

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,	)
Plaintiff	)
vs.	)
	)
AIDAN KEARNEY,	)
	)
WORCESTER DIGITAL MARKETING, LLC	)
	)
TURTLEBOY ENTERPRISES, LLC	)
	)
JOHN DOES 1-10,	)
Defendants	)

**MOTION FOR TRO, PRELIMINARY INJUNCTION, AND
CONSOLIDATION WITH TRIAL ON MERITS**

Pursuant to Mass. R. Civ. P. 65, I pro se Plaintiff Rian Waters move for the court to order the listed requests for relief. On May 10th 2022 Judge: Flannery, Hon. Francis E, approved a 30 page memorandum for a TRO motion. (docket # 98)

The court should grant an injunction because I will succeed on the merits as the evidence makes it clear that Samantha Cardin tried to frame me, and she is not a credible witness, and I will continue to be irreparably harmed until I can fairly present evidence, and Kearney will not suffer any harm if the injunction issues as his rights to speech may not deny or disparage my Ninth Amendment right to a fair trial.

Alternatively, the court should grant an injunction using its equitable inherent power to repair the status quo, as the articles and videos were all retaliation and punishment for participation in this court case, and Kearney should no longer be able to receive fruit from his obstructive acts.

Kearney should post a bond or judgment should be paid before Kearney speaks about witnesses or myself because Kearney's has a lengthy and consistent pattern of harassing me and punishing witnesses before court hearings and after court filings, his defamatory allegations have been getting more and more heinous, and he has bragged several times that he will not pay any judgment. (Affidavit at 30)

The TRO should be granted so that Kearney is not able to exploit the adjustment disorder he caused by harassing me and witnesses before the injunction hearing to impair my ability to litigate during the hearing, as he has consistently done.

The court should allow evidence to be presented after a TRO is issued so that I have an opportunity to collect evidence while I can show witnesses that this court does care about witness safety.

I should not have to post a bond, because the injunction should issue for equitable reasons and to protect my constitutional rights, or alternatively because Kearney has promised to harass anyone that hired me which has put me in poverty, and Kearney has no chance of winning.

Consolidation with a trial on the merits should be ordered because this is a 2018 case with a complete record as for liability, and Kearney has insufficient evidence to support his defense. Consolidation would disincentivize Aidan Kearney from harassing or causing damage to any more lives to obstruct the case, and to hopefully make it safe to present evidence of damages.

See also the attached memorandum.

Wherefore, I request the court;

1. Schedule an expedited hearing for a preliminary and permanent injunction, and after hearing issue an injunction requiring Kearney to retract all articles, video's, posts, or other harassing content that was written about me and/or witnesses in this case, from TBDailyNews.com, and TurtleboySports.com, and all associated social media accounts, and for Kearney to refrain from discussing the case on associated accounts until Kearney either prejudgment posts a bond for \$100,000, or post judgment satisfies any judgment in this case.
2. Consolidate the preliminary injunction hearing with the trial on the merits as to liability.

3. Issue a Temporary Restraining Order, 10 days before the hearing for the injunction, enjoining Kearney from mentioning or harassing myself, and any witness or potential witness in this case.
4. Require that all evidence that is to be presented at the injunction hearing be presented at least five days beforehand, unless it is new obstruction.

Respectfully submitted

/S/ Rian Waters
(530)739-8951 Watersrian@gmail.com Dated: June 9th 2022

Certificate Of Service

I, Rian Waters, hereby certify that I will today serve a copy of the **Motion**, memorandum, and exhibits upon Kearney by certified mail to 111 Mason rd. Jefferson MA 01522

/S/ Rian Waters
(530)739-8951 Watersrian@gmail.com Dated: June 9th 2022

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Introduction

This court should grant a temporary restraining order 10 days before holding an expedited preliminary injunction hearing, consolidated with a trial on the merits as to liability. This court should grant the motion because 1) I will succeed on the merits, as the evidence makes it clear that Samantha Cardin tried to frame me, and that she is not a credible witness. 2) I will not be able to present more evidence of damages without any protection, and “an eventual trial that reflects witness intimidation... is as bad as [or worse than] not trial at all.” United States v. Acevedo-Ramos, 755 F.2d 203, 206 (1st Cir. 1985)

3) Aidan Kearney has harassed or threatened to harm Michael Gaffney, Amanda Sawyer, Cristina Yakimowsky, Shannon O’Loughlin, Michelle Olsson, my ex-roommate, my therapist, and my ex-cofounder, all because they participated with this court case, or because Kearney was afraid that they might participate in this case. 4) Kearney’s harassment is the identified cause and stressor of my adjustment disorder. Up until recently I was having a hard time reasonably eating or sleeping because Kearney’s November 19th threats, and related

harassment causes preoccupation with the stressors and the consequences. (Affidavit at 1)

Consolidation is appropriate

This court should allow consolidation because; First, this is a 2018 case and the record is complete for liability, and ripe for review. Second, there is no reason for delay, since the evidence reasonably admits of only one outcome. Third, the defendant has been relentlessly attacking every possible witness, and bringing conclusion to the lawsuit will disincentivize anymore attacks, and limit collateral damage. Fourth, consolidation as to liability will hopefully make it safe to present evidence of damages. Fifth, Kearney has been justifying committing crimes and intimidating witnesses with the defamatory allegations.

“The risk that a party will suffer irreparable harm during the time between the hearing on the preliminary injunction and final adjudication on the merits may be minimized by consolidating the trial on the merits with the preliminary hearing, as authorized by Mass. R. Civ. P. 65 (b) (2)” *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 n.10 (Mass. 1980)

Background:

Kearney frequently lies about this case to intimidate witnesses

On March 22nd, 2022, Aidan Kearney lied to his followers and misled the witness by claiming that I mentioned Cristina Yakimowsky as a witness during the 3/22/22 hearing on whether Kearney's lawyer Kevin Chrisanthopless was able to withdraw from the case. Kearney then said that she was supporting a woman beating dog killer. (Affidavit 3) Kearney keeps saying privately and publicly that anyone that provides me with evidence is supporting a woman beating dog killer. (Exhibit D 15-16)

Kearney admits to the pedophile and murder threats, and brags that this court does not care.

On December 8th 2021, Kearney said the reason why he wasn't worried about getting in trouble for the November 19th 2021 conspiracy was because 90% of court clerk support him. (Affidavit 4) Recently another whistleblower came forward with more evidence that Aidan Kearney admitted to trying to frame me for the rape and murder threats.

(Affidavit at 5) (Exhibit D 5,7) The whistleblower also has evidence of Aidan Kearney bragging that this court doesn't care about his crimes. (Exhibit D 3,4, & 6) And that he justifies his crimes with defamatory allegations. (Exhibit D 1,15,& 16) Kearney extorted this witness just like the last one. (Exhibit D 10-15) And he bragged that he can cause damage with his platform. (Exhibit D 16)

Kearney chose to threaten to molest children because he exploited my history so he could maximize damage.

In January 2020, I told one of Aidan Kearney's now ex-employees about the evidence that I had proving that I was innocent, and I told her about what Samantha Cardin's father said, and probably did to my daughter. On January 25th, 2020, Aidan Kearney twice mocked me about the allegations and bragged on a recorded video that he can molest my daughter. (Affidavit at 7) "Doesn't that feel good Lilah, good thing daddy's not around and I can touch you whenever I want." "ha ha ha, Rian's not around, now I can molest you little girl, let the molesting begin."

Exploiting my past history is not conjecture. On November 7th 2021, two weeks before Kearney sent pedophile threats in my name, and while discussing a lawsuit involving Dave Portnoy, Kearney posted on

his website “people don’t like victims, they like winners. They like people who punch the cancel mob in the face instead of playing defense. What your fans want is for you to sink to your enemy’s level. That’s the Turtleboy philosophy at least. Principles get you nowhere against these people. They want to make you destitute and harm your families¹, and for that they must destroyed. **Nothing is off limits. Find out everything about them. Learn what their vulnerabilities are. Attack that.** Don’t even go after them – go after their employers, friends, and people they love. Those unrelated parties won’t want to deal with it and will begin to pressure them to stop. Ruin their lives as best you can and make them regret the day they ever thought it would be a good idea to poke you.”² At the end of the article Kearney wrote “The problem is that ratioing them on Twitter isn’t really much of a punishment. **You have to direct them** towards Morning Brew or Business Insider’s Facebook and **Google reviews, which should be flooded with**

¹ I end every email with kind regards, and genuinely wish nothing but the best for Kearney and his family, but like most psychopaths, Kearney thinks everyone that participates in a court case is sadistic and only trying to hurt him and his family.

² <https://tbdailynews.com/dave-portnoy-finally-fires-back-at-business-insider-for-hit-piece-smearing-him-as-sex-predator-mom-files-police-report-after-daughter-coerces-sister-into-sleeping-with-him/>

negative reviews accusing them of harboring pedophiles. That's how the game works now. We didn't make the rules, they did.

Dave Portnoy's next step should be:

Finding out the names of Henry Blodgett's closest relatives and putting their contact information out there.

Publishing the names of the women who ran to these lowlives to try to ruin your reputation and business, especially the mother who filed the police report. If he's not vengeful enough to do that I'll do it if someone wants to email me her information to turtleboysports@gmail.com These people are trying to ruin your life. Nothing is off limits." (Affidavit 31)

Kearney has consistently attacked me and everyone that helps me before court dates.

On January 15th, 2022, Kearney extorted Cristina Yakimowsky because she provided me with screenshots of his conspiracy group, and said if she doesn't call him, that he would go to her court hearing and try to send her to jail. On February 17th, 2022, Kearney followed through with his extortion threat against my witness and said presenting

evidence against him is the stupidest thing anyone could do because everyone knows he is uncontrollably vindictive. (Affidavit 8)

On or about October 18th, 2018, I presented an affidavit to this court by a man named Michael Gaffney, (Docket 15.3) detailing Kearney's consistent obstructive tactics. Kearney had an employee create gay porn images of me and Gaffney together, and repeatedly harassed both of us for it before court hearings. (Docket 67.2 at 19) On January 9th, 2019, Hon. Jane, Mulqueen interrupted me from reading death threats, because she found the first one too mild, and she sua sponte argued that the First Amendment protected threats before court dates without need for debate. 1/9/19 Transcript volume 1 pg 11. She also implied that she did not care about any threats unless they were published in Kearney's name. The court refused to grant an injunction allowing me to present evidence because the court thought it could overrule and retire the settled law in Maloof and Lundin. After the court gave Kearney permission to send threats, I got flooded with death threats and harassment impairing me to the point I couldn't do basic obligations. 3/12/2019 Transcript pg 8 On January 22nd, 2019, Kearney threatened to harass my roommate because I used her address for the court case. (Docket 42 Exhibit A pg

5&6) Kearney threatened to kill my daughter³ on February 13th, 2019 (Docket 67.2 at 31) Kearney has admitted the goal of the articles that he published before court hearings was to destroy me. (Docket 67.2 at 13-15) At the summary judgment hearing I explained that the harassment critically impaired my mental health and that Kearney consistently harassed me before every important event. “if I do a deposition, they're going to harass me before...” 3/12/19 Transcript pg 18. The Court asked if that was speculation and I responded, “They've harassed me nonstop every single [court event].” Kearney did not deny or reply. On June 23rd 2019, Kearney discussed this case, and then said if you participate in a court case against him that he will ruin your life, and that he would get sexual pleasure doing so. (Docket 67.2 at 18) On July 11th 2019, Kearney said he would harass anyone that hired me. (Docket 67.2 at 17) On January 25th 2020, five days after this case was docketed in the Appeals court, Kearney showed pictures of me and my house and told his public shaming blog what my address is, and said the world would be better off with me dead. (Docket 67.2 at 33) On 10/21/2020 I renewed my request

³ Because I can prove that Kearney threatened to murder my daughter the last two years in a row, I can circumstantially prove the threat to murder my daughter before a court date on his website three years ago was also him.

for an injunction and listed new and old evidence of obstruction. Docket 67, the court responded to the new and old allegations stating, “[t]he issues raised in this motion have been previously raised, considered, and ruled upon prior to entry of summary judgment for defendant.” 12/22/20

On November 12th 2020 Kearney said “this is war, okay? When general Sherman, when the South would not ***** surrender to the north during the civil war, we didn't say well we're just gonna keep killing soldiers no, general Sherman marched to ***** Atlanta and he lit everything on fire, ***** **everything, men women, children, dogs, everything ***** burns until you surrender** that's how it ***** works if you want to declare war, then people ***** die in war including civilians. When we bombed Hiroshima and Nagasaki we knew that a bunch of ***** kids and women are going to die in that. Too ***** bad, then ***** surrender ***** surrender and then they ***** surrender didn't they? That's what you got to do unfortunately this collateral damage so **I want to make sure the messages sent here if you **** with me if you try to sue me I'm not gonna go after you I'm gonna go after your ***** family don't **** with me that's all I am saying I'm not ***** playing with these people I paid 30,000 *******

dollars in legal fees last year this **** is not ***** cute anymore and I'm not ***** playing defensive and hiding anymore I'm going to burn your family to the ground just understand that.” (Affidavit 10)

My health is crumbling because of Kearney’s threats

I told the court in 2019 that the threats and harassment put me in a coma like state and prevented me from presenting evidence. Kearney has consistently exploited my mental health that he is the identified cause and stressor of, (Affidavit at 1) by threatening me before hearings and after court filings. I have not been able to reasonably eat or sleep since Kearney tried to frame me for the rape and death threats. I am too stressed and focused on these crimes to address my terrifying health problems.

Legal Standard

“Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application.” Mass. R. Civ. P. 65(b)(2) The legal standard for the issuance of a preliminary injunction was stated in Packaging Industries Group,

Inc. v. Cheney, 380 Mass. 609 (1980). As the Supreme Judicial Court explained, the moving party must demonstrate a substantial likelihood of success on the merits of the underlying complaint, that failure to issue the injunction subjects the moving party to a substantial risk of irreparable harm in the absence of injunctive relief, and that the threatened injury to the moving party outweighs the damage an injunction may cause to opposing party. “Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue.” *Id.* at 617

Consolidation can be done pursuant to the same standard as summary judgment when the nonmoving party has adequate notice and insufficient evidence. “When a party not having the burden of proof at trial demonstrates that the party having that burden has insufficient evidence to sustain it, the moving party is entitled to summary judgment.” *King v. Globe Newspaper Co., 400 Mass. 705, 706 (1987)* When a motion for summary judgment is made and properly supported, the non-moving party may not simply rest on pleadings, “but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.”

Correllas v. Viveiros, 410 Mass. 314, 317 (Mass. 1991) see Mass. R. Civ.

P. 56 (e) “A newspaper article that charges a party with a criminal offence is libelous on its face.” Lundin v. Post Pub. Co., 217 Mass. 213, 215 (1914)

Aidan Kearney has no chance of winning.

I did not kill a dog

Samantha never alleged that she seen me hurt a dog. (Transcript pg 16 at 14) Back in 2017, Samantha Cardin claimed that we argued as soon as we woke up and that right after I left the house our dog was army crawling towards her. (Affidavit at 11) During the deposition Samantha said that right after I left the house our dog was laying on the ground unable to walk. (Transcript pg 16 at 23-25) Either way it does not make sense when you look at the timeline of events that day. I left at around 9:30 AM, (Exhibit A 01⁴) (Affidavit at 12) and Samantha did not say anything was wrong with our dog until the afternoon. (Exhibit A 05⁵) (Affidavit at 12) To believe Samantha Cardin’s story, you'd have to believe that Samantha let our dog suffer for three and a half hours while

⁴ Samantha did not remember having this phone number, but she did believe that they were messages sent between us. (Transcript pg 20 at 10-23) The messages were submitted as exculpatory evidence for the dismissed criminal case over the incident, I had given her the phone for Christmas.

⁵ she did remember having this phone, and believed these messages were between us. (transcript pg 35 at 14-25)

she was too busy telling me she believed I was the “nicest guy in the world.” (Exhibit A 04)

Samantha Cardin told a private investigator that there was no metal cabinet in that kitchen, (Affidavit at 13) and according to the DCF report, Samantha claimed in 2017 that there was no cabinets that could have fallen. (Affidavit at 14) During the deposition Samantha Cardin admitted that there was a metal cabinet in the kitchen. (Transcript 17 at 5 - pg 18 at 3) In our transcribed jail phone calls from January 2017, Samantha and I discussed a metal cabinet that had just fallen with broken glass, which I believed and still believe must have been what injured our dog. (Affidavit at 15)

On the day that Samantha Cardin thought she was going to testify about the criminal allegations for the District Attorney, she wrote on Facebook that she was excited to testify, (Affidavit at 16) but when she got to court, a lawyer confirmed Samantha Cardin had a Fifth Amendment right based on my evidence given to him. I testified to my version of events, Samantha Cardin exercised her Fifth Amendment right and refused to testify for the state. During the April 15th deposition I asked Samantha if she would waive her privileges (Transcript pg 18 at

7) and tell us what the lawyer showed her that made her want to plead the fifth. Samantha said she did not remember, but said it was because she was scared. (Transcript pg 18 at 19-25) Samantha then admitted that she was extremely excited to testify a few hours before pleading the Fifth. (Transcript pg 19 at 4-10)

I believe Samantha plead the Fifth because she was shown the attached Exhibit A, and our transcribed jail phone calls. Kearney confirmed after the deposition that she told him she plead the Fifth because I was trying to frame her for drug dealing⁶. (Affidavit 17) Notably, if Samantha told Kearney the truth, he would have done something to her, like he did to me on November 19th, 2021.

Exhibit A 02 corroborates that my concern with breaking up with Samantha on 12/31/2016, was with Samantha Cardin's father watching our daughter. As Samantha said, "if you're around I will never need to leave her with anyone. You would be the one with her." Also, I noted that there was no reason for her to be scared of me, and she responded, "I'm not scared of you, I don't want to fight anymore." (Exhibit A 02) I

⁶ The ADA seen everything that her 5th amendment attorney seen.

responded, “me either, I was begging you to stop.” I was begging her to calm down and let me leave, but she refused and blocked me from leaving.

I asked Samantha Cardin during our now transcribed jail phone calls, if she thought I was guilty of anything. She did not mention anything about our dog, and she admitted that she was blocking me from leaving. (Affidavit at 29) Which did not align with what she told DCF and the district attorney's office.

I never bought or sold drugs in California

I never bought or sold drugs in California. (Affidavit 1) Samantha’s deposition did not reveal any facts or firsthand knowledge of drug dealing. “An imputation of crime is defamatory per se.” *Waters v. Kearney*, No. 20-P-88, 10 (Mass. App. Ct. Aug. 19, 2021) quoting *Jones v. Taibbi*, 400 Mass. 786, 792 (1987) “Neither vague allegations and conclusory statements, nor assertions of inferences not based on underlying facts will suffice.” *First National Bank of Boston v. Slade*, 379 Mass. 243, 246 (Mass. 1979) “ Statements of belief carry no weight in an affidavit in support of summary judgment.” *Hartford Accident, v. Millis Roofing*, 11 Mass. App. Ct. 998, 999 (Mass. App. Ct. 1981) “An accusation purporting to rest on hearsay is none the less defamatory.” *Maloof v. Post*

Pub. Co., 306 Mass. 279, 279 (1940) “The burden of proof was on the defendants to maintain that defense by showing the substantial truth of the charge in all material respects.” *Id* at 280 “[T]he reasons for allowing fair reports of the proceedings of courts of justice have no application whatsoever to the contents of a preliminary written statement of a claim or charge. These do not constitute a proceeding in open court. Knowledge of them throws no light upon the administration of justice. Both form and contents depend wholly on the will of a private individual...” Lundin v. Post Pub. Co., 217 Mass. 213, 216 (1914) Even if Samantha had fabricated a detailed story, I would argue that she got the details elsewhere. (Transcript pg 9 at 16) “It is elementary law that a defendant cannot free himself from responsibility for spreading defamation by stating that the charges were made by another, and not by the defendant.” Sanford v. Boston Herald-Traveler Corp., 318 Mass. 156, 158 (1945)

On December 2nd, 2021, Defendant Kearney presented an affidavit by Samantha Cardin alleging in a conclusory fashion that I was a drug dealer in California. This allegation was only fabricated to make an excuse for why she plead the Fifth. The affidavit has no address for

Samantha, and did not state what first-hand knowledge she had, or what drugs I supposedly sold. I deposed Samantha Cardin on April 15th 2022, and asked her if she had been arrested for selling drugs, (Transcript pg 23 at 7-25)

Samantha: No, I have never been arrested.

Me: Was I ever arrested for selling drugs in California?

Samantha: no not that I'm aware of, unless you got arrested after we broke up.

Me: did you ever hear about a police officer investigation into drug dealing in California?

Samantha: no, I don't believe so.

Me: are you currently, do you consider yourself a drug user?

Samantha: no absolutely not. (Notably she wore a cannabis brand T-shirt and hat to the deposition.) Select from CuraLeaf

Me: Were you using drugs when we lived in California?

Samantha: cannabis yes absolutely.

Me: Was I using drugs when we lived in California?

Samantha: cannabis yes absolutely

Samantha Cardin has a strong bias

Samantha admitted that she has commented on several of Kearney's articles harassing me and witnesses, (Transcript pg 22 at 9) and she implied during the deposition that if I dropped the lawsuit that the harassment would stop. (Transcript pg 22 at 14) Samantha Cardin said she'd do anything in her power to stop me from knowing about our child, including opening up a DCF case on herself. (Transcript pg 34) Notably DCF filled their reports with lies that made Samantha look good and hid the fact that Samantha's father most likely molested my daughter. On the day that Samantha Cardin tried to frame me, she said she was doing it because I believed her father molested our nonverbal child. (Affidavit 18) Exhibit A 02 corroborates that my concern with breaking up with her was that I believed her father had been inappropriate with our daughter.

I am guessing that the reason why Samantha does not want to talk about our daughter is because our daughter must be having seizures, and she is worried I will fight for custody. The only reason why my daughter would have seizures, is because Samantha was not doing a good job parenting, (my daughter was seizure free when she was living with me

Affidavit at 19) or because Samantha couldn't afford to be a good parent because this court and Aidan Kearney have forced them to live in poverty. She need not worry, I am no longer healthy enough to seek custody.

Samantha has no credibility

Samantha Cardin told DCF that we were homeless in California. (Affidavit at 20) During the deposition Samantha admitted we lived in a big, beautiful house in California. (Transcript pg 9 at 1- 11) We lived in a >4,000 sq ft mansion with a private casino, (Affidavit at 21) which highlights the absurdity of her lies.

Samantha Cardin told DCF that I would not let her work. (Affidavit 22) During the deposition Samantha admitted she would work for a couple days at a time away from the home. (Transcript pg 9 at 12 – 21) Samantha's average pay trimming cannabis was over \$400 a day, which is something I appreciated. (Affidavit at 23) I can prove that I allowed Samantha to make her own choices about when she worked, and I can prove that she did work away from the house for weeks at a time. (Exhibit B)

Samantha Cardin said I was the nicest guy in the world on the same day that she tried framing me. (Exhibit A 04) If this does go to trial, I will prove that Samantha Cardin used more drugs than just cannabis, and that I did not approve of it. (Affidavit at 24)

On the subpoena that was served on Samantha it said she was required to bring all emails between Aidan Kearney and herself. (Exhibit C) Samantha did not bring any emails because she said she was unable to read my handwriting. (Transcript Pg 14 at 15-21) Samantha will lose credibility when the jury sees the legibility of the subpoena.

Samantha Cardin did not want to sign an affidavit in this case in January 2019, but she was pressured to do so by Kearney. (Docket 67.2 at 29) Aidan Kearney reminded Samantha during the deposition how intense he is when someone does something he doesn't like in court. I expect Samantha Cardin to either plead the 5th or tell the truth after Aidan Kearney goes to jail, or this court takes witness safety seriously. Aidan Kearney's conduct during the deposition was clearly obstruction. See *Lamex Foods, Inc. v. Audeliz Lebrón Corp.*, 646 F.3d 100, 112 (1st Cir. 2011)

Selling extraction equipment is not selling drugs.

In 2014 I designed and sought a provisional patent on the first hydrocarbon extraction machine to separate grades allowing the extractor to get the best quality extract, and the biggest yield at the same time. But developing and selling extraction equipment does not make me a drug dealer, just as manufacturing guns for the armory did not make Eli Whitney a murderer.

Defamation in Kearney's book was published with malice

“The defendant in an action for writing or for publishing a libel may introduce in evidence the truth of the matter contained in the publication charged as libellous; and the truth shall be a justification unless actual malice is proved.” GL. CH 231 Section 92. “Massachusetts case law maintains that a publisher may abuse, and lose, a conditional privilege in a number of ways, including if the plaintiff offers proof that the defendant (1) **acted out of malice**, (2) knew the information was false, (3) had no reason to believe the information to be true, (4) **acted in reckless disregard of the truth or the defendant's rights**, or (5) published the information unnecessarily, **unreasonably**, or **excessively**. Whatever the manner of abuse, recklessness, at least, should be required to overcome the privilege. Negligence is not enough to

cause the loss of the privilege. Recklessness is a difficult standard to meet. Reckless conduct is not measured by whether a reasonably prudent man would have published or would have investigated before publishing. Rather, the defendant's conduct is measured by what the defendant had reason to believe. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.” Downey v. Chutehall Constr. Co., Ltd., 86 Mass. App. Ct. 660, 661 (2014) Aidan Kearney was aware that no media outlets found Samantha’s allegations credible, (Affidavit at 25) and he was skeptical in the original article. “The judge, who clearly reviewed the entire blog, wrote that the blog article contained the following additional language: ‘She's saying he head butted her. She's also accusing him of killing their dog. Not good if true. But there's two sides to every story’; ‘You have to be careful with these domestic abuse stories. Your initial instinct is often to believe the battered woman. I know it was Turtleboy's. But at the same time, we don't know these people. And some chicks are capable of anything’; ‘Nothing about this story makes much sense...’” Waters v. Kearney, No. 20-P-88, 7-8 (Mass. App. Ct. Aug. 19, 2021) Kearney consistently published defamatory criminal allegations before

court hearings in reckless disregard for my right to a fair trial. Kearney said he was going to murder me with words around the exact same time he published the defamation in his book, "I am Turtleboy." (Affidavit at 26) Kearney hates me so much he used his kids as pawns. "Under exceptional circumstances a trial court may consider a claim not raised in the pleadings, but such instances almost always involve contracts that violate fundamental public policy [like trying to frame a Plaintiff with pedophile threats]." *Messina v. Scheft*, 20 Mass. App. Ct. 945, 945 (1985)

Kearney should be defaulted

Aidan Kearney tried to frame me for pedophile and murder threats to obstruct this case, and he did not oppose a motion for a Default based on those allegations. Besides, "anything less than a default judgment would have the same result on the plaintiff." *Keene v. Brigham Hospital*, 439 Mass. 223, 237 (Mass. 2003)

Summary judgment should be awarded as to liability regardless of the current evidence of damages.

"In a case of defamation the plaintiffs recovery is limited to actual damages, which are compensatory for the wrong done by the defendant."

Stone v. Essex County Newspapers, Inc., 365 Mass. 246, 256 (Mass. 1974)
"Actual injury includes not only out-of-pocket expenses, but also harm inflicted by impairment of reputation and standing in the community, personal humiliation, *and mental anguish and suffering.*" Draghetti v. Chmielewski, 416 Mass. 808, 815-16 (Mass. 1994) In this case I have a diagnosis for adjustment disorder, which Kearny's harassment is the identified cause and stressor of. (Docket 47.1)

I either need an injunction, or I need Kearney to go to jail before I can present more evidence of damages. Kearney has both shown and said that he is unable to control himself when people participate in court cases against him. Even so, summary judgment should still be awarded in my favor as to liability without deciding damages because, "defamatory statements that are accusations of crime are actionable without proof of special damage." Galvin v. New York, N. H. & H. R. Co., 341 Mass. 293, 293 (1960) "Damages for libel or slander per se included harm caused thereby to the reputation of the person defamed or in the absence of proof of such harm, for the harm which normally results from such a defamation. At the heart of the libel-and-slander- per-se damage scheme lay the award of general damages for loss of reputation. They were

granted without special proof because the judgment of history was that the content of the publication itself was so likely to cause injury and because "in many cases the effect of defamatory statements is so subtle and indirect that it is impossible directly to trace the effects thereof in loss to the person defamed." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 372-73 (1974)

I did write an exact quote.

In the edition I have it is an exact quote, (Exhibit E) (Affidavit at 27) regardless "an insinuation may be as actionable as a direct statement. In libel it is enough, whatever the form, that the manifest tendency of the words is seriously to hurt the plaintiff's reputation." Thayer v. Worcester Post Co., 284 Mass. 160, 161 (1933) "The motion judge concluded that the statements were not actionable based on the use of cautionary terms and language, i.e., 'according to' and 'allegedly.' However, 'an imputation of crime is defamatory per se.' This is so even when 'the charge was qualified by the words it is alleged or their equivalent,' or a mere 'truthful preface was added that someone else has so stated.'" Waters v. Kearney, 100 Mass. App. Ct. 1105, (Mass. App. Ct. 2021) citations omitted.

I will be irreparably harmed without an injunction.

Samantha's testimony was influenced, and her deposition got interrupted by Kearney's ruthless behavior. I can't safely present any testimony from my therapist or doctors without an injunction or some other protection.

I am currently unable to have a driver's license because Kearney harassed every person that let me use their address for this court case, showing pictures of their house and saying the world would be better off with me dead. Aidan Kearney frequently directs people on Facebook to access the registry of motor vehicles database and search people's information for him. (Affidavit 28)

I have a Constitutional right to safety in the court

"It is essential to the preservation of the rights of every individual, his *life, liberty*, property, and *character*, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit." Mass. Const. Pt. 1, art. XXIX

“Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws.” Mass. Const. Pt. 1, art. X

“Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. *He ought to obtain right and justice freely*, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; *conformably to the laws.*” Mass. Const. Pt. 1, art. XI

“From these provisions, it necessarily follows that courts of general jurisdiction have the inherent power to do whatever may be done under the general principles of jurisprudence to insure to the citizen a fair trial, whenever his *life, liberty*, property or *character* is at stake.” O'Coin's, Inc. v. Treasurer of the County of Worcester, 362 Mass. 507, 509-10 (Mass. 1972)

I also have a Ninth Amendment and or Fourteenth Amendment right to protection in the courts. The Massachusetts Constitution says that this specific right was already included in the Massachusetts Constitution, even though it had not yet been specifically mentioned. “No

proposition inconsistent with any one of the following rights of the individual, as at present declared in the declaration of rights, shall be the subject of an initiative or referendum petition... the right of access to *and protection in courts of justice...*” Massachusetts Constitution 48, Init., Pt. 2, § 2 Because this right was included by implication in the Mass. Constitution, I argue it was one of the obvious rights that “were retained by the people” that are protected by the Ninth Amendment. “The administration of justice by an impartial judiciary has been basic to our conception of freedom ever since Magna Carta. It is the concern not merely of the immediate litigants. Its assurance is everyone's concern, and it is protected by the liberty guaranteed by the Fourteenth Amendment. That is why this Court has outlawed mob domination of a courtroom, mental coercion of a [Plaintiff and his witnesses]” Bridges v. California, 314 U.S. 252, 282 (1941) citations omitted.

“The purpose for which courts are established is to do justice. A fundamental principle of free institutions was stated by Hamilton in these words: ‘Justice is the end of government. It is the end of civil society. It ever has been, and ever will be pursued, until it be obtained or until liberty be lost in the pursuit. In a society, under the forms of which

the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign, as in a state of nature where the weaker individual is not secured against the violence of the stronger.” (The Federalist, ed. 1864, No. 51, p. 401.) Crocker v. Justices of the Superior Court, 208 Mass. 162, 179-80 (Mass. 1911)

Aidan Kearney will not be harmed by an injunction.

Kearney has no interest in the injunction as my Ninth Amendment right to a fair trial and protection in the court nullifies Kearney’s right to free speech. “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”
Ninth Amendment

Additionally, Kearney fraudulently cancelled his businesses that legally should still own the “weaponized public shaming” accounts. (Docket 74) Kearney has stated that my articles do not make him any money.

Conclusion

This court should schedule a hearing for a preliminary injunction consolidated with the trial on the merits as to liability, and this court

should grant a temporary restraining order 10 days before the hearing for witness safety, and so that the merits of the preliminary injunction motion and trial can be properly addressed.

Respectfully submitted

/S/ Rian Waters
(530)739-8951 Watersrian@gmail.com Dated: June 9, 2022

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,
Plaintiff

VS.

AIDAN KEARNEY,

DEFENDANT

Affidavit of Rian Waters

- 1) I never bought or sold drugs in California.
- 2) Kearney's harassment is the identified cause and stressor of my adjustment disorder. I have been having a hard reasonably eating and sleeping because this court's decisions cause preoccupation with the stressors and the consequences.
- 3) On March 22nd 2022 Aidan Kearney lied to his followers and claimed that I mentioned Christina Yakimaski as a witness during the 3/22/22 hearing, Kearney then said that she was supporting a woman beating dog killer.
- 4) On or around December 8th 2021, Kearney bragged that 90% of court clerks and 99% of police support him. (I have a video recording.)
- 5) Exhibit D are screenshots between Shanon and Kearney
- 6) In January 2020, I told one of Aidan Kearney's now ex-employees about the evidence that I had proving that I was innocent, and I told her about what Samantha Cardin's father said, and probably did to my daughter.

- 7) I have two video clips from January 25th 2020, with Aidan Kearney twice bragging that he can molest my daughter. “Doesn't that feel good Lilah, good thing daddy's not around, and I can touch you whenever I want.” “ha ha ha, Rian's not around, now I can molest you little girl, let the molesting begin.”
- 8) On January 15th, 2022, Kearney extorted the woman that provided the screenshots of his conspiracy group,
- 9) On February 17th, after following through with his extortion threat against Cristina Yakimowsky, Kearney said presenting evidence against him is the stupidest thing anyone could do because everyone knows he is uncontrollably vindictive.
- 10) On November 12th 2020 Kearney said “this is war, okay? When general Sherman, when the South would not ***** surrender to the north during the civil war, we didn't say well we're just gonna keep killing soldiers no, general Sherman marched to ***** Atlanta and he lit everything on fire, ***** everything, men women, children, dogs, everything ***** burns until you surrender that's how it ***** works if you want to declare war, then people ***** die in war including civilians. When we bombed Hiroshima and Nagasaki we knew that a bunch of ***** kids and women are going to die in that. Too ***** bad, then ***** surrender ***** surrender and then they ***** surrender didn't they? That's what you got to do unfortunately this collateral damage so I want to make sure the messages sent here if you **** with me if you try to sue me I'm not gonna go after you I'm gonna go after your ***** family don't **** with me that's all I am saying I'm not ***** playing with

these people I paid 30,000 ***** dollars in legal fees last year this ***** is not ***** cute anymore and I'm not ***** playing defensive and hiding anymore I'm going to burn your family to the ground just understand that.”

- 11) In 2017, Samantha Cardin told DCF that we argued as soon as we woke up and that right after I left the house our dog was army crawling towards her.
- 12) In 2017 I presented the following for a timeline from the New Years Eve that I was accused of animal cruelty and domestic violence. Samantha plead the Fifth.
 - a) ~9:00am we wake up, Sam starts her mania.
 - b) 9:30 I leave with "her car" and both keys.
 - c) ~10:05 I return to the house and walked in the kitchen to grab my backpack. Samantha was cooking my daughter sausage when I showed up, and she was feeding her when I left.
 - d) ~ 10:10 I leave and drive to east long meadow
 - e) 12:50 pm Sam calls and says Luna can't walk and needs to go to vet. I say I'll be right there.
 - f) ~1:05 I show up and carry Luna to the car and hand a key to Sam's dad. Sam leaves with her dad to bring Luna to the vet, I stay and take care of Lilah.
 - g) ~ 1:55 Luna was weighed 78lbs, and upstairs neighbor knocked (who owned a vehicle, and was home all morning.)
 - h) ~ 4:10 Sam and her father return. Sam says I can stay until my flight Tuesday, but then says that the landlord Rob won't allow it.

Rob shows up and trips trying to punch me because the fallen cabinet limited his leg room.

- i) ~4:20 Sam's dad hands me the second key and I drive to my friend Erick's.
 - j) 4:53 police arrive to arrest me and I first learn that I'm accused of animal cruelty
- 13) In 2017 Samantha Cardin told a private investigator that there was no metal cabinet in that kitchen.
- 14) according to the DCF report, Samantha claimed there was no cabinets that could have fallen.
- 15) In our transcribed jail phone calls from January 2017, Samantha and I discussed a metal cabinet that had just fallen with broken glass, which I believed and still believe must have been what injured our dog.
- 16) On the day that Samantha Cardin thought she was going to testify about the criminal allegations for the District Attorney, she wrote on Facebook that she was excited to testify. When she got to court, a lawyer confirmed Samantha Cardin had a Fifth Amendment right based on my evidence given to him. I testified to my version of events, Samantha Cardin exercised her Fifth Amendment right and refused to testify for the state.
- 17) On or around April 17th 2022, Kearney said that when my criminal case ended Samantha told him she plead the Fifth because I was trying to frame her for drug dealing, which is obviously false because the ADA seen everything her 5th Amendment attorney seen.

- 18) On the day that Samantha Cardin tried to frame me, she said she was doing it because I believed her father molested our nonverbal child.
- 19) My daughter was finally seizure free after a long battle when she was living with me.
- 20) Samantha Cardin told DCF that we were homeless in California
- 21) in California me and Samantha Cardin lived in a >4,000 sq ft mansion with a private casino.
- 22) According to DCF reports Samantha Cardin told DCF that I would not let her work.
- 23) Samantha's average pay trimming cannabis was over \$400 a day.
- 24) I have text messages from me and Samantha Cardin, where I told her I did not approve of her doing cocaine, and she responded by saying she would kill herself. Which was a typical response because of her bipolar disorder.
- 25) Aidan Kearney has publicly directed his followers with no success to get the media to write about Samantha Cardin's allegations.
- 26) Kearney said he was going to murder me with words around the exact same time he published the defamation in his book, "I am Turtleboy."
- 27) The defamatory statements in the second amended complaint are exact quotes from Aidan Kearney's first edition "I am Turtleboy"
- 28) Aidan Kearney frequently directs people on Facebook to access the registry of motor vehicles database and search people's information for him

- 29) In transcribed jail phone calls, I asked Samantha if she thought I was guilty of anything. She did not mention anything about our dog, and she admitted that she was blocking me from leaving. Which did not align with what she told DCF and the district attorney's office.
- 30) As detailed in previous affidavits, Kearney has bragged several times that he has intentionally hid his assets so that he will not have to pay any judgment.
- 31) On November 7th 2021 Aidan Kearney published an article on TBdailynews.com using a pen name that he is widely known by “uncle Turtleboy” and in the article he wrote the statements as quoted in the memorandum.

Signed under the pains and penalties of perjury 6/9/2022

/s/ Rian Waters WatersRian@gmail.com (530) 739 8951

EXHIBIT C

EXHIBIT D

EXHIBIT E