

COMMONWEALTH OF MASSACHUSETTS

APPELLATE DOCKET #2020P0088
LOWER COURT DOCKET # 1879CV00344

RIAN WATERS,
Appellant/ Plaintiff
v.

AIDAN KEARNEY,
WORCESTER DIGITAL MARKETING, LLC
TURTLEBOY ENTERPRISES, LLC
Appellee/ Defendant

Record Appendix

Filed Pro se by Rian Waters

Rian Waters
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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

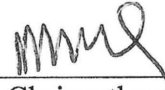
RIAN WATERS	)
Plaintiff	)
	)
vs.	)
	)
AIDAN KEARNEY,	)
WORCESTER DIGITAL MARKETING, LLC	)
TURTLEBOY ENTERPRISES, LLC AND	)
SAMANTHA CARDIN	)
Defendants	)

**EMERGENCY MOTION OF THE DEFENDANTS, AIDAN KEARNEY, WORCESTER
DIGITAL MARKETING, LLC, AND TURTLEBOY ENTERPRISES, LLC TO REMOVE
THE DEFAULT AND REQUEST FOR LEAVE TO FILE ANSWER LATE**

NOW COME the defendants, Aidan Kearney, Worcester Digital Marketing, LLC, and Turtleboy Enterprises, LLC ("Defendants"), and respectfully requests that this Court strike the Request for Default filed by the plaintiff, Rian Waters and/or remove the default pursuant to Rule 55(b) of the Massachusetts Rules of Civil Procedure. As grounds therefore, the Defendants refer to and incorporate the memorandum of law attached hereto.

WHEREFORE, based upon the foregoing, the Defendants respectfully request that the Request for Default be stricken and/or any default be vacated and the Defendants be allowed to answer the Plaintiff's Complaint.

Respectfully submitted,
Attorney for Aidan Kearney,
Worcester Digital Marketing, LLC
Turtleboy Enterprises, LLC



Kevin Chrisanthopoulos, Esq.
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Westfield, MA 01085
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Kevin@KCTrialAttorney.com

DATED: September 25, 2018

CERTIFICATE OF SERVICE

I, Kevin Chrisanthopoulos, Esq., hereby certify that on this 25th day of September, 2018,
I served a copy of the above upon the parties in the action by mailing, postage prepaid, to:

Rian Waters
199 Allen Street
East Longmeadow, MA

Subscribed under the penalties of perjury.



Kevin Chrisanthopoulos

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS	)
Plaintiff	)
	)
vs.	)
	)
AIDAN KEARNEY,	)
WORCESTER DIGITAL MARKETING, LLC	)
TURTLEBOY ENTERPRISES, LLC AND	)
SAMANTHA CARDIN	)
Defendants	)

**DEFENDANTS', AIDAN KEARNEY, WORCESTER DIGITAL MARKETING, LLC,
AND TURTLEBOY ENTERPRISES, LLC, MEMORANDUM IN SUPPORT OF THEIR
EMERGENCY MOTION TO REMOVE THE DEFAULT AND REQUEST FOR LEAVE
TO FILE ANSWER LATE**

The defendants, Aidan Kearney, Worcester Digital Marketing, LLC, and Turtleboy Enterprises, LLC ("Defendants"), moves this Honorable Court to remove the default entered on or about September 18, 2018, pursuant to Mass. R. Civ. P. 55(a) and to allow the Defendants to file late its Answer. Alternatively, the Defendants request that a hearing on this matter be scheduled. As grounds therefor and in support thereof, the Defendants state the following:

FACTUAL BACKGROUND

The Plaintiff filed his Complaint on or about May 16, 2018. (Paper No. 3). The Complaint, alleges that "At about 5pm on December 31, 2016, the Plaintiff was arrested for animal cruelty, and assault and battery." Further, "On or about January 6, 2017, Turtleboy Sports published an article covering the December 31, incident on their website, and Facebook. (Paper No. 3 at ¶ 20).

The Plaintiff alleges numerous false statements were made about him. (Paper No. 3 at ¶28). The Complaint also alleges the Defendants caused him harm and damage. (Paper No. 3 at ¶ 30).

Following the filing of the Complaint service was made on the Defendants on June 1, 2018. (Paper Nos. 5-7). Following service of the Complaint the Defendants received numerous emails from the named Plaintiff attempting to extort money in lieu of proceeding with the Complaint. (Affidavit of Aidan Kearney attached hereto as Exhibit A, ¶ 3). On July 26, 2018 the Defendants received an email from the Plaintiff stating that in exchange for cash the Plaintiff would dismiss the lawsuit. In that same email the Plaintiff told the Defendants to “take your time to figure what is best for you and TBS”. (Exhibit A ¶ 4). On July 26, 2018, the Defendants filed a Police Report with the Holden Police Department reporting the attempted extortion. (Exhibit A ¶ 5). The Plaintiff’s continued emails distracted the Defendants attention from this civil matter. A Default order was entered on September 18, 2018. (Paper Nos. 12-13). Upon receipt of the Default Order, the Defendants contacted counsel for representation. (Exhibit A ¶ 7).

ARGUMENT

Under Mass. R. Civ. P. 55(c), “[f]or good cause shown the court may set aside an entry of default and, if a judgment has been entered, may likewise set it aside in accordance with Rule 60(b).” The Court has broad discretion in removing or setting aside a default. *Greenleaf v. Mass. Bay Transp. Auth.*, 22 Mass. App. Ct. 426, 429 (1986). It has generally been stated that a Court should resolve any doubts in favor of a trial on the merits. See *Smith and Zobel*, 8 Mass. Prac. § 55.8 and cases cited therein. In *Berube v. McKesson Wine & Spirits Co.*, 7 Mass. App. Ct. 426 (1979), the Court provided six considerations:

(1) whether the offending party has acted promptly after entry of judgment to assert his claim for relief therefrom; (2) whether there is a showing either by way of affidavit, or otherwise apparent on the record, that the claim sought to be revived has merit; (3) whether the neglectful conduct occurs before trial, as opposed to

during, or after the trial; (4) whether the neglect was the product of a consciously chosen course of conduct on the part of counsel; (5) whether prejudice has resulted to the other party; and (6) whether the error is chargeable to the party's legal representative, rather than to the party himself; for the courts have been reluctant to attribute to the parties the errors of their legal representatives.

Id. at 430-431 (internal quotations and citations omitted); see also *Jerry Martin Co., Inc. v. Hyannis Marina, Inc.*, 3 Mass. App. Ct. 746 (1975); *Lye v. Lye*, 322 Mass. 155, 157-158 (1947).

The Defendant respectfully submits that based on these considerations the Court should remove the default and allow the Defendants to answer the Plaintiff's complaint. First, the Defendants acted promptly after they received notice of the Default Order to assert its defense. Also, there is evidence to show that the Defendants' failure to respond to the Complaint was not a chosen course of action, but the result of neglect due to extenuating circumstances resulting from the Plaintiff's email correspondence to the Defendants and subsequent filing of the Police Report. Rules 55 and 60 of the Massachusetts Rules of Civil Procedure contemplate situations just like this one where the party seeks relief due to "circumstances that are unique or extraordinary, [and] not any 'garden-variety oversight.'" *Tai v. City of Boston*, 45 Mass. App. Ct. 220, 222 (1998) citing *Felch v. General Rental Co.*, 383 Mass. 603, 613-614 (1981); see also *Tai*, 45 Mass. App. Ct. at 222 n.4 (noting that the terms "inadvertence" and "excusable neglect" are often used interchangeably). The Defendant asserts that these facts meet that burden.

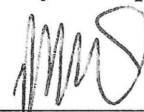
The Defendants have meritorious defenses to the Plaintiff's claims. In this case, the Defendants are not posting the alleged statements, rather a third party posts their blogs to the website. Moreover, truth is always a defense to the Plaintiff's allegations.

This matter has been filed with the Court for only three months, and there has been no trial assigned, nor has there been any discovery. *Berube*, 7 Mass. App. Ct. at 430-431. The Plaintiff will suffer no prejudice by virtue of the removal of the default and late filing of the Answer. Delay alone does not constitute prejudice. See *KPS & Assocs., Inc. v. Designs by FMC, Inc.*, 318 F.3d

1, 15 (1st Cir. 2003); see *id.* (internal citations omitted) (“The issue is not mere delay, but rather its accompanying dangers: loss of evidence, increased difficulties of discovery, or an enhanced opportunity for fraud or collusion.”). In this case, the Plaintiff only filed his Complaint on May 16, 2018, and would be hard pressed to claim prejudice as a result of a short delay.

WHEREFORE, based upon the foregoing, the Defendants respectfully requests that this Court remove the default entered against it pursuant to Mass. R. Civ. P. 55(a), and allow the Defendants to file the Answer within twenty days. Alternatively, the Defendant requests that a hearing on this matter be scheduled.

Respectfully submitted,
Attorney for Aidan Kearney,
Worcester Digital Marketing, LLC
Turtleboy Enterprises, LLC



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EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV344

RIAN WATERS,
Plaintiff

VS.

AIDAN KEARNEY,

WORCESTER DIGITAL MARKETING, LLC

TURTLEBOY ENTERPRISES, LLC

SAMANTHA CARDIN.

JOHN DOES 1-10,
Defendants

PLAINTIFF RIAN WATERS'S OPPOSITION TO DEFENDANTS AIDAN KEARNEY, WORCESTER DIGITAL MARKETING LLC, AND TURTLEBOY ENTERPRISES LLC EMERGENCY MOTION TO REMOVE DEFAULT AND REQUEST FOR FILING A LATE ANSWER.

The Defendants Aidan Kearney, Worcester Digital Marketing, LLC, and Turtleboy Enterprises, LLC, (“The Defendants”) Motion To Remove Default (D. Motion)¹ should be denied because it does not provide a valid good reason to default pursuant of Ma. Civil Rule 55(c). The Defendants in this case deliberately defaulted, and they only provide a conclusory argument of having a meritorious claim.

¹ The Defendants Motion to remove the Default will be cited as (D Motion). The Defendants Memorandum in support of Motion to remove the Default will be cited as (D Memo [at page number]) Affidavit of Aidan Kearney will be cited as (D AFF. ¶.[Paragraph Number]) Plaintiffs Amended Complaint (Complaint. ¶.[Paragraph Number])

Factual History

The Plaintiff filed a lawsuit for malicious prosecution and defamation on or about May 16, 2018. The Defendants were served with the a copy of the initial complaint for the underlying lawsuit on May 21, 2018 in hand by a Sheriff. The Defendants were served with a copy of the Amended Complaint (Complaint) by mail on June 1, 2018. Defendants do not dispute that service was proper. On September 18, 2018 the Clerk ordered all of the Defendants defaulted Pursuant of Mass. R. Civ. P. 55(A) for failing to defend or otherwise plead in the time allowed under Mass. R. Civ. P. 12(a). Now the Defendants presumably² seek to remove the default pursuant of Mass. R. Civ. P. 55(C)

On or about May 20, 2018 Defendant Aidan Kearney hosted a live show, and after discussing the Plaintiff's complaint, Mr. Kearney bragged about defaulting in another case, before stating "we are undefeated in court, we are ready, bring it on." (Exhibit C ¶. 2) On July 7th 2018 the Plaintiff was messaged by one of the Defendants Facebook accounts, Clarence Emerson. On July 8th 2018 The Plaintiff emailed the Defendants asking them not to send messages to his Facebook account. The Defendants replied "So you're not interested in having the blog taken down." (Exhibit A) On September 24, 2018 Defendant Aidan Kearney (Mr. Kearney) committed perjury and additional defamation by misrepresenting the contents of the emails, and alleging that the settlement negotiations that transpired as a result of these messages is attempted extortion. The Defendants also argue that their failure to respond to the complaint is due to neglect resulting from the email correspondence distracting their attention from

²The Defendants motion (D Motion) requested to remove the default pursuant of Mass. R Civ. P., Rule 55(B) The Defendants memorandum (D Memo 1) request to remove the default pursuant of Mass. R Civ. P., Rule 55(a) Although Mass. R Civ. P., Rule 55(c) is the correct rule

3

the lawsuit. On September 23 2018 the Defendants messaged the Plaintiff's Facebook account stating "Get ready homeboy. Funs just getting started"

ARGUMENT

To remove a default pursuant of 55c, the Defendants are required to show that they have a good reason for defaulting, and that they have meritorious defenses to the claims they seek to revive. The Defendants claim that their neglect to answer was due to the emails distracting their attention.(D. AFF ¶.6)(D. Memo 2&3) Being distracted and attempting to settle is not a valid excuse to ignore the courts rules. see Kenney v. Rust, 17 Mass. App. Ct. 699, 702, 462 N.E.2d 333, 336, 1984 Mass. App. LEXIS 1428, *7 Furthermore, even if the Plaintiff had said the statements that Mr. Kearney alleged, The Defendants still should have defended pursuant of Mass. R. Civ. P. 12. While the courts generally have broad discretion in removing defaults, ignoring or flouting Mass. R. Civ. P. 12a is not permitted. "Parties cannot, with impunity, ignore, flout, or circumvent the Rule 12(a)(1) twenty-day deadline for filing an answer." Floyd v. Owens, 2009 Mass. App. Div. 219

A. The Defendants are well aware of the potential consequences of defaulting, and their decision to default was strategic flouting.

The Defendants blogged about winning a case by default on June 17 2017 (Exhibit D)

"we took them to small claims court and won after this deadbeat decided not to show up. Then he didn't show up for the payment review, so that means it's capias time. Small claims court is routine for Turtleboy at this point. We actually like it and we even have our preferred courthouses. That's how often we go and win."

The Defendants have routinely defaulted in at least three other cases. (Exhibit B ¶.2)

Mr. Kearney has talked about the strategic benefits of defaulting on more that one

occasion. (Exhibit B ¶.2) (Exhibit C ¶.2b) Furthermore, the Defendants stated that they were ready for this case on May 20, 2018, and on August 20, 2018 under oath with counsel present, Mr. Kearney inferred that the Plaintiff's Pro Se status meant this case wasn't serious. (Exhibit B ¶.3d) Mr. Kearney also fails to explain why he was unable to respond before the default order was entered, but was able to immediately hire counsel after receiving the default order.

At the end of the Defendants live show on May 20th 2018, Mr. Kearney talked about the defamatory article written about the Plaintiff, and stated that the Plaintiff threatened to sue. Then Mr. Kearney bragged about their litigation skills and experience stating "Your not going to come in here and threaten to sue us, and if you do, good luck cause we are so good at court, I can't even begin to tell you, we are undefeated, we are the New England Patriots of internet defa..deformation court."

Then Mr. Kearney discussed defaulting in a defamation case filed by Hip Hop Star Talib Kweli in Kings County Supreme Civil Court in New York. Stating "you know what we did, we just didn't fucking go. We got the papers and everything" "I'm not spending a Lawyer, and playing your bullshit game here. And you know what he did? He dropped it." Mr. Kearney closed the topic by stating "we are undefeated in court, we are ready, bring it on."

B. The Allegations of extortion in the Defendants Motion and Affidavit are malicious and not presented in good faith:

The Defendants claim that settlement negotiations in the email correspondence that they initiated is attempted extortion, and that it distracted them from answering the complaint. But none of the emails contain a threat or malicious intent as would be

required by MA G.L. CH 265 (25)³ Aidan Kearney claims that on July 26, 2018 he received an email from the Plaintiff stating that in exchange for cash the Plaintiff would dismiss the lawsuit. (D Aff. ¶4) This is perjury and a misrepresentation of the Plaintiff's email, (Exhibit A page 2) On July 24th 2018 the Plaintiff sent a email stating that he could not drop the suit completely, but that he could have a lawyer draft a proper settlement agreement. The email didn't contain any threats, or mention accepting cash. In prior cases Judges have ignored baseless extortion allegations. See Brothers v. Lipp, 2004 Mass. App. Div. 21, 26, 8, *18

C. The Defendants argument of having meritorious claims is insufficient:

Mr. Kearney's Affidavit does not state the nature of his defense to any of the claims in the amended complaint. "A bare allegation or of merit will not suffice. There should be support in the form of affidavits or reference material" Carlson v. Silvia, 2002 Mass. App. Div. 190, 191, 75, *4-5 The Defendant's memorandum cites a single claim that was only directed at Turtleboy Enterprises LLC. A single claim is not enough to remove the default "meritorious nature of defense to one claim of a multi-claim action does not justify removal of default on other claims" Cicchese v. Tape Time Corp., 28 Mass. App. Ct. 72, 76, 546 N.E.2d 384, 386, 1989 Mass. App. 658, *8 The Defendants claim that they are not responsible for posting the statements, and that a third party posts the blogs. However this is not a meritorious defense, as the blogger who wrote the damaging article referred to himself

³ Section 25. Whoever, verbally or by a written or printed communication, maliciously threatens to accuse another of a crime or offence, or by a verbal or written or printed communication maliciously threatens an injury to the person or property of another, or any police officer or person having the powers of a police officer, or any officer, or employee of any licensing authority who verbally or by written or printed communication maliciously and unlawfully uses or threatens to use against another the power or authority vested in him, with intent thereby to extort money or any pecuniary advantage, or with intent to compel any person to do any act against his will, shall be punished by imprisonment in the state prison for not more than fifteen years, or in the house of correction for not more than two and one half years, or by a fine of not more than five thousand dollars, or both.

as Turtleboy twice in the article. The Defendants typically refer to themselves as Turtleboy whenever a statement or article concerns their business. (Exhibit D)(Complaint ¶.29)

Without support the Defendants memorandum states truth is always a defense to the Plaintiff's allegations, this is another weak defense as the article was not verbatim and contained multiple statements and conclusions that contradicted the sources they had used. Also, they noted in the article that their source wasn't reputable. (Complaint ¶.53)

D. The Plaintiff could be prejudiced if the default is removed:

The Plaintiff's Complaint (Complaint p12 & p55-62) contains both Alter Ego, and fraud allegations. Based on the Defendants prior conduct, it is very likely that the Defendants will use any additional time to falsify documents or hide assets.

Additionally the Defendants are currently being sued in another Superior Court case that was filed March 6, 2018 in Bristol county. If another lawsuit gets a large judgment before this case finishes, then it will be unlikely that the Plaintiff will be able to realize any of the judgment. So a timely answer would have certainly helped this case finish before the other case.

E. The Defendants argument that the courts generally favor a trial on merits does not excuse strategic flouting:

Prior courts have decided that removing a default requires "a party who would have a default judgment set aside must show both that there is good reason for the default and the existence of a meritorious defense." "Even if B & T satisfied the latter requirement, it would not be entitled to relief because it failed to satisfy the former."

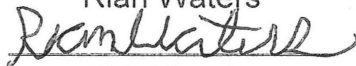
Taylor v. Boston & Taunton Transp. Co., 720 F.2d 731, 733, 1983 U.S. App. 15350, *6, 37 Fed. R. Serv. 2d (Callaghan) 970 (Internal citations omitted) Other courts have also denied this argument. "The Court regards this argument as an invitation to disregard the plain language and unmistakable purposes of the Rule, an invitation it now declines." Barron v. Brofsky, 2016 Mass. Super. 5, *6-7, 33 Mass. L. Rep. 201, 2016 WL 418981

CONCLUSION

For the reasons set forth above, the Plaintiff respectfully requests that the Defendants Emergency Motion to remove the default, and request for leave to file answer late be denied in all respects.

Respectfully submitted,

Rian Waters



199 Allen St.

East Longmeadow, MA. 01028

(530)739-8951

Watersrian@gmail.com Dated: October 11, 2018

EXHIBIT A



Rian Waters <watersrian@gmail.com>

Dear Aidan

7 messages

Rian Waters <watersrian@gmail.com>

Sun, Jul 8, 2018 at 10:14 AM

To: Turtleboy Hottakes <Turtleboysports@gmail.com>

Dear Aidan

Please don't send messages to my personal page. I was making a lot of money on a poker trip before Clarence messaged me. I will hire representation this week and you can message them.

In the meantime you can send any questions or concerns here.

Thank you in advance
Rian Waters

Turtleboy Hottakes <turtleboysports@gmail.com>

Sun, Jul 8, 2018 at 12:28 PM

To: Rian Waters <watersrian@gmail.com>

So you're not interested in having the blog taken down?

[Quoted text hidden]

Rian Waters <watersrian@gmail.com>

Sun, Jul 8, 2018 at 2:27 PM

To: Turtleboy Hottakes <Turtleboysports@gmail.com>

I am very interested in negotiating peace, but I want some personal space.

What do you have in mind? What conditions are important to you? You can call me if you would rather obviously a NDA would protect your info.

Rian Waters
[Quoted text hidden]

Turtleboy Hottakes <turtleboysports@gmail.com>

Sun, Jul 8, 2018 at 2:48 PM

To: Rian Waters <watersrian@gmail.com>

I am admitting to no wrongdoing nor am I saying that I am Aidan Kearney. Basically I think your lawsuit is a joke but it's just not worth our time and effort to fight it. No one reads that blog anymore so it's of no use to me or the site. It's not worth dealing with you so it's easier to just take the blog down, which I believe is what you want. If you want this then drop the lawsuit, we will unpublish the blog and move on. That's the offer.

[Quoted text hidden]

Rian Waters <watersrian@gmail.com>

Sun, Jul 8, 2018 at 5:04 PM

To: Turtleboy Hottakes <Turtleboysports@gmail.com>

I will get back to you later this week.

[Quoted text hidden]

Rian Waters <watersrian@gmail.com>

Tue, Jul 24, 2018 at 1:21 PM

To: Turtleboy Hottakes <Turtleboysports@gmail.com>

First I want to point out that even if we don't settle, retracting the article before your response is due would cut the damages owed in half. It's tough for for me to drop you from the suit because I know my team is stronger than you think,

RA020

and if you had insurance I would get a six figure settlement during the deposition phase. But I would rather spend my time and energy winning in a poker room than winning in the court room.

Sadly I can't drop the suit completely because Samantha is still crazy and this case is slowly forcing her back to reality. But I can have a lawyer draft a proper settlement agreement and drop all the defendants besides her. Below is my offers which I tried to make as low as possible.

Option 1

1. NDA, You agree not to write about Samantha or myself.
2. \$1,500
3. \$5,000 advertising credit that expires, which honestly I will likely never use it's just to ease court approval

Option 2

1. NDA, You agree not to write about Samantha or myself without permission
2. You publish a two part article that I'll send in the rough drafts, and I will get final editor rights before they are published. First part will be about my daughters battle with Glut1 and the negligent doctor that didn't want my daughter to make it. If needed the second part will cover Samantha framing me, and my battle to get my daughter back.
3. \$5,000 ad credit that expires.

Take your time to figure what is best for you and TBS, and feel free to ask questions here or by phone.

Best Regards
Rian Waters
(530) 739-8951
[Quoted text hidden]

Rian Waters <watersrian@gmail.com>
To: Turtleboy Hottakes <Turtleboysports@gmail.com>

Mon, Jul 30, 2018 at 1:35 PM

I have to drop option 2.

Give me a phone call and we can do something closer to your offer. The Carr fire has me feeling generous.

[Quoted text hidden]

EXHIBIT B

AFFIDAVIT OF MICHAEL T. GAFFNEY

I, Michael T. Gaffney, 3333 Bleecker Street, #425, Dallas, TX, swear and depose as follows:

1. I have extensive knowledge of the methods and practices of Aidan Kearney as I am currently involved in litigation with him and had extensive communications with him over the period of approximately 3 years.
2. That Mr. Kearney has routinely failed to timely respond to Complaints as a matter of strategy to cause inconvenience, once stating that "Things like this inconvenience him. Can't get much more into detail, but everything is by design....":
 - a) He defaulted in January of 2018 in Dudley District Court civil action #1764CV473.
 - b) According to media accounts, he failed to file an Answer in a case filed on April 23, 2018 in Kings County Supreme Civil Court in New York.
 - c) He has not filed a timely Answer in Bristol County Superior Court civil action #1873CV00231 (filed March 6, 2018).
3. That Mr. Kearney was well aware of the instant lawsuit, had counsel, and was not "distracted":
 - a) He was represented by counsel, Attorney Margaret Melican in Dudley District Court and Bristol County Superior Court, when he was served with the instant lawsuit.
 - b) He was also represented by Attorney Stephen Gordon on a Harassment Order in Worcester District Court on July 13, 2018 and July 25, 2018.
 - c) He did a Facebook live show about July 14, 2018, the told his audience that he had three lawsuits pending, one of which was the instant case.
 - d) On August 20, 2018 he testified under oath that he had three lawsuits pending against him and when asked "Are you being sued in the Springfield court?" He answered "I received paperwork for it, but the person never hired a lawyer so I'm not sure how that works. It was months ago and I haven't received anything about it since." No mention was made of any distraction or extortion.
4. On July 25, 2018, the day prior to filing his complaint with the Holden Police alleging extortion here, Mr. Kearney was at a Hearing on a Protective Order represented by Attorney Gordon where Judge Robert Pelligrini advised that the affidavit presented by the victim showed that he was trying to extort her.
5. Mr. Kearney is under investigation with the Worcester Police Department (for harassment, extortion and witness tampering.)

Signed under the pains and penalties of perjury this 2nd day of October, 2018.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.

Michael Gaffney

EXHIBIT C

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT

CIVIL ACTION NO. 1879CV00344

RIAN WATERS,

Plaintiff

VS.

AIDAN KEARNEY,

WORCESTER DIGITAL MARKETING, LLC

TURTLEBOY ENTERPRISES, LLC

SAMANTHA CARDIN,

JOHN DOES 1-10,

Defendants

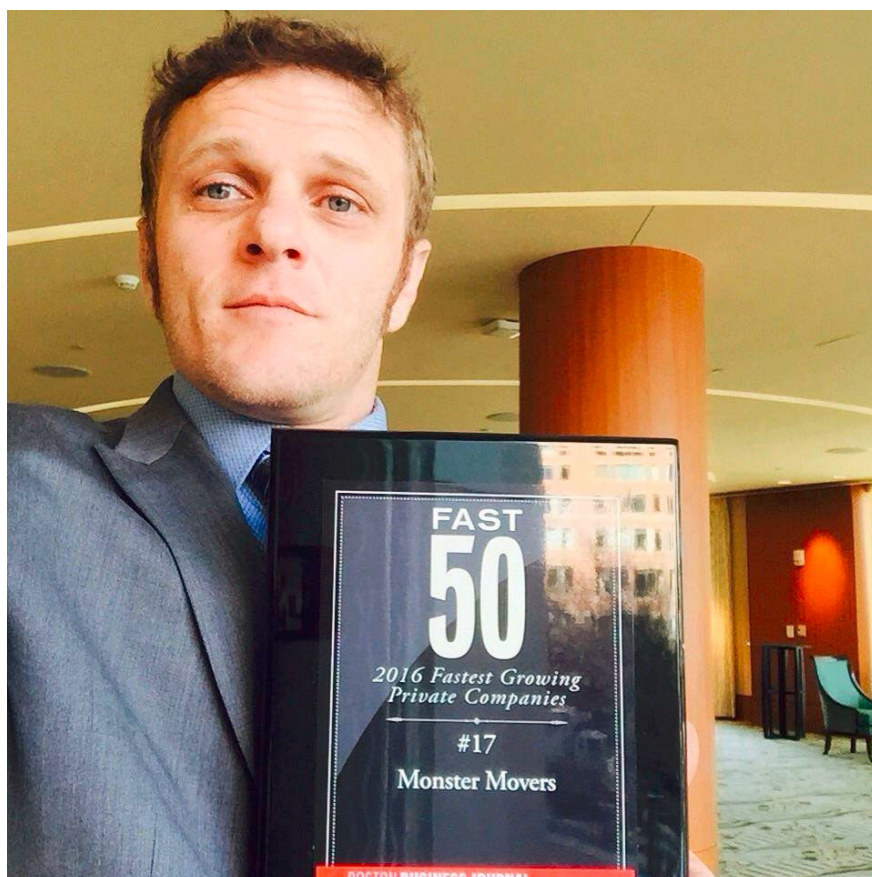
AFFIDAVIT OF RIAN WATERS

1. I am the Pro Se Plaintiff in the above captioned matter.
2. On or about May 20, 2018 Defendant Aidan Kearney discussed my complaint, and then stated the following
 - a. "Your not going to come in here and threaten to sue us, and if you do, good luck cause we are so good at court, I can't even begin to tell you, we are undefeated, we are the New England Patriots of internet defa..deformation court."
 - b. "We took down Talib Kweli, who sued us last year, and were like yeah bitch, were not showing up, he sued us in Queens District Court, and you know what we did, we just didn't fucking go. We got the papers and everything, and were like fuck you Kweli. I'm not spending a Lawyer, and playing your bullshit game here. And you know what he did? He dropped it, cause he's a bitch."
 - c. "We are undefeated in Court, so bring that shit on, we are ready."
3. One of the Defendants Facebook accounts messaged my personal account on July 7, 2018, and September 23, 2018

Signed under the pains and penalties of perjury this 10th day of October, 2018

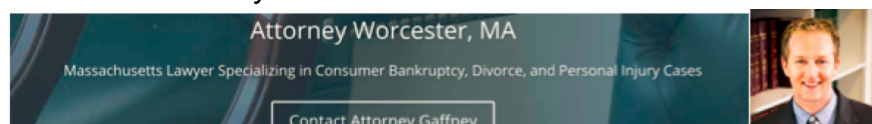
Ram Hattar

EXHIBIT D



It's pretty easy to grow fast when Turtleboy sends you referrals and then you decide you don't wanna pay the piper. It's cool though, because we took them to small claims court and won after this deadbeat decided not to show up. Then he didn't show up for the payment review, so that means it's capias time. Small claims court is routine for Turtleboy at this point. We actually like it and we even have our preferred courthouses. That's how often we go and win.

Can't say I blamed Bill Antonelli for not showing though since he had no shot at winning. His wife Sarah Christie-Antonelli got in contact with us after riding the turtle for a while and asked to promote her business. We agreed. But the problem was that she forgot to tell her husband, so when the bill got to him he was like, "what the hell is a Turtleboy?" And since he probably considers us a joke, he decided he wasn't gonna pay. Dude is a real tough guy if you ever meet him in person. He'll be the first to tell you he's from Charlestown. Hardo central.

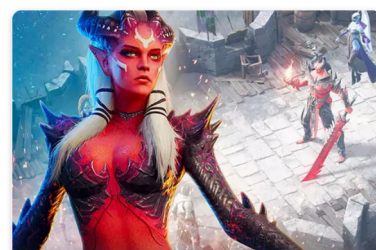


TRENDING NOW

by mgid



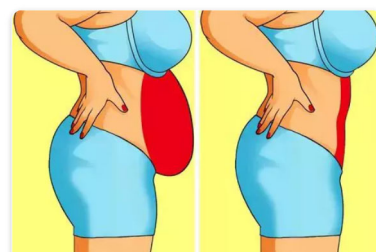
**One Cup Of This
(Before Bed) Burns
Belly Fat Like Crazy!**



**Play This For 1 Min
And See Why
Everyone Is Addicted!**



**Best Diet For Lazy
People! Up To -17 Kg
In 3 Weeks! No
Workouts!**



**These 2 Vegetables
Will Kill Your Belly Fat
Overnight!**

RA028

CLERK'S NOTICE	DOCKET NUMBER 1879CV00344	Trial Court of Massachusetts The Superior Court 	
CASE NAME: Rian Waters vs. Aidan Kearney et al		Laura S Gentile, Clerk of Courts	
TO: Rian Waters 199 Allen St East Longmeadow, MA 01028		COURT NAME & ADDRESS Hampden County Superior Court Hall of Justice - 50 State Street P.O. Box 559 Springfield, MA 01102	
You are hereby notified that on 11/20/2018 the following entry was made on the above referenced docket: Endorsement on Motion to remove default and file answer late (#15.0): ALLOWED After hearing, the motion is allowed. However, counsel for the moving parties must file an answer on their behalf no later than 11/26/18. Judge: Sweeney, Hon. Constance M			
DATE ISSUED 11/21/2018	ASSOCIATE JUSTICE/ ASSISTANT CLERK Hon. Constance M Sweeney		SESSION PHONE# (413)735-6016 RA029

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS
Plaintiff

vs.

AIDAN KEARNEY,
WORCESTER DIGITAL MARKETING, LLC
TURTLEBOY ENTERPRISES, LLC AND
SAMANTHA CARDIN
Defendants

HAMPDEN COUNTY
SUPERIOR COURT

FILED

OCT 18 2018

CLERK OF COURTS

**EMERGENCY MOTION OF THE DEFENDANTS, AIDAN KEARNEY, WORCESTER
DIGITAL MARKETING, LLC, AND TURTLEBOY ENTERPRISES, LLC TO REMOVE
THE DEFAULT AND REQUEST FOR LEAVE TO FILE ANSWER LATE**

NOW COME the defendants, Aidan Kearney, Worcester Digital Marketing, LLC, and Turtleboy Enterprises, LLC ("Defendants"), and respectfully requests that this Court strike the Request for Default filed by the plaintiff, Rian Waters and/or remove the default pursuant to Rule 55(b) of the Massachusetts Rules of Civil Procedure. As grounds therefore, the Defendants refer to and incorporate the memorandum of law attached hereto.

WHEREFORE, based upon the foregoing, the Defendants respectfully request that the Request for Default be stricken and/or any default be vacated and the Defendants be allowed to answer the Plaintiff's Complaint.

*To the Court - Please schedule a hearing, which
does not have to occur on an
expedited basis.*

*A. Kearney
10/19/18
dml*

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,

Plaintiff

vs.

AIDAN KEARNEY,

WORCESTER DIGITAL MARKETING, LLC

TURTLEBOY ENTERPRISES, LLC

SAMANTHA CARDIN,

JOHN DOES 1-10,
Defendants

HAMPDEN COUNTY
SUPERIOR COURT
FILED

JAN - 2 2019

[Signature]
CLERK OF COURTS

PLAINTIFF RIAN WATERS EMERGENCY MOTION FOR A TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Now Comes the Plaintiff, Rian Waters, and respectfully requests that pursuant of MRCP 65, this court issue a temporary restraining order on Defendant Aidan Kearney, and hold a hearing to issue a preliminary injunction against Defendants Aidan Kearney, Turtleboy Enterprises LLC, and Worcester Digital Marketing LLC. As grounds therefore, the Plaintiff refers to and incorporates the memorandum of law attached hereto.

Wherefore, based upon the foregoing, the Plaintiff respectfully requests that this court enter

the following:

*5w.
2/1/19
(m)
2/1/19 After hearing and careful and thorough consideration of the submissions and arguments of the parties, the court finds neither a likelihood of success on the merits nor that irreparable harm will result from denial of the injunction. Accordingly, the motion is DENIED.
Mulqueen, J.
1/2/19 Short Order to issue for 1/15/19 @ 2pm.
Mulqueen, J.
KS.*

RA031

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- 2
1. Enter a Temporary Restraining order against the Defendants, and those parties acting at their direction or command that they immediately remove all, and refrain from posting any other articles/blogs referencing the Plaintiff, and that they stop contacting the Plaintiff until further order of the court.
 2. After hearing, enter a Preliminary Injunction, enjoining and restraining the Defendants, and those parties acting at their direction or command that they immediately remove all, and refrain from posting any other articles/blogs referencing the Plaintiff until further order of the court.
 3. After hearing, make an order pursuant of MCRP 65 (B)(2) that advances the trial and Summary Judgment hearing.

Respectfully submitted,

Rian Waters

199 Allen St.
East Longmeadow, MA. 01028
(530)739-8951
Watersrian@gmail.com Dated: January 2nd, 2019

Certificate Of Service

I, Rian Waters, hereby certify that on January 2nd, 2019, I served a copy of the above upon the parties in the action by mailing U.S. first class, to:

Kevin Chrisanthopoulos, Esq.
KC Law
30 Court Street, Suite 1
Westfield, MA 01085

Subscribed under the penalties of perjury. 1/2/2019



COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,

Plaintiff

vs.

AIDAN KEARNEY,

WORCESTER DIGITAL MARKETING, LLC

TURTLEBOY ENTERPRISES, LLC

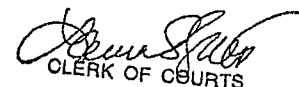
SAMANTHA CARDIN,

JOHN DOES 1-10,

Defendants

HAMPDEN COUNTY
SUPERIOR COURT
FILED

JAN - 2 2019


CLERK OF COURTS

**PLAINTIFF RIAN WATERS'S EMERGENCY MOTION FOR A TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

The Plaintiff's Rian Waters motion should be granted to prevent the Defendants from impairing the Plaintiff's ability to litigate, or causing other irreparable harm. The Plaintiff is very likely to succeed on the merits.

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ARGUMENT

I. LEGAL STANDARD

Temporary Restraining Order

MRCP 65 (a) "A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition." "To establish harassment, a complainant must prove that the defendant, motivated by cruelty, hostility, or revenge, wilfully committed three or more acts aimed at a specific person, each with the intent

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to cause that person to experience fear or intimidation, or to cause abuse or damage to property, which, considered together, did in fact cause fear, intimidation, abuse, or damage to property.

O'Brien v. Borowski, 461 Mass. 415, 416, 961 N.E.2d 547, 550, 2012 Mass. LEXIS 19, *1, 2012 WL 255785

Preliminary Injunction

“When asked to grant a preliminary injunction, the judge initially evaluates in combination the moving party's claim of injury and chance of success on the merits. If the judge is convinced that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm, [Note 11] the judge must then balance this risk against any similar risk of irreparable harm which granting the injunction would create for the opposing party. What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits. Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue.” Packaging Industries Group, Inc. v. Cheney, 380 Mass. 609, 616, 405 N.E.2d 106, 111, 1980 Mass. LEXIS 1141, *14-15

Consolidation of Hearing With Trial on Merits.

“Consolidation is generally desirable in an appropriate case” Packaging Industries Group, Inc. v. Cheney, 380 Mass. (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) consolidating and

advancing the trial on the merits would be ideal in this case as the law presented below clearly establishes liability for Libel, and Slander per se.

MCRP 65 (B)(2) "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. This subdivision (b)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury."

Defamation

Words spoken orally are not actionable per se, unless they charge the plaintiff with a crime

Lynch v. Lyons, 303 Mass. 116, 116, 20 N.E.2d 953, 954, 1939 Mass. LEXIS 919, *1 "The article in question charged the plaintiff with a criminal offense. It was libellous on its face, and the judge correctly so ruled." Lundin V Post Publishing, "To prevail on a claim of defamation, a plaintiff must establish that the defendant was at fault for the publication of a false statement regarding the plaintiff, capable of damaging the plaintiff's reputation in the community, which either caused economic loss or is actionable without proof of economic loss. See Ravnikar v. Bogojavlensky, 438 Mass. 627, 629-630, 782 N.E.2d 508 (2003) White v. Blue Cross & Blue Shield of Mass. 442 Mass. 64, 66, 809 N.E.2d 1034, 1036, 2004 Mass. LEXIS 305, *4-5, 21 I.E.R. Cas. (BNA) 70

II. A TEMPORARY ORDER IS NECESSARY

The Defendants have been publishing defamatory allegations and using threats to affect the Plaintiff's ability to litigate at important times. One of the Defendant's writers sent the Plaintiff an email stating that they are planning to finish writing an article about the Plaintiff on January 2nd 2019, which is only 7 days from the default judgment hearing. Defendant Aidan Kearney

has admitted in his book that he is the editor of Turtleboy Sports. The following dates are an incomplete list of past harassment;

1. On November 11, 2018 Defendant Aidan Kearney threatened the Plaintiff on his online show that was recorded, and is available to watch on demand. Stating "Fuck that asshole, I hope he's listening. He thinks I'm scared of him, fuck you Rian Waters, He killed a dog in front of a special needs daughter, and that whole story is going to come out too by the way, I'm going to bury that mother fucker, that guy is going to die, I'm going to, not really die, I am going to fucking murder him with words and we are going to bury him, and he teamed up with his new boyfriend Mike Gaffney"
2. In the beginning of November 2018, Aidan Kearney published a book that was first available for sale on or about November 13th, which accuses the Plaintiff of several criminal allegations, and states inaccurate and unfair statements of a judicial proceeding
3. On December 27, 2018 The Defendants published another article about the Plaintiff, and wrote false statements on facebook including "the vet who examined the dog testified that He killed the dog. Case stopped because he basically intimidated the victim from testifying" No vet ever testified in court, (Exhibit B) and the Plaintiff did not intimidate or even contact Defendant Samantha Cardin before the final hearing.

Rule 2.6 of the Code of Judicial Conduct allows "A judge may make reasonable efforts, consistent with the law,* to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard."

III. PLAINTIFF'S RISK OF IRREPARABLE HARM

Defendant Aidan Kearney has made serious threats directed at the Plaintiff.

"Fuck that asshole, I hope he's listening. He thinks I'm scared of him, fuck you Rian Waters, He killed a dog in front of a special needs daughter, and that whole story is going to come out too by the way, I'm going to bury that mother fucker, that guy is going to die, I'm going to, not really die, I am going to fucking murder him with words and we are going to bury him"

The Defendant's business and past history make their threats very serious.

The Defendants operate a public shaming device, and the targets of their articles often get harrassed without the Defendants risking any liability. In Mr. Kearney's book he admits that one of his followers created a website, and made an unfounded allegation that a different Plaintiff who sued the Defendants, had been guilty of sexually assaulting a 14 year old girl.

The Defendants have been intimidating the Plaintiff to impair his ability to litigate.

A Facebook account that represents the Defendants business, messaged the Plaintiff the day before they served their motion to remove default saying, " Get ready homeboy, funs just getting started." Defendant Aidan Kearney (Mr. Kearney) wrote a book titled " I am Turtleboy" which was not available for purchase until the week before the hearing to remove the default.

The book contained several defamatory statements including but not limited to the following;

- a. Rian Waters sold drugs in California
- b. Shipped himself drugs via the USPS, which he intended to sell here.
- c. allegedly assaulted her, causing the black eye.
- d. He then went into the house and killed the dog in front of his special needs daughter by stomping it in the back.

- e. Everything she had posted on Facebook was true, and she had finally gotten the courage to speak out against her abuser. I know this as a fact because Rian had a trial and it all came out.

The Defendants article has been preventing the Plaintiff from being gainfully employed.

Currently when you google the Plaintiff's name the defamatory article is on the first page, which prevents the Plaintiff from working any executive positions.

IV. THE DEFENDANTS HAVE VERY LITTLE RISK OF HARM

Retracting the defamatory article will not cost anything.

When discussing the defamatory article in an email The Defendant's said "No one reads that blog anymore so it's of no use to me or the site."

The Plaintiff is not requesting to limit any legal speech.

"The First Amendment does not protect conduct that threatens another." *Commonwealth v. Robicheau*, 421 Mass. 176, 183, 654 N.E.2d 1196 (1995). *Commonwealth v. Sholley*, 432 Mass. 721, 726-727, 739 N.E.2d 236, 241, 2000 Mass. LEXIS 710, *12-13 "A "true threat" need not take the form of an explicit statement that the speaker intends to cause imminent, physical harm to the victim, but may comprise "words or actions that -- taking into account the context in which they arise -- cause the victim to fear such harm now or in the future." *O'Brien v. Borowski*, 461 Mass. at 425. see also *Black*, 538 U.S. at 362-363 and *Walters v commonwealth* "An accusation purporting to rest on hearsay is none the less defamatory." *Maloof v. Post Pub. Co.*, 306 Mass. 279, 280, 28 N.E.2d 458, 458-459, 1940 Mass. LEXIS 931, *3-4 "the right of a party to make charges gives no right to others to spread them" *Lundin v. Post Pub. Co.*, 217 Mass. 213, 215-217, 104 N.E. 480, 481-482, 1914 Mass. LEXIS 1211, *2-6

8

V. THE DEFENDANTS DO NOT HAVE A LEGAL DEFENSE

The First Amendment does not protect the Defendants.

Even if the Defendants could convince this court or a jury that the defamation in their book and article is about a matter of public interest, the constitution does not protect them. "The First Amendment protection afforded to defendants against defamation suits by public persons is not to be extended to defamation suits by private individuals even though the defamatory statements concern an issue of public or general interest" Stone v. Essex County Newspapers, Inc., 367 Mass. 849, 857-858, 330 N.E.2d 161, 167-168, 1975 Mass. LEXIS 907, *15-16 see also Gertz v. Robert Welch, 418 U.S. *id.* at 346 "there is no constitutional value in false statements of fact. HN2 Neither the intentional lie [****27] nor the careless error materially advances society's interest in "uninhibited, robust, and wide-open" debate on public issues." New York Times Co. v. Sullivan, 376 U.S., at 270 Gertz v. Robert Welch, 418 U.S. 323, 339-340, 94 S. Ct. 2997, 3007, 41 L. Ed. 2d 789, 805, 1974 U.S. LEXIS 88, *26-27, 1 Media L. Rpt. 1633

Section 230 of the Communications Decency Act does not protect the Defendants

1. The defamatory article written about the Plaintiff on the Defendants website does not contain a disclaimer or statement indicating that the article was written by a third party. Someone arriving from Google would have no reason to believe a third party published it.
2. The Defendants have re-published the article on Facebook,

3. The book Mr. Kearney wrote and published (I am Turtleboy) not only contains all the same defamatory allegations as The Article, as well as some additional defamatory allegations.

The Defendants Argument that a third party published the article is meritless

The user name that published the article is Turtleboy, and the writer referred to themselves as Turtleboy twice in the article. The Defendants refer to themselves as Turtleboy whenever a matter concerns their business. Therefore respondeat superior certainly applies in this case.

Even if the Defendants could prove that they were not responsible for the initial publication of The Article, they are considered publishers due to their re-publishing, and failure to remove the defamatory content. "One who intentionally and unreasonably fails to remove defamatory matter that he knows to be exhibited on land or chattels in his possession or under his control is subject to liability for its continued publication." Restat 2d of Torts, § 577 (2nd 1979)

The Defendants Article was not privileged.

The Defendants do not attempt to argue that the article was privileged, as they claim that an un-namable employee wrote the article. Regardless even if they had claimed that the article was privileged, the article does not cite any judicial proceeding, and could not be considered a fair or accurate report. The article stated several inaccurate details, including stating that the Plaintiff found his dog buried under a pile of rubble. The Defendants still have not made any attempt to fix the defamation, and they have been unwilling to look at any of the plaintiff's evidence. "the reasons for allowing fair reports of the proceedings of courts of justice "have no application whatever 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, who may not be even an officer of the court. It would be carrying privilege farther than we feel prepared to carry it" Lundin v. Post Pub. Co., 217 Mass.

Additionally some of the defamatory allegations that Mr. Kearney wrote and published in his book "I am Turtleboy" were not part of any judicial proceeding.

The Defendants First, Second, and Third Affirmative Defenses of Contributory Negligence are not Material.

"because the defendant had no privilege to report these charges, it took the risk, when it chose to repeat them, of being held liable for any damage thus caused to this plaintiff. The privilege [***8] which that woman enjoyed of stating her charges against this plaintiff for the purpose of having them adjudicated did not extend to this defendant or afford it any defense for the publication of libelous matter." Lundin v. Post Pub. Co., 217 Mass. 213, 218, 104 N.E. 480, 482, 1914 Mass. LEXIS 1211, *7-8

"If one private citizen wrote to another that a high official had taken a bribe, no one would think good faith a sufficient answer to an action. He stands no better, certainly, when he publishes his writing to the world through a newspaper, and the newspaper itself stands no better than the writer." Burt v. Advertiser Newspaper Co., 154 Mass. 238, 242-244, 28 N.E. 1, 4, 1891 Mass. LEXIS 100, *9-13

But the right of a party to make charges gives no right to others to spread them.'

Lundin v. Post Pub. Co., 217 Mass. 213, 215-217, 104 N.E. 480, 481-482, 1914 Mass. LEXIS 1211, *2-6

Even if the Defendants could prove that they were not responsible for the initial publication of The Article, they are considered publishers due to their re-publishing, and failure to remove the defamatory content. "One who intentionally and unreasonably fails to remove defamatory

matter that he knows to be exhibited on land or chattels in his possession or under his control is subject to liability for its continued publication." Restat 2d of Torts, § 577 (2nd 1979)

The Plaintiff has a right of action as a matter of law. The Defendants Forth and Fifth defense's have no merit.

"An imputation of crime is defamatory per se" Stone v. Essex County Newspapers, Inc., 367 Mass. 849, 850, 330 N.E.2d 161, 164, 1975 Mass. LEXIS 907. "The defendant published in its newspaper a statement that it was alleged that the plaintiff had committed an assault upon a woman named, which had resulted in stated personal injuries to her. For this publication the plaintiff had a right of action, unless it was privileged, or unless it was true, or unless for some other reason it was not libellous." Lundin v. Post Pub. Co., 217 Mass. The mere fact that the charge against the plaintiff was not made by direct averment but only by saying that such an allegation had been made was not material; for the statement of unfounded charges is none the less actionable that it is made only by way of repeating them as having been made by others. Kimball v. Post Publishing Co. 199 Mass. 248, 251, et seq.

The Defendant's Sixth Defense of Truth has no merit.

Defendant Samantha Cardin has effectively admitted to the Plaintiff's allegations by defaulting in this action for Malicious Prosecution, and Libel. "if the court determines that the defendant is in default, his liability is established and may not be contested." Reportes notes under mrcp 55. Ms. Cardin also lied about evidence to investigators, and the version of events Ms. Cardin stated in the article does not make sense when compared with the timeline of events from that day. The Defendants will be hard pressed to maintain this defense "The burden of proof was on the

defendants to maintain that defence by showing the substantial truth of the charge in all material respects. *Perry v. Porter*, 124 Mass. 338." *Maloof v. Post Pub. Co.*, 306 Mass. 279, 280, 28 N.E.2d 458, 458-459, 1940 "However, to the extent that the articles contained false statements, the privilege did not apply and it was irrelevant whether the newspaper had cause to believe that those statements were true." *Burt v. Advertiser Newspaper Co.*, 154 Mass. 238, 242, 28 N.E. 1, 4, 1891 Mass. LEXIS 100, *6

The Defendants Seventh Defense that the Statements were made without Malice is without merit and irrelevant.

The Defendants operate a public shaming device, and the stated reason for the article is because they like watching the world burn. Regardless the Plaintiff is not a public official, so malice is not a necessary element in this action.

The Defendants Eighth Defense that the statements are not reasonably capable of defamatory meaning is without merit.

"The mere fact that the charge against the plaintiff was not made by direct averment but only by saying that such an allegation had been made was not material; for the statement of unfounded charges is none the less actionable that it is made only by way of repeating them as having been made by others." *Kimball v. Post Publishing Co.* 199 Mass. 248, 251, et seq."

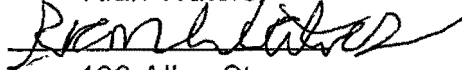
"The fact that the charge was qualified by the words "it is alleged" or their equivalent, does not absolve the defendants from responsibility for publishing it. *HNI* An accusation purporting to rest on hearsay is none the less defamatory." *Maloof v. Post Pub. Co.*, 306 Mass. 279, 280, 28 N.E.2d 458, 458-459, 1940 Mass. LEXIS 931, *3-4

The Plaintiff can prove damages, but is not required to do so.

"At the heart of the libel-and-slander-per-se [*373] damage scheme lay the award of general damages for loss [****80] 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, 418 U.S. 323, 372-373, 94 S. Ct. 2997, 3023, 41 L. Ed. 2d 789, 824, 1974 U.S. LEXIS 88, *78-80, 1 Media L. Rep. 1633

Respectfully submitted,

Rian Waters



199 Allen St.

East Longmeadow, MA. 01028

(530)739-8951

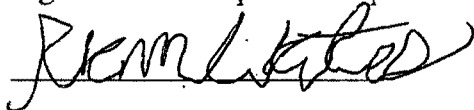
Watersrian@gmail.com Dated: January 2nd, 2019

Affidavit of Rian Waters

1. I am the Pro Se Plaintiff in the above captioned matter.
2. The Defendants have been using intimidation to affect my ability to litigate at important times.
3. One of the Defendants writers told me in an email that they plan on writing a story about me on January 2nd 2019, which is a week before the default judgment hearing.
4. On or about November 11th Aidan Kearney threatened me on his online show that was recorded, and is available to watch on demand. Stating "Fuck that asshole, I hope he's listening. He thinks I'm scared of him, fuck you Rian Waters, He killed a dog in front of a special needs daughter, and that whole story is going to come out too by the way, I'm going to bury that mother fucker, that guy is going to die, I'm going to, not really die, I am going to fucking murder him with words and we are going to bury him"

5. Once I became aware of Mr. Kearney's threat, I felt uncomfortable being inside my residence, and have since avoided it.
6. Aidan Kearney wrote a book titled "I am Turtleboy" and had it first published in November 2018. The book was not available for purchase until on or about November 13th 2018. The book contained several defamatory statements including but not limited to the following;
 - a. Rian Waters sold drugs in California
 - b. Shipped himself drugs via the USPS, which he intended to sell here.
 - c. allegedly assaulted her, causing the black eye.
 - d. He then went into the house and killed the dog in front of his special needs daughter by stomping it in the back.
 - e. Everything she had posted on Facebook was true, and she had finally gotten the courage to speak out against her abuser. I know this as a fact because Rian had a trial and it all came out.
7. No veterinarian ever testified in court against me, and I will attach the Docket to the summary judgment motion.

Signed under the pains and penalties of perjury this 2nd day of January 2019



COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS:

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,

Plaintiff

vs.

AIDAN KEARNEY,

WORCESTER DIGITAL MARKETING, LLC

TURTLEBOY ENTERPRISES, LLC

SAMANTHA CARDIN,

JOHN DOES 1-10,

Defendants

HAMPDEN COUNTY
SUPERIOR COURT
FILED

JAN - 8 2019

[Signature]
CLERK OF COURTS

**PLAINTIFF'S EMERGENCY MOTION TO CONVERT DEFAULT JUDGMENT
HEARING INTO A TEMPORARY RESTRAINING ORDER HEARING.**

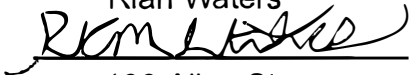
Now Comes the Plaintiff, Rian Waters, and respectfully requests a continuance for the Default Judgment Hearing, and that this court convert the January 9th Default Judgment hearing into a hearing for a temporary restraining order on Defendant Aidan Kearney. As grounds therefore, the Plaintiff refers to and incorporates the memorandum of law attached hereto.

Wherefore, based upon the foregoing, the Plaintiff respectfully requests that this court enter the following:

1. Compel email service of motions.
2. Allow the Plaintiff to impound his new address.

3. Make future hearings closed to the public, and impound witnesses testimony and identities.
4. Enter a Temporary Restraining order against the Defendants, and those parties acting at their direction or command that they immediately remove all, and refrain from posting any other articles/blogs referencing the Plaintiff, and that they stop contacting the Plaintiff until further order of the court.

Respectfully submitted,

Rian Waters

199 Allen St.
East Longmeadow, MA. 01028
(530)739-8951
Watersrian@gmail.com Dated: January 8th, 2019

Certificate Of Service

I, Rian Waters, hereby certify that on January 8th, 2019, I served a copy of the above upon the parties in the action by mailing U.S. first class, to:

Kevin Chrisanthopoulos, Esq.
KC Law
30 Court Street, Suite 1
Westfield, MA 01085

Subscribed under the penalties of perjury. January 8th, 2019



COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,
Plaintiff

vs.

AIDAN KEARNEY, .

WORCESTER DIGITAL MARKETING, LLC

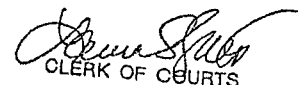
TURTLEBOY ENTERPRISES, LLC

SAMANTHA CARDIN,

JOHN DOES 1-10,
Defendants

HAMPDEN COUNTY
SUPERIOR COURT
FILED

JAN - 8 2019


CLERK OF COURTS

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF EMERGENCY MOTION TO
CONVERT DEFAULT JUDGMENT HEARING INTO A TRO HEARING.**

The Plaintiff's Rian Waters motion should be granted to give the Plaintiff a fair opportunity to be heard, and to prevent the Defendants from scaring witnesses from testifying.

FACTUAL BACKGROUND

Turtleboy Sports which is controlled and owned by Defendant Aidan Kearney, republished criminal allegations originating from Defendant Samantha Cardin. The article has prevented the Plaintiff from working executive positions. In July of 2018 a Turtleboy Sports facebook account messaged the plaintiff. The Plaintiff responded by email asking the Defendants to respect his personal space and requested correspondence be made my email. The same Facebook account

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messed the Plaintiff the day before serving a motion to remove Default. The week before the Default removal hearing, Defendant Aidan Kearney wrote a book containing more defamatory criminal allegations, and threatened the Plaintiff on his "live show" that was streamed and recorded through Facebook. Now less than a week before the Default Judgment Hearing, Turtleboy Sports has published the defamatory criminal allegations again using inaccurate details as evidence. The Plaintiff has since been receiving harassment and threats. None of Turtleboy Sports publications could be considered a fair or accurate report of a judicial proceeding.

ARGUMENT

I. LEGAL STANDARD

Temporary Restraining Order

MRCP 65 (a) "A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition."

II. A TEMPORARY ORDER IS NECESSARY

Rule 2.6 of the Code of Judicial Conduct allows "A judge may make reasonable efforts, consistent with the law,* to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard."

The Plaintiff has been receiving several threats of violence, and harassment due to the Defendants recent publications. Not only do these threats affect the Plaintiff's ability to get rest

and litigate, but they also scare any favorable witness from testifying. Currently if a Venture Capitalist agrees to be a witness for the Plaintiff, then they are voluntarily ending their career. If anyone on Facebook suggests that this case has merit they are harassed until they say otherwise. The Defendants have a history of harassing witnesses and litigants¹, which could prevent Samantha Cardin from admitting the truth.

III. PLAINTIFF'S RISK OF IRREPARABLE HARM

The Defendants have been intimidating the Plaintiff to impair his ability to litigate.

On January 4th 2019, five days before the scheduled hearing, Turtleboy Sports published a defamatory article that lists the Plaintiff's address and phone number. The article accuses the Plaintiff of killing his dog and uses undisclosed defamatory facts as the basis. "Where the defamatory communication consists of a statement in the form of an opinion, it is actionable only if the statement implies the allegation of undisclosed defamatory facts as the basis for the opinion." King v. Globe Newspaper Company, 400 Mass. 705 at 713. The article also accused the Plaintiff of illegally making cannabis oil. The Defendants have since published two more articles concerning the Plaintiff.

Defendant Aidan Kearney has made serious threats directed at the Plaintiff.

"Fuck that asshole, I hope he's listening. He thinks I'm scared of him, fuck you Rian Waters, He killed a dog in front of a special needs daughter, and that whole story is going to come out too by the way, I'm going to bury that mother fucker, that guy is going to die, I'm going to, not really die, I am going to fucking murder him with words and we are going to bury him"

¹ Plaintiff's Exhibit B of the Defendants motion to remove Default is an affidavit that states that Defendant Kearney is under investigation for witness tampering, and harassment.

The Plaintiff is not requesting to limit any legal speech.

"The First Amendment does not protect conduct that threatens another." *Commonwealth v. Robicheau*, 421 Mass. 176, 183, 654 N.E.2d 1196 (1995). *Commonwealth v. Sholley*, 432 Mass. 721, 726-727, 739 N.E.2d 236, 241, 2000 Mass. LEXIS 710, *12-13 "A "true threat" need not take the form of an explicit statement that the speaker intends to cause imminent, physical harm to the victim, but may comprise "words or actions that -- taking into account the context in which they arise -- cause the victim to fear such harm now or in the future." *O'Brien v. Borowski*, 461 Mass. at 425. see also *Black*, 538 U.S. at 362-363 and *Walters v commonwealth* "An accusation purporting to rest on hearsay is none the less defamatory." *Maloof v. Post Pub. Co.*, 306 Mass. 279, 280, 28 N.E.2d 458, 458-459, 1940 Mass. LEXIS 931, *3-4 "the right of a party to make charges gives no right to others to spread them" *Lundin v. Post Pub. Co.*, 217 Mass. 213, 215-217, 104 N.E. 480, 481-482, 1914 Mass. LEXIS 1211, *2-6

Respectfully submitted,

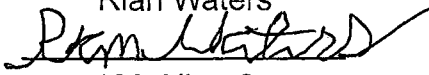
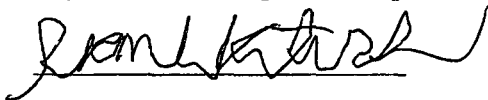
Rian Waters

 199 Allen St.
 East Longmeadow, MA. 01028
 (530)739-8951
Watersrian@gmail.com Dated: January 8th, 2019

EXHIBIT A

Affidavit of Rian Waters

1. I am the Pro Se Plaintiff in the above captioned matter.
2. The Defendants have been using intimidation to affect my ability to litigate at important times.
3. On January 4th 2019 Turtleboy Sports Published a defamatory article about me.
4. I have been harassed and threatened since January 4th 2019, I will bring exhibits to the hearing.
5. On or about November 11th Aidan Kearney threatened me on his online show that was recorded, and is available to watch on demand. Stating "Fuck that asshole, I hope he's listening. He thinks I'm scared of him, fuck you Rian Waters, He killed a dog in front of a special needs daughter, and that whole story is going to come out too by the way, I'm going to bury that mother fucker, that guy is going to die, I'm going to, not really die, I am going to fucking murder him with words and we are going to bury him"
6. Once I became aware of Mr.Kearney's threat, I felt uncomfortable being inside my residence, and have since avoided it.
7. Aidan Kearney wrote a book titled "I am Turtleboy" and had it first published in November 2018. The book was not available for purchase until on or about November 13th 2018. The book contained several defamatory statements including but not limited to the following;
 - a. Rian Waters sold drugs in California
 - b. Shipped himself drugs via the USPS, which he intended to sell here.
 - c. allegedly assaulted her, causing the black eye.
 - d. He then went into the house and killed the dog in front of his special needs daughter by stomping it in the back.
 - e. Everything she had posted on Facebook was true, and she had finally gotten the courage to speak out against her abuser. I know this as a fact because Rian had a trial and it all came out.
8. No veterinarian ever testified in court against me, and I will attach the Docket to the summary judgment motion.

Signed under the pains and penalties of perjury this 8th day of January 2019



CLERK'S NOTICE

DOCKET NUMBER

1879CV00344**T. Court of Massachusetts
The Superior Court**

CASE NAME:

Rian Waters vs. Aidan Kearney et al**Laura S Gentile, Clerk of Courts**

TO:

File Copy

COURT NAME & ADDRESS

**Hampden County Superior Court
Hall of Justice - 50 State Street
P.O. Box 559
Springfield, MA 01102**

You are hereby notified that on 01/09/2019 the following entry was made on the above referenced docket:

Endorsement on Motion to convert default judgment hearing into temporary restraining order hearing (#32.0):

DENIED

Mailed 1/10/2019

Judge: Mulqueen, Hon. Jane E

DATE ISSUED

01/10/2019

ASSOCIATE JUSTICE/ ASSISTANT CLERK

Hon. Jane E Mulqueen

SESSION PHONE#

**(413)735-6017
RA055**

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,
Plaintiff

vs.

AIDAN KEARNEY;

WORCESTER DIGITAL MARKETING, LLC

TURTLEBOY ENTERPRISES, LLC

HAMPDEN COUNTY
SUPERIOR COURT
FILED

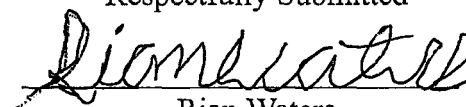
JAN 17 2019


CLERK OF COURTS

NOTICE OF APPEAL

The Plaintiff Rian Waters is appealing the November 20th, 2018 order to remove the default of the above listed parties, by Hon. Constance M. Sweeney. The Plaintiff requests a transcript of the November 20th hearing, and would like to include the motion for reconsideration, which was decided on January 7th, 2019. Hon. Jane E. Mulqueen, indicated on January 17th 2019 that the appeal could be filed the same day.

Respectfully Submitted

 1/17/2019

Rian Waters
199 Allen st.

East Longmeadow MA 01028
(530)739-8951
Watersrian@gmail.com

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,
Plaintiff

vs.

AIDAN KEARNEY,

WORCESTER DIGITAL MARKETING, LLC

TURTLEBOY ENTERPRISES, LLC

HAMPDEN COUNTY
SUPERIOR COURT
FILED

JAN 18 2019

[Signature]
CLERK OF COURTS

NOTICE OF REQUEST FOR CLARIFICATION

The Plaintiff is requesting the court to clarify if the motion that the Defendants served on January 17th 2019 will be treated as a motion for summary judgment, or if the attached Exhibit A will be excluded so it can be treated as a motion to dismiss. The motion says pursuant of Mass. R. Civ. P. 12(b)(6), but the Defendants motion includes an affidavit from a third party, who alleges facts that were not part of the pleadings.

"If, on any motion asserting the defense numbered (6), to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. A motion, answer, or reply presenting the defense numbered (6) shall include a short, concise statement of the grounds on which such defense is based." Mass. R. Civ. P. 12 (B)

Additionally the Defendants did not follow Superior Court Rule 9C, and therefore the motion

should be denied. The Plaintiff has tried to initiate a conference in person, by phone, and email.

2/1/19 As the court will accept and consider the affidavits submitted by defendants in support of their Rule 12(b)(6) motion, constituting "matters outside the pleadings" the court will treat the motion as a motion for summary judgment under Rule 56. See Williams v. Episcopal Diocese of Mass., 436 Mass. 574, 577 n.2 (2002). Defendants have until March 14 to file further materials and the matter is to be scheduled for trial on April 10, 2019.

they want the court to consider

Mulqueen

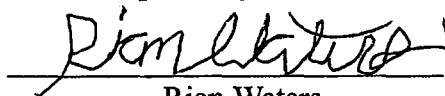
RA057

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and the defendants counsel has either ignored the requests, or stated that he does not think one is necessary. The Defendants used threats and intimidation to prevent the Plaintiff from filing a summary Judgment motion, and they filed this motion to waste time and money.

Counsel for each of the parties shall confer in advance of serving any motion under Mass. R. Civ. P. 8(a), 12 (except Rule 12(c) motions in administrative appeals), 26, 37, 41(b)(2) (first sentence) or 56 and make a good faith effort to narrow areas of disagreement to the fullest extent. Counsel for the party who intends to serve the motion shall be responsible for initiating the conference, which conference shall be by telephone or in person. All such motions shall include a certificate stating that the conference required by this Rule was held, together with the date and time of the conference and the names of all participating parties, or that the conference was not held despite reasonable efforts by the moving party to initiate the conference, setting forth the efforts made to speak by telephone or in person with opposing counsel. Motions unaccompanied by such certificate will be denied without prejudice to renew when accompanied by the required certificate. Superior Court Rule 9C

Respectfully Submitted



1/18/2019

Rian Waters

199 Allen st.

East Longmeadow MA 01028

(530)739-8951

Watersrian@gmail.com

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,
Plaintiff

vs.

AIDAN KEARNEY,

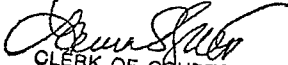
WORCESTER DIGITAL MARKETING, LLC

TURTLEBOY ENTERPRISES, LLC

JOHN DOES 1-10
Defendants

HAMPDEN COUNTY
SUPERIOR COURT
FILED

JAN 31 2019


CLERK OF COURTS

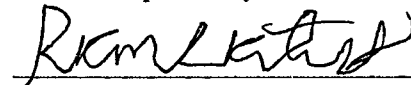
EMERGENCY MOTION FOR IMPOUNDMENT

The Plaintiff moves for this court to impound the below listed items for integrity, safety, and privacy concerns detailed in the attached memorandum.

1. The Plaintiff's new address and phone number. (email address can remain public)
2. Any witness or potential witnesses name, address, and phone number.
3. The transcribed jail phone calls between Samantha Cardin and Rian Waters.
4. Messages submitted as evidence between Samantha Cardin and Rian Waters.
5. The future deposition of Samantha Cardin.

Alternatively the Plaintiff requests a hearing to argue the merits of the proposed impoundment.

Respectfully Submitted



Rian Waters

1/31/2019

199 Allen st. East Longmeadow MA 01028

2/1/19 The matter is not an emergency. Subsequent
filings to be done in accordance with Rule 9A.
Mulqueen 142.

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,
Plaintiff

vs.

AIDAN KEARNEY,

WORCESTER DIGITAL MARKETING, LLC

TURTLEBOY ENTERPRISES, LLC

JOHN DOES 1-10
Defendants

**MEMORANDUM IN SUPPORT OF PLAINTIFF’S EMERGENCY MOTION FOR
IMPOUNDMENT**

LEGAL STANDARD:

“To determine whether good cause is shown, a judge must balance the rights of the parties based on the particular facts of each case, and take into account all relevant factors, including, but not limited to, the nature of the parties and the controversy, the type of information and the privacy interests involved, the extent of community interest, and the reason for the request.” New England Internet Cafe, LLC v. Clerk of the Superior Court for Criminal Business in Suffolk County, 462 Mass.76, 83 (2012); Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 604-605 & 604 n.22 (2000); In re Globe Newspaper Co., Inc., 461 Mass. 113, 120-121 (2011); Commonwealth v. George W. Prescott Pub. Co., LLC, 463 Mass. 258, 268 (2012). A party's constitutional rights,

investigative secrecy, and the safety of a person or the public are also concerns. See, e.g., New Eng. Internet Cafe, LLC v. Clerk of Superior Court for Criminal Business in Suffolk County, 462 Mass. 76, 86,92,93 (2012); Commonwealth v. Silva, 448 Mass. 701, 708 (2007). “A legitimate expectation of privacy ordinarily is sufficient to constitute good cause.” H.S. Gere & Sons, Inc. v. Frey, 400 Mass. 326, 330 (1987).

ARGUMENT:

The Nature of the Defendants Business puts the Plaintiff and Witnesses in Danger.

The Defendants operate a public shaming device that often encourages harassment of their targets using careful words. Several of the Defendants loyal followers take advantage of the “platform” and use it as a license to harass people without fear of consequences. Turtleboy has publically shamed several people just for helping a person featured in their blog. The Plaintiff has moved out of his East Longmeadow address after he was threatened by Defendant Aidan Kearney (Exhibit A ¶4). The Defendants published the Plaintiff’s East Longmeadow address and phone number on their website, and the Plaintiff has since received several harassing and/or threatening messages and phone calls.

Recently a man by the name of Achim Bailey went missing, and a man named Dante Pagan assisted in searching for Achim, and found his phone and gave it to the police. Turtleboy Sports published several articles insinuating that Dante Pagan is guilty of murder because he helped search for him, and found his phone (Exhibit C). Dante claims he has since received several threats, and someone even tried to break into his home after Turtleboy published their

articles (Exhibit B page 3). This behavior discourages people from turning in evidence, or assisting police, just as it discourages people from being a favorable witness in the instant case.

The Defendants leverage their business to scare and intimidate potential witnesses.

On or about January 22nd 2019 the Defendants threatened and intimidated my old roommate (Exhibit A ¶5&6) who was asking them to take down her address. Every lawyer says I shouldn't worry about the consequences, and that I should subpoena witnesses as they are required to tell the truth. But I know the damage that Turtleboy Sports does, and I don't believe anyone should risk their mental health, reputation, and life just because they witnessed something Turtleboy doesn't want the court to know about. If Samantha Cardin's deposition is public information and she tells the court the truth, then Turtleboy will try their best to destroy her life, and my special needs daughter will suffer. I also argue that any other evidence I present to this court, will be used to shame Samantha Cardin if and when I win this case. Justice requires that the evidence sought to be impounded is, so that the court can learn the truth of the matter without risking the life and wellbeing of witnesses.

The Public would receive very little benefit in having access to the Information sought to be Impounded.

The Plaintiff believes that this case is a matter of public concern, as weaponized social media is a relatively new issue that needs to be addressed. But the names, addresses, and phone numbers of private individuals will not help the public in understanding the important issues.

Defendant Aidan Kearney plans on Fraudulently not Paying any Judgment.

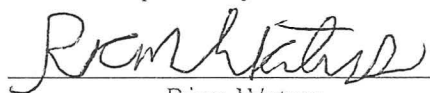
It is especially unfair for the Plaintiff and his witnesses to endure harassment and intimidation while the Defendants do not plan on honoring any judgment. On or about December

17th 2019 Defendant Aidan Kearney stated on a recorded show that if the Plaintiff wins a judgment, he will bankrupt the company, and continue to receive money from advertisements and his book.(Exhibit A ¶2)

CONCLUSION

Impoundment of the requested evidence is necessary for the safety of private citizens, and for the court to find out the truth of the merits of this case. Alternatively the Plaintiff requests a hearing to discuss the merits of this issue.

Respectfully Submitted



1/31/2019

Rian Waters

199 Allen st.

East Longmeadow MA 01028

(Above is an old address, as was stated at the January 17th hearing, I will update after this motion is decided)

(530)739-8951

Watersrian@gmail.com

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,

Plaintiff

vs.

AIDAN KEARNEY,

WORCESTER DIGITAL MARKETING, LLC

TURTLEBOY ENTERPRISES, LLC

JOHN DOES 1-10

Defendants

AFFIDAVIT OF RIAN WATERS

1. I am the Pro Se Plaintiff in the above captioned matter.
2. On or about December 17th 2018, Defendant Aidan Kearney said on his live recorded show that if the Plaintiff wins a Judgment he will bankrupt the company, and continue to collect business revenue.
3. On or about November 11th Aidan Kearney threatened me on his online show that was recorded, and is available to watch on demand. Stating "I am going to fucking murder him with words, and we are going to bury him"
4. Once I became aware of Mr. Kearney's threat, I felt uncomfortable being inside my residence, and have since moved out.
5. On or about January 22nd 2019, my old roommate (who I will name Jane Doe 1) messaged one of the Turtleboy Sports Facebook accounts (TurtleBoy Sports Forever, which has since been unpublished by Facebook for repeated bullying and harassment), asking them to remove her address from their website for safety concerns.
6. The Turtleboy Sports account responded with several threatening and intimidating messages including the following;
 - a. He dragged you into this by suing fucking turtleboy. Do you understand how fucking stupid that is?
 - b. We are the ones you don't do that to unless you want to get your shit blown up.

- c. He is evil. Why are you friends with such an evil person?
 - d. I'm not taking anything down if that maggot is living with you. Why is he using your address? Where does he really live?
 - e. First of all we can publish whatever we want to publish, so don't lecture me about that. I said we wouldn't if you were truthful.
 - f. I'm not doing anything until I hear from him, he needs to personally message this Page using his real Facebook account.
 - g. I don't give a flying fuck about your problems if your friends with this human fucking garbage.
7. Exhibit B is the search results for Dante Pagan on the Defendants website. The articles are very long and spread out making them not conducive to attach as exhibits.
8. On or about January 27th 2019, Aidan Kearney was telling his live show all the reasons he thinks Dante Pagan is guilty of murdering Achim Bailey, one reason he spent a lot of time on was saying that guilty people usually try to help the investigation.
9. Exhibit C is an article from Mass Live that reports that Dante says he's been threatened, and someone tried to break into his house since turning in a missing persons phone.

Signed under the pains and penalties of perjury this 31st day of January, 2019

A handwritten signature in black ink, appearing to read "Ramon Latorre", written over a horizontal line.

AIDAN KEARNY,
WORCESTER DIGITAL MARKETING, LLC
TURTLEBOY ENTERPRISES, LLC
By their attorney,



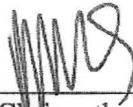
Kevin Chrisanthopoulos, Esq.
BBO # 643734
KC LAW
30 Court Street, Suite 1
Westfield, MA 01085
(413) 251-1010
(413) 372-1610 fax
Kevin@KCTrialAttorney.com

CERTIFICATE OF SERVICE

I, Kevin Chrisanthopoulos Esq., hereby certify that on this 17th day of January 2018, I served a copy of the above upon the parties in the action in hand, to the plaintiff:

Rian Waters
199 Allen Street
East Longmeadow, MA 01028

Subscribed under the penalties of perjury.



Kevin Chrisanthopoulos, Esq.

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT**

HAMPDEN, SS.

**SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344**

RIAN WATERS	)	
Plaintiff	)	
	)	
vs.	)	
	)	
AIDAN KEARNEY,	)	
WORCESTER DIGITAL MARKETING, LLC	)	
TURTLEBOY ENTERPRISES, LLC	)	
Defendants	)	

**DEFENDANTS, AIDAN KEARNEY, WORCESTER DIGITAL MARKETING, LLC,
AND TURTLEBOY ENTERPRISES, LLC MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION TO DISMISS**

NOW COME the defendants, Aidan Kearney, Worcester Digital Marketing, LLC, and Turtleboy Enterprises, LLC ("Defendants"), and respectfully move this Court to dismiss the Second Amended Complaint filed against them. As grounds therefore and in support thereof, the defendants state as follows:

PROCEDURAL AND FACTUAL BACKGROUND

This action arises out of an underlying arrest of the Plaintiff, Rian Waters, for animal cruelty charge and assault and battery upon Samantha Cardin, that occurred on or about December 31, 2016. Said charges were subsequently blogged about on Defendant, Worcester Digital Marketing, LLC's social media platform on or about January 6, 2017.

Plaintiff filed this action on May 16, 2018. (Dkt. No. 3). Plaintiff subsequently filed an Amended Complaint, then a Second Amended Complaint on December 26, 2018. (Dkt. No. 24). The Plaintiff has also filed numerous other pleadings including a pending Motion for Preliminary Injunction. (Dkt. No. 25). The Defendants were granted leave to file their Answer late and filed

their Answer to Plaintiff's Amended Complaint on or about December 10, 2018. The Defendants now move to dismiss Plaintiff's Second Amended Complaint. All counts against Samantha Cardin were dismissed on January 9, 2019, in court.

On or about December 31, 2016, the Plaintiff, Rian Waters, did physically assault Samantha Cardin leaving a black eye and bruises on her body. See Exhibit "A", a true and accurate copy of the Affidavit of Samantha Cardin. Samantha Cardin believes that on or about December 31, 2016, the Plaintiff, Rian Waters, did physically assault her dog, leading to the dog's death a few hours later. Exhibit A. Shortly after December 31, 2016, Samantha Cardin posted to her Facebook page photographs of her injuries and statements concerning the assault on her and her dog. Exhibit "A".

On December 31, 2016 the Plaintiff was arrested for animal cruelty and assault battery upon the Defendant, Samantha Cardin. Exhibit A. At times relevant to the allegations in Plaintiff's Second Amend Complaint the Defendant, Aidan Kearney, was an employee and/or officer of Worcester Digital Marketing, LLC. See Exhibit "B", a true and accurate copy of Affidavit of Aidan Kearney. Worcester Digital Marketing, LLC owns all publications using the name Turtleboy Sports and operates social media platforms known as Turtleboy Sports. Exhibit "B". Third party bloggers are permitted to post their own blogs to the Turtleboy Sports social media platforms. Exhibit "B". Turtleboy Enterprises, LLC, is a defunct company which has no involvement with regard to the allegations in Plaintiff's Second Amended Complaint. Exhibit "B".

On January 6, 2017 a third-party posted a blog re-publishing several of Samantha Cardin's Facebook posts which stated that she was assaulted by the Plaintiff and her dog was gravely injured and subsequently died. See Exhibit "C", a true and accurate copy of Turtleboy

Sports blog dated January 6, 2017. Mr. Water's Facebook posts were also added to the blog. Exhibit "C". Samantha Cardin's Facebook posted were accurately detailed in the blog. Exhibit "A". The blogger provides his/her commentary and opinions on the subject incident. Exhibit "C".

On or about November 13, 2018, Worcester Digital Marketing, LLC published a book entitled "I am Turtleboy." See Exhibit "B". The subject lawsuit is discussed on several pages in that book. See Exhibit "D", a true and accurate copy of the relevant pages of I am Turtleboy.

STANDARD OF REVIEW

The standard of review for a motion to dismiss pursuant to Mass. R. Civ. P. 12(b)(6) requires that the court determine that the allegations state a claim on which relief can be granted. "In making this determination, [the court] look[s] beyond the conclusory allegations in the complaint and focus[es] on whether the factual allegations plausibly suggest an entitlement to relief." *Curtis v. Herb Chambers I-95, Inc.*, 458 Mass. 674, 676 (2011); see also *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 635-636 (2008) (retiring the standard contained in *Conley v. Gibson*, 355 U.S. 41 (1957) and *Nader v. Citron*, 372 Mass. 96 (1997)). In *Iannacchino*, the Supreme Judicial Court held:

As the Court stated, "While a complaint attacked by a ... motion to dismiss does not need detailed factual allegations ... a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions.... Factual allegations must be enough to raise a right to relief above the speculative level ... [based] on the assumption that all the allegations in the complaint are true (even if doubtful in fact)...." What is required at the pleading stage are factual "allegations plausibly suggesting (not merely consistent with)" an entitlement to relief, in order to "reflect[] the threshold requirement of [Fed. R. Civ. P.] 8(a)(2) that the 'plain statement' possesses enough heft to 'sho[w] that the pleader is entitled to relief.'"

Id. at 636 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)).

ARGUMENT

Plaintiff's Complaint alleges claims for Libel, Slander, Intentional Infliction of Emotional Distress, Fraud and Negligent Publication against the Defendants. These claims should be dismissed pursuant to Rule 12(b)(6) because the Complaint does not allege any facts, as opposed to conclusions of law, or sufficient facts, to support the causes of action alleged. Additionally, the individual defendant, Aidan Kearney, cannot be individually liable.

I. AIDAN KEARNEY CANNOT BE INDIVIDUALLY LIABLE TO THE PLAINTIFF BECAUSE OF THE EXISTENCE OF THE LIMITED LIABILITY COMPANY, WORCESTER DIGITAL MARKETING, LLC.

The Plaintiff has asserted claims in the Complaint against Aidan Kearney individually, who is an employee and sole member of Worcester Digital Marketing, LLC.

Generally, however, a corporate officer has no liability at common law for a corporation's obligations. *Lyon v. Morpew*, 424 Mass. 828, 831 (1997) ("Officers and employees of a corporation do not incur personal liability ... merely by virtue of the position they hold in the corporation.") In the context of limited liability companies, G.L. c. 156C, § 22, provides that:

... [T]he debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company; and no member or manager of a limited liability company shall be personally liable, directly or indirectly, including, without limitation, by way of indemnification, contribution, assessment or otherwise, for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

Id. (emphasis added). In *Davidson v. Ruskin*, 2009 Mass. App. Div. 75, 2009 Mass. App. Div. LEXIS 31 (Mass. App. Div. 2009), a tenant brought a claim against Peabody Park, LLC, the lessor ("Peabody Park"), Bernard Ruskin, Peabody Park's principal, and the leasing agent. In affirming the trial court's decision, the Appellate Division noted that any appeal of the claims against Ruskin,

a member of Peabody Park, would be frivolous, citing to “G.L. c. 156C, § 2(5), stating that a limited liability company need only have one member, and § 22, providing that a member is not liable for obligations of a limited liability company arising in contract or tort.” *Id.*; see also *CMI Assocs., LLC v. Regional Financing Co., LLC*, 775 F. Supp. 2d 281, 288 (D. Mass. 2011) (Ponsor, J.) (granting summary judgment as to all claim against individual defendant because the claims arose “from actions taken by [him] in his official capacity as owner and principal of [the limited liability company]”); *Smith v. Shining Rock Golf Community, LLC*, No. 2006-1510-B, 2007 Mass. Super. LEXIS 222 (Mass. Super. June 20, 2007) (McCann, J.) (holding that individual not liable where acting in representative capacity for limited liability company).

In this case, the Plaintiff alleges that Worcester Digital Marketing, LLC is a duly organized limited liability company, that Kearney is a member. The allegations against Kearney are limited to those he took in his capacity as manager and/or employee of Worcester Digital Marketing, LLC. The Complaint is devoid of any allegations that Kearney engaged in any conduct outside of the scope of his capacity as a member or manager of Worcester Digital Marketing, LLC or that could otherwise serve as a basis for any liability not shielded by Chapter 156C. Indeed, there are also no allegations that could support a finding that Kearney owed any personal duty to the Plaintiff or had any special relationship with the Plaintiff separate and distinct from the duties of Worcester Digital Marketing, LLC. See e.g., *Lyon, supra*. In *Lyon, supra*, the Supreme Judicial Court stated that defendants, who were the employer’s chief operating officer and director and assistant director of engineering, “may not be held individually liable for any breach of a duty which their employer, as owner of the building, may have owed to the plaintiff.” *Id.* at 831. Here, any duty that may have been owed to the Plaintiff was owed by Worcester Digital Marketing, LLC, and, therefore, Kearney cannot be individually liable to the Plaintiff. To find that a claim exists against Kearney

on these alleged facts would destroy the very reason for creating a limited liability company as company owners, members or managers would be individually liable for actions of the corporation.

As such, the law does not permit piercing the veil established by statute for such limited liability corporations and, therefore, Kearney is entitled to a dismissal of all claims against him, including Counts 4, 5, & 7.¹

II. PLAINTIFF HAS NOT ALLEGED A VIABLE CLAIM FOR DEFAMATION.

Counts 2, 4, 5, 8, & 9 of the Complaint purport to be claims for defamation (libel/slander). To prove a claim for defamation, Plaintiff must allege and prove four elements to a defamation claim:

[F]irst, the defendant made a statement, of and “concerning the plaintiff, to a third party”; second, the “statement could damage the plaintiff’s reputation in the community”; third, the defendant was at fault for making the statement; and fourth, the statement caused economic loss or, in four specific circumstances, is actionable without economic loss.

Scholz v. Delp, 473 Mass. 242, 249 (2015) (quoting *Ravnikar v. Bogojavlensky*, 438 Mass. 627, 629-630 (2003) (footnote omitted) (emphasis added)).

A. Defendants Did Not Make Any Statements Concerning the Plaintiff

The Defendants did not write the blog in question. Worcester Digital Marketing’s social media platforms allowed a third party to post to their website or platform, which is what occurred in this instance. Exhibit “B”.

B. Defendant’s Alleged Statements Are Not Actionable.

Assuming arguendo, that the subject statements are attributed the Defendants, “[A] threshold issue is whether the statement is reasonably susceptible of a defamatory meaning, and that

¹ The inclusion of these claims against Kearney without any factual bases and in light of the protections afforded by Chapter 156C may support a finding that such claims are frivolous for purposes of G.L. c. 231, § 6F, and Kearney would reserve the right to file an appropriate motion at the time as allowed by Section 6F.

determination is a question of law for the court. *Foley v. Lowell Sun Pub. Co.*, 404 Mass. 9, 11 (1989) (citing *Jones v. Taibbi*, 400 Mass. 786, 791-792 (1987), and cases cited). Further:

Stated another way “[s]tatements alleged to be libelous must be interpreted reasonably.” *King v. Globe Newspaper Co.*, 400 Mass. 705, 711-712 (1987), cert. denied, 485 U.S. 940 and 962 (1988). As we have said in another context, this interpretation “requires that the court examine the statement in its totality in the context in which it was uttered or published. The court must consider all the words used, not merely a particular phrase or sentence.” *Myers v. Boston Magazine Co.*, 380 Mass. 336, 341-342 (1980), quoting *Information Control Corp. v. Genesis One Computer Corp.*, 611 F.2d 781, 784 (9th Cir. 1980).

Foley, 404 Mass. at 11.

1. Plaintiff Has Not Alleged Any Facts that the Alleged Statements Were Not Substantially True.

Assuming arguendo, that the subject statements are attributed the Defendants, truth is a defense to libel unless actual malice is alleged or proved by the Plaintiff. See G.L. c. 231, § 92; *McAvoy v. Shufirin*, 401 Mass. 593, 597 (1988); see also *Jones v. Taibbi*, 400 Mass. 786 (1987). “Substantial, not literal truth, is required. See, e.g., *Clay Corp. v. Colter*, 30 Mass. L. Rep. 536, 2012 Mass. Super. LEXIS 357, at *11 (Mass. Super. Ct. Sept. 10, 2012) (citing *Conner v. Standard Pub. Co.*, 183 Mass. 474, 478 (1903)). It is undisputed that Plaintiff was arrested for animal cruelty and assault and battery upon Samantha Cardin. See Plaintiff’s Complaint. Moreover, Samantha Cardin has submitted an affidavit confirming she was in fact assaulted by the Plaintiff. Exhibit A. Plaintiff has not alleged any facts that he did not in fact assault Samantha Cardin. As such, there is nothing in the alleged statements to support the conclusion that Defendants’ statements were false, or not substantially true.

2. To the Extent that the Alleged Statements Contain Opinions, Such Opinions are Not Actionable.

While Defendants deny they made any defamatory statements, the statements, in context, are not actionable because they are opinions. “If it is plain that the speaker is expressing a subjective

view, an interpretation, a theory, conjecture, or surmise, the statement is not actionable.” *Scholz*, 473 Mass. at 251 (citation omitted; alterations omitted; internal quotation marks omitted; emphasis added). Here, Defendants are allegedly expressing its opinion based on disclosed, nondefamatory facts. “An ‘expression of opinion based on disclosed or assumed nondefamatory facts is not itself sufficient for an action of defamation, no matter how unjustified or unreasonable the opinion may be or how derogatory it is.’” *Dulgarian v. Stone*, 420 Mass. 843, 850 (1995) (quoting *Lyons*, 415 Mass. at 262 (1993) (further citation omitted); see *Nat’l Ass’n of Gov’t Employees, Inc. v. Central Broadcasting Corp.*, 379 Mass. 220, 227 (1980) (“Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.”). Whether a statement is one of fact or opinion is a question of law for the Court to decide when the statement is unambiguously either fact or opinion. See *Lyons*, 415 Mass. at 263.

Again, it is undisputed that Plaintiff was arrested for assault and battery, and the victim, has confirmed she was in fact assaulted by the Plaintiff. As such, the blog simply reflects Defendants’ subjective views based on nondefamatory facts.

III. PLAINTIFF HAS NOT ALLEGED ANY FACTS THAT WOULD SUFFICIENTLY PLACE DEFENDANT ON NOTICE OF THE BASES FOR THE CLAIM OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

Preliminarily, because the alleged statements are nonactionable opinion, and Plaintiff therefore cannot prevail on his defamation claim, he also cannot establish the derivative claim of intentional infliction of emotional distress. See *Scholz*, 473 Mass. at 254; see also *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 57 (1988); *Rotkiewicz v. Sadowsky*, 431 Mass. 748, 755 (2000).

Nevertheless, Plaintiff’s Complaint is also devoid of any facts that would support, as a matter of law, a claim for intentional infliction of emotional distress. Liability for intentional infliction

of emotional distress occurs when "one who, without a privilege to do so, by extreme and outrageous conduct intentionally causes severe emotional distress to another..." *George v. Jordan Marsh Co.*, 359 Mass. 244, 256 (1971); *Agis v. Howard Johnson Co.*, 371 Mass. 140, 144 (1976). The Plaintiffs must prove:

(1) the defendant intended to inflict emotional distress, or knew or should have known that emotional distress was the likely result of his conduct; ... (2) that the conduct was "extreme and outrageous," was "beyond all possible bounds of decency" and was "utterly intolerable in a civilized community," ... (3) that the actions of the defendant were the cause of the plaintiff's distress; ... and (4) that the emotional distress sustained by the plaintiff was "severe" and of such a nature that no reasonable [person] could be expected to endure it.

Agis, 371 Mass. at 144-145 (internal citations omitted). In *Foley v. Polaroid Corp.*, 400 Mass. 82 (1987), the Court, addressing a claim for intentional infliction of emotional distress, noted:

[L]iability cannot be predicated upon "mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities," nor even is it enough "that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort"; rather, "[l]iability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Restatement (Second) of Torts § 46 comment d (1965). Massachusetts cases have similarly described the limitations upon what can constitute "extreme and outrageous" conduct. See, e.g., *Agis v. Howard Johnson Co.*, *supra* at 145; *George v. Jordan Marsh Co.*, *supra* at 254; *Boyle v. Wenk*, 378 Mass. 592, 594-595 (1979).

Foley, *supra* at 99.

In the three cases cited by the *Foley* court, the respective courts found that the conduct alleged rose to the level of extreme and outrageous so as to support a claim for intentional infliction of emotional distress. In *Agis*, a manager decided to terminate employees in alphabetical order when money was discovered missing, even though he had not conducted any investigation and had no proof who stole the money. The plaintiff was among the first fired. 371 Mass. at 140, 145-146.

In *Boyle*, the defendant continued to harass the plaintiff even though he knew of her tenuous health situation from the recent birth of her child. 378 Mass. 594-595; see also *George, supra* at 255 (continued calls and requests for payment without any privilege to do so).

Here, the Plaintiff's claims again do not state any facts would allow for an analysis of this claim and its individual elements. Plaintiff has not alleged any facts as to the context for Defendants' statements, whether it was made in a capacity that would or would not permit such a statement, or any other information necessary to plead such a claim that is not a self-serving conclusory statement.

Based on the foregoing, Plaintiff's claim for intentional infliction of emotional distress must be dismissed.

IV. DEFENDANTS RESERVES THE RIGHT TO ARGUE ADDITIONAL DEFENSES.

Because the Complaint is so utterly devoid of any facts so as to place Defendants on the notice to which he is entitled under the Rules of Civil Procedure, Defendants are unable to anticipate or assert other defenses that may be available to them and, thus, expressly reserves their right to assert additional defenses, including but not limited to defenses under the Anti-SLAPP statute, G.L. c. 231, § 59H.

CONCLUSION

WHEREFORE, the defendants, Aidan Kearney, Worcester Digital Marketing, LLC, and Turtleboy Enterprises, LLC, respectfully requests that the Court dismiss Plaintiff's Complaint.

AIDAN KEARNY,
WORCESTER DIGITAL MARKETING, LLC
TURTLEBOY ENTERPRISES, LLC
By their attorney,



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CERTIFICATE OF SERVICE

I, Kevin Chrisanthopoulos Esq., hereby certify that on this 11th day of January 2018, I served a copy of the above upon the parties in the action, in hand, to the plaintiff:

Rian Waters
199 Allen Street
East Longmeadow, MA 01028

Subscribed under the penalties of perjury.



Kevin Chrisanthopoulos, Esq.

EXHIBIT

A

Excerpt from “I am Turtleboy”

In January 2017 Rian appeared in a blog written by one of the girls, after his baby's mother alleged domestic abuse by posting a picture of herself with a black eye on Facebook. She also alleged that Rian Waters had killed their dog. The blogger never said that he did it, and simply satirized the story as an example of trashy people airing their trash publicly. There was much more to it though, which I didn't find out until after he sued me. According to the woman he assaulted, Rian Waters sold drugs in California and hardly ever saw his daughter or baby momma in Palmer. However, on a visit to see them he allegedly shipped himself drugs via the USPS, which he intended to sell here. One day he got into an argument with his baby's mother and allegedly assaulted her, causing the black eye. He then went into the house and killed the dog in front of his special needs daughter by stomping it in the back. Everything she had posted on Facebook was true, and she had finally gotten the courage to speak out against her abuser. I know this as a fact because Rian had a trial and it all came out. In court a veterinarian testified that the autopsy on the dog indicated that he killed the poor thing. He avoided a guilty verdict because he intimidated his baby's mother from testifying against him. By making it clear to her that his lawyer would bring up the fact that he had drugs in her house, with her child present, he convinced her that she would lose custody of her daughter if she testified. Scared and with limited resources she decided not to testify against him. As a result the case was dismissed, but it was not a not guilty verdict.

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,
Plaintiff

VS.

AIDAN KEARNEY,

WORCESTER DIGITAL MARKETING, LLC

TURTLEBOY ENTERPRISES, LLC

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

The Defendants motion to dismiss must be denied as they ignored Superior Court Rule 9c, and emailed the Plaintiff stating that a conference is not necessary. The motion also includes two affidavits which are not apart of the Plaintiff's complaint, or public record. Most importantly the Plaintiff has a claim for relief as a matter of law established clearly in **Lundin v. Post Pub. Co., 217 Mass.** and similar cases. The Plaintiff believes a Mass.R.Civ.P. 16 conference would be more appropriate to simplify the issues.

Background

On January 6, 2017, the Defendant's website TurtleboySports.com and social media pages published an article (The Article) that accused the Plaintiff of killing his dog and head butting Samantha Cardin. On May 20, 2018 Defendant Aidan Kearney stated on a recorded online 'live show' that an ex employee named "Rhode Island Turtle Sister" wrote The Article,

and he stated inaccurate details of the related criminal case. On November 6th, 2018 Defendant Aidan Kearney published a book titled “I am Turtleboy” which states that the Plaintiff murders dogs and beats women, and accuses the Plaintiff of several more crimes including selling drugs in California, and shipping drugs through the USPS. The book also contains inaccurate details of the malicious criminal case that was initiated by Samantha Cardin. The Defendants strategically defaulted in this lawsuit, and when the default was removed they were required to answer by November 26th 2018. The Defendants then answered the original complaint, and planned on denying that they received the Amended Complaint. The Plaintiff then tried to initiate a Superior Court Rule 9C conference, and after detailing evidence of service in a email, the Defendants filed a late answer to the Amended Complaint. Now the Defendants file this motion to dismiss without any attempt for a 9C conference. To this date no other media outlet has published any of Samantha Cardin’s criminal allegations.

ARGUMENT

Legal Standard For a 12(b)(6) Motion to Dismiss

In evaluating a motion pursuant to Mass. R.Civ.P. 12(b)(6), a court takes into consideration the allegations in the complaint, although matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint, also may be taken into account. Iannacchino v. Ford Motor Co., 451 Mass. 623, 624, (2008) The court examines the sufficiency of a complaint in light of the principles that: (a) the allegations in the complaint, as well as such reasonable inferences as may be drawn therefrom in favor of the plaintiff, are to be taken as true, and (b) a complaint is sufficient unless it appears beyond doubt that the plaintiff

can prove no set of facts in support of his claim which would entitle him to relief. Eyal v. Helen Broadcasting Corp., 411 Mass. 426, 427, 583 N.E.2d 228, 229, 1991 Mass. LEXIS 584, *1, 19 Media L. Rep. 1989 Once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint. Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007). The primary function of pleadings is not to formulate the precise issues for trial but rather to give fair notice of the claims and defenses of the parties. White v. Spence, 5 Mass. App. Ct. 679, 680, (1977)

Legal Standard for Defamation

A statement is defamatory if it "would tend to hold the plaintiff up to scorn, hatred, ridicule or contempt, in the minds of any considerable and respectable segment in the community." Phelan v. May Dep't Stores Co., 443 Mass. 52, 56, 819 N.E.2d 550 (2004). "[T]he imputation of a crime is defamatory per se. To constitute defamation on that ground, the publication need not use "direct and explicit language" discrediting or imputing a crime to the plaintiff. Mabardi v. Boston Herald-Traveler Corp., 347 Mass. 411, 413, 198 N.E.2d 304 (1964). "An insinuation may be as actionable as a direct statement." Id., quoting Thayer v. Worcester Post Co., 284 Mass. 160, 162, 187 N.E. 292 (1933). Whether a statement is reasonably susceptible of a defamatory meaning is a question of law for the Court. Phelan, 443 Mass. at 56; Foley v. Lowell Sun Publishing Co., 404 Mass. 9, 11, 533 N.E.2d 196 (1989). With respect to the element of falsehood, courts consider the allegedly defamatory report as a whole to determine whether the gist or tenor of the report was accurate. See Masson v. New Yorker Magazine, Inc., 501 U.S. 496, 517, 111 S. Ct. 2419, 115 L. Ed. 2d 447 (1991). The Court considers the impact of the inaccuracy on the reader or listener, as compared to the impact of the

truth. See Jones v. Taibbi, 400 Mass. 786, 795-96, 512 N.E.2d 260 (1987) But the Court must address the question of truth or falsehood by reference to the communication in its entirety and the context in which it was published, as well as "the emotions, prejudices and intolerance of mankind." Ingalls v. Hastings & Sons Pub. Co., 304 Mass. 31, 33, 22 N.E.2d 657 (1939).

Aidan Kearney's Alter Ego Corporations do not give him any protection for his actions.

"A person who is an operator of a facility is not protected from liability by the legal structure of ownership." United States v. Bestfoods, 524 U.S. 51, 55, (1998) Additionally the book doesn't identify Worcester Digital Marketing LLC's (WDM) as owning or publishing the book, and on or about December 19, 2018 Aidan Kearney said on his live recorded show that he will continue to sell the book after WDM is bankrupt.

The Defendants have purported to the public they are a credible news source that pays writers and checks facts. The Defendants are telling this court that they operate a social media platform. But WDM's filings with the Secretary of State (Exhibit A) only list two very different services to be rendered. "Worcester Digital Marketing will sell ad space on popular local websites to local businesses, as well as writing promotional blogs.." WDM's filings do not say that the company owns a website, writes books, or even hosts online live shows, so it's very unclear how they think Aidan Kearney's actions were done under the scope of his employment with WDM. Turtleboy Enterprises LLC (TBE) filings say that they "Engage in all aspects of hosting and maintaining online forums and blogs in social media" (Exhibit B) So it would make more sense for the Defendants to argue that Aidan Kearney was working for TBE when he wrote the book and hosted the live shows. But the Defendants argue that TBE is a defunct company

that has not been properly dissolved. I argue that in light of the foregoing the 12 factors are not necessary to show that the business structures are misleading. “The supreme judicial court has not considered these factors mandatory; it has merely approved of the trial judge's use of them to analyze whether the corporate form properly protects the defendant from derivative liability.” Commonwealth v. Springfield Terminal Ry. Co., 80 Mass. App. Ct. 22, 23, 951 N.E.2d 696, 699, 2011 Mass. App. LEXIS 1100, *1 “One examines the 12 factors that are considered in deciding whether to penetrate the corporate form to form an opinion whether the over-all structure and operation misleads. There is present in the cases which have looked through the corporate form an element of dubious manipulation and contrivance, finagling, such that corporate identities are confused and third parties cannot be quite certain with what they are dealing.” Evans v. Multicon Constr. Corp., 30 Mass. App. Ct. 728, 729, (1991) If this motion is decided under rule 12(b)(6) standards, then the allegations in the Second Amended Complaint (Complaint) should be accepted as true. I will go through the 12 factors identified in Pepsi-Cola Metro. Bottling Co. v. Checkers, Inc. one at a time identifying where the facts are alleged in the complaint and describing the currently available evidence.

(1) Common ownership, ¶ 12(b) On August 20th 2018, Aidan Kearney said under oath that he is the sole owner of WDM, The Plaintiff served his first set of interrogatories on December 6, 2018, so the answers should be received once this motion is dismissed;

(2) Pervasive control, ¶ 12(a) Aidan Kearney holds all of the officer positions of both companies (Exhibit A&B), and has admitted on several occasions that he runs the business (Exhibit C page 14);

(3) Confused intermingling of business assets, ¶ 12(e) discovery is needed, although neither company lists an accurate address with the State, and as stated above it is unclear which business provides what service;

(4) Thin capitalization, ¶12(c) TBE is now “defunct”;

(5) Nonobservance of corporate formalities, ¶ 12(f) Aidan Kearney has not filed an annual report for WDM since 2016, and they never filed one for TBE. The most recent filings are included as Exhibit A&B;

(6) Absence of corporate records, The Defendants argue that TBE is defunct, and Aidan Kearney said at a deposition in August of 2018 that he was unaware that he was supposed to update the companies addresses with the Secretary of State (Exhibit C page 21), if he is unaware of such basic obligations it is unlikely that he has done his other obligations;

(7) No payment of dividends, This is likely not applicable, but very doubtful if it is;

(8) Insolvency at the time of the litigated transaction, ¶ 12(d) I need discovery, although it is likely their excuse for not filing annual reports;

(9) Siphoning away of corporation's funds by dominant shareholder, need discovery first;

(10) Nonfunctioning of officers and directors, I repeat my response to number 6;

(11) Use of the corporation for transactions of the dominant shareholders, ¶12(c) need discovery to assess, but Aidan Kearney has represented the corporation in small claims court;

(12) Use of the corporation in promoting fraud. ¶12(h)& ¶ 64-70 On or about December 19th 2018 Aidan Kearney said on his online show that if the Plaintiff wins a judgment he will bankrupt the company, and continue to sell books and collect advertising money.

“The corporate veil may be pierced and the shareholder held liable for the corporation's conduct when, inter alia, the corporate form would otherwise be misused to accomplish certain wrongful purposes, most notably fraud, on the shareholder's behalf.” United States v. Bestfoods, 524 U.S. 51, 55, 118 (1998) (There are occasions when the limited liability sought to be obtained through the corporation will be qualified or denied.... There are instances in which the parent has not sufficiently overstepped the bounds of corporate separateness to warrant piercing, yet is involved enough in the facility's activities that it should be held liable as an operator.)

The Plaintiff's complaint states sufficient facts and inferences to support his claims.

The Defendant's Memorandum claims that the “Plaintiff has not alleged any facts that he did not in fact assault Samantha Cardin.” This is a blatant lie as Paragraph 35 does list Samantha Cardin's allegations as false statements “On January 5 2017 The Defendant Samantha Cardin wrote the following false statements... That the Plaintiff intentionally caused a black eye, That the Plaintiff killed the family dog.”, and paragraphs 17, 19, 40, 41, and 46 strongly infer that all the criminal allegations are false. Additionally paragraphs 10, 12, 20, 26, 36, and 54 provide various reasons that the Defendants are liable. Although the Plaintiff will gladly amend his complaint so that all the facts that support the inferences are clearly stated and placed neatly in the beginning of the complaint.

Paragraph 25 of the Complaint states that “Defendants John Doe 1-10 wrote and caused to be publicated numerous false statements about the Plaintiff including the following... c. That the Plaintiff found his dog crushed underneath a big metal cabinet.” The John Doe writer used the defamatory allegation from Paragraph 25(c) as the basis for his opinion that the Plaintiff is

guilty. “Where the defamatory communication consists of a statement in the form of an opinion, it is actionable only if the statement implies the allegation of undisclosed defamatory facts as the basis for the opinion.” King v. Globe Newspaper Company, 400 Mass. 705 at 713, 512 N.E.2d 241 (1987).

In the Plaintiff’s Memorandum for his preliminary injunction he included plenty of case law that establishes a right of action as a matter of law. “An accusation purporting to rest on hearsay is none the less defamatory.” Maloof v. Post Pub. Co., 306 Mass. 279, 280, 28 N.E.2d 458, 458-459, 1940 Mass. LEXIS 931, *3-4 “the right of a party to make charges gives no right to others to spread them” Lundin v. Post Pub. Co., 217 Mass. 213, 215-217, 104 N.E. 480, 481-482, 1914 Mass. LEXIS 1211, *2-6 “An imputation of crime is defamatory per se” Stone v. Essex County Newspapers, Inc., 367 Mass. 849, 850, 330 N.E.2d 161, 164, 1975 Mass. LEXIS 907, “The defendant published in its newspaper a statement that it was alleged that the plaintiff had committed an assault upon a woman named, which had resulted in stated personal injuries to her. For this publication the plaintiff had a right of action, unless it was privileged, or unless it was true, or unless for some other reason it was not libellous.” Lundin v. Post Pub. Co., 217 Mass. “The mere fact that the charge against the plaintiff was not made by direct averment but only by saying that such an allegation had been made was not material; for the statement of unfounded charges is none the less actionable that it is made only by way of repeating them as having been made by others.” Kimball v. Post Publishing Co. 199 Mass. 248, 251, et seq.

Considering Samantha Cardin’s Affidavit would be improper and unfair.

“If, on any motion asserting the defense numbered (6), to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary

judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56..” Mass. R. Civ. P. 12 (B)

Additionally the eleventh hour affidavit of Samantha Cardin that states conclusory statements and opinions, did not exist when the defamatory article and book was published. “Where a plaintiff’s amended defamation complaint sets forth facts it will be analyzed under the traditional standard governing Mass. R. Civ. P. 12 (b)(6) motions, leaving fatal defects in the potential proof to be more properly decided under Mass. R. Civ. P. 56, after the completion of a more expanded record.” Eyal v. Helen Broadcasting Corp., 411 Mass. 426, 427, 583 N.E.2d 228, 229, 1991 Mass. LEXIS 584, *1, 19 Media L. Rep. 198 It would be unfair, and raise Fifth Amendment Due Process issues to accept her affidavit as fact for this motion. The Plaintiff intends to depose Samantha Cardin on or before the 8th of March 2019.

There is no evidence that the Plaintiff hurt his dog, or sold or shipped drugs in California.

Samantha Cardin has said many times that she did not see or hear the Plaintiff hurt his dog. The Defendants do not offer any evidence that the Plaintiff committed the listed crimes.

The Defendants do not operate a “social media platform.”

Social Media Platforms are not well defined, but all social media platforms have a few common characteristics that Turtleboy Sports does not share. 1) Users are able to create profiles that usually have their own unique address. 2) Users are able to send messages to other users. 3) Account access is open to the public whether free or paid.

The Turtleboy Sports website is hosted through Wordpress which does have a feature that allows administrators with the website owners permission create accounts for publishing blogs and other various levels of backend access. The account that published The Article was “Turtleboy”

which is likely the original account with complete backend access. Regardless Turtleboy is written at the top of every page of their website, and is the name the writers use when referring to the business. Paragraph 10 and 32 of the complaint touch on this issue, but if permission to amend is granted then I certainly could add more useful facts to the complaint.

Vicarious liability should apply in this case even if the identity of the John Doe blogger is unknown.

“A master is subject to liability for the torts of his servants committed while acting in the scope of their employment.” Burlington Indus. v. Ellerth, 524 U.S. 742, 746, 118 (1998) (A master is not subject to liability for the torts of his servants acting outside the scope of their employment, unless: (a) the master intended the conduct or the consequences, or (b) the master was negligent or reckless, or (c) the conduct violated a non-delegable duty of the master, or (d) the servant purported to act or to speak on behalf of the principal and there was reliance upon apparent authority, or he was aided in accomplishing the tort by the existence of the agency relation.)

The Defendants should not be allowed to file subsequent dismissive motions based on defenses currently available.

Mass. R. Civ. P. 12G&H were created “to conserve judicial time by preventing a defendant from serially raising objections which the plaintiff might well be able to meet.” Comments under Mass.R.Civ.P. 12 The Defendants argue that they should be allowed to argue additional defenses since the complaint is “devoid of any facts” to put the Defendant’s on notice. Assuming arguendo, the Defendant’s could have addressed it by not ignoring Superior court rule 9(C). As stated above the facts and inferences in the complaint, and the case law presented with the preliminary injunction motion give the Plaintiff a claim of action as a matter of law.

Restructuring and rewording the complaint is not going to shed new light on the Defendant's ability to file a SLAPP motion. I also argue that the intentions behind the Defendants default strategy and this instant motion are in line with the intentions the SLAPP statute intended to prevent.

LEAVE TO AMEND

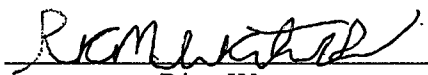
The Defendants seem to argue that they want all the facts to be clearly pled and placed neatly at the top of the complaint instead of spread out in the body of the complaint. The Plaintiff will be happy to do so, although the Plaintiff believes holding a Mass.R.Civ.P. 16 conference first would be helpful to simplify the issues. The Defendants have refused to sign a Mass.R.Civ.P. 41 stipulation, and have refused to have a Superior Court Rule 9C conference, and it takes a week to get a response to any questions. When the Plaintiff filed the Second Amended complaint Samantha Cardin was still in default, so the Plaintiff was very careful not to alter any facts that pertained to her. Shortly after filing the Defendants started a harassment campaign, and said they did not think Samantha should have been sued. In court on January 9th 2019, the Plaintiff voluntarily dismissed Samantha Cardin. Justice requires that leave be granted to amend the complaint.

CONCLUSION

The Defendants motion must be denied as they did not meet any of the requirements of a Mass.R.Civ.P. 12 (b)(6) motion, and misrepresented the complaint. No concise statement, includes outside matters, and no Superior court rule 9(c) conference. The Plaintiff will soon file a motion for leave to amend, although strongly believes that holding a Mass.R.Civ.P. 16 conference first would be helpful to simplify the case. If the court converts the motion to a

Mass.R.Civ.P.56 Summary Judgment motion, the Plaintiff recommends scheduling it in March so that Samantha Cardin can be deposed first.

Respectfully Submitted



1/28/2019

Rian Waters

199 Allen st.

East Longmeadow MA 01028.

(530)739-8951

Watersrian@gmail.com

(above is an old address, new address will be used after it is impounded.)

Certificate Of Service

I, Rian Waters, hereby certify that on January 2nd, 2019, I served a copy of the above document and the Request for Cassette upon the parties in the action by mailing U.S. first class, to:

Kevin Chrisanthopoulos, Esq.
KC Law
30 Court Street, Suite 1
Westfield, MA 01085

Subscribed under the penalties of perjury. 1/28/2019

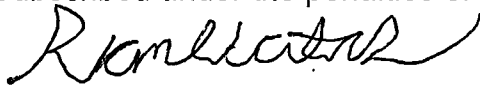


EXHIBIT A



The Commonwealth of Massachusetts
William Francis Galvin

Minimum Fee: \$500.00

Secretary of the Commonwealth, Corporations Division
 One Ashburton Place, 17th floor
 Boston, MA 02108-1512
 Telephone: (617) 727-9640

Annual Report

(General Laws, Chapter)

Identification Number: 001152634

Annual Report Filing Year: 2016

1.a. Exact name of the limited liability company: TURTLEBOY DIGITAL MARKETING LLC

1.b. The exact name of the limited liability company as amended, is: WORCESTER DIGITAL MARKETING LLC

2a. Location of its principal office:

No. and Street: 2 FOSTER STREET
 City or Town: WORCESTER State: MA Zip: 01608 Country: USA

2b. Street address of the office in the Commonwealth at which the records will be maintained:

No. and Street: 2 FOSTER STREET
 City or Town: WORCESTER State: MA Zip: 01608 Country: USA

3. The general character of business, and if the limited liability company is organized to render professional service, the service to be rendered:

WORCESTER DIGITAL MARKETING WILL SELL AD SPACE ON POPULAR LOCAL WEBSITES TO LOCAL BUSINESSES, AS WELL AS WRITING PROMOTIONAL BLOGS.

4. The latest date of dissolution, if specified:

5. Name and address of the Resident Agent:

Name: AIDAN KEARNEY
 No. and Street: 116 BROOKLINE ST
 City or Town: WORCESTER State: MA Zip: 01603 Country: USA

6. The name and business address of each manager, if any:

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
MANAGER	AIDAN T KEARNEY	116 BROOKLINE ST WORCESTER, MA 01603 USA

7. The name and business address of the person(s) in addition to the manager(s), authorized to execute documents to be filed with the Corporations Division, and at least one person shall be named if there are no managers.

RA096

Title	Individual Name	Address (no PO Box)
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	First, Middle, Last, Suffix	Address, City or Town, State, Zip Code
SOC SIGNATORY	AIDAN T KEARNEY	116 BROOKLINE ST WORCESTER, MA 01603 USA

8. The name and business address of the person(s) authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property:

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
REAL PROPERTY	AIDAN T KEARNEY	116 BROOKLINE ST WORCESTER, MA 01603 USA

9. Additional matters:

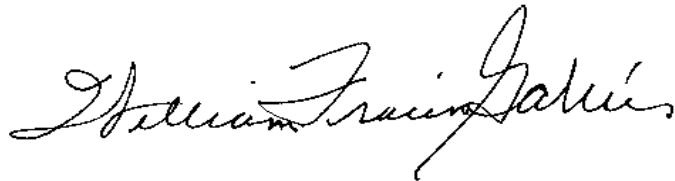
CHANGED THE BUSINESS ADDRESS, CHANGED THE STREET ADDRESS OF THE OFFICE IN THE COMMONWEALTH AT WHICH THE RECORDS WILL BE MAINTAINED, CHANGED THE NAME OF THE BUSINESS.

SIGNED UNDER THE PENALTIES OF PERJURY, this 6 Day of December, 2016,
AIDAN KEARNEY , Signature of Authorized Signatory.

THE COMMONWEALTH OF MASSACHUSETTS

I hereby certify that, upon examination of this document, duly submitted to me, it appears that the provisions of the General Laws relative to corporations have been complied with, and I hereby approve said articles; and the filing fee having been paid, said articles are deemed to have been filed with me on:

December 06, 2016 02:48 PM

A handwritten signature in black ink, reading "William Francis Galvin". The signature is written in a cursive, flowing style with a large initial 'W'.

WILLIAM FRANCIS GALVIN

Secretary of the Commonwealth

EXHIBIT B



The Commonwealth of Massachusetts
William Francis Galvin

Minimum Fee: \$500.00

Secretary of the Commonwealth, Corporations Division
 One Ashburton Place, 17th floor
 Boston, MA 02108-1512
 Telephone: (617) 727-9640

Certificate of Organization

(General Laws, Chapter)

Identification Number: 001217369

1. The exact name of the limited liability company is: TURTLEBOY ENTERPRISES LLC

2a. Location of its principal office:

No. and Street: 116 BROOKLINE STREET
 City or Town: WORCESTER State: MA Zip: 01603 Country: USA

2b. Street address of the office in the Commonwealth at which the records will be maintained:

No. and Street: 116 BROOKLINE STREET
 City or Town: WORCESTER State: MA Zip: 01603 Country: USA

3. The general character of business, and if the limited liability company is organized to render professional service, the service to be rendered:

TO ENGAGE IN ALL ASPECTS OF HOSTING AND MAINTAINING ONLINE FORUMS AND BLOGS IN SOCIAL MEDIA AND ALSO TO TAKE ANY OTHER ACTION AND ENGAGE IN ANY OTHER BUSINESS NOT PROHIBITED UNDER THE ACT OR OTHER APPLICABLE LAW.

4. The latest date of dissolution, if specified:

5. Name and address of the Resident Agent:

Name: AIDAN KEARNEY
 No. and Street: 116 BROOKLINE STREET
 City or Town: WORCESTER State: MA Zip: 01603 Country: USA

I, AIDAN KEARNEY resident agent of the above limited liability company, consent to my appointment as the resident agent of the above limited liability company pursuant to G. L. Chapter 156C Section 12.

6. The name and business address of each manager, if any:

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
MANAGER	AIDAN KEARNEY	116 BROOKLINE STREET WORCESTER, MA 01603 USA

7. The name and business address of the person(s) in addition to the manager(s), authorized to execute documents to be filed with the Corporations Division, and at least one person shall be named if there are no managers.

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
		RA100

SOC SIGNATORY	AIDAN KEARNEY	116 BROOKLINE STREET WORCESTER, MA 01603 USA
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8. The name and business address of the person(s) authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property:

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
REAL PROPERTY	AIDAN KEARNEY	116 BROOKLINE STREET WORCESTER, MA 01603 USA

9. Additional matters:

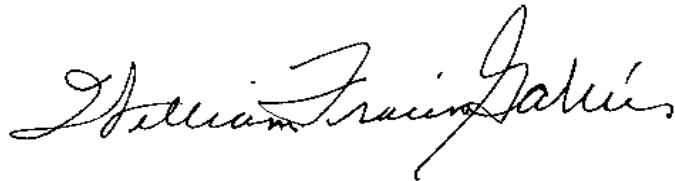
SIGNED UNDER THE PENALTIES OF PERJURY, this 1 Day of April, 2016,
AIDAN KEARNEY
(The certificate must be signed by the person forming the LLC.)

© 2001 - 2016 Commonwealth of Massachusetts
All Rights Reserved

THE COMMONWEALTH OF MASSACHUSETTS

I hereby certify that, upon examination of this document, duly submitted to me, it appears that the provisions of the General Laws relative to corporations have been complied with, and I hereby approve said articles; and the filing fee having been paid, said articles are deemed to have been filed with me on:

April 01, 2016 04:32 PM

A handwritten signature in black ink, reading "William Francis Galvin". The signature is written in a cursive, flowing style with a large initial 'W' and 'G'.

WILLIAM FRANCIS GALVIN

Secretary of the Commonwealth

EXHIBIT C

13

1 involvement with the blog content, what do you do
2 with regard to the blog content, anything?

3 A. It's my job to take the content and
4 drive traffic towards it in order to monetize it.
5 The more page views you get on the website the
6 more money I make via advisements.

7 Q. Do you solicit writers for content?

8 A. Yes, I have solicited writers,
9 correct.

10 Q. Do you research material for accuracy
11 and propriety?

12 A. Do I?

13 Q. Yes.

14 A. They do, the writers do.

15 Q. Do you post the content on Facebook?

16 A. Sometimes. Other people do as well.
17 It's a community thing. It's like Facebook, if
18 you will. Anyone can create an account and post
19 whatever they want.

20 Q. I'll show you a copy of Defendant's
21 Answers to the Plaintiff's First Set of
22 Interrogatories. I'll ask you to review them and
23 let me know if that's your signature on the final
24 page?

14

1 A. (Witness complying). It is my
2 signature, that's correct. Do you want me to
3 read all of these over?

4 Q. Just take a look at it and let me know
5 if those are the interrogatories that you signed?

6 A. (Witness reviewing document). Yes, I
7 read it all over and that is my signature.

8 Q. I direct your attention to
9 Interrogatory 6. Your response here is that, "I
10 sell advertising, receive payments from
11 advertising revenue sources, monitor all billing
12 and payments, pay all expenses associated with
13 Turtleboy Sports, receive content from writers
14 and review the same, monitor all platforms on
15 which Turtleboy Sports content appears including
16 Facebook, Twitter, Instagram and other outlets,
17 solicit writers for content, maintain contact
18 with all writers and news resources, research
19 submitted material for accuracy and propriety and
20 post approved content on available platforms such
21 as Facebook." I show that to you. Did I read
22 that correctly?

23 A. Yeah, I've read it.

24 Q. That's accurate?

15

1 A. I mean, it doesn't apply to all.
2 Other people do that stuff as well. If, for
3 instance --

4 Q. So now you're going to change your
5 response?

6 A. No, I'm not.

7 Q. So is this response accurate or
8 inaccurate?

9 MS. MELICAN: I'm going to object to
10 this and instruct you not to answer.

11 THE WITNESS: Okay.

12 MR. GAFFNEY: You're instructing your
13 client not to answer whether or not this response
14 to the interrogatory is accurate or inaccurate?

15 MS. MELICAN: That's correct. He
16 signed it. He just acknowledged that the
17 signature was his. The interrogatories are
18 answered under the pains and penalties of
19 perjury.

20 MR. GAFFNEY: Perfect.

21 Q. Here it indicates that you've
22 indicated that you maintain contact with all the
23 writers and news sources. How do you do that?

24 A. Anonymous e-mails.

16

1 Q. What do you mean by anonymous e-mails?

2 A. They create burner accounts or fake
3 Facebook pages is more accurate. They
4 communicate with me via their -- I don't want to
5 know their names.

6 Q. How do you pay them?

7 A. I don't.

8 Q. How do they get paid?

9 A. How do they get paid?

10 Q. Yes.

11 A. That's up to them.

12 Q. What do you mean it's up to them?

13 A. If they want to monetize the blog in
14 their own way they can.

15 Q. So the blog doesn't actually pay them?

16 A. No. Not the current stuff that I have
17 now, no.

18 Q. Did they in the past?

19 A. I have paid people for stuff via
20 PayPal, but that's about it.

21 Q. And that came from you?

22 A. That came from me, that's correct.

23 Q. When did you stop doing that?

24 A. I just don't have -- when did I stop?

17

1 I don't know the exact date, to be honest.
 2 Q. Was it in the last six months?
 3 A. Um --
 4 MS. MELICAN: If you know.
 5 A. I don't know off the top of my head.
 6 I can't recall.
 7 Q. Was it last month?
 8 A. Did I make a payment last month.
 9 Q. By PayPal to any of your writers?
 10 A. I'm trying to think. The last 30
 11 days?
 12 Q. Correct.
 13 A. No.
 14 Q. How about the last 60 days?
 15 A. I think in the last 60 days I paid
 16 someone a small amount of money.
 17 Q. Who was that?
 18 A. I don't know their names.
 19 Q. Where did you send the pay PayPal
 20 payment to?
 21 A. I don't know. They make up a fake
 22 e-mail address and I send it that way.
 23 Q. How do you advance a payment to a fake
 24 e-mail address?

18

1 A. I don't know. They set up a fake
 2 e-mail address, that's how PayPal works. It's
 3 all by e-mail.
 4 Q. But it has to go to a name, doesn't
 5 it?
 6 A. No, it does not. You can put whatever
 7 name you want on PayPal.
 8 Q. How do they deposit it into their
 9 account?
 10 A. It's not my problem, I don't know.
 11 Q. It also indicates here that you
 12 research submitted material for accuracy. Is
 13 that part of your job?
 14 A. If, for instance, there is a dispute
 15 in which somebody claims libel, for instance, in
 16 that case I would. But no, I do not review every
 17 blog that is published before publishing.
 18 MR. GAFFNEY: I'll make that an
 19 exhibit.
 20 MS. MELICAN: Is that going to be an
 21 exhibit?
 22 MR. GAFFNEY: Yes, it is.
 23 MS. MELICAN: Is that Exhibit 1?
 24 MR. GAFFNEY: Number 2. Number 1 is

19

1 the notice.
 2 (Deposition Exhibit No. 2 Marked.)
 3 MS. MELICAN: It would be helpful to
 4 me if you announce that you're making an exhibit.
 5 MR. GAFFNEY: I just did.
 6 Q. You are the sole owner of Turtleboy
 7 Digital Marketing, correct?
 8 A. Correct.
 9 Q. You submitted some documents.
 10 A. It's called Worcester Digital
 11 Marketing, not Turtleboy Digital Marketing.
 12 Q. Okay. The name has changed?
 13 A. Yes, a couple of years ago.
 14 Q. The document you submitted here in
 15 productions have the title Turtleboy Digital
 16 Marketing, LLC. Has that changed?
 17 A. Productions?
 18 Q. In your production of documents you
 19 produced a copy of Certificate of Organization.
 20 Is that still your Certificate of Organization?
 21 A. It's the same entity. It was renamed
 22 Worcester Digital Marketing instead of Turtleboy.
 23 Q. Was that actually changed in your
 24 Certificate of Organization when you changed the

20

1 name of the organization or is it still listed as
 2 Turtleboy Digital Marketing?
 3 A. If you look it up on the Secretary of
 4 State's website it's Worcester Digital Marketing.
 5 Q. Okay. That's the document that you
 6 submitted in your production?
 7 MS. MELICAN: If you know.
 8 A. I don't know.
 9 Q. Do you recall giving a document to
 10 your counsel in response to a request from myself
 11 concerning your Certificate of Organization for
 12 the entity whether it's Worcester Digital
 13 Marketing or Turtleboy Digital Marketing?
 14 A. Excuse me?
 15 Q. Do you recall submitting documents to
 16 your counsel that were submitted to me in
 17 response to the Request For Production?
 18 A. No, I don't recall.
 19 Q. You don't recall submitting any
 20 documents to your counsel at all?
 21 A. No. You asked for quite a few
 22 documents. I can't keep them all on track.
 23 Q. Do you recall submitting some
 24 documents or you don't recall any documents?

21

1 A. I don't recall any particular
2 documents that you're speaking of.
3 MR. GAFFNEY: I'm going to put this as
4 Exhibit 3.
5 (Deposition Exhibit No. 3 Marked.)
6 Q. You are the registered agent for that
7 corporation as well?
8 A. That's correct.
9 Q. What is the address of that
10 corporation?
11 A. I don't know.
12 Q. Have you been instructed by the
13 Commonwealth of Massachusetts to update that
14 address?
15 A. Um -- not to my -- I don't know. No
16 one called me and told me to.
17 Q. Did you receive a letter?
18 A. I can't remember. I received a lot of
19 letters because of this lawsuit.
20 Q. I'll show you a blog published on
21 November 6, 2017, "Don't vote for Michael
22 Gaffney. Tomorrow he's walking out on what he
23 started, playing games and isn't the same guy we
24 got behind before." You can review it. The

22

1 question will be, is that a copy of the blog that
2 was posted on the Turtleboy website and on social
3 media pages?
4 A. I can't remember if it was posted on
5 social media pages. It certainly appears to be a
6 blog that is posted on Turtleboy Sports.
7 Q. Did you review this blog prior to it
8 being published?
9 A. No.
10 Q. Who posted the blog?
11 A. I don't know.
12 Q. Who wrote the blog?
13 A. I don't know.
14 Q. Why was the blog published?
15 A. Because that's what happens at a blog,
16 blogs get published.
17 Q. What efforts did you engage in to
18 verify the accuracy of the blog?
19 A. I've looked at it since, obviously
20 because you've sued me. I read it over and I
21 don't see any glaring issues with it.
22 Q. There's information in the blog
23 concerning communications between you and I. How
24 did that information --

23

1 A. What information is that?
2 Q. The screen shots that are in here.
3 A. Like what?
4 Q. Again, there's information there
5 concerning communications between you and I.
6 A. Show me.
7 Q. Are you denying that?
8 A. I'd like to see it.
9 Q. Sure. Are you not Clarence Woods
10 Emerson?
11 A. No, my name is Aidan Kearney.
12 Q. Is that a profile that you control,
13 Clarence Woods Emerson?
14 A. It's a profile a lot of people
15 control.
16 Q. So do you use Clarence Woods Emerson?
17 A. I have used it before, but I have no
18 way of knowing if that's me that wrote that to
19 you.
20 Q. Who has access to it?
21 A. I don't know.
22 Q. Who has control of that account?
23 A. Anyone who has a password.
24 Q. How did you get the password?

24

1 A. I was the original creator of Clarence
2 Woods Emerson. I have given that account to so
3 many people I can't even keep track.
4 Q. Tell me some of the people that you
5 have given it to?
6 A. I don't know their names.
7 Q. You don't know a single person's name
8 who has had access to that?
9 A. Not currently, no. I did notice that
10 they have posted many times, but I have not been
11 the person.
12 Q. You said you reviewed this blog.
13 A. Reviewed what?
14 Q. This blog, you said you reviewed it
15 after the fact?
16 A. I've looked at it after the fact.
17 Q. I bring your attention to Page 5. I'm
18 going to read this bullet here, "The way they did
19 it really annoyed the shit out of me." What is
20 the purpose of that statement?
21 A. I don't know because I didn't write
22 it.
23 Q. When you reviewed it did you inquire
24 of the person who wrote it?

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,
Plaintiff

vs.

AIDAN KEARNEY,

WORCESTER DIGITAL MARKETING, LLC

TURTLEBOY ENTERPRISES, LLC
Defendants

HAMPDEN COUNTY
SUPERIOR COURT
FILED

MAR 11 2019


CLERK OF COURTS

Supplementary Brief for Motion to Dismiss/ Summary Judgment

Due to the Defendants flagrant violations of GL ch. 268, § 13B, the Plaintiff has been unable to prepare for the motion to dismiss, and asks that this court take an affirmative role in resecuring the Plaintiff's right to be fairly heard, and constitutional rights. The Plaintiff still believes an injunction preventing witnesses from being mentioned on sites/accounts associated with public shaming would be the best solution, although impoundment, or appointed counsel Mass. Sup. Jud. Ct. R. 3:10 Section 4, could also work.

LEGAL STANDARD:

"Ensuring the public's safety is of the first order of government, a duty underlying all government action." Lavallee v. Justices in the Hampden Superior Court, 442 Mass. 228, 229.

812 N.E.2d 895, 899, 2004 Mass. LEXIS 422, *1 "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.* A judge may make reasonable efforts, consistent with the law,* to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard." **Mass. Sup. Jud. Ct. R. 3:10 Rule 2.6(A)** ([1] The right to be heard is an essential component of a fair and impartial* system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed. [1A] **The judge has an affirmative role** in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard. In the interest of ensuring fairness and access to justice, judges may make reasonable accommodations that help self-represented litigants to understand the proceedings and applicable procedural requirements, secure legal assistance, and be heard according to law.)

Relevant parts of GL ch. 268, § 13B

(a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

"Harass", to engage in an act directed at a specific person or group of persons that seriously alarms or annoys such person or group of persons and would cause a reasonable person or group of persons to suffer substantial emotional distress including, but not limited to, an act conducted by... or electronic communication device including but not limited to, electronic mail, internet communications, instant messages and facsimile communications.

(b) Whoever willfully, either directly or **indirectly**: (i) threatens, attempts or causes physical, emotional or economic injury... (iii) misleads, intimidates or harasses another person who is a: (A) witness or potential witness; (B) person who is or was aware of information, records,

documents or objects that relate to a violation of a criminal law... (D) person who is or was attending or a person who had made known an intention to attend a proceeding described in this section... , with the intent to or with reckless disregard for the fact that it may; (1) impede, obstruct, delay, prevent or otherwise interfere with...or any other civil proceeding of any type; or (2) punish, harm or otherwise retaliate against any such person described in this section for such person or such person's family member's participation in any of the proceedings described in this section, shall be punished by imprisonment in the state prison for not more than 10 years or by imprisonment in the house of correction for not more than 2 1/2 years or by a fine of not less than \$1,000 or more than \$5,000 or by both such fine and imprisonment... (c) A prosecution under this section may be brought in the county in which the... proceeding was being conducted or took place or in the county in which the alleged conduct constituting the offense occurred. "In the context of a witness, words do not need to be expressly intimidating, threatening, or harassing in order to fall within the meaning of intimidation... The assessment whether a defendant made a threat to a witness is not confined to a technical analysis of the precise words uttered; the jury may consider the context in which the allegedly threatening statement was made and all of the surrounding circumstances." Commonwealth v. Carvalho, 88 Mass. App. Ct. 840, 841, 43 N.E.3d 340, 343, 2016

The Plaintiff's Rights are being violated.

If this court provides an injunction or impounds the case I will submit my diagnosis and comments from my therapist showing that the Defendants actions are causing serious damage. The Defendants operate a public shaming device that tells the public that they are a news source

whos purpose is to "expose bad people doing bad things." Their ruthless reputation makes it seriously alarming and causes substantial emotional distress to be featured with your address on their website. The Defendants have utilized the anonymity the internet provides, and the ability to create multiple fake profiles on Facebook to amplify the intensity of the harassment campaigns against their subjects. The result is the Defendants have essentially created an extra legal online court house, that ignores rules of evidence and sentences subjects they assume are guilty to a unconstitutional infamous punishment that strips them of their dignity, and weaponizes social media so that the subjects are harassed and humiliated on the public internet, by several unidentifiable parties. The resulting emotional and reputational damage is especially excruciating because the subjects friends and family receive eye-catching invites to the degrading ceremonies while looking through their facebook newsfeed. The damage that is caused is endlessly recurring as the Defendant's articles rank at the top of google searches, making it impossible for a subject to move on with their life, or work a decent job. GL ch. 268, § 13B Starts with "whoever willfully either directly or indirectly" Defendant Aidan Kearney is the sole owner of Turtleboy, he admitted in his book he is the editor, and his recorded rants online show he is well aware of the harrassing articles and threats, so I argue that Aidan Kearney indirectly continued harassing the Plaintiff Rian Waters and witness Michael Gaffney on his website and social media platform through his agents (if not really him). As well as directly harassing and intimidating on his recorded online shows. The Defendants published articles on their website on January 13, 2019, and February 3, 2019 which included images that were created with photoshop, that use the faces of the Plaintiff and his first witness Michael Gaffney, and puts them on two gay men in bed with sex toys, as well as fake homosexual movie

promotions (Exhibit A page 7). On February 13, 2019 The Defendants Published a harassing article that caused severe emotional damage, and had put the Plaintiff in a zombie like state for over two weeks, it became extremely difficult for the plaintiff to perform basic tasks such as returning phone calls, or replying to emails, and impossible for the Plaintiff to effectively represent himself. The article has comments of threats of violence including;

"I truly want to beat the shit out of him. In fact, I may spend this weekend trying to find this mother...." and " if this shitbag is on the street, he better go into hiding. I can't say what i'd like to do to him, but be assured that it would be legendary, lasting and horrific"

With this court ignoring the flagrant violations to GL ch. 268, § 13B it is impossible for the Plaintiff to seek fair justice.

At this point the public knows that if any expert or witness says anything the Defendants don't like, then they will get doxxed and harrassed, likely lose their careers, and forced to make their social media profiles private, essentially losing their liberty of freedom of speech. With Samantha Cardin the community intimidation is especially prejudicial, both Samantha Cardin and Aidan Kearney have committed perjury and had it pointed out to the court without repercussions, so Samantha knows if she commits perjury and says what Turtleboy wants, she won't be punished. But if Samantha pleads the fifth, or admits what really happened she knows this court will not protect her; and her life and reputation will be destroyed. **Samantha Cardin likely has borderline personality disorder, and she is currently taking care of the Plaintiff's daughter, so if the defendants write an article punishing her there is a high probability the Plaintiff's daughter will be hurt.**

The following is relevant parts from the Massachusetts Constitution;

Preamble

The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and **to furnish the individuals who compose it with the power of enjoying in safety and tranquillity their natural rights, and the blessings of life:** and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

The body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that **all shall be governed by certain laws for the common good.** It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as **for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them....**

PART THE FIRST

A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts

Article I.

All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness. [Annulled by Amendments, Art. CVI.]

Article V.

All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

Article VII.

"Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men: Therefore the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it."

If you look at any law journal or article on public shaming you will see that it causes, ostracism and harassment, which perpetuates violence and prevents people from being productive members of society.

Article X.

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....[See Amendments, Arts. XXXIX, XLIII, XLVII, XLVIII, The Initiative, II, sec. 2, XLIX, L, LI and XCVII.]

Article XI.

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.**

Article XII.

No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defense by himself, or his council at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, **put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.**

And the legislature shall not make any law, that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury. [Sec Amendments, Art. XLVIII, The Initiative, II, sec. 2.]

Deciding summary judgment in the Defendants favor without a jury would deprive the Plaintiff of life and liberty without due process. .

Article XX.

The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for. [See Amendments, Arts. XLVIII, I, Definition and LXXXIX.]

Allowing The Defendants extra legal court house to decide guilt and sentence the Plaintiff to cruel and unusual punishment is unconstitutional.

Article XXVI.

No magistrate or court of law, shall demand excessive bail or sureties, impose excessive fines, or

inflict **cruel or unusual punishments**. [See Amendments, Art. XLVIII, The Initiative, II, sec. 2, and CXVI.]

Article XXIX.

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... [See Amendments, Arts. XLVIII, The Initiative, II, sec. 2, and The Referendum, III, sec. 2, LXVIII and XCVIII.]

Article XXX.

....to the end it may be a government of laws and not of men.

"[A] statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated."

Commonwealth v. Figueroa, 464 Mass. 365, 368 (2013)

This Article does a good job explaining that Public shaming does not work, is inaccurate and perpetuates violence. **PURSUING ACCOUNTABILITY FOR PERPETRATORS OF INTIMATE PARTNER VIOLENCE: THE PERIL (AND UTILITY?) OF SHAME, 98 B.U.L. Rev. 1680, 1700-1701**

"that guilt shall not escape nor innocence suffer" **United States v. Nobles, 422 U.S. 225, 230 (1975)**

The Plaintiff recognizes that both Constitutions list freedom of the press as a right, although the Plaintiff first argues the **Ninth Amendment of the U.S. Constitution** protects him, secondly the Defendants told the Secretary of State that they are an advertising company, and they told this court that they are a "social media platform." So they can not legally be considered press as far as the constitution is concerned. Also John Adams was nice enough to include a Preamble that explains the purpose of the constitution, which was to create a fair government that protects the rights of the individuals that make up the body politic. John Adams was unaware of how media would develop, and he didn't know that the words "free speech" would be used to allow public shaming that deprives subjects of their dignity and unalienable rights without due process. John Adams made a very famous and strong argument against punishing the innocent when he argued for the defense of the British soldiers accused of the Boston Massacre.

This court is already aware of violations to MA GL ch. 268, § 13B

On May 20th 2018 Defendant Aidan Kearney accused the Plaintiff of killing dogs and beating women on a recorded show online that is available to download on demand, the Defendant had reason to believe the Plaintiff was writing the complaint at the time. Shortly before serving their motion to remove default the Defendants republished the defamatory May 20th recording on their facebook account, and messaged the Plaintiff "Get ready Homeboy, The funs just getting started." Then in November Defendant Aidan Kearney threatened the Plaintiff and published a defamatory book that accused the Plaintiff of several crimes, and included inaccurate details about the criminal case to make him seem guilty. The book was not available for purchase until the week before the hearing to remove the default. The days before the TRO hearing, and the Preliminary injunction hearing the Defendants published several articles about

the Plaintiff, and harassed his first witness Michael Gaffney. While the MA Civil Rules do not specifically address witness intimidation, MA GL ch. 268, § 13B which was revised in 2018, "A purpose of the statute is the protection of participants in judicial proceedings and thereby the protection of the public interest in the due administration of justice." Commonwealth v. Burt, 40 Mass. App. Ct. 275, 277, 663 N.E.2d 271, 273, 1996 Mass. App. LEXIS 136, *5 See also United States v. Chandler, 604 F.2d 972, 974 (5th Cir. 1979) (construing a similar Federal statute, 18 U.S.C. § 1503 [1994]). Each of the harassing acts happened at the times when the Plaintiff's cognitive ability was the most important. "the timing of the defendant's actions makes it more, rather than less, likely that he was trying to intimidate the witness." Commonwealth v. Robinson, 444 Mass. 102, 109, 825 N.E.2d 1021 (2005).

If this court is inclined to allow the Defendants to continue their harassment campaign, then this court needs to appoint counsel in the interest of justice.

"where the interests of justice so require, the judge may assign standby counsel to assist the party in the course of the proceedings regardless of whether the party is indigent." Mass. Sup. Jud. Ct. R. 3:10 Section 4. There is also laws that could allow this court to appoint full counsel "Said committee shall establish, supervise and maintain a system for the appointment or assignment of counsel at any stage of a proceeding, either criminal or noncriminal in nature, provided, however, that the laws of the commonwealth or the rules of the supreme judicial court require that a person in such proceeding be represented by counsel; and, provided further, that such person is unable to obtain counsel by reason of his indigency..." MASS GL ch. 211D, § 5 "A right to appointed counsel is recognized to exist only where the litigant may lose his physical liberty if he loses the

litigation.” Lassiter v. Dep't of Social Services, 452 U.S. 18, 20, 101 S. Ct. 2153, 2156, 68 L. Ed. 2d 640, 645, 1981 U.S. LEXIS 107, *1, 49 U.S.L.W. 4586

“If in fact a trial is dominated by a mob so that there is an actual interference with the course of justice, there is a departure from due process of law.” Moore v. Dempsey, 261 U.S. 86, 87, 43 S. Ct. 265, 265, 67 L. Ed. 543, 544, 1923 U.S. LEXIS 2529. “The case of Mathews v. Eldridge propounds three elements to be evaluated in deciding what due process requires, viz., the private interests at stake, the government's interest, and the risk that the procedures used will lead to erroneous decisions. A court must balance these elements against each other, and then set their net weight in the scales against the presumption that there is a right to appointed counsel only where the indigent, if he is unsuccessful, may lose his personal freedom.” Lassiter v. Dep't of Social Services, 452 U.S. 18, 20, 101 S. Ct. 2153, 2156, 68 L. Ed. 2d 640, 645, 1981 U.S. LEXIS 107, *1, 49 U.S.L.W. 4586 (In its Fourteenth Amendment, the Constitution imposes on the States the standards necessary to ensure that judicial proceedings are fundamentally fair.) “There can be no real dispute that recklessness regarding a risk of serious harm is wrongful conduct. In a wide variety of contexts, we have described reckless conduct as morally culpable.” Elonis v. United States, 135 S. Ct. 2001, 2015, 192 L. Ed. 2d 1, 20, 2015 U.S. LEXIS 3719, *34, 83 U.S.L.W. 4360, 43 Media L. Rep. 1749, 25 Fla. L. Weekly Fed. S 287 see also Garrison v. Louisiana, 379 U.S. 64, 75, 85 S. Ct. 209, 13 L. Ed. 2d 125 (1964) (criminal libel); New York Times Co. v. Sullivan, 376 U.S. 254, 279-280, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964) (civil libel). “But if we maintain a general policy of free speaking, we must recognize that its inevitable consequence will be sporadic local outbreaks of violence, for it is the nature of men to be intolerant of attacks upon institutions, personalities and ideas for which they really care. In [*37] the long run,

maintenance of free speech will be more endangered if the population can have no protection from the abuses which lead to violence. No liberty is made more secure by holding that its abuses are inseparable from its enjoyment. We must not forget that it is the free democratic communities that ask us to trust them to maintain peace with liberty and that the factions engaged in this battle are not interested permanently in either." Terminiello v. Chicago, 337 U.S. 1, 36-37, 69 S. Ct. 894, 910, 93 L. Ed. 1131, 1151, 1949 U.S. LEXIS 2400, *57 (But we must bear in mind also that no serious outbreak of mob violence, race rioting, lynching or public disorder is likely to get going without help of some speech-making to some mass of people. A street may be filled with men and women and the crowd still not be a mob. Unity of purpose, passion and hatred, which merges the many minds of a crowd into the mindlessness of a mob, almost invariably is [***1149] supplied by speeches. It is naive, or worse, to teach that oratory with this object or effect is a service to liberty. No mob has ever protected any liberty, even its own, but if not put down it always winds up in an orgy of lawlessness which respects no liberties.) "The freedom of association protected by the First Amendment does not extend to joining with others for the purpose of depriving third parties of their lawful rights." Madsen v. Women's Health Ctr., 512 U.S. 753 "The constitutional guaranty of free speech does not "protect a man from an injunction against uttering words [****34] that may have all the effect of force." Gompers v. Buck Stove & Range Co., 221 U.S. 418, 439. "Punishment for the abuse of the liberty accorded to the press is essential for the protection of the public, and the common-law rules that subject a libeler to responsibility for the public offense, as well as for the private injury, are not abolished by the constitutional protection of such liberty." Near v. Minn., 283 U.S. 697, 701, 51 S. Ct. 625, 626, 75 L. Ed. 1357, 1360, 1931 U.S. LEXIS 175, *1, 1 Media L. Rep. 1001

(Liberty of speech and of the press is not an absolute right, and the state may punish its abuse.)

"There are special, limited circumstances in which speech is so interlaced with burgeoning violence that it is not protected by the broad guarantee of U.S. Const. amend. I." Carroll v. President & Comm'Rs of Princess Anne, 393 U.S. 175, 176, 89 S. Ct. 347, 349, 21 L. Ed. 2d 325, 328, 1968 U.S. LEXIS 2948, *1, 1 Media L. Rep. 1016 "An injunction is not content based, even though it is directed only at abortion protesters, if it is only abortion protesters who had done the acts which are being enjoined." Schenck v. Pro-Choice Network of W. N.Y., 519 U.S. 357, 361, 117 S. Ct. 855, 859, 137 L. Ed. 2d 1, 11, 1997 U.S. LEXIS 1270, *1, 65 U.S.L.W. 4109, 97 Cal. Daily Op. Service 1167, 97 Daily Journal DAR 1687, 10 Fla. L. Weekly Fed. S 296

The Plaintiff served the First set of interrogatories on December 6th, and still hasn't gotten a response. I sent the final demand while under severe emotional distress, so I failed to place the required sentence, the Plaintiff needs the answers to continue with the case.

This Section Covers the Importance of Protecting Dignity

The Constitution of the United States and its Bill of Rights do not mention human dignity. It has since been suggested, however, that the purpose of the Constitution and its Bill of Rights is to protect human dignity (Goldman v. Weinberger, 1986, p. 523; Roper v. Simmons, 2005, p. 578; see also Henkin, 1992), ARTICLE: HUMAN DIGNITY, SELF-WORTH, AND HUMILIATION: A Comparative Legal--Psychological Approach, 18 Psych. Pub. Pol. and L. 105, 117

Arguments of dignity as self-worth also underlie the Supreme Court's thinking regarding the constitutional protection of reputation. By its very nature, reputation, one's good name, is an

essential part of a person's identity and self-worth. These are the elements that were noted by Justice Stewart arguing for the protection of reputation under the Constitution in his concurring opinion in Rosenblatt v. Baer, 383 U.S. 75 (1966) p. 92:

(The right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being--a concept at the root of any decent system of ordered liberty. The protection of private personality, like the protection of life itself, is left primarily to the individual States under the Ninth and Tenth Amendments. But this does not mean that the right is entitled to any less recognition by this Court as a basic of our constitutional system)

In the later *Paul v. Davis* (1976) judgment, dealing with a defamatory action of the Police, Justice Brennan, joined by Justice Marshall and White, cited Justice Stewart and went on to explain that the protection of human dignity as self-worth is at the heart of the Constitution:

[*123] I have always thought that one of this Court's most important roles is to provide a formidable bulwark against governmental violation of the constitutional safeguards securing in our free society the legitimate expectations of every person to innate human dignity and sense of worth (p. 734). **ARTICLE: HUMAN DIGNITY, SELF-WORTH, AND HUMILIATION: A**

Comparative Legal--Psychological Approach, 18 Psych. Pub. Pol. and L. 105, 122-123

"But how might individuals be wrongly abased? They might be denigrated when their "ontological heft" is denied solely on the basis of the individual's alleged inferiority. Under this understanding, dignity's non-humiliation injunction mandates that institutions provide counsel, for example, that facilitates the hearing of that particular litigant's story no matter who she is so that her subjectivity is honored: Once we accept that human dignity requires litigants to be heard, the justification of the advocate becomes clear. People may be poor public speakers. They may be inarticulate, unlettered, mentally disorganized, or just plain stupid. They may know nothing of

the law, and so be unable to argue its interpretation. Knowing no law, they may omit the very facts that make their case, or focus on pieces of the story that are irrelevant or prejudicial. They may be unable to utilize basic procedural rights such as objecting to their adversary's leading questions. Their voices may be nails on a chalkboard or too mumbled to understand. They may speak a dialect, or for that matter know no English. None of this should matter. Human dignity does not depend on whether one is stupid or smooth. Hence the need for the advocate. Just as a non-English speaker must be provided an interpreter, the legally mute should have--in the very finest sense of the term--a mouthpiece. 15 Nw. J. Hum. Rts. 126

CONCLUSION:

While the Plaintiff is unable to fairly argue the merits of the motion at this time, the Constitution provides the Plaintiff with an affirmative right to action and his constitutional rights of liberty and pursuit of happiness should not be denied but by a jury of the people.

Respectfully submitted,

Rian Waters



I'll start putting the address again when it's safe to do so

(530)739-8951

Watersrian@gmail.com Dated: March 11th, 2019

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,
Plaintiff

vs.

AIDAN KEARNEY,

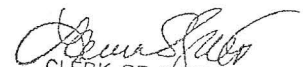
WORCESTER DIGITAL MARKETING, LLC

TURTLEBOY ENTERPRISES, LLC

JOHN DOES 1-10,
Defendants

HAMPDEN COUNTY
SUPERIOR COURT
FILED

MAR 11 2019


CLERK OF COURTS

AFFIDAVIT OF RIAN WATERS

1. I am the Pro Se Plaintiff in the above captioned matter.
2. On or about November 11th Aidan Kearney threatened me on his online show that was recorded, and is available to watch on demand. Stating "I am going to fucking murder him with words, and we are going to bury him"
3. Once I became aware of Mr. Kearney's threat, I felt uncomfortable being inside my residence, and have since avoided it.
4. Aidan Kearney wrote a book titled "I am Turtleboy" and had it first published in November 2018. The book was not available for purchase until on or about November 13th 2018, one week before the default hearing.
5. If this court protects me in some way, I can provide my diagnosis and prove that I have recently suffered severe emotional damage.
6. Everything in the brief is accurate.

Signed under the pains and penalties of perjury 3/11/2019





WTF HOODRAT HEROES SOCIAL JUSTICE WARRIORS PODCASTS
ALL CATEGORIES SHOP MY ACCOUNT

FREE DONUT INSIDE

**Get Fat
As Fuck
21-Day Plan**

- Deep Vein Thrombosis
- Chronic Sleep Apnea
- Two Spin Classes

The wife,
the mistress,
the gay lover
and the
infatuation
with Uncle Turtle

**Bed
Brews**
Farts To
Fall Asleep

**MIKE
GAFFNEY
SPECIAL
EDITION**

**"CHEERS!"
TO THE
NEW YEAR**

**WHY DID
MIKE POKE
THE TURTLE?**

**Not Able
To See His
Own Dick**
Try This Guy's
Lifestyle!

**SUBSCRIBE TO
RECEIVE EMAIL
NOTIFICATION
EVERY TIME WE
PUBLISH A NEW
BLOG**

Get updated from the latest
posts straight to your
mailbox!

Email Address

SUBSCRIBE

CLOSE

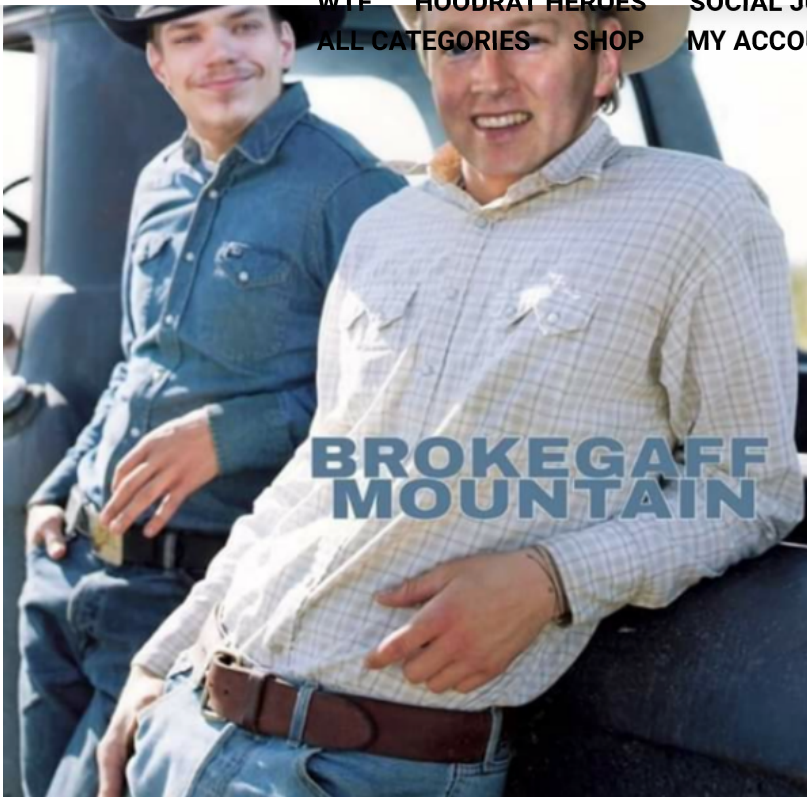


RA124





WTF HOODRAT HEROES SOCIAL JUSTICE WARRIORS PODCASTS
ALL CATEGORIES SHOP MY ACCOUNT



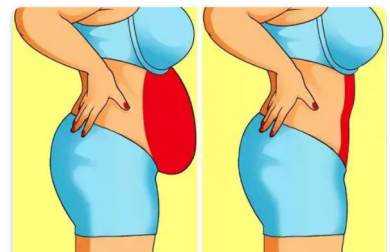
**One Cup Of This
(Before Bed) Burns
Belly Fat Like Crazy!**



**Play This For 1 Min
And See Why Everyone
Is Addicted!**



**Best Diet For Lazy
People! Up To -17 Kg In
3 Weeks! No Workouts!**



**These 2 Vegetables
Will Kill Your Belly Fat
Overnight!**

CLOSE



CLICK TO[^]

RA125

A

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

Bruce S. Allen
CLERK OF COURTS

6/18/19 DENIED for E Mulgrew

"The request must be sent directly to the session clerk, ATTN: Session Judge. The request must be served on all other parties, but the court need not await a response to such request before ruling." Superior Court Rule 9A(6)

Respectfully submitted, Rian Waters



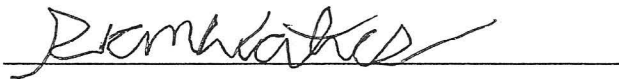
Watersrian@gmail.com Dated: March 18, 2019

Certificate Of Service

I, Rian Waters, hereby certify that on March 18, 2019 I served a copy of the above upon the parties in the action by mailing U.S. first class, to:

Kevin Chrisanthopoulos, Esq.
KC Law
30 Court Street, Suite 1
Westfield, MA 01085

Subscribed under the penalties of perjury. Dated 3/18/2019



COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,
Plaintiff

vs.

AIDAN KEARNEY,

WORCESTER DIGITAL MARKETING, LLC

TURTLEBOY ENTERPRISES, LLC
Defendants

HAMPDEN COUNTY
SUPERIOR COURT
FILED

APR 25 2019

John J. [Signature]
CLERK OF COURTS

See #25
(Melgare, J.)

EMERGENCY MOTION TO RECONSIDER PRELIMINARY INJUNCTION

The Plaintiff Rian Waters humbly asks this court reconsider the Preliminary injunction motion.

The Defendants actions have made it too dangerous to bring any witnesses in the case or discuss merits that could bring harassment to other parties. Plaintiff was unaware that he had a diagnosis of Adjustment Disorder at the time of the motion. The Plaintiff incorporates the attached memorandum as reason.

Wherefore, I Rian Waters the Plaintiff requests an injunction protecting me and my witnesses from harassment and intimidation.

6/12/19 DENIED After review, the court finds that the additional submission does not alter the court's original finding that there is no likelihood of success on the merits.

Jane E. Melgare
JS M. 6-13-19

Respectfully submitted,

Rian Waters

Rian Waters

I'll start putting the address again when it's safe to do so

(530)739-8951

Watersrian@gmail.com Dated: April 25th, 2019

Certificate Of Service

I, Rian Waters, hereby certify that on April 25th, 2019, I served the above motion by
mailing U.S. first class, to:

Kevin Chrisanthopoulos, Esq.
KC Law
30 Court Street, Suite 1
Westfield, MA 01085

Subscribed under the penalties of perjury.

Dated 4/25/2019

Rian Waters

To Whom It May Concern:

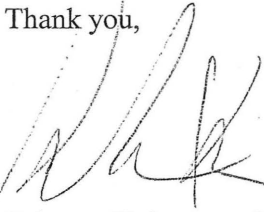
Rian Waters began psychotherapy with me in early October of 2018, when he was diagnosed with adjustment disorder (DSM code: F43.22) with anxiety and the target of perceived discrimination (ICD code: Z60.5). In order to meet criteria for adjustment disorder, one must have a lived identified stressor that marks the onset of symptoms; in Rian's case, his court case involving Turtleboy was and currently is the identified stressor.

At time of intake, Rian's presenting symptoms included disproportionate marked distress, nervousness, and excessive worry/preoccupation that impair occupational and social functioning. Rian's reported anxiety in response to the Turtleboy case and the related published articles proves an obstacle to seeking and maintaining employment to the best of Rian's capability. In addition to the court case and published articles, Rian has reported death threats related to this case. These threats cause marked clinical distress in Rian as well as concerns for immediate safety for himself and those he lives with. This reported distress has proved a further impairment to his occupational and social functioning.

Rian continues to meet criteria for adjustment disorder, though currently meets criteria for mixed anxiety and depressive symptoms. The distress of the court case has led to a report of increasingly depressed mood, feelings of overwhelm and hopelessness, and decreased desire to do things he once enjoyed. Rian attends weekly psychotherapy to help manage symptoms of anxiety and depression and will most likely benefit from support throughout and potentially a while after the case concludes.

If you have any further questions, please don't hesitate to contact me (413) 736-3668 ext. 9336 or via email at Rebecca.kaiserman@bhninc.org

Thank you,

A handwritten signature in black ink, appearing to read 'Rebecca Kaiserman', written over a horizontal line.

Rebecca Kaiserman, BSW, MSW Intern

Respectfully Submitted

Rian Waters

6/17/2020

Rian Waters 199 Allen st.
East Longmeadow MA 01028
(530)739-8951
Watersrian@gmail.com

Certificate Of Service

I, Rian Waters, hereby certify that on June 17, 2020, I served the Defendants the

Record Appendix by emailing:

Kevin Chrisanthopoulos, Esq.
kevin@kctrialattorney.com

Subscribed under the pains and penalties of perjury.

Rian Waters

Dated June 17, 2020