UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Roderick Webber, Pro Se Plaintiff, v. Donald J. Trump, Donald J. Trump For President Inc., Edward Deck, et al. al. Defendants.	)	Case 1:18-cv-00931-LM (Chief Judge Landya McCafferty) June 26, 2019

REPLY MEMORANDUM TO MOTION TO DISMISS BY DEFENDANTS TRUMP CAMPAIGN, DECK AND DOUCETTE

STANDARD OF REVIEW

The Supreme Court has held that to survive a motion to dismiss under Federal Rule 12(b)(6), a complaint must contain "sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim has "facial plausibility" when the plaintiff pleads "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. at 678. Wells v. West Georgia technical College, 2012 WL 3150819, (N.D. Georgia August 2, 2012). (“the complaint’s factual allegations must be enough to raise the right to relief above the speculative level, *i.e.*, enough to make the claim plausible.”) Arista Records, LLC v. Doe 3, 604 F.3d 110, 120 (2d Cir. 2010) (quoting Twombly, 550 U.S. at 555, 570). This "plausibility" standard is "not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Ashcroft v. Iqbal, 556 U.S. at 678.

The Supreme Court has specifically indicated that determining whether a complaint states a plausible claim for relief under this standard is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Ashcroft v. Iqbal, 556 U.S. at 679. The Second Circuit has held that where there are two plausible inferences that may be drawn from the factual allegations in the complaint: "A court ruling on such a motion may not properly dismiss a complaint that states a plausible version of the events merely because the court finds a different version more plausible." Anderson News, L.L.C. v. Am. Media, Inc., 680 F.3d 162, 185 (2d Cir. 2012), cert. denied, 133 S. Ct. 846 (2013). Thus, "[t]he question at the pleading stage is not whether there is a plausible alternative to the plaintiff's theory; the question is whether there are sufficient factual allegations to make the complaint's claim plausible." Anderson News, L.L.C. v. Am. Media, Inc., 680 F.3d 162 at 189. The Second Circuit further explained that although one plausible interpretation of “defendant's words, gestures, or conduct” is innocuous does not mean that plaintiff's allegation that that conduct was culpable is not also plausible." Anderson News, L.L.C. v. Am. Media, Inc., 680 F.3d 162 at 189-90.

Likewise, "in determining whether a complaint states a claim that is plausible, the court is required to proceed 'on the assumption that all the [factual] allegations in the complaint are true[,'] [e]ven if their truth seems doubtful." Anderson News, L.L.C. v. Am. Media, Inc., 680 F. 3d 162 at 185 (court's emphasis) (quoting Twombly, 550 U.S. at 556). Because the plaintiff is entitled to the benefit of the doubt, "it is not the province of the court to dismiss the complaint on the basis of the court's choice among plausible alternatives"; rather, "the choice between or among plausible interpretations of the evidence will be a task for the factfinder," assuming that the plaintiff "can adduce sufficient evidence to support its factual allegations." Anderson News, L.L.C. v. Am. Media, Inc., 680 F.3d 162 at 190.

In his second amended complaint, Plaintiff has alleged specific facts supporting each element of the causes of action pled drawing a reasonable inference that the Defendants are liable for the misconduct alleged. Plaintiff's allegations are also supported by transcribed videotapes of the incident in the appendix to the complaint as well as other research and documentation.

DISPOSITIVE ISSUE ON THIS MOTION TO DISMISS, APPLYING STANDARD OF REVIEW

Most Importantly, all of Defendants' defenses are based on the argument that Plaintiff has failed to factually allege plausible claims that Defendants: 1) jointly participated or conspired in civil rights violations; 2) committed multiple torts; 3) were agents or employees of Defendants Trump Campaign and/or Defendant Trump; or 4) committed unlawful civil rights violations and torts and are thereby not immunized because Defendant Tortfeasors were assisting law enforcement in stopping a criminal or are candidate security officers.

The claims in this complaint specifically stem from Plaintiff, without a microphone, asking Defendant Trump the journalistic question: was he "aware that Plaintiff had been assaulted and battered" at one of his previous campaign events. In other words, Plaintiff asked Defendant Trump whether he was aware that crimes and torts were committed under his watch. From that moment onward, as factually alleged, Defendant Tortfeasors intentionally, conpiratorially, unlawfully and tortiously acted 1) to prevent the public from hearing that Defendants permitted crimes and torts at a previous event and preventing Defendant Trump from having to seriously respond or condemn those crimes and torts; and; 2) to intentionally inflict pain and suffering on the Plaintiff for making public those unlawful acts and for attempting to exercise his right to speak (the whole purpose of the event).

In sum, the dispositive issue on all of the defenses here is: if Plaintiff has alleged facts demonstrating a plausible claim that Defendants' committed multiple civil rights violations and torts to prevent the public from hearing that Defendants Trump Campaign, Trump, and Deck had permitted/condoned crimes and torts by their supporters and to prevent Defendant Trump from condemning those actions or seriously responding to the question, then the court must hold that Plaintiff has properly pled plausible factual allegations of 1) joint participation or conspiracy to violate civil rights 2) intentional torts 3) agency and employment as required under the doctrine

of respondeat superior 4) and unlawful acts that dismiss any alleged law enforcement assistance or candidate security officer immunity for civil rights violations or tortious acts. Accordingly, Defendants' motions to dismiss should be denied.

PLAINTIFF HAS CORRECTLY PLED THAT DEFENDANTS ACTED "UNDER OF COLOR OF LAW" BY CONSPIRING/PARTICIPATING IN A JOINT ACTION WITH STATE/LOCAL OFFICIALS, DEFENDANTS MANCHESTER POLICE OFFICERS, TO DEPRIVE PLAINTIFF OF HIS CIVIL RIGHTS

First, Defendants Donald J. Trump for President, Inc. ("Trump Campaign"), Edward Deck, and Fred Doucette have collectively filed a motion to dismiss against Plaintiff, referring to themselves as the "Campaign Defendants." In their motion, Campaign Defendants claim that they merely assisted the hired Defendants Pittman, Cosio, Craig and Aldenberg, ("Manchester Defendants," which also includes City of Manchester), in gently removing Plaintiff from the auditorium. (Any mention of Trump Organization, LLC and The Trump Organization, Inc. together, collectively referred to as "Trump Companies.")

As the videotape and other evidence will demonstrate, Campaign Defendants jointly acted with Manchester Defendants to brutally assault and batter Plaintiff "under color of law," for asking a legitimate and important question of Defendant Donald J. Trump at a Q&A of the Presidential candidates at a venue leased by Defendant No Labels (not Campaign Defendants), thereby depriving Plaintiff of his civil rights, as provided for by the United States Constitution and 42 U.S.C. §1983.

More specifically, Campaign Defendants contend that Plaintiff's 42 U.S.C. §1983 Civil Rights Claims fail to allege facts supporting a reasonable inference that the Campaign Defendants acted "Under Color of Law," and are thereby not liable for the misconduct alleged. The entirety of Plaintiff's meticulously drawn chronological factual allegations are supported by recorded videotapes, public records, affidavits sworn out by the Defendants, and other heavily researched reports and documentation.

42 U.S.C. §1983 provides that "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

The Supreme Court has held that private persons conspiring with local and state official(s) to deprive the Plaintiff of a federal right can be considered to be acting under "color of law" for purposes of Section 1983. In fact, Congress passed the "Ku Klux Klan Act of 1871," 42 U.S.C. §1983, to combat and provide redress for a vial ethos existing in the United States at that time. At that time, it was commonplace for State and Local officials together with law enforcement to gather friends and/or mobs, and using their badges of authority to assault, batter, maim, torture, rape, lynch, and murder their neighbors, former slaves, thus, denying them their

civil rights with complete and total impunity.

To address the same horrors of that time or anytime, the Supreme Court has consistently held that private persons acting jointly with State or Local officials in the challenged action are acting "under color of law" for purposes § 1983 actions." In fact, it is enough that the private person is a willful participant in joint action with the State or its agents. Dennis v. Sparks, 449 U.S. 24, 27-28 (1980) (citing Adickes v. S. H. Kress & Co., 398 U.S. 144, 152 (1970) (Justice Harlan writes, "a private party involved in such a conspiracy, even though not an official of the State, can be liable under § 1983); United States v. Price, 383 U.S. 787, 794 (1966)); Abbott v. Latshaw,164 F.3d 141, 147-48 (3d Cir. 1998). "[A]n otherwise private person acts 'under color of state law when engaged in a conspiracy with state officials to deprive another of federal rights." Tower v. Glover, 467 U.S. 914, 920 (1984) (citing Dennis, 449 U.S. at 27-28); see also Adickes, 25398 U.S. at 152. In Cruz v. Donnelly, 727 F.2d 79 (3d Cir. 1984),("two police officers, acting at the request of [a private] company's employee, stripped and searched the plaintiff for stolen goods,"); National Collegiate Athletic Ass'n v. Tar-kanian, 488 U.S. 179 (1988) (the Supreme Court held that there was no joint action between the NCAA, a private entity, and the state university because they had diametrically opposite goals); Lugar v. Edmondson Oil Co., Lugar, 457 U.S. at 939–42 (the Supreme Court held that a creditor who used a state prejudgment attachment statute acted under color of state law because, in attaching the debtor's property, with help from the court clerk and sheriff, the creditor used state power. The assistance from state officials made the creditor a joint participant in state action).

A §1983 defendant "may be held liable for 'those consequences attributable to reasonably foreseeable intervening forces, including acts of third parties.'" Warner v. Orange County Dep't of Prob., 115 F.3d 1068, 1071 (2d Cir. 1996) (quoting Gutierrez-Rodriguez v. Cartagena, 882 F. 2d 553, 561 (1st Cir. 1989)). "Where multiple 'forces are actively operating,' . . . plaintiffs may demonstrate that each defendant is a concurrent cause by showing that his or her conduct was a 'substantial factor in bringing [the injury] about.' In a case of concurrent causation, the burden of proof shifts to the defendants in that 'a tortfeasor who cannot prove the extent to which the harm resulted from other concurrent causes is liable for the whole harm' because multiple tort-feasors are jointly and severally liable." Lippoldt v. Cole, 468 F.3d 1204, 1219 (10th Cir. 2006) (quoting Northington v. Marin, 102 F.3d 1564, 1568–69 (10th Cir. 1996)). On the other hand, a §1983 defendant may not be held liable when an intervening force was not reasonably foreseeable or when the link between the defendant's conduct and the plaintiff's injuries is too remote, tenuous, or speculative. Martinez v. California, 444 U.S. 277,, 444 U.S. at 284–85; Wray v. City of N.Y., 490 F.3d 189, 193 (2d Cir. 2007); Murray v. Earle, 405 F.3d 278, 290, 291 (5th Cir. 2005) (proximate cause under § 1983 is evaluated under common-law standards); McKinley v. City of Mansfield, 404 F.3d 418, 438 (6th Cir. 2005) ("causation in the constitutional sense is no different than causation in the common law sense"). , 176 F.3d 138, 146–47 (2d Cir.), cert. denied, 528 U.S. 964 (1999).

The existence of a conspiracy can be proved through circumstantial evidence. Adickes v. S. H. Kress & Co., 398 U.S. 144, 152 (1970), 398 U.S. at 158 ("If a policeman were present, we think it would be open to a jury, in light of the sequence that followed, to infer from the circumstances that the policeman and a Kress employee had a 'meeting of the minds' and thus reached an understanding that petitioner should be refused service.").

Although the Supreme Court has held that acting jointly with state officials is sufficient, the Third Circuit has suggested that the plaintiff must establish the elements of a civil conspiracy, express or implied "meeting of the minds," and an act in furtherance, in order to use the existence of the conspiracy to demonstrate state action. Melo v. Hafer, 912 F.2d 628, 638 n. 11 (3d Cir. 1990) (addressing plaintiff's action-under-color-of-state-law argument and"assum[ing], without deciding, that the complaint alleges the prerequisites of a civil conspiracy"), aff'd on other grounds, 502 U.S. 21 (1991). The Melo court cited Hampton v. Hanrahan, 600 F.2d 600, 620-21 (7th Cir. 1979), rev'd in part on other grounds, 446 U.S. 754 (1980)). (Plaintiff must show both a conspiracy to violate the plaintiff's federal rights and an overt act in furtherance of the conspiracy that results in such a violation); Great Western Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d 159, 179 (3d Cir. 2010) (plead facts establishing a "meeting of the minds").

The Supreme Court's references to the"conspiracy" test do not emphasize the overt-act-resulting-in-violation requirement. Adickes v. S. H. Kress & Co., 398 U.S. 144, 152 (1970). (the relevant act in violation of the plaintiff's federal rights would necessarily have constituted an action by a co-conspirator in furtherance of the conspiracy); Hindes v. F.D.I.C., 137 F.3d 148, 158 (3d Cir. 1998) ("[F]ederal officials are subject to section 1983 liability when sued in their official capacity where they have acted under color of state law, for example in conspiracy with state officials").

In the Second Amended Complaint, Plaintiff has clearly alleged that Campaign Defendants acted jointly with Manchester Defendants to violate his federal rights. Plaintiff has also pled sufficient facts to demonstrate an express or implied "meeting of the minds" and sufficient acts in furtherance of the deprivation of his civil rights between Campaign Defendants and Manchester Defendants and others, from the time that Defendant Deck tapped Plaintiff on the back and deceptively told Plaintiff that the microphone was in the back so that Defendants could stop him from asking a question, to the time that Defendants and others "kettled" or surrounded Plaintiff, to the verbal and physical assaults on Plaintiff, to the time that Defendant Police Officer Pittman and Defendant Deck grabbed and brutally assaulted Plaintiff, to the huddle by the Manchester Defendants (consulting and communicating with each other and most likely the other Defendants personally or through their radio headsets) to the arrest of the Plaintiff on the public park bench. There was a meeting of the minds and/or joint action.

(*It should be noted that the Second Amended Complaint (Doc. 75 (05/22/2019) has two paragraphs numbered "55," as the result of a clerical error, so for ease of communication, those will be known as paragraphs 55a and 55b respectively.)

Additionally, the videotape evidence clearly demonstrates Defendants jointly participating together to violate Plaintiff's civil rights. **None** of the Defendants were acting alone, they were acting together. "Defendant Doucette, Deck, Trump staff, and Unidentified Individuals make a human wall around Plaintiff blocking his return to his seat." Doc. 75 (05/22/2019) at ¶ 43. "Defendant Doucette says something into Defendant Deck's ear." *Id*. at ¶ 49. "Defendants Deck and Pittman throw Plaintiff head-first into a table knocking it over." *Id*. at ¶ 53. "Defendants Deck, Pittman and Cosio push Plaintiff a few more feet, eventually aggressively throwing Plaintiff to the ground as Defendant Deck swears loudly at Plaintiff." *Id*. at ¶ 55b.

"Defendant Aldenberg (with a rank of Sergeant, at the time), arrives and tells Plaintiff, 'you are not being detained,' and Defendant Craig concurs, saying, 'you can leave.'" *Id*. at ¶ 61. "Plaintiff, of his own accord, sits on a public park bench waiting for Defendant Aldenberg to return with the battery, but instead records Defendant Aldenberg conferring with Defendants Pittman, Cosio and Craig in front of the Radisson Hotel/ Expo Center." *Id*. at ¶ 63. "Defendants Aldenberg, Craig, and Pittman arrest Plaintiff." *Id*. at ¶ 64.

The deprivation of Plaintiff's civil rights in Manchester is a case study on how this and other type of incidents occur: the state or local authorities instigate, condone or participate in the deprivation of civil rights, others join in with a common purpose/agreement, in some instances whole populations participate in ritualistic crimes against another group or minority perceived as their enemies.

No, this case does not rise to the level of the 1931 lynching of Raymond Gunn in Maryville, Missouri with two thousand attendees, but it is the same sick "meeting of the minds" orchestrated by violent and hateful individuals using the "color of the law" to brutalize and violate a citizen's or perceived enemy's civil rights. What does rise to that level is the number of those who have acted "under color of law," since this incident to assault, batter, threaten with death, and even murder, (as in the case of Heather Heyer, (U.S. v. Fields 3:18-cr-00011)), others perceived as the enemy, many times with impunity.

In this case, Defendants performed acts in furtherance of their "meeting of the minds," jointly and for a common purpose and at no time did any of the Defendants attempt to stop, prevent, or protect Plaintiff from the deprivation of his civil rights. Plaintiff's complaint successfully alleges, and the videotapes of the event demonstrate Defendants' joint action in furtherance of the deprivation of Plaintiff's civil rights.

Accordingly, Plaintiff has alleged a set of facts sufficient to state a claim that Defendants acted "under color of law." Plaintiff should be entitled to discover evidence supporting his well-pled allegations and this motion to dismiss should be denied against all Defendants."

DEFENDANTS DOUCETTE, DECK, AND THE MANCHESTER POLICE DEPARTMENT/ MANCHESTER DEFENDANTS WERE EMPLOYEES AND AGENTS OF DEFENDANT TRUMP CAMPAIGN AND THEREBY DEFENDANT TRUMP CAMPAIGN IS VICARIOUSLY LIABLE FOR THE ACTIONS OF THE DEFENDANT TORTFEASORS

Defendant Trump Campaign claims that it is not liable for the tortious conduct of Defendants Deck, Doucette, and the Manchester Defendants because they were "independent contractors" of Defendant Trump Campaign rather than agents or employees.

"Ah, why should all mankind
For one man's fault, be condemned,
If guiltless?"

— John Milton, Paradise Lost

Historically, the common law theory of respondeat superior arises from the concept that those who profit from the activities of their employees should also bear the burden of their employees tortious acts and has imposed liability on employers with the public policy prerogatives of deterrence, prevention and compensation of victims in mind.

New Hampshire seems to have drawn its theory of respondeat superior liability from the Restatement (Second) of Torts §409 and its fifteen exceptions. In fact it has been said that this rule is so riddled with exceptions that the "exceptions have practically subsumed the rule." Elliott v. Public Serv. Co. of N.H., 128 N.H. 676, 678, 517 A.2d 1185, 1187 (1986); Rowley v. City of Baltimore, 305 Md. 456, 505 A.2d 494, 497 (1986).

That said, the New Hampshire courts generally apply the respondeat superior doctrine when the employee or agent commits a tort within the "scope of their employment." Conduct is considered being within the scope of employment if: "(a) it is of the kind he or she is employed to perform; (b) it occurs substantially within the authorized time and space limits; and (c) it is actuated, at least in part, by a purpose to serve the master." Pierson v. Hubbard, 802 A.2d 1162 (N.H. 2002); Porter v. City of Manchester, 921 A.2d 393, 397-398(N.H. 2007). For example, if an employee is sent upon a specific errand, using his or her own car but with the knowledge and permission of the employer, and it is agreed that the employee is acting within the scope of his or her employment at the time of the accident, the employer is liable for the acts whether or not the employer had control of the employees detailed operation of the motor vehicle. Hunter v. R.G. Watkins, 265 A.2d 15 (N.H. 1970).

In light of New Hampshire rulings, Plaintiff finds Defendant's argument specious. First, merely stating that Defendant Tortfeasors are "independent contractors" does not make them so, even written contracts stating they are independent contractors have been held by many Courts to be insufficient to make them independent contractors for the purposes of vicarious liability. The alleged facts and proffered evidence, including transcribed videotape evidence, and FEC filings that reasonably infer that Defendants Trump and Trump Campaign were employed and paid by Defendants Trump to support, protect, serve said Defendants in a master and servant relationship within the authorized time and space. Accordingly, in his second amended complaint, Plaintiff has correctly pled the elements of respondent superior liability as provided by New Hampshire common law.

Although New Hampshire Courts have not ruled so, other States have applied The Restatement (Second) of Agency to the doctrine of respondeat superior and have asked whether the employer 1) had control of the alleged independent contractor; 2) whether the independent contractor was acting in the business interest of the employer; and 3) whether the work was within the scope of employment of the employer.

In those States, Courts have looked at "control" as the most significant factor. "Considering parties' contractual arrangements and on-site activities to conclude defendant was an employee… In workers' compensation cases, this court has consistently held that whether an employer-employee relationship exists depends upon the employer's right to control the employee." Averett v. Grange 909 P.2d 246 (Utah 1995) For purposes of attaching vicarious liability to the employer, the main factor in determining whether a person is an employee or

agent or independent contractor is *whether the employer has the right to control the manner in which the employee performs their job*." Thus, if an employer hires a contractor, that contractor, his employees, and all subcontractors under him are 'employees' if (1) the employer controls or supervises the contractor's work, and (2) such work is a part or process in the employer's trade or business." *Id*. at 307. The court further held, "It is not the actual exercise of control that determines whether an employer-employee relationship exists; it is the right to control that is determinative." Id. at 309 (citing Hinds v. Herm Hughes Sons, Inc., 577 P.2d 561 (Utah 1978); Bambrough v. Bethers, 552 P.2d 1286 (Utah 1976); Smith v. Alfred Brown Co., 27 Utah 2d 155, 493 P.2d 994 (1972); Pinter Construction Co. v. Frisby, 678 P.2d 305, 308-310 (Utah 1984) ("Frisby was a subcontractor of Pinter Construction Company, which was under contract to construct a metal building. This court held that Frisby was an employee of Pinter because Pinter had the right to control Frisby. Therefore, this court held that Frisby, as an employee of Pinter, was entitled to workers' compensation.").

The Restatement (Third) of Agency § 7.07(2) provides: "An employee acts within the scope of employment when performing work assigned by the employer or engaging in a course of conduct subject to the employer's control. An employee's act is not within the scope of employment when it occurs within an independent course of conduct not intended by the employee to serve any purpose of the employer." As one discerns, the Restatement (Third) of Agency, the Courts regard control as the primary factor for determining whether or not an employee is within the scope of his or her employment. With control as the primary focus, control and deterrence become a greater justification than whether the employee is acting to further the employer's business. The Courts focus on whether an employer had "actual or potential control"over an employee at the time of the injury to create vicarious liability.

Whether this Court applies New Hampshire law focused on the Restatement (Second) and it's myriad of exceptions or the Restatement (Second) or (Third) of Agency, Plaintiff has alleged a plausible set of facts demonstrating Defendant Trump Campaign had control over Defendants Deck, Doucette, and the Manchester Police Department/ Manchester Defendants. Not only did Donald J. Trump and the Trump Campaign have control over the Defendants here, they acted to further his interests.

The Second Amended Complaint (Doc. 75) makes clear in the first paragraph, the dominion Defendant Trump had over the Trump Campaign with statements such as, "brave judges, like those in the Galicia et al. v. Donald J. Trump, et al. and KASHIYA NWANGUMA, et al. v. DONALD J. TRUMP, et al. cases, have attempted to hold Defendant Trump and those perpetrating violence on his behalf individually liable for condoning, authorizing, and participating in these rogue assaults." The first paragraph of the complaint also describes, "Trump supporters surrounded Plaintiff pushing him and punching Plaintiff viciously in the kidneys," and Plaintiff asking for assistance from Trump Campaign staff, who instead, "told him to shut up and leave," in furtherance of Defendant Trump's agenda. Appendix 8 of the complaint is full of videos which are titled after commands that Defendant Trump has given to Trump Campaign and supporters, such as, "Get 'em out", "Take his coat", "Knock the crap out of em", and "Carried out on a stretcher." All of the commands in these instances are commands to commit violence, or do harm, and show the dominion Defendant Trump has over the Trump Campaign, his companies and his supporters.

On October 12, 2015, none of the Defendants actions were independent of Defendants Trump and Trump Campaign right to control. Additionally, Defendant Trump Campaign, through it's leader, Defendant Trump, could at any time have prevented or deterred Defendants from committing the torts on the Plaintiff. Defendant Trump had made a joke about Plaintiff's question and numerous torts were unfolding right in front of Defendant Trump. Doc. 75 (05/22/2019) at ¶¶ 40-55b. Does anyone doubt that Defendant Trump Campaign, led by Defendant Trump, had the power and control over the situation or that the Defendant Tortfeasors were acting within the scope of that employment? Additionally, Defendant Tortfeasors were conducting their affairs on their radio headsets at the behest and direction of Defendant Campaign. "Defendants were often communicating through radios and headset apparatus." *Id*. at ¶ 168. Consequently, Plaintiff has plausibly alleged in his complaint such power and control in support of his claim that Defendant Trump Campaign has respondeat superior liability.

In support of the Plaintiff's allegations in his Complaint, Plaintiff cited Galicia v Trump. In that case, Justice Tapia of the New York Supreme Court, found more than sufficient evidence of Defendant Trump's involvement in the controlling of security officers Defendant Edward Deck, Gary Uher, and Keith Schiller. Justice Tapia explained: "there is ample evidence of Defendant Trump's dominion and control over the other defendants. In this analysis of the doctrine of respondeat superior, it must be noted the apparent association between defendants Trump, Trump Organization, and Trump Campaign, or synonymously the man, his company, and his campaign. Defendants' motion to disassociate the actions of Schiller, Uher, and Deck from Trump, his namesake company, and campaign as a matter of law is unavailing. To the contrary, plaintiffs raise ample issues of fact that contrary to moving defendants' claims, tends to exhibit Trump's dominion and control over Schiller, Uher, and Deck. Plaintiffs point out that Trump authorized and condoned the specific type of conduct of defendants Schiller, Uher, and Deck. Furthermore, plaintiffs proffer evidence that indicates Trump's knowledge of the altercation and subsequent seizure of the banner. The employment relationship between Uher and Deck and Trump Campaign is also a disputed issue of fact. Finally, the plaintiffs presented evidence that illustrates the close relationship between Trump and Schiller, indicating Trump's behest guided Schiller's actions. The fluidity of Schiller, Uher, and Deck's employment between Trump, Trump Campaign and Trump Organization present issues of facts that need to be addressed at trial." Galicia v Trump, INDEX NO. 24973/2015E NYSCEF DOC. NO. 342 Page 3, ¶ 8.

Also compelling are Defendant Deck's statements under oath. In an October 2, 2015 affidavit, in the case of Galicia v Trump, Defendant Deck wrote, "while conducting my duties and responsibilities to the Campaign, I observed a number of individuals… As part of my duties and responsibilities to the [Trump] Campaign I am tasked to utilize my extensive experience and training in law enforcement to assist in protecting personnel." INDEX NO. 24973/2015E NYSCEF DOC. NO. 38 ¶¶ 2, 3. Defendant Deck testified that he was "hired to preform [sic] security services for the Trump Organization." INDEX NO. 24973/2015E NYSCEF DOC 342, Page 20, (a scan of INDEX NO. 24973/2015E NYSCEF Doc 330 as an exhibit), (Deck tr at 27-32). Defendant Pittman testified in his affidavit (Doc. 75, at Appendix 16), "I was approached by a Trump Security Officer… The security Officer was identified as Edward Deck (11/16/1954)."

Defendant Doucette has also spoken publicly about working for the Trump Campaign,

and has even spoke on stage at Trump Campaign events. Doc. 75 (05/22/2019) at Appendix 8, lists "Doucette speaks at rally in Hampton, NH." The Second Amended Complaint also describes how Doucette wore "a New Hampshire State Representative pin, and a Trump Campaign staff pin." *Id*. at ¶ 44, 107. Doc. 75 (05/22/2019) at ¶¶5, 6. A direct link to FEC Campaign disbursements is provided in Doc. 39 (04/03/2019) at page 8. Although evidence is not required to survive a motion to dismiss, The videotape evidence and other evidence so far gathered by Plaintiff support the Plaintiff's allegations that Defendant tortfeasors were acting at the behest of Defendant Trump and the Trump Campaign.

The law is clear. Even if a company hires what it believes to be an independent contractor, if the hiring party can exert control over and direct the work being done by the contractor to any degree, then that person is no longer an independent contractor and instead must be treated as an employee of the hiring company. Plaintiff has alleged in his second amended complaint sufficient facts and evidence supporting the elements necessary to support a plausible claim of vicarious liability on the part of the Defendant Trump Campaign. At the very least, this is a matter for a fact-finder or a jury to decide.

Defendant Trump Campaign further contends that payments by Defendant Trump Campaign to Defendant tortfeasors does not demonstrate employment or agency by Defendant Trump Campaign. Any reasonable person would find that payment by Trump Campaign to the Defendant Tortfeasors and their participation in the event and their participation in the assault and battery of the Defendant would clearly indicate that they were acting at the behest of the Trump Campaign and were employees and/or agents of the Trump Campaign. Defendant Trump Campaign did not pay Defendant Doucette to attend the event as a gesture of altruism, love, and goodwill.

Defendant Doucette was clearly at the event representing and supporting Defendants Trump Campaign and Trump, and felt obliged and empowered to assault Plaintiff and to participate in the microphone deception by Defendant Deck, "kettling" of the Plaintiff that led to the battery upon Plaintiff and his resulting injuries. Doc. 75, at ¶ 43, 103. Defendant Doucette's manner, his actions, his words, his Trump staff pin, and his receipt of payment speak clearly that he was employed and/or agent of the Trump Campaign at that event.

Plaintiff has alleged a plausible set of facts and supporting evidence that Defendants Trump and Trump Campaign had control over Defendant Tortfeasors and that they were thereby not "independent contractors." Plaintiff should be entitled to the opportunity to further discover evidence to present at trial that said Defendants were employees and/or agents of Defendant Trump Campaign and liability should extend to the Defendant Trump Campaign. It would be inherently unjust for this Court to permit Defendant Trump Campaign to escape respondeat superior liability while at the same time allow said Defendant to have gained from the cooperation of Defendant Tortfeasors acting under their control and at their direction and for their benefit. Accordingly, Defendants' motions to dismiss should be denied.

PLAINTIFF HAS CORRECTLY PLED THAT DEFENDANTS TRUMP CAMPAIGN, DECK AND DOUCETTE COMMITTED ASSAULT OR INTENDED TO COMMIT ASSAULT ON THE PLAINTIFF

Defendants contend that Plaintiff has not properly alleged that Defendants Deck and Doucette committed assault or intended to commit assault on the Plaintiff. "To plead an assault claim under New Hampshire law, a plaintiff must allege that: (1) the defendant . . . intended to cause harmful or offensive contact to the plaintiff, and (2) the plaintiff must have been put in imminent apprehension of such contact," citing King v. Friends of Kelly Ayotte, 860 F. Supp. 2d 118, 129 (D.N.H. 2012), aff'd. (Apr. 5, 2013) (internal quotation marks omitted).

In the tort of assault, intent is established if a reasonable person is substantially certain that certain consequences will result; intent is established whether or not the Defendant actually intended those consequences to result.

Plaintiff, in his Second Amended Complaint, Doc. 75 (05/22/2019) at ¶¶ 40-55b, has detailed that the Defendants caused harmful or offensive contact to the Plaintiff, but also put Plaintiff in imminent apprehension of such contact because "Plaintiff recognized Defendant Deck as one of the members of security staff of Defendants Trump and Trump Companies involved in violent assaults which were all over the headlines in the preceding weeks." *Id* at ¶ 100. This was the September 2015 attack on Efrain Galicia by Deck and Keith Schiller (*Id* at Doc.75 Appendix 7). To further illustrate how Plaintiff became familiar with Deck, and his co-workers, Keith Schiller, Gary Uher and Fred Doucette, Plaintiff had attended several Trump rallies preceding Oct 12, 2015, where he filmed or documented either Deck, Doucette or Keith Schiller. Those rallies listed in Doc. 75, Appendix 8: "Deck in Birch Run, MI" (August 11, 2015), "Doucette speaks at rally in Hampton, NH," (August, 14, 2015), "Rochester rally" (September 17, 2015), "Deck in Keene, NH" (September 30, 2015).

The Second Amended Complaint details the assaults on Oct 12, 2015 stating, "Defendant Doucette, Deck, Trump staff, and Unidentified Individuals make a human wall around Plaintiff." *Id* at ¶ 43. Plaintiff immediately felt threatened of imminent physical contact by Defendant Deck, "because Plaintiff recognized Defendant Deck as one of the members of security staff of Defendants Trump/ Trump Companies involved in violent assaults which were all over the headlines in the preceding weeks." *Id* at ¶ 100. Defendant Deck, and other security staff from Trump Campaign, "intended to put Plaintiff in apprehension of imminent physical contact, when those Defendants, and several Unknown Individuals created a human wall or 'kettle.'" *Id* at ¶ 103.

"Defendant Deck gets within inches of Plaintiff's face, engaging in unwanted touching." *Id* at ¶ 46. Defendant Deck shows his intent by responding, "I'm going to break your (inaudible)." *Id* at ¶ 48. Defendant Deck further illustrates his intent by getting right in Plaintiff's face, saying, "You're going to see my name on your face," which Plaintiff interpreted to be a clear threat of violence." *Id* at ¶ 48. "Defendants Deck and Pittman throw Plaintiff head-first into a table knocking it over." *Id* at ¶ 53. "Defendants Deck, Pittman and Cosio push Plaintiff a few more feet, eventually aggressively throwing Plaintiff to the ground as Defendant Deck swears loudly at Plaintiff." *Id* at ¶ 55b. A reasonable person would have been substantially certain that

Defendant Deck's words and actions would result in imminent apprehension of offensive contact.

Regarding Defendant Doucette, Plaintiff has sufficiently pled facts that satisfy the elements of assault: both demonstrating that a reasonable person would have been substantially certain that consequences would result from Defendant Doucette's actions and an apprehension of imminent offensive contact when Plaintiff leaves his seat after being deceived by Defendant Deck into believing that a microphone for him to speak is in the back of the hall, but instead is surrounded or "kettled" by Defendant Doucette and other angry Defendant Trump Campaign supporters and staff and prevented from returning to the safety of his seat and his friends, (other journalists on the floor), in the front of the hall.

Defendant Doucette also told plaintiff to keep rolling and that he would not be getting a microphone, and suggested he was going to get a police officer to remove plaintiff from the convention." *Id* at ¶ 44. Representative Doucette wasn't prompting Plaintiff to "keep rolling" on videotape, as Defendant Doucette alleges. He was prompting him to get out of the auditorium, which was made clear by his follow-up statement of "do I gotta get a badge to get you out of here?" *Id* at ¶ 44. The statement is rhetorical, but one of intent. Representative Doucette used the fact that he was wearing his New Hampshire State Representative Badge to misrepresent that he had the authority to tell the event-goers what to do). " Defendant Doucette put Plaintiff in apprehension of imminent harmful contact." *Id* at ¶ 106. A reasonable person would be fearful of imminent harmful contact when an angry person threatens to make one leave a place by use of the police or by any other means.
Subsequently, Doucette, Deck, and others, "make a human wall around Plaintiff." *Id* at ¶ 43.

Further proof of being substantially certain that the threats of harmful contact would result in harmful contact is the fact that Plaintiff was subsequently brutally battered by members of Defendant Trump Campaign and the Manchester Defendants. This is certainly an issue for the fact-finder or the jury after further discovery and review of the videotape evidence.

Plaintiff has alleged sufficient facts to make a plausible claim of assault by Defendants Trump Campaign, Deck and Doucette as provided by New Hampshire law. The Trump Campaign is also liable under respondeat superior because Defendants Deck, Doucette and Manchester Defendants were employees or agents of Defendant Trump Campaign. Plaintiff had included evidence of assault in support in Appendices 1-16 of Plaintiff's Second Amended Complaint, (Doc. 75.) Accordingly, Defendants' motions to dismiss should be denied.

PLAINTIFF HAS CORRECTLY PLED THAT DEFENDANTS DECK AND TRUMP CAMPAIGN COMMITTED THE TORT OF BATTERY ON PLAINTIFF

Note: Defendant Doucette's inclusion in the header was a clerical error and can be stricken from the battery cause of action.

Defendants contend that Plaintiff has failed to allege a set of facts that make a plausible

claim of battery by Defendants on the Plaintiff, "Under New Hampshire law, a defendant is liable for battery if: "(a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or imminent apprehension of such a contact, and (b) a harmful contact with the person of the other directly or indirectly results." *Rand v. Town of Exeter*, 976 F. Supp. 2d 65, 76 (D.N.H. 2013) (internal quotation marks omitted).

Plaintiff's Second Amended Complaint details the elements of battery by Defendant Deck upon the Plaintiff, showing that not only did Defendant Deck cause imminent apprehension of such a contact with Plaintiff, but that he intended to cause a harmful or offensive contact and did make harmful contact with the Defendant Deck when Defendant violently grabbed Plaintiff in chorus with Defendant Pittman and threw him into a table, knocking it over.

On October 12, 2015, Defendant Doucette, Deck, Trump staff, and Unidentified Individuals, "make a human wall around Plaintiff." Doc. 75 (05/22/2019) at ¶ 43. "Defendant Deck gets within inches of Plaintiff's face, engaging in unwanted touching." *Id* at ¶ 46. Defendant Deck shows his intent by responding, "I'm going to break your (inaudible)." *Id* at ¶ 48. Defendant Deck further illustrates his intent by getting right in Plaintiff's face, saying, "'You're going to see my name on your face,' which Plaintiff interpreted to be a clear threat of violence." *Id* at ¶ 48. "Defendant Pittman grabbed Plaintiff from behind," (Doc 75 at ¶ 65), "grabbing an arm, while Defendant Deck grabs Plaintiff's other arm." *Id* at ¶ 51.Defendants Deck and Pittman batter Plaintiff by throwing him "head-first into a table knocking it over." *Id* at ¶ 53. "Throughout the attack, Plaintiff is constantly being pushed from behind, making it impossible for Plaintiff to clearly see his attackers faces." *Id* at ¶ 55a."Plaintiff attempts to stand up from the floor, when Defendant Cosio approaches from in front of him. Now, Defendants Deck, Pittman and Cosio push Plaintiff a few more feet, eventually aggressively throwing Plaintiff to the ground as Defendant Deck swears loudly at Plaintiff," saying, "I don't give a shit." *Id* at ¶ 55b.

Plaintiff has alleged sufficient facts to make a plausible claim of battery by Defendant Deck as provided by New Hampshire law. The Trump Campaign is also liable under respondeat superior because Defendants Deck, and Manchester Defendants were employees or agents of Defendant Trump Campaign. Plaintiff had included evidence of battery in support in Appendices 1-16 of Plaintiff's Second Amended Complaint, (Doc. 75.) Accordingly, Defendants' motions to dismiss should be denied.

DEFENDANT DECK'S CLAIM OF IMMUNITY FROM LIABILITY FROM MULTIPLE TORTS BECAUSE HE SHOULD BE CONSIDERED A SECURITY GUARD OR ASSISTED LAW ENFORCEMENT AS PROVIDED BY NEW HAMPSHIRE LAW IS ERRONEOUS

As pled, and supported by New Hampshire statutes, Plaintiff posed no threat to anyone, and had committed no crime. "Defendant Pittman grabbed Plaintiff from behind," (Doc 75 at ¶ 65), "grabbing an arm, while Defendant Deck grabs Plaintiff's other arm." *Id* at ¶ 51. Defendant Deck cites RSA 627:6, RSA 627:5, III, RSA 627:1 in support of his claim that as a Security Guard for Defendants Trump and the Trump Campaign, he was authorized to use non-deadly

force against the Plaintiff and, therefore, is a complete defense to any civil action based on such conduct.

First, Defendant Deck misconstrues RSA 627:5, III. RSA 627:5, III reads, "A private person who has been directed by a law enforcement officer to assist him in effecting an arrest or preventing an escape from custody is justified in using: (a) Non-deadly force when and to the extent that he reasonably believes such to be necessary to carry out the officer's direction, unless he believes the arrest is illegal; or (b) Deadly force only when he reasonably believes such to be necessary to defend himself or a third person from what he reasonably believes to be the imminent use of deadly force, or when the law enforcement officer directs him to use deadly force and he believes such officer himself is authorized to use deadly force under the circumstances.

As pled, and supported by the videotape evidence, there was no attempt to arrest or prevent an escape of the Plaintiff at the Radisson Hotel. Doc. 75 (05/22/2019) at ¶¶ 40-55b. Plaintiff was not arrested at the time of Defendant Deck's involvement. *Id* at ¶¶ 59-61. "Defendant Aldenberg (with a rank of Sergeant, at the time), arrives and tells Plaintiff, 'you are not being detained,' and Defendant Craig concurs, saying, "you can leave." *Id* at ¶ 61.An arrest did take place later in the day in a different location, but the Plaintiff was not arrested inside the Radisson Hotel nor on it's property, nor was Mr. Deck anywhere near Plaintiff, when Plaintiff was arrested on an entirely different piece of property. *Id* at ¶¶ 63-64.

Second, Defendant Deck cites, 627:1, "Conduct which is justifiable under [the criminal code] constitutes a defense to any offense. The fact that such conduct is justifiable shall constitute a complete defense to any civil action based on such conduct." This merely creates an affirmative defense for Defendant Deck, and doesn't address whether the Plaintiff has alleged facts sufficient to make a plausible claim for relief.

Further, Defendant cites Officer Pittman's affidavit in support of his claims. In Paragraph 65 of Plaintiff's Second Amended Complaint, (*Id* at ¶ 65), Plaintiff states that the Pittman Affidavit is "full of obvious factual inaccuracies which can be easily disproven by video evidence of the incident. Defendant Pittman perjures himself in the process." Doc 75, Paragraph 65 also details the multitude of erroneous statements by Pittman and meritless assertions which at times contradict themselves within the same sentence. *Id* at ¶ 65.

Third, Defendant misconstrues 627:6, V, stating, "Consequently, under RSA 627:6, V he was also authorized to use non-deadly force to the extent he deemed necessary under the circumstances. Such justification also forms a complete defense to plaintiff's claim for battery." In full, 627:6, V reads, "A person authorized by law to maintain decorum or safety in a vessel, aircraft, vehicle, train or other carrier, or in a place where others are assembled may use non-deadly force when and to the extent that he reasonably believes it necessary for such purposes, but he may use deadly force only when he reasonably believes it necessary to prevent death or serious bodily injury." Defendant has left out a substantially important word, "reasonably." As pled by Plaintiff, Doc. 75, paragraph 48 states that Defendant Deck threatened Plaintiff. Surely this was not reasonable, considering Plaintiff just wanted to either get to the microphone or get back to his seat. Surely, Deck's attempts to escalate the situation were not reasonable. As pled,

and supported by the videotape evidence, Plaintiff posed no threat to anyone, and had committed no crime. "Defendant Pittman grabbed Plaintiff from behind," (*Id* at ¶ 65), "grabbing an arm, while Defendant Deck grabs Plaintiff's other arm." *Id* at ¶ 51. Therefore, Defendant Deck could not have reasonably believed that his conduct was justified or necessary. Regardless, it is merely a defense for Defendant Deck, and doesn't address whether the Plaintiff has alleged facts sufficient to make a plausible claim for relief.

Fourth, Defendants misconstrue RSA 106-F:4, XII, claiming, "Security personnel, moreover, are regulated and licensed in New Hampshire. RSA 106- F:1. Licensing is not required for "persons from other states temporarily accompanying national political candidates on visits to the state." RSA 106-F:4, XII. This exemption applies to any person contracted to any entity for the purpose of providing protection of individuals, including but not limited to crowd control situations. *Id."* RSA 106-F:4, XII, makes no statements to that effect.

Fifth, even if these laws are capable of being construed together, they merely create an affirmative defense for Defendant Deck, they do not address whether the Plaintiff has alleged facts sufficient to make a plausible claim for relief. Plaintiff in his complaint has clearly pled a plausible claim that Defendant's words and actions were unreasonable and unjustifiable. Doc. 75 (05/22/2019) at ¶¶ 40-55b. Plaintiff's deception about a microphone, (which wasn't there), was to lure Plaintiff away from the safety of his seat and companions, and to prevent Plaintiff from asking an important and reasonable question of Defendant Trump about a previous assault and battery of the Plaintiff at a previous event by Defendant Trump supporters, the organized "kettling" of the Plaintiff.

Defendant's violent and terrifying words and brutal throwing of Plaintiff into a table head-first and a second throwing of Plaintiff on to the ground were not reasonable and were not justifiable, or legal. At no time was Plaintiff a threat, a danger to Defendant Trump or any person, nor was Plaintiff violating any law, (despite what Defendant Pittman may have claimed in his erroneous affidavit). Plaintiff's words and actions are consistent throughout.

After the unreasonable and unjustifiable multiple torts by Defendant Deck, Defendants Police Officers concurred that Plaintiff had committed no violation when he asked if he was being arrested and for what and Defendants Police Officers said that he was free to go. Additionally, No Labels produced the event and leased the auditorium and not Defendants Trump Campaign or Trump, therefore, Defendant Deck did not have any authority over the Plaintiff.

Sixth, even if this statute (RSA 627:1) is applicable to this case, for Defendant to claim his conduct was justifiable under the criminal code as provided for by RSA 627:1, the desire or need to avoid the present harm must outweigh the harm sought to be prevented by the violated statute." State v. O'Brien, 567 A.2d 582 (N.H. 1989).

In State v. L'Heureux, 846 A.2d 1193 (N.H. 2004) the Court held: "We also note that competing harms is a justification defense, which the legislature has established constitutes a defense to any offense. They continue, "the State has the burden to prove beyond a reasonable doubt that the harm produced by violation of the statute 'was not conduct believed by the defendant to be necessary to avoid harm to himself or another, where the harm perceived

outweighs the harm sought to be prevented by the statute (this weighing to be measured objectively)." State v. Bernard, 680 A.2d 609 (N.H. 1996); see also RSA 625:10, :11, III(c) (1996).; State v. L'Heureux 846 A.2d 1193 (N.H. 2004)

Defendants would have the Court believe that Plaintiff was a "present harm" to Defendant Deck or others present. Nothing could be further from the truth. Plaintiff was a known figure at Trump rallies and other political events throughout the 2016 US Presidential Election. What's more, it can be proven that the Trump Campaign specifically knew about Plaintiff, and was aware that he presented no "present harm," and had a track-record of being peaceful.

As photographic and video evidence will show, Mr. Deck and various co-workers or associates from the Trump Campaign already had interacted with Plaintiff on many occasions, while Plaintiff was giving away flowers "for peace," at various rallies. Those Trump Campaign co-workers include Donald Trump, Hope Hicks, Fred Doucette, Keith Schiller, Gary Uher, Andrew Georgevits, (and other John Does). Photographic and video evidence will show that Trump rallies which Plaintiff attended prior to Oct 12, (also attended by Mr. Deck) caused no "present harm" nor a "perceived harm" to Mr. Deck. They include: Birch Run, MI (August 11, 2015), Hampton, NH (August, 14, 2015), Rochester, NH (September 17, 2015), Keene, NH (September 30, 2015) Doc 75. at Appendices 8 & 10.

As video evidence will show, Plaintiff spoke directly to Mr. Trump on two occasions before the October 12, No Labels incidents. The first time, at "rally in Hampton, NH" on August, 14, 2015. Doc 75. at Appendix 8. The second time, September 17, 2015, Plaintiff "at the behest of Defendant Trump, quoted from First Timothy, from the Christian Bible." *Id*. at ¶ 1. Plaintiff is easily recognizable from his "long and thick beard," (*Id*. at ¶ 176), and "for handing out 'symbolic flowers for peace' to all of the major candidates," (*Id*. at ¶ 1), which is what Plaintiff was doing both times he spoke to Defendant Trump. Defendant Trump is famously quoted as saying,"I have one of the great memories of all time." (Oct 25th, 2017), so surely Mr. Trump remembered those interactions.

Also in attendance on September 17, were Mr. Deck's co-workers, Hope Hicks, Keith Schiller, Gary Uher and Fred Doucette. As stated in Doc 75, paragraph 1, Plaintiff attempted to get press credentials from Hope Hicks. As video evidence will show, Plaintiff brought a bouquet of flowers for Mr. Trump, which were taken by Mr. Schiller and Mr. Uher on behalf of Mr. Trump. As video (and other) evidence will show, Trump staffers were aware of Plaintiff's identity and/or presence and/or stated "flowers for peace" mission before the October 12, 2015 incident. All the evidence points to Mr. Trump and the Trump Campaign being aware prior to October 12th of Plaintiff and his peaceful activities, which they surely must have conveyed to Mr. Deck, if he wasn't already aware. Doc. 75 at Appendices 8 & 10.

Defendants would have the court believe the absurd notion that Plaintiff, (known as "The Flowerman" and known by at least a half dozen people from the Trump Campaign), was a dangerous threat to Mr. Deck or others in attendance. They would have the court believe that Defendant Deck grabbed Plaintiff *from behind* as a matter of self-defense, and that such a defense required that Deck drag Plaintiff through the crowd for several yards, only to throw him over a table. Once Deck was done savaging the peace activist with tables, he evidently, (according to defense), felt that he still wasn't safe from Plaintiff, despite Plaintiff being held in

an arm-lock by Officer Pittman. This is nonsense. The Defendants would have the court believe that once Plaintiff was laying on the floor, that Mr. Deck still feared for his safety and others in attendance, and felt the need to once again pick up the Plaintiff from the ground only to push him down again, shouting, "I don't give a shit." Defendants contentions are without merit, and not based in fact.

Seventh, even if these laws, capable of being construed together, create a defense for Defendant Deck, they do not create blanket immunity to commit multiple torts as the Defendant would have the Court believe. Both RSA 627:6 and RSA 627:5, III, state that the Defendant must reasonably believe the non-deadly force is necessary and the statute that allegedly creates the immunity and, therefore commands the other two, RSA 627:1 provides that the Defendant's conduct must be justifiable under the criminal code. As alleged by the Plaintiff in his Second Amended Complaint, none of Defendant's actions were justifiable (under the criminal code).

Eighth, additionally, Plaintiff's civil rights claims, as provided by 42 U.S.C. §1983, supersede all state law defenses. Nonetheless, Defendant Deck's claim that he assisted Defendant Police Officer Pittman at Pittman's direction further proves that there was a conspiracy or "meeting of the minds" between the Defendants for purposes of violating Plaintiff's constitutional rights "under color of law."

Likewise, Defendant's claim that as a security guard for a candidate working with Defendant Police officers and asserting immunity akin to that of a public official would make him a public official and, thereby, subject to actions under 42 U.S.C. §1983 as a public official.

Considering the facts as pled, Defendant Deck's claim of immunity from liability, (because he was considered a security guard or assisted law enforcement), is an erroneous claim.

The Plaintiff has Alleged Facts Sufficient to State a Claim That Defendants Trump Campaign, Deck and Doucette are Liable for Intentional Infliction of Emotional Distress.

Defendants contend, "The Plaintiff has not alleged facts sufficient to state a claim that the Campaign" [nor Deck, nor Doucette] is "Liable for Intentional Infliction of Emotional Distress." They continue, "To state a claim for intentional infliction of emotional distress, a plaintiff must allege that the defendant: '(1) acted intentionally or recklessly; (2) that [his] acts were extreme and outrageous; and (3) that [his] acts caused the plaintiff to suffer severe emotional distress,'" citing Bethany T. v. Raymond Sch. Defendants continue, "The conduct must have been '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.'"

Second Amended Complaint alleges intentional recklessness conduct. Defendants Deck and Pittman are employees or agents of Defendant Trump Campaign. The Trump Campaign brought staff, and also hired Manchester Police Officers/ Manchester Defendants as alleged in Second Amended Complaint. "According to the Federal Election Commission (FEC), Trump Campaign has made substantial monetary payments to Defendants named in this case, Donald J. Trump, Edward Deck, Fred Doucette, and The City of Manchester." Doc 75 (05/22/2019) at ¶ 4.

A link to the FEC website was sent to counsel. Doc. 39 (04/03/2019) at page 8. When Plaintiff asked Defendant whether he knew of violence committed by Trump supporters at a Trump rally prior to October 12, 2015, Defendants, "make a human wall." *Id* at ¶ 43. Defendant Deck says, "You're going to see my name on your face," which Plaintiff interpreted to be "a clear threat of violence." *Id* at ¶ 48. Defendants Deck and Pittman, "throw Plaintiff head-first into a table knocking it over." *Id*. at ¶ 53. Intention is shown by fact that previous to the battery, Deck told Plaintiff that he was going to put his name all over Plaintiff's face. Defendants threw Plaintiff head first into table, seriously injuring Plaintiff. That's outrageous.

Later, Manchester Defendants, "arrested Plaintiff in retaliation." *Id* at ¶ 121. This is also outrageous. Defendants Deck and Pittman engaged in a cover-up with their intentional collaboration to falsify the police report/ affidavit. *Id*. at ¶ 65. The false statements regarding Plaintiff in the Pittman police report/ affidavit resulted in publications publishing articles such as "Man Thrown Out During Trump Speech." *Id*. at ¶ 68. This caused Plaintiff severe emotional distress. "This damaged Plaintiff's reputation, and prevented him from earning wages."*Id*. at ¶ 68. The Second Amended Complaint, (at ¶¶ 68-96), properly alleges the myriad of negative articles in the wake of Defendants' actions causing severe emotional distress.

"Plaintiff suffered injuries to his body, scrapes, bruises, lacerations, and emotional trauma. Plaintiff continues to suffer trauma and fear from the incident and may continue to suffer trauma in the future as a result of these injuries proximately caused by Defendants." *Id*. at ¶ 118. No Labels' employee Ryan Clancy, stated, "I saw what happened to you… it isn't right." *Id*. at ¶ 125 (Doc 75. at Appendix 1: K.) The entire situation caused immense emotional distress to Plaintiff, as evidenced in videos after the incident. Doc. 75 at Appendices 7, 8, 9, 10, 11. Campaign Defendants' behavior was 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.

Plaintiff has alleged sufficient facts to make a plausible claim of intentional infliction of emotional distress by Defendants Trump Campaign, Deck and Doucette as provided by New Hampshire law. The Trump Campaign is also liable under respondeat superior because Defendants Deck, Doucette and Manchester Defendants were employees or agents of Defendant Trump Campaign. Plaintiff had included evidence of intentional infliction of emotional distress in support in Appendices 1-16 of Plaintiff's Second Amended Complaint, (Doc. 75.) Accordingly, Defendants' motions to dismiss should be denied.

<u>The Plaintiff has Alleged Facts Sufficient to State a Claim That Defendants Trump Campaign, Deck and Doucette Are Liable for Negligence.</u>

The Plaintiff has alleged sufficient facts to state a claim that the Campaign Defendants are liable for negligence. Defendants write, "A plaintiff claiming negligence must allege: (1) that the defendant owed the plaintiff a duty; (2) that the duty was breached; (3) that the plaintiff suffered an injury; and (4) that the defendant's breach was a substantial cause of the injury.

As stated in the Second Amended Complaint, paragraph 134, "Defendants owed a duty of ordinary care to keep the Plaintiff safe from assault and battery while attending the No Labels Problem Solvers event.

Trump Campaign brought Candidate Trump's own personal security composed of Defendant Edward Deck, Fred Doucette, Keith Schiller and others. The Trump Campaign brought staff, and also hired Manchester Police Officers/ Manchester Defendants as alleged in Second Amended Complaint. "According to the Federal Election Commission (FEC), Trump Campaign has made substantial monetary payments to Defendants named in this case, Donald J. Trump, Edward Deck, Fred Doucette, and The City of Manchester." Doc 75 (05/22/2019) at ¶ 4. A link to the FEC website was sent to counsel. Doc. 39 (04/03/2019) at page 8. When Plaintiff asked Defendant whether he knew of violence committed by Trump supporters at a previous Trump rally, Defendant Campaign's security, led by Defendant Deck deceived Plaintiff into leaving his seat so that Trump Campaign's security and staff could surround Plaintiff and then proceeded to assault and batter Plaintiff. "Plaintiff… politely asked Defendant Trump if he was aware that Plaintiff had been assaulted in Rochester."Doc 75 (05/22/2019) at ¶ 40. "Defendant Doucette, Deck, Trump staff, and Unidentified Individuals make a human wall around Plaintiff blocking his return to his seat." Id. at ¶ 43. "Defendants Deck and Pittman throw Plaintiff head-first into a table knocking it over." *Id*. at ¶ 53.

Those who assaulted and battered Plaintiff were employees and agents of Defendant Trump Campaign, Defendants Deck, Doucette, and Manchester Defendants, and unknown staff and Trump supporters. The Campaign Defendants owed a duty of care. The Defendants, "breached that duty of care and their breach proximately caused the Plaintiff's injuries." *Id*. at ¶ 134. "Due to Defendant Deck's previous history of assaults and batteries, Defendants… were aware or should have been aware that Defendant Deck and Trump Campaign security and Trump supporters were prone to commit assault and battery on any person they perceived to be opposed to Defendant Trump." *Id*. at ¶ 135.

Plaintiff has alleged sufficient facts to make a plausible claim of Negligence by Defendants Trump Campaign, Deck and Doucette as provided by New Hampshire law. The Trump Campaign is also liable under respondeat superior because Defendants Deck, Doucette and Manchester Defendants were employees or agents of Defendant Trump Campaign. Plaintiff had included evidence of negligence in support in Appendices 1-16 of Plaintiff's Second Amended Complaint, (Doc. 75.) Accordingly, Defendants' motions to dismiss should be denied.

<u>The Plaintiff has properly Alleged Facts Sufficient to State a Claim That the Trump Campaign is Liable for Negligent Hiring, Training, Supervision, and Retention.</u>

The Defendants state, "An employer may be liable for the damages resulting from negligent supervision of its employee's activities. *Trahan-Laroche v. Lockheed Sanders, Inc*., 139 N.H. 483, 485 (1995). Liability for negligent hiring and retention exists where 'the actor has brought into contact or association with the other a person whom the actor knows or should know to be peculiarly likely to commit intentional misconduct.' *Marquay v. Eno*, 139 N.H. 708,

719 (1995) (internal quotation marks omitted)."

As stated in Second Amended Complaint, "Defendants Trump, Trump Campaign, Trump Companies, XMark Companies, and The City of Manchester negligently hired, trained, supervised, and retained Defendants Deck and Pittman for the No Labels event and they knew or should have known that Defendants Deck and Pittman were unfit for the job due to their past conduct and behavior and that they were peculiarly likely to commit intentional misconduct and created a danger of harm to third persons such as Plaintiff. " Doc 75 at ¶ 145.

Surely when Plaintiff asked Mr. Trump about getting assaulted and battered at the Rochester rally, Mr. Trump should've properly addressed this instead of making a joke, "you look healthy to me." Doc. 75 at ¶ 40. And as Mr. Trump watched the employees of the Trump Campaign make a human wall around Plaintiff, then assault and batter him, and did nothing, he behaved in a negligent way. Defendant Trump knew the violent nature of Mr. Deck (since the Galicia v Trump case), so surely Mr. Trump was supervising the activity of Deck and Doucette, while permitting, or failing to prevent, the negligent and tortious conduct by persons under his control. Restatement (Second) of Agency §213 (1958) (adopted as New Hampshire law in Trahan- Laroche, 139 N.H. at 485).

Surely the Trump Campaign knew or should have known, that when Defendant Deck was brought into contact or association with people he perceived to be opposed to Donald Trump in some way, that Defendant Deck would be likely to commit intentional misconduct.

Plaintiff has alleged sufficient facts to make a plausible claim of negligent hiring, training, supervision and retention by Defendants Trump Campaign, Deck and Doucette as provided by New Hampshire law. The Trump Campaign is also liable under respondeat superior because Defendants Deck, Doucette and Manchester Defendants were employees or agents of Defendant Trump Campaign. Plaintiff had included evidence of negligent hiring, training, supervision and retention in support in Appendices 1-16 of Plaintiff's Second Amended Complaint, (Doc. 75.) Accordingly, Defendants' motions to dismiss should be denied.

The Plaintiff has properly Alleged Facts Sufficient to State a Claim That the Defendants Trump Campaign, Deck and Doucette are Liable for Intentional Misrepresentation/Fraud.

As stated by Defendants, "The elements of fraud or deceit are (1) the defendant misrepresented a material fact to the plaintiff, knowing it to be false; (2) the defendant did so with fraudulent intent that the plaintiff act on it; and (3) that the plaintiff, without knowledge of its falsity, detrimentally relied on the misrepresentation. *Alexander v. Fujitsu Bus. Comm. Sys., Inc*., 818 F. Supp. 462, 467 (D.N.H. 1993)."

The Second Amended Complaint sufficiently alleges facts to state a claim that the Trump Campaign is liable for intentional misrepresentation/ fraud. "Defendants knowingly and consciously and fraudulently misrepresented that the microphone was in the back of the hall… and prevent Plaintiff from questioning Defendant Trump. Doc 75 (05/22/2019) at ¶ 147.

Defendant Deck says, "it's over there. They're only being taken from the mics. So, if you wanna ask your question, you're going to have to go to the microphone." *Id*. at ¶ 41. Plaintiff goes where Defendant Deck has directed him, "toward the back of the hall." Plaintiff "turns back toward his seat when he realizes that Defendant Deck has deceived him into believing that there is a microphone." *Id*. at ¶ 42. "Defendant Doucette, Deck, Trump staff, and Unidentified Individuals make a human wall around Plaintiff blocking his return to his seat." *Id*. at ¶ 43. By Defendant Deck directing Plaintiff to find the microphone at the back of the hall, then blocking Plaintiff's return to his seat, Defendant Deck reveals his intention is to misrepresent a material fact to the plaintiff, knowing it to be false. Defendant Deck did so with fraudulent intent that the Plaintiff act on it; and without knowledge of its falsity, Plaintiff detrimentally relied on the misrepresentation.

Further, "In so relying on Defendants' misrepresentations, Plaintiff was unable to ask Defendant Trump questions and film the event for his journalistic writings and/or his documentary films." *Id*. at ¶ 148. "Defendants Deck, Doucette, Trump Campaign, Trump Companies and XMark Companies impersonated law enforcement officials by telling local police/ Defendants Pittman, Aldenberg, Cosio and Craig that they were active duty secret service agents, and instructed the Defendants Defendants Pittman, Aldenberg, Cosio and Craig to remove Plaintiff with the objective of preventing Plaintiff from making statements Defendant Trump perceived to be embarrassing." *Id*. at ¶ 149. "Defendants Deck and Pittman made gross misrepresentations and fraudulent claims as part of an affidavit filed in this case." *Id*. at ¶ 151.

Plaintiff has alleged sufficient facts to make a plausible claim of intentional misrepresentation by Defendants Trump Campaign, Deck, and Doucette as provided by New Hampshire law. The Trump Campaign is also liable under respondeat superior because Defendants Deck, Doucette and Manchester Defendants were employees or agents of Defendant Trump Campaign. Plaintiff had included evidence of intentional misrepresentation/ fraud in support in Appendices 1-16 of Plaintiff's Second Amended Complaint, (Doc. 75.) Accordingly, Defendants' motions to dismiss should be denied.

The Plaintiff has Alleged Facts Sufficient to State a Claim That Defendants Trump Campaign, Deck and Doucette are Liable for False Imprisonment.

Campaign Defendants cite Farrelly v. City of Concord, 168 N.H. 430, 445 (2015), "To prevail on a claim for false imprisonment, a plaintiff must prove: (1) the defendant acted with the intent of confining him within boundaries fixed by the defendant; (2) the defendant's act directly or indirectly resulted in the plaintiff's confinement; (3) the plaintiff was conscious of or harmed by the confinement; and (4) the defendant acted without legal authority."

Plaintiff has alleged facts sufficient to state a claim that the Campaign Defendants are liable for false imprisonment, and fulfills the four requirements set by Farrelly v. City of Concord. Campaign Defendants acted with the intent of confining Plaintiff within boundaries fixed by the defendant(s) when they, "falsely imprisoned Plaintiff by building a human wall and assaulting Plaintiff and battering Plaintiff as they prevented Plaintiff from returning to his seat in the auditorium." I*d*. at ¶ 153. The Campaign Defendants' act directly or indirectly resulted in the

plaintiff's confinement when, "Plaintiff felt confined and feared for his personal safety and was injured by said confinement created and executed by Defendants." *Id*. at at ¶ 153. The plaintiff was conscious of or harmed by the confinement when, "Plaintiff felt confined and feared for his personal safety and was injured by said confinement created and executed by Defendants." *Id*. at at ¶ 153. The Campaign Defendants acted without legal authority because none of the Campaign Defendants are active law enforcement officers, and as stated earlier at great length, Defendant Deck's claim of immunity as being a "security guard" is not sufficient to give him legal authority to commit these torts.

Manchester Defendants, "arrested Plaintiff without sufficient probable cause… the Courts have held that yelling at the police about illegal behavior is insufficient probable cause for an arrest for disorderly conduct, resisting arrest, or violation of a noise ordinance." Id. at ¶ 154. Therefore, the Manchester Defendant acted without legal authority.

Plaintiff has alleged sufficient facts to make a plausible claim of false imprisonment by Defendants Trump Campaign, Deck and Doucette as provided by New Hampshire law. The Trump Campaign is also liable under respondeat superior because Defendants Deck, Doucette and Manchester Defendants were employees or agents of Defendant Trump Campaign. Plaintiff had included evidence of false imprisonment in support in Appendices 1-16 of Plaintiff's Second Amended Complaint, (Doc. 75.) Accordingly, Defendants' motions to dismiss should be denied.

The Plaintiff has properly Alleged Facts Sufficient to State a Claim That Defendants Trump Campaign, Deck and Doucette are Liable for Civil Conspiracy.

According to Defendants, "The plaintiff did not include civil conspiracy as a claim for relief, but mentions "conspiracy" and its elements throughout the second amended complaint. *See*, *e.g*., Doc. 75 (05/22/2019) at ¶¶108, 120, 162, 167, 200. References to conspiracy and conspiratorial conduct, when used as mere legal assertions, and unsupported by factual content, are insufficient to satisfy a claim for civil conspiracy. *Jay Edwards, Inc*. *v. Baker*, 130 N.H. 41, 47 (1987)." As stated earlier, Plaintiff has properly alleged Civil Conspiracy.

The existence of a conspiracy can be proven through circumstantial evidence. Adickes v. S. H. Kress & Co., 398 U.S. 144, 152 (1970), 398 U.S. at 158 ("If a policeman were present, we think it would be open to a jury, in light of the sequence that followed, to infer from the circumstances that the policeman and a Kress employee had a 'meeting of the minds' and thus reached an understanding that petitioner should be refused service.").

Although the Supreme Court has held that acting jointly with state officials is sufficient, the Third Circuit has suggested that the plaintiff must establish the elements of a civil conspiracy, express or implied "meeting of the minds," and an act in furtherance, in order to use the existence of the conspiracy to demonstrate state action. Melo v. Hafer, 912 F.2d 628, 638 n. 11 (3d Cir. 1990) (addressing plaintiff's action-under-color-of-state-law argument and"assum[ing], without deciding, that the complaint alleges the prerequisites of a civil conspiracy"), aff'd on other grounds, 502 U.S. 21 (1991). The Melo court cited Hampton v.

Hanrahan, 600 F.2d 600, 620-21 (7th Cir. 1979), rev'd in part on other grounds, 446 U.S. 754 (1980)). (Plaintiff must show both a conspiracy to violate the plaintiff's federal rights and an overt act in furtherance of the conspiracy that results in such a violation); Great Western Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d 159, 179 (3d Cir. 2010) (plead facts establishing a "meeting of the minds").

The Supreme Court's references to the"conspiracy" test do not emphasize the overt-act-resulting-in-violation requirement. Adickes v. S. H. Kress & Co., 398 U.S. 144, 152 (1970). (the relevant act in violation of the plaintiff's federal rights would necessarily have constituted an action by a co-conspirator in furtherance of the conspiracy); Hindes v. F.D.I.C., 137 F.3d 148, 158 (3d Cir. 1998) ("[F]ederal officials are subject to section 1983 liability when sued in their official capacity where they have acted under color of state law, for example in conspiracy with state officials").

Other Courts have held that where a private party employs a state official, the private party need not conspire with the official concerning the act that constitutes a violation of the plaintiff's rights to be held liable under color of law. Thomas v. Zinkel, 155 F. Supp.2d 408, 412 (E.D.Pa. 2001); Cruz v. Donnelly, 727 F.2d 79 (3d Cir. 1984), ("two police officers, acting at the request of [a private] company's employee, stripped and searched the plaintiff for stolen goods,") id.at 79.

Second amended complaint alleges Defendants Deck and Pittman are employees or agents of Defendant Trump Campaign. The Trump Campaign brought staff, and also hired Manchester Police Officers/ Manchester Defendants as alleged in Second Amended Complaint. "According to the Federal Election Commission (FEC), Trump Campaign has made substantial monetary payments to Defendants named in this case, Donald J. Trump, Edward Deck, Fred Doucette, and The City of Manchester." Doc 75 (05/22/2019) at ¶ 4. When Plaintiff asked Defendant whether he knew of violence committed by Trump supporters at a previous Trump rally, Defendants, "make a human wall." *Id* at ¶ 43. Defendant Deck says, "You're going to see my name on your face," which Plaintiff interpreted to be "a clear threat of violence." *Id* at ¶ 48. Defendants Deck and Pittman, "throw Plaintiff head-first into a table knocking it over." *Id*. at ¶ 53.

Plaintiff has clearly alleged in his Second Amended Complaint that Defendant Trump had an express or implied "meeting of the minds" with the Defendant Tortfeasors to prevent Plaintiff from publicly asking a question of Defendant Trump and to prevent Defendant Trump from having to seriously answer said question and then punished Plaintiff for attempting to ask that question. By failing to intervene or prevent the harm to Plaintiff, although he had control over Defendant Tortfeasors who were his agents and employees, Defendant Trump demonstrated that he had a meeting of the minds for Defendant Tortfeasors to violate Plaintiff's civil rights. Hence, Defendant Trump's conduct was a substantial factor in bringing about the injury to the Plaintiff and Defendant Trump should be held jointly and severally liable with the other Defendant tortfeasors. As in *Adickes*, Plaintiff has pled sufficient facts to make out a plausible claim that Defendant Trump and Defendants Deck, Doucette, and Defendant Pittman had a

meeting of the minds to violate Plaintiff's civil rights.

The Trump Campaign is also liable under respondeat superior because Defendants Deck and Doucette were employees or agents of Defendant Trump Campaign. Plaintiff had included evidence of civil conspiracy in support in Appendices 1-16 of Plaintiff's Second Amended Complaint, (Doc. 75.) Accordingly, Defendants' motions to dismiss should be denied.

Conclusion:
Plaintiff has alleged sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. The Second Amended Claim has facial plausibility and the plaintiff has plead factual content that will allow the court to draw the reasonable inference that the defendants are liable for the misconduct alleged. Accordingly, Defendants' motions to dismiss should be denied.

Pro Se Plaintiff, Roderick Webber
Signed Rod Webber
June 26, 2019