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 DEFENDANT TRUMP

A. 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 Defendant is liable for the misconduct alleged. Plaintiff's allegations are also supported by transcribed videotapes of the incident, parts of which are to be found in the appendix to the complaint, as well as other research and documentation.

Defendant attempts to make out the false case that Defendant Tortfeasors gently removed Plaintiff for being overly loud. The Plaintiff's allegations in his Second Amended Complaint and the videotape evidence demonstrate that Defendant's contention is very far from the truth. When Plaintiff, seated with the other journalists in the front of the hall, pointedly asked Defendant Trump if he was aware of uncontrolled violence on the Plaintiff at a previous rally, Defendant Deck, who knew Plaintiff, deceived Plaintiff into believing there was a microphone in the back of the hall for the sole purpose of "kettling" or surrounding Plaintiff with other Trump staff and supporters and then brutally hauling Plaintiff off with Defendant Pittman, then throwing Plaintiff head first into a table and to the ground again, meanwhile screaming epithets at Plaintiff. While this whole event took place directly in front of Defendant Trump did nothing and said nothing, because he knew of the violence of Defendant Deck and he encouraged it and sanctioned it over and over again. Defendant Trump controls and dominates Defendant Donald J. Trump For President, Inc. ("Trump Campaign") and Defendants Trump Organization, LLC and The Trump Organization, Inc., ("Trump Companies") making them his alter egos and making him personally liable for and the acts of those entities and their employees and agents as other Courts have held. Likewise, Defendant Trump, as an officer and/or director and/or central figure of the Defendant Trump Campaign had a duty to prevent harm to the Plaintiff by his employees or agents, but failed to prevent that harm although he had control over those third parties and the torts were happening right in front of him. Defendant Trump's motion to dismiss should be denied.

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

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 Deck, Doucette, and Manchester Defendants as well as Trump supporters and staff intentionally, conpiratorially, unlawfully and tortiously acted 1) to prevent the public from hearing that Defendants permitted/ condoned unlawful acts torts at a previous event and to also prevent 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 torts and for attempting to exercise his right to speak (the whole purpose of the event). (Defendants City of Manchester, Pittman, Cosio, Craig and Aldenberg, (collectively referred to as "Manchester Defendants.")

In sum, the dispositive issue on all of Defendant Trump's defenses is whether Plaintiff has alleged facts demonstrating a plausible claim that Defendant Trump (participating and watching the incident unfold directly in front of him) was in control of the Defendant Tortfeasors and had permitted, condoned, incited, encouraged and/or conspired to commit said unlawful torts and/or had negligently trained, supervised or hired said Defendant Tortfeasors to commit said tortious behavior, of which they had no lawful right, in order to prevent Plaintiff (or any individual or press person similarly situated) from asking and preventing Defendant Trump from having to condone or condemn such violence against Plaintiff at his rallies and also to punish those who did so with unlawful torts and violence.

As the Plaintiff's Second Amended Complaint provides, and as the videotape evidence will demonstrate, Plaintiff has properly pled facts sufficient to comprise plausible legal claims of liability against Defendant Trump. Accordingly, Defendant Trump's motion to dismiss should be denied.

Contrary to Defendant's Contention, Civil Lawsuits against a Sitting President of the United States are Not Disfavored by the Courts, Defendant President Trump may be hailed into Court for his tortious actions just as other Courts have recently done

First, citing Nixon v. Fitzgerald, 457 U.S. 731, 753-754, Defendant contends that the Supreme Court discourages civil suits against sitting Presidents of the United States. Defendant further contends that the balancing test in such suits (weighing the public interest against the dangers of intrusion on the authority and functioning of the executive branch) would excuse Defendant Trump because Defendant Trump did not directly commit any of the alleged torts and

Defendant Deck, Doucette, and/or the Manchester Defendants were neither Defendant's employees nor his agents at the time of the incident.

Plaintiff, respectively, disagrees. The Courts in several similar cases as this, have held that Defendant Trump, could be held liable regardless of his present Presidential position. In People v Trump, citing Clinton v. Jones, 520 U.S. 681, 117 S.Ct. 1636, 137 L.Ed.2d 945 (1997), the Supreme Court stated, "Respondents [Trump] have failed to cite a single case in which any court has dismissed a civil action against a sitting president on Supremacy Clause grounds, where, as here, the action is based on the president's unofficial acts." People v Trump 88 N.Y.S. 3d 830 (N.Y. Sup. Ct. 2018).

In an Amicus brief to that case, law professors Stephen B. Burbank, Richard D. Parker and Lucas A. Powe Jr., wrote: "In Clinton v. Jones, the Supreme Court held that the doctrine of separation of powers does not bar a federal suit (including state law claims) against a sitting president. Clinton v. Jones, 520 U.S. 681, 117 S.Ct. 1636, 137 L.Ed.2d 945 (1997). Specifically, the Supreme Court held that the president does not have immunity and is 'subject to the laws' for unofficial acts. Id. at 695-696, 117 S.Ct. 1636 (stating that President Clinton's 'effort to construct an immunity from suit for unofficial acts grounded purely in the identity of his office is unsupported by precedent.')." People v. Trump, 88 N.Y.S.3d 830, 835 (N.Y. Sup. Ct. 2018).

Many other Courts have upheld private actions against this President. In Zervos v. Trump, 74 N.Y.S.3d 442 (N.Y. Sup. Ct. 2018), the Court stated, "There is absolutely no authority for dismissing or staying a civil action related purely to unofficial conduct because defendant is the President of the United States."

In Karnoski v. Trump, CASE NO. C17-1297-MJP (W.D. Wash. Aug. 20, 2018), the Court, citing United States v. Nixon**,** 418 U.S. 683, 707 (1974), wrote: "As in Nixon, President Trump's refusal to comply with the judicial process threatens to 'upset the constitutional balance of 'a workable government' and gravely impair the role of the courts under Article III.' And in, Stone v. Trump, 335 F. Supp. 3d 749 (D. Md. 2018), the Court, relying on language in Nixon, denied a protective order because Defendants had failed to assert executive privilege and to produce a single document or a privilege log. ECF No. 200-1 at 11."

Similarly, United States v. Menendez, 270 F. Supp. 3d 780 (D.N.J. 2017), the Court held, "Indeed, if the Framers of the Constitution had thought it necessary to protect the President from the burdens of private litigation, we think it far more likely that they would have adopted a categorical rule than a rule that required the President to litigate the question[.]" And in Swidler Berlin v. United States 524 U.S. 399, 410 (1998), the Supreme Court wrote: "Finally, the Independent Counsel, relying on cases such as United States v. Nixon, 418 U.S. 683, 710 (1974), and Branzburg v. Hayes, 408 U.S. 665 (1972), urges that privileges be strictly construed because they are inconsistent with the paramount judicial goal of truth seeking. But both *Nixon* and *Branzburg* dealt with the creation of privileges not recognized by the common law, whereas here we deal with one of the oldest recognized privileges in the law. And we are asked, not simply to 'construe' the privilege, but to narrow it, contrary to the weight of the existing body of case-

law."

Accordingly, Defendant Trump's claim that a sitting President is immune to civil actions for his unofficial acts is contrary to law, the Court has the right to hail Defendant Trump into Court in this case.

As Defendant Trump is the "Alter Ego" of Defendants Trump Campaign, Inc., Trump Organization, LLC, and The Trump Organization, Inc., he is vicariously and personally liable for his tortious actions as well as those committed by agents and employees of said entities

"Alter Ego" Vicarious Liability

The Courts have held that where a person or entity operates as the alter ego for another entity or entities, the controlling person or entity is liable for the torts committed by agents and employees of that entity. Matter of S.I. Acquisition, Inc., 817 F.2d 1142 (5th Cir. 1987), (examining the cause of action premised on alter ego under Texas law, "This arrangement is used merely as a cloak to conceal fraud, wrongs, and injustice, and to insulate TPO, INC. from legal and financial responsibility for wrongs committed by S.I.A. and other subsidiaries. . . . [A]nd that Defendants S.I.A., ABEL, and TPO, INC. are but alter egos for the personal business affairs of Defendant THOMAS P. O'DONNELL . . . and that THOMAS P. O'DONNELL's control and domination of Defendants S.I.A., ABEL, and TPO, INC. exists to the extent that said purported corporations' actions are in substance the actions of Defendant THOMAS P. O'DONNELL."

In United States v. Jon-T Chemicals, Inc., 768 F.2d 686 (5th Cir. 1985), Judge Goldberg stated, "According to [Jon-T] Chemicals, it cannot be held responsible because it did not engage in any wrongdoing. This argument, however, begs the alter ego question. The purpose of the alter ego analysis is to determine whether [Jon-T] Chemicals is vicariously liable for [Jon-T] Farms's actions — that is, whether actions by [Jon-T] Farms are considered to be actions by [Jon-T] Chemicals… A corporation, unlike Proteus, cannot assume a new form at will. While we generally recognize a corporation's attempt to assume the guise of a subsidiary, even this expedition into fantasyland has its bounds. Here, as in National Marine Service, Inc. v. C.J. Thibodeaux Co., 501 F.2d 940 (5th Cir. 1974), "[t]he corporate veil with which appellants would enrobe [the subsidiary] to give it the semblance of being attired in corporate clothing was so diaphanous that the district court was well able to see through it." *Id.* at 943. Judge Goldberg AFFIRMED.

Additionally, in National Marine Service, Inc. Judge Moore stated, "Appellants contend that, any finding of liability against them as an 'alter ego' of River Gulf requires a showing of fraud on their part… However, this assertion does not represent the applicable law. Although there is no doubt that fraud is a proper matter of concern in suits to disregard corporate fictions, it is not a prerequisite to such a result, especially where there is gross undercapitalization or complete domination of the corporate entity under scrutiny." Moore cited, The Consolidated Rock Products Co. v. Du Bois, 312 U.S. 510, 61 S.Ct. 675, 85 L.Ed. 982 (1941); Taylor v.

Standard Gas Electric Co., 306 U.S. 307, 618, 59 S.Ct. 543, 83 L.Ed. 669 (1939); 2 G. Hornstein, Corporation Law and Practice § 756 (1959); see generally W. Cary, Corporations, 109-112, 128-143 (4th ed. 1969). The district court found that, "While never intended to be such River Gulf became an operating arm of Prairie Company and C. J. Thibodeaux and Company. Upon these facts, it appears to this Court that River Gulf was a mere alter ego of Prairie Company; that the bareboat charter was a fiction; and that the repairs were performed for the benefit of Prairie Company with its actual or constructive knowledge."

When Courts find that a director or officer has used a corporate entity as his alter ego, Courts will pierce the corporate veil and impose personal liability on that director, officer or individual. Gidwitz v. Stirco, Inc., 646 F. Supp. 825, 829–30 (N.D. Ill. 1986) (separate corporate identity may be disregarded and liability imposed upon an individual if a court finds that the corporation is controlled and operated in a manner that makes it a "mere instrumentality of another" and that the "observance of the fiction of separate existence would, under the circumstances, sanction fraud or promote injustice." *Id*. at 830 (citing Main Bank of Chicago v. Baker, 427 N.E.2d 94, 101 (Ill. 1981)); see also Lambert v. Kazinetz, 250 F. Supp. 2d 908, 914 (S.D. Ohio 2003). Under a veil-piercing approach, courts can find directors and officers personally liable in cases where they did not participate in the tortious acts and where there would be no liability under participation or duty-based theories. Smith v. Hawks, 355 S.E.2d 669, 675–76 (Ga. Ct. App. 1987) (discussing the "piercing the corporate veil" exception to the general rule of non-liability for a corporate officer who did not participate in tortious conduct). Courts and commentators have also emphasized their unwillingness to allow the corporate agent to hide behind the corporate veil, as this would encourage irresponsible behavior and result in unfair outcomes. Grynberg Prod. Corp. v. British Gas, P.L.C., 817 F. Supp. 1338, 1350–51 (E.D. Tex. 1993) (mem.); Frances T Vil., 723 P.2d at 581 ("[A] director could inflict injuries upon others and then escape liability behind the shield of his or her representative character, even though the corporation might be insolvent or irresponsible."); Zipora Cohen, Directors' Negligence Liability to Creditors: A Comparative and Critical View, 26 J.CORP.L. 351, 361 (2001).

Hence, Courts have held that where entities are formed to conduct the personal affairs of the Defendant and where he exercises control and domination of said purported corporations' actions, the actions of the "alter egos," are in substance the actions of the Defendant.

Defendant Trump Campaign Inc., and Trump Organization, LLC, and The Trump Organization, Inc. Are The Alter Egos of Defendant Trump

Defendants Trump exercised complete domination and control over Defendant Trump Campaign, and Trump Companies, making him liable for the unlawful and tortious actions of those entities employees and/or agents Defendants Deck, Doucette, and the Defendant City of Manchester and the Manchester Defendants.

In past cases, Courts have found that Trump Campaign and the Trump Companies to be the "alter egos" of Defendant Trump and held that Defendant Trump could be personally liable for the tortious actions of those entities employees and/or agents. In Galicia v Trump, INDEX NO. 24973/2015E, Doc. 342, Judge Tapia found, "more than sufficient evidence of Defendant Trump's involvement in the conduct at issue." Justice Tapia held, "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. at ¶3, at Ex. 1 at pp. 5-6 (footnotes with record citations omitted).

Likewise, in the case of People v Trump, 88 N.Y.S.3d 830, 835 (N.Y. Sup. Ct. 2018), Judge Saliann Scarpulla opines, "Respondents [Trump et al.] fail to demonstrate a basis to strike the Petitioner's request for injunctive relief… The allegations in the petition which purport to quote Mr. Trump at the Fundraiser, rallies, and press conference show that Mr. Trump was acting in both of his capacities as campaign candidate and president of the Foundation. Moreover, considering the allegations of coordination between the Campaign and [Trump] Foundation, as well as the control and authority that Mr. Trump and the Campaign allegedly wielded over the Foundation, the petition adequately alleges that the political acts by Mr. Trump and the Campaign are attributable to the [Donald J. Trump] Foundation." People v. Trump, 88 N.Y.S.3d 830, 846 (N.Y. Sup. Ct. 2018) (The Judge ORDERED that the motion of respondents The Donald J. Trump Foundation, Donald J. Trump, Donald J. Trump Jr., Ivanka Trump, and Eric F. Trump to dismiss the petition is denied except as to the sixth cause of action). *Footnote 1

Footnote 1:
[Judge Scarpulla writes, "In its first and second causes of action, Petitioner alleges that the Individual Respondents [Foundation's officers, directors, and board members: Donald J. Trump ("Mr. Trump"), Donald J. Trump Jr.; Ivanka Trump; and Eric F. Trump (collectively, the "Individual Respondents" and together with the Foundation, "Respondents").] breached their fiduciary duties and failed properly to administer the Foundation's assets by, among other things: failing to ever hold a board meeting or to keep required board minutes; failing to conduct reviews of the Foundations assets, liabilities, revenues and disbursements; failing to oversee the Foundation and its activities; failing to supervise the Trump Organization accounting staff ; permitting non-Foundation members to disburse Foundation assets without review or approval; permitting Mr. Trump to solicit donations that went directly to the Foundation; and subsequently

> giving control over the donated funds to the Campaign which, in turn, distributed the funds so as to influence the outcome of Mr. Trump's presidential bid.
> The petition alleges that the Trump Corporation, Inc. ("Corporation") — a management company owned by Mr. Trump — provides back-office services to the hundreds of business entities that comprise the Trump Organization (the "Organization"), including the Foundation. The Foundation allegedly does not have any of its own employees, and its operations are mainly performed by the Corporation's accounting staff. Purportedly, the Corporation was responsible for issuing checks from the Foundation, which it did based solely upon direction from Mr. Trump and without Board approval.
>
> Respondents fail to demonstrate a basis to strike the Petitioner's request for injunctive relief… The allegations in the petition which purport to quote Mr. Trump at the Fundraiser, rallies, and press conference show that Mr. Trump was acting in both of his capacities as **campaign candidate and president of the Foundation.** Moreover, considering the allegations of coordination between the Campaign and Foundation, as well as the control and authority that Mr. Trump and the Campaign allegedly wielded over the Foundation, the petition adequately alleges that the political acts by Mr. Trump and the Campaign are attributable to the [The Donald J. Trump] Foundation." *People v. Trump* 88 N.Y.S.3d 830, 846 (N.Y. Sup. Ct. 2018)]

In his Second Amended Complaint, Plaintiff has documented many times how Defendants Trump and Defendant Trump Companies have failed to distinguish between themselves as entities or as alter egos. In Document 65, (Appendix 2), Plaintiff detailed that Trump Organization, LLC and "The Trump Organization" are synonymous. A quick review shows that Defendant Trump and others related to Defendant Trump Organization, LLC referred to the entity with great regularity as "The Trump Organization," dropping the suffix "LLC" and adding the prefix, "The."

Document 65, cites Galicia, (INDEX NO. 24973/2015E, NYSCEF DOC. NO. 342 **)** where Defendant Trump wrote "I am the founder, President and Chairman of The Trump Organization s/h/a The Trump Organization LLC ("Trump Org." one of the Defendants in this litigation." In another communication in Doc 65 (referencing Galicia, Doc. 342*)*, Trump Attorney Lawrence S. Rosen's email address is written as mmaron@trumporg.com. TrumpOrg.com forwards to Trump.com, which is promoted as "The Trump Organization." The official Twitter handle for "The Trump Organization" is https://twitter.com/Trump. The website listed for this twitter account is Trump.com, which as established in the previous paragraph is synonymous with Trump Organization, LLC and "The Trump Organization." These web pages and accounts promote themselves as "The most globally recognized brand in luxury real estate, golf, hospitality, and entertainment."

These connections are important, because Donald Trump, (who is synonymous with Trump Organization, LLC/ "The Trump Organization,") also uses "The Trump Organization" to advertise himself on WWE. Document 74 Appendix B iv establishes that Trump brags about his record setting views on WWE. Doc. 74 Appendix B v establishes that Defendant Trump promotes himself on WWE as "Donald Trump, Chairman of The Trump Organization."

Appendix 13 of the Second Amended Complaint, C-SPAN's coverage of the Oct 12, 2015

No Label's event shows that Mr. Trump bills himself as "Trump Organization, Chair & President."

In the US Department of Justice's "Report On The InvestigationInto Russian Interference In The 2016 Presidential Election Volume I," written March 2019, commonly known as "The Mueller Report," Donald Trump responds to Robert Mueller's Question 1, Part (d), by saying, "My Trump Organization desk calendar also reflects that I was outside Trump Tower during portions of these days. The June 7, 2016 calendar indicates I was scheduled to leave Trump Tower in the early evening for Westchester where I gave remarks." Donald Trump's writing makes no distinction between Trump Organization, LLC and The Trump Organization, Inc. In the hundreds of mentions of "Trump Organization" in the 448 page document, no distinction is made between the two companies whatsoever.

In the 3,730 page FOIA request by American Oversight, containing hundreds of Whitehouse emails (referenced in Document 65), no distinction whatsoever is made between Trump Organization, LLC and The Trump Organization, Inc. https://www.documentcloud.org/documents/4110106-GSA-Trump-Hotel-Correspondence.html

As outlined in Document 91 of Plainitiff's Second Amended Complaint, Attorney Peter Cowan of Sheehan Phinney Bass & Green PA, representing The Trump Organization, Inc. and Trump Organization, LLC filed an appearance on May 24, 2019, for "The Trump Organization, LLC." The Trump Organization, LLC is not a real company. Even the attorney for one of Defendant Trump's alter egos finds it impossible to make the distinction between the two companies himself. As shown in Document 90, Attorney Cowan, confuses the entities once again when he writes "counsel for TOL and TTOL," effectively meaning "counsel for Trump Organization, LLC or **The** Trump Organization, LLC." It was almost two weeks from his initial appearance before Attorney Cowan filed a new appearance on June 5th with the correct name for the company.

Similarly, in the case of Diduck v.Kaszycki Sons Contr. 737 F. Supp. 792 (S.D.N.Y. 1990), Donald Trump was doing business as "d/b/a The Trump Organization," and the Defendants were listed as: Trump-Equitable Fifth Avenue Company, the Trump Organization, Inc., Donald J. Trump, Donald J. Trump d/b/a The Trump Organization, and the Equitable Life Assurance Society of the United States (the "Trump Defendants.")

Donald Trump is The Trump Organization, Inc.. The Trump Organization, Inc. is "The Trump Organization." Trump Organization, LLC is "The Trump Organization", "The Trump Organization" is a real estate company. "The Trump Organization" is a wrestling Company. "The Trump Organization" represents the Trump Campaign at political events. Neither Defendant Trump, in his internal emails nor in legal responses to Special Counsel Robert Mueller nor Defendant Trumps own lawyers can tell the companies apart. And the reason why they cannot distinguish between the mirage of entities is because they are one and the same and they are one and the same because they are all "alter egos" of the one person who dominates and controls those entities, Defendant Donald J. Trump, and everyone knows it.

The FEC filings alluded to in Plaintiff's complaint are also probative of how the entities, employees, agents and Defendant Trump play fast and loose with corporate form and the mixing funds. FEC documents show that roughly $83,000 was paid from The Trump Campaign to Trump Corporation. https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&cycle=2016&data_type=processed&committee_id=C00580100&recipient_name=trump+corporation&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016&line_number=F3P-23

Additionally, in a FOIA request by Lachlan Markay, documents reveale that The Trump Corporation paid out checks on behalf of The Trump Organization to The United States Treasury in the amount of $151,470.00 by the Trump Corporation. However, in the memo accompanying that check, Sheri A. Dillon from the law firm of Morgan Lewis writes, "On behalf of The Trump Organization, please find enclosed a check for $151,470 made payable to the United States Treasury. https://www.scribd.com/document/376727130/Treasury-emoluments-FOIA

Similarly, Defendant Trump Campaign makes substantial payments both to Defendant Deck and Defendant XMark, (XMark Companies) at the same address, during the same period around the time of the events of this lawsuit. (Although Defendant Deck claims that he resides in another State, Defendant Deck retains a driver's license in North Carolina, where the payments were made). It appears that sometimes Defendant Deck invoices or asks for the payments to his person and sometimes he passes the payments through the Defendant Company in attempt to retain the corporate fiction of his own alter ego.

Even the employees and agents cannot distinguish between which of entity and persons they are working for. In Galicia v. Trump, INDEX NO. 24973/2015E, security officers, Defendant Edward Deck, Keith Schiller and Gary Uher described themselves at various times in the case as working for XMark, LLC, (INDEX NO. 24973/2015E Doc. 38 at at ¶ 1.) The Trump Campaign (*Id*. at ¶ 3), and The Trump Organization, (INDEX NO. 24973/2015E Doc. 342 at page 28.) Schiller, specifically described himself as working directly for Defendant Trump in an appearance on "Conversations with Rich Siegel," which is referenced in Plaintiff's Second Amended Complaint Appendix 7, as well as documents 73, 74, 106 and 111. Though Schiller is not named as a Defendant, paragraphs 136 and 139 of Plaintiff's Second Amended Complaint make reference to Defendant Deck and Schiller as working together as "Trump Security," and Doc. 75, paragraph 168 alleges that Trump Security communicated via headset. Thus, there is a reasonable inference that Defendant Deck communicated or took orders from Schiller, who works directly for Trump.

Defendants Trump, Trump Campaign, and Trump Organization, LLC contend the same defense to vicarious liability here as they did in *Galicia.* Defendants moved to dismiss, stating "because Deck and Uher were not their employees or agents and therefore vicarious liability fails to apply. Specifically, they argue that defendants Uher and Deck were never employed by them, and were, instead employees of XMark, a third-party, independent contractor." Problematically,

Uher testified in *Galicia* that he was not paid by XMark, which brings up the question of whether the many XMark companies and locations, like the Trump Campaign and Trump Companies, are mere alter egos for Defendant Edward Deck. Defendant Deck also testified in *Galicia* that "he was hired to preform (sic) security services for the Trump Organization."

In Plaintiff's Second Amended Complaint, Plaintiff has factually alleged, that the Defendant Tortfeasors were working and being paid by Defendants Trump Campaign, Inc. and/or the Trump Companies at the time that they brutally committed multiple torts on the Plaintiff. (Doc. 75 (05/22/2019) at ¶¶ 5,6), Plaintiff has also factually alleged that Defendant Trump was aware of their tortious and unlawful conduct and chose not to intervene or prevent their tortious acts although he had authority over the Defendant Tortfeasors at the time. *Id*. at ¶ 112.

Plaintiff has alleged facts sufficient to state plausible claims that Defendant Trump exercised complete domination over his employees, Defendant Trump Campaign, Inc. and the Trump Companies and that said entities are mere "alter egos," of Defendant Trump. Plaintiff has also alleged facts sufficient to state plausible claims that Defendant Tortfeasors Deck, Doucette, and Manchester Defendants committed unlawful tortious acts while they were employees and/or agents of those entities. Accordingly, Plaintiff has stated an actionable claim for relief attributing liability to Defendant Trump for his own tortious conduct and that of Defendant Tortfeasors Deck, Doucette, and the Manchester Defendants. In the very least, there is sufficient allegations and evidence presented that whether Defendant Companies were "alter egos" for Defendant Trump is a matter for a jury or fact-finder.

DEFENDANT TRUMP, AS AN OFFICER, DIRECTOR, OR THE "CENTRAL FIGURE" BEHIND THE TRUMP CAMPAIGN, INC., IS PERSONALLY LIABLE FOR THE TORTIOUS ACTS OF THIRD PARTIES UNDER AGENCY THEORY

The Courts have attributed agency liability to officers, directors, or "central figures" behind tortious acts of third parties when they have sanctioned, directed, participated, negligently failed to take appropriate action to prevent or avoid a harm, breached a duty owed to a third party by act or omission, and when they have negligently appointed, supervised, or cooperated with third party tortfeasors.

The Courts have held that specific direction or sanction of, or active participation or cooperation in, a positively wrongful act of commission or omission which operates to the injury or prejudice of the complaining party is necessary to generate individual liability in damages of an officer or agent of a corporation for the tort of the corporation. Lobato v. Pay Less Drug Stores, 61 F.2d 406, 408-409 (10th Cir. 1958).

In Cruz v. Ortho Pharm. Corp., 619 F.2d 902, 907 (1st Cir. 1980) (citing Donsco, Inc. v. Casper Corp., 587 F.2d 602, 605–06 (3d Cir. 1978)); Marks v. Polaroid Corp., 237 F.2d 428, 435 (1st Cir. 1956), the First Circuit held the "Guiding spirit or central figure" behind tortious act"

was liable for the tortious acts of third parties.

Directors and officers can be liable if they "reasonably" should have known that some hazardous condition or activity under their control could injure a third party, but they negligently failed to take or order appropriate action to avoid the harm. Frances T. v. Vill. Green Owners Ass'n, 723 P.2d 573, 584 (Cal. 1986) (en banc). Thus, courts can impose personal liability for "participation" solely based on failures to act. Haupt v. Miller, 514 N.W.2d 905, 909 (Iowa 1994) (en banc).

The Restatements of Agency (Third) provides that an agent is only subject to tort liability to a third party harmed by his conduct when such conduct constitutes a breach of duty the agent personally owes to the third party. RESTATEMENT (THIRD) OF AGENCY § 7.02 cmt. b (2006). An agent may be liable to a third party for physical harm, even if the third party incurs such harm because of the agent's failure to adequately perform his or her duties to the principal. RESTATEMENT (THIRD) OF AGENCY § 7.02 cmt. c-d (2006); RESTATEMENT (SECOND) OF AGENCY §§ 352, 357 (1984).

Some courts have specifically stressed that, in order to be liable for his or her actions within the corporate context, a director or officer must breach an independent duty of care, which he personally owes to the injured party. Lawlor v. District of Columbia, 758 A.2d 964, 975 (D.C. Cir. 2000); Frances T. v. Vill. Green Owners Assn., 723 P.2d 573, 581 (Cal. 1986) (en banc); Michaelis v. Benavides, 71 Cal. Rptr. 2d 776, 778 (Cal. Ct. App. 1998); Cisneros v. U.D. Registry, Inc., 46 Cal. Rptr. 2d 233, 255–56 (Cal. Ct. App. 1995) (duty imposed by statute on company, not officer personally); White v. Wal-Mart Stores, Inc., 918 So. 2d 357, 358 (Fla. Dist. Ct. App. 2005); West v. Bruner Health Group, Inc., 866 So. 2d 260, 269 (La. Ct. App. 2003); Donnelly v. Handy, 415 So. 2d 478, 480 (La. Ct. App. 1982) (stating that Louisiana courts have consistently employed a duty-based analysis in determining officers' personal liability for injury to third parties); Leitch v. Hornsby, 935 S.W.2d 114, 117 (Tex. 1996). Courts often recognize the existence of a personal duty based upon the defendant's personal participation in or direction of a tortious act. McCaskey v. Cont'l Airlines, Inc., 159 F. Supp. 2d 562, 577 (S.D. Tex. 2001).

However, another group of Courts focus on an alternative inquiry to ascertain personal liability. Under this approach, a director or officer will be liable for a tort where (1) the corporation owed a duty of care to the victim; (2) the corporation delegated that duty to the director or officer; and (3) the director or officer breached the duty of care by his or her own conduct, causing injury to the victim. Courts that use this test have sometimes pointed out that if the defendant's general responsibility has been delegated with due care to some responsible subordinate or subordinates, he is not himself personally at fault and liable for the negligent performance of this responsibility unless he personally knows or personally should know of its nonperformance or malperformance and has nevertheless failed to cure the risk of harm. Manning v. United Med. Corp. of New Orleans, 902 So. 2d 406, 410–12 (La. Ct. App. 2005) (discussing the distinction between internal and external duties); Downey v. Callery, 338 So. 2d 937, 943–944 (La. Ct. App. 1977) (per curiam), cert.denied, 431 U.S. 955 (1977); Saltiel v. GSI Consultants, Inc., 788 A.2d 268, 272 (N.J. 2002) (treating the requirement of a duty being

delegated to and breached by a director or officer as part of the "participation theory"); Metuchen Sav. Bank v. Pierini, 871 A.2d 759, 764 (N.J. Super. Ct. App. Div. 2005); Schaefer v. D & J Produce, Inc., 403 N.E.2d 1015, 1020–21 (Ohio Ct. App. 1978).

Courts have also directors and officers personally liable for the torts of negligent supervision and management with regard to corporate activities and subordinates. Jabczenski v. S. Pac. Mem. Hosps., 579 P.2d 53, 58 (Ariz. Ct. App. 1978); Smith v. Isaacs, 777 S.W.2d 912, 914–15 (Ky. 1989); see also RESTATEMENT (SECOND) OF AGENCY § 358(1) (1958) ("The agent of a disclosed or partially disclosed principal is not subject to liability for the conduct of other agents unless he is at fault in appointing, supervising, or cooperating with them."); RESTATEMENT (SECOND) OF TORTS § 877 (1979) (summarizing liability for harm resulting from the directed conduct of another).

Methods for ascertaining liability for supervision and management can vary. Some courts analyze these types of claims by inquiring into whether the defendant participated in tortious conduct. Adel v. Greensprings of Vermont, Inc., 363 F. Supp. 2d 692, 700 (D. Vt. 2005); Omaha Indem. Co. v. Royal Am. Managers, Inc., 777 F. Supp. 1488, 1492 (W.D. Mo. 1991); Detig, 50 N.E.2d at 603–04; Smith, 777 S.W.2d at 914–15. Other courts focus on the requirement of the breach of a personal duty. Airlines Reporting Corp. v. Aero Voyagers, Inc., 721 F. Supp. 579, 585 (S.D.N.Y. 1989); Shay v. Flight C Helicopter Servs., Inc., 822 A.2d 1, 17–19 (Pa. Super. 2003); Inter-Ocean Cas. Co. v. Leccony Smokeless Fuel Co., 17 S.E.2d 51, 53–54 (W.Va. 1941). Still other courts appear to treat supervision and management related claims as a sui generis category of torts, different from general tort liability, based on participation in or knowledge of an illegal act. Jabczenski v. S. Pac. Mem. Hosps., 579 P. 2d 53, 58 (1978)(identifying three distinct bases of personal liability for corporate torts under Arizona law: (1) participation; (2) knowledge amounting to acquiescence, and; (3) negligent management and supervision); accord Avery v. Solargizer Intern., Inc., 427 N.W.2d 675, 681 (Minn. Ct. App. 1988) ("Generally, a corporate officer is not liable for torts of the corporation's employees unless he participated in, directed, or was negligent in failing to learn of and prevent the tort."). In these latter cases, the test appears to be simply whether there were negligent supervisory or managerial acts, which led to harm incurred by a third party. In addition, courts may also rely on a combination of the aforementioned approaches. Frances T. v. Vill. Green Owners Assn., 723 P.2d 573, 583–86 (Cal. 1986) (en banc) (articulating considerations for determining liability based on various standards).

In general, the tort of negligent supervision sanctions not an act, but rather an omission. Thus, a director or officer may be liable for failures in the supervision and control of corporate affairs, Cameron v. Kenyon-Connell Commercial Co., 56 P. 358, 361 (Mont. 1899) (stating that directors may be liable where they fail to exercise reasonable diligence in the control and supervision of the corporate business);see also Barnes v. Andrews, 298 F. 614, 616 (S.D.N.Y. 1924) (holding that an allegation that a director failed to devote adequate attention to his company's affairs stated a cause of action in tort where proper attention would have avoided loss) as well as for torts committed by agents of the corporation if he or she fails to act with due diligence in his or her supervision. Cameron v. Kenyon-Connell Commercial Co., 56 P. 358,

361 (Mont. 1899) (stating that directors may be liable where they fail to exercise reasonable diligence in the control and supervision of the corporate business)The latter is especially true in cases where there is not only a single, isolated incident, but where the agents' tortious acts occur persistently and continuously for substantial periods of time and the director or officer had the opportunity to discover the wrongful acts. Lowell Hoit & Co. v. Detig, 50 N.E.2d 602, 603 (Ill. App. Ct. 1943); Air Traffic Conference of Am., 316 S.E.2d at 645. Similarly, courts can impose liability where directors or officers are negligent in failing to learn of and prevent torts by employees. Avery v. Solargizer Int'l., Inc., 427 N.W.2d 675, 681 (Minn. Ct. App. 1988); Preston-Thomas Const., Inc. v. Cent. Leasing Corp., 518 P.2d 1125, 1127 (Okla. Ct. App. 1973) ("[The e]xistence of circumstances and facts which would arouse the suspicions of an ordinary prudent business man will furnish a basis" for directors' or officers' personal liability if they failed "to make reasonable inquiry and act with due care regarding the suspicions").

The Nebraska Supreme Court found a sufficient cause of action for negligence where an officer failed to properly train and supervise a trenching machine operator because the operator's action resulted in the plaintiff's death and the supervisor knew or should have known that the machine operator would perform the job assigned to him negligently. Carlson v. Metz, 532 N.W.2d 631, 634–36 (Neb. 1995). The Supreme Court of California recognized a cause of action against individual board members of a condominium owner's non-profit corporation for alleged negligence in the board members' decision not to provide adequate lighting where an intruder attacked a resident in her condominium unit. Frances T. v. Vill. Green Owners Assn., 723 P.2d 573, 584–86 (Cal. 1986) (en banc).

New York Supreme Court held that officers of companies associated with a shopping mall, who reduced or eliminated security measures to maximize profits, could be personally liable to a patron who sustained injuries during a shooting incident at the mall. Haire v. Bonelli, 870 N.Y.S.2d 591, 593 (N.Y. App. Div. 2008). Supreme Court of Ohio denied the defendants summary judgment in a case where the plaintiffs claimed that directors who operated a city-owned coliseum, but who failed to implement security measures designed to protect rock concert patrons from a dangerous condition caused by a first-come-first-served seating policy, should be held personally liable. Bowes v. Cincinnati Riverfront Coliseum, Inc., 465 N.E.2d 904, 909–12 (Ohio Ct. App. 1983).

Courts must distinguish between a director or officer's fiduciary duties to the corporation (and its shareholders) and a director or officer's duty not to injure third parties under common law tort principles. Frances T. v. Vill. Green Owners Assn., 723 P.2d 573, 581–82 (Cal. 1986) (en banc).

The situation is slightly different in the case of the duty to supervise. For example, the Restatement (Second) of Agency specifically states that an agent may be liable to third parties based on his negligence in supervising other agents appointed by his principal. In addition, an individual's duty to supervise is common in various areas of tort law, such as parental or medical liability.WILLIAM PROSSER ET AL.,THE LAW OF TORTS 383–85, 914–15 (5th ed. 1984). Nevertheless, the duty to supervise arises only in situations in which an individual is in a

position in which he is legally obliged to exercise control over another. Without the corporation, the director or officer would not have an obligation to exercise control over subordinate employees.

The duty to supervise or manage remains an internal duty, whether it consists of omissions (such as not having prevented tortious conduct) or positive acts (such as taking a decision which leads to harm to a third party). This approach is preferable because there is no obvious reason to treat omissions differently than actions. Haupt, 514 N.W.2d at 909. In contrast, none of these corporate law protections apply to tort claims brought by third party plaintiffs. Tort-based suits for supervision and management ordinarily operate under a simple negligence standard.

In Plaintiff's Second Amended Complaint has alleged Defendant Trump was an officer, director, or the "central figure" at the Trump Campaign, Inc. Plaintiff has also alleged that when Defendant Tortfeasors committed unlawful torts on the Plaintiff to prevent him from asking a question of Defendant Trump and preventing Defendant Trump from having to answer the question, Defendant Trump watched and failed to take appropriate action over those he had control over to prevent or stop the unlawful and harmful tortious actions. Accordingly, based on those stated facts, Plaintiff has made plausible claims that Defendant Trump by his actions and omissions sanctioned, participated, knew of the harm, but negligently failed to take appropriate action. Plaintiff's complaint has also alleged sufficient facts making plausible claims that by hiring, supervising, and cooperating with said Tortfeasors, Defendant Trump is vicariously liable for their unlawful and tortious actions.

For the above reasons, Defendant Trump's motion to dismiss should be denied.

Plaintiff has alleged sufficient facts to state plausible claims that Defendant Trump by jointly acting and/or conspiring with other Defendant Tortfeasors acted "Under Color of Law" and is, therefore, liable as provided for by 42 U.S.C. §1983

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 Clan 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 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.

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 Plaintiff also alleged sufficient facts to impose liability on Defendant Trump under the alter ego theory. Defendant Trump Campaign and/or Trump Companies as the alter egos of Defendant Trump hired Defendant Tortfeasors Manchester Defendants, and, therefore, Defendant Trump is liable for the tortious actions of the police officials as held in *Thomas* and *Cruz*. For the above reasons, the law provides that Defendant Trump's motion to dismiss should be denied.

Pro Se Plaintiff, Roderick Webber

Signed Rod Webber

June 26, 2019