UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE

Roderick Webber, Pro Se Plaintiff, v) Case 1:18-cv-00931-LM

Donald J. Trump, Edward Deck et al.) (Chief Judge Landya McCafferty)

Defendants.) July 3, 2019

REPLY MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS BY DEFENDANT NO LABELS

NOTES

Defendants Donald J. Trump for President, Inc. ("Trump Campaign"), Edward Deck, and Fred Doucette have collectively referred to as the "Campaign Defendants." Defendants Pittman, Cosio, Craig and Aldenberg and City of Manchester, (collectively referred to as "Manchester Defendants.") Trump Organization, LLC and The Trump Organization, Inc. together, collectively referred to as "Trump Companies." XMark, LLC (Arizona) and XMark LLC (North Carolina), collectively referred to as "XMark Companies." A clerical error resulted in two paragraphs called Paragraph 55 in Second Amended Complaint, (Doc 75., 05/22/2019). For simplicity, they will be referred to as 55a and 55b respectively.

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.

ANALYSIS

Three of Defendant No Labels contentions are based upon the fiction that the Manchester Defendants were not its employees or agents, that they were independent contractors, and that No Labels did not have control over them.

As required by Rule 12(b)(6), Plaintiff has alleged sufficient facts demonstrating that the Manchester Defendants were indeed hired by Defendant No Labels and that Defendant No Labels had control and authority over those

Defendants before, during, and after multiple torts were committed upon the Plaintiff.

Defendant No Labels' fourth contention is that, although they were the Producer of the event, the harm to the Plaintiff was not foreseeable and, therefore, Plaintiff entered the event at his own risk. This is absurd. In fact, No Labels should have held themselves to a higher standard of warning guests of dangers, having invited a disparate group of citizens, with the stated goal of the event to challenge those with opposing ideologies. No Labels invited the Plaintiff, a journalist, to their event to ask tough questions of the candidates and when he did ask a legitimate question, Trump Campaign staff and Manchester Defendants committed multiple torts on Plaintiff, while Defendant No Label's staff watched complaisantly.

Plaintiff has alleged sufficient facts demonstrating a plausible claim of negligence by Defendant No Labels who had a duty to protect those invited guests from harm by their employees or agents. Negligence can be both by action and/or omission. In this case, it is both. Defendant misconstrues the legal concept of foreseeability.

First, Plaintiff has alleged sufficient facts, in his Second Amended Complaint, that Defendant hired the Manchester Defendants as their security. Plaintiff has plausibly claimed the element of foreseeability in two different ways. As employees or agents of Defendant No Labels, the Manchester Defendants' actions are imputed to the Defendant No Labels. Contrary to Defendant's assertion that the hiring of the off-duty police (wearing police uniforms), were not the proximate cause of Plaintiff's injuries, Manchester Defendants' actions were the proximate cause of the Plaintiff's injuries. Accordingly, it was foreseeable that when Manchester Defendants grabbed Plaintiff for asking a legitimate question and threw him head first into a table and then threw him down again, he would be harmed.

Plaintiff has also alleged by facts, and provided substantiated evidence, in his Second Amended Complaint, that it was foreseeable that hiring Manchester Police/ Manchester Defendants, with a very extensive and long record of violent acts and torts against citizens, would commit multiple torts against the Plaintiff, as they surely did. Plaintiff has also alleged facts, that it was foreseeable that Defendant No Labels omissions were the proximate cause of Plaintiff's injuries.

Defendant No Labels, as the Producer of the event, the one with authority and control, the one that had invited the Plaintiff journalist, should have been running the questioning of the candidates, but instead allowed Defendant Deck to deceive Plaintiff as to the location of the microphone. Then, as Defendant Deck and the other tortfeasors kettled Plaintiff, as he futilely asked where the microphone was, multiple members of Defendant No Labels' staff watched listlessly. Then, when the Manchester Defendants and Defendant Deck grabbed Plaintiff, Defendant No Labels staff

watched without saying or doing anything. And, when Manchester Defendants threw the Plaintiff into a table head first and down again while Deck shouted expletives at him, No Labels did nothing. A sure display of negligence by omission.

No Labels invited partisan individuals of different ethnic, racial and religious identities to an event featuring Defendant Trump, who is known for scapegoating different ethnicities. Add to this, Trump's security apparatus known for violence and Manchester Police with their long record of committing torts on the public, and the situation was a powder keg in the making, which No Labels is negligent for not foreseeing. Plaintiff has also alleged facts demonstrating foreseeability by Defendant No Labels, as the Producers of the event and with authority over all personnel there, permitting known violent persons, in Defendant Trump's security detail, to participate in the event and to engage and commit multiple torts on the Plaintiff.

DEFENDANTS THE CITY OF MANCHESTER/ MANCHESTER DEFENDANTS WERE EMPLOYEES AND AGENTS OF NO LABELS AND THEREBY DEFENDANT NO LABELS IS VICARIOUSLY LIABLE FOR THE ACTIONS OF THE DEFENDANT TORTFEASORS

Defendant No Labels claims that it is not liable for the tortious conduct of Defendants Pittman, Cosio, Craig and Aldenberg (the Manchester Defendants), because they were "independent contractors" of No Labels rather than agents or employees of No Labels dressed as police and wearing a badge.

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 that reasonably infer that Manchester Defendants were employed and paid by Defendant No Labels to support, protect, serve said Defendant No Labels 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 No Labels had control over Defendants Pittman, Cosio, Craig and Aldenberg/ The Manchester Defendants. Not only did No Labels have control over the Manchester Defendants here, they acted to further their interests, and did so while wearing Manchester Police badges/ acting under color of law, (as provided by 42 U.S.C. §1983).

The Second Amended Complaint (Doc. 75, 05/22/2019), makes clear the dominion Defendant No Labels had over the Manchester Defendants with statements such as, "Defendant No Labels' [staff-member, Ryan] Clancy made it clear that though candidates could bring their own security, that those candidate security forces did not have any kind of authority over Defendant No Labels, stating, 'it was our event—We were hosting it. And we had security.'" Doc. 75 at ¶86. "Clancy affirmed that Defendant No Labels had hired four off-duty Manchester Police Officers." *Id.* at ¶87. Even though the Manchester Defendants were not on duty, as Defendant Pittman wrote in his affidavit, "I Officer Pittman was in the uniform," meaning that he was wearing his Manchester Police uniform, and acting under color of law. *Id.* at Appendix 16.

On October 12, 2015, none of the Manchester Defendants actions were independent of Defendant No Labels'

right to control. Additionally, Defendant No Labels, through members of it's leadership, such as Ryan Clancy, could at any time have prevented or deterred Manchester Defendants from committing the torts on the Plaintiff. No Labels' Ryan Clancy watched as the numerous torts were unfolding right in front of him. *Id.* at ¶86. Clancy witnessed the attack, acknowledging it caused suffering, saying, "'I saw what happened to you while you were there, which sucks and I'm sorry that that happened,' and, 'it isn't right.'" *Id.* at ¶86.

Does anyone doubt whether or not Defendant No Labels, had the power and control over the situation at an event called "No Labels Problem Solvers," or that the Defendant Tortfeasors were acting within the scope of that employment? Clearly, Defendant Deck collaborated with Defendant Pittman, (who was being paid by No Labels), "each grabbing an arm of Plaintiff and assaulting and battering him are strong inferences of a mutual understanding or conspiracy among the Defendants." *Id.* at ¶ 168. Additionally, Defendant Tortfeasors were conducting their affairs on their radio headsets at the behest and direction of Defendant No Labels. "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 No Labels has respondeat superior liability. The Manchester Defendants were clearly at the event representing and supporting Defendant No Labels, and felt obliged and empowered to assault and batter the Plaintiff resulting in his injuries. Defendant Pittman's manner, his actions, his words, his Manchester Police uniform, and No Labels' acknowledgement that he was hired as security, demonstrate clearly that he was employed and/or agent of Defendant No Labels at that event.

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 No Labels. At the very least, this is a matter for a fact-finder or a jury to decide.

Plaintiff has alleged a plausible set of facts and supporting evidence that Defendant No Labels 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 No Labels and liability should extend to the Defendant No Labels. It would be inherently unjust for this Court

to permit Defendant No Labels 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, Defendant's 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, MANCHESTER DEFENDANTS/ POLICE OFFICERS, TO DEPRIVE PLAINTIFF OF HIS CIVIL RIGHTS

Plaintiff has alleged sufficient facts to state plausible claims that Defendant No Labels is liable as provided for by 42 U.S.C. 1983 under three theories: 1) Under the legal theory of respondeat superior, Defendant No Labels is liable for the actions of its employees or agents, Defendant Manchester Police; 2) Courts have held that private parties are joint tortfeasors where they employ state officials for a common purpose; 3) No Labels employees and/or agents participated jointly in the multiple civil rights violations on the Plaintiff with the Manchester Police/ Manchester Defendants by their acts and omissions.

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 42 U.S.C. §1983. 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 Defendant No Labels acted jointly with Manchester Defendants (who were wearing their police uniforms), 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 Plaintiff's civil rights between Defendant No Labels and Manchester Defendants and others, from when, "No Labels' staff engages in unwanted touching with Plaintiff," (Doc 75 at ¶ 45), to when Defendant Pittman, "grabbed Plaintiff from behind without warning," (*Id.* at ¶ 109), brutally assaulting Plaintiff, to when the Manchester Defendants, "conferred regarding Plaintiff's desire to file a complaint," (*Id.* at ¶ 121), (likely with other Defendants), and "often communicating through radios and headset apparatus," (*Id.* at ¶ 168), to when Manchester Defendants "arrested Plaintiff in retaliation" (*Id.*) There was a meeting of the minds and/or joint action.

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. Campaign Defendants 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. "Defendants Deck, Pittman and Cosio push Plaintiff a few more feet, eventually aggressively throwing Plaintiff to the ground." *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 tacit approval of Defendant No Labels as torts unfolded in front of multiple No Labels employees is on full display as evidenced by allegations in Second Amended Complaint such as, "An employee of Defendant No Labels wearing a yellow staff badge casually watches doing nothing to intervene," (*Id.* at ¶ 52) and "At least three employees of Defendant No Labels can be seen (on video) wearing green No Labels shirts with yellow No Labels badges, casually watching Plaintiff being assaulted but failing to speak up, and doing nothing to intervene," (*Id.* at ¶ 56). Most indicative of the tacit approval by No Labels are the comments by No Labels' Ryan Clancy who said, "I saw what happened to you… it isn't right." (*Id.* at ¶ 86.)

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. 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."

1. PLAINTIFF HAS CORRECTLY PLED THAT DEFENDANT NO LABELS COMMITTED ASSAULT OR INTENDED TO COMMIT ASSAULT ON THE PLAINTIFF (COUNT I)

Defendant No Labels would have the court believe that, "the conduct on which these claims are premised was allegedly committed by individuals who were not, and are not alleged to have been employees or agents of No Labels."

To the contrary, the employer/employee relationship is clearly alleged, "[No Labels' Ryan] Clancy affirmed that Defendant No Labels had hired four off-duty Manchester Police Officers." Doc. 75 at ¶87.

Plaintiff alleged sufficient facts that he had established a prior relationship with No Labels when he "sought press credentials." Doc 75, ¶ 1. No Labels is liable for the unknown member of No Labels staff who "engages in unwanted touching with Plaintiff," (*Id.* at ¶45), as well as No Labels Defendants who, "created a human wall or 'kettle,' preventing Plaintiff from returning to his seat." *Id.*at ¶103. The conduct of the unknown the No Labels employee who engaged in unwanted touching is at least in part responsible for the subsequent events. As stated in the Second Amended Complaint, "No Labels and other unknown individuals did intend to cause apprehension of physical contact with Plaintiff through their physical actions and threatening tones of voice and words and did conspire together to threaten Plaintiff with physical contact if he attempted to return to his seat and thereby assaulted Plaintiff as provided by New Hampshire state law." *Id.* at ¶108.

Defendant No Labels should be held vicariously responsible for the tortious acts of its unidentified No Labels employees as well as the Manchester Defendants since they were acting within the scope of their employment when their tortious acts injured the plaintiff. (1) It was the kind of work they are employed to perform; (2) The torts occurred substantially within the authorized time and space limits; and (3) the torts were actuated, at least in part, by a purpose to serve the employer, No Labels. Defendant would have the court believe that Plaintiff, " fail to plead that he suffered any injury, yet Plaintiff clearly alleges the opposite, "On October 12, 2015, at the No Labels Problem Solvers event in Manchester, New Hampshire, Defendants intended to cause harmful contact or apprehension of harmful contact to the Plaintiff without consent or justification, whereby Defendants assaulted Plaintiff causing damages to Plaintiff." *Id.* ¶99.

Further proof of substantial certainty that the threats of harmful contact would result in harmful contact is the fact that Plaintiff was subsequently brutally battered by 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 No Labels as provided by New Hampshire law. No Labels is also liable under respondeat superior because Manchester Defendants were employees or agents of No Labels. Plaintiff has included evidence of assault in support in Doc 75., Appendices 1-16. Accordingly, Defendant's motions to dismiss should be denied.

2. PLAINTIFF HAS ALLEGED FACTS SUFFICIENT TO STATE A CLAIM THAT DEFENDANT NO LABELS COMMITTED THE TORT OF BATTERY (COUNT II)

As alleged previously, Manchester Defendants were employed by No Labels, at the time of batteries, said batteries were actuated to serve their employer.

Plaintiff alleged sufficient facts for a claim of battery through statements such as, "Defendant Pittman [employed by No Labels] grabbed Plaintiff from behind." Doc. 75 at ¶ 65. "Pittman throw[s] 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." *Id* at ¶ 55b.

"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.)

Plaintiff has alleged sufficient facts to make a plausible claim of battery by Defendant No Labels who is liable under respondeat superior because Manchester Defendants were employees or agents of No Labels. Plaintiff has included evidence of battery in support in Doc 75, Appendices 1-16. Accordingly, Defendant's motions to dismiss should be denied.

3. THE PLAINTIFF HAS ALLEGED FACTS SUFFICIENT TO STATE A CLAIM THAT DEFENDANT NO LABELS COMMITTED THE TORT OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS ON PLAINTIFF (COUNT III)

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… 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." Bethany T.v.Raymond Sch. Dist. with Sch. Admin. Unit 33 Case No. 11-cv-464-SM (D.N.H. May. 10, 2013).

Second Amended Complaint alleges intentional recklessness conduct. Defendant Pittman is an employee or agent of Defendant No Labels. No Labels hired Manchester Defendants. As alleged in Second Amended Complaint." Defendants, "make a human wall." Doc. 75 at ¶ 43. Defendants Deck and Pittman, "throw Plaintiff head-first into a table

knocking it over." *Id.* at ¶ 53. Outrageous.

Later, Manchester Defendants, "arrested Plaintiff in retaliation." *Id* at ¶ 121. Outrageous. Defendant Pittman engaged in a cover-up when he, "files a police report/ affidavit which is full of obvious factual inaccuracies which can be easily disproven." *Id.* at ¶ 65. The false statements regarding Plaintiff resulted in publications publishing articles such as "Man Thrown Out During Trump Speech." *Id.* at ¶ 68. This caused, "severe emotional distress on the Plaintiff." *Id* at ¶ 129. "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. Manchester 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 No Labels who are liable under respondeat superior because Manchester Defendants were employees or agents of Defendant No Labels. Plaintiff has included evidence of intentional infliction of emotional distress in support in Appendices 1-16 of Doc. 75. Accordingly, Defendant's motions to dismiss should be denied.

4. THE PLAINTIFF HAS ALLEGED FACTS SUFFICIENT TO STATE A CLAIM THAT DEFENDANT NO LABLES IS LIABLE FOR NEGLIGENCE (COUNT IV)

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, "Defendants owed a duty of ordinary care to keep the Plaintiff safe from assault and battery while attending the No Labels Problem Solvers event." Doc 75. at ¶ 134. "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 No Labels. Defendant No Labels owed a duty of care. The Defendants, "breached that duty of care and their breach proximately caused the Plaintiff's injuries." *Id.* at ¶ 134.

"Defendant No Labels employees, during the scope of their employment either participated, conspired,

cooperated, or assented to the assaults committed against the Plaintiff and Plaintiff's injuries were proximately caused by the failure of No Labels employees to intervene or prevent those injuries. Upon information and belief, statements by Defendant No Labels' employees Ryan Clancy and Sam Boswell indicate gross negligence on the part of Defendant No Labels; Defendant No Labels encouraged rowdy behavior and shouting from the event organizers, and failed to vet their own hired security, consisting of off-duty police officers." *Id.* at ¶ 141. The Second Amended Complaint (Appendix 4) lists dozens of cases of police misconduct, by the Manchester Police which Defendant No Labels should have taken into consideration before hiring police officers from a department with such a troubled history.

The fourth and fifth sentences of ¶164 of the Second Amended Complaint state, "Of the documented years, available to the public, (2008-2017), there were at least 96 claims of rudeness/ conduct unbecoming (21 substantiated), 35 allegations of ineffective service (22 substantiated), 41 claims of unnecessary/ excessive force (2 substantiated), 62 allegations of Improper police action/ Improper conduct/ unlawful conduct (46 substantiated), and 56 claims of Neglect of Duty, (45 substantiated). Other claims of misconduct included (but is not limited to illegal activity, unlawful conduct, unlawful arrest, threatening behavior, Police Harassment, Untruthfulness, theft, evidence tampering, ineffective police service, and racial bias." In Manchester Defendants Answer, Doc. 101, they state, "The fourth and fifth sentences of the first paragraph of Paragraph 164 cite to Manchester Police Internal Affairs Investigation reports which speak for themselves."

The second paragraph of ¶164 of the Second Amended Complaint states, "Defendant City of Manchester has permitted its subordinates to make retaliatory arrests as in the cases of Kean v Manchester and Valentin v Manchester. Defendant City of Manchester has permitted its subordinates to commit multiple acts of assault, and even hit-and-runs, indicating it has not properly trained its officers in protecting citizen's civil rights. There was the 2010 bar brawl at Strange Brew, involving Officer Michael Buckley, Officer Jonathan Duchesne, Officer Matt Jajuga and Lt. Ernie Goodno. Officer Ryan Nardone was found guilty of assault in 2010. In 2013 Officer Steven Coco was found guilty of hitting two pedestrians with his Police SUV and leaving the scene. Manchester Officer Christian Horn was charged with felony assault in 2014. Officer William Soucy was charged with assault in 2013. Officer Nathan Robert Linstad was charged with assault in 2012." The Manchester Defendants deny the allegations contained in the first two sentences of the second paragraph of ¶ 164. However, Manchester Defendants admit that the incidents listed in the remainder of the paragraph took place.

Plaintiff has alleged sufficient facts to make a plausible claim of Negligence by Defendants No Labels as provided by New Hampshire law. No Labels is also liable under respondeat superior because Manchester Defendants were employees or agents of No Labels. Plaintiff has included evidence of negligence in support in Appendices 1-16 of Doc. 75. Accordingly, Defendant's motions to dismiss should be denied.

5. THE PLAINTIFF HAS ALLEGED FACTS SUFFICIENT TO STATE A CLAIM THAT DEFENDANT NO LABLES IS LIABLE FOR NEGLIGENT HIRING, TRAINING, SUPERVISION AND RETENTION (COUNT V)

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).

Restatement (Second) of Agency § 250, cmt. b. Section 213 provides: A person conducting an activity through servants or ***other agents*** is subject to liability for harm resulting from his conduct if he is negligent or reckless: (a) in giving improper or ambiguous orders of in failing to make proper regulations; or (b) in the employment of improper persons or instrumentalities in work involving risk of harm to others: (c) in the supervision of the activity; or (d) in permitting, or failing to prevent, negligent or other tortious conduct by persons, whether or not his servants or agents, upon premises or with instrumentalities under his control. Restatement (Second) of Agency §213 (1958) (adopted as New Hampshire law in *Trahan- Laroche*, 139 N.H. at 485). (Emphasis added.)

As stated earlier, "Defendants owed a duty of ordinary care to keep the Plaintiff safe from assault and battery while attending the No Labels Problem Solvers event." Doc. 75 at ¶ 134. "Defendants… throw Plaintiff head-first into a table knocking it over." *Id.* at ¶ 53. Surely Plaintiff made sufficient allegations that No Labels were negligent or reckless in giving improper or ambiguous orders by stating No Labels employees gave no orders at all while multiple torts by Manchester Defendants were unfolding in front of them. Surely No Labels was negligent when they watched multiple torts by Manchester Defendants and did nothing, as described in Doc. 75 at ¶¶ 52, 54, 56, 58 and 86.

No Labels' Ryan Clancy who said he, "witnessed the attack, acknowledging it caused suffering, saying 'it isn't right.'" Doc. 75 at ¶ 86. "An employee… watches doing nothing to intervene." *Id.* at ¶ 52. "At least three employees…

casually watching Plaintiff being assaulted but failing to speak up, and doing nothing to intervene." *Id.* at ¶ 56. Surely Plaintiff made sufficient allegations that Defendant No Labels were negligent or reckless in the employment of improper persons or instrumentalities in work involving risk of harm to others by listing the massive string of abuses by Manchester Defendants as found by Manchester Police Internal Affairs reports and as stated in Doc. 75, ¶ 164, and already stated previously.

Surely No Labels knew or should have known, that when Manchester Defendants were brought into contact or association with the public, that Manchester Defendants would be likely to commit intentional misconduct, (as they did). Surely, No Labels was negligent in hiring the dozens of other employees at the event who did and said nothing as violent torts were unfolding.

Plaintiff has alleged sufficient facts to make a plausible claim of negligent hiring, training, supervision and retention by Defendant No Labels as provided by New Hampshire law. No Labels is also liable under respondeat superior because Manchester Defendants were employees or agents of No Labels, as established previously. Plaintiff has included evidence of negligent hiring, training, supervision and retention in support in Appendices 1-16 of Doc. 75. Accordingly, Defendant's motions to dismiss should be denied.

6. THE PLAINTIFF HAS ALLEGED FACTS SUFFICIENT TO STATE A CLAIM THAT DEFENDANT NO LABLES IS LIABLE FOR FRAUD (COUNT VI)

Alexander v. Fujitsu Bus. Comm. Sys., Inc., 818 F. Supp. 462, 467 (D.N.H. 1993) states, "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."

Plaintiff has alleged sufficient facts to show that Defendant Aldenberg [employed by No Labels] misrepresented a material fact to the Plaintiff, knowing it to be false when he told Plaintiff, "you are not being detained," (Doc. 75 at, ¶ 61), and Defendant Craig concurs, saying, "you can leave." *Id.* Aldenberg continues his deceit when Plaintiff asks Aldenberg, "to file a complaint against those that assaulted and battered him… Defendant Aldenberg takes notes in his notebook for the complaint. Defendant Aldenberg agrees to retrieve Plaintiff's lost video camera battery in the Radisson Hotel." *Id.* at ¶ 62.

Plaintiff has alleged sufficient facts to show that Aldenberg said these things with fraudulent intent knowing that the plaintiff would act on it, as the Plaintiff did when, "Plaintiff, of his own accord, sits on a public park bench waiting for Defendant Aldenberg to return with the battery." *Id.* at ¶ 63. Plaintiff, without knowledge of its falsity, detrimentally relied on the misrepresentation. Being deceived into believing that Aldenberg wanted to help Plaintiff, Plaintiff shouted to Defendant Aldenberg, "to keep Defendant Craig away from him. Defendants Aldenberg, Craig, and Pittman arrest Plaintiff." *Id.* at ¶ 64.

Plaintiff has alleged sufficient facts to make a plausible claim of fraud/ intentional misrepresentation by No Labels who are liable under respondeat superior because Manchester Defendants were employees or agents of Defendant No Labels. Plaintiff has included video and other evidence of intentional misrepresentation/ fraud in support in Appendices 1-16 of Doc. 75. Accordingly, Defendant's motions to dismiss should be denied.

7. THE PLAINTIFF HAS ALLEGED FACTS SUFFICIENT TO STATE A CLAIM THAT DEFENDANT NO LABLES IS LIABLE FOR FALSE IMPRISONMENT (COUNT VII)

Farrelly v. City of Concord, 168 N.H. 430, 445 (2015) states, "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 show that Manchester Defendants, (who were employed by No Labels at the time), acted with the intent of confining Plaintiff within boundaries fixed by the defendant, and that Manchester Defendants act directly resulted in the plaintiff's confinement when he stated, "Defendants Aldenberg, Craig, and Pittman arrest Plaintiff." Doc 75. at ¶ 64.

Plaintiff has alleged facts sufficient to show that Plaintiff was conscious of or harmed by the confinement when he stated, "I was thrown to the ground twice, and later arrested without justification." Doc. 75 at Appendix 1D (Sam Boswell.)

Plaintiff has alleged facts sufficient to show that Manchester Defendants acted without legal authority, when Plaintiff stated 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.

Plaintiff has alleged sufficient facts to make a plausible claim of false imprisonment by Defendants No Labels who are liable under respondeat superior because Manchester Defendants were employees or agents of Defendant No Labels. Plaintiff has included evidence of false imprisonment in support in Appendices 1-16 of Doc. 75. Accordingly, Defendant's motions to dismiss should be denied.

8. THE PLAINTIFF HAS ALLEGED FACTS SUFFICIENT TO STATE A CLAIM THAT DEFENDANT NO LABLES IS LIABLE FOR CIVIL RIGHTS VIOLATION, 42 U.S.C. §1983 (Unreasonable Seizure-Terry Stop and Frisk, Fourth Amendment violations) (COUNT VIII)

As stated previously, "Defendants owed a duty of ordinary care to keep the Plaintiff safe." Doc 75. at ¶ 134.

Plaintiff has alleged sufficient facts in Doc. 75, stating, "Defendants Deck, Pittman, Craig, Cosio, and Aldenberg, under color of law, exercised an unreasonable stop and detention upon the Plaintiff when they prevented Plaintiff from returning to his seat and grabbed him from the hall and threw him into a table and then again to the floor when Plaintiff attempted to stand back up. At that time, under the totality of the circumstances, Defendants did not have a reasonable suspicion that illegal activity on the part of Plaintiff had occurred or was about to occur in violation of 42 U.S.C. §1983 and the fourth amendment. Plaintiff had merely asked Defendant Trump a question at a Question and Answer session, this in no manner rises to the level of a crime worthy of a stop or detention by the Defendants. In fact, after being thrown down twice, Plaintiff asked if he was being detained and for what he was being detained. At that point, Defendant Aldenberg came along and told Plaintiff that he could leave or was free to go. Plaintiff then left the property freely. This series of events demonstrates that Defendants had no reasonable suspicion to stop or detain Plaintiff for any crime, but were merely using excessive force under color of law. Further, at no time during the initial detainment did Defendants frisk Plaintiff for a weapon or contraband as in a normal Terry-type stop and frisk because was not a professional police action, this was a criminal assault and battery by the Defendants." Doc 75. at ¶ 158.

Plaintiff has alleged sufficient facts to make a plausible claim of Unreasonable Seizure-Terry Stop and Frisk by Defendants No Labels who are liable under respondeat superior because Manchester Defendants were employees or agents of No Labels. Plaintiff has included evidence in support in Appendices 1-16 of Doc. 75. Accordingly, Defendant's motions to dismiss should be denied.

9. THE PLAINTIFF HAS ALLEGED FACTS SUFFICIENT TO STATE A CLAIM THAT DEFENDANT NO LABLES IS LIABLE FOR CIVIL RIGHTS VIOLATION, 42 U.S.C. §1983 (Unreasonable search and seizure/ Excessive Force) (COUNT IX)

As stated previously, "Defendants owed a duty of ordinary care to keep the Plaintiff safe." Doc 75. at ¶ 134.

Plaintiff has alleged sufficient facts in Doc. 75, stating, "Through the use of excessive force under the color of law, Defendants violated Plaintiff's Fourth Amendment right to be free from unreasonable search and seizure, as provided for by 42 U.S.C. §1983. Defendants Pittman and Deck used unreasonable force and excessive force by grabbing Plaintiff by the arms, hauling him past the seating area into the back corridor with great force, throwing Plaintiff into a table head first and then throwing Plaintiff down again as he attempted to stand back up. Defendants Pittman, Deck and Cosio used unreasonable force and excessive force by throwing Plaintiff to the floor after knocking over the table." Doc 75. at ¶ 166.

Plaintiff has alleged sufficient facts to make a plausible claim of Unreasonable search and seizure/ Excessive Force by Defendants No Labels who are liable under respondeat superior because Manchester Defendants were employees or agents of Defendant No Labels. Plaintiff has included evidence in support in Appendices 1-16 of Doc. 75. Accordingly, Defendant's motions to dismiss should be denied.

10. THE PLAINTIFF HAS ALLEGED FACTS SUFFICIENT TO STATE A CLAIM THAT DEFENDANT NO LABLES IS LIABLE FOR CIVIL RIGHTS VIOLATION, 42 U.S.C. §1983 (Freedom of Speech, First Amendment Violation) (COUNT X)

As stated previously, "Defendants owed a duty of ordinary care to keep the Plaintiff safe." Doc 75. at ¶ 134.

Plaintiff has alleged sufficient facts in Doc. 75, stating, "Due to Defendants [Manchester Defendants] violations of his civil rights under color of law, Plaintiff was unable to video tape or publish his material as he had planned. Accordingly, Defendants' actions infringed upon his First Amendment press freedoms and were a proximate cause of his injuries." Doc 75. at ¶ 171.

Plaintiff has alleged sufficient facts to make a plausible claim of Civil Rights Violation, 42 U.S.C. §1983 (Freedom of Speech, First Amendment Violation) by Defendants No Labels who are liable under respondeat superior because

Manchester Defendants were employees or agents of Defendant No Labels. Plaintiff has included evidence in support in Appendices 1-16 of Doc. 75. Accordingly, Defendant's motions to dismiss should be denied.

11. THE PLAINTIFF HAS ALLEGED FACTS SUFFICIENT TO STATE A CLAIM THAT DEFENDANT NO LABLES IS LIABLE FOR CIVIL RIGHTS VIOLATION, 42 U.S.C. §1983 (First Amendment, Freedom of Religion) (COUN T XI)

As stated previously, "Defendants owed a duty of ordinary care to keep the Plaintiff safe." Doc 75. at ¶ 134.

Plaintiff has alleged sufficient facts in Doc. 75, stating "Defendants in this case, violated Plaintiffs First Amendment right to Freedom of Religion when they singled him out to be denied a microphone and took him away and assaulted and battered him due to his religious dress, manner, and previous religious speech." *Id.* at ¶ 177. "The First Amendment protection of religion applies to events open to the public, such as the No Labels event, and participants cannot be excluded based on religious speech, physical appearance, manner or dress even thought the event is conducted on private property." *Id.* at ¶ 178.

Plaintiff has alleged sufficient facts to make a plausible claim of Civil Rights Violation, 42 U.S.C. §1983 (First Amendment, Freedom of Religion) by Defendants No Labels who are liable under respondeat superior because Manchester Defendants were employees or agents of Defendant No Labels. Plaintiff has included evidence in support in Appendices 1-16 of Doc. 75. Accordingly, Defendant's motions to dismiss should be denied.

12. THE PLAINTIFF HAS ALLEGED FACTS SUFFICIENT TO STATE A CLAIM THAT DEFENDANT NO LABLES IS LIABLE FOR CIVIL RIGHTS VIOLATION, 42 U.S.C. §1983 (Negligent Hiring and Retention) (COUNT XII)

To satisfy the elements of this Claim, Plaintiff incorporates the allegations set forth in his Fifth Claim for Relief, stating that Defendants negligently hired and retained Defendant Pittman and Manchester Defendants in violation of his civil rights as provided for by 42 U.S.C. §1983.

Plaintiff has alleged sufficient facts to make a plausible claim of Civil Rights Violation, 42 U.S.C. §1983 (Negligent Hiring and Retention**)** by Defendants No Labels who are liable under respondeat superior because Manchester Defendants were employees or agents of Defendant No Labels. Plaintiff has included evidence in support in Appendices 1-16 of Doc. 75. Accordingly, Defendant's motions to dismiss should be denied.

13. THE PLAINTIFF HAS ALLEGED FACTS SUFFICIENT TO STATE A CLAIM THAT DEFENDANT NO LABLES IS LIABLE FOR CIVIL RIGHTS VIOLATION, 42 U.S.C. §1983 (Negligent Supervision.) (COUNT XIII)

As stated previously, "Defendants owed a duty of ordinary care to keep the Plaintiff safe." Doc 75. at ¶ 134.

Plaintiff has alleged sufficient facts in Doc. 75, "Defendant Aldenberg violated Plaintiff's civil rights through negligent supervision of their subordinates. Defendants Pittman and Cosio violated Plaintiff's civil rights when they unreasonably and maliciously and violently assaulted and battered the Plaintiff. Defendant Aldenberg acquiesced in those violations by not properly filing a complaint of police brutality against Defendant Pittman when asked by Plaintiff, when he later had Plaintiff arrested to cover up the civil rights violations and for purposes of retaliation, and by failing to stop his subordinates from violating Plaintiff's civil rights, although he knew they were taking place, and through his other actions as previously plead." *Id.* at ¶ 190.

Plaintiff has alleged sufficient facts to make a plausible claim of Negligent Supervision by Defendants No Labels who are liable under respondeat superior because Manchester Defendants were employees or agents of Defendant No Labels. Plaintiff has included evidence in support in Appendices 1-16 of Doc. 75. Accordingly, Defendant's motions to dismiss should be denied.

14. THE PLAINTIFF HAS ALLEGED FACTS SUFFICIENT TO STATE A CLAIM THAT DEFENDANT NO LABLES IS LIABLE FOR CIVIL RIGHTS VIOLATION, 42 U.S.C. §1983 (MALICIOUS ABUSE OF PROCESS) (COUNT XIV)

As stated previously, "Defendants owed a duty of ordinary care to keep the Plaintiff safe." Doc 75. at ¶ 134.

Plaintiff has alleged sufficient facts in Doc. 75, "In this case, after the assaults and batteries by Defendants Pittman, Deck and Cosio, Plaintiff asked Defendants if he was being detained and why he was being detained. Initially, Plaintiff was told he was detained, with no explanation as to why. Then Defendant Aldenberg told Defendant that he could leave. Plaintiff then left the property and went to sit on a public park bench. Plaintiff sought to file charges against Defendants Pittman, Cosio, Craig and Deck with Defendant Aldenberg. Then Defendant Aldenberg left under pretense to search for Plaintiff's video battery, but in fact conferred with the other Police Defendants. When Defendant Aldenberg returned, Defendants arrested Plaintiff. It is clear that Defendants arrested Plaintiff in retaliation for his attempt to file charges, to conceal their own misconduct in connection with the assaults and batteries, in order to escape disciplinary charges and potential loss of employment, and to make it more difficult for Plaintiff to pursue legal action against the

Defendants or give evidence in any future investigation." *Id.* at ¶ 196.

Plaintiff has alleged sufficient facts to make a plausible claim of MALICIOUS ABUSE OF PROCESS by Defendants No Labels who are liable under respondeat superior because Manchester Defendants were employees or agents of Defendant No Labels. Plaintiff has included evidence in support in Appendices 1-16 of Doc. 75. Accordingly, Defendant's motions to dismiss should be denied.

15. THE PLAINTIFF HAS ALLEGED FACTS SUFFICIENT TO STATE A CLAIM THAT DEFENDANT NO LABLES IS LIABLE FOR CIVIL RIGHTS VIOLATION, 42 U.S.C. §1983 FALSE IMPRISONMENT (COUNT XV)

To satisfy the elements of this Claim, Plaintiff incorporates the allegations set forth in his Seventh Claim for Relief, stating that Defendants negligently hired and retained Defendant Pittman and Manchester Defendants in violation of his civil rights as provided for by 42 U.S.C. §1983.

Plaintiff has alleged sufficient facts to make a plausible claim of CIVIL RIGHTS VIOLATION, 42 U.S.C. §1983 FALSE ARREST/ FOURTH AMENDMENT by Defendants No Labels who are liable under respondeat superior because Manchester Defendants were employees or agents of Defendant No Labels. Plaintiff has included evidence in support in Appendices 1-16 of Doc. 75. Accordingly, Defendant's motions to dismiss should be denied.

16 THE PLAINTIFF HAS ALLEGED FACTS SUFFICIENT TO STATE A CLAIM THAT DEFENDANT NO LABLES IS LIABLE FOR FALSE ARREST/ FOURTH AMENDMENT VIOLATION (COUNT XVI)

As stated previously, "Defendants owed a duty of ordinary care to keep the Plaintiff safe." Doc 75. at ¶ 134.

As alleged in Doc. 75, "Defendants violated Plaintiff's Fourth Amendment rights when they falsely arrested him under color of law." *Id.* at ¶ 203.

Plaintiff has alleged sufficient facts to make a plausible claim of FALSE ARREST by Defendants No Labels who are liable under respondeat superior because Manchester Defendants were employees or agents of Defendant No Labels. Plaintiff has included evidence in support in Appendices 1-16 of Doc. 75. Accordingly, Defendant's motions to dismiss should be denied.

17 THE PLAINTIFF HAS ALLEGED FACTS SUFFICIENT TO STATE A CLAIM THAT DEFENDANT NO LABLES IS

LIABLE FOR RETALIATION (COUNT XVII)

As stated previously, "Defendants owed a duty of ordinary care to keep the Plaintiff safe." Doc 75. at ¶ 134.

As alleged in Doc. 75, "In this case, Plaintiff was exercising his First Amendment right to speech when he attempted to file a complaint with Defendant Aldenberg against other named Defendants for unlawfully detaining him and assaulting and battering him. In retaliation, Defendant Officers arrested Plaintiff in an attempt to intimidate and prevent Plaintiff from further attempts to file a complaint against Defendant." *Id.* at ¶ 207. Manchester Defendants, "arrested Plaintiff in retaliation." *Id* at ¶ 121.

Plaintiff has alleged sufficient facts to make a plausible claim of RETALIATION by Defendants No Labels who are liable under respondeat superior because Manchester Defendants were employees or agents of Defendant No Labels. Plaintiff has included evidence in support in Appendices 1-16 of Doc. 75. Accordingly, Defendant's motions to dismiss should be denied.

18. PLAINTIFF HAS ALLEGED FACTS SUFFICIENT TO STATE A CLAIM THAT DEFENDANT NO LABLES IS LIABLE FOR FAILURE TO INTERVENE (COUNT XVIII)

As stated previously, "Defendants owed a duty of ordinary care to keep the Plaintiff safe." Doc 75. at ¶ 134. As alleged in Doc. 75, "As provided for under 42 U.S. C. §1983, Defendants had a **duty** to intervene to prevent the use of excessive force by Defendants Pittman and Deck on Plaintiff. Defendants had a reasonable opportunity to intervene, but failed to do so and Plaintiff suffered injuries as a result of Defendants' failure to intervene." *Id.* at ¶ 210.

"At any time, from the time that Plaintiff was surrounded until Defendants Pittman and Deck grabbed him and threw him into the table and then threw him down again, Defendants had a reasonable opportunity to intervene, but instead, they did nothing. They just went along, although they had a duty to intervene." *Id.* at ¶ 211.

Plaintiff has alleged sufficient facts to make a plausible claim of FAILURE TO INTERVENE by Defendants No Labels who are liable under respondeat superior because Manchester Defendants were employees or agents of Defendant No Labels. Plaintiff had included evidence in support in Appendices 1-16 of Doc. 75. Accordingly, Defendant's 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

July 3, 2019