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 12, 2019

REPLY MEMORANDUM TO DEFENDANT XMARK'S MOTION TO DISMISS

PARTIES

Plaintiff incorporates by reference, (Reply to JPA III's Motion to Dismiss), section entitled, "Parties."

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

XMark Companies have brought motions to dismiss as provided by Rule 12(b)(6) claiming that Plaintiff failed to join said Defendants in his original complaint because he knew or should have known of Defendants within the three-year statute of limitations period and, therefore, Plaintiff should be barred from joining them in his first and second amended complaints. Defendants' arguments, although interesting, are contrary to law. Plaintiff's claims against XMark Companies established in first and second amended complaints are not time-barred by the statute of limitations and, therefore, Defendants' Motions to Dismiss should be denied as a matter of law.

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 video footage of the incident in the appendix to the complaint as well as other research and documentation.

RULE 15(c) "RELATE BACK" PROVISION PROVIDES THAT PLAINTIFF'S MAY ADD XMARK COMPANIES AS A PARTY IN HIS FIRST AND SECOND AMENDED

COMPLAINTS

Defendants incorrectly contend that because Plaintiff, as any member of the public, had access to public FEC records, Plaintiff could have discovered the connections between Defendants Deck, Trump for President, Trump, and the XMark Companies within the statutory period and, therefore, is time-barred.

First, flexibility in pleading is an important feature of the Federal Rules of Civil Procedure and Rule 15(a) provides that the court should freely give leave to amend when justice so requires. More specifically, however, the "relation back" provision of Federal Rule of Civil Procedure 15(c) is what is at issue here. Rule 15(c) attempts to balance the flexibility of Rule 15(a) and the adequacy of notice requirements of the statute of limitations. Rule 15(c) provides for "relation back" of amendments to the filing date of the original complaint for purposes of the statute of limitations where an amendment adding a party asserts "a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading," and where "the amendment changes the party or the naming of the party against whom a claim is asserted," the party to be brought in must have, within the period provided by Rule 4(m), "(i) received such notice of the action that it will not be prejudiced in defending on the merits; and (ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity."

Some courts have read Rule 15(c)(1)(C)(i) and (ii) together, holding that where a party received notice it will not be prejudiced because it would have been aware that it might still be added to the suit by amendment. Meredith v. United Air Lines, 41 F.R.D. 34, 39 (S.D. Cal. 1966); see also Bayerische Landesbank v. Aladdin Capital Mgmt. LLC, 289 F.R.D. 401, 406 (S.D.N.Y. 2013) (where amendment of investor's complaint added another company upon

discovering that its employees were involved, "[t]here is no requirement, however, that an amendment must replace a party in order to establish a mistake warranting relation back." These courts also held that adding a party constitutes a "change" of the party within the meaning of Rule 15(c)).

Other courts have considered (i) and (ii) as separate requirements, interpreting (i) as focusing only on the narrow question of whether the information received by the party to be brought in was adequate. Under Rule 15(c)(1)(C)(i) either actual or constructive notice are sufficient. The Third Circuit has held that mere service is adequate notice. Williams v. Army & Air Force Exchange Serv., 830 F.2d 27, 30 n.2 (3d Cir. 1987). Notice is sufficient where there is an identity of interests between the parties. Kinnally v. Bell of Pa., 748 F. Supp. 1136, 1141 (E.D. Pa. 1990) (sufficient notice where the party has reason to expect his involvement as a defendant when he hears of the commencement of litigation).

The First Circuit has upheld the identity of interests concept. The institution of the action serves as constructive notice of the action to the parties added after expiration of the limitations period, when the original and added parties are so closely related in business or other activities that it is fair to presume the added parties learned of the institution of the action shortly after it was commenced. The identity of interest principle is often applied where the original and added parties are a parent corporation and its wholly owned subsidiary, two related corporations whose officers, directors, or shareholders are substantially identical and who have similar names or share office space, past and present forms of the same enterprise, or co-executors of an estate. Hernandez Jimenez v. Calero Toledo, 604 F.2d 99, 102–03 (lst Cir. 1979).

Sufficient notice was even found where the named corporate defendant sent a letter to the company that had sold the allegedly defective product, advising that, in the view of its attorneys,

the latter company would likely be drawn into the action. Loveall v. Emp'r Health Servs., Inc., 196 F.R.D. 399, 403 (D. Kan. 2000).

The law is well-settled in corporate and officer settings as it is in this case. In Swartz v. Gold Dust Casino, Inc., 91 F.R.D. 543, 547 (D. Nev. 1981), the Court held that the Rule 15(c) relation back provision permitted an amendment to add Cavanaugh Properties, a partnership that owned and operated a casino, where previous service was perfected on the president of the casino corporation, where the casino president was also a partner in Cavanaugh Properties. The court stated, "If a person who receives notice of the legal action within the limitations period should know from the information received that he may be liable to the plaintiff by reason of the claim for relief asserted against another, he has received the notice required by the Rule." The dual capacities of the person originally served "supports the premise that the partnership had such notice of the lawsuit within the limitations period as should have induced it to commence investigations and other preparations to defend itself."

Likewise, where the same attorney represents both the person or entity served and the one proposed to be brought in through amendment, the latter may be considered to have received notice. Kirk v. Cronvich, 629 F.2d 404, 407–08 (5th Cir. 1980) (knowledge of attorney and deputy sheriff imputed to sheriff); Florence v. Krasucki, 533 F. Supp. 1047, 1053–54 (W.D.N.Y. 1982). Some courts have held that here must be some showing that the attorney(s) knew that the additional defendants would be added to the existing suit. Gleason v. McBride, 869 F.2d 688 (2d Cir. 1989). Nonetheless, the identity of interests test should be sufficient for adequacy of notice in this case.

` Rule 15(c)(1)(C)(i) may also require that the party to be brought in "received such notice of the action that it will not be prejudiced in defending on the merits." Lack of prejudice can

result from having received the notice, and therefore the adequacy of the notice is also relevant. Delay extending discovery and trial preparation may be deemed prejudicial when justice so requires. That is not the case here.

The Supreme Court has ruled that leave to amend should be granted under Rule 15(a) "[i]n the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc." Foman v. Davis, 371 U.S. 178, 182 (1962) "Prejudice arises when the amendment would '(i) require the opponent to expend significant additional resources to conduct discovery and prepare for trial; (ii) significantly delay the resolution of the dispute; or (iii) prevent the plaintiff from bringing a timely action in another jurisdiction. Soroof Trading Dev. Co. v. GE Microgen, Inc., 283 F.R.D. 142, 147 (S.D.N.Y 2012) (quoting Block v. First Blood Associates, 988 F.2d 344, 350 (2d. Cir. 1993)).

Essential to a finding of prejudice is whether the issues raised by bringing in a new party will be similar and will require much the same investigation and evidence as the claim against the original defendant. Where the same defenses will be made by the new defendant as would be made by the original defendant, prejudice will not be found. Roland v. McMonagle, No. 12 Civ. 6331, 2014 WL 2861433 (S.D.N.Y. June 24, 2014).

In addition to a plethora of case law supporting the addition of Defendants where there is adequacy of notice due to an identity of interests and lack of prejudice as we have here, due to the prompt filing of the amendments, Plaintiff's amendments also gain further support from the Supreme Court ruling in Krupski v. Costa Crociere S.p.A., 560 U.S. 538, 541 (2010), although not directly on point. In that case, the Court held that relation back under Rule 15(c)(1)(C)

depends on what the prospective defendant knew or should have known, not on the amending party's knowledge or timeliness in seeking to amend the pleading. The Court specifically rejected the idea that a plaintiff's "knowledge of a party's existence" constitutes an "absence of mistake." Krupski, 548–49 (majority opinion). The Court held that purpose of relation back in Rule 15(c) is "to balance the interests of the defendant protected by the statute of limitations with the preference expressed in the Federal Rules of Civil Procedure in general, and Rule 15 in particular, for resolving disputes on their merits." Krupski, 550.

In this case, Defendants XMark, LLC, located in North Carolina, (XMark NC) and Defendant XMark, LLC in Arizona (XMark AZ), collectively known as "XMark Companies, principally or solely owned by Defendant Edward Deck. In an October 2, 2015 affidavit in the case of Galicia v. Trump, (INDEX NO. 24973/2015E NYSCEF DOC. NO. 38) Defendant Deck swore, "I am the principal of XMark, LLC, which company provides security services on behalf of Donald J. Trump For President, Inc. (the 'Campaign')." Deck also testified in the same case that he was "hired to preform [sic] security services for the Trump Organization." INDEX NO. 24973/2015E NYSCEF DOC 342, Page 20. Hence, Defendant Deck and XMark Companies certainly have an identity of interest as provided for in Rule 15(c). Similarly, the addition of the Defendants the XMark Companies arise from the same case or controversy because Defendant Deck, participated in the violent and tortious assaults and batteries upon the Plaintiff as alleged in the complaint. For purposes of Rule 15(c) when Plaintiff served Defendant Deck, the principal of the XMark Companies, he knew or should have known that his Companies may be added as Defendants in this case. In fact, Plaintiff came to know about the Defendants XMark Companies after Feb 15, 2019, when Plaintiff attempted personal service on Defendant Deck at 280 Cochrane Castle Circle, Pinehurst, NC at what was perceived as Defendant Deck's residence

which apparently turned out to be the location of one of the XMark Companies. It was after that event that Plaintiff began to look at the FEC filings and saw hundreds of payments from Defendant Trump for President, Inc. to many entities with relation to the Trump Campaign including many to Defendant Trump, Defendant Deck and the XMark Companies.

Certainly, Defendants were not prejudiced by any delay or otherwise as they were added in the First and Second Amended Complaints well before any discovery or further preparations were needed. In fact, as soon as Plaintiff discovered that XMark NC was being paid as security for the No Labels Problem Solvers Conference, Plaintiff reached out to Defendant Deck's counsel, Bryan Gould, to alert him to the connection. On Mar 29, 2019, Plaintiff wrote, "Hi, Bryan/ Matt, I have one quick concern I was hoping we could address before signing off on your question about Mr. Doucette. In my amended complaint, I plan to join Mr. Deck's company, XMark, LLC. As you acknowledged in your motion to quash, I engaged a process server to deliver my papers on Feb. 14th and 15th at 80 Cochran Castle Circle, Pinehurst, North Carolina. Since this is the address that XMark, LLC lists as it's place of business on it's website XMark2.com, it would be reasonable to conclude that XMark, LLC effectively has notice, and joining them to my complaint should not prejudice their appearance."

In response, Bryan Gould responded, "We did speak with Mr. Deck, and he told us that XMark had no relationship with the campaign at the time of the events described in your complaint. In light of this, I would ask you to reconsider adding XMark as a defendant." Gould, (who claimed he did not represent XMark at the time), was actively trying to discourage joining Defendants XMark Companies to the lawsuit.

This naturally caused confusion and delay in joining XMark NC as a defendant, but upon further digging into FEC filings, it became clear that the statements made by Deck regarding

XMark Companies were not based in fact. The FEC filings proved this, and showed there was enough evidence that adding XMark NC was valid.

Plaintiff was clear with this court of his intention, writing in his April 3rd motion, "The brief backstory on that is that I had discovered what I believed to be evidence from the Federal Election Commission (FEC) indicating that Mr. Deck's company XMark, LLC was involved in the incident described in the complaint, as they had been hired for security services."

Shortly after that, Plaintiff joined XMark NC to the first amended complaint, and emailed at length with Matt Mortensen regarding additional XMark Companies owned by Edward Deck. Obviously Defendant Deck and his attorneys believed there was legitimacy to joining XMark Companies, because on May 8, 2019, Mortensen wrote, "Ed Deck is amenable to waiving service for XMark for both the Arizona and North Carolina addresses so that you can be certain all the bases are covered for service of process." The communications with Mortensen regarding the eight entities around the US called "XMark, LLC," and which ones should be joined continued until May 10, 2019.

As it turns out, Defendants XMark Companies are now represented by Attorney Gould and Matthew Mortensen of Cleveland, Waters & Bass. However, Gould and Mortensen would not concede that they would be their attorney until after Plaintiff attempted service on Defendants XMark Companies, and after he registered an appearance on their behalf. What's more, when Plaintiff asked Matthew Mortensen *which XMark Companies,* (since there are many entities named "XMark" registered throughout the United States), which were potentially involved in payments from Defendants Trump for President, Inc. and Defendant Trump and Defendants Trump Companies, Mr. Mortensen told Plaintiff that he would not reveal their corporate structure.

As the Supreme Court held in *Krupski*, the question for the Court here is not whether the Plaintiff knew or should have known of the Defendants, but whether the Defendants knew or should have known that except for their blatant subterfuge Plaintiff would have added the Defendants.

DEFENDANTS' CLAIM THAT PLAINTIFF KNEW OR SHOULD HAVE KNOWN OF DEFENDANTS' EXISTENCE DURING STATUTORY PERIOD IS INCORRECT.

Although Rule 15(c) is dispositive in this case and Defendants XMark Companies had adequate notice and were not prejudiced, Defendants claim that Plaintiff should have known of the connection of Defendant Edward Deck and XMark Companies during the statutory period because the FEC filings are public is misguided. It is true that FEC filings are publicly available. However, because the Trump Campaign made hundreds of payments to hundreds upon hundreds of companies, this is like suggesting that Plaintiff should be aware of all needles in all haystacks because haystacks are public. Would a reasonably diligent pro se litigant or any litigant understand the XMark connection by looking at FEC filings for the Trump Campaign? Absolutely not. By reading the FEC filings no person would understand a connection between the names Deck and XMark among all of the hundreds upon hundreds of payments and information. Until the time of service on Defendant Deck, Plaintiff had no choice but to take on faith, the October 12, 2015 affidavit of Defendant Manchester Police Officer Pittman, in which he stated that Defendant Deck was a Trump Security Officer, and making no mention of XMark Companies. On October 12, 2015, a sworn affidavit by Defendant Pittman, a Police Officer in the

City of Manchester. “At approximately 11:40 I was approached by a Trump Security Officer,” and “The security Officer was identified as Edward Deck (11/16/1954).” A reasonable person, (such as the Plaintiff), would understand this to mean that Defendant Deck worked for Defendant Trump, the Trump Campaign or “The Trump Organization,” not a mysterious unmentioned shell company called “XMark.”

DEFENDANTS FRAUDULENTLY CONCEALED THEIR EXISTENCE AND RELATIONSHIP TO DEFENDANT DECK

After attempting personal service on Defendant Deck at the 280 Cochrane Castle Cir., Pinehurst, North Carolina address, Plaintiff began researching the connection between Defendants XMark and Defendant Deck. Plaintiff discovered an XMark website, XMark2.com, that listed a Connecticut phone number for contact: (203-962-1922), but since then, all archival records of XMark2.com have been scrubbed, leaving no content for the years 2015 and 2019, and the website XMark2.com has become blank, with the exception of the word “pageok” in small letters. However, archival searches show that prior to the 2015 incident, XMark2.com listed it’s address and contact as: Pinehurst, North Carolina & Rye, New York, with telephone numbers 203-962-1922 or 914-625-6460 and email of info@xmark2.com. The North Carolina branch of the company was formed on March 30, 2017 according to the North Carolina Secretary of State Corporate Registry. However, Federal Election Commission (“FEC”) filings show that payments from the Trump Campaign were not being sent to Arizona, but primarily paid to the entity’s Greenwich address, at 47 Lafayette Place “care of Eddie Deck.” According to their motion to quash (Doc. 14), “Mr. Deck is a resident of Greenwich, CT.” Dozens of payments were made to 47 Lafayette Place.

See Appendix 12 of Second Amended Complaint, as well as Appendix of the doc.

Additionally, according to recent arrest reports, Defendant Deck was arrested twice in 2017. The first arrest was April 8, 2017 in Georgetown, SC, Case Number 5102P0201722. The arrest report claimed that Mr. Deck lived at 280 Cochrane Castle Cir., Pinehurst, NC 28374. The second arrest was July 1, 2017 in Georgetown, SC, Case Number: 6102P0497522. The arrest report claimed that Mr. Deck lived at 280 Cochrane Castle Cir., Pinehurst, NC 28374. In both arrests, Edward Deck is listed as a resident at the same address that XMark2.com used to publicly promote the company address while the website was still active. This is also the same address for XMark (South Carolina) listed with the Secretary of State Corporation Registry.

Defendant Deck and XMark Companies fraudulently concealed the connection between themselves when it appears they scrubbed their website after personal service was attempted on Feb 14, 2019 on Defendant Deck at the 280 Cochrane Castle Circle, Pinehurst, NC address. Courts have held that fraudulent concealment tolls the statute of limitations, Civil Action Nos. 4:05CV186LR, 4:06CV64LR (S.D. Miss. Jul. 27, 2006); Bartone v. Robert L. Day Co., 656 A.2d 221, 224-25 (Conn. 1995)(Defendants' concealment of the facts was for the purpose of obtaining delay in Plaintiff's joining them to the complaint).

There is sufficient evidence to show that Mr. Deck has attempted to hide his proper address, and his connection to XMark Companies. In the least, this should be a matter for a jury or a fact-finder.

PLAINTIFF'S AMENDMENT ADDING DEFENDANTS ALSO SUPPORTED BY THE NEW HAMPSHIRE "DISCOVERY RULE" EXEMPTION

Under New Hampshire's discovery rule exception, the statue of limitations had tolled until Plaintiff discovered XMark Companies' involvement. "Except as otherwise provided by law, all personal actions, except actions for slander or libel, may be brought only within 3 years of the act or omission complained of, except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of." RSA 508:4, I (1997). "N.H. Rev. Stat. Ann. § 508:4, I. The exception to the three year limitation period, which depends on discovery of the causal relationship between the injury and the complained of act, is known as "the discovery rule exception." Kelleher v. Lumber, 152 N.H.813, 824 (2005). Perez v. Pike Industries, Inc. gets more specific, stating, "This two-pronged rule requires that, before the statute of limitations will begin to run, the plaintiff must know or reasonably should have known that he has been injured and that his injury was proximately caused by conduct of the defendant. Id. Thus, the discovery rule exception does not apply unless the plaintiff did not discover, and could not reasonably have discovered, either the alleged injury or its causal connection to the alleged negligent act." Perez v. Pike Industries, Inc. 889 A.2d 27(N.H. 2005)

Plaintiff did not discover, and could not reasonably have discovered, that XMark Companies were Defendant Deck's "superior" who was responsible for the injury to the Plaintiff or the causal connection to the tortious acts upon the Plaintiff.

THE XMARK COMPANIES ARE THE "ALTER EGO" OF DEFENDANT EDWARD DECK AND THIS COURT SHOULD DETERMINE THAT FOR PURPOSES OF THIS MOTION THE STATUTE OF LIMITATIONS WAS TOLLED FOR THE XMARK DEFENDANTS WHEN PLAINTIFF FILED HIS ORIGINAL COMPLAINT

Defendant XMark Companies are shell companies or mere "alter egos" for Defendant Deck to shield himself from liability and protect his financial assets in anticipation of lawsuits such as this one. Defendant Deck uses himself and the XMark Companies interchangeably. There is no legal distinction between XMark NC and XMark AZ (even as defense has stated), except that on some days one Defendant XMark may receive payment and on other days Defendant Deck may decide that he receives payment.

In Galicia v. Trump, Gary Uher, so-called "partner" (in name only) with Defendant Deck in XMark, LLC testified that he was never paid by XMark, LLC. Galicia v Trump, Index No. 24973/2015E NYSCEF DOC. 342.

"At federal common law, "[t]he alter ego doctrine, like all variations of piercing the corporate veil doctrine, is reserved for exceptional cases." The doctrine applies "only if (1) the owner exercised complete control over the corporation with respect to the transaction at issue and (2) such control was used to commit a fraud or wrong that injured the party seeking to pierce the veil." Patz v. Supermarket CIVIL ACTION NO. 17-3465 SECTION: "E" (1) (E.D. La. Dec. 26, 2018) "Because state and federal alter ego tests are essentially the same, [the Fifth Circuit's] nondiversity alter ego cases apply state and federal cases interchangeably." Patz v. Supermarket CIVIL ACTION NO.17-3465 SECTION: "E" (1) (E.D. La. Dec. 26, 2018)

The only other employee of XMark Companies, Michael Sharkey, appears to work as a

so-called "Registered Agent" at an Arizona address which has no apparent relation to the day-to-day functions of the company, which allegedly has its headquarters at 280 Cochrane Castle Circle, Pinehurst, N.C, 28374, according to what could be discerned before the website, XMark2.com, was scrubbed.

Upon discovery, in addition to gathering evidence supporting the allegations of tortious conduct of Defendant Deck, Plaintiff will be pursuing further evidence that Defendants XMark Companies are mere "alter egos" of Defendant Deck, that they are interchangeable entities, mix assets, functions, representations and discovering where the assets gained from the brutal, tortious, and unconstitutional conduct of the Defendant Deck may be found.

EQUITABLE TOLLING

Similar to the jurisprudence previously stated applicable to Rule 15(c), Plaintiff ask the Court to apply the legal concept of equitable tolling to this case. That concept provides that if Defendants XMark Companies had notice of this suit and their liability from the original complaint and were not prejudiced by being added in the amended complaints, the Court should deny Defendants motion to dismiss and in the interests of justice grant Plaintiff's amendments adding Defendants to this lawsuit.

EQUITABLE ESTOPPEL

The legal principal of equitable estoppel provides that where Defendants hide or cover up the existence of a compromising relationship between themselves and other Defendants, the Defendants should be estopped or prevented from asserting a defense that would deny liability.

In this case, it is clear that Defendant Deck represented himself on many occasions as working for Defendants Trump and/or Trump for President, Inc. or the Trump Companies and not the XMark Companies. Further, through his attorney Mr. Gould, Defendant Deck represented that XMark "had no relationship with the campaign," regarding the violent and brutal attack on the Plaintiff." Likewise, it appears that after personal service was attempted on Defendant Deck in North Carolina, Defendant Deck had the XMark website scrubbed of information. Additionally, Plaintiff contends that Defendant Deck established XMark entities in many states to confuse and confound any person seeking redress of grievances against Defendants XMark or Defendant Deck just as Defendant Deck's employer Defendant Trump has established dozens of entities with many various complicated names and titles, many of which are mere shells of companies that are not truly functioning entities to confuse, delay, and prevent legitimate tortious actions against them.

REFERENCE/ COUNTS 1-13, 15

Many of the same issues are found and argued in many of the replies and motions, and so for economy please reference them. 1 Assault, 2 Battery, 3 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, 4 Negligence, 5 NEGLIGENT HIRING, TRAINING, SUPERVISION, RETENTION, 6 INTENTIONAL MISREPRESENTATION/ FRAUD, 7 FALSE IMPRISONMENT, 8 Unreasonable Seizure-Terry Stop and Frisk, Fourth Amendment violations, 9 Unreasonable search and seizure "Excessive Force," Fourth amendment violations, 10 Freedom of Speech, First Amendment Violation, 11 First Amendment, Freedom of Religion, 12 Negligent Hiring and Retention, 13 Negligent Supervision, 15 FALSE IMPRISONMENT-FOURTEENTH AMENDMENT.

CONCLUSION

Rule 15(c) clearly provides that the addition of XMark Companies to this lawsuit should be granted and Defendants' Motions to Dismiss should be denied. Defendants had adequate notice and were not prejudiced by their addition. Defendant Deck is the principal of the Defendant Companies and he expected that they may be added to this suit. In fact, Defendant Deck and his attorney, through word and deed, attempted to prevent, conceal, and delay addition of Defendant Companies (for what purpose yet to be uncovered) and it was only through the diligent research and insistence of the Plaintiff to uncover their falsehoods and deceptions that Plaintiff was able to justly add those Defendants. Further, New Hampshire's "discovery rule," the legal principles of equitable estoppel, and equitable tolling all support Plaintiff's amendments and contentions. For the above reasons, Plaintiff ask the Court to deny Defendants's Motions to Dismiss and allow the addition of Defendants XMark Companies as Defendants in this case.

Pro Se Plaintiff, Roderick Webber

Signed Rod Webber

July 12, 2019