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 15, 2019

REPLY MEMORANDUM TO MOTION TO DISMISS BY CAMPAIGN DEFENDANTS

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.

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, TO DEPRIVE

PLAINTIFF OF HIS CIVIL RIGHTS

In their motion, Campaign Defendants claim that they merely assisted Manchester Defendants in gently removing Plaintiff from the auditorium. As the video and other evidence will demonstrate, Campaign Defendants jointly acted with Manchester Defendants to brutally assault and batter Plaintiff "under color of law," for asking a legitimate question of Defendant Trump at a Q&A of the Presidential candidates at a venue leased by Defendant No Labels (not Campaign Defendants), thereby depriving Plaintiff of his civil rights, as provided for by the United States Constitution and 42 U.S.C. §1983.

Campaign Defendants contend that Plaintiff's 42 U.S.C. §1983 Civil Rights Claims fail to allege facts supporting a reasonable inference that the Campaign Defendants acted "Under Color of Law," and are thereby not liable. The entirety of Plaintiff's meticulously drawn chronological factual allegations are supported by recorded video, public records, affidavits sworn out by the Defendants, and other heavily researched reports and documentation. 42 U.S.C. §1983 provides that "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

The Supreme Court has held that private persons conspiring with local and state official(s) to deprive the Plaintiff of a federal right can be considered to be acting under "color of law" for purposes of Section 1983. In fact, Congress passed the "Ku Klux Klan Act of 1871," 42 U.S.C. §1983, to combat and provide redress for a vial ethos existing in the United States at that time. 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," and 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 §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)). 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 Supreme Court's references to the"conspiracy" test do not emphasize the overt-act-resulting-in-violation requirement. Adickes

v. S. H. Kress & Co., 398 U.S. 144, 152 (1970). (the relevant act in violation of the plaintiff's federal rights would necessarily have constituted an action by a co-conspirator in furtherance of the conspiracy); Hindes v. F.D.I.C., 137 F.3d 148, 158 (3d Cir. 1998) ("[F]ederal officials are subject to section 1983 liability when sued in their official capacity where they have acted under color of state law, for example in conspiracy with state officials").

In the Second Amended Complaint, Plaintiff has clearly alleged that Campaign Defendants acted jointly with Manchester Defendants to violate his federal rights. Plaintiff has also pled sufficient facts to demonstrate an express or implied "meeting of the minds" and sufficient acts in furtherance of the deprivation of his civil rights between Campaign Defendants and Manchester Defendants and others. Additionally, the video evidence clearly demonstrates Defendants jointly participating together to violate Plaintiff's civil rights. **None** of the Defendants were acting alone, they were acting together. "Defendant Doucette, Deck, Trump staff, and Unidentified Individuals make a human wall around Plaintiff blocking his return to his seat." Doc. 75 (05/22/2019) at ¶ 43. "Defendant Doucette says something into Defendant Deck's ear." *Id*. at ¶ 49. "Defendants Deck and Pittman throw Plaintiff head-first into a table knocking it over." *Id*. at ¶ 53. "Defendants Deck, Pittman and Cosio push Plaintiff a few more feet, eventually aggressively throwing Plaintiff to the ground as Defendant Deck swears loudly at Plaintiff." *Id*. at ¶ 55b. Defendant Aldenberg, "arrives and tells Plaintiff, 'you are not being detained,' and Defendant Craig concurs, saying, 'you can leave.'" *Id*. at ¶ 61. "Plaintiff, of his own accord, sits on a public park bench waiting for Defendant Aldenberg to return with the battery, but instead records Defendant Aldenberg conferring with Defendants Pittman, Cosio and Craig in front of the Radisson Hotel/ Expo Center." *Id*. at ¶ 63. "Defendants Aldenberg, Craig, and Pittman arrest Plaintiff." *Id*. at ¶ 64. The deprivation of Plaintiff's civil rights in

Manchester is a case study on how this and other type of incidents occur: the state or local authorities instigate, condone or participate in the deprivation of civil rights, others join in with a common purpose/agreement, in some instances whole populations participate in ritualistic crimes against another group or minority perceived as their enemies. 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 video of the event demonstrate Defendants' joint action in furtherance of the deprivation of Plaintiff's civil rights. Accordingly, Plaintiff has alleged a set of facts sufficient to state a claim that Defendants acted "under color of law." Plaintiff should be entitled to discover evidence supporting his well-pled allegations and this motion to dismiss should be denied against all Defendants."

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

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

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. 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). 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 video evidence, and FEC filings that reasonably infer that Defendants Deck and Doucette were employed and paid by Defendants Trump and Trump Campaign to support, protect, serve said Defendants in a master and servant relationship within the authorized time and space. Accordingly, in his second amended complaint, Plaintiff has correctly pled the elements of respondent superior liability as provided by New Hampshire common law.

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

Also, " 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);

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

plausible set of facts demonstrating Defendant Trump Campaign had control over Defendants Deck, Doucette, and Manchester Defendants. Not only did Donald J. Trump and the Trump Campaign have control over the Defendants here, they acted to further the interests of Trump Campaign and Defendant Trump. "According to the Federal Election Commission (FEC), Trump Campaign has made substantial monetary payments to Defendants named in this case, Donald J. Trump, Edward Deck, Fred Doucette, XMark Companies and The City of Manchester." Doc 75, at ¶ 4. A link to the FEC website was sent to counsel. Doc. 39 (04/03/2019) at page 8. (SEE APPENDICES 1-2, and Doc. 135 APPENDIX. 1)

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

On October 12, 2015, none of the Defendants actions were independent of Defendants Trump, Trump Campaign and Trump Companies right to control. Defendant Trump Campaign,

through it's leader, Defendant Trump, could at any time have prevented or deterred Defendants from committing the torts on the Plaintiff, especially since Defendants were, "often communicating through radios and headset apparatus." Doc. 75 at ¶ 168. Consequently, Plaintiff has plausibly alleged in his complaint such power and control in support of his claim that Defendant Trump Campaign has respondeat superior liability.

In support of the Plaintiff's allegations in his Complaint, Plaintiff cited Galicia v Trump. In that case, Justice Tapia found more than sufficient evidence of Defendant Trump's involvement in the controlling of security officers Defendant Edward Deck, Gary Uher, and Keith Schiller. Justice Tapia explained: "there is ample evidence of Defendant Trump's dominion and control over the other defendants." Galicia v Trump, INDEX NO. 24973/2015E NYSCEF DOC. NO. 342 Page 3, ¶ 8. (The larger quote at Doc. 136, page 15). Also compelling is an October 2, 2015 affidavit, in the case of Galicia v Trump, in which Defendant Deck wrote, "while conducting my duties and responsibilities to the Campaign, I observed a number of individuals… As part of my duties and responsibilities to the [Trump] Campaign I am tasked to utilize my extensive experience and training in law enforcement to assist in protecting personnel." INDEX NO. 24973/2015E NYSCEF DOC. NO. 38 ¶¶ 2, 3. Defendant Deck testified that he was "hired to preform [sic] security services for the Trump Organization." INDEX NO. 24973/2015E NYSCEF DOC 342, Page 20, (a scan of INDEX NO. 24973/2015E NYSCEF Doc 330 as an exhibit), (Deck tr at 27-32). Defendant Pittman testified in his affidavit (Doc. 75, at Appendix 16), "I was approached by a Trump Security Officer… The security Officer was identified as Edward Deck (11/16/1954)." Likewise, Doucette spoke about working for the campaign on TV and at Campaign events. Doc. 75, at Appendix 8, lists "Doucette speaks at rally in Hampton, NH." Doc. 75 describes how Doucette wore "a New

Hampshire State Representative pin, and a Trump Campaign staff pin." *Id*. at ¶¶ 44, 107. A direct link to FEC Campaign disbursements is provided in Doc. 39 (04/03/2019) at page 8. 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 must be treated as an employee of the hiring company. Plaintiff has alleged in Doc. 75 sufficient facts and evidence supporting the elements necessary to support a plausible claim of vicarious liability on the part of the Defendant Trump Campaign. At the very least, this is a matter for a fact-finder or a jury to decide. Accordingly, Defendants' motions to dismiss should be denied.

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

Defendants contend "To plead an assault claim under New Hampshire law, a plaintiff must allege that: (1) the defendant . . . intended to cause harmful or offensive contact to the plaintiff, and (2) the plaintiff must have been put in imminent apprehension of such contact," citing King v. Friends of Kelly Ayotte, 860 F. Supp. 2d 118, 129 (D.N.H. 2012), aff'd. (Apr. 5, 2013). In the tort of assault, intent is established if a reasonable person is substantially certain that certain consequences will result; intent is established whether or not the Defendant actually intended those consequences to result.

Plaintiff, in Doc. 75 has detailed that the Defendants caused harmful or offensive contact to the Plaintiff, putting him in imminent apprehension of such contact because "Plaintiff recognized Defendant Deck as one of the members of security staff of Defendants Trump and Trump Companies involved in violent assaults which were all over the headlines in the preceding weeks." *Id* at ¶100. This refers to the attack on Efrain Galicia, (Galicia v Trump). Plaintiff

attended several Trump rallies preceding Oct 12, 2015, where he filmed or documented either Deck, Doucette or Keith Schiller (from Trump Campaign). Those rallies listed in Doc. 75, Appendix 8: "Deck in Birch Run, MI" (8/11/2015), "Doucette speaks at rally in Hampton, NH," (8/14/2015), "Rochester rally" (9/17/2015), "Deck in Keene, NH" (9/30/2015).

Plaintiff's Complaint details the assaults on Oct 12, 2015 stating, "Defendant Doucette, Deck, Trump staff, and Unidentified Individuals make a human wall around Plaintiff." *Id* at ¶ 43. Defendant Deck, and other security staff from Trump Campaign, "intended to put Plaintiff in apprehension of imminent physical contact.'" *Id* at ¶ 103. "Defendant Deck gets within inches of Plaintiff's face, engaging in unwanted touching." *Id* at ¶ 46. Defendant Deck shows his intent by responding, "I'm going to break your (inaudible)." *Id* at ¶ 48. Defendant Deck further illustrates his intent by getting right in Plaintiff's face, saying, "You're going to see my name on your face," which Plaintiff interpreted to be a clear threat of violence." *Id* at ¶ 48. "Defendants Deck and Pittman throw Plaintiff head-first into a table knocking it over." *Id* at ¶ 53.

Plaintiff has sufficiently pled facts that Defendant Doucette "put Plaintiff in apprehension of imminent harmful contact." *Id* at ¶ 106. Doucette told plaintiff, "keep rolling," and, "You're not going to get the mic," *Id* at ¶ 44. Doucette wasn't prompting Plaintiff to "keep rolling" *on videotape*, as Defendants allege. He was telling Plaintiff to leave, while threatening police force by saying, "do I gotta get a badge to get you out of here?" The statement is one of intent. Doucette used his N.H. State Representative Badge to misrepresent that he had the authority to tell the event-goers what to do. Further proof of threat of harmful contact is the fact that Plaintiff was subsequently battered by members of Defendant Trump Campaign and the Manchester Defendants. This is certainly an issue for the fact-finder or the jury after further discovery and review of the video evidence. Plaintiff has alleged sufficient facts to make a

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

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

Defendant Doucette's inclusion in the header was a clerical error and can be stricken from battery cause of action. Defendants contend, "Under New Hampshire law, a defendant is liable for battery if: "(a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or imminent apprehension of such a contact, and (b) a harmful contact with the person of the other directly or indirectly results." *Rand v. Town of Exeter*, 976 F. Supp. 2d 65, 76 (D.N.H. 2013). Doc. 75 details the elements of battery by Defendant Deck upon the Plaintiff, showing that not only did Deck cause imminent apprehension of such a contact with Plaintiff, but that he intended to cause a harmful or offensive contact and did make harmful contact. After the microphone deception, the human wall, and the unwanted touching, Defendant Deck shows his intent to do harm by angrily stating, "I'm going to break your (inaudible)." *Id* at ¶ 48. Deck further illustrates his intent by getting in Plaintiff's face, saying, "'You're going to see my name on your face,' which Plaintiff interpreted to be a clear threat of violence." *Id* at ¶ 48. Deck and Pittman carry through with Deck's threat, when, "Pittman grabbed Plaintiff from behind," (*Id*. at ¶ 65), "grabbing an arm, while Defendant Deck grabs Plaintiff's other arm." *Id* at ¶ 51.Defendants Deck and Pittman batter Plaintiff by throwing him "head-first into a table knocking it over." *Id* at ¶ 53. "Throughout the attack, Plaintiff is

constantly being pushed from behind." *Id* at ¶ 55a. Defendants Deck, Pittman and Cosio, "push Plaintiff a few more feet, eventually aggressively throwing Plaintiff to the ground as Defendant Deck swears loudly at Plaintiff," saying, "I don't give a shit." *Id* at ¶55b.

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

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

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

First, Defendant Deck misconstrues RSA 627:5, III. RSA 627:5, III reads, "A private person who has been directed by a law enforcement officer to assist him in effecting an arrest or preventing an escape from custody is justified in using: (a) Non-deadly force when and to the extent that he reasonably believes such to be necessary to carry out the officer's direction, unless

he believes the arrest is illegal; or (b) Deadly force only when he reasonably believes such to be necessary to defend himself or a third person from what he reasonably believes to be the imminent use of deadly force, or when the law enforcement officer directs him to use deadly force and he believes such officer himself is authorized to use deadly force under the circumstances." As pled, there was no attempt to arrest or prevent an escape of the Plaintiff at the Radisson Hotel. Plaintiff was not arrested at the time of Defendant Deck's involvement. *Id* at ¶¶ 59-61. Defendant Aldenberg, "arrives and tells Plaintiff, 'you are not being detained,' and Defendant Craig concurs, saying, "you can leave." *Id* at ¶ 61. An arrest did take place later in the day in a different location, but the Plaintiff was not arrested inside the Radisson Hotel nor on it's property, nor was Mr. Deck anywhere near Plaintiff, when Plaintiff was arrested on an entirely different piece of property. *Id* at ¶¶ 63-64.

Second, Defendant Deck cites, 627:1, "Conduct which is justifiable under [the criminal code] constitutes a defense to any offense. The fact that such conduct is justifiable shall constitute a complete defense to any civil action based on such conduct." This merely creates an affirmative defense for Defendant Deck, and doesn't address whether the Plaintiff has alleged facts sufficient to make a plausible claim for relief. Further, Defendant cites Pittman's affidavit in support of his claims. In Paragraph 65 of Doc. 75, Plaintiff states that the Pittman Affidavit is "full of obvious factual inaccuracies which can be easily disproven by video evidence of the incident. Defendant Pittman perjures himself in the process."

Third, Defendant misconstrues 627:6, V, stating, "Consequently, under RSA 627:6, V he was also authorized to use non-deadly force to the extent he deemed necessary under the circumstances. Such justification also forms a complete defense to plaintiff's claim for battery." In full, 627:6, V reads, "A person authorized by law to maintain decorum or safety in a vessel,

aircraft, vehicle, train or other carrier, or in a place where others are assembled may use non-deadly force when and to the extent that he reasonably believes it necessary for such purposes, but he may use deadly force only when he reasonably believes it necessary to prevent death or serious bodily injury." Defendant has left out a substantially important word, "reasonably." Doc. 75, paragraph 48 states that Deck threatened Plaintiff. Surely this was not reasonable, considering Plaintiff just wanted to either get to the microphone or get back to his seat. From there, "Defendant Pittman grabbed Plaintiff from behind," (*Id* at ¶ 65). Therefore, Defendant Deck could not have reasonably believed that his conduct was justified or necessary. Regardless, it is merely a defense for Defendant Deck, and doesn't address whether the Plaintiff has alleged facts sufficient to make a plausible claim for relief.

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

Fifth, even if these laws are capable of being construed together, they merely create an affirmative defense for Defendant Deck, they do not address whether the Plaintiff has alleged facts sufficient to make a plausible claim for relief. Defendant's violent and terrifying words and brutal throwing of Plaintiff into a table head-first were not reasonable and were not justifiable, or legal. At no time was Plaintiff a threat, a danger to Defendant Trump or any person, nor was Plaintiff violating any law, (despite Pittman's erroneous affidavit). Plaintiff's words and actions are consistent throughout. Subsequently, Manchester Defendants concurred that Plaintiff had

committed no violation when he asked if he was being arrested and for what and Manchester Defendants said that he was free to go.

Sixth, even if this statute (RSA 627:1) is applicable to this case, for Defendant to claim his conduct was justifiable under the criminal code as provided for by RSA 627:1, the desire or need to avoid the present harm must outweigh the harm sought to be prevented by the violated statute." State v. O'Brien, 567 A.2d 582 (N.H. 1989). In State v. L'Heureux, 846 A.2d 1193 (N.H. 2004) the Court held: "We also note that competing harms is a justification defense, which the legislature has established constitutes a defense to any offense. They continue, "the State has the burden to prove beyond a reasonable doubt that the harm produced by violation of the statute 'was not conduct believed by the defendant to be necessary to avoid harm to himself or another, where the harm perceived outweighs the harm sought to be prevented by the statute (this weighing to be measured objectively)." State v. Bernard, 680 A.2d 609 (N.H. 1996); see also RSA 625:10, :11, III(c) (1996).; State v. L'Heureux 846 A.2d 1193 (N.H. 2004)

Defendants would have the Court believe that Plaintiff was a "present harm" to Defendant Deck or others present. Nothing could be further from the truth. Plaintiff was a known to be peaceful, and it can be proven that the Trump Campaign specifically knew about Plaintiff, and was aware that he presented no "present harm," and had a track-record of being peaceful. As photographic and video evidence will show, security staff from the Trump Campaign had already interacted with Plaintiff on many occasions, while Plaintiff was giving away flowers "for peace," at various Trump rallies, and Plaintiff spoke directly to Mr. Trump on two occasions before the October 12, No Labels incidents. On the second occasion, September 17, 2015, Plaintiff "at the behest of Defendant Trump, quoted from First Timothy, from the Christian Bible." Doc. 75. at ¶ 1. Plaintiff is easily recognizable from his "long and thick beard," (*Id*. at ¶ 176), and "for

handing out 'symbolic flowers for peace' to all of the major candidates," (*Id*. at ¶ 1), which is what Plaintiff was doing both times he spoke to Defendant Trump. Defendant Trump is famously quoted as saying,"I have one of the great memories of all time." (Oct 25th, 2017), so surely Mr. Trump remembered. All the evidence points to Mr. Trump and the Trump Campaign being aware prior to October 12th of Plaintiff and his peaceful activities, which they surely must have conveyed to Mr. Deck, if he wasn't already aware. Doc. 75 at Appendices 8 & 10. Defendants would have the court believe that Defendant Deck grabbed Plaintiff *from behind* as a matter of self-defense. This is nonsense.

Seventh, even if these laws, capable of being construed together, create a defense for Defendant Deck, they do not create blanket immunity to commit multiple torts as the Defendant would have the Court believe. Both RSA 627:6 and RSA 627:5, III, state that the Defendant must reasonably believe the non-deadly force is necessary and the statute that allegedly creates the immunity and, therefore commands the other two, RSA 627:1 provides that the Defendant's conduct must be justifiable under the criminal code. As alleged in Doc. 75, none of Defendant's actions were justifiable (under the criminal code).

Eighth, additionally, Plaintiff's civil rights claims, as provided by 42 U.S.C. §1983, supersede all state law defenses. Nonetheless, Defendant Deck's claim that he assisted Defendant Pittman at Pittman's direction further proves that there was a conspiracy or "meeting of the minds" between the Defendants for purposes of violating Plaintiff's constitutional rights "under color of law." Likewise, Defendant's claim that as a security guard for a candidate working with Defendant Police officers and asserting immunity akin to that of a public official would make him a public official and, thereby, subject to actions under 42 U.S.C. §1983 as a public official. Considering the facts as pled, Defendant Deck's claim of immunity from

liability, (because he was considered a security guard or assisted law enforcement), is an erroneous claim.

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

Defendants contend, "To state a claim for intentional infliction of emotional distress, a plaintiff must allege that the defendant: '(1) acted intentionally or recklessly; (2) that [his] acts were extreme and outrageous; and (3) that [his] acts caused the plaintiff to suffer severe emotional distress,'" citing Bethany T. v. Raymond Sch. Defendants continue, "The conduct must have been 'outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'"

Doc. 75 alleges intentional recklessness conduct by Campaign Defendants. When Plaintiff questioned Trump about torts committed by his supporters in Rochester, Trump joked, "you look healthy to me." Doc. 75 at ¶40. The Trump Campaign make threats, and intimidate with the "human wall." (*Id* at ¶43). Deck follows through with threats when, (with Pittman), they "throw Plaintiff head-first into a table knocking it over." *Id*. at ¶ 53. Intention is shown by fact that previous to the battery, Deck told Plaintiff that he was going to put his name all over Plaintiff's face. Defendants threw Plaintiff head first into table, seriously injuring Plaintiff. That's outrageous. Later, Manchester Defendants, "arrested Plaintiff in retaliation." *Id* at ¶ 121. This is also outrageous. Defendants Deck and Pittman engaged in a cover-up with their intentional collaboration to falsify the police report/ affidavit. *Id*. at ¶ 65. That's outrageous. The false statements regarding Plaintiff in the Pittman police report/ affidavit resulted in publications publishing articles such as "Man Thrown Out During Trump Speech." *Id*. at ¶ 68. This caused

Plaintiff severe emotional distress. "This damaged Plaintiff's reputation, and prevented him from earning wages."*Id*. at ¶ 68. The Complaint, properly alleges the myriad of negative articles in the wake of Defendants' actions causing severe emotional distress. (at ¶¶ 68-96).

"Plaintiff suffered injuries to his body, scrapes, bruises, lacerations, and emotional trauma. Plaintiff continues to suffer trauma and fear from the incident and may continue to suffer trauma in the future as a result of these injuries proximately caused by Defendants." *Id*. at ¶ 118. No Labels' employee Ryan Clancy, stated, "I saw what happened to you… it isn't right." *Id*. at ¶ 125 (Doc 75. at Appendix 1: K.) The entire situation caused immense emotional distress to Plaintiff, as evidenced in videos after the incident. Doc. 75 at Appendices 7, 8, 9, 10, 11. Campaign Defendants' behavior was outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Plaintiff has alleged sufficient facts to make a plausible claim of intentional infliction of emotional distress by Defendants Trump Campaign, Deck and Doucette as provided by New Hampshire law. The Trump Campaign is also liable under respondeat superior because Defendants Deck, Doucette and Manchester Defendants were employees or agents of Defendant Trump Campaign. Plaintiff had included evidence s in support in Doc 75 Appendices 1-16. Accordingly, Defendants' motions to dismiss should be denied.

The Plaintiff has Alleged Facts Sufficient to State a Claim That Defendants Trump Campaign, Deck and Doucette Are Liable for 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 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. The Defendants, "breached that duty of care and their breach proximately caused the Plaintiff's injuries." *Id*. at ¶ 134. "Due to Defendant Deck's previous history of assaults and batteries, Defendants… were aware or should have been aware that Defendant Deck and Trump Campaign security and Trump supporters were prone to commit assault and battery on any person they perceived to be opposed to Defendant Trump." *Id*. at ¶ 135.

Many of the same issues regarding "duty of care" are found and argued in Doc. 134 (Reply to JPA III's Motion to Dismiss), section entitled "Duty of Care," and so for economy please reference them. The duty of care as a result of foreseeability of violence by Defendants Trump, Trump Companies and Campaign Defendants are found and argued in greater length in Doc 136, (in the section for Count IV of the Reply to Trump Companies Motion to Dismiss).

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

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

The Defendants state, "Liability for negligent hiring and retention exists where 'the actor has brought into contact or association with the other a person whom the actor knows or should know to be peculiarly likely to commit intentional misconduct.' *Marquay v. Eno*, 139 N.H. 708, 719 (1995) (internal quotation marks omitted)." As stated in Doc. 75, Defendants, "negligently

hired, trained, supervised, and retained Defendants Deck and Pittman for the No Labels event and they knew or should have known that Defendants Deck and Pittman were unfit for the job due to their past conduct and behavior and that they were peculiarly likely to commit intentional misconduct and created a danger of harm to third persons such as Plaintiff. " Doc 75 at ¶ 145. Surely, when Plaintiff asked Trump about the battery at the Rochester rally, Trump should've addressed this in a professional manner, instead of joking, "you look healthy to me." Doc. 75 at ¶ 40. And as Mr. Trump watched Trump Campaign employees assault and batter Plaintiff, but he said and did nothing, Trump behaved in a negligent way. Trump knew the violent nature of Mr. Deck, (since the Galicia v Trump case), so surely Mr. Trump was supervising the activity of Deck and Doucette, while permitting, or failing to prevent, the negligent and tortious conduct by persons under his control. Restatement (Second) of Agency §213 (1958) (adopted as New Hampshire law in Trahan- Laroche, 139 N.H. at 485). Surely the Trump Campaign knew or should have known that Defendant Deck would be likely to commit intentional misconduct.

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

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

As stated by Defendants, "The elements of fraud or deceit are (1) the defendant

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

Doc. 75 sufficiently alleges facts to state a claim that the Trump Campaign is liable for intentional misrepresentation/ fraud. "Defendants knowingly and consciously and fraudulently misrepresented that the microphone was in the back of the hall… and prevent Plaintiff from questioning Defendant Trump. Doc. 75 at ¶ 147. Defendant Deck says, "it's over there. They're only being taken from the mics. So, if you wanna ask your question, you're going to have to go to the microphone." *Id.* at ¶ 41. Plaintiff goes where Defendant Deck has directed him, "toward the back of the hall." Plaintiff "turns back toward his seat when he realizes that Defendant Deck has deceived him into believing that there is a microphone." *Id.* at ¶ 42. "Defendant Doucette, Deck, Trump staff, and Unidentified Individuals make a human wall around Plaintiff blocking his return to his seat." *Id.* at ¶ 43. By Defendant Deck directing Plaintiff to find the microphone at the back of the hall, then blocking Plaintiff's return to his seat, Defendant Deck reveals his intention is to misrepresent a material fact to the plaintiff, knowing it to be false. Defendant Deck did so with fraudulent intent that the Plaintiff act on it; and without knowledge of its falsity, Plaintiff detrimentally relied on the misrepresentation.

Further, "In so relying on Defendants' misrepresentations, Plaintiff was unable to ask Defendant Trump questions and film the event for his journalistic writings and/or his documentary films." *Id.* at ¶ 148. "Defendants Deck, Doucette, Trump Campaign, Trump Companies and XMark Companies impersonated law enforcement officials by telling local police/ Defendants Pittman, Aldenberg, Cosio and Craig that they were active duty secret service

agents, and instructed the Defendants Defendants Pittman, Aldenberg, Cosio and Craig to remove Plaintiff with the objective of preventing Plaintiff from making statements Defendant Trump perceived to be embarrassing." *Id*. at ¶ 149. "Defendants Deck and Pittman made gross misrepresentations and fraudulent claims as part of an affidavit filed in this case." *Id*. at ¶ 151.

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

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

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

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

the auditorium." Doc 75. at ¶ 153. The Campaign Defendants' act directly or indirectly resulted in the plaintiff's confinement when, "Plaintiff felt confined and feared for his personal safety and was injured by said confinement created and executed by Defendants." *Id*. at at ¶ 153. The plaintiff was conscious of or harmed by the confinement when, "Plaintiff felt confined and feared for his personal safety and was injured by said confinement created and executed by Defendants." *Id*. at at ¶ 153. The Campaign Defendants acted without legal authority because none of the Campaign Defendants are active law enforcement officers, and as stated earlier at great length, Defendant Deck's claim of immunity as being a "security guard" is not sufficient to give him legal authority to commit these torts.

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

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

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

According to Defendants, "The plaintiff did not include civil conspiracy as a claim for relief, but mentions "conspiracy" and its elements throughout the second amended complaint.

See, *e.g.*, Doc. 75 (05/22/2019) at ¶¶108, 120, 162, 167, 200. However, as stated previously, the existence of a conspiracy can be proven through circumstantial evidence. Adickes v. S. H. Kress & Co., 398 U.S. 144, 152 (1970), 398 U.S. at 158 ("If a policeman were present, we think it would be open to a jury, in light of the sequence that followed, to infer from the circumstances that the policeman and a Kress employee had a 'meeting of the minds' and thus reached an understanding that petitioner should be refused service.").

Plaintiff has clearly alleged in Doc. 75 that Defendant Trump had an express or implied "meeting of the minds" between the Defendant Tortfeasors. The Trump Campaign is also liable under respondeat superior because Defendants Deck and Doucette were employees or agents of Defendant Trump Campaign. Plaintiff had included evidence of civil conspiracy in support in Appendices 1-16 of Doc. 75. Accordingly, Defendants' motions to dismiss should be denied.

REFERENCE/ COUNTS 1-13, 15-17: Many of the same issues are found and argued in many of the replies and motions, (especially Docs 126, 134, 135, 136 and 139), and so for economy, please reference them.

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 15, 2019