

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

<p>Roderick Webber,  <i>Pro Se</i> Plaintiff,  v.  Edward Deck, et al.  Defendants</p>	<p>Case No. 1:18-cv-00931-LM (Chief Judge Landya McCafferty)</p>
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**THE TRUMP ORGANIZATION, INC. AND TRUMP ORGANIZATION, LLC’S REPLY  
MEMORANDUM**

The Defendants, The Trump Organization, Inc. and Trump Organization, LLC., (Trump Organization Defendants), through their attorneys, Sheehan Phinney, PA submit this Reply Memorandum in Support of their Motion to Dismiss Plaintiff’s Second Amended Complaint.<sup>1</sup> For the reasons stated below and in The Trump Organization Defendants’ Memorandum of Law, Plaintiff’s claims against them must be dismissed.

**I. Plaintiff’s Objection Still Violates the Court’s Local Rules and the Court Must Strike It.**

After striking the Plaintiff’s Objection to The Trump Organization Defendants’ Motion to Dismiss for his repeated failure to comply with local rules, including the page-length requirement, the Court cautioned Plaintiff that he must comply with all local formatting rules. Doc. 125 at 2. Despite the Court’s caution, Plaintiff’s Objection (Doc. 136) still violates the Court’s page-length rules by attempting to circumvent the page limit using references to other pleadings and appendixes at least four times. First, it incorporates by reference a portion of a separate pleading. Doc. 136 at 1. Second, it incorporates by reference a seven page appendix,

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<sup>1</sup> Plaintiff’s Document 136 was styled as a “Reply” to The Trump Organization Defendants’ Motion to Dismiss. To avoid confusion, this Memorandum will refer to Document 136 as Plaintiff’s Objection.

containing a detailed “factual summary,” filed with Plaintiff’s Objection. Doc. 136 at 5, 10. Third, Plaintiff invites the Court to refer to many of the same issues and arguments discussed in various unspecified “replies and motions.” Doc. 136 at 25. Fourth, Plaintiff refers to Document 65, a separate and unrelated pleading. Doc. 136 at 9. While Plaintiff’s expressed interest in “economy” is laudable, this open-ended incorporation by reference also violates the page-length requirement of the local rules. The Court should strike this memorandum, but in any event, the Court should not consider any of the incorporations by reference.

**II. Plaintiff’s Factual Allegations Completely Fail to Satisfy the Plausibility Requirement and Fails to Demonstrate the Existence of An Employment or Agency Relationship that Satisfies Personal Jurisdiction or Establishes Vicarious Liability**

Plaintiff’s Second Amended Complaint is completely dependent upon establishing an agency relationship between the Trump Organization Defendants and the alleged tortfeasors, and particularly Defendant Deck, in order to succeed both on personal jurisdiction and the merits of his claims. Plaintiff’s Second Amended Complaint, however, is long on speculation and short on specific facts with respect to the Trump Organization Defendant’s affiliation with the individual tortfeasors. This fatal shortcoming was not cured by his Objection, which fails to point to any fact from which the Court may draw the inference that the alleged tortfeasors were agents of any kind to the Trump Organizations Defendants on October 12, 2015 during the Problem Solvers event organized by Defendant No Labels. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

**1. Plaintiff’s unsupported legal conclusions and speculation do not establish an employment or agency relationship.**

Plaintiff asserts that he has “properly pled that Defendant Deck was employed or an agent of Defendant Trump Companies”. Doc. 136 at 3. However, this naked legal conclusion is flatly contradicted by his own allegations in his Second Amended Complaint. In that pleading, Plaintiff alleges that Deck was “believed to be a security employee employed through the Donald J.

Trump for President Campaign, Inc. as well as through his own companies” and then speculates that Deck or his company were “possibly” hired through one or the other of the Trump Organization Defendants. Doc. 75 at 7. Of course, this speculation contradicts the only reasonable inference that can be drawn from the complaint: Deck was employed by the Campaign to provide security services for then-Candidate Trump, at an election-related event.

Plaintiff supports his speculative legal conclusion that Deck or his company were employed by the Trump Organization Defendants with just a single bare-bones factual allegation in the Second Amended Complaint. He alleges that one or the other of the Trump Organization Defendants “had been” making payments to Deck “just previous” to the Problem Solvers event. Doc. 75 at ¶50. But this allegation does not support the inference that Deck had any affiliation with the Trump Organization Defendants during the Problem Solvers event, and the Second Amended Complaint fails to allege any specific facts concerning Deck’s affiliation during the event. Instead, it refers only to some unspecified time “just previous” to October 12, 2015, the date of the Problem Solvers event. Whatever the situation may have been on October 12, 2015, the Second Amended Complaint provides no specifics, and thus no support for the existence of any employment or other agency relationship on the day of the Problem Solvers event.

**2. Plaintiff’s allegations against Mr. Trump do not support the inference that Deck was acting as an employee or agent for the Trump Organization Defendants.**

The Second Amended Complaint’s deficiencies are not cured by Plaintiff’s allegation that Mr. Trump described himself as “Chairman of the Trump Organization” at the Problem Solvers event. Doc. 136 at 4. Like every other Presidential candidate who has ever visited New Hampshire both before and since the Problem Solvers event, Mr. Trump recounted some of his affiliations and achievements. Yet, his statement of affiliation has no impact on the relationship

between the alleged tortfeasors and the Trump Organization Defendants during the Problem Solvers event.

This is particularly true when one takes into account both the venue and the purpose of the event. Mr. Trump was not in New Hampshire making a business pitch for either of these two New York-formed and New York-based entities. Rather, he was making a campaign pitch for himself for the Presidency of the United States, and doing nothing more than talking about his resume. The same is true of other similar references made by Mr. Trump at some unspecified, but plainly non-New Hampshire locations, on prior occasions in connection with World Wrestling Entertainment events. Doc. 136 at ¶140. These events and remarks have nothing to do with either New Hampshire or the events that took place in Manchester on October 12, 2015.<sup>2</sup>

**3. Plaintiff's reliance on *Galicia v. Trump* and other new factual allegations do not establish an agency or employment relationship in this case.**

Plaintiff also cites to certain testimony by Mr. Deck, Keith Schiller and others in the *Galicia v. Trump* case in New York State. Doc. 136 at 3.<sup>3</sup> The testimony Plaintiff refers to, in turn, quotes a decision from yet another, but different, New York case that also apparently involved events in New York. The *Galicia* case involves a different, wholly unrelated event, on a different date, in New York City. Whatever the facts of that case, which have no bearing whatsoever on the legal issues presented by the Motion to Dismiss, they do not support the inference that any alleged tortfeasor was employed by or otherwise an agent of the Trump Organization Defendants at the Problem Solvers event.

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<sup>2</sup> Plaintiff's arguments with respect to vicarious liability ignore his failure to allege sufficient facts to establish that Deck was an employee or agent of either one of the Trump Organization Defendants. This shortcoming is also fatal to his § 1983 claims. Doc. 136 at 17-21 and his claim in Count IV that the Trump Organization Defendants owed him a duty of care. Doc. 136 at 21-25. Nor is Count IV saved by Plaintiff's references to WWE activities involving Mr. Trump in prior years. See e.g. Doc. 136 at 22-23.

<sup>3</sup> Plaintiff cites to page 20 of an affidavit submitted by plaintiffs' counsel in *Galicia*. This page does not exist as the affidavit was only 11 pages long. The Trump Organization Defendants, therefore cannot verify the source of Plaintiff's allegations and the Court should disregard them. See *Rivera v. Centro Medico de Turabo, Inc.*, 575 F.3d 10, 15 (1st Cir. 2009)

Plaintiff also cites to an October 2, 2015 affidavit provided by Mr. Schiller in the *Galicia* case stating that he has been head of security for the Trump Organization since 2004. Doc. 136 at 3. Plaintiff asserts in his Objection, but not his Second Amended Complaint, that Mr. Schiller was present at the October 12, 2015 Problem Solvers event. Doc. 136 at 3. The allegation is not probative as to Deck's relationship with the Trump Organization Defendants during the Problem Solvers event and should not be considered. *Rivera v. Centro Medico de Turabo, Inc.*, 575 F.3d 10, 15 (1st Cir. 2009) ("Under Rule 12(b)(6), the district court may properly consider only facts and documents that are part of or incorporated into the complaint...").

Without authentication, Plaintiff also attached a substantial donation check made payable to the United States Treasury and written by The Trump Corporation, but dated February 21, 2018, nearly two and a half years after the Problem Solvers event. Several other related documents accompanied the check. However, Plaintiff offers no bridge spanning the yawning two and a half year gap between the Problem Solvers event and the date of the check. Nor does Plaintiff provide any explanation as to the purported impact of this check on the events of October 12, 2015. Again, this newly added allegation must be disregarded under the well-settled motion to dismiss standard. *Id.*

### **III. Plaintiffs' Claims are Barred by the Statute of Limitations**

Lastly, Plaintiff argues that the statute of limitations does not bar his claims. To support this argument, Plaintiff relies on the "facts" recited in the seven-page appendix (itself not properly supported) appended to his Objection in violation of the local rule governing page length. Ignoring for the moment Plaintiffs' reliance on this improper appendix, even according to Plaintiff's Objection, the earliest possible notice to these Defendants occurred on March 18, 2019. Doc. 136 at 5. This date is some five months after the statute of limitations ran. Moreover,

Plaintiff's Objection completely fails to address the fact that he named a single "organization" that might have been one or the other of the two Trump Organization Defendants.<sup>4</sup>

**CONCLUSION**

For the reasons stated in this Reply and in their Motion to Dismiss, the Trump Organization Defendants request that the Plaintiff's Second Amended Complaint must be dismissed.

Respectfully submitted,

**THE TRUMP ORGANIZATION, INC. and  
TRUMP ORGANIZATION, LLC**

By Their Attorneys,

SHEEHAN PHINNEY BASS & GREEN, P.A.

Dated: July 26, 2019

By: /s/ Peter S. Cowan  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 26, 2019, I served the foregoing on the *Pro Se* Plaintiff and Defendants' Counsel of Record via the Court's ECF system.

/s/ Peter S. Cowan  
Peter S. Cowan

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<sup>4</sup> Plaintiff's equitable tolling and equitable estoppel arguments also improperly rely on the "facts" set forth in other pleadings and also the accompanying appendix. Doc. 136 at 9-10. These "facts" may not properly be considered by the Court and should be rejected.