UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

RODERICK WEBBER, Plaintiff v. EDWARD DECK, ET AL., Defendants	Case No. 1:18-cv-00931-LM

DEFENDANT DONALD J. TRUMP'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, defendant Donald J. Trump (the "President") moves to dismiss the claims against him in plaintiff's second amended complaint for failure to state a claim upon which relief can be granted. This motion rests on the following grounds.

I. Introduction

The plaintiff seeks to recover damages from the President for his removal from the No Labels "Problem Solvers" convention at which the President was a speaker. The second amended complaint names the President in seven state law claims and eight federal law claims under 42 U.S.C. §1983 ("§1983"). The claims against the President should be dismissed because (1) the public interest in allowing the case to proceed is far outweighed by the intrusion on executive branch functions and authority; (2) there are no facts alleged to support an inference that the President was acting under color of state law; (3) there are no facts alleged to support an inference that the President committed any of the ten state-law torts alleged in the complaint; and

(4) there are no facts alleged to support an inference that the President had a relationship with the alleged tortfeasors that could serve as a basis for vicarious liability.

II. Statement of Facts

The plaintiff attended the No Labels "Problem Solvers" convention in Manchester, New Hampshire, on October 12, 2015. Doc. 75 (05/22/2019) at ¶33. The President, then a presidential candidate and private citizen, was speaking at the convention. *See id.* at ¶40. During the question and answer portion of the presentation, the plaintiff, without a microphone, asked the President a question regarding an alleged assault at a previous campaign rally. *Id.* The plaintiff was directed to the back of the ballroom, and continued to draw attention to himself. *Id.* at ¶¶41, 50 and Appx. 16 (p. 77). As a consequence, the plaintiff was removed from the ballroom. *Id.* at ¶51. The plaintiff alleges that his removal from the venue violated his rights under §1983 and was tortious under state law. *See generally id.*

III. Argument

A. Motion to Dismiss Standard

To withstand a motion to dismiss pursuant to Rule 12(b)(6), "a complaint must allege 'a plausible entitlement to relief.' " *ACA Fin. Guar. Corp. v. Advest, Inc.*, 512 F.3d 46, 58 (1st Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678-87 (2009). "[A] plaintiff . . . is . . . required to set forth factual allegations, either direct or inferential, respecting each material element necessary to sustain recovery under some actionable legal theory." *Gooley v. Mobil Oil Corp.*, 851 F.2d 513, 515 (1st Cir. 1988).

The "tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678 (citing

Twombly, 550 U.S. at 555). A facially-plausible complaint "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

The court will accept as true the well-pleaded factual allegations of the complaint and draw all reasonable inferences in favor of the plaintiff. *Cook v. Gates*, 528 F.3d 42, 48 (1st Cir. 2008); *McCloskey v. Mueller*, 446 F.3d 262, 266 (1st Cir. 2006). However, "this deferential standard does not force [a] court to swallow the plaintiff's invective hook, line, and sinker; bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like need not be credited." *Aulson v. Blanchard*, 83 F.3d 1, 3 (1st Cir. 1996).

B. This Court Should Decline to Exercise Jurisdiction over the President, as Civil Lawsuits against the Sitting President of the United States are Disfavored Because They Intrude on the Discharge of the President's Duties.

Due to the "sheer prominence of the President's office" the President is "an easily identifiable target" for vexatious and politically motivated lawsuits. *Nixon v. Fitzgerald*, 457 U.S. 731, 752-53 (1982). Indeed, the tenor of the allegations of the second amended complaint against the President is one of political antipathy. *See, e.g.*, Doc. 75 (05/22/2019) at ¶1 ("Defendant Trump's goal is to deprive press and anyone asking serious questions from having a voice, and thereby create a 'chilling effect' on speech in order to exert control over our political system and our nation's affairs for his own personal gain."). While the separation of powers doctrine does not bar every exercise of jurisdiction over the President of the United States, a court, before exercising jurisdiction over the President, "must balance the constitutional weight of the interest to be served against the dangers of intrusion on the authority and functions of the Executive Branch." *Nixon*, 457 U.S. 731 at 753-54. Accordingly, the United States Supreme Court has held that there is little public interest in exercising jurisdiction over the President in civil matters. *See id.* at n.37 ("The Court has recognized before that there is a lesser public

interest in actions for civil damages than, for example, in criminal prosecutions. *See United States v. Gillock*, 445 U.S. 360, 371-373 100 S. Ct. 1185, 1192-1193, 63 L. Ed. 2d 454 (1980) . . .”). This balancing of the public interest is necessary when reviewing complaints against a sitting President, lest a plaintiff use civil discovery on meritless claims to interfere with the President’s ability to discharge his constitutional responsibilities. *Cheney v. U.S. Dist. Court for Dist. of Columbia*, 542 U.S. 367, 382, 386 (2004).

This is a lawsuit against the sitting President of the United States. The public interest in subjecting the President to the present action must therefore be balanced carefully against the dangers of intruding upon the authority and functions of the Executive Branch. There is no discernable public interest in subjecting the sitting President to a civil action arising from alleged torts and civil rights deprivations that neither he nor any of his personal agents or employees allegedly perpetrated. Even construing the facts liberally, plaintiff has not alleged the President personally made physical contact with the plaintiff or that he threatened the plaintiff in any way. The persons allegedly responsible for the plaintiff’s removal, moreover, have no alleged employer/employee or principal/agent relationship with the President.

For these reasons, all claims against the President must be dismissed.

C. The Allegations Against the President Fail to State Claims for Which Relief May be Granted.

The court has original jurisdiction over the §1983 claims and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §1367. The President addresses each set of claims in turn.

i. The §1983 Claims Fail to Allege Facts Supporting an Inference That the President Acted Under Color of State Law.

The plaintiff has alleged that the President is liable under §1983 for multiple federal civil rights violations. Under the Fourth Amendment plaintiff alleges unreasonable seizure and stop and frisk (Count 8), unreasonable search and seizure and "excessive force" (Count 9), false arrest (Count 16), and retaliation (Count 17). Under the First Amendment he alleges a deprivation of freedom of speech (Count 10) and of freedom of religion (Count 11). Under the Fourteenth Amendment he alleges false imprisonment (Count 15).

To state a valid claim under §1983 for the violation of constitutional rights, a plaintiff must allege facts supporting the proposition that the defendant acted under color of law as a state actor. 42 U.S.C.A. §1983. "When the named defendant in a section 1983 case is a private party, the plaintiff must show that the defendant's conduct can be classified as state action . . . [; i]f there is no state action, the plaintiff's claim fails." *Jarvis v. Vill. Gun Shop, Inc.*, 805 F.3d 1, 8 (1st Cir. 2015) (citing *Rendell-Baker v. Kohn*, 457 U.S. 830, 838 (1982)); *see also United States v. Price*, 383 U.S. 787, 794 n.7 (1966) (finding that §1983 claims require the same "state action" as is required under the Fourteenth Amendment); *see generally* COLOR OF LAW, Black's Law Dictionary (10th ed. 2014) ("The term [color of law] usu. implies a misuse of power made possible because the wrongdoer is clothed with the authority of the state. *State action* is synonymous with *color of [state] law* in the context of federal civil-rights statutes or criminal law.") (emphasis in original).

The Fourteenth Amendment by its own terms "prohibits only state action;" it "erects no shield against merely private conduct, however discriminatory or wrongful." *United States v. Morrison*, 529 U.S. 598, 619, 621 (2000) (internal quotation marks omitted); *see also Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999) ("Like the state-action requirement of the

Fourteenth Amendment, the under-color-of-state-law element of §1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful.") (internal quotation marks omitted). It is well established that the "action of private persons" ordinarily does not amount to state action. *Morrison*, 529 U.S. at 621 (quoting *United States v. Harris*, 106 U.S. 629, 640 (1883)).

Given that the President was not sworn into office until January of 2017, the court can take judicial notice that he was a private citizen when he attended the No Labels convention in Manchester. The second amended complaint does not allege that the President had official, apparent, or implied authority to act on behalf of the state or that he represented or actually took any actions on behalf of the state at the convention. He was a candidate for office in October 2015. The President's conduct at the convention, by definition, therefore could not have amounted to state action because it is well established that a "candidate" is "not a state actor." *Melo v. Hafer*, 912 F.3d 628, 638 (3d Cir. 1990); *see also Acosta v. Democratic City Comm.*, 288 F. Supp. 3d 597, 629 (E.D. Pa. 2018) ("As a political candidate, [the defendant's] alleged conduct was merely private conduct, no matter how discriminatory or wrongful") (internal quotation marks omitted).

The plaintiff has therefore failed to plead any "factual content that allows the court to draw the reasonable inference" that the President was acting under color of law or as a state actor during the October 2015 convention. *See Iqbal*, 556 U.S. at 678. As a result, each of the §1983 claims against the President must be dismissed.

Even if the President could somehow be considered a state actor during the October 2015 No Labels convention, the plaintiff's §1983 claims still fail because he has not alleged that the President personally participated in any alleged violation of the Constitution. A government

official is liable under §1983 "only for his or her own misconduct," and not "for the misfeasances . . . of . . . other persons." *Iqbal*, 556 U.S. at 676-77. As a result, a plaintiff in a §1983 case "must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." *Parrish v. Bell*, 594 F.3d 993, 1001 (8th Cir. 2010) (quoting *Iqbal*, 556 U.S. at 676). Said differently, the plaintiff must plead that the defendant "directly participated in the constitutional violation." *Beaulieu v. Ludeman*, 690 F.3d 1017, 1031 (8th Cir. 2012). The plaintiff's second amended complaint fails to allege facts supporting an inference that the President participated in any alleged violation of the Constitution during the events in question. Because the plaintiff's allegations do not satisfy this element of a claim under §1983, his claims must be dismissed as a matter of law.

D. The Plaintiff has not Alleged Facts Sufficient to State a Claim That the President is Liable for his Alleged Injuries Under State Law.

The plaintiff has alleged that the President is liable for the following state law claims: assault (Count 1), battery (Count 2), intentional infliction of emotional distress (Count 3), negligence (Count 4), negligent hiring, training, supervision, and retention (Count 5), intentional misrepresentation/fraud (Count 6), and false imprisonment (Count 7). The plaintiff has alleged that the President is vicariously liable for six of the alleged torts[1] and personally liable for seven of those torts[2].

[1] Construing the second amended complaint in a manner most favorable to the plaintiff, the plaintiff alleges vicarious liability for the President on the state law claims for assault, battery, intentional infliction of emotional distress, negligence, intentional misrepresentation/fraud, and false imprisonment.

[2] Construing the second amended complaint in a manner most favorable to the plaintiff, the plaintiff alleges personal liability for the President on the state law claims for assault, battery, intentional infliction of emotional distress, and negligent hiring, training, supervision, and retention.

i. The Plaintiff has not Alleged Facts Sufficient to State a Claim That the President is Vicariously Liable Under any of the Claims in the Second Amended Complaint.

A person may be held vicariously liable for the tortious actions of another only under two narrow circumstances. First, an employer may be vicariously liable for the torts of an employee when the employee committed the tortious act within the scope of his or her employment. *Porter v. City of Manchester*, 151 N.H. 30, 39 (2004). An employee acts within the scope of his or her employment when (1) the conduct is of the kind the employee is hired to perform; (2) the act occurred substantially within authorized time and space limits; and (3) the act was done by a purpose to serve the employer. *Id.* at 39-40.

Second, a principal may be vicariously liable for the tortious conduct of an agent. *See Herman v. Monadnock PR-24 Training Council, Inc.*, 147 N.H. 754, 759 (2002). The analysis for determining whether an agency relationship exists for purposes of vicarious liability is different from the analysis for determining whether an employer/employee relationship exists. *Dent v. Exeter Hospital*, 155 N.H. 787, 792 (2007). The necessary elements to establish an agency relationship include: "(1) authorization from the principal that the agent shall act for him or her; (2) the agent's consent to so act; and (3) the understanding that the principal is to exert some control over the agent's actions." *VanDeMark v. McDonald's Corp.*, 153 N.H. 753, 761 (2006) (quoting *Herman*, 147 N.H. at 758).

The second amended complaint alleges that the following defendants committed the allegedly tortious acts to which he attributes his claimed damages: Edward Deck, Rep. Fred Doucette, the City of Manchester, and the Manchester Police Department and some of its officers. Doc. 75 (05/22/2019) at ¶¶41-55. Plaintiff fails to allege, however, any facts upon which the court could conclude that any of these defendants were employees or agents of the

President. Indeed, he alleges Defendants Deck, Doucette, and other staffers and security were retained by Defendant Donald J. Trump for President, Inc. ("the Campaign"). *Id.* at ¶¶7, 16. The plaintiff also alleges that the City of Manchester, the Manchester Police Department, and some of the Department's officers received disbursements from the Campaign for security services. Nowhere does plaintiff allege that the President retained or paid any of the alleged tortfeasors. Accordingly, the second amended complaint does not allege any basis on which the President may be held vicariously liable, and those counts alleging such liability against the President must be dismissed.

ii. The Plaintiff has not Alleged Facts Sufficient to State a Claim That the President is Liable for Assault.

The plaintiff has alleged that the President is both personally and vicariously liable for the alleged assault.

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." *King v. Friends of Kelly Ayotte*, 860 F. Supp. 2d 118, 129 (D.N.H. 2012), aff'd. (Apr. 5, 2013) (internal quotation marks omitted).

The plaintiff alleges that the President is personally liable for the alleged assault because he "authorized and condoned the tortious behavior of Defendant Deck, his staff and security team" by stating "you look healthy to me" in response to the plaintiff's question. Doc. 75 (05/22/2019) at ¶113. The plaintiff concedes, however, that he did not actually hear the President's statement at the time he allegedly made it. *Id.* at ¶40. Likewise, there is no allegation in the second amended complaint explaining how the statement "you look healthy to me" is indicative of an intent to cause harmful or offensive contact with the plaintiff or how that

statement could have placed plaintiff in imminent apprehension of such contact even if he had heard it.

The plaintiff also alleges that the President is vicariously liable for the alleged assault because he "assented to the tortious behavior of the other named Defendants and his employees, as he watched the assault unfold." *Id.* at ¶112. The plaintiff has not alleged any factual basis to support the claim that the President assented to the alleged assault or even that the President knew of its occurrence. Aside from bare legal conclusions and conclusory allegations, the plaintiff has failed to plead facts that plausibly support the inference that the other named defendants were employees hired by the President himself. Thus, the plaintiff has failed to allege facts that support the conclusion that the employer/employee or principal/agent relationship required for vicarious liability existed.

The plaintiff also alleges that payments made by the Campaign "to Defendants Deck, Doucette, XMark, LLC and City of Manchester" likewise impute liability to the President. *Id.* There are no allegations of fact on which the court could conclude that a campaign's payment to third parties is a basis for the personal liability of the candidate.

Accordingly, the claim of personal and vicarious liability for assault against the President should be dismissed.

iii. The Plaintiff has not Alleged Facts Sufficient to State a Claim That the President is Liable for Battery.

Under New Hampshire law, a defendant is only 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) (internal quotation marks omitted).

The plaintiff alleges that the President is personally liable for the alleged battery because he "authorized and condoned the tortious behavior of Defendant Deck, his staff and security team" by stating "you look healthy to me" in response to the plaintiff's question. [3] *See* Doc. 75 (05/22/2019) at ¶113. The statement "you look healthy to me" is not contact, harmful or otherwise. There is no allegation in the second amended complaint that the President had any physical contact with the plaintiff, harmful or otherwise. Absent such allegations, plaintiff has not stated a claim for the President's personal liability for battery.

The allegation that the President authorized or condoned the alleged physical contact by other defendants appears to allege vicarious liability. As noted above, however, for such liability to exist, there must be an employer/employee or principal/agent relationship, and there is no allegation of fact that supports the existence of such a relationship between the President and any of the alleged tortfeasors. Nor are there any facts alleged from which the court could infer that the President authorized or condoned the alleged battery. Indeed, the second amended complaint does not even allege that the President was aware of the events described in the battery claim.

Accordingly, the claims against the President for battery must be dismissed.

iv. The Plaintiff has not Alleged Facts Sufficient to State a Claim That the President is Liable for Intentional Infliction of Emotional Distress.

The plaintiff alleges that the President is personally and vicariously liable for intentional infliction of emotional distress.

[3] The plaintiff stated in the claim for assault that the President was "personally liable for the assaults and batteries on the Plaintiff." Doc. 75 (05/22/2019) at ¶113. The plaintiff also included the President in the heading for the claim for battery but did not mention the President once in his claim for battery. In order to address all possible claims made against the President, this motion assumes that the plaintiff has alleged both personal and vicarious liability of the President on the claim for battery.

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." *Bethany T. v. Raymond Sch. Dist. with Sch. Admin. Unit 33*, No. 11-CV-464-SM, 2013 WL 1933756, at *3 (D.N.H. May 10, 2013). 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." *Id.* (internal quotations omitted). The standard for intentional infliction of emotional distress is "formidable." *Id.* (internal quotations omitted).

Here, the only fact alleged by the plaintiff describing his interaction with the President is that the President said "you look healthy to me" in response to plaintiff's question. There is simply nothing extreme and outrageous, much less atrocious and intolerable, about such a statement.

The plaintiff alleges that the President is personally liable for "intentional infliction of emotional distress due to his consent, authorization, and condoning and support for tortfeasors that he employed at the event, and for which he witnessed the assault and battery." Doc. 75 (05/22/2019) at ¶131. Again, the plaintiff has pled no facts that allow even an inference that the President consented to, authorized, condoned, or supported the alleged intentional infliction. Nor has the plaintiff alleged facts upon which the court could infer that the alleged tortfeasors were employees or agents of the President.

Accordingly, the claims against the President for intentional infliction of emotional distress must be dismissed.

v. The Plaintiff has not Alleged Facts Sufficient to State a Claim That the President is Liable for Negligence.

The plaintiff alleges that the President is vicariously liable for the negligence of Defendant Deck and the Campaign's security detail.

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. *Vachon v. New England Towing, Inc.*, 148 N.H. 429, 430 (2002).

Here, the plaintiff alleges that the President "by speech, word, and act encouraged Defendant Deck and his security detail to assault and be physical with other citizens as he also did with some members of the audience, and is therefore vicariously liable for the actions of those individuals." Doc. 75 (05/22/2019) at ¶140. Nowhere does plaintiff allege facts supporting an inference that the President "encouraged" plaintiff's removal from the No Labels event. The only "speech [or] word" the second amended complaint attributes to the President is "you look healthy to me." This statement provides no support for the proposition that the President encouraged anyone to "assault and be physical with" the plaintiff. The second amended complaint alleges no act whatsoever that supports plaintiff's "encouragement" theory.

For vicarious liability to exist, moreover, there must be an employer/employee or principal/agent relationship, and as noted repeatedly above there is no allegation of fact supporting the existence of such a relationship between the President and any of the alleged tortfeasors.

Accordingly, the claims against the President for negligence must be dismissed.

vi. The Plaintiff has not Alleged Facts Sufficient to State a Claim That the President is Liable for Negligent Hiring, Training, Supervision and Retention.

The plaintiff alleges that the President is liable for negligent hiring, training, supervision, and retention.

An employer may be liable for the damages resulting from negligent supervision of its employee's activities. *Trahan-Laroche v. Lockheed Sanders, Inc.*, 139 N.H. 483, 485 (1995). Liability for negligent hiring and retention exists where "the actor has brought into contact or association with the other a person whom the actor knows or should know to be peculiarly likely to commit intentional misconduct." *Marquay v. Eno*, 139 N.H. 708, 719 (1995) (internal quotation marks omitted). To establish negligent training and/or supervision the plaintiff must prove that:

> A person conducting an activity through servants or other agents is . . . negligent or reckless:
>
> > (a) in giving improper or ambiguous orders of in failing to make proper regulations; or
> > (b) in the employment of improper persons or instrumentalities in work involving risk of harm to others:
> > (c) in the supervision of the activity; or
> > (d) in permitting, or failing to prevent, negligent or other tortious conduct by persons, whether or not his servants or agents, upon premises or with instrumentalities under his control.

Restatement (Second) of Agency §213 (1958) (adopted as New Hampshire law in *Trahan-Laroche*, 139 N.H. at 485).

A predicate of a claim for negligent hiring, training, supervision, or retention is that the negligent person employed the tortfeasor or that the tortfeasor is that person's agent. Here, plaintiff alleges that defendant Edward Deck was an employee of the President (Doc. 75 (05/22/2019) at ¶145), but he alleges no facts to support that conclusion of law.

Accordingly, the claims against the President for the alleged negligent hiring, training, supervision, and retention must be dismissed.

vii. The Plaintiff has not Alleged Facts Sufficient to State a Claim That the President is Liable for Intentional Misrepresentation/Fraud.

The plaintiff alleges that the President is liable for intentional misrepresentation/fraud.[4] 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).

Here, the plaintiff has not alleged that the President said anything false to the plaintiff; thus, there is no factual support for any allegation of fraud against the President. *See* Doc. 75 (05/22/2019) at ¶¶41, 147. For vicarious liability to exist, moreover, there must be an employer/employee or principal/agent relationship, and there is no allegation of fact that supports the existence of such a relationship between the President and the alleged tortfeasors.

Accordingly, the claims against the President for intentional misrepresentation/fraud must be dismissed.

viii. The Plaintiff has not Alleged Facts Sufficient to State a Claim That the President is Liable for False Imprisonment.

The plaintiff alleges that the President is vicariously liable for false imprisonment.

[4] The plaintiff lists the President in the heading for the claim, but does not mention the President in his allegations in the body of the claim. For purposes of this motion, the President assumes that the plaintiff alleges that the President is vicariously liable for the alleged actions of the alleged tortfeasors.

> 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.

Farrelly v. City of Concord, 168 N.H. 430, 445 (2015). Nowhere in the second amended complaint does plaintiff allege that the President confined him in any way so there is no factual basis supporting a claim for false imprisonment against the President.

The plaintiff's allegation that the President is vicariously liable for false imprisonment fails for the same reason that his other vicarious liability claims fail, namely there is no allegation of fact that supports the existence of an employment or agency relationship between the President and any of the alleged tortfeasors.

Accordingly, the claim of vicarious liability for the alleged false imprisonment against the President must be dismissed.

IV. Conclusion

Taking as true the plaintiff's well-pleaded facts and drawing all reasonable inferences therefrom in his favor, the second amended complaint does not state a cognizable cause of action against the President. The President therefore respectfully requests that the court dismiss the claims against him in the plaintiff's second amended complaint for failure to state a claim upon which relief can be granted.

Respectfully submitted,

Donald J. Trump,
By His Attorneys,

Date: June 5, 2019

/s/ Bryan K. Gould

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CERTIFICATE OF SERVICE

I hereby certify that the within pleading is being served electronically upon the persons listed below through the court's ECF system.

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