

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

S  
C  
NOV 17 2019

TIMOTHY J. MUISE, PRO SE,  
PLAINTIFF,

Vs.

KELLY RAY & KAREN DINARDO,  
DEFENDANTS,

PLAINTIFF'S OPPOSITION TO DEFENDANT RYAN'S  
MOTION FOR RECONSIDERATION AND TO  
DEFENDANT DINARDO'S MOTION FOR SEPERATE  
AND FINAL JUDGMENT

NOW COMES THE PLAINTIFF, TIMOTHY J. MUISE, ACTING  
PRO SE, WHO DOES HEREIN OPPOSE BOTH DEFENDANT  
RYAN'S MOTION FOR RECONSIDERATION AND DEFENDANT  
DINARDO'S MOTION FOR SEPERATE AND FINAL JUDGMENT.

THE PRO SE PLAINTIFF MUST FIRST START BY  
ASKING THAT THE HONORABLE COURT EXCUSE THIS  
HAND-WRITTEN FILING, BUT AT THIS TIME THE

PLAINTIFF IS AGAIN HELD IN SOLITARY CONFINEMENT DUE TO THE EXERCISE OF FREE SPEECH. ON THURSDAY, JANUARY 5, 2017, THE PLAINTIFF APPEARED VIA TELEPHONE ON A LIVE RADIO BROADCAST ON TOUCH 106.1 FM IN BOSTON. MINUTES AFTER THE RADIO BROADCAST THE PLAINTIFF WAS WHISKED AWAY TO SOLITARY CONFINEMENT PENDING INVESTIGATION FOR "UNAUTHORIZED CONTACT WITH THE MEDIA" AND HAS BEEN HELD IN SOLITARY SINCE.

I. DEFENDANT RYAN IS NOT ENTITLED TO THE PROTECTIONS OF QUALIFIED IMMUNITY AS "HER CONDUCT VIOLATES A CLEARLY ESTABLISHED CONSTITUTIONAL RIGHT", WHICH MS. RYAN "WOULD HAVE KNOWN". THE LAW OF THE LAND, STILL FULLY VALID AND ON POINT, GOVERNING THE PROTECTED FREE SPEECH IN THIS CASE IS PROCTOR V. MARTINEZ, 416 U.S. 396 (1974), WHICH CLEARLY DETAILS THE ADDED PROTECTIONS OF OUTGOING PRISONER MAIL AS WELL AS DETAILS HOW THE CENSORSHIP OF SUCH MAIL IS ACTUAL INJURY AND DAMAGE. THE PLAINTIFF EXERCISED

(2.)

A PROTECTED RIGHT, THE INVOLVEMENT IN ORGANIZING A PEACEFUL FREE-WORLD PROTEST, AND THE DEFENDANT TOOK KNOWINGLY ADVERSE ACTION, AGAINST ESTABLISHED REGULATIONS, TO MONITOR THE PLAINTIFF'S PROSECUTOR PROTECTED OUTGOING MAIL.

DEFENDANT RYAN IS NOT ENTITLED TO QUALIFIED IMMUNITY. THIS PREMISE WAS RAISED IN THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, WAS OPPOSED IN THE PLAINTIFF'S OPPOSITION TO THAT MOTION, AND THE HONORABLE COURT'S SILENCE ON THE ISSUE IN ITS DECEMBER 29, 2016 RULING ON THE MOTION SPEAKS VOLUMES; NO RELIEF WAS WARRANTED ON THOSE GROUNDS. THE LAST MINUTE, LAST GASP, CONTENTIONS OF THE DEFENDANT THAT SOME SORT OF "SAFETY ISSUE" WAS INVOLVED IS LUDICROUS. NO SUCH ISSUE EXISTED AND IT IS FICTION TO RAISE IT NOW. FURTHER, THE DEFENDANT'S USE OF CRIMINAL CASE CITATIONS IN JUSTIFYING THEIR CENSORSHIP OF THE PLAINTIFF'S FREE SPEECH IS A CLEAR INDICATOR THAT THEY FEEL

(3)

THE EXERCISE OF FREE SPEECH IN PRISON, WHICH CRITICIZES CONFINEMENT CONDITIONS, IS A CRIMINAL ACT. THIS SHOULD BE ABHORRANT TO THE HONORABLE COURT AND OUR FREE SOCIETY IT PROTECTS.


DEFENDANT RYAN'S CONDUCT VIOLATED A CLEARLY ESTABLISHED CONSTITUTIONAL RIGHT, SHE KNEW - OR AT A BARE MINIMUM - SHOULD HAVE KNOWN, THAT THIS RIGHT WAS CLEARLY ESTABLISHED, AND HER OFFICIAL ACTION WAS THEREFORE UNREASONABLE AND ACTIONABLE. DEFENDANT RYAN IS NOT ENTITLED TO QUALIFIED IMMUNITY. SEE: HARLOW V. FITZGERALD, 457 U.S. 800 (1982), AND CLANCY V. McCABE, 441 MASS. 311 (2004).

II. DEFENDANT DINARDO SHOULD REMAIN AS A DEFENDANT ON THE 42 U.S.C. § 1983 RETALIATION CLAIM DUE TO THE DISCIPLINARY REPORT THAT SHE ISSUED THE PLAINTIFF FOR HIS EXERCISE OF FREE SPEECH, SPECIFICALLY WRITING TO GOVERNOR CHARLES BAKER AND REQUESTING THAT HE COME TO THE PRISON TO

MEET WITH A GROUP OF PRISONERS ABOUT NEGATIVE CONFINEMENT  
CONDITIONS, THE COURT SPECIFICALLY REFERS TO THIS ACTION IN  
ITS DECEMBER 29, 2016 RULING ON THE DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT, (SEE PAGE 4, SECTION II) DEFENDANT  
DINARDO PARTICIPATED IN RETALIATORY ACTS AGAINST THE  
PLAINTIFF AND SHOULD THEREFORE REMAIN A DEFENDANT IN THIS  
ACTION.

WHEREFORE, THE PRO SE PLAINTIFF, LITIGATING UNDER THE  
SEVERE HANDICAP OF BEING HELD IN SOLITARY CONFINEMENT, PRAYS  
THAT THE HONORABLE COURT DENY BOTH DEFENDANT RYAN'S  
MOTION FOR RECONSIDERATION AND DEFENDANT DINARDO'S MOTION  
FOR SEPERATE AND FINAL JUDGMENT.

DATED: 01/20/2017

RESPECTFULLY SUBMITTED,  
  
TIMOTHY J. MUISE, PRO SE  
MCC NORFOLK  
PO BOX 43  
NORFOLK, MA 02056

CERTIFICATE OF SERVICE

I, TIMOTHY J. MUISE, DO HEREBY SWEAR AND CERTIFY THAT I DID CAUSE TO BE SERVED A TRUE AND ACCURATE COPY OF THE INSTANT MOTION UPON COUNSEL FOR THE DEFENDANTS AT HIS USUAL PLACE OF BUSINESS.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED: 01/20/17

  
TIMOTHY J. MUISE