

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2683CV00541

JENNIFER McCABE, BRIAN ALBERT,
COLIN ALBERT, and BRIAN HIGGINS,

Plaintiffs,

v.

KAREN READ and AIDAN KEARNEY,

Defendants.

SPECIALLY ASSIGNED TO
HON. MARK C. GILDEA

**DEFENDANT AIDAN KEARNEY'S MEMORANDUM OF LAW
IN SUPPORT OF HIS SPECIAL MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED COMPLAINT
PURSUANT TO THE ANTI-SLAPP LAW, G.L. c. 231, § 59H
(Leave to File 31-Page Memorandum Granted June 22, 2026)**

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INTRODUCTION

Three years ago, Defendant Aidan Kearney, an independent journalist and online content creator, began writing articles, publishing videos, and leading protest activity over the prosecution of Karen Read for murder. Convinced that Read had been framed for killing her boyfriend, Boston Police Officer John O’Keefe, Kearney enlisted members of the public to demand that the charges be dismissed, that responsible law enforcement officials be held accountable, and that the Commonwealth instead charge Plaintiffs Brian Albert, Jennifer McCabe, Colin Albert, and Brian Higgins with crimes relating to O’Keefe’s death. Kearney’s brash mix of activism, advocacy, and investigative reporting brought national attention to this little-noticed case, leading to the remarkable “Free Karen Read” movement. With Kearney’s encouragement, hundreds participated in daily courthouse protests, engaged in public advocacy, and advocated for reform. (Amended Complaint (“Am. Compl.”) ¶ 106). Kearney’s relentless activism “ma[de] it impossible for people not to know about the case.” (*Id.*, ¶ 126).

Plaintiffs have now sued Kearney for his speech and activism around the O’Keefe killing and the Karen Read case. The legislature, however, has enacted “very broad protection for petitioning activities” like Kearney’s. *Duracraft Corp. v. Holmes Prods. Corp.*, 427 Mass. 156, 162 (1998). The Anti-SLAPP Law, G.L. c. 231, § 59H, grants civil immunity for the exercise of the right to petition the government. Its protection extends not only to statements made directly to government bodies, but those made “in connection” with ongoing judicial proceedings and statements “reasonably likely to enlist public participation” to effect governmental consideration. G.L. c. 231, § 59H. The statute “immunize[s] this broad category of conduct from suit, except where it is ‘devoid of any reasonable factual support or any arguable basis in law.’” *Bristol*

Asphalt, Co., Inc. v. Rochester Bituminous Prods., Inc., 493 Mass. 539, 550 (2024) (“*Bristol Asphalt*”), quoting G.L. c. 231, § 59H.

As explained below, the Anti-SLAPP Law requires dismissal of all of Plaintiffs’ claims against Kearney because they are based solely on his petitioning activity, and Plaintiffs cannot prove by a preponderance of the evidence that his petitioning was “devoid” of “any” reasonable factual support or arguable basis in law. G.L. c. 231, § 59H.

FACTUAL BACKGROUND

The following facts are drawn from the allegations in Plaintiffs’ Amended Complaint and the affidavits and exhibits filed herewith.¹ Unlike a motion to dismiss for failure to state a claim under Mass. R. Civ. P. 12(b)(6), a court faced with an anti-SLAPP motion “shall consider . . . supporting and opposing affidavits stating the facts upon which the liability or defense is based.” G.L. c. 231, § 59H.

A. Aidan Kearney’s Investigative Reporting and Video Streaming Content.

Aidan Kearney is a writer, investigative reporter, and video content producer known as “Turtleboy.” (Kearney Aff., ¶ 2). For the last 13 years he has published a widely read website, currently titled “TB Daily News.” (*Id.*). He also publishes livestreamed video content. (*Id.*).

Some of Kearney’s best-known work has involved police misconduct. In October 2017, for example, Kearney was the first to report that State Police officials had ordered a state trooper to omit incriminating information about the daughter of a district court judge from an official arrest report. (Ex. 1, Phil Demers, “Worcester DA’s office, state police communicated about scrubbed arrest report of judge’s daughter Alli Bibaud (report),” *MassLive*, Nov. 16, 2017

¹ Each of the exhibits referred to in this motion (“Ex __.”) is attached to the Affidavit of Jeffrey J. Pyle.

(noting that Kearney’s blog, then called “Turtleboy Sports,” was “[t]he blog that broke the story of the altered report”)). Kearney’s reporting resulted in the resignations of State Police Col. Richard McKeon and Deputy Superintendent Francis Hughes. (*Id.*) The State Ethics Commission later found reasonable cause to believe that Worcester District Attorney Joseph D. Early, Jr., and other officials had violated the conflict of interest law in their handling of the police report.²

Kearney’s website and videos comprise a mixture of investigative reporting, analysis, opinion, and the kind of “vituperative, abusive, and inexact” language that is a hallmark of political speech under the First Amendment.³ *Watts v. United States*, 394 U.S. 705, 708 (1969). Like many other media outlets, “TB Daily News” features advertising. (Am. Compl., ¶ 8). Kearney also requests donations and sells merchandise to support his work. (Kearney Aff., ¶ 3).

B. Kearney Publishes Articles and Videos About the Karen Read Case.

Plaintiffs allege that in April 2023, Kearney began receiving information through an intermediary from Karen Read, the defendant in a pending murder case in Norfolk Superior Court. (Am. Compl., ¶ 23). Read had been charged with killing her boyfriend, Boston Police officer John O’Keefe, by backing her car into him outside the Canton home of Boston Police officer Brian Albert during the early morning hours of January 29, 2022. (*Id.*, ¶ 7). On April 12,

² The Ethics Commission’s petition did not result in a finding of a violation. <https://www.mass.gov/decision/final-decision-and-order-in-the-matters-of-susan-anderson-joseph-d-early-jr-richard-mckeeon-and-jeffrey-travers>. Separately, Kearney broke the story that State Trooper Leigha Genduso had been hired by the Massachusetts State Police despite having previously participated in a marijuana trafficking operation, and that she may not have disclosed that information on her application. (Pyle Aff., **Ex. 2**, Paul Tuthill, “Scandals Scar Massachusetts State Police,” WAMC Northeast Public Radio, March 23, 2018 (noting that “the blog Turtleboy Sports reported that years before she was hired, Genduso had been charged in a massive federal drug investigation. She escaped prosecution by agreeing to testify against coconspirators.”)).

³ See generally www.tbdailynews.com and www.youtube.com/@TurtleboyLive.

2023, Read filed a discovery motion to obtain Mr. Albert's phone for analysis. (*Id.*, ¶ 27). The motion attached numerous documents, including police reports. (*Id.*).

On April 18, 2023, Kearney published a blog post about the Read case, headlined, "Canton Cover-Up Part 1: Corrupt State Trooper Helps Boston Cop Coverup Murder of Fellow Officer, Frame Innocent Girlfriend." (Am. Compl., ¶ 33) (**Ex. 3**). The post is 70 pages long, including photographs obtained through Kearney's reporting efforts and screenshots from court pleadings and exhibits. (*Id.*). Contrary to Plaintiffs' allegations, Kearney wrote the post himself – its content was not "funneled by Read" to Kearney. (Kearney Aff., ¶ 5; Am. Compl. ¶ 34).

In his "Part 1" post, Kearney sets forth the Commonwealth's theory of the O'Keefe killing and the evidence supporting it, alongside information from the defense's discovery motion. (**Ex. 3**). Based on his assessment of the evidence, Kearney concludes O'Keefe was "violently beaten to death" by persons inside Brian Albert's house, who then "hatch[ed] an elaborate plot to frame Read for killing him." (*Id.*). As evidence, Kearney cites to damning facts set forth in the defense motion for discovery. (*Id.*). These include that Brian Albert's sister-in-law, Jennifer McCabe, who was present at Albert's house, "had searched 'Hos [how] long to die in cold' at 2:27 AM on the night O'Keefe died," long before O'Keefe's body was discovered at 6:00 that morning. (*Id.* at 40-41). Kearney reported that McCabe had taken steps to purge her phone of this inculpatory search, and to delete her communications with Brian Albert. (*Id.* at 44). O'Keefe's phone, Kearney noted, had "tracked him walking up and down . . . stairs" between 12:20 to 12:32 AM, movement that would have been impossible "if he was inside Karen Read's car or lying on the ground outside the house" as the Commonwealth alleged. (*Id.* at 48). Kearney also reported that in the morning after Canton Police arrived, "Brian [Albert], a veteran Boston

Police Officer and trained first responder, didn't even come outside despite the fact that a crime scene was unfolding on his property.” (*Id.* at 53).

Kearney argues in “Part 1” that the killing was the subject of a coverup, “aided and abetted by members of the Massachusetts State Police, Canton Police Department, and Norfolk County DA’s Office.” (**Ex. 3** at 2). “The person most responsible for the coverup,” Kearney stated, was Massachusetts State Police Trooper Michael Proctor, who “failed to speak to key witnesses,” and “never applied for geofence data that would show the identities of every person in the house that night.” (*Id.* at 64). Kearney then makes a direct plea for government action: “Trooper Proctor, Brian Albert, Colin Albert, and Jennifer McCabe should all spend significant amount of time in jail, and two of them should be charged with murder. . . . The Canton Police Chief and Deputy Chief should be fired. . . . Every other person in that house should be charged with obstruction of justice, as they witnessed a crime and never reported it.” (**Ex. 3** at 70).

Following his “Part 1” post, Kearney wrote many more articles about the Read case in which he argued forcefully for her innocence. On April 18, 2023, he published “Part 2,” of his “Canton Cover-up” series, in which he responds to commenters who had criticized his earlier post. (Am. Compl., ¶ 33; **Ex. 4**). In “Part 3,” published on April 20, 2023, Kearney criticizes the Norfolk DA, Michael Morrissey; the post is titled, “Norfolk County DA Says He Will Continue Prosecution of Innocent Woman Karen Read.” (**Ex. 5**). Morrissey, Kearney writes, “knows full well that Karen Read did not kill John O’Keefe” but he “is pushing forward anyway for one reason – pride. He’s not man enough to admit that his office is complicit in covering up for a murder.” (*Id.* at 3). “Every minute wasted on the prosecution of Karen Read is time, money, and resources that could be spent investigating and charging the people who killed John O’Keefe. . . . It is an absolute joke, and a DISGRACE, that this politically connected hack of a DA is pursuing

this. He should resign IMMEDIATELY and hand over this case to a competent individual.” (*Id.* at 18-19). Kearney then calls on his readers to “[e]mail michael.morrissey@state.ma.us.” (*Id.*).

These posts marked the beginning of Kearney’s yearslong and ongoing campaign of investigation, advocacy, and petitioning surrounding the Karen Read case. The Amended Complaint alleges that Kearney has published 550 parts to his “Canton Coverup” series to date (Am. Compl., ¶ 33, n. 5), as well as “thousands of tweets, hundreds of blog posts, hundreds of YouTube videos, and countless other public statements across a variety of platforms.” (*Id.*, ¶ 46).

3. Kearney’s Petitioning Spawns the “Free Karen Read” Movement.

Plaintiffs admit, as they must, that Kearney successfully encouraged thousands of people to join in his efforts to ensure justice in the Karen Read case and accountability for O’Keefe’s killing. (Am. Compl., ¶¶ 60-63, 106, 121, 126). For example, on July 22, 2023, Kearney assembled at least 200 individuals to participate in a “rolling rally” through Canton focused on the case, culminating in a protest at the Canton Police Department. (*Id.*, ¶¶ 60-63). After 500 people joined Kearney at a protest in front of the courthouse on July 25, 2023, he published an article exhorting his readers to continue to speak out: “Soon Karen Read will be a household name across the country, and we are responsible for that. It has put public pressure on the DA’s Office and Judge Cannone to remind them that there are millions of us watching their every move. We will not allow them to frame and prosecute an innocent woman for murder while her killers remain free. We will continue to make our voices heard until there is REAL justice for John O’Keefe.” (**Ex. 6**)

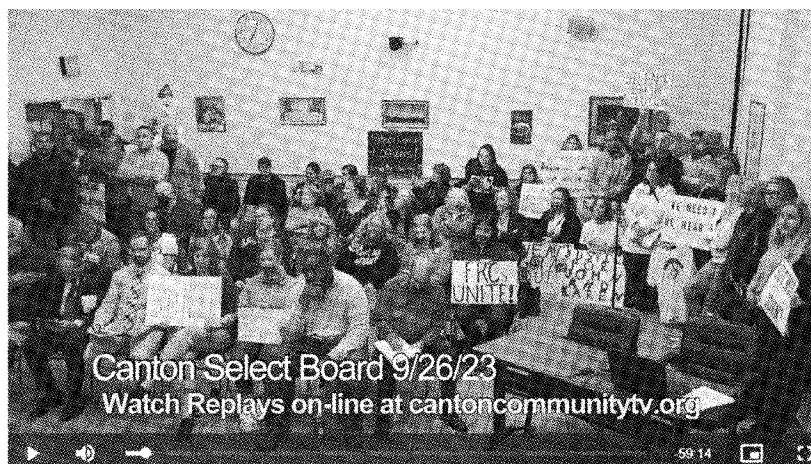
Kearney undisputedly inspired hundreds of people to protest in front of the courthouse every day during Read’s two trials. (Am. Compl., ¶ 106, alleging, in words of protester, that “‘Turtleboy [was] the reason there were people outside the courthouse every single day,’”

chanting “‘FREE KAREN READ,’ and wearing pink as a symbol of their support.”) During Read’s second trial, he drew protesters “from as far as California and Georgia,” and they “stopped to take pictures with him.” (*Id.*, ¶ 121). After Read was found not guilty, Kearney stated that he would “‘like to think that some of the evidence that was presented to [the jury] in court was a result of [his] journalism and [his] influence and [his] activism online.’” (*Id.*, ¶ 126). Kearney “also applauded himself for conducting standouts, ‘put[ting] up billboards all over Norfolk County for Free Karen Read,’ and making it impossible for people not to know about the case.” (*Id.*).

Observers of the trial shared Plaintiffs’ assessment of Kearney’s central importance in driving public discourse about the Karen Read case. *See* **Ex. 7**, Brad Petrishen, “Turtleboy Factor: As Karen Read Trial Starts, Holden Blogger’s Influence on Display,” *Worcester Telegram*, April 16, 2024 (“While the murder allegedly occurred in Canton, the publicity that has turned it into a regional and national fixation largely stemmed from the blog of Holden’s Aidan Kearney.”); **Ex. 8**, Catherine Elton, “‘Free Karen Read’ Blogger Turtleboy Will Not Go Quietly,” *Boston* magazine, May 19, 2024 (“Almost single-handedly, through relentless blogging and YouTube streaming, Kearney upturned public perception of what seemed like an open-and-shut case, casting a thick cloud of doubt on the workings of our justice and law enforcement systems.”); **Ex. 9**, Chris Heath, “Turtleboy Will Not Be Stopped,” *The Atlantic*, March 10, 2025 (“[T]here’s a solid argument that the whole public discourse around the trial—not just the heightened interest in it but the galvanizing of a small movement of people committed to defending Read against what they believed was an imminent injustice—was catalyzed mainly by [Kearney’s] interventions.”). Participants in the “Free Karen Read” protests agree. (**Ex. 10**, Affidavit of Rita Lombardi; **Ex. 11**, Affidavit of Paul Christoforo).

4. Kearney's Writings Lead to a Canton Special Town Meeting and an Audit of the Canton Police Department.

Kearney's activism did not just inspire protest. It encouraged Canton residents to propose, vote for, and implement a measure to bring increased oversight to the Canton Police Department. In direct response to Kearney's coverage, residents began to speak up at meetings of the Canton Select Board to raise questions about the honesty and professionalism of the Canton Police Department, and to question the actions of Select Board member Chris Albert, the brother of Brian Albert. (Ex. 10, Lombardi Aff., ¶¶ 5-7). Before its meeting on September 26, 2023, the Select Board suspended the open comment portion of future meetings to allow "emotions" to cool. (Ex. 12). Spectators showed up anyway, some with tape over their mouths, and others with signs reading, "Justice for John and Karen," and "Stop Corrupt Officers!"⁴



In the fall of 2023, Canton residents placed an article on the warrant at a special town meeting to conduct an independent audit of the Canton Police. (Ex. 10, Lombardi Aff., ¶ 6). Co-

⁴ On October 27, 2023, in response to the criticism fomented by Kearney's reporting, the Canton Select Board announced that it would conduct two reviews of the Canton Police Department's operations, one examining the department's policies and procedures, and the other auditing its evidence room. According to the *Canton Citizen*, "Both reviews have been the subject of numerous resident requests at Select Board meetings following the death of former Boston Police Officer John O'Keefe." (Ex. 13). A Select Board member stated at the meeting, "We have heard the individual concerns of our residents." (*Id.*).

sponsor Rita Lombardi states in her affidavit that she was spurred to take action to propose the audit because of Kearney's reporting. (*Id.*). In an article on November 10, Kearney encouraged "every citizen of Canton to be at Canton High School on November 20 for the Special Town Meeting. Vote YES on the audit, and bring as many friends and family members with you as you can." (**Ex. 14**). On November 20, 2023, the special town meeting voted 903 to 800 to approve the warrant article, despite the unanimous opposition of the Select Board.⁵ (**Ex. 10**, ¶ 7; **Ex. 15**).

5. Each of the Articles and Videos Identified in Plaintiff's Amended Complaint Was Part of Kearney's Petitioning Campaign.

In their Amended Complaint, Plaintiffs identify 37 allegedly defamatory publications that Kearney published about them, consisting of 14 written statements and 23 allegedly defamatory videos. (*See generally* Am. Compl., ¶¶ 33-141). A list of the articles and posts identified as defamatory is set forth as **Exhibit 16** to the Affidavit of Jeffrey J. Pyle.⁶ The written publications that plaintiffs identify as defamatory are attached to the Pyle Affidavit as Exhibits **3-4** and **17-28**). The videos identified as defamatory in the Amended Complaint as defamatory total

⁵ The audit report, released in April 2025, criticized the Canton Police for several failures of procedure at the O'Keefe crime scene, including the failure to photograph O'Keefe's body where it was found and to interview Jennifer McCabe and Brian Albert on camera at the Canton Police Department. The audit also criticized the Canton Police Department for leaving the crime scene unattended for ten hours after discovering O'Keefe's body. The auditors recommended that Canton police officers undergo additional training in crime scene management and interrogation, that patrol vehicles be equipped with crime scene kits, and that policy be changed to prohibit officers from using personal phones to take crime scene photographs. A copy of the report is available at https://www.statehousenews.com/audit-of-canton-police-department/pdf_f0f2be73-faad-4c15-a7e5-ecda9dc1c566.html

⁶ The list does not include every video or writing identified in the Amended Complaint. Plaintiffs reference some of them in an effort to show that Read and Kearney worked together, as opposed to identifying statements that harmed the Plaintiffs.

approximately 58 hours. Certain petitioning-related segments of these videos are summarized in a chart attached as to the Pyle Affidavit as **Exhibit 29**, with available hyperlinks to the videos.⁷

Each of the allegedly defamatory publications of which Plaintiffs complain was part of Kearney's campaign to ensure that justice was served in the Karen Read case, and to encourage the prosecution of Plaintiffs for crimes related to John O'Keefe's death. (Kearney Aff., ¶ 7). They further those goals in several ways: (1) by reviewing the evidence of Read's innocence and Plaintiffs' guilt in O'Keefe's killing, (2) criticizing the police and prosecution for their handling of the case, (3) calling for dishonest or corrupt police officers to be fired or prosecuted, (4) expressing opinions about the veracity and significance of trial testimony, and (5) encouraging public participation in the case. (Exs. 3-4 and 17-28).

6. Karen Read's Trials

The first trial in *Commonwealth v. Read* began on April 29, 2024 and ended in a mistrial on July 1, 2024. A retrial began on April 22, 2025, and ended on June 18, 2025 with a "not guilty" verdict on the charge of second-degree murder. At both trials, the Court permitted the defense to present evidence that Plaintiffs Brian Albert and/or Brian Higgins were "third party culprits" who killed John O'Keefe. (**Ex. 30**). The Court made these rulings after determining that Read met the evidentiary standard to mount a "third-party culprit" defense under *Commonwealth v. Watkins*, 473 Mass. 222, 233 (2015). *Id.*

ARGUMENT

The Anti-SLAPP law, G.L. c. 231, § 59H, protects the right to petition the government for redress of grievances. "Under G. L. c. 231, § 59H, a party may file a motion to dismiss if 'the

⁷ As of the date of service of this motion, Plaintiffs have not complied with the Court's directive to supply the allegedly defamatory videos on a thumb drive.

civil claims ...’ against it are based solely on its exercise of the constitutional right to petition.” *477 Harrison Ave., LLC v. JACE Boston, LLC*, 483 Mass. 514, 518 (2019), quoting G.L. c. 231, § 59H. The statute provides “powerful procedural protections” requiring the speedy dismissal of such claims unless the targeted petitioning was “devoid of any reasonable factual support or any arguable basis in law.” *Bristol Asphalt*, 493 Mass. at 540, 557, quoting G.L. c. 231, § 59H.

An Anti-SLAPP motion is addressed in two stages. “At the first stage, the motion’s proponent,” here, Kearney, “must ‘make a threshold showing through the pleadings and affidavits that the claims against [him] are ‘based on’ [his] petitioning activities alone and have no substantial basis other than or in addition to the petitioning activities.” *Doe v. Thorell*, 106 Mass.App.Ct. 532, 535 (2026), quoting *Bristol Asphalt*, 493 Mass. at 555; *Kuzma v. Rollins*, No. 1872-CV-00286, 2022 WL 21807922, at *6 (Mass.Super. July 29, 2022). “If a special motion proponent meets this threshold burden, the analysis proceeds to the second stage, at which § 59H requires allowance of the motion unless the special motion opponent[s],” here, Plaintiffs, “show[] that [Kearney’s] exercise of [his] right of petition was devoid of any reasonable factual support or any arguable basis in law’ and . . . caused actual injury to the special motion opponent.” *Thorell*, 106 Mass. App. Ct. at 535-536 (cleaned up). “[P]roving petitioning is ‘devoid’ of any reasonable factual support or any arguable basis in law is a difficult task” *Bristol Asphalt*, 493 Mass. at 557 (emphasis in original).

The Anti-SLAPP Law provides that if a court grants a special motion to dismiss, it “shall award the moving party costs and reasonable attorney’s fees, including those incurred for the special motion. . . .” G.L. c. 231, § 59H. “[T]he award of attorney’s fees . . . is mandatory.” *N. Am. Expositions Co. Ltd. P’ship v. Corcoran*, 452 Mass. 852, 872 (2009) (internal quotations omitted). A denial of an anti-SLAPP motion is appealable under the doctrine of present

execution, *Fabre v. Walton*, 436 Mass. 517, 521-22 (2002), and is reviewed *de novo*. *Bristol Asphalt*, 493 Mass. at 560.

I. PLAINTIFFS' CLAIMS AGAINST KEARNEY ARE BASED SOLELY ON HIS PETITIONING ACTIVITIES.

Plaintiffs' claims against Kearney are based on statements and acts that fall well within the broad ambit of Anti-SLAPP Law's protection for "a party's exercise of [his] right of petition." G.L. c. 231, § 59H. Kearney is being sued solely for writing and speaking about the evidence in a pending criminal prosecution, rallying public opposition to the proceeding, reporting on facts that were likely to – and did – inspire public participation in the matter, and for arguing that authorities should charge Plaintiffs, not Karen Read, with the underlying crime. All of that conduct is protected petitioning activity.

The definition of "a party's exercise of its right of petition" in the Anti-SLAPP Law is "very broad." *Duracraft Corp.*, 427 Mass. at 162. It includes several elements that squarely apply to Kearney's alleged speech and actions here, including: "any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body;" "any statement reasonably likely to encourage consideration or review of an issue by a legislative, executive, or judicial body," "any statement reasonably likely to enlist public participation in an effort to effect such consideration;" and "any other statement falling within constitutional protection of the right to petition government." G.L. c. 231, § 59H. "In order to determine if statements are petitioning, [courts] consider them in the over-all context in which they were made." *N. Am. Expositions Co. Ltd.*, 452 Mass. at 862.

Kearney's writings and statements constituted petitioning, first and foremost, because they were "reasonably likely to enlist public participation" concerning the O'Keefe killing and the Karen Read prosecution. G.L. c. 231, § 59H. Kearney identified what he believed to be a

massive travesty of justice, explained in detail the reasons for that conclusion, and inspired his “hundreds of thousands of followers” (Am. Compl., ¶ 143) to take action to stop it, including by emailing and protesting against DA Morrissey and the police, (Ex. 5), protesting at the courthouse, (Exs. 10-11), and participating in public “standouts” against the prosecution. (*Id.*).

The Supreme Judicial Court has squarely held that speech and advocacy designed to foment public participation around a pending judicial proceeding constitutes protected petitioning under the Anti-SLAPP Law. In *Cardno ChemRisk, LLC v. Foytlin*, 476 Mass. 479 (2017), two environmental activists published an article in the *Huffington Post* about a pollution lawsuit against BP arising from the Deepwater Horizon disaster. *Id.* at 479-480. The activists wrote that an expert consultant for BP, Cardno Chemrisk, “has a long, and on at least one occasion fraudulent, history of defending big polluters using questionable ethics to help their clients avoid legal responsibility for their actions.” *Id.* at 481. Cardno Chemrisk sued the activists for defamation, and the SJC held that the case had to be dismissed under the Anti-SLAPP Law. The activists’ article, the Court held, was protected petitioning activity because it was published “to influence governmental bodies by increasing the amount and tenor of coverage around the environmental consequences of the spill,” and included an “implicit call for its readers to take action.” *Id.* at 486 (emphasis supplied). “Given this, the article fits squarely within the second clause of G. L. c. 231, § 59H: ‘any statement reasonably likely to enlist public participation.’” *Cardno ChemRisk, LLC*, 476 Mass. at 486.

So here, Kearney’s articles, videos, and actions plainly were intended to “increas[e] the amount and tenor of coverage” around the Karen Read case. (Am. Compl., ¶¶ 106, 121, 126). They also included implicit and explicit calls for the public to take action. (Exs. 5, 29). In one of the earliest videos Plaintiffs complain about, Kearney states that anyone who cares about John

O’Keefe should be “literally in front of the Massachusetts State Police Headquarters or the Norfolk County District Attorney’s Office every single day with a megaphone making noise, demanding, DEMANDING to know how these incompetent [law enforcement agents] screwed this up so badly,” and “why there aren’t IMMEDIATE resignations.” (Ex. 29, p. 1 (April 22, 2023 video identified in Am. Compl. at ¶¶ 37-38)). He repeatedly called the prosecution a harmful waste of time and resources, and urged the authorities to prosecute the Plaintiffs instead of Read. (*See, e.g.*, Ex. 29 at 4, 13).

Indeed, as Plaintiffs acknowledge, Kearney’s advocacy was not only “reasonably likely” to enlist public participation in the Read case, it was wildly successful in doing so. (Am. Compl., ¶¶ 60-63 (alleging that Kearney assembled at least 200 individuals to participate in “rolling rally”); ¶ 106 (alleging Kearney was “the reason there were people outside the courthouse every single day,” chanting “‘FREE KAREN READ,’ and wearing pink as a symbol of their support”) ¶ 121 (alleging Kearney made “it impossible for people not to know about the [Karen Read] case.”)) Further, the affidavit of Rita Lombardi shows that Kearney’s statements convinced her, as a Canton resident, to co-sponsor a town meeting article to audit the Canton Police Department. (Ex. 10, Lombardi Aff., ¶¶ 6-8). There is no purer example of “public participation” than town meeting. G.L. c. 231, § 59H; *Wood v. Town of Milton*, 197 Mass. 531, 533 (1908) (noting that town meeting is a “pure democracy, where the citizens, as to matters within their jurisdiction, administer the affairs of the town in person.”).

Kearney’s statements also meet another element of the “petitioning” definition: they were made “in connection with an issue under consideration or review by a . . . judicial body.” G.L. c. 231, § 59H. His statements were “made to influence, inform, or at the very least, reach [government] bodies—either directly or indirectly,” *North American Expositions Co. Ltd.*

Partnership v. Corcoran, 452 Mass. 852, 861 (2009), “they [were] closely and rationally related to the proceedings,” and “they [were] in furtherance of the objective served by governmental consideration of the issue under review.” *Plante v. Wylie*, 63 Mass. App. Ct. 151, 159 (2005); *see Cardno Chemrisk*, 476 Mass. at 486 (activists’ statements about BP met this prong of Anti-SLAPP definition); *see also Blanchard v. Steward Carney Hosp., Inc.*, 477 Mass. 141, 151 (2017), overruled on other grounds by *Bristol Asphalt, Co. v. Rochester Bituminous Prods., Inc.*, 493 Mass. 539, 554, 556 (2024)(allegedly defamatory statements by hospital president to *Boston Globe* were in furtherance of hospital’s goal of maintaining license in pending review). The statements by Kearney identified in the Amended Complaint were made after Read had been charged with murder; they related to the case; they all were “in furtherance of the objective[s]” of ensuring justice in the case and securing the indictment of one or more of the Plaintiffs for O’Keefe’s killing; and they all were made to influence or at least reach judicial and executive officials, either directly or through participation by other members of the public. (Exs. 3-4, 17-29). As Kearney wrote on his website early on, the public advocacy campaign was intended to “put public pressure on the DA’s Office and Judge Cannone to remind them that there are millions of us watching their every move. We will not allow them to frame and prosecute an innocent woman for murder while her killers remain free. We will continue to make our voices heard until there is REAL justice for John O’Keefe.” (Ex. 6 at 46).⁸

⁸ Kearney’s words unintentionally echo those of Justice Oliver Wendell Holmes, Jr. nearly 150 years ago: “It is desirable that the trial of causes should take place under the public eye . . . because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed.” *Cowley v. Pulsifer*, 137 Mass. 392, 394 (1884).

In their Amended Complaint, Plaintiffs allege that Kearney continued to make statements accusing Plaintiffs of crimes related to the death of John O’Keefe after Read was exonerated. (Am. Compl., ¶¶ 125-141). These statements, too, meet the Anti-SLAPP Law’s definition of petitioning, because of their continued likelihood of enlisting public participation, and because they are “reasonably likely to encourage consideration or review of an issue by a[n] . . . executive . . . body” G.L. c. 231, § 59H. There is no statute of limitations for murder, and the O’Keefe killing remains within the six-year statute of limitations for manslaughter. G.L. c. 277, § 63. Kearney’s continued statements accusing the Plaintiffs of having killed O’Keefe are thus reasonably likely to encourage the investigation or filing of charges against them. Indeed, in one of the videos Plaintiffs identify as defamatory, Kearney states that he hoped the jury’s unanimous acquittal of Read would mean that “all of us can unite and demand that the Alberts and the McCabes and Brian Higgins be held accountable for what they did to John O’Keefe.” (Pyle Aff. Ex. 29, p. 16). This is quintessential petitioning activity. G.L. c. 231, § 59H.

In a vain attempt to distract from this conclusion, Plaintiffs allege that Kearney had a commercial motive and “profit model” behind his statements. (Am. Compl., ¶¶ 79-86, 161). However, “the motive behind the petitioning activity is irrelevant at this initial stage” of the Anti-SLAPP test; instead, “[t]he focus solely is on the conduct complained of” *Off. One, Inc. v. Lopez*, 437 Mass. 113, 122 (2002); *see also 477 Harrison Ave., LLC*, 477 Mass. at 170. As the SJC has recently re-emphasized, “a party may seek to invoke the powerful protections of the anti-SLAPP statute to protect speech even if it ‘involves a commercial motive,’ with only a

limited relationship to issues of public concern.” *Bristol Asphalt*, 493 Mass. at 549. As such, allegations about Kearney’s “profit” motive are irrelevant.⁹

II. NONE OF THE PLAINTIFFS’ CLAIMS AGAINST KEARNEY HAS ANY “SUBSTANTIAL BASIS” OTHER THAN PETITIONING ACTIVITY.

Although Plaintiffs make a number of spurious and irrelevant allegations about Kearney’s “motives,” the “actual conduct complained of” in each of their counts against him is petitioning alone. *477 Harrison Ave., LLC*, 477 Mass. at 170. As shown below, there is no “substantial basis” to any of these claims “other than or in addition to [Kearney’s] petitioning activities.” *Thorell*, 106 Mass.App.Ct. at 535.¹⁰

The first claim against Kearney, for defamation, (Count Two), is based entirely on his allegedly defamatory statements that Plaintiffs “were responsible for the murder of O’Keefe, and a coverup of their purported role in that murder.” (Am. Compl. ¶¶ 156; 157-167). As shown

⁹ Nor does Kearney’s use of name-calling render his statements unprotected by the “very broad” definition of petitioning. *Duracraft Corp.*, 427 Mass. at 162; (See Am. Compl., ¶¶ 58, 90, 102, 184) (complaining that Kearney referred to Plaintiff McCabe as “horse face,” a “Disney villain,” and a “pig.”)) Article 19 of the Massachusetts Declaration of Rights, which protects the right to petition the government, “expressly envisions a politically active and engaged, even aggrieved and angry, populace.” *Barron v. Kolenda*, 491 Mass. 408, 415 (2023) (striking down municipal civility code for government meetings). “Although civility can and should be encouraged in political discourse, it cannot be required. In this country, we have never concluded that there is a compelling need to mandate that political discourse with those with whom we strongly disagree be courteous and respectful. Rather, we have concluded that political speech must remain ‘uninhibited, robust, and wide-open.’” *Id.*, 491 Mass. at 421, quoting *Van Liew v. Stansfield*, 474 Mass. 31, 39 (2016). Thus, in *MacDonald v. Paton*, the Appeals Court held that the Anti-SLAPP Law protected a website operator who called the plaintiff, a retired state trooper and member of the Athol Board of Selectmen, a “nazi.” 57 Mass. App. Ct. at 293 (2003) (holding Anti-SLAPP Law protected satiric website’s definition of “nazi” to mean, “In Athol, a term sometimes used to describe certain selectmen who wish to ignore most issues except for those which place them firmly in bed with chiefs of police. (see Old Macdonald had a gun, E-I-E-I-Oh shit).”)

¹⁰ The Amended Complaint now alleges five counts against Kearney: Defamation (Count Two); Intentional Infliction of Emotional Distress (Count Five); Negligent Infliction of Emotional Distress (Count Eight); “Civil Conspiracy” (Count Ten); and violation of Chapter 93A (Count Eleven).

above, these statements constituted the exercise of Kearney's right to petition because they were "reasonably likely to" (and did) "enlist public participation" in putting pressure on prosecutors to drop the case against Read and charge the Plaintiffs instead, and were made "in connection with an issue under consideration" by a "judicial body." G.L. c. 231, § 59H. The "over-all context in which they were made," moreover, shows they were intended to ensure justice in the case and bring about the prosecution of the Plaintiffs. *N. Am. Expositions Co. Ltd. P'ship*, 452 Mass. at 862. Accordingly, the defamation claim is based on petitioning alone.

In their count of "civil conspiracy," Plaintiffs allege that Kearney and Read agreed "to defame the Plaintiffs" and inflict emotional distress on them by publishing information suggesting that Read was innocent and that the Plaintiffs were guilty – an agreement carried out by Read "funnel[ing]" information to Kearney for publication. (Am. Compl. ¶¶ 212-216). In other words, Plaintiffs allege that defendants conspired to publish statements implicating the Plaintiffs in the killing. As explained above, such statements were "reasonably likely to enlist public participation" around the case and to encourage authorities to bring charges against Plaintiffs. G.L. c. 231, § 59H. This count thus targets petitioning activity alone.

Plaintiffs' emotional distress counts (Counts Five and Eight), essentially duplicate their defamation claim. In both counts, Plaintiffs complain of Kearney's acts of publishing statements accusing Plaintiffs of crimes – acts that constitute petitioning activity, as explained above. (Am. Compl., ¶ 184; ¶¶ 182-190 (Count Five) (Kearney "broadcast[ed] his campaign of outrageous and false statements about the Plaintiffs."); ¶ 202 (Count Eight) ("Kearney's campaign of outrageous, cruel, and malicious lies created an unreasonable risk of causing the Plaintiffs severe emotional distress"). Where a defamation count is based solely on petitioning, the same must be true of emotional distress claims based on the same statements. *Cf. Shay v. Walters*, 702 F.3d 76,

83 (1st Cir. 2012) (dismissing plaintiff’s claim for negligent infliction of emotional distress where it “grows out of the same nucleus of operative facts that spawn her defamation claim.”).

Plaintiffs cannot avoid this conclusion by pointing to their allegations that Kearney engaged in “extreme and outrageous” conduct, because even cursory scrutiny of those allegations show that they identify only petitioning. *Bristol Asphalt*, 493 Mass. at 550 (noting the statute “immunize[s] [a] broad category of *conduct* from suit” unless devoid of merit) (emphasis supplied). For example, Plaintiffs complain that Kearney “accost[ed]” McCabe at a sporting event, and recorded this interaction on camera to publish on his communications platforms. (Am. Compl., ¶ 59). The video of the encounter shows that Kearney sought to ask McCabe questions about her actions on the night in question.¹¹ Kearney published the resulting video in furtherance of his quest to show Karen Read’s innocence, and publication of McCabe’s reaction to his questions was likely to spur public interest and participation. (*Id.*). Thus, the confrontation amounted to petitioning, as broadly defined in G.L. c. 231, § 59H.

Similarly, Plaintiffs allege that in one of his videos, Kearney displayed an image of a police incident report that had been publicly filed in Court containing some of the Plaintiffs’ social security numbers and addresses.¹² (Am. Compl., ¶¶ 28, 38, 184; Ex. 29, p. 1). In that same video, Kearney expressly exhorts people who care about John O’Keefe to demand justice and

¹¹ Embedded video of Kearney’s effort to ask McCabe questions can be seen here: <https://tbdailynews.com/2023/06/06/canton-coverup-part-48-jen-and-matt-mccabe-avoid-questions-about-involvement-in-john-okeefes-murder-at-billerica-canton-lacrosse-game-ask-administrators-to-kick-out-award-winning-journalist/> (article about Kearney’s attempt to ask Jennifer McCabe why she Googled “How long to die in cold” at 2:27 a.m. on night in question).

¹² As the video shows, Kearney did not highlight or even mention the social security numbers or addresses in this video – he merely displayed the publicly filed report while discussing other content within it. See <https://rumble.com/v2ju5ro-breaking-the-narrative-in-canton-and-newton.html> (last visited May 20, 2026).

“immediate resignations” in the Massachusetts State Police and Norfolk County District Attorney’s Office over the case. (See Ex. 29, p. 1). Likewise, the Amended Complaint alleges that Kearney engaged in “extreme and outrageous” conduct by leading peaceful protesters in cars through public streets of Canton in a “rolling rally” to bring awareness to the case – a rally that ended in a protest in front of the Canton Police Department. (Am. Compl., ¶¶ 60-63, 184). As Kearney stated at the time, the “rolling rally” came in the context of his effort to “put public pressure on the DA’s Office and Judge Cannone” not to “frame and prosecute an innocent woman for murder while her killers remain free,” quintessential petitioning conduct. (Ex. 6). Such an assembly plainly could be expected to foment further public participation.¹³

Plaintiffs vaguely complain of “harassing voicemails,” but they identify only a single voicemail that Kearney allegedly left for Boston police officer Brian Albert during the same April 22, 2023 livestream video discussed above, asking him, “[D]id you kill John O’Keefe or was it your nephew Colin, and are you covering for him? How did your dog get downstairs and begin biting Mr. O’Keefe?” (Am. Compl., ¶ 37). These questions are plainly geared toward advancing Kearney’s cause of eliciting information that could ensure justice in the case, and they came in the context of an express call to petition the government. (Ex. 29, p. 1).¹⁴

¹³ In their Amended Complaint, Plaintiffs newly allege that Kearney’s speech was intended to “intimidate[e] [Plaintiffs] to not testify or change their testimony.” (Am. Compl., ¶ 25). Plaintiffs identify no facts supporting this baseless allegation. However, once again, the Court’s task is not to speculate on Kearney’s motives for petitioning, but to determine whether the specific allegedly actionable statements and conduct meet the definition of petitioning set forth in G.L. c. 231, § 59H.

¹⁴ Plaintiffs also complain of Kearney’s name-calling, which is both non-actionable and petitioning, as explained above. See note 9, *supra*. Finally, they assert that Kearney “encouraged his followers to harass and confront Plaintiffs,” but this conclusory allegation is wholly unsupported by facts. Such a threadbare assertion does not show a “meritorious claim[] with a substantial basis other than or in addition to the petitioning activities implicated.” *Duracraft Corp.*, 427 Mass. at 167.

Finally, in Count Eleven, Plaintiffs attempt to re-cast their defamation claim as one for violation of the consumer protection act, G.L. c. 93A, § 9, but once again, the only basis for the count is Kearney's publication of the blog posts, videos, and other statements identified above, allegedly with a commercial motive. (Am. Compl., ¶¶ 217-226). As explained above, the allegation of a commercial motive does not show a "substantial basis" to a claim other than or in addition to petitioning. *477 Harrison Ave., LLC*, 477 Mass. at 170–71 (facts showing improper motive "are not themselves the conduct on which the plaintiff rests its . . . claim and, accordingly, cannot provide a substantial nonpetitioning basis for that claim."); *Bristol Asphalt*, 493 Mass. at 549 (petitioning protected "even if it 'involves a commercial motive'").

III. KEARNEY'S PETITIONING WAS NOT "DEVOID" OF "ANY" REASONABLE FACTUAL SUPPORT OR ARGUABLE BASIS IN LAW.

As explained above, each count of the Amended Complaint is based solely on Kearney's petitioning activity, so the burden now shifts to the Plaintiffs to "show[] that [Kearney's] exercise of [his] right of petition was devoid of any reasonable factual support or any arguable basis in law' and . . . caused actual injury to the special motion opponent." *Thorell*, 106 Mass. App. Ct. at 535-536 (cleaned up). "Proving that the moving party's petitioning activity was, in essence, a sham presents a high bar." *Blanchard v. Steward Carney Hosp., Inc.*, 483 Mass. 200, 204 (2019), overruled on other grounds, *Bristol Asphalt*, 493 Mass. at 555. The Supreme Judicial Court's jurisprudence "has tended to 'equate the standard under the anti-SLAPP statute with the concept of frivolousness.'" *Bristol Asphalt*, 493 Mass. at 559–60, quoting *Demoulas Super Mkts., Inc. v. Ryan*, 70 Mass. App. Ct. 259, 267 (2007). "[A] claim is frivolous if there is an absence of legal or factual basis for the claim, and if the claim is without even a colorable basis in law." *Id.* (internal quotation omitted). Even where the petitioning does not end in the

petitioner's favor, that "does not, in and of itself, mean that [it] did not have some basis in law or foundation in fact." *Donovan v. Gardner*, 50 Mass. App. Ct. 595, 601 (2000).

Importantly, Plaintiffs "cannot prevail merely by submitting affidavits controverting the statements made in [Kearney's] petitioning and in the affidavits supporting [his] special motion to dismiss." *Thorell*, 106 Mass. App. Ct. at 540, citing *Bristol Asphalt*, 493 Mass. at 557-558. "Material, disputed credibility issues may not be resolved in the [Plaintiffs'] favor in ruling on the presence of reasonable factual support." *Id.* Nor can Plaintiffs satisfy their burden by challenging the accuracy of isolated statements in Kearney's various blog posts and YouTube shows. "Under § 59H, the question is not whether each and every assertion made in the course of petitioning activity has reasonable factual support, but whether the special motion proponent's 'exercise of its right to petition [itself] was devoid of any reasonable factual support.'" *Thorell*, 106 Mass. App. Ct. at 542 (emphasis supplied), quoting G. L. c. 231, § 59H (while statement in parents' letter to school officials "may well have been rhetorical excess, it did not render the letter devoid of support"); *Bristol Asphalt*, 493 Mass. at 558 n. 18 ("the mere existence of an isolated 'untrue' or 'misleading' statement would not, in and of itself, mean that the petitioning activity was devoid of any reasonable factual support or arguable basis in law.")

Here, Kearney's petitioning primarily concerned what he viewed as the unjust prosecution of Karen Read and the Massachusetts State Police's wrongful failure to investigate the Plaintiffs, despite evidence suggesting Read did not strike O'Keefe with her vehicle and that Plaintiffs were responsible for his death and its subsequent cover-up. (Exs. 3-4, 17-29). Plaintiffs cannot show that Kearney's statements – whether directed at Karen Read's innocence or their own culpability – were "devoid" of "any" reasonable factual support or arguable legal basis. G.L. c. 231, § 59H.

A. Kearney's Petitioning Concerning Karen Read's Innocence Is Supported by the Facts and the Law.

Kearney's petitioning concerning Read's innocence is supported by evidentiary facts, sworn testimony from expert and percipient witnesses, and the law. Indeed, at the conclusion of Read's first trial, the jury failed to reach a unanimous verdict and the Court declared a mistrial. (Am. Compl., ¶ 7). In the second trial, the jury acquitted Read on all counts related to Officer O'Keefe's death – second-degree murder (Count I), manslaughter while operating a motor vehicle under the influence (Count II), and leaving the scene of an accident resulting in death (Count III). (*Id.*). The jury's determination forecloses any claim that Kearney's statements regarding her innocence were "devoid" of "any reasonable factual support or arguable basis in law." *See Fabre*, 436 Mass. at 524 (judgment in favor of party to litigation "is conclusive evidence that the petitioning activity was not devoid of any reasonable factual support or arguable basis in law"); *Baker v. Parsons*, 434 Mass. 543, 555 n. 20 (2001) ("It is not enough for [plaintiff] to show that [defendant's] alleged petitioning activity . . . was based on an error of law; he must show that no reasonable person could conclude that there was a [a basis in law] for [his position].").

There is, moreover, extensive factual support for the jury's acquittal of Read and Kearney's statements concerning her innocence. As Kearney repeatedly explained, Read could not have caused O'Keefe's injuries by striking him with her vehicle. Rather, the evidence at trial pointed to a physical altercation. Kearney's statements that O'Keefe's injuries could not have been caused by Read's vehicle are supported by extensive expert testimony, including, but not limited to, the following:

- Dr. Irini Scordi-Bello, the medical examiner assigned to examine O'Keefe and a prosecution witness, testified that other than wounds on his right arm, O'Keefe did

- not sustain any significant injuries below the neck. **Ex. 31**, Scordi-Bellow Tr. at 18:14-20:1.¹⁵ Dr. Scordi-Bello also testified that while she could not determine what caused the wounds on O’Keefe’s right arm, the wounds were the result of blunt force trauma and animal claws can cause blunt force trauma. *Id.* at 17:15-18:10, 28:3-5.
- Dr. Elizabeth Laposata, the former chief medical examiner for Rhode Island and a professor at Brown University, testified that in her opinion, O’Keefe died from a massive skull fracture that was not consistent with a vehicle strike. **Exs. 32-34**. She further testified that due to the abrasions on the back of O’Keefe’s head, the injury was most likely caused by falling backward onto “something that had a little ridge” and that she saw no evidence of any such ridged surface at the location O’Keefe’s body was found. **Ex. 34**. Dr. Laposata also testified that she saw no signs of hypothermia in O’Keefe’s body and that wounds on his right arm were consistent with an animal bite or claw marks. **Exs. 32, 33**.
 - Dr. Andrew Rentschler, a biomechanical engineer and accident reconstructionist originally retained by the federal government, testified that O’Keefe’s injuries were not consistent with a vehicle strike. **Ex. 35**, Rentschler Tr. at 126:21-23, 135:11-141:20; **Ex. 36**, (“We have no information that he was even hit by the Lexus.”).
 - Dr. Daniel Wolfe, an accident reconstructionist who was also originally retained by the federal government as part of its investigation, testified that based on extensive testing he performed using a crash test dummy, the damage to Read’s vehicle was not consistent with striking a pedestrian. **Ex. 37**, Wolfe Tr. at 65:21-23; 65:24-93:20.

¹⁵ Where a witness’s testimony is cited from both trials, the citation includes a citation to “Trial 1” or “Trial 2.”

Testimony from percipient witnesses provides additional factual support for Kearney's petitioning and, specifically, his assertions that Read did not strike O'Keefe with her vehicle. For example, Brian Loughran, who plowed Fairview Road on the morning of January 29, testified that on his first pass by the Albert residence at approximately 2:45 AM – two hours after the Commonwealth claimed Read struck O'Keefe – he saw no body or anything else near the flagpole where O'Keefe was later found. **Ex. 38**, Loughran Tr. at 24:10-28:21. On his second pass at approximately 3:15-3:30 AM, a Ford Edge was parked in front of the flagpole, but the yard to its right was visible and he observed nothing on the ground where O'Keefe's body was subsequently discovered. *Id.* at 29:2-32:10. Loughran was surprised to see a vehicle on the street because the Alberts never parked on the street. *Id.* at 30:16-25.

In both trials, the Commonwealth relied on taillight pieces allegedly found at 34 Fairview Road and a photograph depicting extensive damage to the right rear taillight of Read's vehicle. Sergeant Nick Barros of the Dighton Police Department, however, testified that he was present when law enforcement took possession of Read's vehicle at her parents' Dighton residence on the evening of January 29, and the taillight was not "completely damaged." **Ex. 39**, Barros Tr. at 5:4-6:10, 10:1-15, 11:16-12:14. When presented with the Commonwealth's photograph of the taillight during the second trial and asked whether it was consistent with what he observed on January 29, Sergeant Barros testified: "absolutely not." **Ex. 40**, p. 4. When Barros observed the taillight on January 29, the middle part of the taillight was intact and only the side had a missing piece, it was not "completely smashed out" as depicted in the photo. *Id.*, pp. 2-4.

B. Kearney's Petitioning About Plaintiffs' Culpability as It Relates to the Competency of the Canton Police Department and the Adequacy of the State Police Investigation Is Supported by Facts and Law.

The other focus of Kearney's petitioning was the integrity of the investigation of O'Keefe's death by the Massachusetts State Police and Canton Police Department, including their failure to investigate whether Plaintiffs were responsible for the killing. As with Kearney's petitioning about Read's innocence, his petitioning about Plaintiffs' responsibility for O'Keefe's death is not "devoid" of reasonable factual support or arguable legal basis. G.L. c. 231, § 59H.

As a threshold matter, O'Keefe's body was found on Brian Albert's property at 34 Fairview Road, where each of the Plaintiffs had been drinking into the early morning hours of January 29. If Read did not cause O'Keefe's injuries by striking him with her vehicle – and, as set forth above, there is substantial evidence that she did not – someone else caused his fatal injuries, and it is reasonable to infer that those present at the Albert home that evening were responsible, particularly given expert testimony that O'Keefe's injuries are inconsistent with being struck by a car. See pp. 23-24, *supra*. There is also evidence from which a reasonable person could infer that each of the Plaintiffs had a role in causing O'Keefe's injuries or participating in a coverup to conceal the true cause of O'Keefe's death.

i. Jennifer McCabe

- At 2:27 AM on January 29, just a few hours before O'Keefe's body was discovered, McCabe googled "Hos long to die in the cold." **Ex. 41**, McCabe Tr. (Trial 1, May 22, 2024) at 44:20-45:3; see also **Ex. 42**, Green Tr. at 22:25-24:23, 32:20-25. McCabe admitted at trial that a forensic report of her phone data stated that the 2:27 AM search was later deleted. **Ex. 41**, McCabe Tr. (Trial 1, May 22, 2024) at 47:3-14, 48:18-49:18.

- McCabe deleted other calls and screenshots on her phone on January 29. **Ex. 43**, McCabe Tr. (Trial 1, May 21, 2024) at 108:2-16, 139:7-22, 185:15-21.
- While at 34 Fairview Road shortly after O’Keefe’s body was discovered on January 29, McCabe told first responders that Read said: “Could I have hit him.” **Ex. 44**, McCabe Tr. (Trial 1, May 17, 2024) at 123:22-124:5. Only later did McCabe testify that Read said: “I hit him I hit him I hit him.” *Id.* at 124:17-125:20.
- In April 2023, McCabe was approached by two FBI agents near her home in Canton. **Ex. 45**, McCabe Tr. (Trial 2, April 30, 2025) at 77:6-79:11. McCabe initially falsely identified herself as her sister Nicole. *Id.* at 79:13-80:2. Minutes later, the FBI agents called McCabe who said she needed ten minutes before meeting with them. *Id.* at 80:3-81:10. At the end of her meeting with the agents, they asked who, if anyone, she had spoken with between the time she falsely identified herself and the meeting. McCabe told agents that she had only spoken with her husband, Matthew McCabe, and Kerry Roberts. *Id.* at 82:2-17, 83:19-84:2, 88:13-18, 90:7-22. Following the meeting, McCabe was told that lying to a federal agent is a crime, and she called the FBI agents and told them that, in the minutes before her meeting with them, she had also called Brian Albert, among others. *Id.* at 91:17-92:4, 94:16-96:6.

ii. Brian Albert

- As set forth above, the Court allowed Read to present evidence at trial related to Albert as a third-party culprit. **Ex. 30**, March 31, 2025 Order.
- At the time of O’Keefe’s death, Brian Albert was a Boston police officer and a trained boxer. **Ex. 46**, B. Albert Tr. (May 13, 2024) at 90:15-19, 121:2-14.

- When O’Keefe, a fellow Boston police officer, was found dead on his front lawn on the morning of January 29, Albert, a trained first responder, did not exit his home. Ex. 46, B. Albert Tr. (May 13, 2024) at 73:22-77:13.
- Albert told Canton police that his daughter, Caitlin Albert, was only briefly at his home on January 29 and left around 12:15 AM. Ex. 46, B. Albert Tr. (May 13, 2024) at 56:21-58:17. Caitlin later told Massachusetts State Police that she was actually the last to leave that evening and left around 2:00 AM. **Ex. 47**, C. Albert MSP Interview. At trial, Caitlin and her parents, Brian Albert and Nicole Albert, confirmed that she was the last to leave between 1:45 and 2:00 AM. Ex. 46, B. Albert Tr. (May 13, 2024) at 58:13-59:4; **Ex. 48**, C. Albert Tr. at 258:15-259:9; **Ex. 49**, N. Albert Tr. at 76:13-77:19.
- Albert testified that he did not make any calls after all his guests left his house on January 29, but call logs show a call between him and Brian Higgins at 2:22 AM on January 29. **Ex. 50**, B. Albert Tr. (May 10, 2024) at 200:21-201:7, Ex. 46, B. Albert Tr. (May 13, 2024) at 142:7-144:23. According to Albert, that call was the result of a “butt dial” and he could not have possibly held a telephone call because he was having “intimate relations” with his wife. Ex. 46, B. Albert Tr. (May 13, 2024) at 137:11-144:23. That testimony is inconsistent with his wife’s testimony that she went to bed shortly after their guests left. Ex. 49, N. Albert Tr. at 81:23-83:15.
- On September 23, 2022, the Superior Court issued a preservation order to Brian Albert requiring that he preserve the contents of his cell phone. **Ex. 51**, Preservation Order. At trial, Albert testified that, on September 22, 2022, the day before the preservation order, he turned in his cell phone and purchased a new one. Ex. 46, B. Albert Tr. (May 13, 2024) at 106:4-19, 107:10-109:1.

iii. The Alberts' Dog Chloe

- At the time of O'Keefe's death, the Alberts owned a German shepherd named Chloe, who was present at the home on the evening of January 28. As Nicole and Brian Albert testified at trial, Chloe had a history of aggression and, in May 2022, the dog injured a person who was trying to break up a fight between Chloe and another dog. Ex. 49, N. Albert Tr. at 122:18-124:12; Ex. 46, B. Albert Tr. (May 13, 2024) at 67:22-68:23.
- Read's dog bite expert, Dr. Marie Russell, testified that the wounds to O'Keefe's right arm were likely caused by a dog. **Ex. 52**, M. Russell Tr. at 18:7-23:18. Dr. Laposata similarly testified that the wounds were consistent with animal bites or claw marks and the medical examiner, Dr. Scordi-Bello, testified that the wounds were caused by blunt force trauma and that a dog's claws can cause such trauma. Exs. 32-34; Ex. 31, Scordi-Bellow Tr. at 17:15-18:10, 28:3-5.
- Shortly after O'Keefe's death, the Alberts "re-homed" Chloe, claiming that it was due to the incident in which she harmed a person more than seven months prior to O'Keefe's death. Ex. 49, N. Albert Tr. at 124:24-125:9.

iv. Brian Higgins

- The Court allowed Read to present evidence at trial related to Higgins as a third-party culprit. Ex. 30, March 31, 2025 Order.
- At trial, text messages were introduced establishing that Higgins had a romantic interest in Read and that, on the night of January 28, he expressed to Read frustration at seeing her with O'Keefe. **Ex. 53**, Higgins Tr. (May 24, 2024) at 142:8-146:23, 161:7-164:7; see also, *Id.* at 86:10-110:25.

- Despite admittedly drinking for most of January 28 and into the early morning hours of January 29, Higgins did not drive straight home from the Alberts' home. Instead, in the middle of a snowstorm, he visited the Canton Police Department ("CPD"). Ex. 53, Higgins Tr. (May 24, 2024) at 189:16-18.
- At various times, Higgins gave different reasons for why he visited the CPD in the middle of a snowstorm. For example, he first told police he went to do administrative work. Ex. 53, Higgins Tr. (May 24, 2024) at 189:16-191:12. Then he told the grand jury that he went there "to move cars around." *Id.* at 190:7-192:22.
- Higgins testified that he did not talk to anyone after leaving the Alberts' house and being notified of O'Keefe's death later in the morning of January 29. Ex. 53, Higgins Tr. (May 24, 2024) at 47:17-49:22, 198:20-199:18. However, telephone records establish that he and Brian Albert had a 22 second phone call at 2:22 AM. *Id.* at 202:4-203:10.
- Like Brian Albert, Higgins was served with an order to preserve the contents of his cell phone on September 23, 2022. He testified that, similar to Albert, he changed phone carriers and phone numbers the day before. **Ex. 54**, Higgins Tr. (May 28, 2024) at 6:22-13:23. About one month later, in October 2023, Higgins disposed of his phone at a military base on Cape Cod. *Id.* at 12:14-13:9.

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- Colin Albert lived next door to O'Keefe. **Ex. 55**, C. Albert Tr. (May 15, 2024) at 266.
- Colin Albert was at 34 Fairview on the evening of January 28 celebrating his cousin Brian Albert's Jr.'s birthday. Ex. 55, Colin Albert Tr. (May 15, 2024) at 244:5-7, 247:6-21. He claims to have left at 12:10 AM on January 29. *Id.* at 253:8-13.

- At trial, Read presented photographic evidence showing that, on February 26, 2022, Colin Albert had scabbed knuckles. **Ex. 56**, Colin Albert Tr. (May 16, 2024) at 48:17-50:12, 51:13-19. Colin claimed that he sustained the injuries to his knuckles when he slipped and fell and braced himself with his knuckles. *Id.* at 51:20-52:19.
- Evidence at trial also established that Colin Albert had a history of violent threats, including a video in which he threatened members of an area youth hockey team. **Ex. 56**, Colin Albert Tr. (May 16, 2024) at 77:16-25, 79:10-82:20, 91:10-25.

In short, Plaintiffs have no hope of demonstrating that Kearney's petitioning to establish Read's innocence and Plaintiffs' culpability in the killing of John O'Keefe was devoid of reasonable factual or legal support. G.L. c. 231, § 59H. Accordingly, Kearney's Anti-SLAPP motion must be allowed.

IV. AN AWARD OF REASONABLE ATTORNEYS' FEES AND COSTS TO KEARNEY IS MANDATORY.

The Anti-SLAPP Law provides that "[i]f the court grants [a] special motion to dismiss, the court shall award the moving party costs and reasonable attorney's fees, including those incurred for the special motion. . . ." G.L. c. 231, § 59H. "Once a court grants a special motion to dismiss under G.L. c. 231, § 59H, the award of attorney's fees . . . is mandatory." *N. Am. Expositions Co. Ltd.*, 452 Mass. at 872 (internal quotations omitted). Accordingly, Kearney requests that upon allowance of his Special Motion to Dismiss, the Court set forth a schedule for him to submit an appropriate application for attorneys' fees and costs.

CONCLUSION

For the foregoing reasons, Aidan Kearney respectfully requests that the Court allow his special motion to dismiss and that he be awarded his reasonable attorneys' fees and costs incurred in this action.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify on this 18th day of June, 2026, I served a copy of the foregoing document upon the following by email:

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