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DOCKET NO.: FBT-CV-21-5045439-S	SUPERIOR COURT
JASON GLADSTONE	J. D. OF FAIRFIELD
vs.	AT BRIDGEPORT
LAURA KARSON	JUNE 17, 2021

DEFENDANT'S
AMENDED SPECIAL MOTION TO DISMISS
PLAINTIFF'S COMPLAINT DATED MAY 12, 2021

Pursuant to Connecticut General Statutes §52-196a, the "Anti-SLAPP" statute, the Defendant, LAURA KARSON, hereby moves this Court to dismiss the Plaintiff's purported Intentional Infliction of Emotional Distress claim, Negligent Infliction of Emotional Distress claim, Defamation claim, False Light claim, and Civil Conspiracy claim alleged against her contained in the Plaintiff's Complaint dated May 12, 2021.[1] As more fully set forth below, the Defendant has made an initial showing that the Plaintiff's Complaint is based on the Defendant's exercise of her right to free speech; her right to petition the government; and her right of association under the Constitution in connection with a matter of public concern and therefore, she is entitled to file this motion pursuant to C.G.S. §52-196a. Additionally, the Plaintiff has failed to meet his burden to show that his claims against the Defendant should not be dismissed.

[1] The Plaintiff's original Complaint was dated May 4, 2021, to which the Defendant filed a Special Motion to Dismiss on June 11, 2021. On June 14, 2021 the Plaintiff's Motion to Cite In Defendants was granted which adds an additional count against the Defendant. On June 15, 2021 the Plaintiff filed a Withdrawal to withdraw his Motion to Cite In Defendants. The Defendant hereby has filed an Amended Motion and Memorandum of Law directed at this Complaint dated May 12, 2021. The same arguments are addressed in both motions.

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The Plaintiff's First Count should be dismissed because the Plaintiff's claim for Intentional Infliction of Emotional Distress is insufficiently pled. The Plaintiff has failed to plead any facts demonstrating that the Defendant's conduct was extreme and outrageous and that the emotional distress the Plaintiff suffered was severe. Moreover, there is no probable cause the Plaintiff will prevail on the merits on this claim because no reasonable person would conclude that the Defendant's conduct was extreme or outrageous. Additionally, the Plaintiff's Intentional Infliction of Emotional Distress claim is barred, as a matter of law, by the First Amendment since the Plaintiff's claim is based on the Defendant's conduct that is protected by the Constitution.

The Plaintiff's Second Count should be dismissed because the Plaintiff's claim for Negligent Infliction of Emotional Distress is insufficiently pled. In this count, the Plaintiff fails to allege facts demonstrating that the Plaintiff's distress was foreseeable and severe enough to lead to illness or bodily harm. Moreover, there is no probable cause that the Plaintiff will prevail on the merits of his Negligent Infliction of Emotional Distress claim because he cannot prove that the Defendant's email created an unreasonable risk of causing the Plaintiff emotional distress and that the Plaintiff's alleged severe distress from the statement was foreseeable. Additionally, the Plaintiff's Negligent Infliction of Emotional Distress claim is also barred, as a matter of law, by the First Amendment since the Plaintiff's claim is based on the Defendant's conduct that is protected by the Constitution.

The Plaintiff's Third Count should be dismissed because the Plaintiff's Defamation claim is insufficiently plead as the Complaint fails to plead what the allegedly defamatory statements are. Moreover, there is no probable cause that the Plaintiff will prevail on the merits of his Defamation claim because the Defendant's email contained her opinion and not

statements of fact. Additionally, the Defendant's email is protected from liability by qualified and/or absolute privilege.

The Plaintiff's Fourth Count should be dismissed because the Plaintiff's False Light claim is insufficiently plead as the Plaintiff fails to allege any facts demonstrating the Defendant's comments in her email would be considered highly offensive to a reasonable person. Moreover, there is no probable cause that the Plaintiff will prevail on the merits of his False Light claim because: (1) the Defendant's conduct was a single isolated incident; (2) even if the email could be construed as false, the Plaintiff cannot prove that the Defendant knew or should have known that statement was false; (3) and the Defendant's email addressed a matter of public concern.

Lastly, the Plaintiff's claim for Civil Conspiracy set forth in the Twenty-First Count should be dismissed because the Plaintiff's claim is insufficiently plead because the Complaint fails to allege any facts demonstrating that the Defendant's email was criminal or unlawful and fails to allege facts showing that she conspired with the proposed co-defendants pursuant to a scheme. Moreover, there is no probable cause that the Plaintiff will prevail on the merits of his Civil Conspiracy claim because the Defendant did not conspire or work in agreement with any of the proposed co-defendants to inflict emotional distress on the Plaintiff and/or to defame him and/or to portray him under a false light. Additionally, the Plaintiff's Civil Conspiracy claim must be disposed because all of the Plaintiff's other causes of action against the Defendant should be dismissed and a civil conspiracy claim cannot stand as an independent claim since it is derivative claim of an underlying tort.

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For the reasons more fully articulated in the accompanying memorandum of law, the Defendant respectfully requests her Special Motion to Dismiss be granted and seeks the award of attorney's fees pursuant to §52-196a.

THE DEFENDANT
LAURA KARSON

By_____

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CERTIFICATION

I certify that a copy of the above was or will immediately be mailed or delivered electronically or non-electronically on June 17, 2021 to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

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DOCKET NO.: FBT-CV-21-5045439-S SUPERIOR COURT

JASON GLADSTONE J. D. OF FAIRFIELD

vs. AT BRIDGEPORT

LAURA KARSON JUNE 17, 2021

DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF SPECIAL MOTION TO DISMISS PLAINTIFF'S COMPLAINT DATED MAY 12, 2021

Pursuant to Connecticut General Statutes § 52-196a, the "Anti-SLAPP" statute, the Defendant, LAURA KARSON, hereby submits this memorandum of law in support of her Special Motion to Dismiss the Plaintiff's (Amended) Complaint dated May 12, 2021.[1] As more fully set forth below, the Defendant has made an initial showing that the Plaintiff's claims are based on the Defendant's exercise of her right to free speech; her right to petition the government; and her right of association under the Constitution in connection with a matter of public concern. As a result, the Defendant is entitled to file this motion under C.G.S. § 52-196a.

Additionally, the Defendant's Special Motion to Dismiss should be granted because the Plaintiff fails to meet his burden of pleading adequate claims for intentional and negligent infliction of emotional distress, defamation, false light and civil conspiracy and fails to meet his burden of establishing probable cause that he will prevail on the merits on any of these five causes of action against the Defendant. For such reasons, the Defendant respectfully requests her Special Motion to Dismiss be granted and seeks the award of attorney's fees.

[1] The Plaintiff's original Complaint was dated May 4, 2021, to which the Defendant filed a Special Motion to Dismiss on June 11, 2021. On June 14, 2021, the Plaintiff's Motion to Cite In Defendants was granted which adds an additional count against the Defendant. On June 15, 2021 the Plaintiff filed a Withdrawal to withdraw his Motion to Cite In Defendants. The Defendant hereby has filed an Amended Motion and Memorandum of Law directed at this Complaint dated May 12, 2021.

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I. FACTUAL BACKGROUND

The Plaintiff's claims set forth in his Complaint arise from the Defendant's email to First Selectwoman Brenda Kupchick, which was subsequently posted in a Facebook group, in which the Defendant requested the First Selectwoman defend Michael Cummings ("Cummings"), the Superintendent of Fairfield Schools, in connection with an email he sent out on March 19, 2021, reconfirming his commitment to racial equity.

On March 19, 2021, Cummings sent out an email to the Fairfield Public Schools Community. (See Karson Affidavit, Exhibit A, ¶ 6). This email provided:

> Good morning:
>
> This past summer, in the wake of national demonstrations and conversations about racism, I was confronted with my own personal anger, shame, and fear about the long history of racism in our country. I committed to addressing the greater issues within our school system and leading us to be part of the solution. Since then, our equity work has begun in earnest and continues to be an integral part of our planning and action.
>
> Now, when acts of violence against Asian Americans are on the rise and in the news, I am compelled to recognize that our equity work must be broad and truly inclusive. This is not a "program," this is an ongoing commitment to changing our culture, as a school district and as a community. So once again I reaffirm the commitments I made last spring.
>
> Fairfield Public Schools is committed to continuing to examine our own policies, practices, beliefs, and actions so that we can become aware of the hurt we may cause students, staff, and the community, when we are unmindful of our own inherent biases. We continue commit to raising staff awareness of those biases because they stand in the way of the fulfillment of our district mission, "to ensure that every student acquires the knowledge and skills needed to be a lifelong learner, responsible citizen, and successful participant in an ever-changing global society through a comprehensive educational program." If we are not aware of our own beliefs and actively work to eliminate our prejudices, then we cannot truly educate every child.
>
> We commit to being anti-racist in our expectations and actions.
>
> We commit to being part of a community dialogue that confronts the issues that drive us apart so that we may heal as one.

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> We commit, above all, to listening, to fully investigating, and to addressing, allegations of racist behavior, actions, policies, or practices, in our school system.
>
> We know that current events impact students and families in many different ways. If your child needs support, please contact your building principal or school counselor. Together, when we commit to living our values, we will make our schools, our community and our world stronger, safer, better.
>
> Take care,
>
> Mike
>
> Mike Cummings
>
> Superintendent of Schools

(Ex. A, ¶ 7).

On the same date, the Plaintiff, Jason Gladstone, responded to Cummings' email and copied, among others, parents and a host of other elected officials, including the Defendant, who is a member of the Fairfield Representative Town Meeting (RTM), District 4. (Ex. A, ¶s 3; 8). The Plaintiff's email provided:

> Mr. Cummings, I am truly offended that you would insinuate that I am inherently racist or biased within your March 19, 2021 email. You are truly out of bounds with your message and I am concerned that you are incapable of understanding this community and the people that reside here. Shocking would be a good word to describe your message. How can you possibly claim that people of this community "are not aware of our own beliefs" or "inherently bias" and do "not actively work to eliminate our prejudices." Our kids need a superintendent that will stand up and believe in them, not someone who calls the community inherently biased and unknowingly racist. Your failures as a superintendent to get these kids back in school did more damage to these kids then your unsubstantiated and spurious claims of racism within this great community. Truly disappointing and out of touch with the great families that live in this community.
>
> Jason P. Gladstone
>
> Lampert, Toohey & Rucci, LLC

(Ex. A, ¶ 9).

The Plaintiff's email prompted a number of responses from others directed at Cummings and his March 19, 2021 email. On March 24, 2021, the Defendant sent an email to First Selectwoman Brenda Kupchick, which provided:

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> Dear First Selectwoman Kupchick, I am writing to you to publicly defend Superintendent Cummings' email sent out Friday, March 19th reconfirming his commitment to racial equity. The responses he received were so out of line. Since I am on the RTM D4, I was one of the recipients of an email chain initiated by Jason Gladstone in which the tone and tenor were so disrespectful and offensive. He was outraged that Mr. Cummings insinuated he was inherently racist, which couldn't be farther from the truth. What Mr. Gladstone and others on the email chain exhibited is "white fragility," a discomfort and defensiveness on the part of a white person when confronted by information about racial inequality and injustice. Based on these responses, it is clear much work is needed in understanding racial bias. We must understand the truth that from the moment a color of person is born, the deck is stacked against them due to the color of their skin. Throughout the pandemic, Mr. Cummings has demonstrated steady leadership, always putting the best interests of our children first. He is to be commended for dealing with all the challenges Covid-19 has put on our children, teachers, administrators and parents. These are tough times for all of us, but tearing down an educator, accusing him of calling other racists, when in fact he was trying to share his own reflections and ask for everyone in the community to do better, will not lead to a stronger Fairfield. So, I am asking you to speak up on his behalf and speak to the need for racial equality in our schools and town, which as demonstrated by the email chain, we so clearly need. Thank you for your time.
>
> Laura Karson

(Ex. A, ¶s 11-13).

Thereafter, in an effort to gain support and as a matter of public interest, the Defendant posted a copy of this email in a Facebook group entitled "Fairfield Standing United," which is an advocacy group representing residents of Fairfield and New Haven Counties that focus on advocacy of social and political issues on federal, state and local levels. (Ex. A, ¶s 14-16; 18). This post was done in an attempt to garner public participation in order to affect the consideration of the First Selectwoman on the issue of racial equality in the Town of Fairfield and its' schools and to defend Cummings. (Ex. A, ¶ 17).

On April 12, 2021, the Plaintiff sent a certified letter to the Defendant, which she received on April 16, 2021. (Ex. A, ¶s 19-21). This letter provided:

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> Re: Defamation
>
> Attention Laura Karson,
>
> It has come to my attention that on March 24, 2021 you posted libelous statements on a Facebook group called "Fairfield Standing United" in connection with an email I sent to Fairfield Superintendent of Schools Mike Cummings. On that post, you stated that I was offensive, disrespectful, suffering from a malady called "White Fragility" and I was "tearing down an educator." Such statements are false, and were intended to injury my reputation, diminish my self-esteem, respect, goodwill and confidence in the community. The defamatory statements were meant to excite an adverse, derogatory or unpleasant feelings or opinions against me.
>
> As a direct result of those libelous statements, my reputation in the community has been damaged and I have been prejudiced in public estimation, all to my detriment.
>
> This letter is to demand a full retraction of those statements in the same manner they were made, specifically on the Facebook group "Fairfield Standing United" or on any other publication it was published. Failure to retract the statements will result in a civil action against you.
>
> Sincerely, Jason Gladstone.

(Ex. A, ¶ 20).

Following receipt of the letter on April 16, 2021, that same week the Defendant removed her original March 24, 2021 post from Fairfield Standing United. (Ex. A, ¶ 22). Additionally, on April 21, 2021, the Defendant posted the following retraction:

> On March 24, 2021, I posted a copy of an email I sent FS Kupchick asking for her support of Superintendent Cummings' email to parents about diversity and inclusion in the school. In my email to her, I mentioned Jason Gladstone, who sent a group email to Superintendent Cummings objecting to his email. I characterized the tone and tenor of Mr. Gladstone's email as a disrespectful and offensive and suggested that it exhibited white fragility and that he was "tearing down an educator." I understand that these comments offended Mr. Gladstone and I hereby retract them.

(Ex. A, ¶s 23-24).

Despite this retraction, on May 4, 2021, the Defendant was served in hand with a copy of the Plaintiff's Complaint. (Ex. A, ¶ 27).

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II. PROCEDURAL BACKGROUND

A. Complaint

The Plaintiff's original Complaint, dated May 4, 2021, alleged four counts against the Defendant, entitled Intentional Infliction of Emotional Distress (First Count); Negligent Infliction of Emotional Distress (Second Count); Defamation (Third Count); and False Light (Fourth Count).[2]

On May 12, 2021, the Plaintiff filed a Motion to Cite four other individuals into the case as additional defendants. These four individuals allegedly posted statements about the Plaintiff on a social media website after the Defendant's March 24, 2021 statement. This Motion to Cite in Defendants was granted on June 14, 2021. In the Complaint attached to the Motion to Cite In Defendants, the First through Fourth Counts are again directed at the Defendant and are identical to the First through Fourth Counts against the Defendant in the original Complaint, which again purport to allege claims for intentional infliction of emotional distress, negligent infliction of emotional distress, defamation and false light. (See Complaint dated May 12, 2021, First through Fourth Counts, hereinafter "Complaint"). The Fifth through the Twentieth Counts, are brought against each of the four additional individuals and make similar claims of emotional distress, negligent infliction of emotional distress, defamation and false light. (See Complaint, Fifth through Twentieth Counts). In addition, in the Twenty-First Count, the Plaintiff purports to assert a Civil Conspiracy claim against the Defendant.

In the First Count, purporting to allege a claim for Intentional Infliction of Emotional Distress, the Plaintiff alleges that the Defendant, Laura Karson, at all times was a Town of Fairfield Representative Town Meeting (RTM) District 4 Representative. (First Count, ¶ 2). The Plaintiff

[2] This Complaint was returned to court on May 12, 2021 and has a return date of May 25, 2021 (See Complaint; Judicial Information Website).

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further alleges that on or about March 24, 2021, the Defendant forwarded an email to Town of Fairfield First Selectwoman, Brenda Kupchick, and then posted the same e-mail on a social media Facebook page containing many defamatory statements regarding the Plaintiff which intended to harm the Plaintiff, including but not limited to causing the Plaintiff to experience extreme emotional distress (First Count, ¶ 3).[3] The Plaintiff claims the aforementioned posts contained numerous false statements about the Plaintiff, were intended to injure the Plaintiff's reputation, diminish his self-esteem, respect, goodwill and confidence in the community, questioned his morality and were libelous per se. (First Count, ¶ 4). The Plaintiff further claims the statements made by the Defendant in the aforementioned emails were false and said statements were published to hundreds of people, and upon information and belief, to numerous other people not known by the Plaintiff. The Plaintiff alleges the Defendant made such statements with malicious intent, and were meant to excite an adverse, derogatory and/or unpleasant feeling and/or opinion about the Plaintiff. (First Count, ¶ 5). The Plaintiff claims the Defendant knew the aforementioned statements to be false and that the Defendant's actions were extreme and outrageous and caused the Plaintiff to experience extreme, severe and pervasive emotional distress. (First Count, ¶ 6). The Plaintiff claims the statements were defamatory, and the Plaintiff's public reputation has been damaged in the public estimation, all to the Plaintiff's detriment. (First Count, ¶ 7).

The Second Count purports to allege a claim for negligent infliction of emotional distress. The Plaintiff incorporates by reference the first and second paragraphs of the First Count and further alleges that:

> 3. On or about March 24, 2021, the defendant, LAURA KARSON, forwarded an email to Town of Fairfield First Selectwoman Brenda Kupchick and then posted the same e-mail on a social media Facebook page containing many defamatory statements regarding the Plaintiff which harmed the Plaintiff, including but not limited to causing the plaintiff to experience extreme emotional distress.

[3] Nowhere in the plaintiff's Complaint does he identify the defamatory or false statements he is referring to.

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4. The aforementioned posts contained numerous false statements about the Plaintiff, injured the Plaintiff's reputation, diminished his self-esteem, respect, goodwill and confidence in the community, questioned his morality and were libelous per se.

5. The statements made by the Defendant in the aforementioned emails were untrue and false, and said statements were published to hundreds of people, and upon information and belief, to numerous other people not known by the Plaintiff. The statements produced an adverse, derogatory and/or unpleasant feeling and/or opinion about the Plaintiff.

6. The aforementioned statements were untrue and false, and the Defendant's actions were extreme and outrageous and caused the plaintiff to experience extreme, severe, and pervasive emotional distress.

7. The statements were defamatory, and the Plaintiff's public reputation has been damaged in the public estimation, all to the Plaintiff's detriment.

8. The Defendant knew, or should have known, that her actions were likely to cause emotional harm to the Plaintiff and were likely to cause severe and extreme and pervasive emotional duress.

9. Despite the fact that the Defendant knew or should have known that her actions were likely to do so, she engaged in defamatory conduct nonetheless.

10. The conduct with which the Defendant engages were extreme and outrageous, and the Defendant knew or should have known that it was likely to cause harm to the Plaintiff.

11. The Plaintiff has sustained damages, including extreme emotional duress, as a result of the Defendant's defamatory conduct.

The Third Count, purporting to allege a defamation claim, incorporates by reference the allegations set forth in paragraphs 1-7 of the First Count and further alleges:

8. When making said statements and transmitting the aforesaid documents to a third party, the Defendant identifies the Plaintiff by name, knew the statements that were contained in the aforementioned e-mail and posts were untrue and false and published those statements to hundreds of third parties.

9. The Defendant's conduct as stated above is defamatory and libelous per se, and it has caused the Plaintiff damage to his reputation as described above and damages for pain and suffering, including emotional distress.

10. The Defendant is liable to the plaintiff for the damages she has incurred as a result of the aforementioned conduct.

The Fourth Count, purporting to allege a claim for False Light, also incorporates by reference paragraphs 1-7 of the First Count and alleges:

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8. The aforementioned email and posts contained statements regarding the Plaintiff that were transmitted publicly.

9. The statements made in the aforementioned statements would be highly offensive to any reasonable person, and they were highly offensive to the Plaintiff.

10. The Defendant had knowledge of the falsity of the statements made in the aforementioned emails or acted in reckless disregard as to the falsity of the statements, and the false light in which the Plaintiff would be placed.

11. The statements contained within the emails and posts were a major misrepresentation of the Plaintiff's character, history, activities or beliefs and the plaintiff took serious offense to the statements.

12. As a result of the Defendant's contact, the Defendant has caused the plaintiff to incur damages including emotional distress and is therefore liable to the plaintiff for said damages.

In the Twenty-First Count, the Plaintiff incorporates by reference paragraphs 1-7 of the First Count; 1-11 of the Second Count; 1-10 of the Third Count and 1-12 of the Fourth Count as paragraphs 1-40 of the Twenty-First Count. The Plaintiff further alleges:

41. The defendant LAURA KARSON committed an overt act with one or more of the other defendants to intentionally inflict emotional distress, negligently inflicted emotional distress, defamed and/or portrayed the plaintiff in a false light.

42. The defendant KARSON acted pursuant to the scheme and in furtherance of the object to intentionally inflict emotional distress, negligently inflicted emotional distress, defamed and/or portrayed the plaintiff in a false light.

43. All of the foregoing action by defendant KARSON damaged the plaintiff.

(Id., Twenty-First Count, ¶ 41-42).

III. <u>LEGAL STANDARD</u>

Connecticut General Statutes Sec. 52-196a(b) provides that: "[i]n any civil action in which a party files a complaint, counterclaim or cross claim against an opposing party that is based on the opposing party's exercise of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection

with a matter of public concern, such opposing party may file a special motion to dismiss the complaint, counterclaim or cross claim." C.G. S. § 52-196a(b).

"The court shall grant a special motion to dismiss if the moving party makes an initial showing, by a preponderance of the evidence, that the opposing party's complaint, counterclaim or cross claim is based on the moving party's exercise of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern, unless the party that brought the complaint, counterclaim or cross claim sets forth with particularly the circumstances giving rise to the complaint, counterclaim or cross claim and demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint, counterclaim or cross claim." C.G.S. § 52-196a(e)(3).

IV. ARGUMENT

*A. The Defendant is Entitled to File a Special Motion to Dismiss Pursuant to C.G.S. § 52-196*a.

C.G.S. § 52-196a enables a defendant to file a "special motion to dismiss" if the complaint filed by the plaintiff is based on any one of the following three categories: 1) defendant's exercise of her right to free speech; 2) defendant's right to petition the government; **or** 3) the defendant's right of association under the Constitution in connection with a matter of public concern. C.G.S. Sec. 52-196a(b). In this case, as fully discussed below, the Plaintiff's claims are based not only on one category, but **on all three categories**. As a result, the Defendant is entitled to file this Special Motion to Dismiss pursuant to C.G.S. § 52-196a.

1. The Plaintiff's Complaint is Based on the Defendant's Exercise of Her Right to Free Speech.

First, the Plaintiff's claims are based on the Defendant's exercise of her right to free speech, since her statement was posted in a Facebook group and pertained to an issue regarding the community's well-being, specifically how the town should address racism. C.G.S. § 52-196a

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defines "right of free speech" as "communicating, or conduct furthering communication, in a public forum on a matter of public concern". C.G.S. § 52-196a(a)(2). The subject statute defines "matter of public concern" to include an issue related to "community well-being". C.G.S. § 52-196a(a)(1).

Connecticut courts have held that communications on Facebook and email are considered to be made in a public forum. Cevetillo v. Lang, 2019 WL 7597451, *5 (Dec. 13, 2019, *Tyma, J.*)(Court granted special motion to dismiss).

In this case, the Defendant posted her email to First Selectwoman Kupchick to the Fairfield Standing United Facebook Group, an advocacy group representing residents of Fairfield and New Haven Counties that focus on federal, state and local advocacy on social and political issues. (Ex. A, ¶ 16). In addition, the Defendant's email addressed her support for the Superintendent's goal to tackle racism and seek racial equity while at the same time showing her concern and dismay for the Plaintiff's, and other community members', anger at the Superintendent's message. Because the Defendant's statement is a communication made in a public forum addressing a matter of public concern, the Defendant met her burden demonstrating that the Plaintiff's Complaint is based on the first category of C.G.S. § 52-196a and therefore, she is entitled to file this Special Motion to Dismiss.

2. The Plaintiff's Complaint Is Based on the Defendant's Right to Petition the Government.

Second, the Plaintiff's claims are also based on the Defendant's right to petition the government as the Defendant's statement is a communication that sought the consideration of an executive body regarding a matter of public concern and/or an attempt to garner public participation in order to affect the consideration of an executive body. The "right to petition the government" is defined as:

> (A) communication in connection with an issue under consideration or review by a legislative, executive, administrative, judicial or other governmental body, (B)

> communication that is reasonably likely to encourage consideration or review of a matter of public concern by a legislative, executive, administrative, judicial or other governmental body, or (C) communication that is reasonably likely to enlist public participation in an effort to effect consideration of an issue by a legislative, executive, administrative, judicial or other governmental body;

C.G.S. § 52-196a(a)(3)(A)-(C). Our courts have held that for the purposes of determining whether a communication is considered a right to petition the government, pursuant to C.G.S. § 52-196a, officials from municipal executive bodies are considered to be a part an executive government as defined in C.G.S. § 52-196a(a)(3). *See* Baity v. Mickley-Gomez, 2020 WL 9314537, *6 (Dec. 14, 2020, Stevens, J.) ("By contacting the Darien Police Department, the defendants unquestionably were communicating with an executive government body. See § 52-196a(a)(3)(A).").

In this case, the First Selectwoman is a position within the executive body of municipal government. In the Defendant's email to the First Selectwoman, she states, "I am asking you to speak up on his behalf and speak to the need for racial equality in our schools and town, which as demonstrated by the email chain, we so clearly need." The issue of racial equality in the Town of Fairfield and its schools is clearly a matter pertaining to the community's well-being. Accordingly, because the Defendant's email to the Town of Fairfield First Selectwoman is a communication that sought the consideration of the Selectwoman regarding a matter of public concern, the Plaintiff's Complaint is based on the Defendant's right to petition the government as defined in C.G.S. § 52-196a(a)(3)(B).

In addition, the Defendant's posting of the same email sent to the First Selectwoman on the Facebook page of "Fairfield Standing United" also meets the definition of the right to petition the government as provided in C.G.S. § 52-196a(a)(3)(C). As indicated above, Fairfield Standing United is an advocacy group representing residents of Fairfield and New Haven counties that focus on federal, state and local advocacy on social and political issues. (Ex. A, ¶ 16). The

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Defendant's Facebook post on the advocacy group's Facebook Page is a communication that attempted to garner public participation in order to affect the consideration of the First Selectman on the issue of racial equality in the Town of Fairfield and its' schools and to defendant Cummings. (Ex. A, ¶ 17). Thus, the Plaintiff's Complaint is also based on the Defendant's right to petition the government as defined in C.G.S. § 52-196a(a)(3)(C) and for this additional reason, the Defendant has met her burden demonstrating the applicability of C.G.S. § 52-196a and therefore, is entitled to file this Special Motion to Dismiss.

3. The Plaintiff's Complaint is Based on the Defendant's Right of Association with a Matter of Public Concern.

Lastly, the Plaintiff's claims are also based on the Defendant's right of association in connection with a matter of public concern as defined in C.G.S. § 52-196a. "Right of association" is defined as "communication among individuals who join together to collectively express, promote, pursue or defend common interests". C.G.S. § 52-196a(a)(4). Additionally, the subject statute defines "matter of public concern" to include an issue related to "community well-being". C.G.S. § 52-196a(1).

In Day v. Dodge, 2019 WL 994532, *6 (Jan. 25, 2019, *Knox, J.*) the court determined that the defendants fulfilled their initial burden of demonstrating that several counts of the plaintiff's complaint were based on the defendants' right of association. Id., *6. The defendants in Day v. Dodge belonged to a local Boy Scout pack, which the court reasoned is "certainly a joining of individuals with a common interest, namely scouting." Id.

In this case, the Defendant posted a copy of her email to the First Selectwoman on the Facebook Group, Fairfield Standing United, an advocacy group. (Exhibit A, pp. 10-12). If our courts have deemed communications between members of a local Boy Scout pack to be considered a right of association pursuant to C.G.S. § 52-196a(4), then in this case, the Defendant's

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communication amongst an advocacy group promoting the shared interest of certain social and political values is also conduct pertaining to the Defendant's right of association.

In sum, the Defendant is only required to demonstrate the Plaintiff's claims are based on one of the three categories enumerated in C.G.S. § 52-196a(b) to meet her burden that C.G.S. § 52-196a is applicable to this case. However, the Defendant has shown that the Plaintiff's claims **are based on all three categories** listed in C.G.S. § 52-196a(b). Therefore, the Defendant is entitled to file this Special Motion to Dismiss.

B. The Plaintiff Fails, as to All Five Claims Plead Against the Defendant, to Meet his Burden of Demonstrating Both that: (1) His Pleadings are Adequate; and (2) the Existence of Probable Cause that He Will Prevail.

Once the moving party has established that C.G.S. § 52-196a is applicable, the moving party is "entitled to have the case dismissed unless the [plaintiff] ... [sets] forth **with particularity** the circumstances giving rise to the complaint ... **and** demonstrate[s] to the court that there is probable cause, considering all valid defenses, that the [plaintiff] will prevail on the merits of the complaint ..." (Emphasis in the original). Cronin v. Pelletier, 2018 WL 3965004, *3 (July 26, 2018, *Sferrazza, J.*); see also C.G.S. § 52-196a(e)(3).

> To reiterate, the court holds that the **plaintiffs must demonstrate both that their pleadings are adequate and the existence of probable cause that they will prevail**… The court recognizes that in a typical civil case, a deficient pleading can be raised by a motion to strike or a request to revise, neither of which procedural devices results in a dismissal of the case. However, §52-196a(e)(3) appears to produce such an outcome because the court 'shall grant a special motion to dismiss' in such a situation.

(Citations omitted; emphasis added.) Cronin v. Pelletier, 2018 WL 3965004, *3 (July 26, 2018, *Sferrazza, J.*); *see also* Reid v. Harriman, 2019 WL 5960521, *7 (Oct. 28, 2019, *Welch, J.*).

"Probable cause is the knowledge of facts sufficient to justify a reasonable person in the belief that there are reasonable grounds for prosecuting an action." Falls Church Group, Ltd. v. Tyler, Cooper and Alcorn, LLP, 281 Conn. 84, 94 (2007). "Probable cause is a bona fide belief in the existence of facts essential under the law for the action and such as would warrant a [person]

of ordinary caution, prudence and judgment, under the circumstances, in entertaining it." (Citations omitted; internal quotation marks omitted.) Day v. Dodge, 2019 WL 994532, *4 (Jan. 25, 2019, *Knox, J.*).

In this case, as set forth below, the Plaintiff has failed to adequately plead causes of actions as to all five claims pled against the Defendant and cannot establish probable cause that the Plaintiff will prevail on any of the five claims.

C. Intentional Infliction of Emotional Distress[4]

1. The Plaintiff Fails to Plead an Adequate Intentional Infliction of Emotional Distress Claim Since the Complaint Fails to Allege Facts Showing the Defendant's Conduct Was Extreme and Facts Demonstrating the Emotional Distress He Suffered was Severe.

The Plaintiff's claim for intentional infliction of emotional distress is legally insufficient in that the Complaint fails to allege any facts demonstrating that the Defendant's alleged conduct was extreme and fails to allege facts showing that the emotional distress the Plaintiff suffered was severe.

"In order for the plaintiff to prevail in a case for liability under ... [intentional infliction of emotional distress], four elements must be established. It must be shown: (1) that the actor intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of his conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe." (Internal quotation marks omitted.) Watts v. Chittenden, 301 Conn. 575, 586 (2011).

[4] It is important to note that the Plaintiff's Intentional and Negligent Infliction of Emotional Distress claims are derivative claims. "Connecticut courts have similarly held that were the alleged emotional distress flows from the publishing of defamatory statements, the emotional distress claim is merely a derivative claim." *See* Red Apple II, Inc. v. Hartford Courant, 1996 WL 40952 at *7 (January 17, 1996, Hale, J.); *citing* Finelli v. Tepfer, Superior Court, judicial district of Fairfield, Docket No. CV 07 5011659S (April 24, 2009, Gilardi J.). Accordingly, because the Plaintiff's Defamation claim fails, as further discussed in this memo, his Intentional and Negligent Infliction of Emotional Distress likewise fail.

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In Pacheco Quevedo v. Hearst Corp., 2019 WL 7900036, *1 (Dec. 19, 2019, *Sommer, J.*), the plaintiff brought, among other causes of action, an intentional infliction of emotional distress claim, against the defendant for publishing an article in the Greenwich Time newspaper crime blotter which described the plaintiff's arrest for assaulting two people. Id. In the complaint, the plaintiff alleges that the defendant refused to retract the article after the criminal case was disposed as a result of the criminal charges being dropped. Id. The defendant filed a special motion to dismiss pursuant to C.G.S. § 52-196a to dismiss the intentional infliction of emotional distress claim. Id. The court granted the defendant's motion as to the intentional infliction of emotional distress claim stating that the plaintiff's complaint failed to allege facts demonstrating that the conducted was extreme. Id., *2; *5. The court reasoned that this claim requires factual allegation that the defendants intended to cause them emotional distress and engaged in "extreme and outrageous" conduct. Id., *5.

In this case, the Plaintiff's Complaint is even more deficient than that of the plaintiff's Complaint in Pacheco, *supra*. Here the Plaintiff fails to allege any facts demonstrating that the Defendant's alleged conduct was "extreme and outrageous." The only factual allegations present in the Plaintiff's complaint regarding the Defendant's conduct is that she sent an email to the First Selectwoman of Fairfield and that she reposted the same email to a Facebook page. (Complaint, First Count, ¶3). Equally as important is that the Plaintiff's Complaint fails to even allege what was contained in the email. (Complaint, First Count). Additionally, the Plaintiff fails to allege any factual allegations demonstrating that the that the emotional distress the Plaintiff suffered was severe. (Complaint, First Count). Instead the Complaint simply pleads conclusory statements as to both of these requisite elements; namely that "[t]he defendant Laura Karson knew the aforementioned statements to be false, and the Defendant's actions were extreme and outrageous and caused the plaintiff to experience extreme, severe, and pervasive emotional distress." (Complaint, First Count, ¶ 6). Pursuant to the unambiguous language of C.G.S. § 52-196a and our

caselaw, because the Plaintiff has failed to adequately plead an intentional infliction of emotional distress claim, the Defendant's Special Motion to Dismiss the First Count should be granted.

2. The Plaintiff Cannot Establish Probable Cause that He Will Prevail on the Merits of his Intentional Infliction of Emotional Distress Claim Because No Reasonable Person Would Conclude the Defendant's Conduct was Extreme and Outrageous.

In addition to the fact that the Plaintiff has plead a legally insufficient claim for Intentional Infliction of Emotional Distress, there is no probable cause that the Plaintiff will prevail on the merits of this claim because no reasonable person would conclude that the Defendant's conduct in showing support for the Superintendent's message about the need to do more to combat racism in the town was extreme and outrageous. "Liability [for intentional infliction of emotional distress] has been found only where the conduct has been so 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. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, Outrageous!" (Internal quotation marks omitted.) Hartmann v. Gulf View Estates Homeowners Assn., Inc., 88 Conn.App. 290, 294, (2005).

The Appellate Court in Parnoff v. Aquarion Water Co. of Conn., 188 Conn.App. 153, 179 (2019), upheld the trial court's granting of summary judgment dismissing the plaintiff's claim of intentional infliction of emotional distress by water company employees for lack of "extreme or outrageous acts" reasoning "[c]onduct on the part of the defendant that is merely insulting or displays bad manners or results in hurt feelings is insufficient to form the basis for an action based upon intentional infliction of emotional distress." Id. Additionally, the Appellate Court in Strano v. Azzinaro, 188 Conn.App. 183, 195-96 (2019), ruled that the removal from a Boy Scouts troop of a child with autism alleged to be the subject of bullying, was not extreme or outrageous conduct and the court noted: "[f]ailure to remedy a difficult environment, at least where some effort is made

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to do so, is rarely, if ever, the kind of behavior that exceeds the bounds of civil decency for the purpose of proving the tort of intentional infliction of emotional distress." Id., 192.

Additionally, our courts have held that infliction of emotional distress claims are barred by the First Amendment when the claims are based on constitutionally protected conduct. Cowras v. Hard Copy, 56 F.Sup.2d 207, 209-10 (D.Conn. 1999) ("The state and federal courts agree that the First Amendment bars [a plaintiff] from recovering damages under the generally applicable laws of intentional and negligent infliction of emotional distress where those claims are based on constitutionally protected conduct."); *see also* Hustler Magazine v. Falwell, 485 U.S. 46, 56 (1988). In Pacheco Quevedo v. Hearst Corp., 2019 WL 7900036, *8 (Dec. 19, 2019, *Sommer, J.*), the court granted the defendants' special motion to dismiss as to the plaintiff's intentional infliction of emotional distress claim, in part, because it was precluded by the First Amendment protection of the defendants' conduct. Id., *8.

Our caselaw clearly establishes that the bar for conduct to be deemed "extreme and outrageous" for an intentional infliction of emotional distress claim is very high. In this case no reasonable person would conclude that the Defendant's statements in her email are "so 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." Hartmann v. Gulf View Estates Homeowners Assn., Inc., 88 Conn.App. 290, 294, (2005).

Lastly, as argued in further detail above, the Defendant's statements were an exercise of her right to free speech on an issue concerning the well-being of her community, her right to petition an executive body of her local government, and her right of association regarding a matter of public concern. All of these rights are protected by the First Amendment and our courts have held, infliction of emotional distress claims are precluded when the claims are based on conduct protected by the Constitution.

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Therefore, there is no probable cause that the Plaintiff will prevail on his intentional infliction of emotional distress claim contained in the First Count because no reasonable person would consider the Defendant's statements as extreme and outrageous, or that such statements was the cause of the Plaintiff's distress, and that any distress was severe. In addition, the Plaintiff's claim is barred by the First Amendment. Thus, as a matter of law, the court should grant the Defendant's Special Motion to Dismiss as to the First Count.

D. Negligent Infliction of Emotional Distress

1. The Plaintiff Fails to Plead an Adequate Negligent Infliction of Emotional Distress Claim Since the Complaint Fails to Allege Facts Demonstrating that the Plaintiff's Distress was Foreseeable and that his Distress was Severe Enough to Lead to Illness.

The Plaintiff fails to plead a legally sufficient negligent infliction of emotional distress claim since his Complaint fails to allege facts demonstrating that the Plaintiff's distress was foreseeable and that his distress was severe enough to lead to illness or bodily harm. "To prevail on a claim of negligent infliction of emotional distress, the plaintiff must plead and prove the following: (1) the defendant's conduct created an unreasonable risk of causing the plaintiff emotional distress; (2) the plaintiff's distress was foreseeable; (3) the emotional distress was severe enough that it might result in illness or bodily harm; and (4) the defendant's conduct was the cause of the plaintiff's distress." (Citations omitted; internal quotation marks omitted.) Stancuna v. Schaffer, 122 Conn.App. 484, 490 (2010). "**As to the third element, a claim in which the plaintiff fails to plead that he or she sustained illness or bodily harm is insufficient and vulnerable to a motion to strike**." (Emphasis added.) Gonzalez v. Harte Subaru, Inc., 2010 WL 4722262, *7 (Nov. 2, 2010, *Sheldon, J.*). "The foreseeability requirement in a negligent infliction of emotional distress claim is more specific than the standard negligence requirement ... [F]or negligent infliction of emotional distress, the plaintiff must plead that the actor should have foreseen that her behavior would likely cause harm of a specific nature, i.e., emotional distress

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likely to lead to illness or bodily harm." (Internal quotation marks omitted.) Stancuna v. Schaffer, 122 Conn.App. 484, 490 (2010).

Connecticut Superior Courts have routinely granted motions to strike on the ground that the plaintiffs failed to allege sufficient facts demonstrating the foreseeability element of a negligent infliction of emotional distress claim. For example, in Misurale v. Cuteri, Superior Court, judicial district of Fairfield, Docket No. CV–01–383788–S (March 13, 2003, *Doherty, J.*), the Court granted a motion to strike a negligent infliction of emotional distress claim because the plaintiff only alleged that the defendants' carelessness and negligence caused the plaintiff's emotional distress, which was factually insufficient to establish foreseeability. Our Superior Court has also held that a 'plaintiff's conclusory allegation that the plaintiff's distress was foreseeable without more, [was] insufficient to satisfy the foreseeability element of a negligent infliction of emotional distress [claim].'" Elisea v. CFC Stillwater, LLC, 2015 WL 2036760, *4 (April 2, 2015, *Nazzaro, J.*); *see also* Gleason v. Smolinski, 2009 WL 2506607, *9 (July 20, 2009, *Wilson, J.*) ("**A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged**… In this case, the complaint states that the defendant's conduct 'cause[d] the plaintiff Gleason, as it would any person of ordinary sensibilities, to suffer emotional distress.' Such a statement is a legal conclusion because it lacks any substantive facts particular to Gleason. Allowing such allegations to survive a motion to strike would essentially render Connecticut's fact pleading requirements irrelevant." (Citations omitted; emphasis added; internal quotation marks omitted.).

In Pacheco Quevedo v. Hearst Corp., 2019 WL 7900036, *7 (Dec. 19, 2019, *Sommer, J.*), the court granted the defendants' special motion to dismiss the plaintiff's negligent infliction of emotional distress claim because the complaint did not allege "any facts that would support the conclusion that their alleged distress was severe enough to result in illness or bodily harm." Id.

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In this case, the Plaintiff has failed to allege any factual allegations to suffice the second and third elements of a valid negligent infliction of emotional distress claim, namely that the Plaintiff's distress was foreseeable and that the Plaintiff's distress was severe enough to lead to illness or bodily harm. The Plaintiff alleges that the Defendant's email to the First Selectwoman, which was then posted on a Facebook page, caused him to experience extreme emotional distress. (Complaint, Second Count, ¶3). However, the Plaintiff does not even plead what was contained in the Defendant's email and fails to plead any factual allegations that would demonstrate the Defendant knew or should have known such an email would cause the Plaintiff distress. Additionally, the Plaintiff also fails to allege any facts demonstrating that the emotional distress he claims to have suffered was to the extent that he suffered illness or bodily harm. Therefore, the Defendant's Special Motion to Dismiss should be granted as to the Second Count because the Plaintiff has failed to plead an adequate negligent infliction of emotional distress claim.

2. The Plaintiff Cannot Establish Probable Cause that He Will Prevail on the Merits of his Negligent Infliction of Emotional Distress Claim Since He Cannot Prove that the Defendant's Email Created an Unreasonable Risk of Causing the Plaintiff Emotional Distress and that Harm was Foreseeable.

The Plaintiff cannot prevail on his negligent infliction of emotional distress claim since he cannot prove that the Defendant's email created an unreasonable risk of causing the Plaintiff emotional distress and that the Plaintiff's alleged severe distress from the statement was foreseeable. "In negligent infliction of emotional distress claims, unlike general negligence claims, **the foreseeability of the precise nature of the harm to be anticipated [is] a prerequisite to recovery even where a breach of duty might otherwise be found** ..." (Citations omitted; emphasis added; internal quotation marks omitted.) Perodeau v. Hartford, 259 Conn. 729, 754 (2002).

In this case, it was the Plaintiff who decided to respond to Superintendent's Cummings' message in a public manner. As previously argued, Superintendent Cummings' message did

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not solicit responses, but the Plaintiff took it upon himself to not only respond to the Superintendent but to copy all of the other parents, in his unsolicited response. (Exhibit A, ¶ 8-9). In fact, the Plaintiff decided to expand his audience even more so by adding members of the Representative Town Meeting of District 4, which the Defendant is a member of, in his public response to the Superintendent. Id. The Plaintiff voluntarily interjected himself to the greater public, including the Defendant, on his stance admonishing Superintendent Cummings' message on the need to do more to combat racism.

Additionally, the Defendant's response to the Plaintiff's email was thoughtful and the Defendant's comments were geared towards showing support for Superintendent Cummings and addressing the content of the Plaintiff's email. When examining the content of the Defendant's email response and the context in which it was made, no reasonable person would conclude that the Defendant's decision to craft and send out a statement in response to the Plaintiff's public email created a foreseeable risk that Plaintiff would be caused to suffer severe distress to the point of bodily harm. Therefore, there is no probable cause that the Plaintiff will prevail on the merits of his negligent infliction of emotional distress claim. Thus, the Defendant's Special Motion to Dismiss the Plaintiff's Second Count should be granted.

E. Defamation

1. The Plaintiff Fails to Plead an Adequate Defamation Claim Against the Defendant Since His Complaint Fails to Plead What the Allegedly Defamatory Statements Are.

The fatal flaw with the Third Count of the Complaint, purporting to allege a claim for defamation, is that it fails to allege the defamatory statement the Plaintiff is relying on to support his claim. This alone is sufficient grounds for this Court to grant the Defendant's Special Motion to Dismiss the Plaintiff's defamation claim. "To establish a prima facie case of defamation, the plaintiff must demonstrate that: (1) the defendant published a defamatory statement; (2) the defamatory statement identified the plaintiff to a third person; (3) the defamatory statement was

published to a third person; and (4) the plaintiff's reputation suffered injury as a result of the statement." Gambardella v. Apple Health Care, Inc., 291 Conn. 620, 627-28 (2009).

"Certainty is required in the allegations as to the defamation and as to the person defamed; a complaint for defamation **must**, **on its face**, **specifically identify what allegedly defamatory statements were made**, by whom, and to whom. **A complaint is insufficient to withstand dismissal for failure to state a cause of action where, other than the bare allegation that the defendant's actions caused injury to plaintiff's reputation, the complaint set forth no facts of any kind indicating what defamatory statements, if any, were made**, when they were made, or to whom they might have been made." (Citations omitted; emphasis added; internal quotations omitted.) Forgione v. Bette, 2005 WL 1545278, *3 (June 2, 2005, *Gallagher, J.*); *see also* Chertkova v. Connecticut Gen. Life Ins. Co., 2002 WL 1902988, *4 (July 12, 2002, *Berger, J.*) aff'd, 76 Conn. App. 907 (2003). "In order to sufficiently state a claim for defamation, the specific statements, the exact words, must be alleged." Pro Performance Corp. Services, Inc. v. Goldman, 2003 WL 22133945, *2 (Aug. 25, 2003, *Lewis, J.*).

In Cevetillo v. Lang, No. CV196031687, *1 (Dec. 13, 2019, *Tyma, J.*), the plaintiff's complaint, containing a defamation claim, alleged that his contract was not renewed because of a complaint by the defendant to the Board of Education and others in a public forum "disparaging [the plaintiff] in his capacity as a teacher… and seeking [the plaintiff's] removal and revocation of [his] teaching license." Id., *1. The defendant filed a special motion to dismiss pursuant to C.G.S. § 52-196a. Id. The court granted the defendant's special motion to dismiss as to the plaintiff's defamation claim because "[t]he plaintiff did not allege with particularity, or even in general terms, which statements or communications the defendant made that are defamatory." Id., *5.

In this case, the Plaintiff's Complaint completely fails to allege the defamatory statements that allegedly made by the Defendant. Therefore, the Plaintiff has failed to allege an adequate

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defamation claim and the Defendant's Special Motion to Dismiss should be granted as to the Third Count.

2. The Plaintiff Cannot Establish Probable Cause that He Will Prevail on the Merits of his Defamation Claim Against the Defendant Since Any Statements Made by the Defendant were Opinion and Not Fact and Were Protected by either Qualified or Absolute Privilege.

A. Any Statements in the Defendant's Email Were Opinions

Plaintiffs must present evidence of the defamatory nature of the statements at issue for their defamation claim to survive the anti-SLAPP motion." Pacheco Quevedo v. Hearst Corp., 2019 WL 7900036, at *6. "A defamatory statement is defined as a communication that tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him ... But it is not enough that the statement inflicts reputational harm. **To be actionable, the statement in question must convey an objective fact, as generally, a defendant cannot be held liable for expressing a mere opinion** ... A statement can be defined as factual if it relates to an event or state of affairs that existed in the past or present and is capable of being known ... In a libel action, such statements of fact usually concern a person's conduct or character ... An opinion, on the other hand, is a personal **comment** about another's conduct, qualifications or character that has some basis in fact." (Citation omitted; emphasis added; internal quotation marks omitted.) NetScout Systems, Inc. v. Gartner, 334 Conn. 396, 410-11 (2020).

In analyzing whether an allegedly defamatory statement is a statement of fact or of an opinion our Supreme Court in Goodrich v. Waterbury Republican-American, Inc., 188 Conn. 107, 112 (1982), instructs that the "distinction between fact and opinion cannot be made in a vacuum, however, for although an opinion may appear to be in the form of a factual statement it remains an opinion if it is clear from the context that the maker is not intending to assert another objective fact

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but only his personal comment on the facts which he has stated ... thus while this distinction may be somewhat nebulous ... [t]he important point is whether ordinary persons hearing or reading the matter complained of would be likely to understand it as an expression of the speaker's or writer's opinion or as a statement of existing fact." Id at 111-12. Verification of an objective declaration of fact is critical in determining whether a statement is defamatory, because a truthful declaration may defame someone's reputation, but is not actionable. (Citations omitted; internal quotation marks omitted.) Gleason v. Smolinski, 312 Conn. 920, (2014).

In the present case, although the alleged defamatory statement the Plaintiff is relying on is unknown, as he failed to plead the statement in his Complaint, there is nothing in the Defendant's email to the First Selectwoman, that can be described as anything but the Defendant's opinions. Furthermore, an ordinary person reading the Plaintiff's email, would likely view the Defendant's comments regarding the "tone and tenor" of the Plaintiff's email response to Superintendent Cummings' message being "disrespectful and offensive," as well her comment that the Plaintiff's email response reflected "white fragility" and was "tearing down an educator," as expressions of her opinion. Any ordinary person reading the email complained of would be likely to understand it as an expression of the writer's opinion. These statements do not convey objective facts, but rather the Defendant's personal *comment* about another's conduct. To convert such opinions to defamatory statements would eliminate the freedom of speech protected under the First Amendment to the Constitution.

3. The Defendant's Statements Are Protected by Either the Qualified or Absolute Privilege.

"A defendant may shield [her]self from liability for defamation by asserting the defense that the communication is protected by a qualified privilege." Gambardella v. Apple Health Care, Inc., 291 Conn. 620, 628 (2009). "The privilege of 'fair comment,' which was one of the most

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important privileges realized at common law, was a qualified privilege to express an opinion or otherwise comment on matters of public interest." Goodrich v. Waterbury Republican–American, Inc., 188 Conn. 107, 114 (1982). "As a general rule ... the privilege of fair comment applies to expressions of opinion." (Citations omitted; emphasis omitted.) Id., 111 n. 4. "An opinion ... is a personal **comment** about another's conduct, qualifications or character that has some basis in fact." (Emphasis in original.) Id., 111.

"One publishing defamatory words under a qualified or conditional privilege is only liable upon proof of express malice." Hassett v. Carroll, 85 Conn. 23 (Conn. 1911). "[T]he malice required to overcome a qualified privilege in defamation cases is malice in fact or actual malice." Hopkins v. O'Connor, 282 Conn. 821, 845 (2007). "Actual malice requires that the statement, when made, be made with actual knowledge that it was false or with reckless disregard of whether it was false.... A negligent misstatement of fact will not suffice; the evidence must demonstrate a purposeful avoidance of the truth…. **Moreover, the plaintiff must prove actual malice by the heightened standard of clear and convincing evidence**." (Citations omitted; emphasis added.) Abdelsayed v. Narumanchi, 39 Conn. App. 778, 781 (1995), cert. denied, 237 Conn. 915, cert. denied, 519 U.S. 868 (1996). Our Supreme Court has held that reckless disregard may be found when a person publishes defamatory statements "with a high degree of awareness of ... probable falsity ... or ... entertained serious doubts as to the truth of [the] publication ..." Gambardella v. Apple Health Care, Inc., 291 Conn. 620, 639 (2009) (Citations omitted; internal quotation marks omitted).

In this case, the Defendant's statement is insulated from liability for defamation based on the qualified privilege of "fair comment" since her email was an opinion on a matter of public interest. As argued above, there is no question that the Defendant's email, which was later posted on a Facebook page, addressed an issue of public interest. The Defendant's email pertained to showing support for Superintendent Cummings' message regarding his commitment to combating

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racism in the local schools and town. In showing her support for the Superintendent's message and initiative, the Defendant's email also addressed some of the responses admonishing Superintendent Cumming's message. The issue of a local educator's efforts to raise attention on combating racism coupled with the fact that numerous parents of local student's responded to the Superintendent Cummings' message including, the Plaintiff, demonstrates that the issue the Defendant was addressing was a matter of public interest.

Furthermore, the Plaintiff is unable to show with clear and convincing evidence that the Defendant's statement was made with actual knowledge that her comments were false or made with reckless disregard of whether it was false. The Defendant, neither currently, nor at the time of preparing her email to the First Selectwoman, believe her comments contained in her email were untruthful in any manner. (Ex. A, ¶ 12). Furthermore, a reasonable person would not interpret the Defendant's comments characterizing the Plaintiff's email to Superintendent Cummings' message as reckless disregard of the veracity of her comments. The Defendant's statements were thoughtful and calculated to focus on the Plaintiff's email response as opposed to the Plaintiff as a person in general. Furthermore, the Defendant's purpose of her email was clear, it was to show support for Superintendent Cummings, and in doing so she felt it necessary to address the specific backlash Superintendent Cummings' message received, including from the Plaintiff himself. (Ex. A,¶ 11).

In addition, the Defendant's statements are protected by an absolute privilege. "Absolute privileges provide a complete defense to the tort of defamation." Ramirez v. Costco Wholesale Corp., 2014 WL 2696737, *5 (May 9, 2014, *Burke, J.*). "[T]he effect of an absolute privilege in a defamation action is that damages cannot be recovered for a defamatory statement even if it is published falsely and maliciously." Hopkins v. O'Connor, 282 Conn. 821, 826 (2007); see also Craig v. Stafford Construction, Inc., 271 Conn. 78, 84 (2004). The class of absolutely privileged communications includes legislative proceedings. Simms v. Seaman, 308 Conn. 523, 537 (2013).

"[T]he appellate courts of this state have stated that an absolute privilege protects statements made in legislative proceedings." (Citations omitted). TicketNetwork, Inc. v. Fay, 2014 WL 1395051, *2 (March 12, 2014, *Wagner, JTR*).

In this case, the Defendant is a member of the Representative Town Meeting (RTM) of District Four in the Town of Fairfield, Connecticut. (Ex. A,¶ 3). The RTM is a municipal legislative body in which the members are elected officials and vote on myriad of issues including municipal ordinances and town budgets. (Ex. A,¶ 4). One of the responsibilities of a member of the RTM is to address issues concerning the Town's well-being and bringing attention to issues of public interest to the First Selectwoman. (Ex. A,¶ 10). As a member of the RTM, the Defendant felt obligated to address Mr. Cummings' email and the responses thereto and to bring the issue to the attention of the community. (Ex. A,¶ 10). Therefore, the defense of absolute privilege applies to the Defendant's email. Thus, as a matter of law, the Plaintiff cannot prevail on his defamation claim and the Defendant's Special Motion to Dismiss the Third Count should be granted.

F. False Light

1. The Plaintiff Fails to Plead an Adequate False Light Claim Against the Defendant Since His Complaint Fails to Allege Any Facts Demonstrating that the Defendant Portrayed the Plaintiff in a False Light that was Highly Offensive to a Reasonable Person.

As to the Plaintiff's false light claim, "Connecticut has adopted the definition ... contained in the Restatement (Second) of Torts § 652E (1997), which provides, '[o]ne who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of privacy, if (a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed." Reid v. Harriman, 2019 WL 5960521, *6 (Oct. 28, 2019, *Welch, J.*) (granting

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the defendant's special motion to dismiss the plaintiff's false light claim because the plaintiff failed to sufficiently allege a false light cause of action. Id., *6).

In Baillargeon v. First Union Nat. Bank, 2001 WL 527632, *1 (May 3, 2001, *Booth, J.*), the plaintiff plead a false light claim against the defendant alleging that the defendant "screamed and yelled at her in front of bank customers and other employees causing her to experience public embarrassment and humiliation." Id., *5. The defendant filed a motion to strike the false light claim arguing that the plaintiff failed to allege facts that the plaintiff was portrayed in a false light. Id. The court in Baillargeon granted the motion to strike, stating "[n]o where in the complaint, however, does the plaintiff **allege facts which would support the conclusory allegation that the defendant knowingly and publicly depicted the plaintiff in a false light.** Because the plaintiff has not alleged facts to support a false light invasion of privacy claim, the court grants the motion to strike count seven." Id., *6.

Similar to the plaintiff in Baillargeon, the Plaintiff in this case has failed to allege any facts demonstrating that the Defendant portrayed the Plaintiff in a false light that was highly offensive to a reasonable person. Instead the Plaintiff in this case alleges that the Defendant's statements "would be highly offensive to any reasonable person, and they were highly offensive to the Plaintiff." (Complaint, Fourth Count ¶9). Again, nowhere in the Complaint does the Plaintiff in this case even allege what statements he is referring to nor does the Complaint allege any facts that would demonstrate that the statements were highly offensive to a reasonable person or that the Defendant acted in a reckless disregard as to any falsity of the alleged statements. Therefore, the because the Plaintiff has failed to allege a legally sufficient false light claim, the Defendant's Special Motion to Dismiss as to the Fourth Count should be granted.

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2. The Plaintiff Cannot Establish Probable Cause that he Will Prevail on the Merits of his False Light Claim Against the Defendant Contained in the Fourth Count.

"Any false statement about a person is potentially offensive. **The false light tort requires more than mere offense. It requires that false [statements] be highly offensive**. It requires that the falsity be a major misrepresentation, which is an offense to a person's character. A pattern of falsehoods might meet this requirement, or at least call into question whether the required level of offensiveness had been met. But ... **one isolated negative statement, even if false, does not meet the requirement for highly offensive behavior**." (Emphasis added.) Decker v. Martin, 2010 WL 625794, *9 (Jan. 19, 2010, *Bear, J.*).

"**The tort of false light invasion of privacy requires the plaintiff to prove that the defendants knew or should have known that the statement was false or acted in reckless disregard of whether the statement was true**. This is different from the tort of defamation, in which the defendant's knowledge of the truth or falsity of the statement is usually immaterial… **that would mean that the plaintiff must prove that the defendants could have no reasonable belief that the statement was true, and that they published it nonetheless**." (Citations omitted; emphasis added). Tolles v. Republican-Am., 2012 WL 6634561, *7 (Nov. 20, 2012, *Pittman, J.*).

Additionally, our caselaw holds when a statement involving a "matter of public interest, the plaintiff's false light invasion of privacy claim 'overlaps' with the standard used for an invasion of privacy claim based on unreasonable publicity given to one's private life, such that the claim is 'only actionable if the matter publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public." (Citations omitted; internal quotation marks omitted.) Traylor v. Meredith Corp., 2021 WL 1235849, *10 (March 8, 2021, *Ozalis, J.*).

In this case, even if the comments in the Defendant's email were to be construed as false, which the Defendant denies, since her email was a single isolated incident, as our caselaw dictates,

her email cannot be considered as highly offensive behavior. Moreover, even if the email were not a single isolated incident, no reasonable person would consider her comments directed at the Plaintiff's email response to constitute highly offensive behavior.

Additionally, in this case, the Plaintiff cannot prove that the Defendant had no reasonable belief that the statement was true. The Defendant reasonably believed that her comments addressing the Plaintiff's rebuke of Superintendent's message were truthful and no reasonable person would consider the Defendant's email as a reckless disregard of the veracity of her comments. (Ex. A, ¶ 12).

Lastly, as has already been argued in the prior sections of this memorandum, the Defendant's email addressed a matter of public concern. In order for the Plaintiff to prevail on his False Light claim he also needs to prove that the matter being addressed by the Defendant's email was not a matter of public concern. For the reasons more fully articulated above, no reasonable person would conclude that a statement addressing the local Superintendent's message on combatting racism and addressing certain individuals who opposed the message is a matter of public concern. Thus, there is no probable cause that the Plaintiff will prevail on the merits of his False Light claim. Therefore, the Defendant's Special Motion to Dismiss should be granted as to the Fourth Count.

G. Civil Conspiracy

1. The Plaintiff Fails to Plead an Adequate Civil Conspiracy Claim Because Such a Claim is Not an Independent Claim and the Complaint Fails to Allege Any Facts Demonstrating that the Defendant Conspired with the Co-Defendants to Commit a Crime.

The elements of a Civil Conspiracy claim are: "(1) a combination between two or more persons; (2) to do a criminal or an unlawful act or a lawful act by criminal or unlawful means; (3) an act done by one or more of the conspirators pursuant to the scheme and in furtherance of the object; (4) which act results in damage to the plaintiff." (Internal quotation marks omitted.)

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Macomber v. Travelers Property & Casualty Corp., 277 Conn. 617, 635-36 (2006). Civil Conspiracy cannot be an independent claim and "must be joined with an allegation of a substantive tort." (Emphasis omitted; citation omitted; internal quotation marks omitted.) Harp v. King, 266 Conn. 747, 779 n.37 (2003); Larobina v. McDonald, 274 Conn. 394, 408 (2005) ("[T]here is no independent claim of civil conspiracy. Rather, [t]he action is for damages caused by acts committed pursuant to a formed conspiracy rather than by the conspiracy itself ... Thus, to state a cause of action, a claim of civil conspiracy must be joined with an allegation of a substantive tort." (Citations omitted; internal quotation marks omitted.))

A legally sufficient civil conspiracy claim must contain factual allegations "setting forth an agreement or combination amongst the defendant[s]" to commit the unlawful or criminal act. Wood v. Club, LLC, 2013 WL 2383642, *5 (May 9, 2013, *Adams, JTR*) (granting the defendants' motion to trike the plaintiff's civil conspiracy claims because the complaint failed to allege facts supporting the requisite elements of the civil conspiracy claim.); *see also* Lengyel v. Aubry, 2020 WL 3790862 (*Kamp, J.*) (Court granted defendant's Motion to Strike finding that "Connecticut is a fact pleading state…Instead of pleading facts, the plaintiff plead legal conclusions when she stated: 'Patrick Aubry knew about, joined and furthered the commission of the injuries caused by Maria Aubry.' The plaintiff did not assert any facts stating how Patrick Aubry furthered Maria Aubry's civil conspiracy.") Id., *6. (Citations omitted.).

In this case, the Plaintiff's Civil Conspiracy claim likewise fails since the Civil Conspiracy claim cannot, as a matter of law, stand as an independent claim, and, as argued in more detail above, all of the Plaintiff's other causes of action against the Defendant should be dismissed. Moreover, the Defendant also fails to plead an adequate Civil Conspiracy claim because his Complaint is devoid of any factual allegations demonstrating that the Defendant's email was criminal or unlawful and fails to allege facts showing that the Defendant conspired with others pursuant to a scheme. Instead the Plaintiff alleges legal conclusions. (Complaint, Twenty-First

Count, ¶42)("The defendant Karson acted pursuant to the scheme and in furtherance of the object to intentionally inflict emotional distress, negligently inflicted emotional distress, defamed and/or portrayed the plaintiff in a false light."). Therefore, the Defendant's Special Motion to Dismiss should be granted as to the Civil Conspiracy claim contained in the Twenty-First Count.

2. The Plaintiff Cannot Establish Probable Cause that He Will Prevail on the Merits of his Civil Conspiracy Claim Since the Defendant Did Not Work With Others to Inflict Emotional Distress Upon the Plaintiff and/or to Defame Him and/or to Portray Him Under a False Light.

"[T]he essence of a civil conspiracy ... [is] two or more persons acting together to achieve a shared goal that results in injury to another ... Thus, the purpose of a civil conspiracy claim is to impose civil liability for damages on those who agree to join in a tortfeasor's conduct and, thereby, become liable for the ensuing damage, simply by virtue of their agreement to engage in the wrongdoing. Implicit in this purpose, and in the principle that there must be an underlying tort for the viability of a civil conspiracy claim, is the notion that the co-conspirator be liable for the damages flowing from the underlying tortious conduct to which the co-conspirator agreed." Cuadrado v. Bristol Police Dept., 2015 WL 2458187, *4 (April 28, 2015, *Swienton, J.*). "Pursuant to Connecticut's jurisprudence, there is, precisely speaking, no independent claim for civil conspiracy." Chapman Lumber, Inc. v. Tager, 288 Conn. 69, 100 (2008).

In this case, the Defendant did not conspire or work in agreement with any of the proposed co-defendants to inflict emotional distress on the Plaintiff and/or to defame him and/or to portray him under a false light. (Exhibit A, ¶s 25-26). The Defendant's email to the First Selectwoman came to fruition because she felt obligated, as a member of the Town of Fairfield's RTM, to address with the First Selectwoman the context and content of Superintendent Cummings' email and the responses thereto. (Exhibit A, ¶ 10). The Defendant also felt obligated to publicly defend Superintendent Cummings and to bring the issue of the need for greater racial equity and apparent opposition to such stance to the attention of the community as further indication that there was

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further work to be done in the community on the issue of racial equity. (Exhibit A, ¶ 5; 10). Therefore, as a matter of law, the Defendant's Special Motion to Dismiss should also be granted as to the Plaintiff's Civil Conspiracy claim plead against the Defendant.

V. AWARD OF ATTORNEY'S FEES

Pursuant to 52-196a(f)(1), [i]f the court grants a special motion to dismiss under this section, the court shall award the moving party costs and reasonable attorney's fees, including such costs and fees incurred in connection with the filing of the special motion to dismiss. Accordingly, should the court grant the defendant's Special Motion to Dismiss the defendant seeks the award of attorneys' fees and will submit a breakdown of attorneys' fees and costs within a reasonable time from the granting of this motion.

VI. CONCLUSION

The Plaintiff has unjustifiably filed a lawsuit against the Defendant for comments that were clearly protected by the Constitution. Although the Defendant had no obligation to remove her post and issue a retraction, she did so, in response to the Plaintiff's threat to bring legal action. However, the Plaintiff sued her anyway. As addressed above, the Plaintiff's claims have no merit and this case has caused the Defendant upset and expense, as well used up judicial resources at a time when the Courts are already taxed with the impact from the pandemic. These actions should not be condoned and are exactly the behaviors that the Anti-SLAPP statute intended to address.

Wherefore, the Defendant respectfully requests the Special Motion to Dismiss is granted as to all five claims against the Defendant and the Defendant is awarded reasonable attorneys' fees

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and costs, including the costs and fees incurred in connection with the preparation of this Special Motion to Dismiss.

THE DEFENDANT
LAURA KARSON

By_____

Jennifer C. Mozzer, Esq.
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jmozzer@nuzzo-roberts.com

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CERTIFICATION

I certify that a copy of the above was or will immediately be mailed or delivered electronically or non-electronically on June 17, 2021 to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

Jason P. Gladstone, Esq.
Lampert Toohey & Rucci, LLC
46 Main Street
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jason@ltr-law.com

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Calabrese & Sreenivasan, LLC
129 Whitney Avenue
New Haven, CT 06510
admin@cslitigators.com

_____
Jennifer C. Mozzer

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EXHIBIT A

Good morning

This past summer, in the wake of national demonstrations and conversations about racism, I was confronted with my own personal anger, shame, and fear about the long history of racism in our country. I committed to addressing the greater issues within our school system and leading us to be part of the solution. Since then, our equity work has begun in earnest and continues to be an integral part of our planning and action.

Now, when acts of violence against Asian Americans are on the rise and in the news, I am compelled to recognize that our equity work must be broad and truly inclusive. This is not a “ program,” this is an ongoing commitment to changing our culture, as a school district and as a community. So once again I reaffirm the commitments I made last spring.

Fairfield Public Schools is committed to continuing to examine our own policies, practices, beliefs, and actions so that we can become aware of the hurt we may cause students, staff, and the community, when we are unmindful of our own inherent biases. We continue commit to raising staff awareness of those biases because they stand in the way of the fulfillment of our district mission, “to ensure that every student acquires the knowledge and skills needed to be a lifelong learner, responsible citizen, and successful participant in an ever-changing global society through a comprehensive educational program.” If we are not aware of our own beliefs and actively work to eliminate our prejudices then we cannot truly educate every child.

We commit to being anti-racist in our expectations and actions.

We commit to being part of a community dialogue that confronts the issues that drive us apart so that we may heal as one.

We commit, above all, to listening, to fully investigating, and to addressing, allegations of racist behavior, actions, policies, or practices, in our school system.

We know that current events impact students and families in many different ways. If your child needs support, please contact your building principal or school counselor. Together, when we commit to living our values, we will make our schools, our community and our world stronger, safer, better.

Take care,

Mike

Mike Cummings

Superintendent of Schools

EXHIBIT B

12:00

36 Messages

All Inboxes

3/19/21 Message

Found in Gmail Inbox

Siri found new contact info

Jason Gladstone Jason@ltr-law.com add...

JG

Jason Gladstone 3/19/21

To: Mcummings@fairfieldsch... & 91 more...

Mr. Cummings,

I am truly offended that you would insinuate that I am inherently racist or biased within your March 19, 2021 e-mail. You are truly out of bounds with your message, and I am concerned that you are incapable of understanding this community and the people that reside here. Shocking would be a good word to describe your message. How can you possibly claim that the people of this community "are not aware of our own beliefs", or "inherently bias" and do "not actively work to eliminate our prejudices". Our kids need a superintendent that will stand up and believe in them, not someone who calls the community inherently biased and unknowingly racist. Your failures as a superintendent to get these kids back in school did more damage to these kids than your unsubstantiated and spurious claims of racism within this great community. Truly disappointing and out of touch with the great families that live in this community.

Jason P. Gladstone, Esq.
Lampert, Toohey & Rucci, LLC
46 Main Street
New Canaan, Connecticut 06840
(p)203-972-8100 ext. 14
(f)203-972-8716
Jason@ltr-law.com

CONFIDENTIALITY NOTICE: This e-mail transmission

EXHIBIT C

From: Laura Karson <laurarkarson@gmail.com>
Date: March 24, 2021 at 12:21:09 PM EDT
To: firstselectwoman@fairfieldct.org
Subject: Mr. Cummings Email

Dear First Selectwoman Kupchick,

I am writing to you to ask you to publicly defend Superintendent Cummings' email sent out Friday, March 19th reconfirming his commitment to racial equity. The responses he received were so out of line. Since I am on the RTM D4, I was one of the recipients of an email chain initiated by Jason Gladstone in which the tone and tenor were so disrespectful and offensive. He was outraged that Mr. Cummings insinuated he was inherently racist, which couldn't be further from the truth. What Mr. Gladstone and others on the email chain exhibited is "white fragility," a discomfort and defensiveness on the part of a white person when confronted by information about racial inequality and injustice. Based on these responses, it is clear much work is needed in understanding racial bias. We must understand the truth that from the moment a color of person is born, the deck is stacked against them due to the color of their skin. Throughout the pandemic, Mr. Cummings has demonstrated steady leadership, always putting the best interests of our children first. He is to be commended for dealing with all the challenges Covid-19 has put on our children, teachers, administrators and parents. These are tough times for all of us, but tearing down an educator, accusing him of calling others racists, when in fact he was trying to share his own reflections and ask for everyone in the community to do better, will not lead to a stronger Fairfield. So I am asking you to speak up on his behalf and speak to the need for racial equity in our schools and town, which as demonstrated by the email chain, we so clearly need.

Thank you for your time.

Sincerely,
Laura Karson

Sent from my iPhone

EXHIBIT D

12:55

Done Edit

FAIRFIELD STANDING U...

Mar 24 ·

Dear First Selectwoman Kupchick,

I am writing to you to ask you to publicly defend Superintendent Cummings' email sent out Friday, March 19th reconfirming his commitment to racial equity. The responses he received were so out of line. Since I am on the RTM D4, I was one of the recipients of an email chain initiated by Jason Gladstone in which the tone and tenor were so disrespectful and offensive. He was outraged that Mr. Cummings insinuated he was inherently racist, which couldn't be further from the truth. What Mr. Gladstone and others on the email chain exhibited is "white fragility," a discomfort and defensiveness on the part of a white person when confronted by information about racial inequality and injustice. Based on these responses, it is clear much work is needed in understanding racial bias. We must understand the truth that from the moment a color of person is born, the deck is stacked against them due to the color of their skin. Throughout the pandemic, Mr. Cummings has demonstrated steady leadership, always putting the best interests of our children first. He is to be commended for dealing with all the challenges Covid-19 has put on our children, teachers, administrators and parents. These are tough times for all of us, but tearing down an educator, accusing him of calling others racists, when in fact he was trying to share his own reflections and ask for everyone in the community to do better, will not lead to a stronger Fairfield. So I am asking you to speak up on his behalf and speak to the need for racial equity in our schools and town, which as demonstrated by the email chain, we so clearly need.

Thank you for your time.

More Add to Story

EXHIBIT E

Jason P Gladstone
240 Jennie Lane
Fairfield, CT 06824
Jason@ltr-law.com

CERTIFIED MAIL NO.
7020 0090 0001 3272 7468

April 12, 2021

Laura Karson
187 Buena Vista Road
Fairfield, CT 06825-1676

RE: Defamation

Attention Laura Karson:

It has come to my attention that on March 24, 2021, you posted libelous statements on a Facebook group called "Fairfield Standing United" in connection with an email I sent to Fairfield Superintendent of Schools Mike Cummings. On that post, you stated that I was offensive, disrespectful, suffering from a malady called "White Fragility" and I was "tearing down an educator". Such statements are false, and were intended to injure my reputation, diminish my self-esteem, respect, goodwill, and confidence in the community. The defamatory statements were meant to excite an adverse, derogatory or unpleasant feelings or opinions against me.

As a direct result of those libelous statements, my reputation in the community has been damaged and I have been prejudiced in public estimation, all to my detriment.

This letter is to demand a full retraction of those statements in the same manner they were made, specifically on the Facebook group "Fairfield Standing United" or any other publication it was published.

Failure to retract the statements will result in a civil action against you.

Sincerely,

Jason P. Gladstone

JPG:jpg

Calabrese and Sreenivasan, LLC

EXHIBIT F

Laura Karson

Apr 21 ·

On March 24, 2021, I posted a copy of an email I sent FS Kupchick asking for her support of Superintendent Cummings' email to parents about diversity and inclusion in the schools. In my email to her, I mentioned Jason Gladstone, who sent a group email to Superintendent Cummings objecting to his email. I characterized the tone and tenor of Mr. Gladstone's email as disrespectful and offensive and suggested that it exhibited white fragility and that he was "tearing down an educator." I understand that these comments offended Mr. Gladstone and I hereby retract them.