

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS

SUPERIOR COURT DEPARTMENT

PAUL O'KEEFE, as Personal Representative
of the Estate of JOHN JOSEPH O'KEEFE III,
PAUL O'KEEFE, Individually, JOHN
O'KEEFE II, MARGARET O'KEEFE, and
MARGARET O'KEEFE as Grandparent/
Guardian of KAYLEY FURBUSH,

Plaintiffs,
v.

C&C HOSPITALITY, LLC d/b/a C.F.
MCCARTHY'S, G&S HOSPITALITY, LLC
d/b/a C.F. MCCARTHY'S, WATERFALL
BAR & GRILL, LTD d/b/a WATERFALL
BAR & GRILL, and KAREN READ,

Defendants.

Civil Action No. 2483cv00692

**DEFENDANT KAREN READ'S REPLY
TO NON-PARTIES NICOLE AND BRIAN ALBERT,
JENNIFER, ALLIE, AND MATTHEW McCABE,
AND BRIAN HIGGINS'S OPPOSITION TO HER MOTION TO COMPEL**

Delay appears to be the goal, and not just a symptom, of the manner in which Nicole and Brian Albert, Matthew and Jennifer McCabe, Allie McCabe, and Brian Higgins (collectively, the "Delinquent Non-Parties") have responded to Defendant Karen Read's ("Read") subpoenas. In response to validly-issued subpoenas, these individuals ignored Rule 45's deadline for objecting to document production and belatedly claimed that almost all of them were fully unavailable for more than a month from their subpoenaed dates, evidencing their desire to obstruct Read's ability to take discovery required for her defense. Indeed, in the 9C conference concerning these subpoenas (among other topics), the Delinquent Non-Parties' counsel even suggested that Read's

counsel should simply accept the late deposition dates his clients had chosen because, by the time the Court heard and decided Read's motion, all of the interceding time would have passed anyway. Rule 45 has specific deadlines and requirements so that a party to a case may compel witnesses to provide discovery in a timely manner, while respecting the non-parties' right to avoid undue burden. Although Read has always been willing to accommodate reasonable scheduling conflicts by choosing new dates in the same timeframe as a subpoenaed date, the Court should not permit these non-parties to unilaterally impose their will on the discovery schedule in this case and prejudice Read's ability to prepare her defense within the discovery period. Read replies separately to the Delinquent Non-Parties' arguments regarding document production and deposition dates below.

Document Production

In their Opposition, the Delinquent Non-Parties claim that "good cause" and "good faith" support their failure and refusal to assert timely objections within the ten-day window set forth in Mass. R. Civ. P. 45(d)(1). But they provide no explanation for why they ignored Rule 45's deadline. Instead, they simply rely on the very objections they belatedly asserted as a reason for the Court to ignore that deadline. The Court should reject this circular reasoning, which would render Rule 45 toothless. This is why "[f]ailure to timely and properly object to the subpoena generally constitutes a waiver of all grounds for objection." *Pons v. Walter Kidde Portable Equip. Inc.*, No. 2025 U.S. Dist. LEXIS 93919 at *6 (D. Mass. May 16, 2025); *see also Burroughs Corp. v. Dataware Sources, Inc.*, No. 86-608, 1987 U.S. Dist. LEXIS 10334 at *2 (D. Mass. Apr. 28, 1987) ("When objections [to a subpoena] are not filed within the time provided by the Rule, the objections are waived.").

The Delinquent Non-Parties then ask the Court not to compel them to produce any documents based on a single paragraph and reference to an opposition filed in response to a *different* motion, by a *different* party, Colin Albert (“Colin”). (pp. 6-7). However, much of Colin’s opposition is distinguishable because it focused on the fact that he claims to have left the house at 34 Fairview Road before Read and John O’Keefe III arrived in the early morning of January 29, 2022. In stark contrast, the Delinquent Non-Parties other than Allie McCabe were undisputedly in the house at that time and their alleged conduct forms the core of the “false narrative” the Plaintiffs allege Read promulgated, causing them compensable emotional distress. To the extent these individuals have communications concerning the major aspects of Read’s defense – or “narrative” – they are relevant and must be produced. If the Delinquent Non-Parties had concerns about specific requests and the burden they would impose, they were required to, at the very least, describe them to the Court with sufficient specificity, so that the Court could balance that burden with Read’s need for this evidence. But they have not done so and have never identified any such specific burden to Read. And it was particularly important for these particular subpoena recipients to specifically identify any undue burden they claim to be facing because many of them are also plaintiffs against Read in the separate defamation case pending before this Court relating to this same “narrative,” a role they voluntarily took on knowing that it would require them to gather, review, and produce whatever responsive documents they may have.

Deposition Dates

As to the Delinquent Non-Parties’ deposition dates, this Reply can be brief. Read offered to reschedule any of the dates to others close in time to the originals to accommodate reasonable availability issues. The Delinquent Non-Parties simply repeated the dates they had proposed in

the first place, ignoring Read's right to take the depositions comfortably within the discovery period rather than facing the task of taking multiple highly relevant depositions in rapid succession at the end of the Court's discovery schedule. Third parties' right to be free from undue burden does not allow them to unilaterally dictate the deposition schedule for this case in this manner, and the Court should prevent them from doing so.

Respectfully submitted,

KAREN READ,

By her attorneys,

/s/ Damon M. Seligson

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Dated: June 29, 2026

CERTIFICATE OF SERVICE

I certify that I served a copy of this document on all counsel of record by email on June 29th, 2026.

/s/ Damon M. Seligson

Damon M. Seligson