

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS.

SUPERIOR COURT DEPT.
 C.A. NO. 2483CV00692

PAUL O'KEEFE, INDIVIDUALLY & AS PERSONAL
 REPRESENTATIVE OF THE ESTATE OF JOHN
 JOSEPH O'KEEFE, III; MARGARET O'KEEFE,
 INDIVIDUALLY AND AS GRANDPARENT / GUARDIAN
 OF KAYLEY FURBUSH; and JOHN O'KEEFE, II,
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.

**PLAINTIFFS' REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFFS'
 EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER PURSUANT TO
 RULE 65 TO PREVENT RELEASE OF EVIDENCE**

Read's opposition rests on either a fundamental misunderstanding or a deliberate overstatement of the relief Plaintiffs seek. Read disingenuously paints Plaintiffs as seeking "a forced full forensic examination of Read's entire phones" provided directly to Plaintiffs right this moment. Read Opposition at 1-2. This is simply untrue. Plaintiffs fully intend to honor their agreement with Read's counsel concerning the phone extractions produced to Read by the NDAO. Pursuant to that agreement and as evidenced by Read's own opposition¹, such extractions are already in Read's possession and Plaintiffs still await production of the same. Notably, instead of

¹ "Read will soon produce supplemental documents in her own possession in accord with her written Rule 34 objections, as well as documents from the Norfolk District Attorney's Office (the "NDAO") pursuant to her counsel's agreement with Plaintiffs' counsel months ago...Read's counsel received the NDAO's first production, which was extremely large **and contained phone extractions, in mid-January.**" Read Opposition at 3 (emphasis added).

working to provide Plaintiffs with the purported supplemental production, Read is expending her resources suspiciously fighting for the immediate return of the phones themselves (of which she does not need for any practical purpose). Plaintiffs' emergency motion pertains to the communications contained on Read's cell phone(s) that are presently in sole custody and control of the NDAO. Upon information and belief, the NDAO has not performed complete extractions, or any extractions, of the subject phones and may never do so if Judge Doolin allows Read to immediately retake possession of same.²

Read's commentary about the state of discovery is misleading and ignores the entire premise of Plaintiffs' motion. Plaintiffs' request for production of documents (No. 22) does in fact encompass the data and communications contained within the devices at issue here.³ As demonstrated within Plaintiffs' emergency motion, such cell phones contain material evidence directly relevant to Plaintiffs' infliction of emotional distress claims. Read's own words belie this argument when she admitted "I'm dead. I'm f*****g dead. Do you have any clue what's on the phone that they took?" [Plaintiffs' Motion, Exhibit J⁴] The Plaintiffs merely seek an opportunity to safeguard the *entire* contents of the devices, to be preserved in trust by an independent third party, before the cell phones are returned to Read or to the NDAO depending on J. Doolin's ruling. Once this is accomplished, the entire extraction can be produced to Read's counsel for review of discoverability, privilege, etc. while retaining a full copy of the devices pending agreement on the production of that information to Plaintiffs. On February 27, 2026, Plaintiffs convened with Read's

² Read also concedes such an extraction might not even exist yet. Read Opposition at n. 1.

³ It is ironic that Read would complain about the breadth of the request when she is actively seeking ten (10) years of phone records from Mass. State Police troopers. Whether Plaintiffs' request may be perceived as overbroad is a separate issue that may be resolved between counsel for the parties by simply narrowing the scope of the request.

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counsel under Rule 9C and proposed this protocol, and Read's counsel advised that they would consider the proposal.

In the event an agreement cannot be reached or disputes arise with respect to the existence or discoverability of certain information, a full extraction of the device data will be available for comparison and review by this Court or a third party, if necessary. In sum, Plaintiffs only ask this Court to maintain the status quo and preserve the cell phones in government custody, only until such time that the parties can be fully heard on the issue of preservation.

Furthermore, there is nothing "unclear" about the critical need for the physical devices to remain secure in the exact state as they were seized in order to prevent immediate irreparable harm to Plaintiffs. Read claims "Plaintiffs have not presented (and cannot present) any evidence whatsoever of discovery malfeasance by Read that would support" their motion. Read Opposition at 1. To the contrary, Plaintiffs already provided the Court with body camera footage from a 1/24/2024 search warrant execution during which Read took affirmative steps to factory reset a cell phone, ostensibly wiping all data and information contained intra, before providing it to investigators. [Plaintiff's Motion, Exhibit I] This is not some run-of-mill fishing expedition. The circumstances of this case are unique, and Plaintiffs' concerns are warranted. The cell phones Plaintiffs seek to preserve contain crucial evidence in support of their claims. Given the history here, Plaintiffs cannot be expected to sit back and blindly trust that Read and her team will unilaterally identify and preserve all potentially incriminating evidence on Read's devices, let alone voluntarily produce the same. There must be guardrails in place to protect the Plaintiffs' rights and the integrity of the process.

Moreover, it is notable what the Defendant does *not* say in its opposition. Remarkably, in her opposition, Defendant Read fails to assure Plaintiffs or this Court that she will ensure that all

information on those phones is preserved. Read offers only half-hearted assurances regarding the preservation of this evidence stating that Plaintiffs will have access to “discoverable material they are entitled to” and that Read will comply with “her standard existing discovery obligations” with respect to the phone. Read Opposition at 2-3. Regardless of these representations, a finding of potential malfeasance is not necessary for a ruling in Plaintiffs’ favor. The moment those devices are removed from Faraday protection/secure evidence holding, they become vulnerable to alteration. Any normal or innocuous use of the phones may overwrite crucial information and metadata contained intra. The phones should remain in the exact state as they were seized until the Plaintiffs’ have an opportunity to be heard on the matter.

With respect to Read’s procedural argument, the plain language of the rule suggests that an affidavit or verified complaint is required for a judge to grant a TRO “without written or oral notice to the adverse party or his attorney”.⁵ Here, Plaintiffs’ have not sought to convene an ex parte hearing on the motion. Read’s counsel was present at the criminal hearing on Thursday when Plaintiffs’ counsel first learned of the hearing and called in from the airport, during which the court ordered Plaintiffs to file their papers on Monday. Plaintiffs’ counsel also copied Read’s counsel on the filing with the expectation that it would be opposed. Even if Plaintiffs did not comply fully with the rule, such argument promotes form over substance and should not deter this Court from exercising its inherent authority to control evidence.

Plaintiffs’ motion here sounds in equity. Had Read’s lawyers given Plaintiffs’ counsel the courtesy of advance notice regarding the motion to return property, Plaintiffs would have served their motion in accordance with Rule 9A. Instead, Plaintiffs were left no choice but to seek this

⁵ “A temporary restraining order **may be granted without written or oral notice to the adverse party or his attorney only if** it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition.” Mass.R.Civ.P. 65(a) (emphasis added)

Court's intervention in emergency fashion because Read chose to proceed in a separate, sealed criminal matter, and Plaintiffs learned of the need for such motion just two business days before such motion was due to the court. Regardless, Read cannot claim any unfair prejudice here from the absence of an affidavit whereas they were given notice of Plaintiffs' motion, and Plaintiffs' exhibits clearly demonstrate the necessity of a temporary restraining order in this particular instance. If the Court deems it necessary, Plaintiffs will provide an affidavit forthwith.

/s/ Marc Diller
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CERTIFICATE OF SERVICE

I, Marc Diller, Esq., do hereby certify that on this 27th day of February, 2026, the foregoing REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFFS EMERGENCY MOTION FOR PROTECTIVE ORDER was served via email upon all counsel of record.

/s/ Marc Diller
Marc Diller, Esq.