

COMMONWEALTH OF MASSACHUSETTS

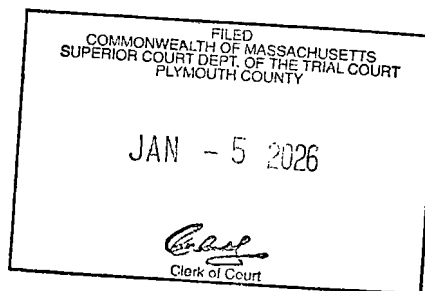
PLYMOUTH, ss

SUPERIOR COURT DEPARTMENT
CIVIL DOCKET NO.: 2483-CV-00692

PAUL O'KEEFE, Individually and as Personal)
Representative of the Estate of John Joseph)
O'Keefe, III; MARGARET O'KEEFE, Individually)
and 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.)



**THIRD PARTY MICHAEL PROCTOR'S STATEMENT IN SUPPORT OF THE
NORFOLK COUNTY DISTRICT ATTORNEY'S OFFICE'S OPPOSITION TO
DEFENDANT KAREN READ'S MOTION TO COMPEL PRODUCTION OF DATA**

Now comes third party Michael Proctor ("Proctor") and submits this memorandum in support of the Norfolk County District Attorney's Office ("DA's Office") Opposition to Plaintiff's Motion to Compel Data in Response to Subpoena (Docket No.). Defendant Karen Read's ("Read") Motion should be denied because it, and the accompanying subpoena, constitute nothing more than a fishing expedition of Proctor's personal cell phone. Commonwealth v. Lam, 444 Mass. 22, 229 (2005) (quashing a subpoena where it constitutes nothing more than a "fishing expedition"). Moreover, Read and her attorneys are already in possession of *at least* 38,707 pages of text messages from Proctor's personal cellphone. (Ex. 1, June 10, 2024 Criminal Jury Trial Testimony of Proctor); *see also* DA's Office Opposition at p. 2: Read's motion seeks "previously disclosed and widely publicized text messages sent by" Proctor "with an assumption" that there are others. These 38,707 pages were, upon information and belief,

subpoenaed by a Federal Grand Jury pursuant to an investigation into the Massachusetts State Police's involvement¹ into the criminal investigation and prosecution of defendant Read and included Proctor's personal text messages sent both before, and well after, the State grand jury's June 9, 2022, indictment of Ms. Read on second degree murder charges. Importantly, the contents of Proctor's cell phone are currently under a December 10, 2025, protective order (Krupp, J.) in the criminal case of *Commonwealth v. Myles King*, Norfolk Superior Court Docket No.: 2182-CR-320 (Ex. 2). Accordingly, to the extent that Read alleges that Proctor's cell phone contains information that shows bias or prejudice in pursuing a criminal investigation against her, such messages, if they ever existed, have most certainly been produced during the criminal proceedings against Read.

ARGUMENT

I. Read's Request Seeks Documents That Overly Broad In Time and Scope, Seeks Documents That Are Privileged, And Seeks Documents That Are Not Likely to Lead to the Admissibility Of Admissible Information

As pointed out in the DA's Office Opposition, Read's subpoena "seeks texts-chats, audio files, pictures and videos that span many years, and in some instances predate" Proctor's employment as a trooper, which began in 2013. DA's Opposition, p. 3. Accordingly, the subpoena on its face is grossly over broad in time and scope. Moreover, as also noted by the DA's Office, Read's subpoena seeks documents protected as attorney-client communications and documents protected by the spousal privilege. To be sure, all of these communications are privileged and not subject to disclosure².

¹ Upon information and belief, no indictments arose out of that grand jury investigation and Proctor was never found by the grand jury to have acted with bias or prejudice during his criminal investigation of Read.

² To the extent Read asserts that Proctor and his attorneys should be forced to review the data for these privileges, such a request is overly broad and unduly burdensome. *See* Mass. R. Civ. P. 26

Furthermore, as a non-party to this litigation, Proctor has an expectation of privacy in the information contained within the electronically stored data. The Supreme Judicial Court has previously held that all persons have privacy rights in response to documents and information sought by subpoena and the Court has cautioned trial judges that “the existence of a personal interest in non-disclosure [of documents] might well persuade a court against ordering production [of documents].” Ward v. Peabody, 380 Mass. 805, 819-820 (1980) (finding that upon remand to the trial court, a witness’s “privacy interest might become a factor” in whether the witness should be required to produce documents as the production might “possibly expos[ing] personal relationships of no concern to [a Congressional], legitimate investigation.”). This, too, is such a case where this Honorable Court should prevent disclosure, especially in light of the fact that Read already has 38,707 relevant texts.

Undersigned counsel have not seen the scores of thousands of documents/texts/emails/messages and other items contained within the electronically stored data. Whereas the data contains data going back more than thirteen years, it is likely to be more than 100,000 items. It is likely to contain photos and communications of and with, not only with Proctor’s wife and attorneys, but also his children, his family members, parents, friends and others that have zero interest or relationship to this matter. Additionally, the data may contain sensitive, privileged information regarding other criminal investigations and may jeopardize the scope of those investigations. Moreover, it may contain confidential, privileged data medical information that is protected by 45 C.F.R. § 160, et seq (“HIPAA”), M.G.L. c. 111, §70 and 70E, which limit the availability of medical and hospital records, as well other state and federal laws.

and 45 (a person may object to producing electronic data pursuant to a subpoena on the grounds that it is overly broad, oppressive and imposes excessive financial burden).

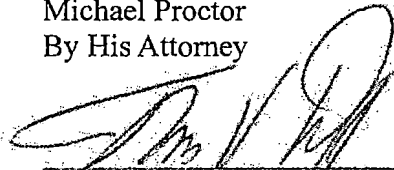
To allow defendant Read unfettered access to this data on such an unfounded basis that discoverable information "might" exist constitutes an unwarranted invasion of privacy.

WHEREFORE, Michael Proctor respectfully requests that defendant Read's Motion to Compel be denied.

Respectfully submitted,
Interested Third Party
Michael Proctor
By His Attorney

Dated:

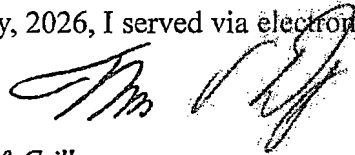
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Certificate of Service

I Thomas DiGangi hereby certify that on this 5th day of January, 2026, I served via electronic email the foregoing document on the counsel of record below:



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