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COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2573CV00305

BRISTOL SUPERIOR COURT
FILED

DIANA NATALE

JUN 10 2026

vs.

JENNIFER A. SULLIVAN, ESQ
CLERK/MAGISTRATE

BARSTOOL SPORTS, INC. & others¹

**MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS MICHELLE C.
LITTLEFIELD AND CHARLES CASTRO'S MOTION TO DISMISS AND FOR FEES
AND COSTS**

Plaintiff filed her Amended Complaint (Paper 36) alleging the following counts against Michelle C. Littlefield ("Littlefield") and Charles Castro ("Castro"): against Littlefield,² XI Defamation, XII Intentional Infliction of Emotional Distress, XIII Misuse of Sealed Records, Invasion of Privacy, XIV Misuse of Sealed Records / Invasion of Privacy, XIV (sic.) Civil Conspiracy; and against Castro, XV Defamation, XVI Intentional Infliction of Emotional Distress. Counts XXVIII and XXIX allege civil conspiracy and seek injunctive and declaratory relief, respectively, against all defendants named in the action, including Littlefield and Castro.

Littlefield and Castro move, pursuant to Mass. R. Civ. P. 12(b)(6), to dismiss plaintiff's claims, contending that the allegations against them are too vague to state a claim upon which relief can be granted. In addition, Littlefield and Castro (collectively "the defendants" or "Littlefield and Castro") maintain that Counts XIII and XIV are duplicative and therefore Count XIV, alleging Invasion of Privacy, should be dismissed.³ For the foregoing reasons, the motion

¹ David Portnoy, Kirk Minihane, Steve Robinson, Justin Trudell, Harrison Marklowsky, Michelle C. Littlefield, Charles Castro, DCS Investigations, Jennifer Maria Jackson Prince, and Meredith O'Neil

² Defendant Meredith O'Neil is also named in Counts XI, XII, XIII, and the two counts labeled as XIV.

³ The defendants' memorandum also addresses Count XVII against DCS Investigations, which is apparently Castro's business. Because no attorney has appeared for DCS Investigations, the court declines to address arguments advanced purportedly on its behalf.

to dismiss is ALLOWED.

BACKGROUND

The following facts are taken from the Amended Complaint and accepted as true for purposes of this motion.⁴ Littlefield works for DCS Investigations, an investigative entity owned by Castro. In 1989, Jennifer Fay (“Fay”) disappeared from Brockton. The plaintiff was never charged in connection with Fay’s disappearance.

In approximately 2021, defendants Kirk Minihane (“Minihane”) and Steve Robinson (“Robinson”) began contacting the plaintiff and producing podcast and media content about the plaintiff in relation to Fay’s disappearance. The plaintiff was mocked and ridiculed on the *Kirk Minihane Show* of July 16, 2025, and Littlefield mocked the plaintiff on the *Calling All Beings* podcast of November 5, 2025.

“Prior to *The Case Podcast*,⁵ the only notable public attacks against Plaintiff occurred during approximately 2014-15, when . . . Littlefield publicly posted accusations about Plaintiff on the Brockton Hub website.” Paper 36, Amended Complaint at par. 220. Any notoriety brought upon the plaintiff by the 2014-2015 publications had subsided years before *The Case Podcast*.

At some point, Minihane, Robinson, Justin Trudell, Harrison Marklowsky, and Littlefield “publicly stated or implied that the plaintiff practiced witchcraft, engaged in sexual misconduct, threatened arson, intimidated a missing child, . . . or engaged in other criminal or dangerous conduct.” *Id.* at par. 46. See *id.* par. 146. Various defendants, including Littlefield, “appeared on or participated in podcast episodes . . . in which Plaintiff was discussed and defamatory

⁴ The court makes no attempt to repeat all facts stated in the 126-page complaint but attempts to capture the crux of the plaintiff’s allegations against Littlefield and Castro to provide context for the discussion.

⁵ *The Case Podcast* apparently aired in 2021.

allegations were repeated or amplified.” *Id.* at par. 78. Littlefield “repeatedly disseminated statements concerning Plaintiff . . . including after acknowledging that Plaintiff was not a suspect in any criminal investigation.” *Id.* at par. 81.

Castro “participated in the creation, publication, or dissemination of content that repeated or reinforced false allegations concerning Plaintiff.” *Id.* at par. 82. He published false statements indicating that the plaintiff was involved in criminal and sexual misconduct.

Littlefield accessed information from the plaintiff’s sealed court records, which he then disseminated and publicly discussed. *Id.* at pars. 150-151. Littlefield publicly implied that the plaintiff was involved in Fay’s disappearance. Since 2021, Castro facilitated and participated in the publication of such defamatory statements in connection with *The Case Podcast* and related media.

Littlefield contacted the plaintiff’s employer, disclosed information from the plaintiff’s sealed court records, and suggested the plaintiff’s involvement in Fay’s disappearance, resulting in the plaintiff being barred from work.

Among the harms suffered by the plaintiff as a result of the defendants’ conduct are psychological and emotional distress, damage to her reputation, and chronic fear for her personal safety.

DISCUSSION

To survive a motion to dismiss for failure to state a claim pursuant to Mass. R. Civ. P. 12(b)(6), a complaint must contain “factual ‘allegations plausibly suggesting (not merely consistent with)’ an entitlement to relief” *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008), quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007). The factual allegations must be “more than labels and conclusions” and “raise a right to relief above the

speculative level” *Iannacchino*, 451 Mass. at 636, quoting *Twombly*, 550 U.S. at 555. In assessing a complaint under Rule 12(b)(6), the court accepts as true the well-pleaded factual allegations and draws all reasonable inferences in the claimant’s favor. See *Fairhaven Hous. Auth. v. Commonwealth*, 493 Mass. 27, 30 (2023). The extent of the court’s review generally is limited to the factual allegations in the complaint and any facts contained in any attached exhibits. See *Eigerman v. Putnam Invs., Inc.*, 450 Mass. 281, 285 n.6 (2007). However, the court also may consider matters of public record, items in the record of the case, and documents cited and relied upon in the complaint. See *Marram v. Kobrick Offshore Fund, Ltd.*, 442 Mass. 43, 45 n.4 (2004); *Schaer v. Brandeis Univ.*, 432 Mass. 474, 477 (2000).

Duplicative Counts

As a threshold matter, the court agrees with the defendants that Count XIII and Count XIV, both alleging Invasion of Privacy are duplicative. Thus, Count XIV, alleging Invasion of Privacy shall be stricken.⁶

Counts XI and XV - Defamation

To state a defamation claim, a plaintiff must allege facts showing that “(1) the defendant published a false statement regarding the plaintiff—that is, the defendant communicated the statement concerning the plaintiff to a third party; (2) the statement could damage the plaintiff’s reputation in the community; and (3) the statement caused economic loss or is otherwise actionable without proof of economic loss.” *Flagg v. AliMed, Inc.*, 466 Mass. 23, 37 (2013). “Statements of pure opinion are not actionable.” *Lawless v. Estrella*, 99 Mass. App. Ct. 16, 20 (2020), citing *King v. Globe Newspaper Co.*, 400 Mass. 705, 708 (1987), cert. denied, 485 U.S. 940 (1988). Four types of statements are actionable without proof of economic loss: (1)

⁶ To be clear, Count XIV alleging Conspiracy is not addressed here.

statements constituting libel; (2) statements charging plaintiff with a crime; (3) statements alleging plaintiff has certain diseases; and (4) “statements that may prejudice the plaintiff’s profession or business.” *Ravnikar v. Bogojavlensky*, 438 Mass. 627, 630 (2003). If such statement comes within one of these four exceptions, “a plaintiff may recover noneconomic losses, including emotional injury and damage to reputation.” *Id.*

The gravamen of plaintiff’s complaint is that, as part of a crime investigation podcast, the defendants published and / or facilitated the publishing of statements indicating that the plaintiff was involved in criminal and immoral behavior. The defendants argue that the plaintiff’s allegations are too vague.

Allowing a meritless defamation case to proceed endangers freedom of expression. See *King v. Globe Newspaper, Co.*, 400 Mass. 705, 708 (1987). Thus, analyzing the sufficiency of plaintiff’s allegations is far from trivial.

In *Driscoll v. Board of Trustees of Milton Academy*, 70 Mass. App. Ct. 285, 295-297 (2007), when considering the defendant’s Rule 12(b)(6) motion to dismiss, the Appeals Court discussed the detailed analysis required to distinguish whether the statements in question may be actionable as statements of fact or statements of opinion. For example, the court noted that “[o]pinions clearly based on disclosed, nondefamatory facts are not actionable.” *Id.* at 296. “However, a statement cast in the form of an opinion may imply the existence of undisclosed defamatory facts on which the opinion purports to be based, and thus be actionable (citations omitted).” *Id.* at 297. “In deciding whether statements can be understood reasonably as fact or opinion the test to be applied [] requires that the court examine the statement in its totality in the context in which it was uttered or published. The court must consider all the words used, not merely a particular phrase or sentence. In addition, the court must give weight to cautionary

terms used by the person publishing the statement. Finally, the court must consider all of the circumstances surrounding the statement, including the medium by which the statement is disseminated and the audience to which it is published (citations omitted).” *Id.* See *Barhoum v. NYP Holdings, Inc.*, Mass. Super., No. SUCV201302062, 2014 WL 2504533 at *5 (Mar. 10, 2014).

The plaintiff’s allegations are not sufficient for the court to engage in such analysis. Although the plaintiff alleges generally that the defendants made assertions of fact rather than assertions of opinion, see e.g., Paper 36 at par. 147, “[the court does] not accept legal conclusions cast in the form of factual allegations . . . [The plaintiff cannot] . . . rest on subjective characterizations or conclusory descriptions” *Schaer*, 432 Mass. at 477-478.

Similarly, the plaintiff’s allegations are not sufficient for the defendants to identify the statements upon which the plaintiff’s allegations are based to assert potential defenses. The plaintiff’s 126-page amended complaint does not specify any alleged defamatory statements attributed to the defendants. For example, the plaintiff indicates that Littlefield “repeatedly disseminated statements concerning Plaintiff through podcasts, social media, and online video platforms, including after acknowledging that Plaintiff was not a suspect in any criminal investigation,” Paper 36 at par. 81, and Castro “participated in the creation, publication, or dissemination of content that repeated or reinforced false allegations concerning Plaintiff.” *Id.* at par. 82. The amended complaint indicates that Littlefield mocked the plaintiff on the November 5, 2025, podcast, *Calling All Beings*, but it is not clear whether the plaintiff alleges Littlefield made any legally defamatory statements in the episode. Moreover, the plaintiff’s amended complaint encompasses statements from 2014-2015, see Paper 36 at 70, par. 3, and alleges

defamatory statements have been made since 2021, a time frame too broad to provide the defendants with fair notice of the statements at issue.

The amended complaint is replete with generalizations, identifying topics, but failing to provide the defendant with fair notice of the statements at issue and failing to provide the specifics needed to analyze whether any of the defendants' alleged statements may constitute defamation. See e.g. Paper 36 at pars. 144-177, 220-221, 228-229, pp. 70-72, and pp. 84-86.

Accordingly, the defendants' motion with respect to the defamation claims must be **ALLOWED**.

Counts XII and XVI - Intentional Infliction of Emotional Distress

To prevail on a claim for intentional infliction of emotional distress ("IIED"), a plaintiff must prove: "(1) that the defendant intended to cause, or should have known that his conduct would cause, emotional distress; (2) that the defendant's conduct was extreme and outrageous; (3) that the defendant's conduct caused the plaintiff's distress; and (4) that the plaintiff suffered severe distress." *Roman v. Trustees of Tufts Coll.*, 461 Mass. 707, 717-718 (2012), quoting *Sena v. Commonwealth*, 417 Mass. 250, 263-264 (1994). See *Conway v. Smerling*, 37 Mass. App. Ct. 1, 8 (1994) (distress suffered must be such "that no reasonable person could be expected to endure it"). Conduct is "extreme and outrageous" if it "go[es] beyond all possible bounds of decency, and [is] regarded as atrocious, and utterly intolerable in a civilized community" *Roman*, 461 Mass. at 718, quoting *Foley v. Polaroid Corp.*, 400 Mass. 82, 99 (1987).

The plaintiff's IIED claims are apparently grounded upon the defendants' publication of statements suggesting that the plaintiff was involved in the disappearance of Jennifer Fay, the

defendants' publication of information contained within the plaintiff's now-sealed court record, the defendants' public reference to plaintiff's family members, and the defendants' mocking of the plaintiff on a podcast. The defendants maintain that the plaintiff has failed to point to any statements that were so extreme and outrageous as to support an IIED claim.

General Laws c. 276, § 100A, which governs sealed records, does not prohibit or restrict the defendants' First Amendment rights. Moreover, vague allegations of disclosure and discussion of one's prior involvement with the criminal justice system, without more, cannot be regarded as extreme and outrageous conduct. While in the context of an investigative podcast or other platform exploring the disappearance of a young woman, suggesting one's possible involvement may or may not be a responsible exercise of free speech, but, particularly where defamation claims have failed, it cannot be regarded as beyond all possible bounds of decency and utterly intolerable.

The plaintiff has undoubtedly suffered as a result of the suspicion cast upon her. The generalized behavior alleged, however, lacks specificity and does not rise to the level of "extreme and outrageous" as required. See *Iannacchino*, 451 Mass. at 636 (allegations must be more than labels and legal conclusions to survive motion to dismiss). The plaintiff has alleged labels and conclusions, but insufficient facts to sustain an IIED claim. Counts XII and XVI must be **DISMISSED**.

Count XIII - Invasion of Privacy

To state a claim for invasion of privacy, the plaintiff's allegations must support an inference that Littlefield's behavior constituted an unreasonable, substantial or serious interference with the plaintiff's privacy. See G.L. c. 214, § 1B; *Transamerica Ins. Co. v. KMS*

Patriots, L.P., 52 Mass. App. Ct. 189, 195-196 (2001). See also *Doe v. Tenet Healthcare Corporation*, 731 F.Supp.3d 142, 149, 151-152 (D. Mass. 2024). The statute creating the right to privacy “protects people from disclosure of facts that are of a highly personal or intimate nature when there exists no legitimate, countervailing interest (citations omitted).” *Dasey v. Anderson*, 304 F.3d 148, 153 (1st. Cir. 2002). The broad terms used by the Legislature in drafting the statute evince an intent to allow a case-by-case analysis, considering societal values. *Amato v. District Attorney for Cape and Islands Dist.*, 80 Mass. App. Ct. 230, 239-240 (2011). An invasion of privacy claim may be based on public disclosure of private facts⁷ or on an unreasonable intrusion on one’s right to seclusion. *Id.* at 240.

Drawing all inferences in the plaintiff’s favor, the thrust of her claim is that Littlefield obtained information from the plaintiff’s sealed record and disseminated such information over a significant period of time. See Paper 36 at 76, par. 6.⁸ A sealed criminal record may contain information that was never subject to public disclosure, such as grand jury testimony, as well as information that was, at least prior to the sealing, in the public realm. The amended complaint does not suggest that Littlefield disseminated information that was never in the public realm. See *Iannacchino*, 451 Mass. at 636 (allegations must be more than labels and legal conclusions to survive motion to dismiss).

The plaintiff may have reasonably expected that information in the sealed criminal record would not be invaded. However, such expectation is not synonymous with a reasonable expectation of privacy as to information contained within the record that has already been in the

⁷ It should be noted that facts that have been published in a newspaper do not automatically become private facts simply because they are contained within a record that has since been sealed.

⁸ Littlefield and the amended complaint also suggest that Littlefield may have obtained the information in the plaintiff’s sealed record before the record was sealed. See Paper 36 at 76, par. 5. As set forth previously, however, with respect to the instant motion, the court must draw all inferences in the plaintiff’s favor.

public realm. Any such facts, although humiliating, are not automatically of a highly personal or intimate nature. In other words, the amended complaint fails to allege that Littlefield publicly disclosed private facts. *Amato*, 80 Mass. App. Ct at 240, citing *Ayash v. Dana-Farber Cancer Inst.*, 443 Mass. 367, 382 n. 16 (2005), cert. denied sub. *Globe Newspaper Co. v. Ayash*, 546 U.S. 927 (2005). See *Boston Herald, Inc. v. Sharpe*, 432 Mass. 593, 612 (2000) (“When the subject matter of the publicity is of public concern, . . . there is no invasion of privacy” (citation omitted).); *Cape Cod Times v. Sheriff of Barnstable County*, 443 Mass. 587, 595 (2005) (names and addresses of adults are not intimate details of a highly personal nature); *Ayash*, 443 Mass. at 385 (no invasion of privacy where employer put out true statements regarding the plaintiff’s professional conduct of public interest, and did not include matters concerning her health). Further, nothing in the plaintiff’s complaint suggests an unreasonable intrusion on her right to seclusion. The defendants’ motion with respect to Count XIII therefore must be **ALLOWED**.

Counts XIV and XXVIII - Conspiracy

In Massachusetts, there are two theories of civil conspiracy. See *Greene v. Philip Morris USA Inc.*, 491 Mass. 866, 871 (2023). The first theory, “concerted action” conspiracy, is “akin to a theory of common law joint liability in tort” (citation and quotations omitted). *Id.* It “applies to a common plan to commit a tortious act where the participants know of the plan and its purpose and take affirmative steps to encourage the achievement of the result.” *Id.* To prevail on this theory, a plaintiff must “show an underlying tortious act in which two or more persons acted in concert and in furtherance of a common design or agreement” (citation and quotations omitted). See *Williamson v. Barlam*, 103 Mass. App. Ct. 727, 733 (2024). See also *Payton v. Abbott Labs*, 512 F. Supp. 1031, 1035 (D. Mass. 1981) (elements of concerted

action conspiracy under Massachusetts law are “that the defendant and the other have an agreement to perform the act or achieve the particular result” and “that the defendant’s own conduct must be tortious”). The second theory, “true conspiracy,” is “based on coconspirators exerting some peculiar power of coercion” (citations and quotations omitted). *Greene*, 491 Mass. at 871. To prevail on this theory, “a plaintiff must prove that alleged conspirators agreed to accomplish an unlawful purpose or a lawful purpose by unlawful means, and then caused harm to the plaintiff via some peculiar power of coercion that they would not have had, had they been acting independently” (citations and quotations omitted). *Id.* at 875 n.10.

With respect to “concerted action” conspiracy, as previously discussed, the amended complaint fails to allege an underlying tortious act. As to “true conspiracy,” the amended complaint does not allege facts from which the court may infer that the defendants had some peculiar power of coercion over the plaintiff. See *Iannacchino*, 451 Mass. at 636 (allegations must be more than labels and legal conclusions to survive motion to dismiss). Therefore, the conspiracy counts also fail.

Count XXIX – Declaratory and Injunctive Relief

Because the substantive basis upon which the plaintiff seeks declaratory and injunctive relief fails, as previously discussed, with respect to Littlefield and Castro, Count XXIX fails.

ORDER

It is hereby **ORDERED** that the defendants' motion to dismiss is **ALLOWED**. Counts XI, XII, XIII, both counts labeled as XIV against Littlefield, and XV, XVI against Castro are dismissed. Count XXVIII and XXIX are dismissed to the extent they pertain to Littlefield and Castro.

The court declines to award attorneys' fees.



Claudine A. Cloutier
Justice of the Superior Court

Dated: June 10, 2026