THE STATE OF NEW HAMPSHIRE

SUPREME COURT

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2018 TERM

JUNE SESSION

Case No: 2017-0682

Lorraine and Peter MacDonald (Plaintiff-Respondents)

v.

Lisa Jacobs (Defendant-Appellant)

BRIEF OF LORRAINE AND PETER MACDONALD

(Rule 7 Appeal from Decision on Merits)

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2. Whether private figure Plaintiffs in a *per se* defamation case involving multiple defamatory publications of private concern need only establish falsity of the statements and negligence in publication; and whether actual malice fault standard is required to recover presumed damages?

3. Whether enhanced compensatory damages are permitted upon proof of common law malice, namely, that the character of the Defendant's conduct toward the Plaintiffs was wanton, malicious and oppressive?

4. Is "prior bad act" evidence properly admissible when it is independently relevant to a defamation claim brought and properly admissible when it is and it was highly probative of a malicious state of mind and of Defendant's plan and intent to get the MacDonalds to quit Fitzwilliam?

5. Whether a Permanent Injunction banning Jacobs from a five mile radius around the "epicenter" from which all of Jacobs' animus toward Plaintiffs emanates, and from the Town of Sterling, Massachusetts, where she specifically targeted people who knew the MacDonalds in order to threaten, intimidate and defame them, is narrowly tailored to reduce the risk of the irreparable harm Jacobs' behavior creates?

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STATEMENT OF THE CASE

This action was commenced by the Plaintiffs in the Cheshire County Superior Court by a *pro se* Petition for an Injunction in April of 2016. The Court granted Plaintiffs a Temporary Injunction/Restraining Order on May 6, 2016. On July 5, 2016, the Court denied Defendant's Motion to Dismiss for lack of subject matter jurisdiction. On June 2, 2016, the Court granted Plaintiffs' Motion to Dismiss Defendant's Cross-Petition except one prayer of relief (seeking a nuisance injunction which was denied by the Court at her trial).

On September 22, 2017, the jury entered a verdict for the Plaintiffs in the total amount of $160,000.00 and on September 29, 2017, the Court entered its Permanent Injunction against Jacobs. This appeal followed after post-trial motions were resolved.

Subsequent to this Appeal, Jacobs was found in contempt of the Cheshire Superior Court on February 9, 2018. In the Order of February 9, 2018, the Court noted that Jacobs' "testified she does not recognize the authority of this Court and that she has no intention of complying with the injunction." She was sanctioned, $9,000.00, found in contempt and warned that "any further violations would be referred to the appropriate prosecuting authority for investigation and prosecution of criminal contempt." 2-9-18, *Order on Motion for Contempt*. On April 5, 2018, Plaintiffs filed a Motion for Indirect Criminal Contempt and on May 23, 2018, a hearing was held on same; Plaintiffs' counsel was "discharged" from the case and the County Attorney took over the criminal contempt prosecution. Jacobs was incarcerated at the Cheshire County House of Corrections for lack of $50,000.00 cash bail on May 23, 2018.[1] The charges arose from Jacobs' additional threats on the lives of Plaintiffs.

[1] The May 23, 2018 Orders were not available at the time of the completion of this Brief, but Plaintiffs intent to supplement the record, per Rue 16(7) (re: "other intervening matters") before Oral Argument.

STATEMENT OF THE FACTS

This is not a case where the Plaintiffs seek to hold a publisher of a daily newspaper to answer for damages for *per se* defamation. It is a case where a private Defendant seeks refuge in the First Amendment for her malicious, abusive and obsessive defamatory attacks against private individuals whose only "mistake" was to purchase a vacation home across the street from Lisa Jacobs' summer house in Fitzwilliam.

The trial exhibits[1] establish Jacobs' defamatory statements which include statements that the Plaintiffs are "alcoholics," "are drunks," "are criminals," "should be in jail," "are sociopaths," and have committed various crimes against Jacobs, such as vandalism, attempted murder, ("tried to kill Lisa Jacobs," and "were involved in a conspiracy to attempt to kill Jacobs and her mother,") "planned a hit and run against Lisa Jacobs and her mother;" Plaintiffs "slashed Lisa Jacobs' tire," "slashed [her] clothesline," "tore down her 'no trespassing' sign," "cut her phone lines," "ripped a sprinkler from her property," "removed a light bulb on her property," and threw it to the ground.

Jacobs' seeks to use the First Amendment as a "tort shield" to immunize herself from liability for her malicious attacks against private people for her own personal, private purposes.

The jury could have found that Jacobs hatched a plan, as early as November 2012, when the MacDonalds purchased their property in the Sunset Road/Fitzwilliam neighborhood, across the street from the property owned by the Jacobs' Family Trust. Trial Transcript, Page 105 and 378 (hereinafter T.T. p. _____). As her obsession and torment of the MacDonalds grew, her harassing efforts to dislodge them from Sunset Road, expanded feverishly and exponentially.

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[1] All set forth in Plaintiffs' Appendix.

At trial, Jacobs was asked if the MacDonalds left Sunset Road "tomorrow," would it satisfy her "need" to get them out of the neighborhood. T.T.p. 209. She deflected and conflated her need with this statement:

> "the need is coming from the New Hampshire Attorney General; the chief code officer for the State of New Hampshire; the Fitzwilliam Selectmen, *where I am under an order to throw the MacDonalds out of the State of New Hampshire* for them to get mandatory alcohol treatment and substance abuse treatment in the State of Massachusetts." T.T.p. 210. (emphasis supplied).

She explained further that the MacDonalds:

> "are expected to sell their property; move out of the state, live close to their treaters in Massachusetts and not split their care and they are also being asked for a ban that they never be allowed to own in the State of New Hampshire again." T.T.p. 210-211.

Her actions (numerous and persistent false criminal complaints against the MacDonalds alleging criminal conduct against her[2]) and numerous defamatory statements regarding them were the primary weapons she employed in her plan to dislodge them from their Fitzwilliam vacation home. T.T.p. 273 and 384. Mr. MacDonald testified that Jacobs:

> "has made a relentless effort to harass us and maliciously intimidate us to the point where the police are coming down the road all the time, fewer and fewer neighbors will talk to us or deal with us, and it's almost like she's trying to make us uncomfortable and ostracized to be there." T.T.p. 384.

MacDonalds' first contact with Jacobs was in the summer of 2013. T.T.p. 49. She complained about Plaintiffs' tenants at Sunset Road and was offended and hostile when the Plaintiffs asked her to contact them if she had any issues with any of their tenants. T.T.p. 379. They asked her not to speak to their tenants about her complaints, but instead to speak to them. *Id.* She refused.

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[2] *See, e.g.* Testimony of Officer Jeff Clark, Fitzwilliam Police Department. T.T.p. 295-311; and Plaintiffs' Exh. #1, Plaintiffs' Appendix, p. 01-22.

Between spring 2013 and June 2015, Jacobs reported the MacDonalds to local law enforcement officials for numerous fictitious criminal offenses she perceived. T.T.p. 295-311. *See,* also, Plaintiffs' Exh. #1, Plaintiffs Appendix, p. 01-22.

Jacobs' numerous claims were investigated by the Fitzwilliam Police Department and the New Hampshire State Police. *See,* T.T.p. 287-293 (testimony of Fitzwilliam Police Officer, Kevin Stone) and 293–319 (testimony of Officer Jeffrey Clark, T.T.p. 295-311). Every one of her allegations were without merit or unsubstantiated. T.T.p. 266. Fitzwilliam Prosecutor Prevett determined Jacobs didn't have legitimate criminal complaints against the MacDonalds and Plaintiffs were never charged with any crimes. T.T.p. 316. *See,* also, Plaintiffs' Exh. #2. Prevett told Jacobs in May 2014 there was no basis for criminal charges against the MacDonalds either because what she reported was not a crime or she refused to supply the detail needed to establish a crime occurred. T.T.p. 263, 266.

In May, 2015, Jacobs' harassment of the MacDonalds intensified. On May 25, 2015, Jacobs complained to the police that Officer Clark was not taking her complaints seriously and failed to interview her about her claim that the MacDonalds took down her "no trespassing" sign, T.T.p. 297, and that the police need to pay a visit to the MacDonalds "as they refuse to keep their noise down." T.T.p. 299.

Officer Clark determined Jacobs' complaints were "completely unfounded." T.T.p. 302.

On July 3, 2015, Jacobs and her mother brought a blown out tire to the Fitzwilliam Police Department claiming the MacDonalds "slashed" their tire. T.T.p. 429. Upon observation, the officer concluded the jagged tear in the sidewall of the tire was not consistent with a knife slash. T.T.p. 306. He confirmed with a colleague that the tire's condition was consistent with being

driven underinflated too long and it simply blew out. T.T.p. 306. There was no crime, but Jacobs vehemently objected.

On July 3, 2015, Jacobs reported that the MacDonalds ripped out and destroyed an "exotic and rare garden hose and sprinkler system." T.T.p. 306. Officer Clark investigated this complaint and concluded that the devise was a simple garden sprinkler system that was mounted on a metal platform that rests on the ground with a hose attachment – "very standard." T.T.p. 308. He found no evidence of any crime. T.T.p. 308.

Many of her complaints before and after July 15, 2015, included remarks by her concerning the MacDonalds that were not pertinent to the subject matter of her criminal complaints. She frequently referred to the MacDonalds as "criminals," "liars," "sociopaths," "loud drunks," that Lorraine MacDonald likes to "watch neighbors have sex;" they "drive drunk" and that Peter MacDonald is "impotent." *See,* e.g., Plaintiffs' Exhs. #1 and #3, etc.

There was sufficient evidence in the record for the jury to conclude that by July 15, 2015, Jacobs was thoroughly frustrated with the refusal of the police to arrest and prosecute the MacDonalds as Jacobs tenaciously demanded. She then accused the police of "public corruption" and threatened the Plaintiffs' lives.

On July 15, 2015, Jacobs emailed, faxed and posted a 26-page letter to, among others, the Boston FBI, the Fitzwilliam Selectmen and Police Department and non-law enforcement individuals, including individuals within the New Hampshire Department of Environmental Services (DES) and the Fitzwilliam Fire Wardens. Plaintiffs' Exh. #3; Plaintiffs' Appendix, p. 0026-0052. In that letter, Jacobs wrote that:

> "My understanding is that issues between neighbors blossom to the point until someday one neighbor gets a gun and shoots the other neighbor. I have already thought about getting a gun. Plaintiffs' Appendix, p. 0046.

> "I have been having fears of homicidal ideation of having to be put into the position of killing the MacDonalds and or their drunken tenants." Plaintiffs' Appendix, p. 0048.

The wide distribution of the letter was substantial enough for the authorities to charge Jacobs with criminal threatening. T.T.p. 266-267. NH RSA 631:4 (2011) provides that "a person is guilty of criminal threatening when (d) the person threatens to commit any crime against the person of another with the purpose of terrorizing any person." Jacobs purpose to terrorize was evident from the wide distribution of the letter within a small community such as Fitzwilliam. This charge was "ultimately dismissed as Ms. Jacobs was found not to be competent to stand trial." *See,* Permanent Injunction Order, Appellant's Brief at 55.

On May 6, 2016, the Superior Court entered a preliminary injunction against Jacobs on the ground that "Defendant's letter [i.e. Plaintiffs' Exh. #3] viewed in its entirety (as well as her lengthy cross-petition) document her fear of the Plaintiffs and she is considering taking matters into her own hands in a violent manner." *See*, Order, May 6, 2016, Defendant's Appendix at 6 and 7.

On May 11, 2016, Jacobs wrote an "ugly letter" to the Fitzwilliam Police Administrator. Plaintiff's Exh. #5; Plaintiffs' Appendix p. 0068-0081. In that Memo she recycled her previous false claims and added a new approach to her plan; she demanded that the police "alter and amend" their official police reports, so that they implicate the MacDonalds in crime. "You should have a police report regarding possibly Peter and Lorraine MacDonald having Peter MacDonald driving drunk intoxicated on Sunset Rd., ..." She made the same demand to the Cheshire County Sheriff. She claimed that if the reports were properly composed, the authorities would "do criminal prosecutions against Peter and Lorraine MacDonald." T.T.p. 170-171.

Jacobs admitted she "told [the Fitzwilliam police administrator] that the police needed to alter and amend police reports to be truthful with new information learned." T.T.p. 171-172.

Jacobs testified that:

> "I was to order the Fitzwilliam Police to write supplemental reports to make the reports able to result in prosecutions and for them to stop writing false police reports and stop protecting the MacDonalds from criminal prosecutions." T.T.p. 172.

Jacobs said:

> "The Fitzwilliam Police have been writing up false police reports. They need to be fired per Richard Tracy, and replaced. And in fact, the county attorney has given the order to have Detective Shawn Skahan write up the Fitzwilliam Police for criminal prosecutions and for them to be prosecuted and the entire police department to be replaced." T.T.p. 173.

When it became apparent to Jacobs that her numerous complaints to law enforcement would not result in criminal prosecutions of the MacDonalds and her retaliatory attacks against law enforcement for "public corruption" failed to persuade law enforcement to act against the MacDonalds, as was her wish, her obsessions and behavior, again, escalated.

Jacobs sued the Town of Fitzwilliam and its prosecutor, Todd Prevett, in Cheshire Superior Court, claiming the police and prosecutor were "publically corrupt" and "unethical" for not prosecuting the MacDonalds. T.T.p. 271. During the course of that lawsuit, she claimed that "I work for the NH Attorney General Office and the County Attorney via his receptionist...I am to enforce the Order of the NH Attorney General that Peter and Lorraine MacDonald are to move out and sell 248 Sunset Rd. etc." Plaintiffs' Exh. #11; Plaintiffs' Appendix, p. 0097-0017.[3] She

[3] See Plaintiffs' Appendix, p. 0102-0108 for the "move out for sale" order Jacobs wrote. T.T.p. 180.

began to represent herself as an agent of law enforcement in her plan and effort to persuade the MacDonalds to leave Fitzwilliam.

Jacobs wrote a so-called "move-out for sale order." T.T.p.179. ("The official orders of the State of New Hampshire *are the ones I wrote*. I am the surrogate of the Chief Building Code Officer for the state..."(emphasis supplied). *See,* also, T.T.p. 180.

While her lawsuit against the Town of Fitzwilliam and Prevett was dismissed, T.T.p. 271, she continued to represent herself as an agent or "surrogate" of the New Hampshire Attorney General's Office, the Cheshire County Attorney's Office and other various law enforcement offices in this state and in the Commonwealth of Massachusetts. Plaintiffs' Exh. #9 and #11.

With respect to the "Move Out for Sale Order," Jacobs testified that:

> "The Fitzwilliam Police have been writing up false police reports to protect the MacDonalds. And the way the State of New Hampshire has chosen to deal with them is to have me pay a private attorney to litigate a nuisance suit against them, including my asking for a restraining order against the MacDonalds, where I am asking this judge for, per the attorney general and the chief code officer of the State of New Hampshire, ***for the move out, for sale order***, that the MacDonalds be ordered to sell their property and move out of the state, as is standard when there are violations of building code, fire laws and conversion from single family residential use to commercial use and also *the award of the deed to me*." T.T.p. 178. (Emphasis supplied).

Her plan to try to force the MacDonalds away from Sunset Road was clear to Prevett, T.T.p. 273, as well as the jury.

On the day the jury was picked in this case, Jacobs was arrested and subsequently charged for the crime of False Swearing arising from her representations that she is an "agent" or "surrogate" of law enforcement. T.T.p. 211.[4]

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[4] As of this writing, those charges remain pending and Jacobs was found incompetent to stand trial.

In February 2017, Jacobs contacted Chief Gary Chamberland of the Sterling Massachusetts Police Department. In another of her "ugly" letters, she wrote to the Chief of Police in the MacDonalds' hometown, she referred to them as "criminals," and accused them of "tax fraud." Plaintiffs' Exh. #12; Plaintiffs' Appendix, p. 0118-0132. Jacobs reiterated the litany of her previously made, fabricated allegations against the MacDonalds. *See,* Plaintiffs' Exh. #12; Plaintiffs' Appendix, p. 0118-0132.

In her February 2017 letter, Jacobs gave notice of her "intent" to sue the Town of Sterling, Massachusetts, for its refusal to take action on allegations of criminal complaints against Plaintiffs. *Id.*

In pursuit of her plan, Plaintiffs contend that Jacobs' evolved focus was to attack them in their hometown by threatening them in their backyard and attempting to damage their reputations where they live.

The Chief explained to Jacobs that he was working on her "ambiguous" record requests, (which was ostensibly the purpose of her letter to the Chief; *See,* Exh. #12), and he had no authority over reported criminal activity in New Hampshire or over "tax fraud." Plaintiffs' Exh. #13; Appendix p. 0133-0139.

Failing in Fitzwilliam and with the Sterling police in her efforts to dislodge the Plaintiffs from Sunset Road, Jacobs wrote more "ugly letters." Now, however, she specifically targeted individuals in Sterling and Bedford, Massachusetts, who know the MacDonalds. The first letter was to Jennifer Hines, who, with her husband, Barry, received a packet from Jacobs. T.T.p. 328. The targeting of Ms. Hines is significant because she lives directly across the street from the MacDonalds in Sterling. T.T.p. 327.

Hines read the letter she received in the mail (Plaintiffs' Exh. #19) at 17 Rowley Hill Road, in Sterling, MA. T.T.p. 329. The "letter" sought "statements...wanted by prosecutors against Lorraine MacDonald and Peter MacDonald of 16 Rowley Hill Rd., Sterling, MA and 248 Sunset Road, Fitzwilliam, NH, 03447." T.T.p. 329; Plaintiffs' Exh. #20; Plaintiffs' Appendix, p. 0146-0154. It refers to the MacDonalds as "criminals" who have "committed crimes against me and my disabled elderly mother Marilyn Jacobs." Plaintiffs' Exh. #20; Plaintiffs' Appendix, p. 0146-0154.

With the "letter" to Hines, Jacobs provided an "Affidavit" she asked Hines to sign. T.T.p. 332. The "Affidavit" (Plaintiffs' Appendix p. 0146-0154) Jacobs composed implicates the MacDonalds in several crimes, including her claim that Plaintiffs were involved in a conspiracy to commit a hit-and-run murder of her and her mother on November 11, 2016, in Marlborough, MA, as well as the various crimes Jacobs' earlier claimed the MacDonalds committed against her in Fitzwilliam, NH. T.T.p. 331-33; Plaintiffs' Exh. #20; Appendix, p. 0146-0154. None of the people who received Jacobs' Affidavits signed them as presented.

On July 29, 2017, Jacobs went to the home of Elizabeth Pekkola's parents, Richard and Betty Furmanick, in Sterling, MA. T.T. p. 360-61. When she met with Ms. Pekkola's parents, she learned that their daughter, Elizabeth, was a registered nurse, living in Bedford, Massachusetts. T.T.p. 198. After Jacobs learned where Ms. Pekkola lived, she specifically targeted her. T.T.p. 354-56. Jacobs went to her home and left a packet of documents in an envelope at her back door, which was inside an enclosed stairwell leading upstairs. T.T.p. 356. Included in the materials published to Pekkola, was Jacobs' false "Affidavit." Jacobs demanded that Pekkola sign the Affidavit under oath. Jacobs made it clear to Pekkola that if she refused to

sign the Affidavit, she would make an unfitness complaint against her to the Massachusetts Nursing Board and sue her. T.T.p. 353-54; 358.

In her July 31, 2017 memo to Pekkola[5], Jacobs informed her that her name was "given [to her] by another witness, where you are identified as a witness whose aware [Jacobs] and [her mother] are victims of crimes by Peter and Lorraine in Fitzwilliam." Plaintiffs' Exh. #23. *Id.* In her memo to Pekkola, Jacobs states that she knew what bedroom she stayed in when she stayed with another family in Fitzwilliam on July 15, 2015. *See,* Plaintiffs' Exh. 23 and T.T.p. 207. Even though Jacobs threatened her with a lawsuit and to report her to the nursing board if she did not sign and return the Affidavit, Pekkola refused to sign the "Affidavit," because it was "all lies," T.T.p. 360, Jacobs, nevertheless, reported her to the Massachusetts Nursing Board as an unfit nurse (Jacobs claimed Pekkola was obstructing her investigation of Jacobs' attempted murder). Plaintiffs' Exh. #26A; Appendix p. 0183-0186.

Jacobs' plan evolved beyond the specifically targeted individuals. In late July and into August 2017, Sterling's Chief Chamberland received numerous reports that a person was in town "handing out information" and "asking questions." T.T.p. 135. Jacobs was in Sterling, MA, approaching various places and businesses, handing out her "memo" and the false "Affidavit," soliciting signatures from strangers, implicating the Plaintiffs for the crime of conspiring to attempt to murder her. T.T.p. 337-340. She canvassed the town; she went to "two churches, a Dunkin Donuts, numerous business, knocking on doors in neighborhoods and passing out a letter and asking people to fill out an affidavit, sign an affidavit that had already been filed out by Ms. Jacobs." T.T.p. 136.

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[5] Plaintiffs' Exh. #23; Appendix p. 0162-0169.

The Chief was concerned because Jacobs was representing herself as an agent of law enforcement to the people of the town and some people were allowing Jacobs into their homes. As a public safety warning[6], he posted information about Jacobs on the police departments' Facebook page. Plaintiffs' Exh. #21; Plaintiffs' Appendix, p. 0155. T.T.p. 137-138.

The Chief identified Plaintiffs' Exh. #20[7] as the "memo" Jacobs was handing out to people along with her false "Affidavit." T.T.p. 139. The Chief testified he received numerous messages over one weekend from people that Jacobs went to the "Light Department, First Church, Woody's Barber Shop and all had received this letter and some residents received this and wanted to know about it." T.T.p. 139.

The Chief testified he looked into Jacobs' allegations that the MacDonalds orchestrated a hit and run attempt to murder her and her mother. The Chief confirmed there was a report made by Lisa Jacobs on November 11, 2016, of an "accident on 495" T.T.p. 141. The Chief learned that the investigating troopers instructed her to proceed to the nearest state police barracks where her vehicle was examined by a trooper who made an entry in the log that "there was minimal damage on the car." T.T.p. 141. Marilyn Jacobs, in her testimony, agreed that the trooper's report correctly indicated that the trooper could not tell if the damage to the vehicle pre-existed the accident or was caused by it. T.T.p. 439. More significantly, Chief Chamberland confirmed that Jacobs never made a report to any Massachusetts law enforcement agency of her suspicion of attempted murder in connection with the alleged hit-and-run accident. T.T.p. 141.

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[6] The Chief testified that he had reports that "for about two or three weekends in a row," Jacobs was "making entry into some individuals houses" and was "allowed in" on the basis that she was "an actual member of a law enforcement agency." T.T.p. 138.

[7] Plaintiffs Appendix p. 0146-0154.

Richard Traina, an owner of a local Sterling business, testified that Jacobs entered his business on July 29, 2017. T.T.p. 150-151. Jacobs represented herself as an agent from the Worcester County Attorney General's Office and wanted to talk to him as she was "investigating some individuals in town" who she identified as Lorraine and Peter MacDonald. T.T.p. 151. Jacobs stated she was looking "for [his] knowledge of criminal activities" committed by the MacDonalds. T.T.p. 151. She gave Mr. Traina paperwork which he read as she spoke. *Id.*

Traina identified in her paperwork, the other individuals Jacobs was targeting, namely the police chief, Mr. Sushchyk (another neighbor on Sunset Road) and Officer Johnson. T.T.p. 151-152.

Traina identified Plaintiffs' Exh. #20 as the paperwork Jacobs handed him. T.T.p. 152. Plaintiffs' Appendix, p. 0146-0154.

Traina testified that Jacobs described the "attempted murder" that was "staged" by the Sushchyks and MacDonalds and covered up by Chief Chamberland and Officer Johnson. T.T.p. 153.

Traina told her what she was telling him was out of character for the individuals he knew and that he could not help her, so she took her papers and left. T.T.p. 153.

On September 8, 2017, the MacDonalds obtained a Harassment Protection Order against Jacobs from the Clinton District Court arising from her behavior in Sterling in July/August 2017. Plaintiffs' Exh. #18; Plaintiffs' Appendix, p. 140-143.

SUMMARY ARGUMENT

Plaintiffs' closing did not ask the jurors to put themselves in Plaintiffs' shoes; it was fair comment on elements of the testimony the jury heard. The closing asked the jury to consider the

Plaintiffs' anxiety caused by Jacobs' defamatory statements and did not appeal to passion, prejudice or sympathy. Therefore, there was no improper prejudice to Defendant's case.

Private figure Plaintiffs in a defamation *per se* case involving publications of a private nature, need to establish the falsity of the statements and that Defendant was negligent in making them. Falsity and negligence based fault are all that is constitutionally required in such circumstance. Publication of defamatory speech of a purely private concern does not require a fault showing of *New York Times* "actual malice" for Plaintiff to recover presumed damages. *Touma v. St. Mary's Bank,* 142 NH 262 (1998).

Proof of common law malice ("wanton, malicious and oppressive" conduct) was sufficient to sustain the award of enhanced compensatory damages awarded by the jury. *Munson v. Raudonis,* 118 NH 474 (1978).

Jacobs' "bad acts" in late July/early August 2017 are 1) independently relevant to the Plaintiffs' defamation claim and 2) highly probative of her malicious state of mind and of her plan and intent to drive the Plaintiffs away from Sunset Road through her constant harassment.

The scope of the Permanent Injunction is reasonable under the facts of this case and strike a narrowly tailored balance between Defendant's right to travel and Plaintiffs' interest in their safety and security from such harassment.

ARGUMENT

A. Trial Court correctly ruled that Plaintiffs' counsel did not make a "golden rule" argument in closing to the jury.

Plaintiffs' closing surveyed the evidence heard by the jury and never suggested the jury, or any member thereof, place themselves in "the shoes of the Plaintiffs." Appellant's Brief, p. 14. Therefore, there is no ground for a mistrial on the claim raised by the Defendant.

Defendant quibbles over four lines of Plaintiffs' closing T.T.p. 453. The context of the closing was Plaintiffs' testimony about the cause of Plaintiffs' anxiety and its affect upon them. Jacobs' behavior toward Plaintiffs caused anxiety and fear, both subjects within the purview of the Plaintiffs' testimony and the jury's fact finding duty.

Closing argument asked jurors to consider and reflect on Plaintiffs' feelings caused by Defendant's conduct in considering damages for their emotional distress (they were not asked to "put themselves in the Plaintiffs' shoes"). Such argument is not an improper "golden rule argument," and is fair comment on the evidence. *Walton v. City of Manchester,* 140 NH 403 (1995). Absent a "blatant appeal to bias and prejudice," Defendant's argument is without merit. *Id* at 406. In *Walton,* Plaintiff was involved in a cheerleading accident, but the volunteer coach was not named in the suit. This Court held that the defense counsel's references to the volunteer coach as the "true Defendant" and asking the jury to consider the effect of a Plaintiff's verdict for the cheerleader on the coach, as well as remarks about what a Plaintiff's verdict would do to volunteerism in the schools were all elements the Court construed to argue passion, prejudice or sympathy not supported by the evidence. Defendant makes no similar showing here.

There was never an "appeal to passion, prejudice or sympathies *in a way not supported by the evidence.*" *Id,* 406. (emphasis supplied).

Defendant complains of a "lack of curative instruction;" however, in the absence of any error, none was required. The Court specifically instructed the jury upon the conclusion of closing argument, as follows:

> "As I told you at the outset of this case, you should decide the facts in this case without prejudice, without fear and without sympathy. It is your highest duty, as officers of this court, to conscientiously determine a fair and just result in this case." T.T.p. 477.

The jury is presumed to follow instructions. *State v. Kuchman,* 108 NH 779, 788

(2016).

> "Absent an unsustainable exercise of discretion, we will affirm a trial court's decision on whether a mistrial or other remedial action is necessary. (citation omitted). A mistrial is appropriate only if the challenged statement was not merely improper, but also so prejudicial that it constituted an irreparable injustice that cannot be cured by jury instructions. (citation omitted). When we review a trial court's ruling on a motion for a mistrial, we recognize that the trial court is in the best position to gauge the prejudicial nature of the conduct at issue and has broad discretion to decide whether a mistrial is appropriate." *State v. Grey*, 2012-0663 (3 jx at 2017 WL 6045053; 12-07-17).

Defendant has neither established that a golden rule argument was made nor has she demonstrated unsustainable exercise of discretion in the denial of Defendant's mistrial motion.

B. Private figure Plaintiffs in a defamation *per se* case involving numerous defamatory publications of private concern need only establish falsity of the statements and negligence in publication; the "actual malice" fault standard is not required to recover presumed damages.

The Restatement (Second) of Torts, §570 (1977) states that:

> "One who publishes matter defamatory to another in such a manner as to make the publication a slander is subject to liability to the other although no special harm results if the publication imputes to the other (a) a criminal offense, as stated in §571, or (b) a loathsome disease, as stated in §572, or (c) matter incompatible with his business, trade, profession, or office, as stated in §573, or (d) serious sexual misconduct, as stated in §574," of the Restatement.

The Restatement above reflects the State of New Hampshire's common law landscape of defamation which was properly applied to the Defendant under all of the facts of this case.

The First Amendment's speech clause may serve as a defense in state tort actions, including actions for defamation. *New York Times v. Sullivan*, 376 US 254; 84 S.Ct. 710 (1964). Actionability of the statements depends on whether they are protected by the First Amendment. After *Gertz v. Welch*, 418 US 323; 94 S.Ct. 2997 (1974), states retain substantial latitude to

enforce remedies for defamatory falsehoods injurious to reputations of private persons; *Gertz* at 94 S.Ct. 3010, but, states cannot impose liability without fault. *Id* at 3010-3011. States "may define for themselves the appropriate standard of liability for publisher or broadcaster of defamatory falsehood injurious to a private individual." *Id.* The standard of fault in New Hampshire is negligence. *Duchesnaye v. Munro Enterprises,* 125 NH 244 (1984).

If, as is the case here, the speech is of purely private concern, and the Plaintiffs are private figures, the First Amendment privilege is not available to Defendant.

In *Dun & Bradstreet, Inc., v. Green Moss Builders, Inc.,* 72 US 749; 105 S. Ct. 2939 (1985) (plurality opinion), the Supreme Court considered the constitutional limitations on speech involving defamation actions involving a private figure plaintiff and speech involving a matter of private concern. In *Dun & Bradstreet*, the Court concluded with such a configuration of plaintiff (private) and speech (concerning private issues) the showing of "actual malice" fault required by the *New York Times* and *Gertz* decisions, was not necessary. *Dun & Bradstreet, Inc.,* 472 US 759-760; 105 S. Ct. 2945. In *Hepps* the Court held that "when the speech is of exclusive private concern and the plaintiff is a private figure, as in *Dun & Bradstreet*, constitutional requirements do not necessarily force any change in at least some of the features of the common law landscape." *Philadelphia Newspapers v. Hepps*, 475 US 775 (1986); 106 S. Ct. 1563. Since the constitutional privilege is not available to the Defendant in this case, it follows that the trial court's instructions on defamation were consistent with the New Hampshire common law landscape.

New Hampshire law is in accord with the plurality in *Dun & Bradstreet. See, Touma v. St. Mary's Bank,* 142 NH 762 (1998).

Since the Plaintiffs are not public figures (and there is no evidence in the record to suggest they are) and the speech is not a matter of public concern, then the common law principles for *per se* negligence apply and Plaintiffs must simply prove falsity of the statements, *Hepps, supra,* and fault of Defendant (negligence), and damages may be enhanced and presumed upon a showing of negligence. *Gertz, Dun & Bradstreet, Hepps, supra*; *Lassonde v. Stanton,* 157 NH 582 (2008); *Chagnon v. Union Leader, Co.,* 103 NH 426, 441 (1961). *Touma, supra.* (Presumed damages recoverable without showing actual malice where defamation is a matter of private concern).

New Hampshire has a "legitimate state interest underlying [its common law of defamation] in the compensation of individuals for the harm inflicted on them by defamatory falsehood." *Hepps*, 475 US 773; 106 S. Ct. 1562 (citing *Gertz, supra*). (discussing the "appropriate accommodation between the public's interest in uninhibited press and its *equally compelling* need for judicial redress of libelous utterances"). The constitutional terrain made by *New York Times*, *Gertz, Dun & Bradstreet* and *Hepps* wound through the New Hampshire "common law landscape" without erosion, on the facts of this case. *Touma, supra. Cp. Palin v. NY Times Co.,* 264 F.Supp 3d 527 (S.D.N.Y. 2017) (allegations in complaint sufficient for public figure plaintiff to establish falsity and actual malice.).

The question, therefore, turns on whether Jacobs' defamatory speech concerned matters of "public concern." Under the circumstances here, her speech does not. Speech on matters of public concern is at the heart of the First Amendment. *Snyder v. Phelps,* 562 U.S. 443; 131 S.Ct. 1207, 1215 (2011); however, not all speech is equal for First Amendment purposes. Where matters are of purely private concern, First Amendment protections are less rigorous." *Id* at 1215.

> "To determine whether speech is of public or private concern, this Court must independently examine the 'content, form, and context,' as the speech is revealed by the record as a whole." *Id* at 1216 (citing, *Dun & Bradstreet); See,* also, *City of Keene v. Cleaveland,* 167 NH 731, 739 (2015).
>
> Speech "deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community [citing, *R*)] or when it "is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." *Snyder* at 1216.
>
> "In considering content, form and context, no factor is dispositive and it is necessary to evaluate all circumstances of the speech, including what was said, where it was said and how it was said. *Id* at 1216.

The content of Jacobs' speech involved claims of petty theft, vandalism, tax fraud, conspiracy to attempt to murder (among other things), sprinkled with personal attacks that they are "alcoholics" and "sociopaths;" and "criminals who should be in jail." The personal attacks were rarely, if ever, relevant to any specific report (to the police or to the many non-law enforcement entities who received her diatribes). The repetitive nature of her accusations, after being informed by the police and prosecutor there was no evidence of any crimes or that her complaints were not crimes, furthers the private nature and purpose of the communication and her motive. The MacDonalds were always her target. The content of her defamatory remarks did not speak to public issues of concern to the community. She wanted the Plaintiffs gone from Sunset Road and she saw their prosecution as a means toward that end. Jacobs' invocation of public corruption charges against the officials (in both Fitzwilliam and later in Sterling, the latter finding nothing warranting prosecution) supports the conclusion that her "public concern" argument is a cloak "contrived to insulate a personal attack on [Plaintiffs] from liability." *Snyder,* at 1211. Accusations that neighbors were murderers, robbers and terrorists did not involve matters of public concern such as would require them to prove actual malice to recover for defamation. *Sartain v. White,* 588 So. 2d 204, 213 (Miss. 1991) (Counterclaim Defendant

did not have to prove actual malice to recover because *per se* defamatory speech was not a matter of public concern).

Form and context of the speech are other considerations under *Snyder*. Recognizing that *Gertz* allows the application of the state's common law defamation rules to apply to determine liability in the private party context; the public nature of the funeral picket in *Snyder* set it apart from a case involving statements accusing a hospital employee of breaching confidentiality of patient records. The First Amendment is "not an all-purpose tort shield." *Greene v. Tinker*, 332 P3d 21, 35. (Al. 2014).

Snyder acknowledges the possibility of contrivance, 131 S.Ct. at 124. The context of Jacobs' defamatory statements, to include non-law enforcement individuals in Fitzwilliam, at the state level and in Sterling in private homes, through the mail and in private businesses, grocery stores and barber shops, clearly establish her private agenda (to assail Plaintiffs),and her private objective (to get them to quit Sunset Road). She said and wrote defamatory statements about the Plaintiffs to get people to sign false "Affidavits" she prepared that incriminate Plaintiffs in crimes so that she could get the authorities in Sterling to prosecute Plaintiffs. She had the same approach in Fitzwilliam without success. Jacobs conducted these activities while falsely representing herself as an agent or "surrogate" of law enforcement.

The long-standing animus Jacobs felt toward Plaintiffs; her plan to force them away from Fitzwilliam; her efforts to have the police "alter and amend" police reports, "to have the MacDonalds prosecuted;" and her defamatory assault against them in New Hampshire and in Sterling (all while representing herself as an agent of law enforcement), demonstrate her words of and concerning the Plaintiffs, are not protected speech, as there is nothing in the context of her

defamatory speech that "*fairly* relates to any political, social or other concern" of the community." *Snyder* at 124. Nor was her speech a matter of "legitimate news interest." *Id.*

The court instructed the jury that "statements made solely to law enforcement that are pertinent to a judicial proceedings cannot be the basis of liability for defamation." T.T.p. 474.

If statements made to law enforcement are made in the course of judicial proceedings, then they are absolutely privileged, provided they are relevant to the subject of the proceeding. *McGranahan v. Dahar,* 119 NH 758 (1979). The "requirement of pertinence eliminates protection for statements made needlessly or wholly in bad faith." *McGranahan,* at 763.

Jacobs' defamatory statements were not relevant to any criminal complaint she made and those same statements offer compelling proof of the private nature of her private concerns.

Therefore, New Hampshire's common law landscape remains untouched by the constitutional limits on state defamation law when there are private parties and the nature of the speech is a private concern surrounding a dispute between neighbors. *Hepps, supra*; *Touma, supra*. The jury was properly instructed on those principles.

C. Enhanced Compensatory Damages were proper where there was proof of common law malice, namely, that the character of Defendant's conduct toward Plaintiffs was "wanton, malicious and oppressive."

In *Danboise v Espinola*, 10/27/10; #2009-0159 (*See,* 2010 WL 11437203), the Court observed:

> "New Hampshire law does not require that damages be calculated with mathematical certainty, and the method used to compute them need not be more than an approximation. *Akwa Vista, LLC v. NRT, Inc.*, 160 NH 595 (2010)."

While the defendant argued that general damages for defamation per se were not warranted in the case, this Court rejected defendant's argument that "with the absolute absence of evidence upon which to award damages for 'libel per se,' the jury was

wholly without reason or justification to award such damages." *Danboise, 2009-0159* (p.1; 10/27/2010).

With respect to the defamation *per se* rule, this Court noted that:

> "In a defamation case, 'the plaintiff is entitled to recover such damages as are the natural and direct or proximate result of the publication' of the defamatory statements." *See, Chagnon v. Union Leader Co.*, 103 NH 426, 441 (1961), *cert. denied*, 369 US 830 (1962). "When as in this case, the jury could find that the defamatory publication charged the plaintiff with a crime or with activities which would tend to injure him in his trade or business, commonly called libel *per se*, he can recover as general damages all damages which would normally result from such a defamation, such as harm to his reputation." *Danboise, Id* at slip op. at 2.

Touma v. St Mary's Bank, 142 NH 762; 712 A2d 619 (1998) held that a publication of a foreclosure notice by the media defendant was a matter of purely private concern so proving "actual malice" was not necessary for the plaintiff to recover presumed damages. *Id.* 142 NH 766; 712 A2d 622.

The Defendant misreads *Merullo v. Greer* 11-cv-116-SM; 02/10/12 (2012 WL 832832 D.N.H.). *Merullo* is procedurally unique in that the plaintiff sought enhanced compensatory damages on her defamation claim relying only on her affidavit of damages in support of a default judgment. The Magistrate Judge recommended damages in the amount of $1,000.00, based on the affidavit. In effect, in *Merullo*, the Court performed the function of the jury due to the defendant's default. This case is, therefore, consistent with *Lassonde*, *Danbois*, *Chagnon*, *Touma,* and the balance of New Hampshire's "common law landscape." *Hepps, supra.*

The Court properly instructed the jury in connection with its charge on enhanced or liberal compensatory damages. Evidence of Jacobs' conduct toward the Plaintiffs was sufficient to establish she acted with "ill-will, hatred, hostility or evil motive" toward them. As noted above, nothing in the First Amendment case law, or state or other interpretive case law, requires instruction on a fault standard of "actual malice" as articulated in *New York Times* when there is

a private Plaintiff and matters are of private concern. *Hepps; Touma; supra. St. Amant v. Thompson*, 390 US 727; 88 S.Ct 1323 (1968) involved a public official plaintiff and a media defendant. Because *St. Amant* plaintiff was a public official, he had the burden of proving both falsity and "actual malice" fault as defined by *New York Times*. That standard does not apply where, as here, there is a private figure plaintiff, a non-media defendant, and a matter of private concern. The common law standard of "malice," as articulated in *Munson v. Raudonis*, 118 NH 474, 479; 387 A.2d 1174 (1978) is appropriate for the award of enhanced compensatory damages. Plaintiffs proved falsity of the statements and fault based on negligence after the jury was properly instructed.

The Defendant's conduct in July/August 2017, two months before the underlying trial, included fresh acts of defamation by the Defendant against the Plaintiffs, as well as her extortionate threat toward Pekkola if she refused to sign an Affidavit implicating the MacDonalds in an attempted murder. Jacobs' attempt to extort Pekkola's signature on the False Affidavit and her deliberate targeting of Plaintiffs' neighbor in Sterling are highly probative of her malicious state of mind toward Plaintiffs at the time she made her defamatory publications against them in Sterling, MA, and supports the conclusion, reached by the jury, that the character of her conduct toward the Plaintiffs was "wanton," ("reckless indifference"[8]), "malicious," ("ill will, hatred, hostility or bad motive") and "oppressive," (abuse of power). *Munson v. Raudonis,* 118 NH at 474, 478 (1978).

D. Prior bad act evidence was properly admitted as probative of Defendant's plan, motive, etc.

[8] *See,* T.T.p. 477 for Court's instructions to jury on the terms "wanton, malicious and oppressive."

Evidentiary rulings on admissibility are reviewed by this Court under an unsustainability standard. *State v. Zeta Chi Fraternity*, 142 NH 16, 26 (1997). Under Rule 403, "evidence is unfairly prejudicial if its primary purpose or effect is to appeal to a jury's sympathies, arouse its sense of horror, provoke its instinct to punish, or trigger other mainsprings of human action that may cause a jury to base its decision on something other than the established propositions in the case." *Zeta Chi.* at 27.

Rule 403 permits the Court to "exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: "Unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."

Rule 404(b) precludes the admissibility of "evidence of other crimes, wrongs, or acts" to "prove the character of a person in order to show that the person acted in conformity therewith." Other crimes, wrongs or acts "may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident."

Jacobs' actions in late July/early August 2017 were relevant to her additional stand-alone acts of defamation against the Plaintiffs in Sterling[9], as well as probative evidence of her evil motive, intent and plan toward them, particularly as part of her "plan" to dislodge them from Fitzwilliam.

E. The Restraining Order entered by the trial court properly struck the balance between the Defendant's right to travel and the Plaintiffs' interests in their personal safety and security where Sunset Road was the "epicenter" of Defendant's animosity toward Plaintiffs and in Sterling,

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[9] Each separate defamatory statement furnishes a separate cause of action that requires proof of each element of defamation. *Thomson v. Cash,* 119 NH 371 (1979); *See,* also, *Cweklinsky v. Mobil Chemical Co.,* 267 Conn. 210, 217 (2004).

where Defendant specifically targeted third parties who knew the Plaintiffs in order to intimidate and harass the Plaintiffs

The Trial Court's Injunction Order, physically removing Jacobs from "her family's vacation property," in Fitzwilliam, New Hampshire, and "banishing" her from the Plaintiff's hometown is narrowly tailored in scope, constitutional and lawful in all regards.

Jacobs' opposition to the Trial Court's Injunction Order raises two arguments. First, she erroneously claims the ruling is against the weight of the evidence (e.g., "the majority of the trial court's factual findings concerned the manner of Jacobs' attire, namely her choice to wear a Kevlar bulletproof vest to court") and second, she claims the order is unconstitutionally overbroad, i.e., not "narrowly tailored" to the circumstances. She does not dispute the necessity of the Injunction. Her arguments are without merit. Here, "the record establishes an objective basis sufficient to sustain the discretionary judgement made," *Benoit v. Cerasaro,* 169 NH 10, 19; 139 A.3d 1134 (2016); *See,* also, *IMO Neal* (#2016-0683; 03/30/18). "The Court has broad and equitable powers which allow it to shape and adjust the precise relief to the requirements of the particular situation." *Benoit,* 169 NH 19. "A court of equity will order to be done that which in fairness and good conscience ought to be or should have been done. It is the practice of courts to administer all relief which the nature of the case and facts demand." *Id.* "The party asserting that a trial court order is unsustainable must demonstrate that the ruling was unreasonable or untenable to the prejudice of his case." *Id.*

In this case, the record establishes a basis sufficient to sustain the discretionary judgement made by the Trial Court, particularly as to its scope. *See, Benoit* and *Neal, supra.*

Here, the Trial Court's Order is narrowly tailored in scope, given the compelling interests at stake: Protection for the safety of the MacDonalds from Jacobs' murderous threats (which continue to this day unabated) and escalating threatening behaviors.

Once a court establishes personal jurisdiction over a Defendant, it is authorized to enjoin the conduct that the Court, in its discretion, finds creates the present threat of irreparable harm. *Concord Orthopaedics Prof. Assoc., v. Forbes,* 142 NH 440 (1997) ("We will uphold the decision of the trial court with regard to the issuance of an injunction absent an error of law, [unsustainable exercise of discretion] or clearly erroneous findings of fact"). *See,* also, *UniFirst Corp., v. City of Nashua,* 130 NH 11 (1987).

The scope of the present injunction does not infringe on Jacob's "right to travel," as she is free to travel anywhere in New Hampshire (except within a five-mile radius of Sunset Road) and anywhere within the Commonwealth of Massachusetts (except within Sterling, MA).

Her conduct toward the Plaintiffs delineates the reach of the orders the Court entered and is indicative of its narrowly tailored scope. The scope of the order is a proper balance between the competing interests.

The evidence established that in late July/early August 2017, Jacobs went to Sterling to harass and intimidate the Plaintiffs over the course of three weekends.

T.T.p. 138.

All of the evidence supports the Court's conclusion that Jacobs is "incapable of restraining herself from harassing the MacDonalds." Defendant's Brief, p. 54. The Court noted at the close of the evidence, Jacobs sought the return of "the original of certain affidavits that had been used during trial[10], indicating [her] likely intention to continue the same behavior that warranted the defamation case." *Id.*

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[10] *See,* Exhibits marked Defendant's Ex. B (for Id) and C (for Id). These so-called "Affidavits" were not signed under oath and all of the defamatory statements about the Plaintiffs were struck by the individuals who purportedly signed them; *See,* Plaintiffs' Appendix p. 0191-0193 (for B) and p. 0194-0197 (for C).

Jacobs' express threats to the lives of the Plaintiffs (which she continues to the present) together with her "increasingly bizarre behavior," legitimately place the Plaintiffs in fear for their safety. Defendant's Brief, p. 55.

The fact that Jacobs "dramatically" displayed a Kevlar vest to the jury, coupled with her statements she is an "agent" or "surrogate" of law enforcement, and her threat to "get a gun and shoot the MacDonalds," are indications that Jacobs considered the possibility of armed confrontation with the MacDonalds or the police and, in that event, a bullet proof vest might be a wise "choice of...attire." The Court observed that it would be "a disastrous, but foreseeable result" if she irrationally convinces herself that "as a self-proclaimed law enforcement agent" she decided to arm herself. Defendant's Brief, p. 56.

The Court considered that Jacobs "pathologically" believes the lies she has "concocted" against the MacDonalds and that she is quite capable of "inflicting harm – both physical and emotional – on the MacDonalds if she is not enjoined." Defendant's Brief, p. 56.

It is, therefore, clear that Jacobs "choice of court attire" was merely one disturbing fact in a cascade of harassing and intimidating behaviors directed toward the MacDonalds. The scope of the restraining order is supported by the evidence and is necessary for the protection of the Plaintiffs from a very dangerous and unstable individual.

The Court found Plaintiffs' interests "compelling" and their fear for their safety, a rational response to Jacobs' "relentless and increasingly intimidating behavior." Defendant's Brief, p. 58.

Jacobs asserts a constitutional right to travel. This court previously employed a rational basis approach to evaluate a federal constitutional challenge to a condition of a suspended sentence that restricted Defendant's right to travel. *State v. Roy*, 2014-0364; (09/17/15 3jx at

2015 WL 11071484). Identical reasoning was employed by the US Supreme Court in *Zewel v. Rusk,* 381 US 1; 85 S.Ct. 1221 (1965) (*ad hoc* balancing of reasonable means to legitimate end). Restrictions on the right to travel may be implemented if the restrictions serve a legitimate and substantial interest and are narrowly tailored to the interest sought to be protected. *Aptheker v. Sec'y of State,* 328 US 500, 508; 84 S.Ct. 1659 (1964).

Ordering the Defendant to stay away from Sunset Road, the "epicenter" of her dispute with the Plaintiffs, is a narrowly tailored restriction on Defendant's right to travel and operates against her as nothing but a mere inconvenience that necessarily reduces her opportunities to threaten the Plaintiffs. *State v. Nienhardt,* 537 N.W. 2d 123, 125 (Wis. Ct. App. 1995).

The trial court's *ad hoc* balancing is constitutionally sound under the due process clause and Lisa Jacobs' banishment from a five-mile radius of Sunset Road for ten years and her banishment from Sterling, MA, are narrowly tailored restrictions in light of the substantial danger Jacobs poses to the Plaintiffs. *Aptheker,* at 508.

CONCLUSION

For all of the reasons stated above, the decisions below and the jury verdict against Lisa A. Jacobs must be AFFIRMED along with the scope and breadth of the Permanent Injunction against Lisa Jacobs.

REQUEST FOR ORAL ARGUMENT

Plaintiffs request oral argument before the full court not to exceed fifteen (15) minutes presented by Joseph S. Hoppock, Esquire.

Respectfully Submitted,

Lorraine and Peter MacDonald
By and through their attorneys,
Law Offices of Joseph S. Hoppock, P.L.L.C.

May 30, 2018
~~June 6, 2018~~

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CERTIFICATE OF SERVICE

I certify that two (2) copies of the Brief of Lorraine and Peter MacDonald were forwarded to opposing counsel, Kelly Dowd, Esquire, by First Class Mail, postage pre-paid on this date. One copy was forwarded to the Clerk of the Cheshire Superior Court, as well.

~~June 6, 2018~~
05/30/18

Joseph S. Hoppock