

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT  
DOCKET NO. 1477CV00487

ROBERT M.A. NADEAU,  
Plaintiff

v.

PLAINTIFF'S CORRECTED STATEMENT  
OF CLAIMS TO BE TRIED

NANCY MADORE PRATT<sup>1</sup>,  
Defendant

NOW COMES the Plaintiff, Robert MA. Nadeau, pro se, with the concurrence of his co-counsel, and pursuant to the requirements of paragraph 1 of the Court's Pre-Trial Order<sup>2</sup>, hereby provide his statement of claims to be tried<sup>3</sup> and expects to prove that:

1. Count III (Defamation): The Defendant, Nancy Pratt, using the pen name of Nancy Madore, and while using without authority the name, photograph and alleged words of her "best friend" and alleged co-author, [Maryann] (formerly known as [Maryann]), "self-published" in Kindle and printed form a book that she entitled "The Ethics of Judge Nadeau" and related internet promotional advertisements which contained information concerning Mr. Nadeau's alleged medical diagnoses, the quality and factual circumstances associated with his past legal representation of [Madore's] brother, and other allegations that is false and defamatory, that she did so negligently because the portions of the book that will be specifically litigated in this case focus on matters that can only fairly be characterized as involving Mr. Nadeau's personal, non-judicial life in matters that were not subjects of public controversy; that those particular publications were otherwise in reckless disregard for the truth; and, that Mr. Nadeau, who had been experiencing heightened professional and financial success in his law practice, suffered a severe loss of law practice business income as the result of [Madore's] conduct for which she

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<sup>1</sup> Subject to the Court's ruling on the Plaintiff's Motion to Dismiss pertinent to [Maryann], the Plaintiff anticipates that [Nancy Madore] will be the sole defendant.

<sup>2</sup> The Pre-Trial Order requires the Plaintiff to be concise, by limiting this Statement to no longer Than 2 pages in length, yet it also requires the Plaintiff to "set forth the legal basis and theory for each claim, as well as a brief summary of the factual basis for each claim." Therefore, to the extent that this submission may fail to adequately address each of those requirements, the Plaintiff incorporates herein the contents of his Memorandum of Law submitted in support of his Motion for Summary Judgment already on file with the Court.

<sup>3</sup> The Court's anticipated summary judgment rulings may limit the triable matters. In addition to Damages, the Plaintiff requests that [Madore] shall be permanently enjoined from publishing the Plaintiff's private information and from further defaming him, particularly inasmuch as she is likely to be judgment proof. It is the Plaintiff's understanding, consistent with what he believes to be the Court's understanding, that Count I of the Plaintiff's Amended Complaint in which relief in the nature of specific performance is not available for trial inasmuch as the Court (Lang, J) has previously ruled in a perceived dispositive fashion that the relief prayed for in that count is unavailable, although the ruling may be subject to appellate review later.

should be held financially liable. The factual bases for these assertions are the deposition testimony and exhibits of the parties, and further testimony that will be introduced at trial. The Plaintiff argues that as a matter of law a mere element of “publicness” regarding the life of a person does not entitle someone who writes about him to have to prove more than a defendant’s negligence in order to be entitled to an award of damages payable to him by his defendant for any harm that her false information caused. See, for example, *Wolston v. Reader's Digest Ass'n.*, 443 U.S. 157, 199 S.Ct. 2701, 61 L.Ed.2d 450 (1979) (relative to prominent atomic secret spies); *Hutchinson v. Proxmire*, 443 U.S. III, 99 S.Ct. 2675, 61 L.Ed.2d 411 (1979) (academic researcher and federal grant recipient); *Time v. Firestone*, 424 U.S. 448, 96 S.Ct. 958, 47 L.Ed.2d 154 (1976) (socially prominent divorcee and heiress).

2. Count II (Invasion of Privacy): The Defendant [Madore] invaded Mr. Nadeau's privacy in one or more of four different ways when she “self-published” in her book and various, related internet promotional ads and blogs Mr. Nadeau’s medical diagnoses allegedly contained in his Southern Maine Medical Center hospital records, and when she asserted Mr. Nadeau's alleged professional mishandling of a legal case on behalf of her brother, and other false information. Mr. Nadeau asserts that Ms. [Madore] invaded his right of privacy by unreasonably intruding upon his right of seclusion, improperly appropriating his name, giving unreasonable publicity to his private life, and for generating publicity that unreasonably placed him in a false light before the public. See *Restatement (Second) Torts*, §§652A and 652E. The factual bases for these assertions are the deposition testimony and exhibits of the parties, and further testimony that will be introduced at trial. “A person shall have a right against unreasonable, substantial or serious interference with his privacy”. M.G.L. §214:1B; see, also, *Restatement (Second) of Torts* §652D (1977). “Every individual has some phases of his life and his activities and some facts about himself that he does not expose to the public eye, but keeps entirely to himself or at most reveals only to his family or to close personal friends. When these intimate details of his life are spread before the public gaze in a manner highly offensive to the ordinary reasonable person, there is an actionable invasion of his privacy, unless the matter is one of legitimate public interest.” *Ayash v. Dana-Farber Cancer Institute*, 443 Mass. 367, 382, 822 N.E.2d 667 (2005).

3. Count IV (Interference With Advantageous Relationships): [Madore], while acting intentionally and with improper motive or means, knowingly sought to and succeeded in breaking Mr. Nadeau’s actual and foreseeable advantageous relationships, causing financial or other harm to him. [Madore] admitted that motive during her deposition.

4. Punitive Damages as to All Counts: [Madore’s] actions were extreme, outrageous and intolerable, and are of the type that must be discouraged from occurring in the future.

November 27, 2015

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