SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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NYC PSYCHIATRIST SERVICES, P.C., CARLENE MACMILLAN, and OWEN MUIR,

Plaintiffs,

Index No. 510858/2023

-against-

ESTHER HADDAD, and JOHN DOES 1-10

Defendant.

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**Defendant's Memorandum of Law in Opposition to Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction**

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*Of Counsel:*

*Matthew W. Bauer*

*On the Brief:*

*Matthew W. Bauer*
*William C. Gattoni Jr.*

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## PRELIMINARY STATEMENT

Defendant Esther Haddad ("Defendant") by her undersigned attorneys, hereby submits this Memorandum of Law in opposition to Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction. Since filing the initial Complaint over a year and a half ago, Plaintiffs have attempted to distract this Court from Defendant's pending Motion to Dismiss the Complaint under New York's Anti-SLAPP Law, Civil Rights Law 76-a, on two separate occasions, by filing a Motion for Leave to File an Amended Complaint (NYSCEF Doc. No. 34) and this instant Motion. However, simply repeating and repackaging their allegations three times does not legitimize them. Plaintiffs' most recent effort simply equates to an improper attempt to obtain summary judgment without discovery and – more importantly – without a decision on the Defendant's pending Anti-SLAPP Motion to Dismiss. As previously stated, this matter was filed by Plaintiffs as a retaliatory action three days after the Appellate Division entered an order in Defendant's favor in her negligence and malpractice suit against Plaintiffs, currently pending in Kings County Supreme Court, Index No. 506528/19. The New York Anti-SLAPP statute is designed to protect defendants like Mrs. Haddad from lawsuits aimed to punish and chill the exercise of free speech rights, especially when they have little legal merit but are filed to burden opponents with legal defense costs and the threat of liability, and to discourage those who might wish to speak out in the future. See Trump v. Trump, 189 N.Y.S.3d 430 (Sup. Ct. New York Co. 2023). Furthermore, the statute was enacted to protect citizen activists from lawsuits brought against them in retaliation for their public advocacy. See City of Saratoga Springs v. Zoning Bd. of Appeals, 279 A.D.2d 756 (3rd Dept 2001). This is exactly what Plaintiffs are attempting to do here: retaliate against Defendant for suing them for malpractice.

The substance of Plaintiffs' argument in this Motion is the same as set forth in the Complaint and the Amended Complaint. Plaintiffs continue to use this litigation as a strategic weapon to further harass Defendant in an attempt to silence her. Defendant has now provided two separate verifications in support of her statements. A review of her affidavits and the affidavits submitted by Plaintiffs makes it abundantly clear that Plaintiffs have not met the required clear and convincing standard of proof to overcome the protections set forth in the New York Anti-SLAPP statute. Plaintiffs have failed to show that any communication at issue "which gives rise to the action was made with knowledge of its falsity or with reckless disregard of whether it was false, where the truth or falsity of such communication is material to the cause of action at issue." New York Civil Rights Law 76-a(2). In clear contrast, Defendant has continued to represent her daughter's interest, and the interest of other families similarly situated, so that they don't fall into the same trap that defendant and her daughter endured. See Affidavit of Esther Haddad in Opposition to Plaintiff's Motion for a Temporary Restraining Order and Injunctive Relief ("Haddad Affidavit") at ¶ 8 and NYSCEF Doc. No. 26 at ¶ 10.

As briefed at length throughout this matter, and additionally below, Defendant's Motion to Dismiss under the New York Anti-SLAPP law should be granted and the instant Motion for a Temporary Restraining Order and Preliminary Injunction denied as moot. Plaintiffs' Motion is substantively the same as their Complaint[1]. As such, Plaintiffs are not able to demonstrate a likelihood of success on the merits, which is the standard for a temporary restraining order. Even if they could demonstrate success on the merits, Plaintiffs are not able to demonstrate any irreparable harm connected to Defendant and her social media postings. Finally, a balancing of the

[1] In their Complaint, Plaintiffs sought injunctive relief in subparagraph D under their Prayer for Relief. Tellingly, Plaintiffs made no application before this Court related to any such relief until now, eighteen (18) months after the filing of the Complaint, in a Motion initially made returnable two days before Defendant's pending Motion to Dismiss.

equities weighs heavily in Defendant's favor. Since Plaintiffs cannot satisfy any of the required elements, even if Defendant's Motion to Dismiss is denied, Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction should be denied.

## LEGAL ARGUMENT

### 1. DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT IS PENDING AND SHOULD BE GRANTED, MOOTING PLAINITFFS' CURRENT MOTION.

### A. Defendant's Motion is Barred by the New York's Anti-SLAPP Law, Civil Rights Law 76-a.

The Court's ultimate ruling on Defendant's Motion to Dismiss should make the instant application moot. Plaintiffs have essentially argued from the same set of facts three separate times now, seemingly in an attempt to legitimize their position to this Court by continually attempting to avert the Court's attention to what's really at issue in this litigation: whether Defendant's statements are protected under New York Anti-SLAPP Law, Civil Rights Law 76-a. Plaintiffs' continued attempts to do so make sense because the law is not on their side. As set forth at length in Defendant's Motion to Dismiss (NYSCEF Doc. No. 5), New York's Anti-SLAPP law was amended in November 2020 to substantially broaden its scope in order to "protect citizens from frivolous litigation that is intended to silence their exercise of the rights of free speech and petition about matters of public interest." 2019 NY A.B. 5991 (NS), New York Committee Report. It is undisputed that the allegations contained in Plaintiffs' Complaint[23] constitute matters of public interest. As amended, Civil Rights Law 76-a(1)(d) provides an expansive definition of "public

[2] Plaintiffs' proposed Amended and Supplemental Complaint ("Amended Complaint") does not seek to assert any additional causes of action but seeks to add "facts" to the existing Complaint in an effort to defeat Defendant's pending Motion to Dismiss outside of the filings usually allowed in opposition.
[3] While it is Defendant's position that the Amended Complaint has not been filed, for purposes of this motion, Defendant's legal analysis would apply to both the Complaint and Amended Complaint, as there is no substantive difference between the allegations made in those documents.

interest," stating that it is to "be construed broadly and shall mean any subject other than a purely private matter."

As set forth at length in Defendant's brief and reply brief in support of its Motion to Dismiss, Defendant has demonstrated that her actions were protected under Civil Rights Law 76-a. See NYSCEF Doc. No. 5 and 25. Based on this expansive definition of "public interest," it is undisputed that Defendant's comments were made in a public forum in a matter of public interest. Each and every statement made by Defendant as described in the Complaint has been supported by her affidavit, has highlighted Defendant's continued belief that what she wrote was true, and has demonstrated that Defendant felt a duty to protect others from suffering the same fate that her daughter suffered. See Haddad Affidavit at ¶¶ 8, 9, 12 and NYSCEF Doc. No. 26 at ¶ 10. Plaintiffs fail to state, other than in conclusory fashion, and in no way rising the level of the required clear and convincing proof, that defendant's comments were made with knowledge of their falsity or with reckless disregard of whether it was false. In fact, they cannot do so because defendant provided sources for her posts and the rationale behind them in her affidavits filed in this matter. See Haddad Affidavit and NYSCEF Doc No. 26. Accordingly, this requires the Court to grant Defendant's Motion to Dismiss under Civil Rights Law 76-a.

**B. Plaintiffs have continually demonstrated retaliation against Defendant and gamesmanship generally throughout this litigation.**

As previously set forth in Defendant's pending Motion to Dismiss, the instant lawsuit is purely retaliatory. The Complaint was filed three days after the Appellate Division reversed plaintiffs' Motion to Dismiss in Defendant's negligence and malpractice action that is currently ongoing in Kings County Supreme Court, Index No. 506528/19. Not including any actions taken by Plaintiffs in the negligence and malpractice action, the Complaint was served on Defendant the day after Mother's Day in 2023, with service attempted on the Friday before Mother's Day. See

NYSCEF Doc No. 3. and Haddad Affidavit at ¶¶ 4, 5. Additionally, after filing the initial Complaint in April 2023, Plaintiffs waited over 18 months to file this Motion – for injunctive relief - based upon allegations that were present in the initial Complaint[4]. Plaintiffs' Motion was originally returnable two (2) days before defendant's Motion to Dismiss, which has been pending for over 15 months. As a result, Defendant was forced to re-argue a position that has remained the same since the filing of the Complaint. This is a waste of both Defendant's time and the Court's resources.

**C. An Amended Complaint has not been filed in this matter.**

Plaintiffs' reliance on the "Amended Complaint" is meritless as no Amended Complaint has been filed in this matter. CPLR 3025(d) states "Except where otherwise prescribed by law or order of the court… an answer or reply shall be made within twenty days after service of the amended or supplemental pleading to which it responds." While Defendant does not disagree that the Court suggested during the May 8, 2024 hearing that the Amended Complaint would be granted, no such Order was ever entered on the docket. Additionally, Plaintiffs' counsel's assertion that the Amended Complaint was deemed filed on the date the motion seeking leave to amend was filed is procedurally inaccurate. An order reflecting same has never been entered or served on Defendant. Pursuant to 22 NYCRR 202.5-b, the court rule governing electronic filing for the Supreme Court, a party may serve an interlocutory document upon another party by filing the document electronically: "Upon receipt of [the] interlocutory document, the NYSCEF site shall automatically transmit electronic notification to all e-mail service addresses in such action . . . . Except as provided otherwise in subdivision (h)(2) of this section, the electronic transmission of the notification shall constitute service of the document on the e-mail service addresses identified

[4] As stated above, injunctive relief was requested in the initial Complaint but no action was taken by Plaintiffs until the filing of this Motion.

therein." 22 NYCRR 202.5-b(f)(2)(ii). Subdivision (h)(2), which appears in a subsection entitled "Entry of Orders and Judgments and Notice of Entry," provides, in relevant part: "[a] party may serve [an order or judgment and written notice of its entry] electronically by filing them with the NYSCEF site and thus causing transmission by the site of notification of receipt of the documents, which shall constitute service . . . by the filer. In the alternative, a party may serve a copy of the order or judgment and written notice of its entry in hard copy by any method set forth in CPLR 2103(b)(1) to (6)." 22 NYCRR 202.5-b(h)(2).

The Second Department addressed this issue in JBBNY, LLC v Dedvukaj, 2019 NY Slip Op 02692 (2d Dept., 2019), where the plaintiff never served the defendants with notice of entry of an order denying their motion to dismiss the complaint. The court there deemed that defendants' answer was timely served when it was filed well after the deadline to answer, as their time to answer never started to run. In this instant matter, as no Order was ever entered by this Court or served upon Defendant, Defendant's time to answer Plaintiff's Amended Complaint has not begun to run. Tellingly, Plaintiffs have not moved to enter default.

**2. PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER MUST BE DENIED ON THE MERITS.**

**A. Even if the Motion to Dismiss is Denied, Plaintiffs have not met the standard for a Temporary Restraining Order or Preliminary Injunction.**

A preliminary injunction may be granted under CPLR Article 63 when the party seeking such relief demonstrates: (1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party's favor. See Doe v. Axelrod, 73 N.Y.2d 748 (1988) (citing Grant Co. v Srogi, 52 NY2d 496, 517 (1981)). "In addition, mandatory preliminary injunctions [which require a responsible party to take action] are not favored and should not be granted absent extraordinary or

unique circumstances, or where the final judgment may otherwise fail to afford complete relief, especially if the status quo would be disturbed." See SHS Baisley, LLC v Res Land, Inc., 18 AD3d 727, 728 (2d Dept 2005). None of the three elements have been satisfied by Plaintiffs and their motion should be denied.

The Second Department is clear that the party seeking the drastic remedy of a preliminary injunction has the burden of proving each of the above noted elements "by clear and convincing evidence." See Liotta v. Mattone, 71 AD3d 741 (2d Dept., 2010). Further, Garcia v Google, Inc. 786 F3d 733, 740 (9th Cir 2015) discusses the heightened standard for mandatory preliminary injunctions requiring the removal of posted materials from online platforms. See P.D. & Assoc. v Richardson, 64 Misc. 3d 763 (Sup Ct, Westchester County, 2019). There, the plaintiff sought an order requiring Google to remove from all its platforms, including YouTube, a film called Innocence of Muslims, which included a five-second clip of a performance by the plaintiff for which the plaintiff claimed copyright protection. The Court opined that a mandatory injunction "goes well beyond simply maintaining the status quo pendente lite [and] is particularly disfavored" and that "[t]emporary restraining orders and permanent injunctions—i.e., court orders that actually forbid speech activities—are classic examples of prior restraints" and that "[p]rior restraints pose the most serious and the least tolerable infringement on First Amendment rights." Id. at 740 and 747 (quoting Alexander v United States, 509 US 544, 550, (1993) and Hunt v National Broadcasting Co., Inc., 872 F2d 289, 293 (9th Cir 1989)).

Granting Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction in this matter in any form proposed by Plaintiffs is a similarly classic example of a prior restraint, and a serious and intolerable infringement on Defendant's First Amendment rights. As such, the Court should deny Plaintiffs' motion in full.

**1. Plaintiffs have not demonstrated a likelihood of success on the merits.**

In order to establish a likelihood of success on the merits, the plaintiff must prima facie establish a reasonable probability of success. See Barbes Restaurant Inc., v. Seuzer 218 LLC, 140 AD3d 430 (2d Dept., 2016). Plaintiffs are unable to do so because this Defendant's posts are protected under the New York Anti-SLAPP law. Plaintiffs cite to Carey v. Ripp, 60 Misc. 3d 1016 (2018), wherein plaintiffs were granted a preliminary injunction in a defamation suit. However, the current matter is entirely distinguishable as Carey was decided in 2018, before the 2020 amendment to New York's anti-SLAPP law, which governs the matter before the Court. Additionally, the Carey court decided that defendants there had to remove a series of posts covering only two dates. Here, Plaintiffs are asking this Court to order Defendant to remove and take down every social media statement that references (directly or indirectly) allegedly disparaging statements about Plaintiffs. Doing so would require the Court to not only cabin Defendant's First Amendment rights but also allow relief for claims otherwise barred by the applicable one-year statute of limitations for defamatory actions. See C.P.L.R. § 215(3). As this Court is aware, defendant has been posting the hashtag of #justiceforMona since 2019. See Haddad Affidavit ¶ 7**.**

Ironically, based on her review and her discussion with representatives from X, Defendant has been shadowbanned[5] on X since May of this year. See Haddad Affidavit ¶¶ 15-16**.** Therefore, even if Defendant had posted substantially new allegations, which she has not, her (small) audience would not have been able to see any of them.

[5] According to Oxford Dictionary, "shadowban" is defined as "block[ing] (a user) from a social media site or online forum without their knowledge, typically by making their posts and comments no longer visible to other users."

In contrast, Plaintiffs are public figures who actively seek publicity. Plaintiff Muir records podcasts, and writes articles and books, in addition to his posts, and has a wide audience who sees his posts, reads his articles and listens to his podcasts. See Haddad Affidavit ¶ 23. According to Muir's online biography, his Substack newsletter, "The Frontier Psychiatrists" alone has "3100+ subscribers, 525+ articles, daily publication schedule, 10,000 podcast downloads, 800,000 total views/60-80 views/month [and] 600,000 views in 1st 16 months." See Haddad Affidavit ¶ 24.

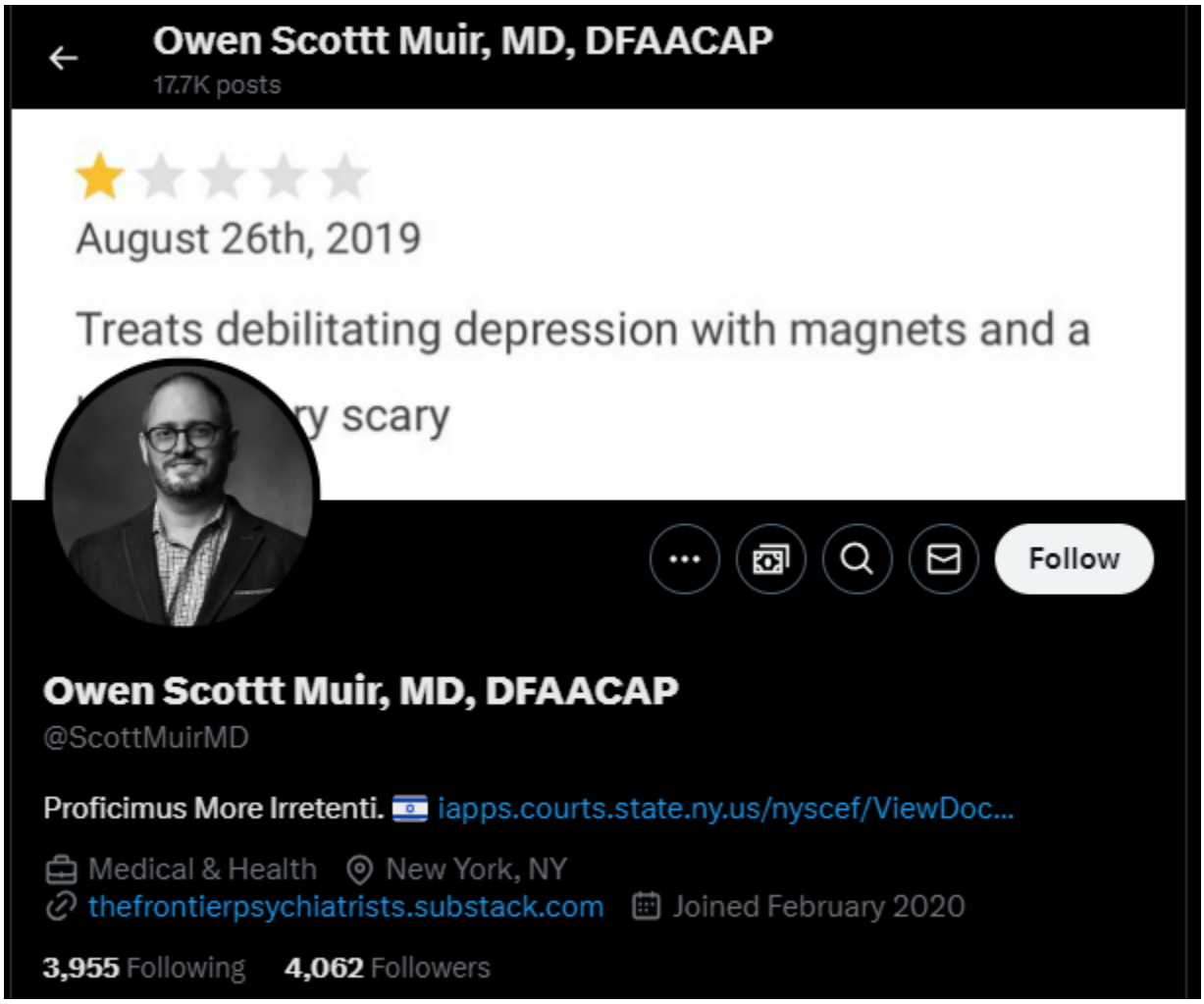
Furthermore, in Defendant's Motion to Dismiss under New York's Anti-SLAPP law, Defendant has set forth at length why the statements and comments posted by her are protected under the law. Plaintiffs have failed to rebut Defendant's argument. Instead, they continually reference the same set of protected statements that have been in play since the original Complaint in this matter was filed. There are no specific references to any new statements. Among other things, Plaintiffs continue to reference a redacted Bluesky account, which they allege without foundation is Defendant's account. See NYSCEF Doc. No. 46 at ¶ 53. This Bluesky account uses extremely inflammatory language that Plaintiffs consider defamatory. However, as has been stated in Defendant's Opposition to Plaintiff's Leave for a Motion to File an Amended Complaint, that account is **not** Defendant's. Further, Defendant has affirmed that she does not have, and has never had, the account referenced in Plaintiff's Affidavit. See Haddad Affidavit ¶¶ 34-38**.** Plaintiffs' attempt to continue to harp on this account is another classic red-herring that the Court should ignore.[6]

[6] The Bluesky account may be an instance of impersonation. On Instagram alone, for example, there were over 30+ profiles that impersonated Defendant, with slight variations of her name and her exact profile picture. See Haddad Affidavit ¶ 40.

**2. Plaintiffs have not demonstrated irreparable injury absent the granting of the preliminary injunction.**

Plaintiffs have not demonstrated that they will suffer irreparable harm absent their requested overbroad relief. Plaintiffs cite to Bingham v. Struve, 184 AD2d 85 (App. Div. 1992) in support of their irreparable harm contention but Bingham is factually distinguishable from the case before the Court. In Bingham, defendant's allegation of a 38-year-old rape was completely unsupported by any objective evidence or corroborating testimony, especially since the individuals continued their affair more than two years after the alleged occurrence of the rape. Here, Defendant has provided an affidavit documenting the basis for the allegations she posts from outside sources. See NYSCEF Doc. No. 26 at ¶¶ 20-54 and Haddad Affidavit ¶ 10. Additionally, there is no dispute here that Defendant's daughter committed suicide while under the care of Plaintiffs. Therefore, statements made regarding the treatment of Defendant's daughter, for others that are in similar situations to be aware of and are looking for treating physicians, are certainly permissible under the law. Plaintiffs alleged in their affirmations that the "heightened attention Defendant and her false allegations are now receiving has caused me to limit my professional and personal activities…" See NYSCEF Doc. No. 46 and 47, ¶¶ 24, 25. Ironically, it is Plaintiffs themselves who have generated publicity for this case and its allegations. A cursory review of Plaintiff Muir's X Account reveals one such example. As seen below, his profile, which is the first thing an individual sees when they access his account, contains a hyperlink to Plaintiffs' Motion. See

Haddad Affidavit ¶ 18.




One of the other more recent posts is a link to his podcast "The Frontier Psychiatrists," which again discusses this very lawsuit. See Haddad Affidavit ¶ 19. Additionally, Plaintiffs post about this matter on social media and on their websites and have done so since the filing of the lawsuit 18 months ago. See Haddad Affidavit ¶ 20. As demonstrated by these examples, Plaintiffs have continued to broadcast and speak about this matter in public forums and clearly are not publicity-shy people. Id. To allege that any publicity this matter has received is Defendant's fault is simply inaccurate. Also, as seen above, Plaintiff Muir's "header" on his X profile contains a one-star review from 2019 which states "treats debilitating depression with magnets and a helmet.

Very scary." Upon information and belief, Plaintiffs are not suing this individual for defamation despite the negative statement regarding Plaintiffs' treatment of depression[7]. Defendant believes it is her duty to warn people about what Plaintiffs did, both to her daughter and others who are similarly situated to her, so that this horrible experience doesn't needlessly happen to anyone else. See Haddad Affidavit ¶¶ 8-9.

In a last-ditch attempt to meet this irreparable harm standard, Plaintiffs complain that they have experienced PTSD as a result of reading Defendant's posts and, in the case of Plaintiff Muir, been voluntarily hospitalized as a result of this matter. See NYSCEF Doc. No. 46, ¶ 14, 15, and NYSCEF Doc. No. 47, ¶ 19. While it is imperative not to minimize the importance of mental health and the impact it has on an individual's life, two points must be made. The first is that Plaintiff Muir has voluntarily submitted himself to hospital care before, as he lives with Bipolar Disorder, pursuant to an interview he gave with the Williamsburg NY Patch in 2017. See Haddad Affidavit ¶ 30. Second, as evidenced by public records, Plaintiffs appear to have had a difficult year otherwise, which included Plaintiff Muir being arrested and charged with 3rd degree assault with intent to cause physical injury (1 count), acting in a manner to injure a child under 17 (2 counts), assault, recklessly causing physical injury (1 count), 3rd degree menacing (1 count), and 2nd degree harassment; physical contact (1 count). See Haddad Affidavit ¶¶ 21-22. With all this as a backdrop, Defendant's postings regarding Plaintiffs are surely not the source of Plaintiff Muir's arrest record or pre-existing mental health conditions and do not constitute irreparable harm.

Plaintiffs have also attempted to introduce hearsay statements to support their irreparable harm allegations. Under New York Evidence Article 8, hearsay is an out of court statement of a

[7] Plaintiffs are very litigious people. A review of filings in New York and New Jersey courts alone show approximately nine (9) cases pending regarding Brooklyn Minds LLC, which was the predecessor to NYC Psychiatrist Services, P.C. and owned by Plaintiffs Muir and MacMillian, and/or Plaintiffs. See Affirmation of Matthew W. Bauer at ¶¶ 4-5.

declarant offered in evidence to prove the truth of the matter asserted in the statement. Hearsay is not admissible unless it falls within an exception to the hearsay rule. Id. Plaintiffs set forth various instances of hearsay throughout their affidavits that do not fall under any exception to the rule. Plaintiff Muir references hearsay in paragraphs 29, 30, and 34 with alleged statements made by his patients that have been impacted by Defendant's postings and in paragraphs 41 and 53 with alleged statements made by business professionals regarding Plaintiff Muir's lost business opportunities. See NYSCEF Doc. No. 46, ¶¶ 29, 30, 34, 41, and 53. Plaintiff MacMillian echoed the same hearsay in her affidavit. See NYSCEF Doc. No. 47, ¶¶ 28, 29 33, and 40. Plaintiffs have not presented any affidavits from these alleged patients affirming the veracity of these statements.[8] Therefore, the statements are not admissible and are added inflammatory statements to distract this Court from the posts made by Defendant that this instant lawsuit is based upon.

**3. The balancing of the equities favors Defendant.**

Absent extraordinary circumstances, injunctive relief should not be issued in defamation cases. See Rombom v. Weberman, 309 A.D.2d 844, 845 (2nd Dept. 2003). An injunction would harm the Defendant in restraining her from publicly criticizing the Plaintiffs and her statements do not constitute a true threat to the Plaintiffs. In Metro. Opera Assn. v. Local 100, Hotel Emples. & Rest. Emples. Intl. Union, 239 F.3d 172 (2d Cir. 2001), the court ruled that equity does not enjoin a libel or slander stating that the only remedy for defamation is an action for damages (finding that equity will not restrain by injunction the threatened publication of a libel, however great the injury to property may be).

[8] We anticipate that Plaintiffs argue that any discussions with patients are privileged. However, in McKinney v. Grand Street P. P. & F. R. CO., 10 N.E. 544, 544 (1887), the court opined that the patient/physician privilege cannot be used as "both as a sword and a shield to waive when it inures to her advantage and wield when it does not…. The nature of the information is of such a character that, when it is once divulged in legal proceedings, it cannot be again hidden or concealed." The Court should not countenance any attempt by Plaintiffs to have it both ways with regard to hearsay statements attributed to patients.

Defendant here is "just a lone grieving mother who wants [her] late daughter's voice heard, and her story spread." See Haddad Affidavit at ¶ 25. She has just as much right as the Plaintiffs do to speak to journalists about what happened. For example, the Plaintiffs made public texts between Defendant's daughter and them through a journalist, Amanda Aronczyk, when it served their purposes to do so. See Haddad Affidavit at ¶ 26. Defendant was also interviewed by the New York Post in 2019 (the paper contacted her) and no defamation suit resulted then. See Haddad Affidavit at ¶ 41. And last year, Defendant was contacted by Wondery (not the other way around) "in the course of research Wondery already had underway about the doctors. See Haddad Affidavit at ¶ 42. The journalists did not tell [her] what their research was about." Id. Defendant has a First Amendment right to speak to any journalist and to post texts to and from her daughter which should not be enjoined.

Contrary to Plaintiffs' counsel's assertions in his procedurally deficient affirmation, which is described in detail below, Defendant has not "prolonged [the] litigation process". In fact, Plaintiffs first requested an adjournment of Defendant's Motion to Dismiss from October 25, 2023 to December 6, 2023 (See NYSCEF Doc No. 15) and again from December 6, 2023 to January 10, 2024 (See NYSCEF Doc No. 21). Due to the Court's availability, the hearing was adjourned to May 8th. Following the May 8th hearing, Defendant's counsel asked to adjourn Defendant's Motion to Dismiss, returnable on July 16th (which was scheduled by the Court at the May 8th hearing) to July 26 due to a previously scheduled in-person mediation that required air travel for the participants. See NYSCEF Doc No. 41. Due to the Court's availability, this matter was then adjourned by the Court to October 24th. As communicated to Plaintiffs, Defendant is eagerly anticipating the ultimate hearing of her Motion to Dismiss under New York's Anti-SLAPP Law.

To insinuate otherwise is factually inaccurate and another example of Plaintiffs' gamesmanship that weighs against them in a balancing of the equities[9].

The equities further disfavor Plaintiffs when one considers the timing of the events in this litigation. When the Defendant's negligence and malpractice suit would not go away after the Appellate Division reversed its dismissal, the Plaintiffs filed the Complaint in this action three days later. And with discovery moving forward in Defendant's negligence and malpractice suit, Plaintiffs asked the Court here for injunctive relief, despite the fact that the same relief was requested in the Complaint when it was filed 18 months ago but never pursued. This retaliatory conduct by Plaintiffs is not only prohibited by law and should result in the dismissal of their Complaint but weighs heavily against them in the balancing of the equities and should result in the denial of their motion for a Temporary Restraining Order and other injunctive relief.

**4. Plaintiff's counsel's attorney affirmation is procedurally deficient.**

The Affirmation of Michael Pelagalli is procedurally deficient. See NYSCEF Doc No. 43. CPLR 2106, as amended, must be included for affirmations to be considered properly sworn. In Grandsard v. Hutchison, 153605/2024, 2024 WL 1957086, 1 (Sup Ct, NY County 2024), aff'd, 2024 N.Y. Slip Op. 02613 (1st Dep't 2024), the Judge refused to consider a New York attorney's affirmation in support of a petition because it merely affirmed that the attorney's statements were made "under penalty of perjury." The affirmation did not comply with the requirements of CPLR 2106 by "acknowledging the laws of New York and the possibility of fines or imprisonment." As a result, the judge in Grandsard concluded that the petition was unverified and therefore denied the petition in its entirety. Here, Plaintiffs' counsel fails to include the language regarding the laws

[9] Furthermore, Plaintiffs complain of the possibility that a jury pool could be "poisoned" by Defendant's postings. However, Plaintiffs contradict their own position with the publicity they have generated with all of their repeated postings and discussions about the lawsuit, as demonstrated above.

of New York and the possibility of fines or imprisonment in his Affirmation. Accordingly, the Court must disregard counsel's Affirmation in its entirety.

## CONCLUSION

For the reasons set forth above, the Court should deny Plaintiffs' Motion a Temporary Restraining Order and Preliminary Injunction.

Dated: Newark, New Jersey
October 17, 2024

CONNELL FOLEY LLP
Attorneys for Defendant, Esther Haddad

By: Matthew W. Bauer

Matthew W. Bauer, Esq.
1085 Raymond Boulevard
Newark, New Jersey 07102
973-436-5800

**CERTIFICATE OF COMPLIANCE WITH WORD LIMIT**

I certify that this Affirmation complies with the 7,000 word-limit under Rule 202.8-b. This computer-generated Opposition to Plaintiffs' Motion for Leave to File an Amended and Supplemental Complaint was prepared using Microsoft Word, and based on Microsoft Word's word count function, the total number of words in this Memorandum of Law, exclusive of the caption, table of contents, table of authorities, signature block and this statement is 4,389.

Dated: October 17, 2024
Newark, New Jersey

Matthew W. Bauer
Matthew W. Bauer

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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NYC PSYCHIATRIST SERVICES, P.C.,
CARLENE MACMILLAN, and OWEN MUIR,

Plaintiffs,

-against-

ESTHER HADDAD, and
JOHN DOES 1-10

Defendant.

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Index No. 510858/2023

**AFFIRMATION OF MATTHEW W. BAUER, ESQ.**

I, Matthew W. Bauer, being first duly sworn to law, deposed, and state as follows:

1. I am an attorney at law in the State of New Jersey and a partner at the law firm of Connell Foley LLP, attorneys for defendant, Esther Haddad ("Defendant"), in the above-captioned matter. As such I am fully familiar with the facts contained herein.

2. I make this Affirmation in further support of Defendant's Opposition to Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction. (NYSCEF Doc No 42-48).

3. Brooklyn Minds Psychiatry P.C. was the business that treated Defendant's daughter. Upon information and belief, Brooklyn Minds Psychiatry P.C. is owned by plaintiffs Muir and MacMillan. At some time after Defendant's daughter's passing, plaintiffs Muir and MacMillan opened NYC Psychiatrist Services, P.C., which is a plaintiff in this matter.

4. Based on a review of the electronic docket, Plaintiffs are very litigious. There are currently four cases pending in the State of New York to which Plaintiffs are parties. The captions and index numbers of the actions are as follows:

a. Bankers Healthcare Group, LLC v. Brooklyn Minds Psychiatry P.C.
    i. Onondaga County Supreme Court of New York
    ii. Index No: 005118/2022

b. 8 W. 37 LLC v. O&C 1, Owen Muir, Carlene MacMillan, Brooklyn Minds Psychiatry P.C.
    i. New York County Supreme Court of New York
    ii. Index No: 653185/2022
c. Mind Centers, Inc., Brooklyn Minds Psychiatry, et al v. Mind Centers II LLC
    i. New York County Supreme Court of New York
    ii. Index No: 654558/2024
d. Mind Centers II LLC v. Evan Barr, Carlene Macmillan, Owen Muir, and Michael Sarmiento
    i. New York County Supreme Court of New York
    ii. Index No: 537272/2023

5. Additionally, there were five other cases involving Plaintiffs that have been resolved since 2018. The captions and index numbers of those actions are as follows:

a. Brooklyn Minds Psychiatry P.C. v. BMDC Construction Limited et al.
    i. Kings County Supreme Court of New York
    ii. Index No: 511856/2018
b. Fund-Ex, LLC v. Brooklyn Minds Psychiatry P.C.
    i. Onondaga County Supreme Court of New York
    ii. Index No: 005255/2022
c. Ascentium Capital LLC v. Brooklyn Minds Psychiatry P.C.
    i. Nassau County Supreme Court of New York
    ii. Index No: 609703/2022
d. Brooklyn Minds Psychiatry P.C. v. 8 W. 37 LLC
    i. New York County Civil Court- Landlord Tenant Division
    ii. LT-315602-22
e. Spheyr, Inc. v. Brooklyn Minds Psychiatry P.C.
    i. United States District Court, District of New Jersey
    ii. Case No. 22-cv-08427

6. Attached hereto as Exhibit A is a true copy of the unpublished decision entitled JBBNY, LLC v Dedvukaj, 2019 NY Slip Op. 02692(U) (2d Dept 2019).

7. Attached hereto as Exhibit B is a true copy of the unpublished decision entitled Grandsard v. Hutchison, 2024 WL 1957086, 1 (Sup Ct, NY County 2024), aff'd, 2024 N.Y. Slip Op. 02613 (U) (1st Dept 2024).

I affirm this 17th day of October, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

*Matthew Bauer*

_____

Matthew W. Bauer, Esq.
Connell Foley LLP
1085 Raymond Blvd., 19th Floor
Newark, New Jersey 07012
Attorneys for Defendant,
Esther Haddad

Dated: October 17, 2024

15735796-3

**CERTIFICATE OF COMPLIANCE WITH WORD LIMIT**

I certify that this Affirmation complies with the 7,000 word-limit under Rule 202.8-b. This computer-generated Affirmation in Support of Defendant's Opposition to Plaintiffs' Motion for Leave to File an Amended and Supplemental Complaint was prepared using Microsoft Word, and based on Microsoft Word's word count function, the total number of words in this Affirmation, exclusive of the caption, table of contents, table of authorities, signature block and this statement is 688.

Dated: October 17, 2024
Newark, New Jersey

*Matthew Bauer*

Matthew W. Bauer

15735796-3

# EXHIBIT A

Neutral
As of: October 17, 2024 7:06 PM Z

# *JBBNY, LLC v Dedvukaj*

Supreme Court of New York, Appellate Division, Second Department

April 10, 2019, Decided

2017-08173, 2017-08174

**Reporter**
171 A.D.3d 898 *; 98 N.Y.S.3d 221 **; 2019 N.Y. App. Div. LEXIS 2736 ***; 2019 NY Slip Op 02692 ****; 2019 WL 1549512

**[****1]** JBBNY, LLC, Respondent, v Victor Dedvukaj et al., Appellants, et al., Defendants. (Index No. 50433/15)

**Prior History:** *JBBNY, LLC v Dedvukaj, 171 AD3d 898, 95 NYS3d 898, 2019 N.Y. App. Div. LEXIS 2690, 2019 NY Slip Op 2691 (N.Y. App. Div. 2d Dep't, Apr. 10, 2019)*

## Core Terms

default, foreclosure, notice, inter alia, electronic, notice of entry, cross motion, first cross, notification, defendants'

## Case Summary

**Overview**
HOLDINGS: [1]-As plaintiff failed to serve defendants with notice of entry of an order denying their motion to dismiss, their time to answer never commenced running; accordingly, they did not default in serving their answer, and the trial court erred in denying their motion to compel plaintiff to accept their answer and in granting plaintiff a default judgment.

**Outcome**
The judgment was reversed.

**Counsel:** **[***1]** Arnold E. DiJoseph, P.C., New York, NY (Arnold E. DiJoseph III and Michael Karlson of counsel), for appellant.

Fein, Such & Crane, LLP, Westbury, NY (Michael Hanusek and Richard D. Femano of counsel), for respondent.

**Judges:** WILLIAM F. MASTRO, J.P., COLLEEN D. DUFFY, HECTOR D. LASALLE, ANGELA G. IANNACCI, JJ. MASTRO, J.P., DUFFY, LASALLE and IANNACCI, JJ., concur.

## Opinion

**[**222]** **[*899]** In an action to foreclose a mortgage, the defendants Victor Dedvukaj and Violeta Dedvukaj appeal from (1) an order of the Supreme Court, Westchester County (William J. Giacomo, J.), dated June 6, 2017, and (2) a judgment of foreclosure and sale of the same court dated June 6, 2017. The order granted the plaintiff's motion for a judgment of foreclosure and sale and denied the second cross motion of the defendants Victor Dedvukaj and Violeta Dedvukaj, inter alia, to compel the plaintiff to accept their answer. The judgment, upon an order of the same court dated March 22, 2016, inter alia, granting that branch of the plaintiff's motion which was for an order of reference and denying the appellants' first cross motion, inter alia, to compel the plaintiff to accept their answer, and upon the order dated June 6, 2017, directed **[***2]** the sale of the subject premises.

Ordered that the appeal from the order dated June 6, 2017, is dismissed; and it is further,

Ordered that the judgment of foreclosure and sale is reversed, on the law, that branch of the plaintiff's motion which was for an order of reference is denied, that branch of the first cross motion of the defendants Victor Dedvukaj and Violeta Dedvukaj which was to compel the plaintiff to accept their answer is granted, the plaintiff's motion for a judgment of foreclosure and sale is denied, the second cross motion of the defendants Victor Dedvukaj and Violeta Dedvukaj, inter alia, to compel the plaintiff to accept their answer is denied as unnecessary, and the orders dated March 22, 2016, and June 6, 2017, are modified accordingly; and it is further,

Ordered that one bill of costs is awarded to the defendants Victor Dedvukaj and Violeta Dedvukaj.

171 A.D.3d 898, *899; 98 N.Y.S.3d 221, **222; 2019 N.Y. App. Div. LEXIS 2736, ***2; 2019 NY Slip Op 02692,
****1

The plaintiff commenced this action to foreclose a mortgage by filing a summons and complaint. In lieu of serving an answer, the defendants Victor Dedvukaj and Violeta Dedvukaj (hereinafter together the Dedvukaj defendants) moved pursuant to CPLR 3211 (a) to dismiss the complaint. By order dated June 24, 2015 (hereinafter the June **[***3]** 2015 order), the Supreme Court denied the Dedvukaj defendants' motion.

On August 11, 2015, the plaintiff served notice of entry of the June 2015 order on a defendant who is not a party to this appeal by mailing a copy of the same, via certified and regular mail, to the attorney for that defendant. On the same day, the plaintiff electronically filed the notice of entry of the June 2015 order and proof of mailing on that defendant's attorney through the New York State Courts Electronic Filing System (hereinafter **[*900]** NYSCEF). A NYSCEF "confirmation notice" was emailed to counsel for the Dedvukaj defendants. It is undisputed that the plaintiff did not serve a copy of notice of entry of the June 2015 order on the Dedvukaj defendants or their attorney.

On October 1, 2015, the Dedvukaj defendants served an answer with affirmative defense and counterclaims, which the plaintiff rejected as untimely. The plaintiff then moved, inter alia, for an order of reference. The Dedvukaj defendants opposed the motion and cross-moved for leave to enter a default judgment against the plaintiff for its failure to reply to their counterclaims, or, in the alternative, to compel the plaintiff to accept their answer **[***4]** as timely. The Dedvukaj defendants contended that since the plaintiff never served them with notice of entry of the June 2015 order, their time to answer never started to run, and thus, their answer was timely **[**223]** served. By order dated March 22, 2016 (hereinafter the March 2016 order), the Supreme Court, inter alia, denied the Dedvukaj defendants' cross motion and granted that branch of the plaintiff's motion which was for an order of reference, in effect finding that the Dedvukaj defendants were in default.

Thereafter, the plaintiff moved for a judgment of foreclosure and sale. The Dedvukaj defendants opposed the motion and, once again, cross-moved, inter alia, to compel the plaintiff to accept their answer or, in the alternative, to vacate their purported default. By order dated June 6, 2017 (hereinafter the June 2017 order), the Supreme Court granted the plaintiff's motion and denied the Dedvukaj defendants' cross motion. On the same date, the court entered a judgment of foreclosure and sale, and these appeals ensued.

The appeal from the June 2017 order must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment of foreclosure and sale in the **[***5]** action (*see* Matter of Aho, 39 NY2d 241, 248, 347 NE2d 647, 383 NYS2d 285 [1976]). The issues raised on the appeal from that order, and on the appeal from the March 2016 order (*see* JBBNY, LLC v Dedvukaj, 171 AD3d 898, 95 NYS3d 898 [2019] [decided herewith]), are brought up for review and have been considered on the appeal from the judgment (*see* CPLR 5501 [a] [1]; Matter of Aho, 39 NY2d at 248).

Contrary to the determination of the Supreme Court, since the plaintiff never served the Dedvukaj defendants with notice of entry of the June 2015 order denying their motion to dismiss the complaint, their answer was timely served, as their time to answer never started to run (*see* CPLR 3211 [f]; Lehifa Trading Co. v Russo Sec., 205 AD2d 738, 738, 614 NYS2d 906 [1994]).

**[*901]** Pursuant to *22 NYCRR 202.5-b*, the court rule governing electronic filing for the Supreme Court, a party may serve an interlocutory document upon another party by filing the document electronically: "Upon receipt of [the] interlocutory document, the NYSCEF site shall automatically transmit electronic notification to all e-mail service addresses in such action. . . . *Except as provided otherwise in subdivision (h) (2) of this section*, the electronic transmission of the notification shall constitute service of the document on the e-mail service addresses identified therein" (22 NYCRR 202.5-b [f] [2] [ii] [emphasis added]).

Subdivision (h) (2), which appears in a subdivision entitled "Entry of Orders and Judgments **[***6]** and Notice of Entry," provides, in relevant part: "[a] party may serve [an order or judgment and written notice of its entry] electronically by filing them with the NYSCEF site and thus causing transmission by the site of notification of receipt of the documents, which shall constitute service . . . by the filer. In the alternative, a party may serve a copy of the order or judgment and written notice of its entry in hard copy by any method set forth in CPLR 2103 (b) (1) to (6). *If service is made in hard copy by any such method and a copy of the order or judgment and notice of its entry and proof of such hard copy service are thereafter filed with the NYSCEF site, transmission by NYSCEF of notification of receipt of those documents shall not constitute additional service of the notice of entry on the parties to whom the notification is sent*" (22 NYCRR 202.5-b [h] [2] [emphasis **[****2]** added]).

171 A.D.3d 898, *901; 98 N.Y.S.3d 221, **223; 2019 N.Y. App. Div. LEXIS 2736, ***6; 2019 NY Slip Op 02692, ****2

Pursuant to the plain language of the rule, the transmission by NYSCEF of the confirmation notice of receipt of the documents **[**224]** showing that the plaintiff served another party with notice of entry did not constitute service upon the Dedvukaj defendants (*see* *22 NYCRR 202.5-b [h] [2]*). Since proper notice of entry of the June 2015 order was never served on the **[***7]** Dedvukaj defendants, "their time to answer never commenced running" (*Lehifa Trading Co. v Russo Sec., 205 AD2d at 738*; *see* *CPLR 3211 [f]*). Accordingly, the Dedvukaj defendants did not default in serving their answer, and the Supreme Court should have granted that branch of their first cross motion which was to compel the plaintiff to accept their answer (*see Lehifa Trading Co. v Russo Sec., 205 AD2d at 738*).

However, we agree with the Supreme Court's determination denying that branch of the Dedvukaj defendants' first cross motion which was for leave to enter a default judgment based upon the plaintiff's failure to reply to their counterclaims, which sought declaratory relief. The plaintiff did not default on **[*902]** the answer, but acknowledged and rejected it, albeit improperly. Moreover, " '[a] default judgment in a declaratory judgment action will not be granted on the default and pleadings alone for it is necessary that [the party seeking default] establish a right to a declaration' " (*Dole Food Co., Inc. v Lincoln Gen. Ins. Co., 66 AD3d 1493, 1494, 885 NYS2d 657 [2009]*, quoting *Merchants Ins. Co. of N.H. v Long Is. Pet Cemetery, 206 AD2d 827, 828, 616 NYS2d 299 [1994]*; *see* Patrick M. Connors, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3001:23). Here, the Dedvukaj defendants did not establish their entitlement to the declarations sought (*see* *McFadden v Schneiderman, 137 AD3d 1618, 1618, 26 NYS3d 915 [2016]*).

Inasmuch as the plaintiff's motions for an order of reference and a judgment of foreclosure and sale were granted **[***8]** based upon a finding that the Dedvukaj defendants failed to timely answer, the Supreme Court erred in granting those motions. Since the Dedvukaj defendants were not in default, that branch of their first cross motion which was to compel the plaintiff to accept their answer should have been granted, and the Dedvukaj defendants' second cross motion should have been denied as unnecessary. Accordingly, we reverse the judgment of foreclosure and sale and modify the orders determining the parties' motions accordingly. Mastro, J.P., Duffy, LaSalle and Iannacci, JJ., concur.

End of Document

# EXHIBIT B

# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** **HON. RICHARD G. LATIN** **PART** **46M**

***Justice***

----------X

BRUNO GRANDSARD,

Plaintiff,

- v -

EVAN HUTCHISON, THE NYC BOARD OF ELECTIONS

Defendant.

----------X

**INDEX NO.** 153605/2024

**MOTION DATE** 04/26/2024

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for ELECTION LAW - INVALIDATE PETITION.

Petitioner commenced the instant proceeding pursuant to Election Law article 16 on April 18, 2024 to invalidate the designating petition of respondent Evan Hutchinson, a democratic congressional candidate for the 10th Congressional District, in order to keep him from being printed on the primary ballot.

Pursuant to New York Election Law § 16-116 a special proceeding under this article shall be "heard upon a verified petition" (*see Goodman v Hayduk*, 45 NY2d 804 [1978]). "The purpose of verification requirements in New York Election Law § 16-116 and CPLR § 3020 is to assure that specified pleadings, such as petitions in election proceedings, are based on personal knowledge to which the witness attests under oath" (*Paez v Bd. of Elections in the City of New York*, 2023 NY Slip Op 31438[U][Sup Ct, New York County 2023], *affd* 213 AD3d 503 [1st Dept 2023]). As a general matter, whoever verifies the petition is required to do so under oath, and the absence of which shall be treated as a substantial defect rather than a mere irregularity (*id.*).

When an attorney admitted to practice in New York State verifies a petition they need only affirm pursuant to CPLR 2106 (*see generally* Patrick M. Connors, Practice Commentaries,

McKinney's Cons Laws of NY, CPLR C3020:9) [Note: online version]. Effective January 1, 2024, CPLR 2106 was amended to state that an affirmation pursuant to this section,

> "shall be in substantially the following form: I affirm this ___ day of _____, _____, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law."

Here, petitioner's attorney submitted a "Verification/Affirmation" with the petition that merely affirmed "under the penalty of perjury." Subsequent to January 1, 2024, courts have found that a statement simply affirming the following under the penalties of perjury fails to acknowledge the laws of New York and the possibility of fines or imprisonment and as a result is not in admissible form and cannot be relied upon (*see R.F. v L.K.*, 82 Misc3d 1221[A][Sup Ct, Westchester County 2024]; *Deigo Beekman Mutual Housing Association Housing Development Fund Corp. v Hammond*, 81 Misc3d 1244[A][Civ Ct, Bronx County 2024]).[1]

Inasmuch as the oath is not something the court is permitted to infer and the purpose of the requirement "impresses on the witness the gravity of his factual account," an affirmation lacking the language that CPLR 2106 now requires fails to demonstrate an appreciation for that gravity and is ultimately not a verification at all (*Paez*, 2023 NY Slip Op 31438[U]). It is both well settled that a matter brought pursuant to Article 16 must be commenced with a verified petition and that as a result a defectively verified petition must be dismissed (*see Goodman,* 45 NY2d 804; *Paez*, 2023 NY Slip Op 31438[U]; *Tuck v Bd. of Elections in the City of NY*, 2023 NY Slip Op 31437[U][Sup Ct, New York County 2023], *affd* 216 AD3d 484 [1st Dept 2023]).

Accordingly, the petition is deemed to be an unverified petition and as a result it is ORDERED and ADJUDGED that this special proceeding is denied and dismissed.

[1] Pursuant to CPLR 3022, respondent Hutchinson's counsel notified petitioner's counsel by email within 24 hours that the verification was defective and not in admissible form.

This constitutes the decision and judgment of the Court.

Index #153605/2024

4/26/2024
DATE

RICHARD G. LATIN, J.S.C.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| CHECK ONE: | X | CASE DISPOSED | | | NON-FINAL DISPOSITION | | |
| | | GRANTED | X | DENIED | GRANTED IN PART | | OTHER |
| APPLICATION: | | SETTLE ORDER | | | SUBMIT ORDER | | |
| CHECK IF APPROPRIATE: | | INCLUDES TRANSFER/REASSIGN | | | FIDUCIARY APPOINTMENT | | REFERENCE |

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS
----------X
NYC PSYCHIATRIST SERVICES, P.C.,
CARLENE MACMILLAN, and OWEN MUIR,

Plaintiffs,

Index No. 510858/2023

-against-

ESTHER HADDAD, and
JOHN DOES 1-10

**AFFIDAVIT OF ESTHER HADDAD**

Defendant.
----------X

I, Esther Haddad, being first duly sworn to law, deposed, and state as follows:

1. My name is Esther Haddad and I am the named defendant in this matter.

2. I am over the age of eighteen (18) and have direct, personal knowledge of the facts asserted in this affidavit.

3. I have already addressed the basis for the posts that Plaintiffs are complaining of in my January 5, 2024 affidavit in further support of Defendant's Motion to Dismiss. See NYSCEF Doc. No. 25.

4. As previously stated, this matter was filed as a retaliatory action **three days after** the Appellate Division entered an order in my favor in my negligence and malpractice suit against Plaintiffs on April 7, 2023.

5. Plaintiffs then waited until May 15, 2023, **the day after Mother's Day,** to serve me with a copy of the Complaint. While it does not have to be Mother's Day for me to think of my daughter, the service of the Complaint so close to that day was particularly insensitive.

6. This Motion for a Temporary Restraining Order, which was originally to be heard by the Court only shortly before defendant's pending Motion to Dismiss, is another calculated and retaliatory effort by Plaintiffs to further hurt and silence me.

7. I have been posting comments with the hashtag #justiceforMona on social media since 2019.

8. I believe that it is my duty to warn people about what Plaintiffs did, both to my daughter and to others who are situated similarly to her.

9. Based on my experiences with Plaintiffs, I have no reason to doubt my sources or the information I receive.

10. In my January 5, 2024 Affidavit, I informed the Court as to the basis for my statements regarding Plaintiffs in six different groups: 1) sexual assault and/or misconduct, 2) malpractice, violations of HIPAA, and unethical acts toward patients, 3) financial scams and crimes against employees and patients, 4) Plaintiff Muir's academic dishonesty and fraudulently obtained degrees,, 5) child abuse and 6) harassment. See NYSCEF Doc. No. 25.

11. All of the allegations contained in paragraph 9 of Plaintiff Muir's Affirmation and the allegations contained in paragraph 8 of Plaintiff MacMillian's Affirmation in support of their motion fall into the six categories already addressed above.

12. I have demonstrated the support and my belief for each of the allegations in the postings that I have made.

13. There are no new allegations cited to in Plaintiffs' Affirmation, except for the alleged language on the Bluesky account, which, as addressed in more detail below, is not mine.

14. Additionally, Plaintiffs have not specifically cited to any recent postings that raise the need for any kind of immediate relief.

15. In fact, the visibility of my postings on X has been limited since May of this year, when I was shadowbanned.

16. I confirmed this with representatives of X when asking how to have my account restored. A true and accurate copy of my correspondence with X is attached hereto as Exhibit A.

17. Nevertheless, Plaintiffs complain that I continue "to digitally scream" allegations about Plaintiffs, yet Plaintiffs - specifically Plaintiff Muir - have continued to publicize this litigation.

18. Plaintiff Muir's profile on X, which is the first thing an individual sees when they access his account, contains a hyperlink to this Motion. A true and accurate copy of Plaintiff Muir's X profile is attached hereto as Exhibit B.

19. "The Frontier Psychiatrists" October 5th podcast episode, which is run by Plaintiff Muir, discussed the filing of this Motion and the filing of this lawsuit. A true and accurate copy of Plaintiff Muir's October 6, 2024 tweet regarding the podcast episode is attached hereto as Exhibit C.

20. Additionally, Plaintiffs post about this matter on social media and on their websites and have done so since the filing of this lawsuit 18 months ago. These are not the practices of publicity-shy people who just want to be left alone. A true and accurate copy of Plaintiff Muir's Substack article dated August 12, 2023 and tweet dated October 3, 2024 referencing this lawsuit are attached hereto as Exhibit D.

21. It is also a matter of public record that Plaintiff Muir was arrested and charged with 3rd degree assault with intent to cause physical injury (1 count), acting in a manner to injure a child under 17 (2 counts), assault, recklessly causing physical injury (1 count), 3rd degree

menacing (1 count), and 2nd degree harassment; physical contact (1 count). I did not create that publicity. Plaintiff Muir did.

22. Plaintiff MacMillian and the Plaintiffs' children were involved in the incident, according to the police report.

23. Plaintiffs – especially Plaintiff Muir – are public figures. He records podcasts, and writes articles and books, in addition to his posts. He has a wide audience who sees his posts, reads his articles and listens to his podcasts. He is famous and successful and tells everyone so.

24. According to his online biography (among other things) his Substack newsletter "The Frontier Psychiatrists" alone has "3100+ subscribers, 525+ articles, daily publication schedule/10,000 podcast downloads, 800,000 total views/60-80k views/month. 600,000 total views in 1st 16 months." A true and accurate copy of the "Other Professional Positions" tab on Fermata Health's website for Plaintiff Muir is attached hereto as Exhibit E.

25. I am just a lone grieving mother who wants my late daughter's voice heard, and her story spread. Part of that story is in the SMS texts between Mona Daniella and both doctors.

26. I believe I have the same right to make public those SMS text exchanges, just like the doctors had when they made texts public through a journalist, Amanda Aronczyk.

27. If people are seeing the posts, it is because the Plaintiffs reach a much larger audience. The Plaintiffs have only themselves to blame about publicity related to the case, since Plaintiff Muir, as noted, has been posting about the case and occasionally makes fun of it. Both doctors have many of the same followers and repost each other's posts, or retweet each other's tweets.

28. I also feel the need to address some of the other contentions made in Plaintiffs' Affirmations. For one, and contrary to her assertions, I have never posted that Plaintiff MacMillian was a "slut of a mother."

29. With respect to the allegation that Plaintiff MacMillian has three boyfriends, I simply reposted an allegation that was written by another source, a former employee.

30. With regard to Plaintiff Muir's "voluntary hospitalization" that he claims resulted from reading my posts, Plaintiff Muir had voluntarily submitted himself to a hospital on at least one other previous occasion. According to an interview Plaintiff Muir had with the Williamsburg NY Patch, he checked himself into a hospital on that prior occasion due to his Bipolar Disorder. A true and accurate copy of Plaintiff Muir's interview in the Williamsburg NY Patch dated August 11, 2017 is attached hereto as Exhibit F.

31. In their Opposition to Defendant's Motion to Dismiss, Plaintiffs also alleged that I fabricated an email.

32. However, as I previously affirmed, the email Plaintiffs were referencing was a draft email that was found in my daughter Mona's drafts after her death and was not sent to anyone.

33. I have never fabricated any of my daughter's emails.

34. Now, Plaintiffs claim that I owned a Bluesky social media account under the pseudonym "redacted.sky.social" and posted that Plaintiff Muir was a "child rapist" and denounced Plaintiff's followers as "rape supporters".

35. This is false.

36. I have no affiliation with the aforementioned Bluesky account and never posted the statements that Plaintiffs allege.

37. As an aside, Bluesky is an invitation-only social media platform. I did not even receive an invitation to the platform until after the alleged statements were made.

38. Although, again, the alleged Bluesky account is not mine. If anything, perhaps someone is impersonating me.

39. Unfortunately, this would not be the first time someone has impersonated me through a social media account.

40. On Instagram, there were over 30+ accounts created with slight variations of my name and my exact profile picture pretending to be me.

41. Also, with regard to my interactions with the press, it should be noted that when I was interviewed about my daughter's case in 2019 by the New York Post, the paper contacted me, not the other way around – and Plaintiffs did not sue me then.

42. Last year, a journalist from Wondery contacted me in the course of research Wondery already had underway about the doctors. The journalists did not tell me what their research was about.

43. These facts make the timing of this TRO and injunction request suspect. Why no complaints after the Post article in 2019? Why wait a year to mention Wondery? Am I not allowed to be interviewed about my late daughter and how she died? I believe it is my First Amendment right to free speech to speak to any journalist and to post texts to and from my daughter.

44. The only conclusion I can reach is that these doctors sued me last year because my daughter's negligence and malpractice suit would not go away. And they now request a TRO and injunction because that negligence and malpractice suit is finally moving again.

45. It's retaliation, and that's it.

I affirm this 17th day of October, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Esther K. Haddad

Signed by: Esther K. Haddad
Date & Time: Oct 17, 2024 12:58:44 EDT

Esther Haddad

Dated: October 17, 2024
New York, New York

State of New York
County of New York

Sworn to before me this
17th day of October 2024

JONATHAN TRATTNER
Notary Public - State of New York
No. 01TR0000004
Qualified in Queens County
My Commission Expires Feb 01, 2027

This electronic notarial act involved a remote online appearance involving the use of communication technology.

Notary Public

This electronic notarial act involved a remote online appearance involving the use of communication technology.

15723712-5

**CERTIFICATE OF COMPLIANCE WITH WORD LIMIT**

I certify that this Affirmation complies with the 4,000 word-limit under Rule 202.8-b. This computer-generated Affirmation in Support of Motion to Dismiss was prepared using Microsoft Word, and based on Microsoft Word's word count function, the total number of words in this Affirmation, exclusive of the caption, table of contents, table of authorities, signature block and this statement is 1757.

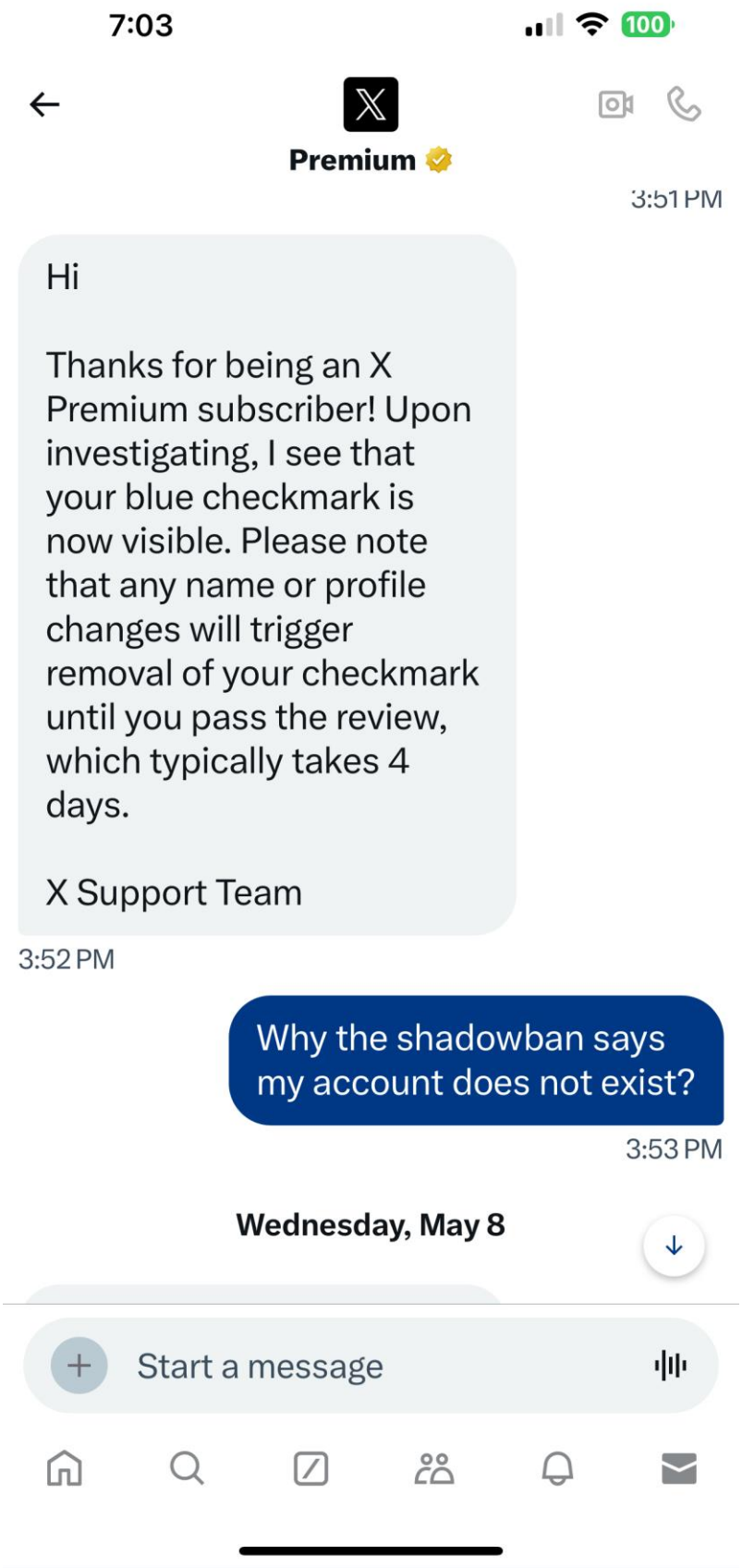
Dated: October 17, 2024
Newark, New Jersey

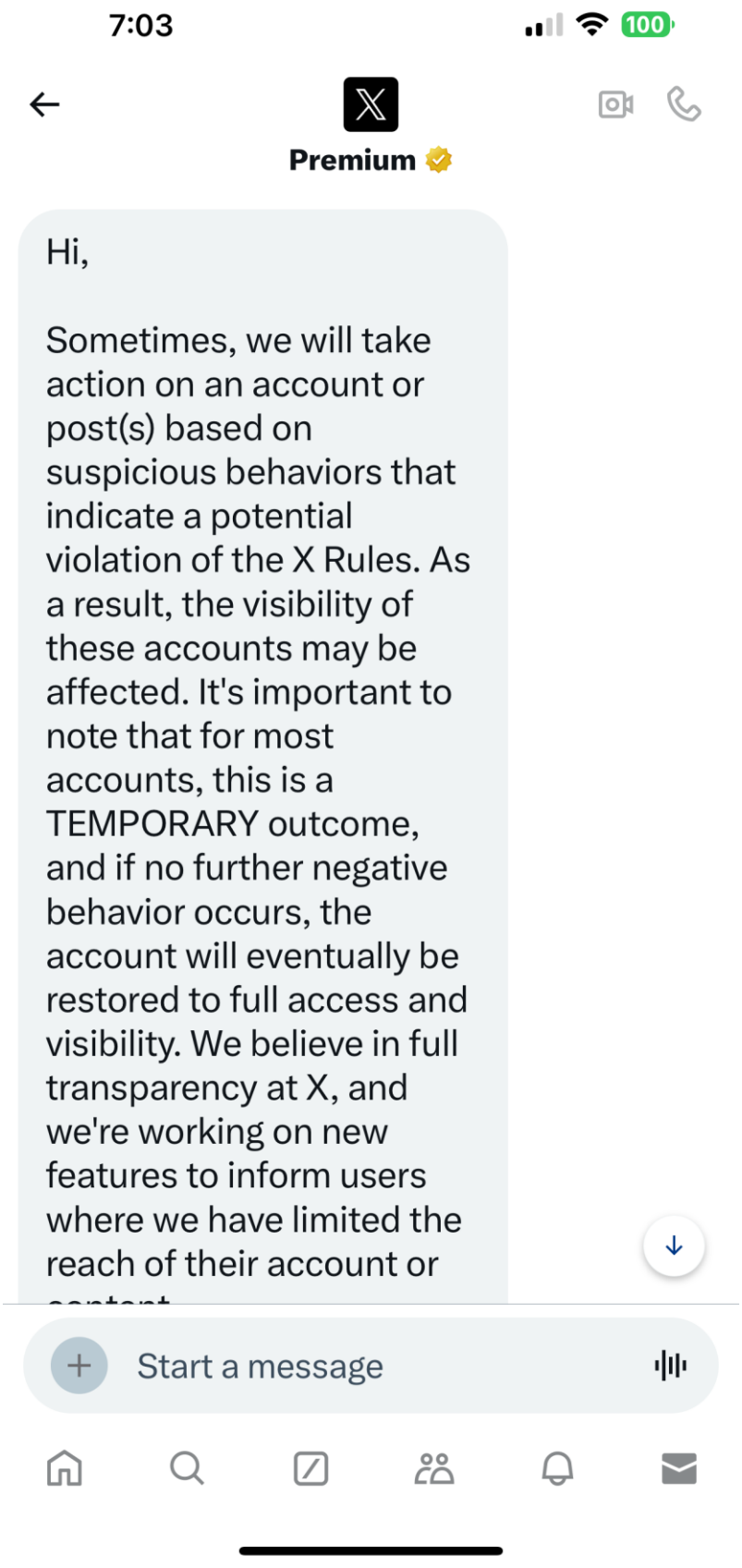
*Matthew Bauer*

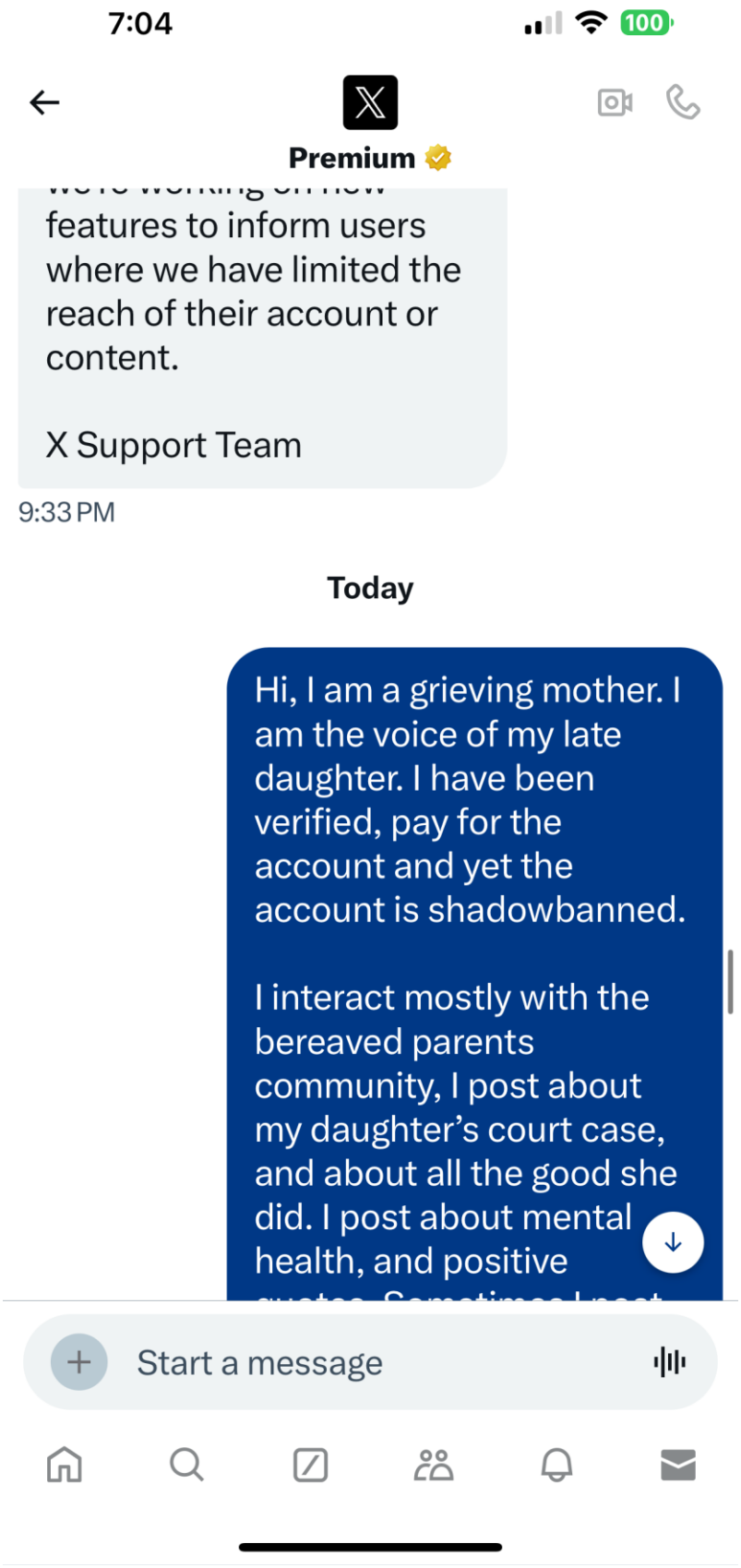
Matthew W. Bauer

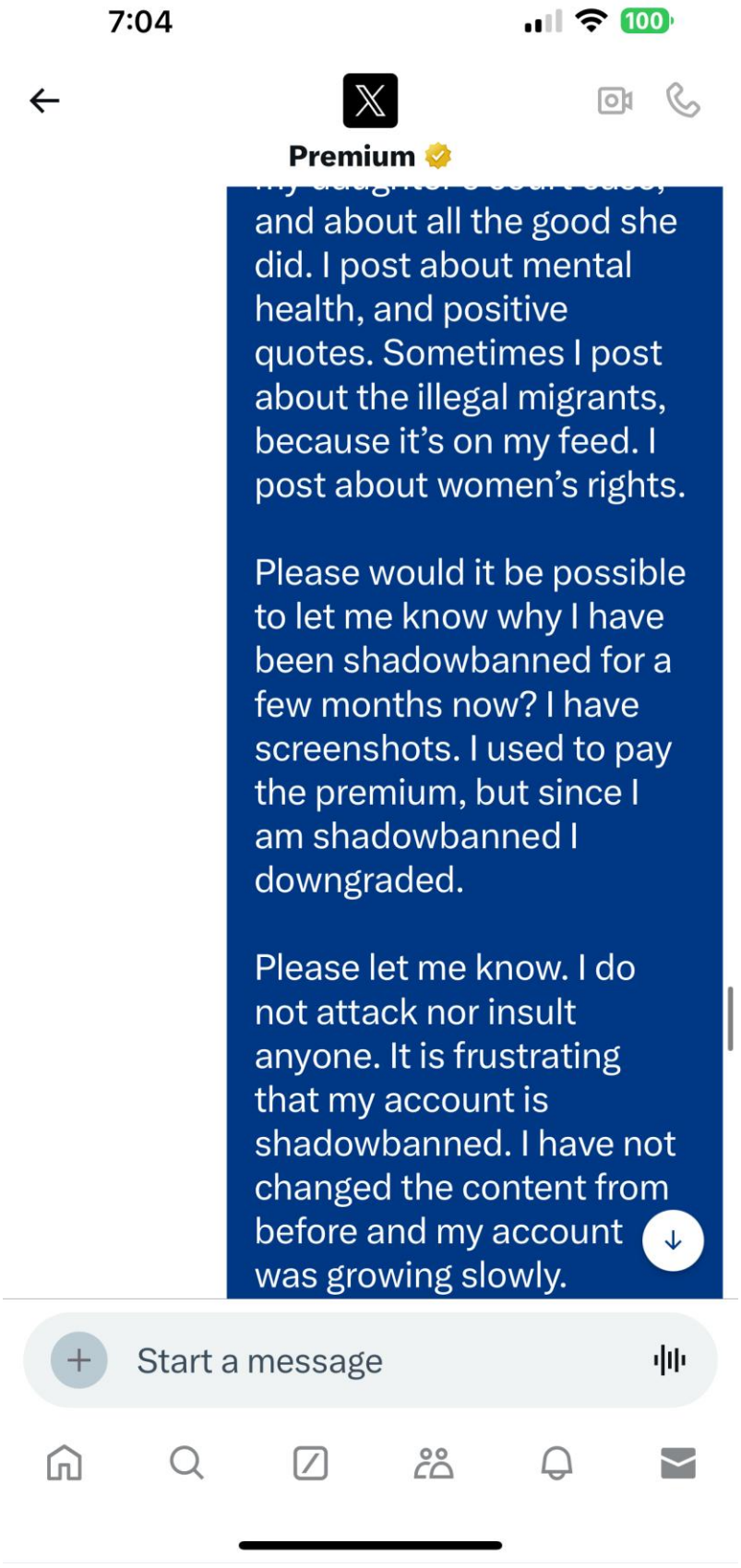
15723712-5

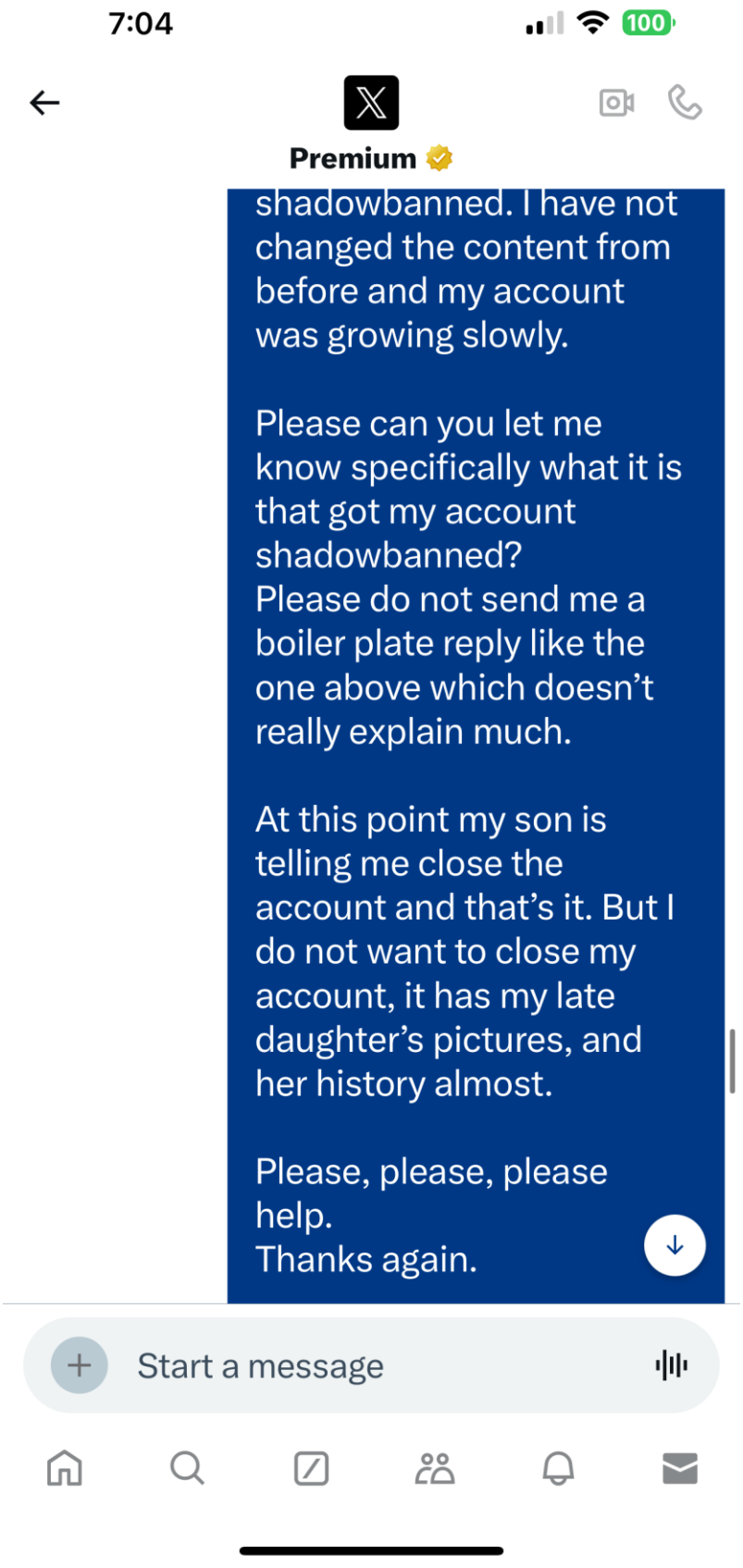
# EXHIBIT A

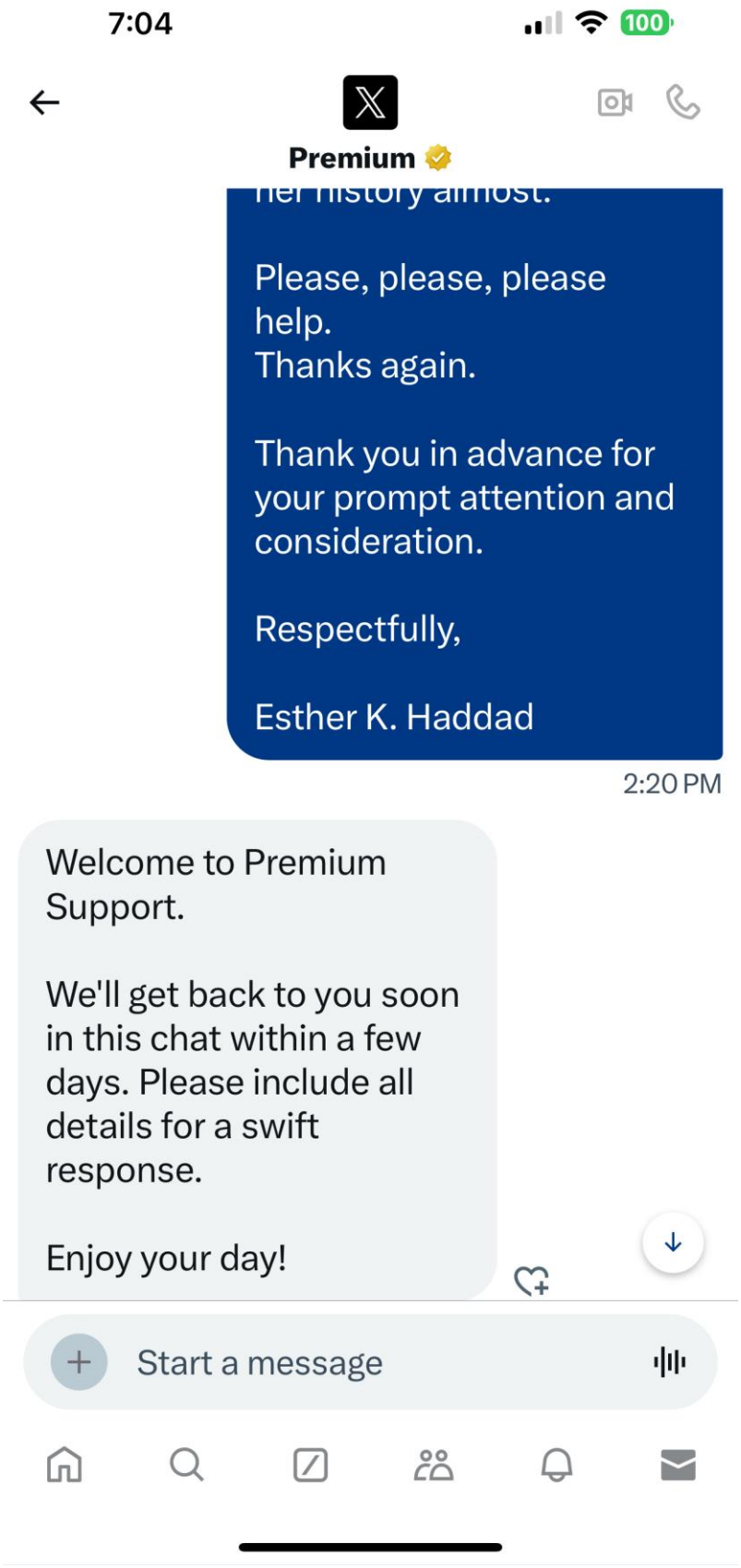

7:03
100
Premium
3:51 PM
Hi
Thanks for being an X Premium subscriber! Upon investigating, I see that your blue checkmark is now visible. Please note that any name or profile changes will trigger removal of your checkmark until you pass the review, which typically takes 4 days.
X Support Team
3:52 PM
Why the shadowban says my account does not exist?
3:53 PM
Wednesday, May 8
Start a message


7:03
100
Premium
Hi,
Sometimes, we will take action on an account or post(s) based on suspicious behaviors that indicate a potential violation of the X Rules. As a result, the visibility of these accounts may be affected. It's important to note that for most accounts, this is a TEMPORARY outcome, and if no further negative behavior occurs, the account will eventually be restored to full access and visibility. We believe in full transparency at X, and we're working on new features to inform users where we have limited the reach of their account or
Start a message

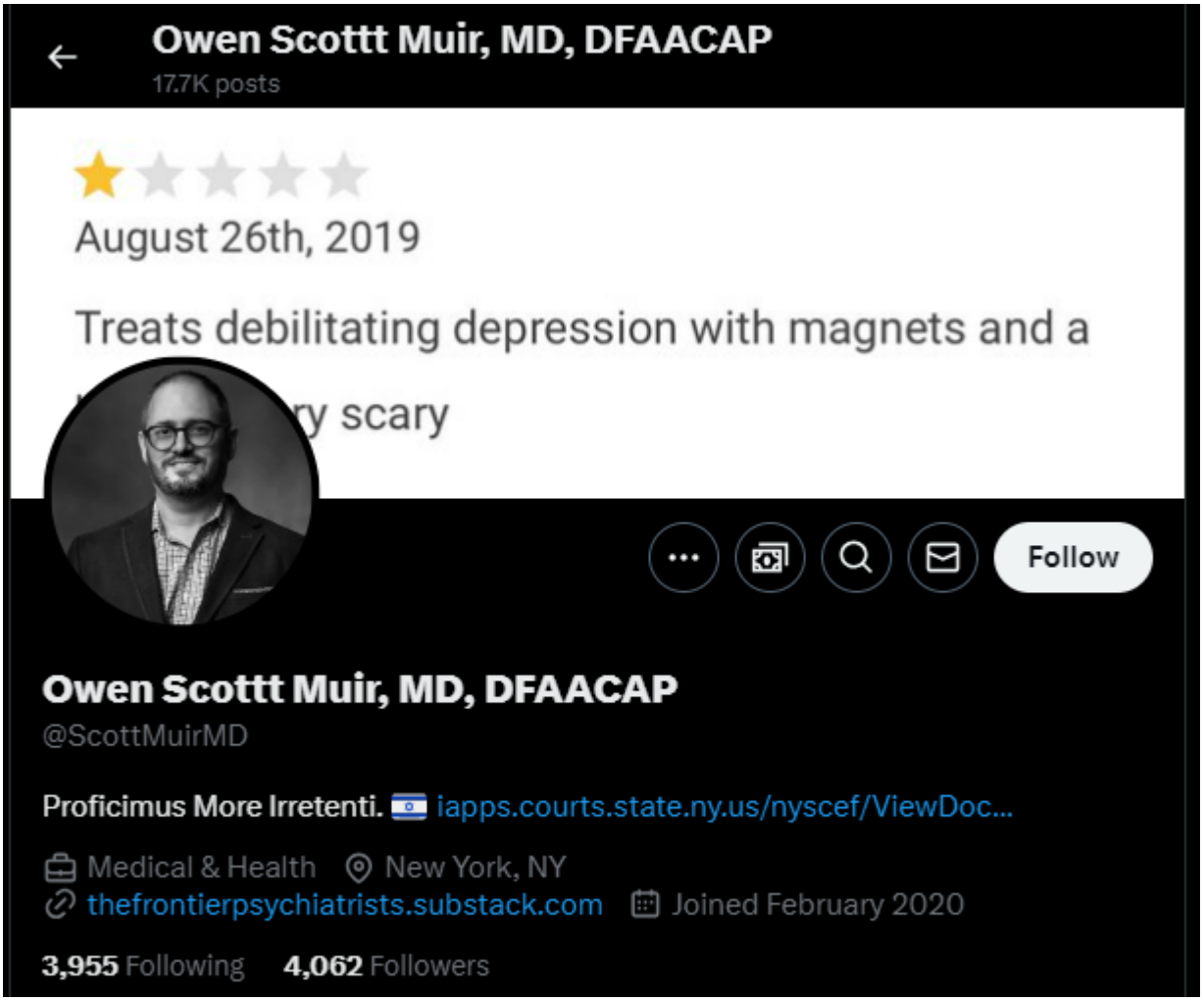

7:04
100
Premium
features to inform users where we have limited the reach of their account or content.
X Support Team
9:33 PM
Today
Hi, I am a grieving mother. I am the voice of my late daughter. I have been verified, pay for the account and yet the account is shadowbanned.
I interact mostly with the bereaved parents community, I post about my daughter's court case, and about all the good she did. I post about mental health, and positive
Start a message


7:04
100
Premium
and about all the good she did. I post about mental health, and positive quotes. Sometimes I post about the illegal migrants, because it's on my feed. I post about women's rights.
Please would it be possible to let me know why I have been shadowbanned for a few months now? I have screenshots. I used to pay the premium, but since I am shadowbanned I downgraded.
Please let me know. I do not attack nor insult anyone. It is frustrating that my account is shadowbanned. I have not changed the content from before and my account was growing slowly.
Start a message


7:04
100
Premium
shadowbanned. I have not changed the content from before and my account was growing slowly.
Please can you let me know specifically what it is that got my account shadowbanned?
Please do not send me a boiler plate reply like the one above which doesn't really explain much.
At this point my son is telling me close the account and that's it. But I do not want to close my account, it has my late daughter's pictures, and her history almost.
Please, please, please help.
Thanks again.
Start a message


7:04
100
Premium
her history almost.
Please, please, please help.
Thanks again.
Thank you in advance for your prompt attention and consideration.
Respectfully,
Esther K. Haddad
2:20 PM
Welcome to Premium Support.
We'll get back to you soon in this chat within a few days. Please include all details for a swift response.
Enjoy your day!
Start a message

# EXHIBIT B


Owen Scottt Muir, MD, DFAACAP
17.7K posts
August 26th, 2019
Treats debilitating depression with magnets and a
ry scary
Follow
Owen Scottt Muir, MD, DFAACAP
@ScottMuirMD
Proficimus More Irretenti.
iapps.courts.state.ny.us/nyscef/ViewDoc...
Medical & Health
New York, NY
thefrontierpsychiatrists.substack.com
Joined February 2020
3,955 Following
4,062 Followers

# EXHIBIT C


Owen Scottt Muir, MD, DFAACAP · 10/6/24
podcasts.apple.com/us/podcast/the...
And this podcast refers to the legal Matter pinned on my twitter profile...it's quite the read.
The Frontier Psychiatrists Podcast
The Culture of Burnout
From podcasts.apple.com
1
101

# EXHIBIT D

# The Defamation Lawsuit, For Reference.

Yes, there is one

OWEN SCOTT MUIR, M.D
AUG 12, 2023 • PAID

But you either have to search for it or, or you can read it here.

I know, I know. The story has been hinted at here. But here is the filed complaint.

**FILED: KINGS COUNTY CLERK 04/11/2023 05:12 PM**

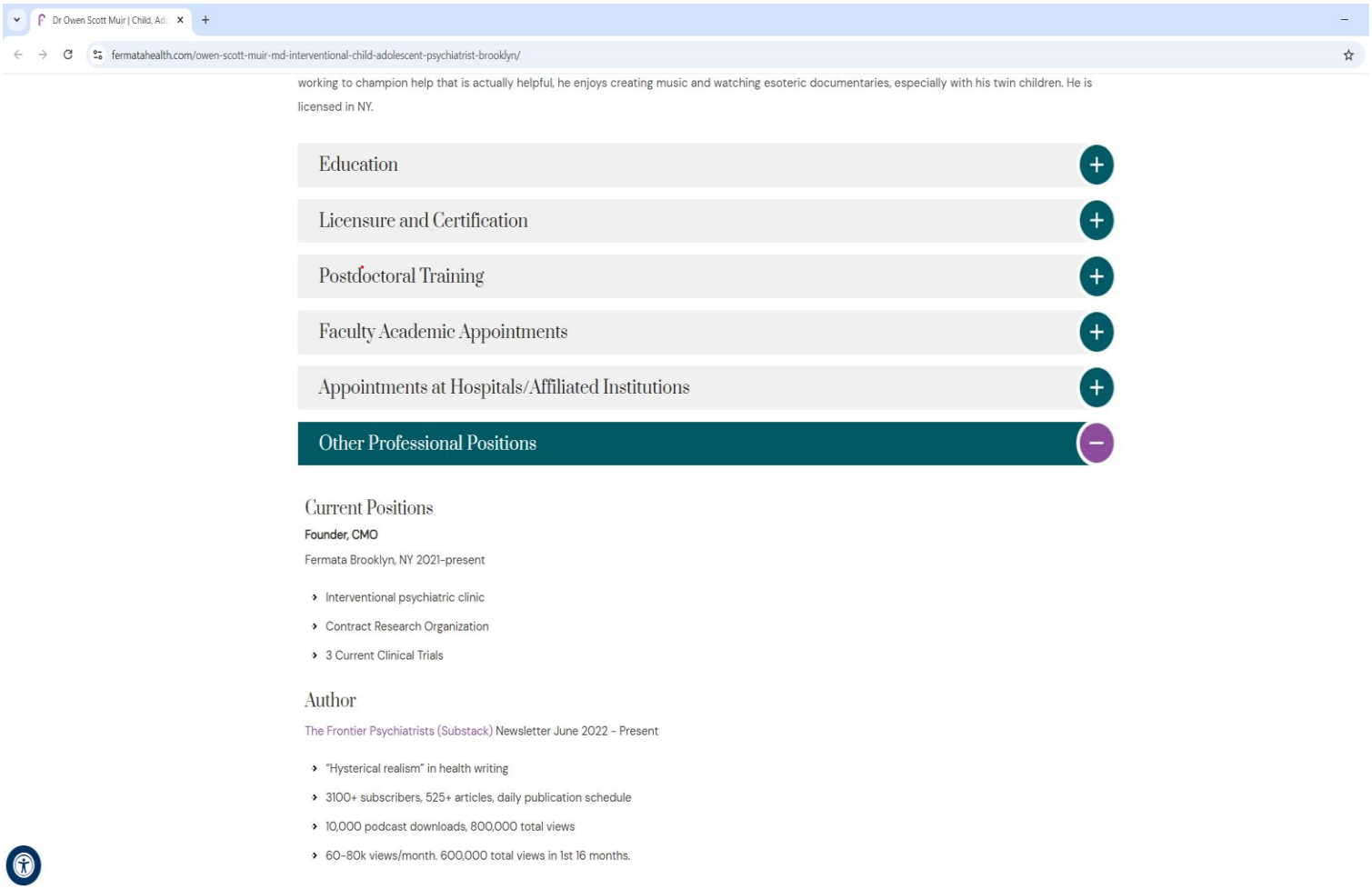
NYSCEF DOC. NO. 1

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS

**NYC PSYCHIATRIST SERVICES, P.C.
CARLENE MACMILLAN, and
OWEN MUIR,**


Post
Psychfox @psychfoxsays · 10/3/24
What's one purchase you've never regretted?
2
1
238
Owen Scottt Muir, MD, DFAACAP
Follow
@ScottMuirMD
iapps.courts.state.ny.us/nyscef/ViewDoc...
That legal filing.
4:48 PM · 10/3/24 · 16 Views
1

# EXHIBIT E


Dr Owen Scott Muir | Child, Ad
fermatahealth.com/owen-scott-muir-md-interventional-child-adolescent-psychiatrist-brooklyn/
working to champion help that is actually helpful, he enjoys creating music and watching esoteric documentaries, especially with his twin children. He is licensed in NY.
Education
Licensure and Certification
Postdoctoral Training
Faculty Academic Appointments
Appointments at Hospitals/Affiliated Institutions
Other Professional Positions
Current Positions
Founder, CMO
Fermata Brooklyn, NY 2021–present
Interventional psychiatric clinic
Contract Research Organization
3 Current Clinical Trials
Author
The Frontier Psychiatrists (Substack) Newsletter June 2022 - Present
"Hysterical realism" in health writing
3100+ subscribers, 525+ articles, daily publication schedule
10,000 podcast downloads, 800,000 total views
60-80k views/month. 600,000 total views in 1st 16 months.

# EXHIBIT F

Health & Fitness

# Crippling Depression Treated With Magnets By Pioneering Brooklyn Doctor

Dr. Owen Muir tells cynical patients deep TMS "worked for me."

**Kathleen Culliton**, Patch Staff

Posted Fri, Aug 11, 2017 at 1:51 pm ETUpdated Tue, Aug 29, 2017 at 10:29 pm ET

WILLIAMSBURG, BROOKLYN — Dr. Owen Muir doesn't expect his patients to believe a helmet lined with magnets can cure their life-crippling depression. The people who see him are desperate who've tried every other known means of curing their seemingly relentless sadness.



So when Muir tells them a magnetic hat could be the answer, they scoff.

This is when Muir tells his patients the fact that convinces them – every time.



"It worked for me," he says.

Muir is the medical director of Brooklyn Minds, a Williamsburg psychiatric center on North First Street that offers a non-invasive treatment for severe depression called deep transcranial magnetic stimulation – or deep TMS.

Muir first became fascinated by deep TMS during his fourth year of residency with the North Shore LIJ Health System in 2015. He was about to graduate, marry and begin the prestigious fellowship in child psychiatry at the NYU Langone Medical Center that had been a lifelong dream.

And he was incredibly depressed.



“Everything was great in my life,” said Muir, who lives with Bipolar Disorder. “My brain didn’t know it.

His disorder had forced Muir to check himself into a psychiatric ward once before, but he didn’t want to return. It wasn’t just that hospitalization would mean missing graduation and put his future at stake. Muir dreaded being a patient.

“If you’re a psychiatrist and you go to a psych hospital, they still treat you like sh--,” he said. “There were not a lot of charitable assumptions being shared.”

So Muir went to his psychiatrist and asked if there was another treatment he could try that would get him back on track.

Deep TMS was new then, and it's still relatively new now. The FDA only approved its use for depression in 2013 and scientists only began studying the effect of TMS treatments on humans in the 1990s.

It is the next step in a progression of medical treatments that fight mental disorders right at the source, the neurons or, as Muir likes to think of them, "the wires of the brain."



But unlike alternative treatments such as medications, deep brain stimulation or electroconvulsive therapy, deep TMS doesn't come with a long list of side effects – and it doesn't involve a doctor opening up your skull.

The technology — patented by the U.S. and developed by a company called Brainsway — works by creating a magnetic field in the area of the brain where the mental disorder lives and fixing the rhythm of the local neurons that have gone slightly wrong.

Depression is caused by hypoactive — or slow — neurons in the left dorsolateral prefrontal cortex. When Muir puts the deep TMS helmet on one of his patients, tips it forward and turns it on, it creates an electrical field that changes when those neurons fire up.

Patients undergo daily treatments over the course of several weeks, until the pattern corrects itself. Soon, the neurons are lighting up on a normal pattern without the help of the helmet — and that's when people start to feel better.

"It's magic," said Casey Wilen, a medical technician at Brooklyn Minds. "It's science, but it's magic."



Wilen works with Muir to help calibrate the machine to make sure it hits its target in the patient's brain, then she and Muir prepare the faulty neurons for treatment.

That's because deep TMS only works when patients are mentally engaging with their problems, and lighting those neurons up themselves.

Muir has set up three posters in direct view of the machine that he uses to help his patients with Obsessive Compulsive Disorder. He turns on the machine, then tips one of the pictures to the side, screwing up the symmetry, and driving those errant neurons wild. Muir's patients with PTSD talk through their "trauma narratives" and alcoholics sniff and swish their drink of choice.

People with depression don't need to feel sad for the treatment to work — they actually need to feel a little cheerful.

So Wilen has become an expert at elevated small talk — she'll discuss favorite television shows and hobbies — and if that doesn't work, Muir has a picture book of sleeping cats that are "too cute to handle."



More often than not, Wilen sees the change before her patient does. "People don't realize they're getting better." she said. "They're used to that identity."

But Wilen has also seen people make rapid changes. One patient, whom she noted was not "a believer," walked in one day and told her, sounding stunned: "I feel better."

"Sometimes the change is very rapid once you find the dosage," said Wilen. "The lightbulb goes off."

That's how it happened for Muir. He still remembers his first deep TMS treatment on the Upper West Side, back in 2015. When he walked in, he was "like a zombie, a robot whose batteries have run out," he said.

When he walked out, he was shocked to find himself hungry.

"I still remember the restaurant, it was Hummus Place," said Muir. "I had this big meal; hummus, falafel, baba ganoush. It was delicious.

"I hadn't felt hungry in months."

Muir went on to marry his wife, complete his fellowship and, in April, 2017 he began offering the treatment that made his new life possible to patients in Brooklyn.

Muir estimates that he's treated about 30 patients since he began offering deep TMS, and of those patients, only one didn't see results because he stopped coming into treatment, according to Muir.

The others have had positive responses. Muir recommended deep TMS to a patient who suffered a depressive episode. She underwent three weeks of treatment and told him that she'd had a complete change of attitude.



"I didn't know it was possible to feel this good," she said. "And by the way, I'm dating a supermodel."

Muir laughed. "Well, I can't promise those results for everybody."

Another patient came from the West Coast to receive treatment because she was considering suicide on a daily basis.

"Her friend told her, 'You're thinking about killing yourself every day, hanging yourself in your barn. Stop f---ing around."

That same patient now sends Muir pictures of herself happily baling hay, he said.

At a recent event called Experiment Salon at Brooklyn's Union Hall, at which audience members watch scientific presentations and guess if they are real or made up, only 42 percent of the audience believed Muir might be telling the truth after he said, "I can fix your brain with magnets."

Preliminary studies have not disproved this assertion, but as deep TMS researchers published in the Journal of World Psychiatry noted in 2015, the studies have been limited to depression that does not respond to other treatment and more research is needed to suss out its potential to treat other conditions.

Which is why the FDA has only approved deep TMS treatment for depression in the United States while in Europe and Israel, the magnetic therapy is being tested as a treatment for cocaine addiction, autism, Parkinson's disease and multiple sclerosis-related fatigue, among others, according to Muir.

The hope is that deep TMS — which can go, well, deeper than its predecessor, TMS — will be able to target those wider array of disorders that exist deeper in the brain.

Reporter Kathleen Culliton tries out the magnetic helmet.

In a test run by Patch, our reporter sat in a comfortable, black leather armchair as Wilen fitted he with a blue skull cap then lowered a helmet that resembled a salon hair dryer onto her skull.



"I'll pinch your shoulder when I'm about to start," she said.

As Wilen calibrated a low dosage — 30 percent on the frontal lobe — Muir said to expect a tap on the forehead, a woodpecker sound, and a possible headache later in the day.

That's exactly what happened — a woodpecker seemed to knock on the reporter's forehead three times and she felt mildy aware of her brain a couple hours later.

The downside to deep TMS treatment, according to Muir, is that it can hurt. There is a one-in-30,000 chance it could cause a seizure and, at $450 a treatment, it's prohibitively expensive.

Most health insurance companies will cover the treatment, but only for patients who have tried four trials of medication, two trials of psychotherapy and don't not have other issues. It is not covered by Medicaid.



But Muir is hoping that his work will contribute to a growing amount of research that has shown deep TMS to be both safe and effective, and make it more widely accessible.

Muir still remembers the day he came back from completing his own deep TMS treatment and demanded that his advisor help him research the burgeoning solution to what can be a fatal disease — hopelessness. His mission hasn't changed since that day, Muir said.

"I have to know more."

*Photos by Kathleen Culliton*

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