

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
DOCKET NO. 2484CV02931

DANY ABOUELKHIER

V.

VIRTUAL FULFILLMENT CENTER, LLC, et al.

**DECISION AND ORDER ON COUNTERCLAIM DEFENDANT'S MOTIONS TO
DISMISS AND MOTION TO DISQUALIFY**

Presented for decision are two motions brough by Counterclaim Defendant Dany Abouelkhier. Counterclaim Defendant has asked this Court to (1) dismiss the counterclaims against him and (2) disqualify opposing counsel. The Court addresses each motion in turn. For the reasons that follow, the Court **DENIES** both motions.

To survive a motion to dismiss under Mass. R. Civ. P. 12(b)(6), a complaint must allege facts "plausibly suggesting . . . entitlement to relief[.]" Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008), quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 557 (2007). Detailed factual allegations are not required, but the plaintiff must present more than mere "labels and conclusions," such that the alleged facts "raise a right to relief above the speculative level." Iannacchino, 451 Mass. at 636, quoting Twombly, 550 U.S. at 555. In determining whether a complaint meets this standard, the Court accepts the factual allegations in the complaint as true, and all draws reasonable inferences in favor of the non-moving plaintiff. Harrington v. Costello, 467 Mass. 720, 724 (2014).

In considering the municipal defendants' motion to dismiss, the Court is generally limited to the four corners of the complaint. There are exceptions to this general rule. The Court may

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consider “matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint” without converting the motion to one for summary judgment.

Reliance Ins. Co. v. Boston, 71 Mass. App. Ct. 550, 555 (2008), quoting Schaer v. Brandeis Univ., 432 Mass. 474, 477 (2000). The Court may also consider documents not attached to the Complaint, but upon which the Plaintiff relied in framing the claims therein. Goldin v. Liberty Mut. Ins. Co., 460 Mass. 222, 224 (2011).

Counterclaim Defendant raises a host of arguments as to why the claims against him must be dismissed. Invariably, though, these arguments require factual determinations to be made. The Court cannot and must not wade into areas of factual dispute at this stage of the proceedings, including on issues that pertain to: the parties’ authority to sue, the parties’ standing, estoppel, and failure to state a claim. The Court is bound to accept the allegations in the counterclaim as true for purposes of the motion to dismiss. Harrington v. Costello, 467 Mass. 720, 724 (2014). The arguments advanced by Mr. Abouelkhier do not, therefore, provide a proper basis upon which to order dismissal.

One of the arguments, however, merits more thorough exploration: Mr. Abouelkhier’s special motion to dismiss under the state’s Anti-SLAPP statute, G.L. c. 231, § 59H. On October 20, 2025, Counterclaim Defendant served pursuant to Superior Court Rule 9A a special motion to dismiss; this motion package was filed with the Court on November 25, 2025. This special motion asks the Court to dismiss the counterclaims that were initially filed on February 11, 2025 and then re-filed on September 29, 2025 (after the Court previously allowed Counterclaim Defendant’s motion to strike all counterclaims and then after the Counterclaim Defendant filed an amended complaint).

First, the special motion to dismiss is untimely. Under G.L. c. 231, § 59H, the anti-SLAPP statute, a special motion to dismiss is considered timely if filed within sixty days of service of the complaint. Although the court has discretion to consider a special motion “at any later time upon terms it deems proper,” it is not required to do so. G.L. c. 231, § 59H. The purpose of Section 59H is to permit anti-SLAPP suits to “be resolved quickly with minimum cost” by establishing “a procedural remedy for early dismissal.” Duracraft Corp. v. Holmes Prods. Corp., 427 Mass. 156, 161 (1998); Donovan v. Gardner, 50 Mass. App. Ct. 595, 601–02 (2000). Here, Counterclaim Defendant has made multiple filings in this case, including to defeat the counterclaims that have been asserted against him through a motion to strike. The Court is not inclined to allow him to proceed in such a piecemeal way, moving serially to dismiss this case over an extended period using different vehicles. Unquestionably, the special motion was presented after the 60-day timeframe contemplated by the statute had passed – not to mention long after this entire litigation first kicked off. The Court, accordingly, will not entertain this tardy motion and will deny the motion on this basis, especially where no explanation for filing the special motion outside the normal window for doing so has been forthcoming.

Even considering the special motion on the merits, however, the Court concludes that the special motion nonetheless fails substantively. A proponent of a special motion to dismiss under Section 59H must first “make a threshold showing through the pleadings and affidavits that the claims against it are ‘based on’ the [party’s] petitioning activities alone and have no substantial basis other than or in addition to the petitioning activities.” Bristol Asphalt, Co. v. Rochester Bituminous Prods., Inc., 493 Mass. 539, 555–56 (2024). Thus, to survive this initial stage, “the proponent must show that the challenged count has no substantial basis in conduct other than or in addition to the special motion proponent’s alleged petitioning activity. If the proponent cannot

make the requisite threshold showing, the special motion to dismiss is denied.” Although the Court liberally construes the pleadings here because the Counterclaim Defendant is representing himself, he has not met his burden to show that the counterclaims have no substantial basis in conduct other than or in addition to the special motion proponent’s alleged petitioning activity. There is nothing in the record that would compel a contrary result and command that the strong medicine created by Section 59H be dispensed here – even if this motion were filed in a timely fashion.

Accordingly, the Court will **DENY** the motion to dismiss in all respects.

Turning next to the motion to disqualify, Mr. Abouelkhier asserts that disqualification of the counterclaiming Defendants’ counsel is necessary to avoid a conflict of interest. A party generally enjoys the right to the counsel of his or her choice, see Mailer v. Mailer, 390 Mass. 371, 373 (1983), and “courts ‘should not lightly interrupt the relationship between a lawyer and [a] client.’” Slade v. Ormsby, 69 Mass. App. Ct. 542, 545 (2007), quoting from G.D. Mathews & Sons Corp. v. MSN Corp., 54 Mass. App. Ct. 18, 20 (2002). The burden thus rests on the party seeking disqualification to establish the need to interfere with the relationship. Steinert v. Steinert, 73 Mass. App. Ct. 287, 288 (2008).

Mr. Abouelkhier argues that opposing counsel must be disqualified for a conflict of interest. He makes amorphous accusations that counsel has violated the professional rules governing conflicts of interest. Particularly as disqualification is a disfavored remedy, the Court does not see any basis in the record that would require that it upset the selection of counsel in this case – at least at this time. Of course, should the contours of this case change, counsel or the Court may need to reconsider whether withdrawal or disqualification is appropriate. But at this

time, the Court perceives no basis mandating removal of counsel, and accordingly, the Court will deny this request to disqualify.

SO ORDERED.

Dated: February 3, 2026

/s/ Adam Hornstine
Adam Hornstine, Justice
Superior Court