

**COMMONWEALTH OF MASSACHUSETTS
HOUSING COURT DEPARTMENT
METRO SOUTH DIVISION**

NORFOLK, SS.

DOCKET No. 24H82SP03575

LENOX FARMS LIMITED PARTNERSHIP,

Plaintiff,

v.

MOHAMED KASSEM, DANNY ABOUELKHIER,

Defendants.

**DEFENDANT DANNY ABOUELKHIER'S NOTICE OF PENDING JURISDICTIONAL
CHALLENGE, OBJECTION TO CROSS-DOCKET USE OF FINDINGS, AND
PRESERVATION OF ALL RIGHTS**

Defendant Danny Abouelkhier hereby provides notice to the Court and all parties as follows:

1. Pending Jurisdictional Challenge

Defendant has filed a post-findings motion pursuant to Mass. R. Civ. P. 12(h)(3) and 60(b)(4) challenging the Court's subject matter jurisdiction and seeking vacatur of the April 15, 2026 Findings and Order as void *ab initio*.

Subject matter jurisdiction must exist at the commencement of an action and cannot be conferred by consent, waiver, or participation. It may be raised at any time and remains under active challenge in this matter.

2. Non-Finality, Severance, and Mootness

The Court has expressly determined that the summary process claim for possession is moot. Concurrently, the Court severed the remaining claims—including Use and

Occupancy, defenses, counterclaims, and crossclaims—and directed that such matters proceed in a separate civil action.

No final judgment has entered in this action, nor has the Court directed the entry of a separate and final judgment pursuant to Mass. R. Civ. P. 54(b).

Accordingly, the April 15, 2026 Findings are interlocutory, do not constitute a final adjudication on the merits, and remain subject to revision. They cannot support any preclusive or quasi-preclusive effect under Massachusetts law.

3. Objection to Cross-Docket Use of Findings (Issue Preclusion / Collateral Estoppel)

The Court's April 15, 2026 Findings and Order expressly contemplate and authorize Plaintiff's pursuit of relief in a separate civil action (Metro South Civil Action No. 26H82CV00011) based on the same factual determinations.

Defendant expressly objects to any cross-docket use or reliance upon those Findings.

Because the Findings are non-final, arise from a mooted summary process claim, and were produced under procedurally contested conditions, they fail to satisfy the requirements for issue preclusion (collateral estoppel), including:

- a final judgment on the merits;
- a full and fair opportunity to litigate; and
- a determination essential to a valid and operative judgment.

Any reliance on such Findings in a separate proceeding raises serious due process concerns and risks improper preclusive use of non-final determinations outside the statutory framework of G.L. c. 239.

4. Procedural Posture and the Unreliability of “Undisputed” Findings

The April 15 Findings rely on what the Court characterized as “undisputed testimony.”

Defendant expressly disputes that characterization.

The record reflects that:

- Defendant’s constitutional right to a jury trial was struck prior to the hearing;
- discovery remained incomplete;
- dispositive issues were addressed without the protections of a full evidentiary

record.

Accordingly, any characterization of testimony as “undisputed” reflects procedural constraints imposed by the posture of the case, not the absence of factual dispute.

5. Jurisdictional Predicate and Notice Issues

Defendant further preserves all objections concerning the statutory predicate for this action.

The record reflects service of a “No Trespass Order,” rather than a legally sufficient Notice to Quit required to commence a summary process action under G.L. c. 239. The timing and adequacy of any purported termination notice remain unresolved and are expressly contested.

These issues present a continuing jurisdictional defect that, if established, renders all subsequent findings void.

6. Active Appellate Scrutiny

The procedural foundation of the April 15 Findings—including the Court’s February 17, 2026 Order imposing use and occupancy and striking Defendant’s jury demand—is

currently the subject of appellate proceedings in the Massachusetts Appeals Court (Docket No. 2026-P-0401).

Accordingly, the legal framework underlying the April 15 Findings remains under active appellate review.

7. Preservation of Appellate and Constitutional Rights

Defendant expressly preserves all rights, including:

- the right to challenge subject matter jurisdiction *de novo* on appeal;
- the right to seek interlocutory relief pursuant to G.L. c. 231, § 118;
- the right to challenge any use of these Findings in separate or parallel

proceedings; and

- all constitutional and due process objections.

8. Purpose of Notice

This Notice is filed to:

- ensure an accurate procedural record;
- prevent improper reliance on non-final and jurisdictionally challenged Findings;
- clarify that such Findings are actively contested and subject to appellate review;

and

- preserve Defendant's rights pending adjudication of the pending motion and

related proceedings.

CONCLUSION

The April 15, 2026 Findings are non-final, jurisdictionally challenged, and issued following a determination of mootness. They remain subject to revision and appellate review and cannot properly be used to determine rights in this or any other proceeding.

Respectfully submitted,

Danny Abouelkhier

Defendant, Pro Se

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Dated: April 20, 2026

/s/ Dany Abouelkhier

Dany Abouelkhier (Pro Se)

CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2026 a copy of the foregoing was served electronically on all counsel of record.

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Respectfully submitted,

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