

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT**

SUPERIOR COURT DEPARTMENT

PLYMOUTH, ss.

Civil Action No.: 2583CV00969

SANDRA FERNANDEZ,
Plaintiffs,

v.

**KECHES LAW GROUP, P.C., and
JOHNATHAN D. SWEET, Esq.,**
Defendant.

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT ON THE
PLEADINGS**

I. PRELIMINARY STATEMENT

Defendants' Motion for Judgment on the Pleadings is procedurally improper, as it rests entirely on disputed interpretations of fact and a narrative that contradicts the well-pleaded allegations of the Complaint. Specifically, Defendants ask this Court to look beyond the pleadings to resolve dispositive questions of consent, authorization, intent, and contract modification, all without the benefit of discovery.

Under Federal Rule of Civil Procedure 12(c), a court must accept all factual allegations in the Complaint as true and draw all reasonable inferences in favor of the non-moving party. Rule 12(c) does not permit a court to resolve factual disputes or credit a defendant's self-serving version of events over the Plaintiff's allegations.

Because the Complaint plausibly alleges the unauthorized use of Plaintiff's and a minor child's identities—conduct that allegedly persisted despite repeated written

objections—Plaintiff has stated claims for which relief can be granted. Since the existence of damages and the scope of authorization are inherently fact-intensive inquiries, judgment on the pleadings is unavailable as a matter of law. Accordingly, Defendants' motion should be denied.

II. LEGAL STANDARD

The standard for evaluating a motion for judgment on the pleadings under **Mass. R. Civ. P. 12(c)** is "the same as that for a motion to dismiss under **Mass. R. Civ. P. 12(b)(6)**." See *Mancuso v. Kinchla*, 60 Mass. App. Ct. 558, 560 (2004). To survive such a motion, the Complaint must "set forth 'factual allegations plausibly suggesting (not merely consistent with) an entitlement to relief.'" See *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008).

In deciding a Rule 12(c) motion:

- The Court must accept all well-pleaded factual allegations as true.
- The Court must draw all reasonable inferences in favor of the non-moving party.
- Judgment may be granted **only** where the pleadings demonstrate that "no material factual dispute exists" and the moving party is entitled to judgment as a matter of law. See *Jarosz v. Palmer*, 436 Mass. 526, 529-30 (2002).

Importantly, while the Court may take judicial notice of the existence of court records in related litigation, it "*may not take judicial notice of the truth of disputed factual assertions contained within those records.*" *Id.* at 530. Because Rule 12(c) is a "narrowly confined" remedy, it is inappropriate where the motion invites the Court to resolve factual disputes or credit a defendant's narrative over the allegations of the Complaint. *Id.*

III. DEFENDANTS' "NO HARM" DEFENSE IGNORES INDEPENDENT DIGNITARY INJURIES

Defendants' contention that Plaintiff has suffered no cognizable harm because certain landlord-related claims were "preserved" in a severed action is a misapprehension of Massachusetts tort and contract law. This argument fails as a matter of law for three reasons.

First, Plaintiff's claims include independent torts—including invasion of privacy and defamation—arising from the unauthorized disclosure of Plaintiff's identity and the sensitive personal information of a minor child. In these contexts, the legal injury is "complete" at the moment of the unauthorized disclosure. See, e.g., **G.L. c. 214, § 1B**. Privacy violations and reputational injuries constitute independent, legally cognizable harms that exist regardless of the procedural posture or outcome of separate litigation.

Second, Defendants' focus on the lack of quantified economic loss is premature at the pleading stage. Under Massachusetts law, a plaintiff may recover at least nominal damages for the violation of a legal right, including breach of contract and related tortious conduct, even if specific compensatory damages have not yet been proven. See *Flynn v. Wallace*, 359 Mass. 711, 720 (1971) (noting that a breach of contract "entitles the party to at least nominal damages").

Third, the question of whether Plaintiff has suffered specific damages—and the extent thereof—is a quintessentially factual inquiry. By arguing that Plaintiff has not been "harmed," Defendants are asking this Court to resolve a disputed issue of fact without the benefit of discovery. Because the Complaint plausibly alleges that Defendants' conduct resulted in a violation of Plaintiff's legal rights and those of a minor child, dismissal under **Rule 12(c)** is improper.

IV. THE “SUPERSEDED AGREEMENT” THEORY PRESENTS A DISPUTED FACTUAL QUESTION

Defendants’ contention that the **Individual Fee Agreement** was "superseded" by a subsequent class action arrangement via an April 26, 2023 letter is a factual assertion that cannot be resolved on a **Rule 12(c)** motion. This argument fails for two reasons.

First, under Massachusetts law, the modification of an existing contract requires "mutual assent" and a "meeting of the minds." See *I & R Mechanical, Inc. v. Hazelton Manufacturing Co.*, 62 Mass. App. Ct. 452, 455 (2004). A unilateral letter cannot modify a bilateral written contract absent clear, mutual consent. Plaintiff explicitly alleges that she entered into an Individual Fee Agreement and **never executed** any subsequent agreement to terminate or replace that contract. Whether the April 26 letter constitutes a valid modification—or whether Plaintiff ever manifested an intent to be bound by its terms—is a disputed issue of fact that requires discovery.

Second, Defendants’ reliance on their own interpretation of the April 26 letter invites the Court to weigh evidence and credit their narrative over the well-pleaded allegations of the Complaint. As established in *Jarosz*, the Court must draw all reasonable inferences in favor of the Plaintiff. 436 Mass. at 529. At this stage, the Court must accept as true Plaintiff’s allegation that the original Individual Fee Agreement remained in effect. Because the validity and scope of the alleged "superseding" agreement are contested, judgment on the pleadings is improper.

V. THE LITIGATION PRIVILEGE DOES NOT BAR PLAINTIFF’S CLAIMS

Defendants argue that the litigation privilege provides an absolute shield against liability for statements made in pleadings. This doctrine, however, is inapplicable to the

specific misconduct alleged in the Complaint and cannot support dismissal under **Rule 12(c)**.

The litigation privilege is designed to promote zealous advocacy by protecting participants from "harassment by an **adversary**." See *Robert L. Sullivan, D.D.S., P.C. v. Birmingham*, 11 Mass. App. Ct. 359, 361 (1981). It does not, however, grant an attorney immunity from claims brought by their own client for breaches of fiduciary duty or unauthorized conduct.

First, the privilege does not extinguish the independent duties of loyalty and confidentiality that an attorney owes to their client and former clients. See **Mass. R. Prof. C. 1.6 & 1.9**. The Complaint alleges that Defendants disclosed sensitive personal information of Plaintiff and a minor child over express written objections. Where a claim arises from a breach of the attorney-client relationship itself, the privilege intended to protect the legal process from external interference does not apply.

Second, the privilege only protects conduct that is "reasonably related" to judicial proceedings and "undertaken in the course of litigation" on a client's behalf. See *Sriberg v. Raymond*, 370 Mass. 105, 108 (1976). Here, the Complaint alleges that Defendants continued to use the identities of Plaintiff and her child after the attorney-client relationship had been terminated. Conduct occurring post-termination cannot, as a matter of law, be characterized as advocacy on behalf of the former client.

Third, the applicability of the litigation privilege is a fact-intensive inquiry. Determining whether the disclosures were "authorized" or "reasonably related" to a legitimate litigation objective requires discovery and the resolution of disputed facts. Massachusetts courts consistently hold that dismissal at the pleading stage is improper

where the "applicability and scope of the privilege depend upon disputed facts." See *Blanchard v. Steward Carney Hospital, Inc.*, 477 Mass. 141, 158 (2017).

Because the Complaint plausibly alleges unauthorized conduct that falls outside the protected scope of judicial advocacy, the litigation privilege provides no basis for judgment on the pleadings.

VI. DEFENDANTS' CHARACTER ATTACKS ARE LEGALLY IRRELEVANT

Defendants repeatedly characterize Plaintiff as "vexatious" and describe her litigation conduct as a "campaign of harassment." Such rhetoric provides no basis for dismissal under Rule 12(c).

At the pleading stage, the Court's inquiry is limited to whether the Complaint plausibly alleges facts that, if proven, would entitle Plaintiff to relief. A party's alleged litigiousness in unrelated proceedings does not determine whether the Complaint states a legally sufficient claim.

Individuals possess a constitutional right to petition the courts for redress of grievances. Characterizing a litigant's efforts to protect her rights as "vexatious" does not transform a complaint that otherwise states a plausible claim into one subject to dismissal.

Accordingly, Defendants' characterizations of Plaintiff are legally irrelevant and provide no basis for judgment on the pleadings.

VII. DEFENDANTS' MOTION IMPROPERLY RELIES ON MATTERS OUTSIDE THE PLEADINGS

Defendants' Motion relies extensively on factual assertions and external narratives that are not found within the four corners of the Complaint. Specifically, Defendants ask the Court to consider:

- The complex history and procedural posture of the unrelated Marina Bay litigation;
- The alleged (and disputed) modification of Plaintiff's Individual Fee Agreement; and
- Pleadings and factual assertions filed in separate, severed cases.

Under **Mass. R. Civ. P. 12(c)**, the Court's review is strictly confined to the pleadings themselves. When a moving party relies on matters outside the pleadings, the Court must either exclude those materials from consideration or convert the motion into one for summary judgment under **Mass. R. Civ. P. 56**. See Jarosz, 436 Mass. at 529.

Conversion to a summary judgment standard is inappropriate at this stage, as Plaintiff has not had the opportunity to conduct necessary discovery regarding these external factual claims. Defendants' reliance on a "version of events" that exists outside the Complaint provides an independent and sufficient basis for denying the Motion. Because the Complaint, standing alone, plausibly alleges unauthorized conduct and resulting harm, the Court should decline to consider Defendants' extraneous evidence and deny the Motion in its entirety.

VIII. DEFENDANTS' DISCOVERY POSITIONS CONFIRM THAT FACTUAL DISPUTES REMAIN

The Defendants' own conduct in this litigation underscores the fact-intensive nature of this dispute. While moving for judgment on the pleadings, Defendants have simultaneously served interrogatories and discovery requests upon Plaintiff. This inconsistent position further demonstrates that the resolution of this action depends upon unresolved factual issues that cannot be determined by the pleadings alone.

If the pleadings truly demonstrated that Defendants were entitled to judgment as a matter of law, as they claim, further discovery would be unnecessary. Instead, by

initiating discovery, Defendants concede that evidence outside the pleadings is required to resolve the claims at issue.

Furthermore, the allegations in this case arise from communications between Plaintiff and Defendants during and after the attorney-client relationship. Much of the evidence relating to those communications including internal firm records and correspondence is within the Defendants' exclusive possession and control. Where relevant evidence lies primarily within the defendants' control, dismissal at the pleading stage is particularly inappropriate, as Plaintiff is entitled to test Defendants' factual assertions through the discovery process.

Because the Complaint plausibly alleges unauthorized conduct that requires a factual inquiry into intent, consent, and the scope of representation, Defendants' motion should be denied to allow for the full development of the evidentiary record.

IX. RELIANCE ON PLEADINGS FROM OTHER LITIGATION IS MISPLACED

Defendants' memorandum repeatedly references pleadings filed in other litigation where Defendants appeared as counsel for different parties.

Such pleadings do not constitute adjudicated facts.

A pleading filed in another case represents only the allegations or advocacy of a party in that proceeding and cannot establish factual findings in this separate lawsuit.

Because those materials fall outside the pleadings in this case, they cannot properly be considered on a Rule 12(c) motion.

X. CONCLUSION

Defendants' motion ultimately depends upon resolving contested questions concerning consent, contract modification, authorization, intent, and damages.

Each of these issues presents factual disputes requiring discovery and evidentiary development.

Because the Complaint plausibly alleges misconduct and raises numerous factual questions, judgment on the pleadings would be improper.

For the foregoing reasons, Defendants' Motion for Judgment on the Pleadings should be **DENIED**.

At minimum, the applicability and scope of any claimed litigation privilege present fact-dependent issues that cannot be resolved on the pleadings and must instead be evaluated on a developed factual record.

In the alternative, Plaintiff respectfully requests leave to amend pursuant to **Mass. R. Civ. P. 15**.

Respectfully submitted,

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Date: March 12 , 2026

/s/ Sandra Fernandez
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CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2026 a copy of the foregoing was served electronically on all counsel of record.

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By: **/s/ Sandra Fernandez**
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