

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

NORFOLK, SS.

DOCKET No. 26H82CV00011

LENOX FARMS LIMITED PARTNERSHIP,

Plaintiff,

v.

DANY ABOUELKHIER,

Defendant.

**DEFENDANT'S COMBINED MOTION TO EXCLUDE AND DISREGARD SUMMARY
PROCESS FINDINGS; TO DISMISS FOR FAILURE TO STATE A CLAIM AND FOR
LACK OF TIMELY SERVICE; TO DENY OR STAY INJUNCTIVE RELIEF; AND FOR
THRESHOLD DETERMINATION OF JURISDICTION AND RELIANCE
(WITH INCORPORATED MEMORANDUM OF LAW AND REQUEST FOR HEARING)**

INTRODUCTION

Defendant Danny Abouelkhier appears specially, and without waiving any objection to personal jurisdiction, insufficiency of service of process, or any other jurisdictional defense, and respectfully submits this Combined Motion.

This Motion presents a threshold question that must be resolved before any consideration of injunctive relief or merits-based adjudication may occur: whether this Court possesses the authority to proceed at all, and, if so, whether it may rely upon findings issued in a separate summary process action that has been declared moot, remains non-final, and is subject to ongoing jurisdictional challenge and appellate review.

Plaintiff seeks to rely—expressly or implicitly—upon findings issued on April 15, 2026 in Summary Process Action No. 24H82SP03575. In that action, the Court determined that no tenancy exists between the parties and that the summary process claim is moot. No final judgment has entered. Those findings were issued within a procedural framework shaped by prior rulings that are currently subject to challenge under Mass. R. Civ. P. 60(b) and are under active appellate review. As such, they are interlocutory, non-final, and remain subject to revision.

At the same time, this civil action has proceeded without compliance with the fundamental requirements of personal jurisdiction. More than ninety days have elapsed since the filing of the complaint, and the record does not reflect service of the summons and complaint in accordance with Mass. R. Civ. P. 4, nor any extension of time under Rule 4(j). Absent proper service, this Court has not acquired personal jurisdiction over Defendant and lacks authority to issue orders affecting his rights.

Despite these jurisdictional defects, Plaintiff seeks to obtain possession-related relief through the Court's equitable powers. That request is not merely premature—it is structurally improper. The recovery of possession of residential premises in Massachusetts is governed by the comprehensive statutory framework set forth in G.L. c. 239. Where the Legislature has established a specific mechanism for adjudicating possession, including defined notice requirements, defenses, and procedural safeguards, a party may not bypass that framework by recasting the same relief as an equitable injunction in a separate action.

Here, Plaintiff attempts to do precisely that: to obtain, through equity, what has not been obtained through the statutory process, and to do so by relying on non-final

findings from a proceeding that has been declared moot and is subject to challenge.

This approach would effectively transform interlocutory and non-operative findings into a substitute for adjudicated proof, while simultaneously avoiding both the statutory requirements governing possession and the jurisdictional requirements governing this action.

Massachusetts law does not permit such a result. A court must possess jurisdiction before it may act; must resolve jurisdictional defects before proceeding to equitable analysis; and may not rely upon non-final findings from a separate, mooted proceeding to determine rights in an independent action. Nor may equitable powers be used to circumvent a complete and exclusive statutory scheme.

Absent immediate intervention, there is a substantial risk that Plaintiff will obtain injunctive relief grounded in a procedurally defective and jurisdictionally unsupported record, thereby producing consequences that would impair meaningful appellate review and cannot be undone.

This Motion therefore seeks a threshold ruling that:

- (1) prohibits any reliance on the April 15, 2026 findings;
 - (2) requires determination of jurisdiction before any consideration of injunctive relief;
- and
- (3) prevents the improper use of equitable relief as a substitute for statutory process.

By resolving these issues at the outset, the Court ensures procedural integrity, adherence to statutory limits, and the creation of a clear and reviewable record.

RELIEF REQUESTED

For the foregoing reasons, Defendant Danny Abouelkhier respectfully requests that this Court enter an order granting the following relief:

Excluding and disregarding in their entirety the April 15, 2026 Findings and Order issued in Summary Process Action No. 24H82SP03575, and determining that such findings shall not be given any operative, binding, persuasive, or preclusive effect in this action;

Prohibiting any direct or indirect reliance by Plaintiff, or by this Court, upon those findings for purposes of establishing facts, satisfying evidentiary burdens, or supporting any request for preliminary or permanent injunctive relief;

Dismissing the Complaint pursuant to Mass. R. Civ. P. 4(j) for failure to effect service of the summons and complaint within ninety (90) days of filing, where no good cause has been shown and no extension has been granted;

Dismissing the Complaint pursuant to Mass. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted, where Plaintiff has not pleaded a cognizable legal theory authorizing recovery of possession or injunctive relief;

Determining, as a threshold matter, that personal jurisdiction has not been established, and that the Court therefore lacks authority to proceed to any merits-based adjudication or to grant injunctive relief affecting Defendant's rights;

Denying Plaintiff's request for preliminary and permanent injunctive relief in its entirety, where such relief is predicated upon non-final findings, a procedurally defective record, and an action in which jurisdiction has not been established;

In the alternative, staying all requests for injunctive relief and all further proceedings in this action pending proper and lawful service of process sufficient to establish personal jurisdiction, resolution of jurisdictional challenges and Rule 60(b) proceedings in Summary Process Action No. 24H82SP03575; and completion of any related appellate review;

Issuing an express and specific ruling identifying whether, and to what extent, this Court has relied or intends to rely upon the April 15, 2026 findings, including whether such findings are being treated as binding, persuasive, or otherwise operative, so as to ensure a clear and reviewable record for purposes of appellate review under G.L. c. 231, § 118;

Determining that no consolidation, conversion, or treatment of prior proceedings as a final adjudication on the merits under Mass. R. Civ. P. 65(a)(2) is permitted, where Defendant has not consented and where jurisdictional and procedural prerequisites have not been satisfied;

Scheduling this Motion for a hearing, given the risk of irreparable harm and the imminent nature of Plaintiff's request for injunctive relief affecting possession;

Granting such other and further relief as justice may require.

MEMORANDUM OF LAW

I. THE APRIL 15, 2026 FINDINGS ARE INTERLOCUTORY, NON-FINAL, AND CANNOT SUPPORT PRECLUSION OR ANY FORM OF RELIANCE

Under Massachusetts law, the doctrine of issue preclusion (collateral estoppel) applies only where there has been a final judgment on the merits, identity of issues, and

where the issue was actually litigated and determined, essential to the judgment, and the party against whom preclusion is asserted had a full and fair opportunity to litigate.

See, *Kobrin v. Board of Registration in Medicine*, 444 Mass. 837, 843 (2005).

Absent these elements, prior findings cannot be given binding or preclusive effect in a subsequent proceeding.

The April 15, 2026 Findings and Order issued in Summary Process Action No. 24H82SP03575 do not satisfy these requirements as a matter of law.

First, those findings were issued after the Court expressly determined that the summary process claim was moot. Once a claim is declared moot, no live controversy remains, and the Court's authority is limited to dismissal. Findings issued in such a posture do not resolve an adjudicable dispute and cannot constitute a judgment on the merits.

Second, no final judgment has entered in the summary process action. The April 15 findings were not reduced to a final, appealable judgment, nor were they accompanied by an entry of judgment disposing of the action.

Third, the findings were not certified under Mass. R. Civ. P. 54(b). In the absence of such certification, any determinations made in a multi-claim or procedurally evolving case remain interlocutory and subject to revision at any time prior to entry of final judgment. See Mass. R. Civ. P. 54(b).

Fourth, the findings are currently subject to challenge and review, including proceedings under Mass. R. Civ. P. 60(b) and ongoing appellate review of the procedural framework that produced them. As such, they lack the finality required for any form of preclusive or operative effect.

Taken together, these circumstances establish that the April 15 findings are interlocutory, non-final, and legally non-operative. They do not—and cannot—satisfy the threshold requirements for issue preclusion.

Nor may they be used indirectly. Massachusetts law does not permit a court to give “persuasive” or “practical” effect to findings that fail the legal standard for preclusion where doing so would effectively substitute those findings for proof. To allow reliance in any form—whether labeled binding, persuasive, or contextual—would improperly elevate non-final determinations into functional adjudications.

That is precisely the risk presented here. Plaintiff seeks to rely upon these findings to establish facts and support injunctive relief affecting possession. Permitting such reliance would confer operative effect on findings that are, as a matter of law, non-final and subject to revision, thereby circumventing the requirements of finality, due process, and proper adjudication.

Accordingly, this Court must exclude and disregard the April 15, 2026 findings in their entirety and must prohibit any direct or indirect reliance upon them in this action.

II. THE FINDINGS ARISE FROM A JURISDICTIONALLY CONTESTED PROCEEDING AND CANNOT BE GIVEN OPERATIVE EFFECT

The April 15, 2026 findings were issued in a proceeding in which the Court’s subject matter jurisdiction has been—and remains—actively contested. That posture is dispositive.

Under Mass. R. Civ. P. 12(h)(3), “[w]henever it appears by suggestion of a party or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” This requirement is mandatory. Subject matter jurisdiction is not

discretionary, cannot be waived, and may be raised at any stage of the proceedings, including after findings have issued and even for the first time on appeal. See *Konstantopoulos v. Whately*, 384 Mass. 123, 129 (1981).

Where subject matter jurisdiction is lacking, any resulting orders or findings are **void ab initio**—that is, without legal force from the outset—and cannot be given operative, binding, or preclusive effect. A court’s authority to act depends entirely upon the existence of jurisdiction; absent that authority, its rulings are legal nullities.

Here, the statutory predicate for the summary process action—namely, the existence of a valid Notice to Quit sufficient to invoke jurisdiction under G.L. c. 239—has been expressly challenged and remains unresolved. That defect goes not to the merits, but to the Court’s power to adjudicate the action at all.

Accordingly, the April 15 findings were not issued from a settled exercise of jurisdiction, but from a proceeding in which the Court’s authority to act is itself in question. That distinction is critical. Findings arising from a jurisdictionally contested proceeding cannot be exported into a separate action and used to determine rights, particularly where those findings are invoked to support dispositive equitable relief.

At a minimum, even if jurisdiction has not yet been definitively resolved, the pendency of a jurisdictional challenge precludes any reliance on resulting findings in another proceeding. To hold otherwise would invert the proper order of analysis—allowing a court to give effect to findings before confirming that it had the authority to issue them.

That is precisely the risk presented here. Plaintiff seeks to rely upon the April 15 findings to establish facts and support injunctive relief in this action. Permitting such

reliance would effectively allow a jurisdictionally uncertain proceeding to generate binding consequences in a separate case, thereby circumventing the requirement that jurisdiction be established before judicial power is exercised.

Massachusetts law does not permit such a result. Jurisdiction must be determined first. Only then may findings—if validly issued—be considered for any purpose.

Accordingly, because the April 15, 2026 findings arise from a proceeding in which subject matter jurisdiction is actively contested and unresolved, they cannot be given operative effect and must be excluded from consideration in this action.

III. THE PROCEDURAL FRAMEWORK PRODUCING THE FINDINGS IS UNDER ACTIVE APPELLATE REVIEW AND CANNOT SUPPORT RELIANCE IN THIS ACTION

The April 15, 2026 findings did not arise in isolation. They are the direct product of the procedural framework established by the Court's February 17, 2026 order, which enforced use and occupancy and struck Defendant's jury demand, thereby shaping the posture in which the matter proceeded and the conditions under which the subsequent findings were issued.

That February 17 order is currently subject to appellate review.

This posture is legally significant. Where the validity of a foundational order is under appellate scrutiny, any findings that are dependent upon that order necessarily share in its uncertainty. They do not stand as independent adjudications; rather, they derive from—and are contingent upon—the procedural structure that produced them.

Permitting reliance on such findings in a separate action creates two interrelated problems.

First, it risks **giving operative effect to rulings that are subject to reversal**. If the appellate court determines that the February 17 order was entered in error—whether due to procedural defect, violation of governing standards, or improper deprivation of rights—then the framework that produced the April 15 findings collapses. Any use of those findings in the interim would improperly confer consequences on rulings that may ultimately be vacated.

Second, it **impairs meaningful appellate review**. Massachusetts appellate courts review legal questions—particularly those involving jurisdiction and procedural rights—de novo, and the appellate process presumes that the consequences of challenged rulings will not be irreversibly executed before review can occur. If findings derived from a challenged order are used to support injunctive relief affecting possession in a separate action, the practical effect is to implement the very consequences that appellate review is intended to examine.

This creates a structural distortion: the appellate court is placed in the position of reviewing a record after the operative consequences of the challenged ruling have already been imposed. In such circumstances, appellate review risks becoming ineffective or moot in practical terms, even if technically available.

Massachusetts law does not permit such an end-run around appellate review. Courts must avoid actions that effectively insulate contested rulings from meaningful scrutiny or that transform interlocutory determinations into de facto final outcomes across proceedings.

Accordingly, because the April 15 findings are inseparable from a procedural framework that is presently under appellate review, this Court must decline to rely upon

them in any capacity. To do otherwise would both risk enforcing potentially reversible rulings and undermine the integrity of the appellate process.

IV. THE FINDINGS WERE PRODUCED WITHOUT A FULL AND FAIR OPPORTUNITY TO LITIGATE AND THEREFORE CANNOT BE RELIED UPON

A fundamental prerequisite to any form of reliance on prior findings—whether under principles of issue preclusion or otherwise—is that the party against whom those findings are asserted had a **full and fair opportunity to litigate** the issues in the original proceeding. See, e.g., *Kobrin v. Board of Registration in Medicine*, 444 Mass. 837, 844 (2005). Where that opportunity is absent, the resulting findings cannot be used to determine rights in a subsequent action.

The record here demonstrates that no such opportunity existed.

First, Defendant's constitutional right to a jury trial was **struck as a terminal sanction** prior to the issuance of the April 15 findings. The removal of the jury right fundamentally altered the adjudicative framework, converting the proceeding into a bench posture under conditions that are themselves subject to challenge. The right to a jury trial is not a procedural formality; it is a core component of the fact-finding process, particularly where issues of status, occupancy, and credibility are central. Its removal necessarily constrains the manner in which factual disputes may be presented and resolved.

Second, **discovery remained incomplete** at the time the findings were issued. A motion to compel was pending, and Defendant had not been afforded the opportunity to obtain and present evidence relevant to the dispositive issues in the case. The ability to conduct discovery is integral to the adversarial process. Where a party is deprived of

access to relevant information, any resulting findings rest on an **incomplete and undeveloped record**.

Third, the Court proceeded to resolve **dispositive factual issues**—including the question of Defendant’s status—without the benefit of a full evidentiary hearing or trial-level development. These issues are inherently fact-dependent and require a complete record, including documentary evidence, witness testimony, and the opportunity for meaningful cross-examination. Their resolution on a constrained record further undermines the reliability of the resulting findings.

Taken together, these conditions created a procedural posture in which Defendant was **effectively prevented from fully litigating the issues** that formed the basis of the April 15 findings. The absence of a jury, the lack of completed discovery, and the premature resolution of dispositive issues are not minor irregularities; they are structural limitations that go to the core of whether the proceeding can be considered a fair adjudication.

Nor can these defects be minimized by characterizing the resulting testimony as “undisputed.” Any such characterization reflects the procedural constraints under which the proceeding occurred, not the absence of genuine factual dispute. Where a party is deprived of the tools necessary to develop and challenge evidence, the resulting record cannot be treated as conclusively establishing facts.

Massachusetts law does not permit findings produced under such conditions to be used in a subsequent action to determine rights, whether directly or indirectly. To allow reliance here would effectively transform a procedurally constrained and incomplete

proceeding into a substitute for a full adjudication, thereby depriving Defendant of the opportunity to litigate those issues in a proper forum.

Accordingly, because the April 15, 2026 findings were produced without a full and fair opportunity to litigate, they cannot be relied upon in this action for any purpose and must be excluded from consideration.

V. USE OF THESE FINDINGS TO SUPPORT INJUNCTIVE RELIEF WOULD CONSTITUTE AN IMPERMISSIBLE CIRCUMVENTION OF THE STATUTORY FRAMEWORK GOVERNING POSSESSION UNDER G.L. c. 239

Plaintiff seeks relief in this action that is, in substance and effect, directed at determining rights of possession to residential premises. Although styled as a request for equitable injunctive relief, the practical objective is to obtain control over occupancy and exclude Defendant from the premises. Massachusetts law does not permit such relief to be obtained outside the statutory framework specifically enacted to govern possession.

The Legislature has established a comprehensive statutory framework governing the recovery of possession of residential property through summary process under G.L. c. 239. That framework is not merely procedural; it reflects a deliberate legislative balance of rights, including notice requirements, defenses, evidentiary standards, and procedural protections afforded to occupants. *See New Bedford Housing Authority v. Olan*, 435 Mass. 364, 370–371 (2001). The statutory scheme defines both the **substantive basis for possession and the procedural path by which it must be adjudicated.**

Where the Legislature has provided a comprehensive statutory remedy, courts will not permit that framework to be displaced or circumvented through recourse to equitable relief. *See Attorney General v. Dime Savings Bank of N.Y., FSB*, 413 Mass. 284, 288–291 (1992) (recognizing that equitable relief is not available where the Legislature has created a complete and adequate statutory remedy). Equity yields where the Legislature has spoken.

That principle applies with particular force here. **Plaintiff elected to proceed under G.L. c. 239 in the summary process action** and did not obtain a judgment awarding possession. Instead, that action was declared moot, and no final adjudication of possession was entered. Having failed to obtain relief within the statutory framework, Plaintiff now seeks to obtain the functional equivalent of possession through an injunction in this separate civil action, relying on non-final findings from the prior proceeding.

This is not a permissible use of equity. It is an attempt to achieve indirectly what cannot be obtained directly under the governing statute. Allowing such an approach would effectively create a **parallel eviction mechanism**, untethered from the procedural safeguards and substantive requirements imposed by G.L. c. 239. It would permit a party to invoke statutory procedures when advantageous, but then abandon those procedures in favor of equitable relief when the statutory path does not produce the desired result.

Massachusetts courts have consistently rejected such “hybrid” approaches. A litigant may not invoke a statutory scheme to adjudicate possession and then, when that scheme fails or remains unresolved, turn to equity to obtain the same relief without

satisfying the statutory requirements. To do so would undermine the legislative framework and erode the protections it affords.

The impropriety is further compounded here by the Plaintiff's reliance on **interlocutory findings from a mooted proceeding**. Those findings are being used not merely as background context, but as a substitute for proof in support of injunctive relief affecting possession. This transforms non-final determinations into the functional equivalent of a judgment—precisely the result that the statutory framework is designed to regulate.

Accordingly, granting injunctive relief in this action on the basis proposed by Plaintiff would constitute an impermissible circumvention of G.L. c. 239. The Court must decline to permit equitable remedies to supplant the statutory mechanism governing possession and must require Plaintiff to proceed, if at all, within the framework established by law.

VI. THE COMPLAINT FAILS TO STATE A COGNIZABLE CLAIM AND MUST BE DISMISSED UNDER MASS. R. CIV. P. 12(b)(6)

Mass. R. Civ. P. 8(a) requires that a complaint contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” While the pleading standard is liberal, it is not without substance. A complaint must articulate a recognized legal theory supported by factual allegations that plausibly suggest an entitlement to relief. *See Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008).

The Complaint in this action fails that basic requirement.

Plaintiff alleges that Defendant is an “unauthorized occupant,” but does not identify any cognizable cause of action under Massachusetts law through which relief may be granted. The Complaint does not plead:

- a claim for summary process under G.L. c. 239;
- a claim for ejectment;
- a claim for trespass; or
- any other statutory or common-law basis authorizing recovery of possession or injunctive relief affecting occupancy.

A conclusory characterization of an individual as an “unauthorized occupant,” standing alone, is not a legal claim. It is a label. Without identification of the legal theory under which possession may be recovered, the Complaint fails to provide notice of the grounds upon which relief is sought and fails to establish that Plaintiff is entitled to any relief as a matter of law.

This deficiency is not cured by Plaintiff’s request for injunctive relief. An injunction is a **remedy**, not a cause of action. A party seeking injunctive relief must first plead and establish an underlying substantive claim that entitles it to relief. *See Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 615–617 (1980). Where no cognizable claim has been pleaded, there is no legal basis upon which injunctive relief may rest.

Nor may the Court supply a theory that Plaintiff has not pleaded. It is not the role of the Court to reconstruct or infer a cause of action where the complaint itself fails to articulate one. To do so would relieve Plaintiff of its burden under Rule 8(a) and deprive Defendant of fair notice and an opportunity to respond to a defined legal claim.

In substance, the Complaint seeks to obtain possession-related relief without invoking or satisfying any recognized legal mechanism for doing so. That omission is fatal. Accordingly, because the Complaint fails to state a claim upon which relief can be granted, it must be dismissed pursuant to Mass. R. Civ. P. 12(b)(6).

VII. THE ACTION IS SUBJECT TO MANDATORY DISMISSAL UNDER MASS. R. CIV. P. 4(j) FOR FAILURE TO TIMELY EFFECT SERVICE OF PROCESS

This action was commenced on January 16, 2026. Under Mass. R. Civ. P. 4(j), a plaintiff is required to serve the summons and complaint within ninety (90) days of filing. The rule provides, in mandatory terms, that if service is not made within that period, “the action shall be dismissed” absent a showing of good cause.

More than ninety days have elapsed since the filing of this action.

The docket does not reflect that Defendant was served with a summons and complaint within the time prescribed by Rule 4(j). Nor does the docket reflect that Plaintiff sought or obtained any extension of time for service upon a showing of good cause. In the absence of timely service or a court-ordered enlargement, dismissal is not discretionary—it is required by the plain language of the rule. *See* Mass. R. Civ. P. 4(j).

This defect is not technical; it is jurisdictional in effect. Proper service of process is the mechanism by which a court obtains personal jurisdiction over a defendant. Without service of the summons and complaint in compliance with Rule 4, the Court lacks authority to adjudicate the rights of that defendant.

Plaintiff’s apparent reliance on notice of a preliminary injunction hearing does not cure this defect. **Service of a hearing notice is not service of process.** It does not satisfy Rule 4, does not confer personal jurisdiction, and does not substitute for the formal service of a summons and complaint required to commence an action against a defendant.

Nor can participation in a hearing be construed as waiver. Defendant has appeared specially and has consistently preserved objections to insufficiency of service and lack

of personal jurisdiction. Massachusetts law is clear that jurisdiction cannot be created through informal notice or implied consent where Rule 4 has not been satisfied.

Allowing this action to proceed—let alone granting injunctive relief affecting possession—without proper service would invert the required order of analysis. The Court must first determine that it has personal jurisdiction before it may exercise judicial power over a party. Proceeding otherwise would constitute reversible error.

Accordingly, because Plaintiff failed to effect service of the summons and complaint within the ninety-day period required by Mass. R. Civ. P. 4(j), and no extension has been granted, this action must be dismissed. At a minimum, no injunctive or other relief may issue unless and until personal jurisdiction has been lawfully established.

VIII. PERSONAL JURISDICTION HAS NOT BEEN ESTABLISHED, AND THE COURT LACKS AUTHORITY TO GRANT ANY RELIEF AFFECTING DEFENDANT

Personal jurisdiction is a fundamental prerequisite to the exercise of judicial authority. A court may not adjudicate the rights of a party, enter binding orders, or grant injunctive relief unless and until it has obtained personal jurisdiction over that party through proper service of process or a valid waiver.

Under Massachusetts law, service of a summons and complaint in compliance with Mass. R. Civ. P. 4 is the mechanism by which personal jurisdiction is established. Absent such service, the Court lacks authority to proceed against the defendant. See *Bowers v. Board of Appeals of Marshfield*, 16 Mass. App. Ct. 29, 33 (1983); see also *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987).

Here, as set forth above, Plaintiff has not effected service of the summons and complaint within the time required by Mass. R. Civ. P. 4(j), and no extension has been

granted. As a result, **personal jurisdiction over Defendant has not been established**. Absent proper service, any order entered against the defendant is void.

This defect is dispositive. Without personal jurisdiction, the Court cannot:

- issue orders binding Defendant;
- adjudicate Defendant's rights; or
- grant injunctive relief affecting possession, occupancy, or access to the premises.

Any such action would exceed the Court's authority and constitute reversible error.

Nor can personal jurisdiction be inferred from Defendant's limited participation in these proceedings. Defendant has appeared specially and solely to contest jurisdiction and preserve procedural objections, and has consistently maintained those objections on the record. Under Massachusetts law, such a limited appearance does not constitute a waiver of defects in service or submission to the Court's jurisdiction.

Equally important, personal jurisdiction cannot be established through informal notice, participation in a hearing, or the pendency of related proceedings. The existence of a related summary process action does not confer jurisdiction in this separate civil case, and notice of a preliminary injunction hearing is not a substitute for formal service of process.

Because personal jurisdiction has not been established, the Court must address that threshold defect before considering any request for relief. Proceeding to evaluate injunctive relief under Rule 65 in the absence of jurisdiction would improperly collapse jurisdictional requirements into discretionary equitable analysis and would constitute error as a matter of law.

Accordingly, the Court lacks authority to grant any relief affecting Defendant in this action unless and until personal jurisdiction is properly established. All requests for injunctive or other substantive relief must therefore be denied or stayed on this independent basis.

IX. FINDINGS ISSUED IN A MOOT PROCEEDING CANNOT BE GIVEN OPERATIVE EFFECT

The April 15, 2026 findings were issued only after the Court determined that the summary process claim was moot. That determination is dispositive of the Court's authority at that stage of the proceeding.

Mootness is a jurisdictional limitation. When a case becomes moot, no live controversy remains for adjudication, and the court lacks authority to proceed. Massachusetts courts do not issue advisory opinions or decide abstract questions once the underlying dispute has ceased to exist. See *Blake v. Massachusetts Parole Board*, 369 Mass. 701, 703 (1976).

Accordingly, once the Court concluded that the summary process claim was moot, its authority under G.L. c. 239 was extinguished except to dismiss the action. Any findings issued thereafter do not resolve a live dispute within the case; rather, they exist outside the proper scope of judicial adjudication.

Findings issued in such a posture cannot be given operative, binding, or preclusive effect. To do so would transform what are, in substance, non-adjudicative statements into functional determinations of rights, thereby extending the reach of a mooted proceeding beyond its lawful boundaries.

That concern is not theoretical here. Plaintiff seeks to rely upon these findings in a separate action to support injunctive relief affecting possession. Permitting such use would effectively allow findings issued after mootness to determine substantive rights in another proceeding—precisely the type of advisory or extra-jurisdictional consequence that the mootness doctrine is designed to prevent.

Moreover, allowing operative effect to findings issued after mootness would invert the structure of judicial authority. A court may not, on the one hand, declare that no justiciable controversy remains, and on the other hand, issue findings intended to influence or control the parties' rights elsewhere. Such action would exceed the limits of judicial power and undermine the requirement that courts act only within the context of an active case or controversy.

Massachusetts law does not permit such an expansion of authority. Where a claim has been declared moot, any subsequent findings must be treated as non-operative and without legal effect.

Accordingly, because the April 15, 2026 findings were issued after the summary process claim was declared moot, they cannot be given operative, binding, or preclusive effect in this or any other proceeding, and must be excluded from consideration in this action.

**X. CONSOLIDATION OR CONVERSION TO A FINAL HEARING UNDER MASS.
R. CIV. P. 65(a)(2) IS IMPROPER AND EXPRESSLY OPPOSED**

Mass. R. Civ. P. 65(a)(2) permits a court, in limited circumstances, to consolidate a preliminary injunction hearing with a trial on the merits. However, that mechanism is

procedurally constrained and cannot be used to bypass fundamental requirements of jurisdiction, pleading, and evidentiary development.

Any attempt in this case to treat prior proceedings— including the March 2, 2026 hearing— as a consolidated or final adjudication on the merits would be improper as a matter of law.

First, **service of process has not been completed** in accordance with Mass. R. Civ. P. 4. Without proper service, the Court has not obtained personal jurisdiction over Defendant. Rule 65(a)(2) presupposes a validly commenced action within the Court's jurisdiction. It cannot be invoked to adjudicate the merits of a case where jurisdiction has not been established.

Second, **no operative pleading has been properly served**. The Complaint itself has not been served in compliance with Rule 4, and its legal sufficiency is independently challenged under Rule 12(b)(6). A court cannot conduct a trial on the merits—whether explicitly or through consolidation—without a properly served and legally sufficient pleading defining the claims at issue.

Third, **no discovery has occurred**. Consolidation under Rule 65(a)(2) is inappropriate where the parties have not had a fair opportunity to develop the evidentiary record. The rule is not intended to permit adjudication of complex factual issues on an undeveloped record, nor to deprive a party of the procedural protections attendant to trial.

Fourth, **Defendant has not consented to consolidation** and expressly objects to any attempt to convert preliminary proceedings into a final adjudication. While formal consent is not always required, Massachusetts practice requires that parties be afforded

clear notice and a meaningful opportunity to prepare for a merits determination.

Proceeding otherwise would violate fundamental principles of due process.

These defects are cumulative and dispositive. Taken together, they establish that the prerequisites for any consolidation or conversion under Rule 65(a)(2) are entirely absent in this case.

Permitting such a conversion would have the practical effect of adjudicating Defendant's rights—potentially including possession—without service, without jurisdiction, without a valid pleading, and without discovery. That result would constitute a profound procedural irregularity and a clear error of law.

Moreover, any attempt to proceed in this manner would collapse the distinction between preliminary equitable relief and final adjudication, thereby depriving Defendant of the procedural safeguards guaranteed under the Massachusetts Rules of Civil Procedure.

Accordingly, this Court may not treat any prior hearing as a final adjudication on the merits, may not consolidate proceedings under Rule 65(a)(2), and must confine its analysis—if any—to the limited scope permitted by Rule 65, and only after threshold jurisdictional issues have been resolved.

XI. THRESHOLD JURISDICTIONAL AND PLEADING DEFECTS MUST BE RESOLVED BEFORE ANY RULE 65 ANALYSIS

Before a court may evaluate a request for preliminary or permanent injunctive relief, it must first confirm that it has the authority to act. That authority depends on the satisfaction of threshold requirements—including proper service of process, the existence of personal jurisdiction, and the presence of a valid operative pleading. These

issues are not discretionary considerations; they are preconditions to the exercise of judicial power.

Here, those threshold requirements have not been satisfied.

First, the Court must determine whether service of the summons and complaint was completed within the time required by Mass. R. Civ. P. 4(j), or whether any extension was granted upon a showing of good cause. As set forth above, the record reflects that more than ninety days have elapsed without proper service, triggering the mandatory dismissal provision of Rule 4(j).

Second, the Court must determine whether personal jurisdiction over Defendant has been established. Without valid service of process or a knowing and voluntary waiver, personal jurisdiction does not exist, and the Court lacks authority to bind Defendant or adjudicate Defendant's rights.

Third, the Court must determine whether a legally sufficient, operative pleading is properly before it. A request for injunctive relief must rest on a cognizable cause of action. Where the Complaint fails to state a claim under Mass. R. Civ. P. 12(b)(6), there is no legal foundation upon which Rule 65 relief may be granted.

These issues must be resolved before any consideration of the equitable factors governing injunctive relief, including the standards articulated in *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609 (1980). A court may not proceed to balance equities, assess likelihood of success, or evaluate irreparable harm where its own authority to act has not first been established.

To do so would improperly collapse jurisdictional and pleading requirements into discretionary equitable analysis, allowing the Court to exercise power without first

confirming that it possesses it. Massachusetts law does not permit such an approach. Jurisdiction and procedural validity are not factors to be weighed; they are conditions that must be satisfied.

Failure to resolve these threshold issues prior to engaging in Rule 65 analysis constitutes reversible error as a matter of law. It results in the issuance of relief without lawful authority and deprives the affected party of the procedural protections guaranteed by the Massachusetts Rules of Civil Procedure.

Accordingly, this Court must determine the issues of service, personal jurisdiction, and pleading sufficiency as a prerequisite to any consideration of injunctive relief. Unless and until those threshold requirements are satisfied, the Court may not proceed to Rule 65 analysis and must deny or stay Plaintiff's request for such relief.

XII. IRREPARABLE HARM AND THE NECESSITY OF A STAY

Absent immediate relief, Defendant will suffer irreparable harm that cannot be remedied through later proceedings or monetary damages.

First, Plaintiff seeks injunctive relief that would, in practical effect, determine rights of possession and occupancy. Such relief—if granted on the basis of non-final, contested findings and in the absence of established jurisdiction—would alter the status quo in a manner that is not readily reversible. The loss of possession or exclusion from residential premises constitutes a form of harm that is inherently irreparable.

Second, the procedural posture of this case threatens to undermine meaningful appellate review. The findings upon which Plaintiff relies are non-final, subject to jurisdictional challenge, and intertwined with rulings currently under appellate scrutiny. If those findings are given operative effect in this action before appellate review is

completed, the practical consequences of the challenged rulings will be realized in advance of judicial review. This creates a structural risk that appellate remedies will be rendered ineffective in practice, even if technically available.

Third, allowing non-final findings to produce immediate legal consequences across proceedings would create irreversible effects. Once injunctive relief is granted—particularly where it affects possession, access, or occupancy—the resulting disruption cannot be fully undone by a later ruling. Even if Defendant ultimately prevails, the interim deprivation of rights, displacement, or restriction of access constitutes harm that cannot be adequately compensated or restored.

Massachusetts law recognizes that a stay is appropriate where necessary to preserve the status quo and protect the integrity of the appellate process. See *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 616–617 (1980) (identifying irreparable harm as a central consideration in equitable relief). Where, as here, the absence of a stay would allow contested, non-final determinations to produce immediate and irreversible consequences, the need for intervention is compelling.

Moreover, the balance of harms weighs decisively in favor of Defendant. Maintaining the status quo pending resolution of jurisdictional issues and appellate review does not deprive Plaintiff of any adjudicated right. By contrast, denying a stay exposes Defendant to immediate and irreversible consequences based on findings that are non-final and legally contested.

Finally, a stay serves the public interest in orderly judicial process. Courts must ensure that jurisdictional requirements are satisfied, that statutory frameworks are respected, and that appellate review remains meaningful. Allowing injunctive relief to

proceed under the present circumstances would undermine those principles and erode confidence in the integrity of the adjudicative process.

Accordingly, a stay of all injunctive relief and further proceedings is necessary to preserve the status quo, protect Defendant's rights, and ensure that the issues presented may be resolved through proper procedural channels.

**XIII. THIS MOTION PRESENTS PURELY LEGAL, THRESHOLD ISSUES
APPROPRIATE FOR INTERLOCUTORY REVIEW UNDER G.L. c. 231, § 118**

This Motion presents discrete, threshold questions of law that are separable from the merits and appropriate for interlocutory review.

Specifically, the Motion raises:

- **jurisdictional defects**, including failure of timely service under Mass. R. Civ. P. 4(j) and the absence of personal jurisdiction;
- **the permissibility of relying on non-final findings** issued in a separate, mooted proceeding that remain subject to revision and appellate scrutiny; and
- **the limits of equitable relief**, including whether an injunction may be used to obtain possession-related relief outside the statutory framework of G.L. c. 239.

These issues do not require resolution of disputed facts. They are pure questions of law that can be decided on the existing record and that, if resolved in Defendant's favor, would dispose of or materially alter the course of this action.

Massachusetts law recognizes that interlocutory review is appropriate where an order presents a question that is collateral to the merits, implicates the court's authority to proceed, or risks causing irreparable harm that cannot be remedied on appeal from a final judgment. See **G.L. c. 231, § 118**.

That standard is satisfied here.

If this Court permits reliance on the April 15, 2026 findings, proceeds without resolving jurisdictional defects, or grants injunctive relief affecting possession, the resulting consequences will be immediate and difficult, if not impossible, to unwind. Such action would effectively determine substantive rights based on non-final, contested findings and in the absence of established jurisdiction.

Moreover, without an express ruling identifying the legal basis for the Court's decision—particularly whether and how it relies on the April 15 findings—meaningful appellate review will be impaired. Appellate courts require a clear statement of the grounds upon which relief was granted or denied in order to assess whether legal error has occurred.

Accordingly, Defendant respectfully requests that the Court issue an explicit and particularized ruling addressing:

whether the April 15 findings are being relied upon, and if so, in what capacity;

whether the Court has determined that personal jurisdiction has been established;

and

whether the Court is proceeding notwithstanding the Rule 4(j) defect and, if so, on what legal basis.

Such a ruling is necessary to ensure that the issues presented may be promptly and effectively reviewed under G.L. c. 231, § 118.

In the absence of such clarity, the risk is that non-final determinations will be given operative effect without a record sufficient to permit meaningful appellate scrutiny—a result Massachusetts law seeks to avoid.

CONCLUSION

The April 15, 2026 findings are non-final, interlocutory determinations issued in a proceeding that has been declared moot, remains subject to jurisdictional challenge, and was conducted within a procedurally defective framework that is currently under appellate review.

They were not reduced to judgment, were not certified under Mass. R. Civ. P. 54(b), and were issued after the Court's authority to adjudicate a live controversy had ceased. They further arose from a process in which Defendant was deprived of a full and fair opportunity to litigate, including the striking of the jury right and the absence of completed discovery.

As a matter of law, such findings cannot be given operative, binding, persuasive, or preclusive effect.

Plaintiff's attempt to rely upon those findings in this separate civil action—particularly to obtain injunctive relief affecting possession—constitutes an impermissible effort to transform non-final determinations into functional adjudications, and to bypass the statutory framework governing possession under G.L. c. 239 through equitable means.

At the same time, this action suffers from independent and dispositive defects. Service of process has not been completed within the time required by Mass. R. Civ. P. 4(j), no extension has been granted, and personal jurisdiction has not been established. The Complaint itself fails to state a cognizable claim upon which relief may be granted.

Under these circumstances, the Court lacks authority to proceed to any merits-based determination, including any analysis under Rule 65. Jurisdictional and

procedural prerequisites must be satisfied before judicial power may be exercised. They have not been satisfied here.

Allowing injunctive relief to proceed under these conditions would result in the immediate and irreversible alteration of Defendant's rights based on findings that are legally non-operative, while simultaneously undermining the integrity of the appellate process and the statutory scheme governing possession.

Massachusetts law does not permit such a result.

Accordingly, the April 15, 2026 findings must be excluded and disregarded, the Complaint must be dismissed or the matter stayed, and no injunctive relief may issue unless and until the Court has first determined that it possesses jurisdiction and that a valid, cognizable claim is properly before it.

WHEREFORE

For the foregoing reasons, Defendant Danny Abouelkhier respectfully requests that this Court enter an order:

- **Excluding and disregarding in their entirety** the April 15, 2026 Findings and Order issued in Summary Process Action No. 24H82SP03575, and determining that such findings shall not be given any operative, binding, persuasive, or preclusive effect in this action;
- **Prohibiting any direct or indirect reliance** by Plaintiff, or by this Court, upon those findings for purposes of establishing facts, satisfying evidentiary burdens, or supporting any request for preliminary or permanent injunctive relief;

- **Dismissing the Complaint pursuant to Mass. R. Civ. P. 4(j)** for failure to effect timely service of the summons and complaint, where more than ninety (90) days have elapsed and no extension has been granted;

- **Dismissing the Complaint pursuant to Mass. R. Civ. P. 12(b)(6)** for failure to state a claim upon which relief can be granted, where Plaintiff has not pleaded a cognizable legal theory authorizing the relief sought;

- **Determining that personal jurisdiction has not been established**, and that the Court therefore lacks authority to adjudicate Defendant's rights or to grant any injunctive or other substantive relief in this action;

- **Denying Plaintiff's request for preliminary and permanent injunctive relief** in its entirety;

- **In the alternative, staying all requests for injunctive relief and all further proceedings** pending:

proper service of process sufficient to establish personal jurisdiction;

resolution of jurisdictional challenges and Rule 60(b) proceedings in Summary

Process Action No. 24H82SP03575; and

completion of any related appellate review;

- **Determining that no consolidation or conversion under Mass. R. Civ. P. 65(a)(2) is permitted**, and that no prior proceeding may be treated as a final adjudication on the merits;

- **Issuing an express and particularized ruling identifying whether, and to what extent, this Court has relied or intends to rely upon the April 15, 2026 findings,**

including the legal basis for any such reliance, so as to permit meaningful appellate review under G.L. c. 231, § 118;

- **Scheduling this Motion for a hearing**, given the risk of irreparable harm; and
- Granting such other and further relief as justice may require.

Respectfully submitted,

Dany Abouelkhier

Defendant, Pro Se

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Braintree, MA 02184

Email: danytaw@yahoo.com

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.

Lisa M. Gouveia, Esq. (*Counsel for Plaintiff Lenox Farms Limited Partnership*)
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Respectfully submitted,

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