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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, ss.

District Court Department
Springfield Division
Civil Action No.: 1143CV293

BRIAN JOHNSON

PLAINTIFF/DEFENDANT-
IN-COUNTERCLAIM

v.

PETER FREI

DEFENDANT/PLAINTIFF-
IN-COUNTERCLAIM

PLAINTIFF/COUNTERCLAIM DEFENDANT'S
MEMORANDUM OF LAW
IN SUPPORT OF MOTION IN LIMINE TO
EXCLUDE EVIDENCE UNRELATED
TO THE CLAIM AS ARTICULATED IN
THE SUBSTITUTED ANSWER/COUNTERCLAIM

I. PROCEDURAL HISTORY

Brian Johnson, the Plaintiff/Defendant-in-Counterclaim ("Johnson") filed a one count Complaint alleging violation of Mass. Gen. Laws. ch. 272, § 99 in Palmer District Court in June, 2011. The Defendant/Plaintiff-in-Counterclaim, Peter Frei ("Frei") filed a Substituted Answer/Counterclaim in August, 2011 alleging assault, assault and battery, defamation, libel, slander, intentional infliction of emotional distress, negligent infliction of emotional distress, abuse of process and obstruction of justice, and violation of the Massachusetts Civil Rights Act G.L. c. 12, §§ 11h and 11i ("MCRA") ("Substituted Answer").

As articulated in the Substituted Answer, the allegations upon which the abuse of process/obstruction of justice claim were based were:

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(2) that particular fact must be material to an issue in the case. *Harris-Lewis v. Mudge*, 60 Mass. App. Ct. 480, 485 (2004).

Any evidence that goes beyond the scope of the claim as articulated in the Substituted Answer should be excluded as it is not relevant because it is not being offered to prove a particular fact that is material to an issue in the case. The issues in the case at trial are defined by the Substituted Answer. Since there are no allegations concerning or references to the letter issued by the State Ethics Commission or to the payment of Johnson's attorneys' fees by the Town of Holland any such evidence does not have any tendency to prove a fact material to Frei's claim as articulated in his Substituted Answer and therefore, should be excluded at trial. "Relevance is defined as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." *Simpson v. Spencer*, 372 F.Supp.2d 140, 147 (2005).

As any evidence unrelated to the allegations that form the basis of the abuse of process claim, which is the subject matter of the trial, is not relevant, it should be excluded.

Respectfully submitted,
The Plaintiff,
Brian Johnson,
By his attorney,


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Dated: September 17, 2019

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above document was served upon the following via first class mail, postage prepaid, to:

Mr. Peter Frei
101 Maybrook Road
Holland, MA 01521

Dated: September 17, 2019

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Tani E. Sapirstein