

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT

 DARLENE SMITH as the PERSONAL
 REPRESENTATIVE OF
 THE ESTATE OF SANDRA BIRCHMORE,
Plaintiff,

v.

C.A. No.: 2282CV1197

 MATTHEW FARWELL, WILLIAM FARWELL,
 ROBERT DEVINE, and JOSHUA HEAL,
 Individually, THE TOWN OF STOUGHTON, and
 THE STOUGHTON POLICE DEPARTMENT,
Defendants.

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**DEFENDANT, JOSHUA HEAL'S MOTION TO SEVER CLAIMS AND FOR
 SEPARATE TRIAL**

NOW COMES the Defendant, Joshua Heal ("Mr. Heal"), and moves pursuant to Rule 21 Mass.R.Civ.P. for an order of this Honorable Court to sever the claims against him from those of the other Defendants and for a separate trial. While Mass. R. Civ. P. 20(a) permits joinder of party defendants when "there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action," where there is a misjoinder, as here, Rule 21 provides "Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative, after hearing, at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

The claims asserted against the Defendants Matthew Farwell, William Farwell, Robert Devine, the Town of Stoughton, and the Stoughton Police Department ("the Defendants") do not

arise out of the same transaction, occurrence, or series of transactions and occurrences, nor will any questions of law or fact common to said defendants arise in the action. The allegations of the Second Amended Complaint assert an “ongoing pattern of abuse” spanning a “decade-long” scheme of which Mr. Heal was not a part. Mr. Heal was not even employed by the Town of Stoughton for a decade – a verifiable fact.

The Plaintiff’s Second Amended Complaint and Demand for Jury Trial in which Mr. Heal was first added as a party defendant in this suit, states a single incident of an alleged sexual act between Ms. Birchmore and Mr. Heal. See Amended Complaint, ¶15. However, the Plaintiff’s claims against the Defendants are based on an “ongoing pattern of abuse and behavior of over the near decade-long relationship that created and exacerbated the underlying trauma, mental, and emotional distress suffered by Ms. Birchmore that ultimately overwhelmed the Decedent’s will to live and, in turn, caused her death.” See Id., ¶16.

A single alleged sexual act between Mr. Heal and Ms. Birchmore cannot be part of an “ongoing pattern of abuse and behavior of over the near decade-long relationship,” and the Amended Complaint does not allege any specific facts which reasonably connect the alleged ongoing, long-term abuse claimed against the Defendants with the a single, alleged, and consensual act between Mr. Heal and Ms. Birchmore. Therefore, the Plaintiff has not “asserted against” Mr. Heal “any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences,” nor has the Plaintiff alleged that “any question of law or fact common to all defendants will arise in the action” as required by Mass. R. Civ. P. 20(a).

Moreover, given the nature of the allegations of the other Defendants, and the fact that the Internal Investigation of the Stoughton Police Department¹ did not implicate any wrongdoing by Mr. Heal, there is a substantial risk that he will be prejudiced by the trial of this case with the other Defendants given the subject matter of the Amended Complaint. The reasons expressed herein are all just and form the basis for Mr. Heal's motion to sever, such that the claims should be severed and trials held separately.

WHEREFORE, Mr. Heal submits the claims against him should be severed from the claims against the other Defendants. in this action, and his claims severed for separate trial pursuant to Mass. R. Civ. P. 21.

Respectfully submitted,
JOSHUA HEAL
By his attorneys,

Date: May 1, 2023

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¹ Mr. Heal filed a contemporaneous motion to file the unredacted IA report under seal. The report unequivocally does not target Mr. Heal nor does it make him the subject of the investigation. To join him in this case with the other Defendants is a denial of due process of law under the facts of this case.

CERTIFICATE OF SERVICE

I, Peter S. Farrell, counsel for the Defendant, Joshua Heal, certify that on this 1st day of May, 2023, I served a copy of the foregoing upon all counsel of record as set forth below, by serving a copy via email as follows:

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