

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SULLIVAN

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MARC ANTHONY,  
Plaintiff,

INDEX NO. E2023-260  
AFFIRMATION IN OPPOSITION  
TO MOTION TO QUASH  
SUPOENA

-against-

KAITLIN HAAS, individually,  
and THE TOWN BOARD  
OF THE TOWN OF HIGHLAND  
Respondents.

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Stacey Van Malden, an attorney duly admitted to the practice of law in the courts of the State of New York affirms the following under penalty of perjury:

1. I am attorney for the Plaintiff herein.
2. As such, I am fully familiar with the facts and circumstances in this matter.
3. I make this Affirmation in Opposition to non-party Joseph Abraham’s Motion to Quash the Subpoena issued to him to testify at a deposition in the above captioned matter.
4. Mr. Abraham argues that he cannot be compelled to testify because of New York’s Press Shield Law, codified at Civil Rights Law § 79-h.

**The Information Sought is not Confidential, and Therefore Discoverable**

5. On June 6, 2024, Mr. Abraham submitted an affirmation in support of his first motion to quash.

6. In that affirmation, Mr. Abraham averred that the Sullivan County Democrat relied upon two sources prior to publishing the subject article on August 19, 2022. (Paragraph 5, NYCEF Doc. #102).
7. In that statement, Mr. Abraham stated that an anonymous source provided the newspaper with a copy of the unredacted Constable Report. Id.
8. Mr. Abraham did not aver that the anonymous source requested to remain confidential in his June 6, 2024 affirmation. Id.
9. In fact, it would be highly unlikely that this anonymous source would request confidentiality, for two distinct reasons.
10. The first is that according to the publisher of the Sullivan County Democrat, Fred Stabbert, the unredacted report was found inside a drop box in front of the news building at 5 Lower Main Street in Callicoon, NY.
11. Mr. Stabbert stated that he had no idea who dropped it off or where it came from.
12. The second reason is that an anonymous source, according to Merriam-Webster means, “not named or identified.”
13. So unless the source was not actually anonymous, it would be impossible for such an unknown source to request confidentiality.
14. Yet, in Mr. Abraham’s August 19, 2024 affirmation, Mr. Abraham states that this anonymous source was promised confidentiality.
15. This is also in direct contravention of an incomplete text conversation between Mr. Abraham and Ms. Haas. Exh. 5.

16. In that message, Mr. Abraham states that he is looking forward to “one day discovering who the leaker is.” Id.
17. This would tend to demonstrate that Mr. Abraham never had a conversation with the anonymous source that left the report in the drop box.
18. Plaintiff would submit that Mr. Abraham has changed his testimony to fit the anonymous report into the first section of CRL §79-h, which prevents the disclosure of confidential information without exception.
19. The case of Beach v. Shanley, 62 NY2d 241 (1984), cited by Mr. Abraham, does not support this “confidential anonymous” person allegation.
20. In Beach, the reporter knew the identity of his source, but promised to guard said identity.
21. Thus, in Beach, the source was known, but confidential, unlike the anonymous source which provided the unredacted Constable Report.
22. Mr. Abraham’s argument about the “confidential anonymous” source is simply a red herring, based upon a perjured statement.
23. However, the information that Plaintiff seeks from Mr. Abraham is disclosure of the name of the Town Official which confirmed the contents of the unredacted Constable Report.
24. In both affirmations, Mr. Abraham stated that the confirming source was an “unnamed Town Source...” NYCEF#102 Paragraph 7; NYCEF 127 paragraph 7.
25. Mr. Abraham does not aver that this unnamed Town Source requested confidentiality.
26. Thus, because the information sought is not from a confidential source, then the information may be compelled if the plaintiff can demonstrate that the information: (i) is highly material and relevant; (ii) is critical or necessary to the maintenance of a party’s claim, defense or

proof of an issue material thereto; and (iii) is not obtainable from any alternative source.

CRL §79-h(c).

### **The Subpoena Satisfies the Elements Required for Disclosure**

27. As set forth in the Amended Complaint/Petition of the Plaintiff, Plaintiff has a claim for

Defamation against Defendant Kaitlin Haas.

28. The following paragraphs from this pleading set forth his claim:

35. Instead of providing proper notice to Plaintiff of any charges made against him, Kaitlin Haas, without the authority of the Town Board, caused unredacted copies of her alleged investigation into Plaintiff's alleged actions to be published in the Sullivan County Democrat.
36. These items were published in the August 19, 2022 issue of the Democrat.
37. The Sullivan County Democrat is a Newspaper serving Sullivan County, New York, and is widely read by its residents, business owners, and other Town Supervisors and Town Boards responsible for staffing of their police forces and Constabularies.
38. Plaintiff has suffered monetary and other consequences as a result of the publication of false, negative allegations about his character, and his work ethic.
39. In the article in the Sullivan County Democrat, allegations against Plaintiff were made public even though Plaintiff had never received a written copy of said charges, nor been given the opportunity for a hearing.
40. Upon information and belief, the information in the article in the Democrat was provided to the Democrat by Defendant Kaitlin Haas.
41. Defendant Kaitlin Haas had previously released a redacted copy of the allegations to the general public.
42. Defendant Kaitlin Haas was not authorized by the Town Board to release the unredacted copy of the Board's investigative report.
43. The report was one sided, and released without said charges being subject to a hearing.
44. Once the unredacted article was published, the redacted version was easily compared to the unredacted allegations, identifying Plaintiff to the general public as well.
45. The article actually names the defendant.

46. The article details “substantiated” charges against the plaintiff which are absolutely false.
  47. The article states that Plaintiff “did not have Peace Officer Training,” “did not have Taser training” and “did not have handgun qualifications to permit him to carry a weapon while on duty.”
  48. These allegations subjected Plaintiff to public contempt, ridicule and disgrace.
  49. Upon information and belief, Kaitlin Haas further stated and caused to be published falsely, that a “representative from the New York Division of Criminal Justice Services” related this information to her.
  50. However, based upon actual New York State records, Plaintiff has more than adequate Police Officer training and qualifications, as well as Taser and Handgun qualifications.
  51. These demonstrably false statements were made by Ms. Haas, with her knowledge of their falsity.
29. Mr. Abraham avers that the defamation cannot be proven, and therefore his testimony is not material nor necessary.
30. As set forth supra, the defamatory statements published are that Plaintiff “did not have Peace Officer Training,” “did not have Taser training” and “did not have handgun qualifications to permit him to carry a weapon while on duty.”
31. These are specific statements, set forth in the Complaint.
32. That the information which was published was false is easily proven.
33. Appended hereto at Exhibit 6 are Plaintiff’s certificates of completion, and receipts for training paid for by the town for Plaintiff’s Peace Officer Training, Taser and and handgun qualifications for the relevant time period, covered by the unredacted Constable Report.
34. It should be noted that Plaintiff was the only Constable to have completed the Basic Course for Police Officers at the Orange County Police Academy, a 600 hour course from September 9, 2000-March 9, 2001.



35. Plaintiff was indeed qualified to be a Peace Officer, had taser training and handgun and long gun qualifications at the time that the unredacted report was published, and the Town knew this, having access to Plaintiff's records over a thirty year period, and having paid for the yearly qualifications.
36. The information that is sought from Mr. Abraham is simply who at the Town confirmed the authenticity of the false report.
37. Based upon his affirmation, Mr. Abraham is in possession of this information.
38. If indeed Kaitlin Haas was the person who confirmed the information, information which was not authorized by the Town to be disclosed, this would prove the allegations in the complaint regarding defamation.
39. This is so because the Sullivan County Democrat would not have published the unredacted report which it received anonymously without confirmation of its contents.
40. Ms. Haas has already admitted at her deposition that she and Board member Christopher Tambini prepared the report. Exh 2.
41. However, neither have admitted to confirming the information to the Sullivan County Democrat.
42. The name of the person that confirmed the report is therefore highly material and necessary, for without it, plaintiff's claim for defamation fails.
43. As per a press release dated October 4, 2023, the Town stated that they had "not publicly released details" of the Constable Report prior to that date. Exh 3.
44. Thus all Board members have gone on record as stating they did not disclose or confirm this information, and there is no alternate source for this information.

45. Simply put, if Mr. Abraham states that Kaitlin Haas confirmed the report, then Plaintiff prevails.
46. If Mr. Abraham does not, the plaintiff's claim for defamation fails.
47. Because Plaintiff's request for information is not confidential, and the elements of Civil Rights Law §79-h(c) have been met, Mr. Abraham must be compelled to reveal the information requested.
48. Mr. Abraham cites to the Court of Appeals case Holmes v. Winter, 22 N.Y.3d 300 (2013), to support his position that he cannot be compelled to disclose the name of the Town source who confirmed the constable report.
49. However, Holmes, is a case whose holding is that confidential sources may not be revealed under the Press Shield Law.
50. This is not the case herein for the Town Source.
51. Moreover, due to Mr. Abraham's first motion to Quash wherein he averred that the subpoena did not comply with CPLR §3101(a)(4), this subpoena was prepared to avoid that argument.
52. The only additional items which plaintiff seeks are relevant texts messages between Ms. Haas and Mr. Abraham.
53. There is no indication in Mr. Abraham's affirmations that these texts messages were confidential, and thus would fall under the same exceptions to CRL §79-h.
54. Specifically, Defendants have produced an incomplete text conversation between Mr. Abraham and Ms. Haas. Exh. 5.
55. The entire conversation likely may, in fact, demonstrate the Town Source that confirmed the report.

56. At this point, Plaintiff still seeks the same information that he sought when the first subpoena was prepared and served, i.e., the identity of the Town Source who confirmed the contents of the false unredacted Constable Report.
57. Appended hereto, as Exhibit 4, are the substantive questions which would be asked of Mr. Abraham at a deposition.
58. These limited questions would reveal the name of the Town Source, and nothing more.
59. Untrue information was gathered by the Town of Highland in a report authored by Kaitlin Haas.
60. This report was sent anonymously to the Sullivan County Democrat.
61. The report was published only after someone from the Town confirmed the contents of the report as true, when in fact they were not.
62. If newspapers are to be protected to publish freely, then they must publish truth.
63. The article has already been published, and therefore any concerns of the newspaper's ability in selecting its material is not a concern.
64. There would be no effect upon the newspaper's or the reporter's ability to disseminate any sort of news article or inform the public. Rather, the newspaper did the responsible thing by confirming the anonymous report it received. Plaintiff merely seeks to find out which Town Source confirmed this false report.
65. In addition, it is submitted to the Court that Mr. Abraham has waived this privilege by speaking with Defendants' counsel regarding this matter.
66. Mr. Abraham's affirmation does not address this issue in any way.

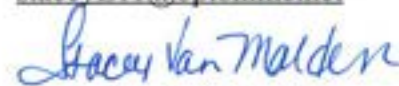


WHEREFORE, it is most respectfully requested that Mr. Abraham's motion be denied in its entirety and that he be compelled to testify at deposition, and for such other and further relief that this Court may deem just and proper.

Dated: August 26, 2024

Goldberger & Dubin, P.C.  
401 Broadway, 306  
New York, New York 10013  
212 431-9380  
[gnd401@aol.com](mailto:gnd401@aol.com)  
[staceyL11@optonline.net](mailto:staceyL11@optonline.net)

By:

  
Stacey Van Malden, Esq.