

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT

SALAHEDDIN BARHOUM, ppa EL  
HOUSSEIN BARHOUM and YASSINE  
ZAIMI,  
Plaintiffs,

Civil Action No.

v.

NYP HOLDINGS, INC., d/b/a *NEW*  
*YORK POST*, LARRY CELONA, BRAD  
HAMILTON, JAMIE SCHRAM  
LORENA MONGELLI, KATE KOWSH  
and JANE DOE,  
Defendants.

13-2062 D



COMPLAINT AND JURY DEMAND

Introduction

1. Plaintiffs bring this action for harm they suffered due to defendants' publication in the *New York Post* ("the *Post*") of their photographic images, together with false, inflammatory and libelous assertions concerning plaintiffs' involvement in the April 15, 2013 Boston Marathon bombing.

2. On Monday, April 15, 2013, at approximately 2:49 p.m., two pressure cooker bombs exploded in the crowded side-line area near the Boston Marathon finish line, killing three people and injuring more than 260 spectators, including 14 who lost limbs.

3. Plaintiffs Salaheddin Barhoum and Yassine Zaimi, residents of Revere and Malden, and 16 and 24 years old, respectively, are avid runners. Earlier in the day, they were present at the finish line to watch the elite runners. They carried their own running gear in their backpacks. They left at 12:45 p.m. They had nothing whatsoever to do with the bombing.

4. On or about Thursday, April 18, 2013, the *New York Post* published on the front page of its newspaper, in interior headlines and an article, and in its Internet edition, a collection of headlines, images and statements which, individually and in connection with each other, unambiguously asserted that plaintiffs were persons suspected by law enforcement of having committed these horrific crimes. The images consisted of photographs taken of the plaintiffs at the finish line earlier that day and derived from the activities of certain “crowd-sourcing” websites. The entire front page was taken up by a photograph of the plaintiffs, with an overlaid 9 x 2 inch, block letter headline containing only the words “**BAG MEN,**” -- a reference to previously reported information that the bombs were thought to have been transported in backpacks or duffel bags. The front page also contained a 4 x 4.25 inch sub-headline stating “**Feds seek these two pictured at Boston Marathon.**” Copies of the front page and full article are attached hereto as Exhibits A and B.

5. The plaintiffs were not suspects and were not being sought by law enforcement. The *Post* had no basis whatsoever to suggest that they were, especially in light of a warning on Wednesday to news media, by federal authorities, to exercise caution in reporting about this very matter. In fact, law enforcement authorities had then focused their investigation on two suspects who were not the plaintiffs.

### **Jurisdiction**

6. This Court has jurisdiction over all defendants in this action pursuant to G.L. c. 223A, § 3 because, among other things, the alleged injury arises from their transacting business in the Commonwealth. In addition, this Court has jurisdiction because the cause of action arises from defendants causing tortious injury in this Commonwealth by an act or omission inside this Commonwealth. In addition, this Court has jurisdiction over defendant *New York Post* because

the cause of action arises from defendants causing tortious injury in this Commonwealth by an act or omission outside this Commonwealth, and defendant *New York Post* engages in a persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth.

### **Parties**

7. Plaintiff Salaheddin Barhoum (“Salah” or “plaintiff Barhoum”) and his father El Houssein Barhoum (who brings this action on behalf of Salah) are individuals who reside in the Beachmont section of Revere, Massachusetts. Salah is a 16 year-old sophomore at Revere High School. He has been an avid runner since the sixth grade. He is a lawful permanent resident of the United States.

8. Plaintiff Yassine Zaimi (“Yassine” or “plaintiff Zaimi”) is an individual who resides in Malden, Massachusetts. He is a lawful permanent resident of the United States. He works full time and attends night school near his place of employment.

9. Defendant NYP Holdings, Inc., d/b/a *New York Post* (hereinafter, “*New York Post*”) is one of the most widely circulated and influential newspapers in the country, and it is read each day by millions of people all over the world, including on the Internet. *New York Post* is owned, in majority part, by its Publisher, Rupert Murdoch (“Mr. Murdoch”). It circulates its newspaper in Massachusetts and otherwise does or solicits business in the Commonwealth.

10. At all times material hereto, defendants Larry Celona, Brad Hamilton, Jamie Schram, Lorena Mongelli, and Kate Kowsh were reporters for the *New York Post*, and while acting within the scope of their employment at the *Post*, contributed to the publications at issue in this case.

11. At all times material hereto, defendant Jane Doe was an employee of the *New York Post*, and while acting within the scope of her employment at the *New York Post*, designed and/or

wrote the “Headline” of the publication at issue in this case.

### **Statement of Facts**

12. On the morning of April 15, 2013, plaintiffs traveled to the finish line of the Boston Marathon where they and thousands of other spectators stood to watch the elite runners come through. While there, they met and conversed with fellow running fans from around the globe who had come to watch the nation’s oldest and most famous annual marathon. After the elite runners finished, plaintiffs left the Marathon area at approximately 12:45 p.m.

13. More than two hours later, at approximately 2:49 p.m., the two bombs were detonated.

14. The plaintiffs learned of the bombings that afternoon from coverage on television.

15. Immediately after the blasts, Federal and local law enforcement began a thorough investigation in an attempt to identify those responsible for the bombings.

16. In furtherance of their investigation, law enforcement officials asked the public to provide them with photographs and videos of the scene of the Marathon bombing.

17. Shortly after the blasts, users of several social media Internet sites, including “4Chan” and “Reddit,” began discussion groups purportedly dedicated to finding the Marathon bombers. Annotated collections of photographs began appearing on these social media sites, some of which contained circles around particular individuals. These efforts were not being performed at the behest or under the auspices of law enforcement authorities.

18. At some time on or prior to April 17, 2013, photographs of plaintiffs began circulating on one or more of these social media Internet sites.

19. On information and belief, by Wednesday afternoon, April 17, 2013, law enforcement authorities had photographs of the two persons they suspected of causing the Marathon bombings and they were conducting an investigation into the suspects’ identities. These two

persons were later identified as Tamerlan Tsarnaev and Dzhokhar Tsarnaev.

20. Due to concern over unsubstantiated and inaccurate information being reported to the public, the F.B.I. issued a news release on Wednesday, April 17, 2013 that included the following language: *“Over the past day and a half, there have been a number of press reports based on information from unofficial sources that has been inaccurate. Since these stories often have unintended consequences, we ask the media, particularly at this early stage of the investigation, to exercise caution and attempt to verify information through appropriate official channels before reporting.”* A copy of the full FBI news release is attached hereto as Exhibit C.

21. That evening, plaintiff Yassine Zaimi learned that his picture, taken on Monday morning as he watched the Marathon, was being shown on the Internet.

22. Even though he had not been approached or contacted by any law enforcement personnel, plaintiff Zaimi voluntarily presented himself at the Malden Police station to answer any questions or address any concerns that said authorities might have about his attendance at the Marathon. He spoke with law enforcement personnel at the Malden Police station, including agents from the F.B.I., speaking with the F.B.I. agents at length and answering all questions with complete candor and honesty. He even offered to retrieve the back-pack he had been wearing at the Marathon for the agents to inspect. At no point did the F.B.I. agents indicate that they had been looking for him or plaintiff Barhoum or that they had been seeking either of them for questioning. Rather, at the conclusion of the interview, the agents told plaintiff Zaimi that he was “all clear” and not to worry. At approximately 2:00 a.m. on Thursday, April 18, 2013, plaintiff left the Malden Police station thinking this matter had been put to rest.

23. Late Wednesday night, plaintiff Salah Barhoum learned that his picture, taken on Monday morning as he watched the Marathon, was being shown on the Internet. As a result, he

went to the East Boston Police to answer any questions authorities might have about his attendance at the Marathon. He arrived at the East Boston Police station in the early morning hours of Thursday, April 18, 2013, and informed law enforcement personnel there that he had learned his picture was being shown on the Internet in connection with the Marathon bombing. The personnel with whom he spoke then made a telephone call to other law enforcement officials and reported back that he was not a suspect and was free to leave. Plaintiff Barhoum then left the East Boston Police station thinking this matter had been put to rest.

24. At some point during the evening of April 17 or the early morning of April 18, the *Post* released and distributed its April 18, 2013 print edition and a corresponding Internet story. In various headlines, articles and images, the newspaper stated or implied that the plaintiffs were the perpetrators of the bombing; that they were suspects in the bombing; that they were being sought by law enforcement; and that photographs of them were being circulated by law enforcement officials. None of these statements were true.

25. The front page of the print edition featured full length, full page, photographic images of plaintiffs. Superimposed on the photograph was a 9 x 2 inch headline, at the top of the page, in block letters, reading, “**BAG MEN.**” The term “Bag Men” itself suggested criminality and, in particular, clearly referenced previous reports that investigators believed that the perpetrators transported their bombs in backpacks or duffel bags. The term “Bag Men” with the images of plaintiffs Zaimi and Barhoum clearly implies that they are the “men” who had bombs in their bags. A subsidiary 4 x 4.25 inch headline, superimposed on the lower portion of the page stated, “**Feds seek this duo pictured at Boston Marathon.**” A copy of the front page is attached hereto as Exhibit A and is incorporated herein by reference.

26. The full article continued on pages 4-5 of the paper. Those pages contained an 18 x 1.25

inch two-page width headline **“FEDS HAVE 2 MEN IN SIGHTS.”** Directly beneath the top headline were two more pictures of plaintiffs, one of which is an image with their heads circled in red, with a caption reading: **“Cops are seeking these two men (above) who were spotted near the site of the Boston blasts.”** Beneath the photographs was the additional 9 x .5 inch headline, which reads: **“Seen in pix with backpack and bag.”** The article’s first sentence read: **“Investigators probing the deadly Boston Marathon bombings are circulating photos of two men spotted chatting near the packed finish line, The Post has learned.”** Page 5 stated that the article was written by defendants Larry Celona, Brad Hamilton and Jamie Schram, with “[a]dditional reporting by Lorena Mongelli and Kate Kowsh in Boston.” A copy of the interior portion of the story is attached as Exhibit B and is incorporated herein by reference.

27. The Internet story appeared under the headline, **“Authorities circulate photos of two men spotted carrying bags near site of Boston bombings.”** Beneath the top headline were the two pictures of plaintiffs that appeared on page 5 of the newspaper, including the image with their heads circled in red, with a caption reading: **“Cops are seeking these two men (above) who were spotted near the site of the Boston blasts.”** The Internet article’s first sentence read: **“Investigators probing the deadly Boston Marathon bombings are circulating photos of two men spotted chatting near the packed finish line, The Post has learned.”** The Internet article stated that it was written by defendants Larry Celona, Brad Hamilton and Jamie Schram, with “[a]dditional reporting by Lorena Mongelli and Kate Kowsh in Boston.”

28. All of the above-described *New York Post* publications were distributed widely in the Greater Boston area, elsewhere in Massachusetts, throughout the United States and the world.

29. On Thursday, April 18, 2013, when plaintiff Zaimi went to work he still did not know of the *Post* publication. Arriving at work, he was met by the Vice President of his division, who

told him that he had called the FBI and that they said he (Zaimi) was not a suspect. Upon leaving the office, plaintiff Zaimi was approached by his office manager, who directed his attention to the *Post* front page, where, for the first time, he saw his picture on the front page and the headline that stated he was one of two “Bag Men” and was being sought by the F.B.I. He immediately started shaking, his mouth went dry, and he felt as though he was having a panic attack.

30. Later on Thursday morning, April 18, 2013, plaintiff Salah Barhoum, who was on school vacation, participated in a track meet. He was also still unaware of the *New York Post* coverage. After the track meet, he left to return home. When he returned and approached the outside of his home at approximately 11:30 a.m., he saw multiple vehicles, including several media trucks. Entering his home, he encountered a large crowd of reporters, from various news media, including the *New York Post*, who arrived to follow up on the *Post* story. Although the plaintiff had not been identified by name in the *Post* story, the various media organizations had been able to identify the plaintiff and locate his residence. There were numerous still cameras and several TV cameras, which were being used to film inside the home. Barhoum observed reporters and other media members interrogating his parents with questions about their son, including questions about him being a Marathon bombing suspect and being sought by law enforcement authorities. The media then turned to Salah and began asking him questions as well, including questions about his being a Marathon bombing suspect and being sought by law enforcement authorities. One of the media members showed him an image of the front page of defendant *New York Post*'s newspaper, which had been published earlier that morning. Seeing the publication for the first time, plaintiff Barhoum became terrified, began to shake and sweat, and felt dizzy and nauseous.

31. Subsequent follow-up reporting by the various media outlets identified the plaintiffs by name.

32. The *New York Post's* April 18, 2013 newspaper article and Internet story were widely disseminated throughout the world, including in Massachusetts.

33. Defendant *New York Post's* front-page story and Internet story implied something that was false and defamatory *per se*.

34. The *New York Post's* widespread dissemination of plaintiffs' photographic images in connection to the Boston Marathon bombing thrust plaintiffs involuntarily into the public light. They began to be recognized by strangers from photographs that had been published in the *New York Post's* newspaper and Internet web page, publications which cast them as dangerous persons responsible for a notorious and heinous crime. Plaintiff Zaimi, while trying to get home from work in the late afternoon of Thursday, April 18, 2013, was identified by a man waiting alongside him at the T platform as the man shown as one of the bombers in the *New York Post*. Both plaintiffs were inundated by unsolicited communications on their cell phones and via social media. Some of these communications caused them to be frightened. Prior to April 18, 2013, plaintiffs were both private persons. As a result of the *New York Post's* defamatory publications, plaintiffs were put in fear for their lives and suffered harm, including but not limited to damage to their reputations and ongoing extreme emotional distress.

35. Plaintiffs continue to suffer the effects of the *New York Post's* actions.

## Claims

### COUNT ONE: (Defamation/Libel *Per Se* on Front Page)

36. Plaintiffs reallege paragraphs 1 through 35 as if fully set forth herein.
37. The defendants caused the April 18, 2013 front page (“Front Page”) of the *New York Post*, as shown in Exhibit A, to be published and distributed in Massachusetts and throughout the United States and the world.
38. The Front Page unambiguously stated and/or implied that plaintiffs were involved in causing the Boston Marathon bombing. This was false.
39. The Front page unambiguously stated and/or implied that federal authorities considered plaintiffs suspects in connection with the crime. This was false.
40. The Front Page unambiguously stated and/or implied that federal authorities were actively seeking them in connection with the crime. This was false.
41. The Front Page unambiguously stated and/or implied that federal authorities were circulating their photo in an effort to identify them. On the basis of all available information, this was false as well.
42. The Front Page would lead a reasonable reader to believe that plaintiffs had bombs in their bags (backpacks), that they were involved in causing the Boston Marathon bombing, that federal authorities considered them suspects in connection with the crime, that federal authorities were actively seeking them in connection with the crime, and that federal authorities were circulating their photo in an effort to find them.
43. The Front Page was defamatory because it discredited plaintiffs and/or held them up to scorn, hatred, ridicule, or contempt in the minds of a considerable and respectable segment of the community.

44. The Front Page was defamatory *per se*, because it implied that plaintiffs committed a heinous crime.

45. Defendants caused the false and defamatory Front Page to be published with knowledge of its falsity of and/or with a reckless disregard for its truth or falsity. Alternatively, defendants acted with negligent disregard for the truth.

46. As a result, plaintiffs have suffered and continue to suffer harm, including but not limited to damage to their reputations, physical injuries, severe emotional distress, embarrassment and humiliation, for which they are entitled to recover damages.

**COUNT TWO: (Defamation/Libel *Per Se* by Full Article)**

47. Plaintiffs reallege paragraphs 1 through 46 as if fully set forth herein.

48. The full libelous April 18, 2013 *New York Post* article included the Front Page and the other photographs, headlines, captions and text that appeared on pages 4 and 5 of the newspaper (“Full Article”).

49. The defendants caused the Full Article to be published and distributed in Massachusetts and throughout the United States and the world.

50. The Full Article unambiguously stated and/or implied that plaintiffs were involved in causing the Boston Marathon bombing. This was false.

51. The Full Article unambiguously stated and/or implied that federal authorities considered plaintiffs suspects in connection with the crime. This was false.

52. The Full Article unambiguously stated and/or implied that federal authorities were actively seeking them in connection with the crime. This was false.

53. The Full Article unambiguously stated and/or implied that federal authorities were circulating their photo in an effort to identify them. On the basis of all available information,

this was false as well.

54. The Full Article would lead a reasonable person to believe plaintiffs were involved in causing the Boston Marathon bombing, that law enforcement personnel considered them suspects in connection with the crime, that law enforcement personnel were actively seeking them in connection with the crime, and that law enforcement personnel were circulating their photo in an effort to find them.

55. The Full Article was defamatory because it discredited plaintiffs and/or held them up to scorn, hatred, ridicule, or contempt in the minds of a considerable and respectable segment of the community.

56. The Full Article was defamatory *per se* because it implied that plaintiffs committed a heinous crime.

57. Defendants caused the false and defamatory Full Article to be published with knowledge of its falsity of and/or with a reckless disregard for its truth or falsity. Alternatively, defendants acted with negligent disregard for the truth.

58. As a result, plaintiffs have suffered and continue to suffer harm, including but not limited to damage to their reputations, physical injuries, severe emotional distress, embarrassment and humiliation, for which they are entitled to recover damages.

**COUNT THREE: (Defamation/Libel *Per Se* by Internet Story)**

59. Plaintiffs reallege paragraphs 1 through 58 as if fully set forth herein.

60. The Internet story was carried on the *New York Post* web page and, as such, the defendants caused it to be published and distributed throughout the United States and the world (“Internet Story”).

61. The Internet story unambiguously stated and/or implied that plaintiffs were involved in

causing the Boston Marathon bombing. This was false.

62. The Internet story unambiguously stated and/or implied that federal authorities considered plaintiffs suspects in connection with the crime. This was false.

63. The Internet story unambiguously stated and/or implied that federal authorities were actively seeking them in connection with the crime. This was false.

64. The Internet story unambiguously stated and/or implied that federal authorities were circulating their photo in an effort to identify them. On the basis of all available information, this was false as well.

65. The Internet Story would lead a reasonable person to conclude that the plaintiffs were involved in causing the Boston Marathon bombing, that law enforcement personnel considered them suspects in connection with the crime, that law enforcement personnel were actively seeking them in connection with the crime, and that law enforcement personnel were circulating their photo in an effort to find them.

66. The Internet Story was defamatory because it discredited plaintiffs and/or held them up to scorn, hatred, ridicule, or contempt in the minds of a considerable and respectable segment of the community.

67. The Internet Story was defamatory *per se* because it implied that plaintiffs committed a heinous crime.

68. Defendants caused the false and defamatory Internet story to be published with knowledge of its falsity of and/or with a reckless disregard for its truth or falsity. Alternatively, defendants acted with negligent disregard for the truth.

69. As a result, plaintiffs have suffered and continue to suffer harm, including but not limited to damage to their reputations, physical injuries, severe emotional distress, embarrassment and

humiliation, for which they are entitled to recover damages.

**COUNT FOUR:**  
**(Negligent, Intentional and/or Reckless Infliction of Emotional Distress)**

70. Plaintiffs reallege paragraphs 1 through 69 as if fully set forth herein.

71. Defendants knew or should have known that their conduct in causing the false and defamatory Front Page, Full Article, and/or Internet Story to be published would cause plaintiffs emotional distress.

72. Defendants' actions in causing the false and defamatory Front Page, Full Article and/or Internet Story to be published was extreme and outrageous, beyond all possible bounds of decency.

73. As a result, plaintiffs have suffered and continue to suffer harm, including but not limited to physical injuries, severe emotional distress, embarrassment and humiliation, the nature of which no reasonable person could be expected to endure, and for which they are entitled to recover damages.

**COUNT FIVE: (G.L. c. 214, §1B, Invasion of Privacy)**

74. Plaintiffs reallege paragraphs 1 through 73 as if fully set forth herein.

75. Defendants interfered with plaintiffs' privacy when they caused the Front Page, Full Article and Internet Story to be published.

76. Defendant's interference with plaintiffs' privacy was unreasonable, substantial, and in serious violation of their rights under G.L. c. 214, §1B.

77. As a result, plaintiffs have suffered and continue to suffer harm, including but not limited to physical injuries, severe emotional distress, embarrassment and humiliation, the nature of which no reasonable person could be expected to endure, and for which they are entitled to

recover damages.

**COUNT SIX: (False Light Invasion of Privacy)**

78. Plaintiffs reallege paragraphs 1 through 77 as if fully set forth herein.

79. By causing the Front Page, Full Article and Internet Story to be published, defendants conveyed to a large number of persons the unambiguous and false implication that plaintiffs were involved in causing the Boston Marathon bombing, that law enforcement personnel considered them suspects in connection with the crime, that law enforcement personnel were actively seeking them in connection with the crime, and that law enforcement personnel were circulating their photo in an effort to find them.

80. Defendants took active steps to cause the Front Page, Full Article and/or Internet Story to be published.

81. Defendant's interference with plaintiffs' privacy was objectionable, unreasonable, substantial, and in serious violation of their privacy rights.

82. As a result, plaintiffs have suffered and continue to suffer harm, including but not limited to damage to their reputations, physical injuries, severe emotional distress, embarrassment and humiliation, for which they are entitled to recover damages.

**Prayer for Relief**

WHEREFORE, plaintiffs respectfully pray that this Court:

1. Allow plaintiffs their compensatory damages;
2. Allow plaintiffs attorney fees, interest and costs;
3. Grant such other relief as is necessary, appropriate, equitable or just.

Respectfully submitted,

SALAHEDDIN BARHOUM,  
ppa EL HOUSSEIN BARHOUM

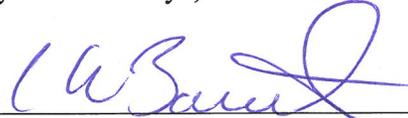
YASSINE ZAIMI,

By his Attorneys,

By his Attorneys,



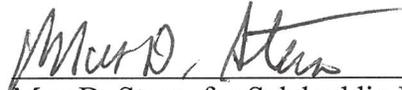
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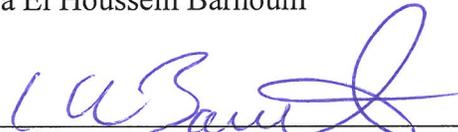
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**DEMAND FOR TRIAL BY JURY**

Plaintiffs claim trial by jury on all counts.



Max D. Stern, for Salaheddin Barhoum  
ppa El Houssein Barhoum



C. William Barrett, for Yassine Zaimi

Dated: June 5, 2013

# **Exhibit A**



# BAG MEN

## Feds seek this duo pictured at Boston Marathon

Investigators probing the deadly Boston Marathon bombings are e-mailing law-enforcement agencies photos of these two men seen on surveillance near the finish line, The Post has learned.

One is carrying a duffel bag and the other has a backpack — which is not visible in a later photo. There is no direct evidence linking them to the crime, but authorities want to identify them.

SEE PAGES 4, 5, 6, 7

SCOTT L. WINTER



# **Exhibit B**



# **Exhibit C**



## Boston Division

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### No Arrest Made in Bombing Investigation

**FBI Boston**  
April 17, 2013

**Special Agent Greg Comcowich**  
(617) 223-6110

Contrary to widespread reporting, no arrest has been made in connection with the Boston Marathon attack. Over the past day and a half, there have been a number of press reports based on information from unofficial sources that has been inaccurate. Since these stories often have unintended consequences, we ask the media, particularly at this early stage of the investigation, to exercise caution and attempt to verify information through appropriate official channels before reporting.

**1-800-CALL-FBI | Updates on Investigation**

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