UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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MARA FELD, PHD,	*	
Plaintiff	*	
	*	
v.	*	DOCKET NO. 13-13122-FDS
	*	
CRYSTAL CONWAY	*	
Defendant	*	
	*	
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MOTION TO DISMISS UNDER RULE 12(B)(1),(B)(2), AND (B)(6)

Now comes Kathleen A. Reagan, Esq. and on behalf of the Defendant Crystal Conway, (hereafter "Defendant" or "Ms. Conway") moves to DISMISS the above entitled action.

All facts recited are taken from the Complaint filed by the Plaintiff. The Defendant reserves her right to answer the Complaint and its allegations in the event her motion is denied.

The Plaintiff is a Massachusetts resident horse owner that sent (or initiated actions which resulted in her horse being sent) her retired racehorse to an auction in New Holland, Pennsylvania where horses are frequently bought to be sent to the Canadian slaughter market. *See* Paragraph Numbers 2-5 of the Plaintiff's Complaint. This event occurred in November of 2010. As indicated in the Complaint, Feld availed herself of the internet through "personal research and investigation," in these events and the apparent and subject demise of the horse became a topic of online conversation generally in a

matter of "great debate." Id. The Defendant posted a Twitter comment on the matter (the debate) in December of 2010 in which she expressed her opinion about the Plaintiff (with an alias of "Gina Holt")(name unexplained further) stating "you are "f[…] crazy." [The profanity in the original was spelled out.] *See* Paragraph No. 11 of the Plaintiff's Complaint. The Defendant has no known contacts to Massachusetts as alleged in the Complaint, being a resident of Kentucky and there is no allegation of any contacts between the parties at all or of contacts by the Defendant with the forum state of Massachusetts.

1. Motion to Dismiss under Rule 12(b)(1); Subject Matter Jurisdiction.

In considering a motion to dismiss for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b) (1), the Court assumes that all material allegations set forth in the complaint are true. *See* Mulloy v. United States, 884 F. Supp. 622, 626 (D. Mass. 1995); Williams v. City of Boston, 784 F.2d 430, 433 (1st Cir. 1986). The averments of the complaint, as well as their proper inferences, are construed in favor of the plaintiff and the claim will not be dismissed unless "it appears beyond doubt that the plaintiff can provide no set of facts in support of his claim which would entitle him to relief." Williams, at 433; Mulloy at 622. In the instant matter the Plaintiff has filed a complaint of defamation but has pled that the Defendant offered a statement which is obviously a statement of opinion. Here, the profanity stated in full clearly signals to the reader as an adjective that the next word is an opinion and not a statement of fact. That is, the vulgarity used signals its lack of clinical or factual significance. The Plaintiff in fact offers no facts from which any other construction can be made on the events, such as laying out a case that shows that the Defendant had any actual contacts with the Plaintiff

or had any basis of knowledge or ability to render any kind of clinical judgment on the Plaintiff or show any facts beyond the mere statement of opinion itself. At the same time the Plaintiff alleges facts which would reasonably lead a community of equine professionals in the Thoroughbred racing industry to become justifiably upset at the public nature of the end of the retired race horse "Munitions" at a well known equine auction that frequently results in such horses being sent to slaughter. No other construction can be placed on these events and more importantly, the Plaintiff alleges none, and thus the Plaintiff's case fails. See e.g. Leidholdt v. L.F.P. Inc., 860 F. 2d. 890 (9th Circ. 1988) (The context of the publication and the language ["pus-bloated walking sphincter" and "wacko"] used make it clear that the statements were understood as ridicule or vituperation and telegraph to the reader that the statements presented were opinions and not allegations of fact.) Id. To hold otherwise would chill important First Amendment rights that surround the privileges of private individuals to have opinions and express them publicly where a Plaintiff has availed herself of such a public forum, as she states in her complaint. Finally, the Plaintiff herself states that the context of the statement was during the next month following the demise of the horse, on the subject of "great debate" in the internet community. The context, which is Twitter, during a raging online debate, would signal the reader of the opinionated nature of the posting. The Plaintiff simply alleges no facts from which any sentient being could conclude that this was an averment of fact or intended as anything other than an opinion.

2. Motion to Dismiss under Rule 12(b)(2); Lack of Personal Jurisdiction

In analyzing the exercise of specific personal jurisdiction, a court may apply a three-part test: "1) whether the claims arise out of or are related to the defendant's in-state

activities, 2) whether the defendant has purposefully availed itself of the laws of the forum state and 3) whether the exercise of jurisdiction is reasonable under the circumstances."

In the instant case, the Plaintiff has not asserted any grounds from which personal jurisdiction can be found. There is no contract between the parties. The Plaintiff and the Defendant have not communicated directly and do not know each other nor have they ever intentionally directed any communication to the other. It cannot be said that a Twitter post is the functional equivalent of an intentional statement made to from one person to another, rather, a Twitter post is in the nature of a public billboard on trending and public events in which opinions are the stock in trade. The Defendant is a resident of the State of Kentucky and has no contacts with the Commonwealth of Massachusetts discernable from the pleadings. The Plaintiff does not allege that the Defendant directed comment(s) to the Plaintiff or to the Commonwealth of Massachusetts purposefully. The comment made was made on a world-wide public bulletin board during a “great debate” and can more accurately be said to be made to the general Twitter public as an expression of the sender’s opinion. The Plaintiff does not say that the Defendant had any in-state activities or that she purposefully availed herself of the laws of the forum state. No allegation of such relatedness appears in the pleadings. As to purposeful availment, this court has held personal jurisdiction not to exist where the Plaintiff has not met even the lower threshold of foreseeability and voluntariness applicable in tort suits. As in Rodriguez v. Samsung Electronics Co., 827 F. Supp. 2d 47 (D. Mass. 2011), Conway has not advertised her business in Massachusetts, does not have offices in Massachusetts, and does not have employees in Massachusetts.

Additionally Ms. Conway has never initiated or consented to a suit in Massachusetts. On these facts, the this court has previously denied the exercise of personal jurisdiction as it would defy reason that the mere posting of one general opinion on Twitter could subject one being haled into a Massachusetts Court. Even the most attenuated of present day exercises of personal jurisdiction using the internet require some intentionally directed conduct by the Defendant at the forum state so as to allow the Defendant due process.

Finally, exercising personal jurisdiction over the Defendant would be unreasonable. The Plaintiff availed herself of several websites intentionally, and she alleges that the events concerning her horse became public knowledge and the subject of entirely reasonable debate as to how her horse came to be sent to an auction that would result in its slaughter. It would defy reason for such a course of action to result in the exercise of personal jurisdiction against an out of state Defendant who was otherwise unrelated to the issue merely because the Plaintiff did not like the opinion expressed, as well as implicating important First Amendment rights that would be chilled through the exercise of such jurisdiction. It is also noteworthy that the Plaintiff apparently waited until the last day of a three year statute of limitations in order to file her complaint. This delay suggests that the matter was not of burning importance to the Plaintiff nor does the Plaintiff include any other posters on the debate in her complaint for comparison's sake. In fact this complaint seems to have more to do with Google's selection algorithm, see Paragraph 15 of the Plaintiff's complaint, and her distress at this debate being so prominent for so long in the internet community. None of these facts assist the Plaintiff in her quest for minimum contacts of the Defendant to the forum state.

Wherefore, for the following reasons, and any other reasons that the Court deems appropriate, the Defendant requests that this matter be DISMISSED.

The Defendant
By Her Attorney,

_____/s/_____
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Date: 3/21/14

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing MOTION TO DISMISS UNDER RULE 12(B)(1),(B)(2), AND (B)(6), and Notice of Limited Appearance were served upon Plaintiff's counsel by CM/ECF electronic filing and first class mail on this 21st day of March, 2014.

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/s/
Kathleen A. Reagan