

**Calaveras Superior Court**

**Civil Law & Motion Calendar with Tentative Rulings**

**Friday, August 28, 2020, Courtroom #2**

**Hon. David M. Sanders**

9:00 AM                      19CV43812                      Default hearing                      01/15/2019                      12/09/2020                      Case Management Conference

Ptff/Pet:      Day, Sheila

Atty:      Ratner, David S

Def/Res:      Griffen, Robin Alan, Jr; Griffen, Robin Alan, Sr

Atty:      Kruse Law Corporation

Tentative Ruling: On March 19, 2020, plaintiff filed a Request for Entry of Default, which was entered that same day, against Robin Alan Griffen, Jr. On May 28, 2020, plaintiff filed this motion. There is no Tentative Ruling on this case. Plaintiff and her legal counsel (if represented) must appear.

9:00 AM                      18CV42976                      Demurrer Hearing by County of Calaveras' Demurrer to                      01/05/2018                      09/09/2020; 11/06/2020                      Case Management Conference;  
Third Amended Complaint                      Judgment / Summary Adjudication

Ptff/Pet:      Barr, Howard Todd

Atty:      Shepardson, John Arthur

Def/Res:      County of Calaveras

Atty:      Angelo, Kilday & Kilduff

Tentative Ruling: On June 5, 2020, the Court partially granted plaintiff's request to file the third amended complaint, filed on June 26, 2020. On July 28, 2020, defendant demurred.

Defendant's demurrer to the third cause of action, pertaining to violation of Labor Code section 98.6, is SUSTAINED, without leave to amend as this is the third amended complaint. Plaintiff did not receive Court's approval to amend the complaint adding this specific cause of action. Furthermore, plaintiff has not adequately pled this cause of action, even under California's liberal pleading practice, even had such an amendment been allowed.

Defendant's demurrer to the third cause of action, pertaining to Labor Code section 1102.5, is OVERRULED. Pursuant to the Court's ruling on June 5, 2020, Labor Code sections 1102.5(b) and (c) provide different protections for employees. Subsection (b) provides protections for an employee for disclosing information to a government or law enforcement agency, and (c) provides protection for an employee against retaliation for refusing to participate in an activity that would result in a violation of state or federal statute. Plaintiff has adequately pled this cause of action in relation to Labor Code subsections 1102.5(b) and 1102.5(c).

The clerk shall provide notice of this ruling to the parties forthwith. Defendant to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

9:00 AM                      20CV44814                      Petition Hearing to Seal Arrest and Related Records                      07/06/2020

Ptff/Pet:      Auten, Nikolas

Atty:      Crowell Law Offices

Def/Res:      People of the State of California

Atty:

Tentative Ruling: There is no tentative ruling on this case. Plaintiff and legal counsel (if represented) must appear.

9:00 AM                      19CV43882                      Motion Hearing for Order Setting Trial Date                      02/19/2019                      11/04/2020                      Case Management Conference

Ptff/Pet:      Moore, David M.; Moore, Rebecca

Atty:      Brown Koro & Romag Llp

Def/Res: George Reed Inc.; etal

Atty: Sacino Bertolino & Hallissy; Caltrans Legal; Brunn & Flynn;  
Kozina, Vladimir Mirko; Bates Winter & Associates

Tentative Ruling: Plaintiffs filed the complaint on February 19, 2019. The final answer to plaintiffs' third amended complaint was filed on June 16, 2020. Plaintiffs filed this motion on July 24, 2020.

While the Court does adhere to the Rule of Court guidelines to set trials as much as practicable in 12, 18, and 24 months' timeframes, these times do not start until any given case is fully at issue. The final defendant 's answer to the third amended complaint was not filed until June 16, 2020, thus this matter did not become fully at issue with all attorneys of record on board until then.

The Court will follow its normal procedure and a Mandatory Settlement Conference will be set at the next Case Management Conference; if, and only if, the MSC judge is convinced this matter cannot be resolved short of trial, a trial date will be set at the end of the Mandatory Settlement Conference. Based on the foregoing, plaintiffs' motion is DENIED.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiffs to prepare a formal Order pursuant to Rule 3.1312 in conformity with this ruling is required.

9:00 AM

CV34859

Def's Motion to Enforce Stipulation and Judgment

07/09/2008

Ptff/Pet: Santos, Alfredo L.

Atty: Pro Se

Def/Res: Bowers, Mary

Atty: Abbott, Michael Lee

Tentative Ruling: There is no tentative ruling on this case. The parties and their legal counsel (if represented) must appear.



that Dr. Robert Allen was the Vice President of Medical Affairs, who testified that when he began working, staff spent time filing him in on the context of background within the department. Again, any communication is privileged, and even if not privileged, the comments made in 2015 are barred by the statute of limitations. Any negative statements toward plaintiff that were repeated by Dr. Robert Allen in his deposition in August 2017, are barred by statute of limitation and are within the scope of CC §47(c) and not republications.

Furthermore, in his deposition, Dr. Allen stated eight people, two of them employees of defendant Optum360, heard “negative information” about plaintiff. However, Dr. Allen stated during his deposition that he could not recall specifically what each and every person told him. “To prove defamation, a plaintiff must establish ‘(a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injury or that causes special damages.’ As always the plaintiff must establish that the person sued is the one legally responsible for the tort.” (Abir Cohen Treyzon Salo, LLP v Lahiji (2019) 40 Cal.App.5th 882, 889.) Since there were six other people involved in the conversation, plaintiff cannot establish that the person legally responsible for making the comments was one of defendant Optum360’s employees as those two individuals cannot be specifically identified.

The Court finds it does not need to rule on defendant Optum360’s objections to evidence submitted by plaintiff as the Court rules in defendant Optum360’s favor and plaintiff’s objections do not concern evidence relevant to the Court’s decision. Even considering all of plaintiff’s evidence, the Court finds defendant Optum360 has proven there are no triable issues and the Court GRANTS defendant Optum360’s motion for summary judgment.

The clerk shall provide notice of this ruling to the parties forthwith. Defendant Optum360 to prepare a judgment pursuant to Rule of Court 3.1312 in conformity with this ruling.

9:00 AM	18CV43486	Motion-Summary Judgment / Summary Adjudication filed by Dignity Health	08/14/2018	09/21/2020	Settlement Conference
Ptff/Pet:	St. Myers, Carla		Atty:	Bohm Law Group	
Def/Res:	Dignity Health; Dignity Health Db	Mark Twain Medical Center; Optum360	Atty:	Atkinson Andelson Loya Ruud & Romo; Seyfarth Shaw LLP	

Tentative Ruling: On August 14, 2020, plaintiff filed the complaint. On October 29, 2018, defendant Dignity Health answered. On April 17, 2020, defendant Dignity Health filed this motion for summary judgment. No trial date has been set.

Defendant Dignity Health alleges there are no triable issues of material fact because plaintiff’s defamation cause of actions fails for the following reasons: 1) the complaint is barred by the statute of limitations; 2) the complaint is barred by the common-interest privilege and there is no evidence of malice; 3) the complaint relies upon allegations of non-actionable opinions that are not provably false assertions of fact; and 4) plaintiff is unable to establish damages.

Pursuant to CCP section 437c (7)(c) , “the motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. “

Also applicable is CCP section 437c(p)(2) which states in pertinent part: “[a] defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto.”

CCP §340(c) provides that the statute of limitations for slander is one year. The Court in Manguso v Oceanside Unfired School District (1979) 88 Cal.App.3d 725 ruled that the “rule of discovery applied to libel actions; thus, appellant’s cause of action accrued when she knew, or should have known, all material facts essential to show the elements of her cause of action.” This matter is distinguished by Manguso, because in Manguso, the plaintiff, a teacher, located an alleged libelous statement about her in her permanent personnel file sixteen years after it was placed there. In this matter, plaintiff knew of the allegations in 2012, and subsequently obtained supplemental, not new, information from Dr. Curtis Allen’s 2017 deposition. The alleged defamatory statements were not hidden away in a file or otherwise that plaintiff had no knowledge they existed; rather she had longstanding knowledge of the statements.

Plaintiff erroneously relies on Schneider v United Airlines (1989) 208 Cal.App.3d 71, wherein the court held that the “general rule is that every repetition of a defamation is a separate publication and gives rise to a new cause of action.” The Schnieder court specifically stated that “appellants suffered injury each time the defamatory matter was published.” However, in this matter, plaintiff became aware of the alleged defamatory statements in 2012 and obtained clarification from Dr. Curtis Allen’s deposition that she reviewed in May or June 2017. When plaintiff filed this action on August 14, 2018, the statute of limitations had passed. There is no new evidence that defendant Dignity Health defamed plaintiff or that there was any new publication in the workplace.

Civil Code section 47(c) provides for a privileged publication in a communication, without malice, to a person interested therein: (1) by one who is also interested; or (2) by one who

stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information. This statute grants a privilege against defamation to communications made without malice on subjects of mutual interest. Defendant has the initial burden of showing facts to bring the communication within the privilege; plaintiff must prove malice. (Lundquest v Reusser (1994) 7 Cal.4<sup>th</sup> 1193.)

Both parties agree all persons attending the various investigatory meetings were employees of Dignity Health, Mark Twain Medical Center or Optum 360. Any statements made during those investigations are privileged publications. Additionally, any statements that could be argued as being outside the scope of the privileged communication, are barred by the statute of limitations. There is no dispute that Dr. Robert Allen was the Vice President of Medical Affairs, who testified that when he began working, staff spent time filing him in on the context of background within the department. Again, any communication is privileged, and even if not privileged, the comments made in 2015 are barred by the statute of limitations. Any negative statements toward plaintiff that were repeated by Dr. Robert Allen in his deposition in August 2017, are barred by statute of limitation and are within the scope of CC §47(c) and not republications.

In the complaint, plaintiff is seeking compensatory damages, including but not limited to lost wages and emotional distress, as well as punitive damages. In plaintiff's response to defendant's summary judgment, plaintiff does not address the issue of damages. There is no evidence presented that she suffered any economic damages as she obtained employment prior to leaving defendant's place of business and is currently employed. Furthermore, no evidence is presented that she sought treatment for any medical condition caused by this matter undercutting any claim of emotional distress damages.

Furthermore, pursuant to Civil Jury Instruction 1723, plaintiff cannot recover damages from defendant even if the statements were false, unless plaintiff also proves either: 1) that in making the statements, defendant acted with hatred or ill will toward her, showing defendant's willingness to vex, annoy, or injury her; or 2) that defendant had no reasonable grounds for believing the truth in the statements. As both plaintiff and defendant agree that only defendant's employees were involved in the investigations from the anonymous complaints, no willingness to vex, annoy, or injury her has been shown. Any statements that Dr. Robert Allen heard at work are protected by the common interest privilege because employees were briefing him on the context and background of Dignity Health to further his new job responsibilities. Furthermore, defendant Dignity Health is not responsible for any negative statements made against plaintiff outside the workplace at a restaurant or through casual conversation by mutual acquaintances.

The Court finds it does not need to rule on defendant Dignity Health's objections to evidence submitted by plaintiff as the Court rules in defendant Dignity Health's favor and plaintiff's objections do not concern evidence relevant to the Court's decision. Even considering all of plaintiff's evidence, the Court finds defendant Dignity Health has proven there are no triable issues and the Court GRANTS defendant Dignity Health's motion.

The clerk shall provide notice of this ruling to the parties forthwith. Defendant Dignity Health to prepare a judgment pursuant to Rule of Court 3.1312 in conformity with this ruling.