IN THE FRANKLIN COUNTY COMMON PLEAS COURT,
FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Omar Alomari, Plaintiff, v. Columbus Division of Police, *et al*. Defendants.	Case No. 12cv004592 Judge Holbrook

MOTION TO DISMISS ON BEHALF OF DEFENDANTS TODD ALAN SHEETS, STEPHEN COUGHLIN, JOHN GUANDOLO AND PATRICK POOLE

Defendants Todd Alan Sheets, Stephen Coughlin, John Guandolo, and Patrick Poole ("Defendants"), through their undersigned counsel, hereby move this court for an order dismissing this case with prejudice pursuant to Rules 12(B)(1) & (6) of the Ohio Rules of Civil Procedure. This motion is supported by the accompanying Memorandum of Law.

The basis for Defendants' motion is patent from the allegations of the Amended Complaint itself. Plaintiff's claims of false light publicity/invasion of privacy and tortious interference with a business relationship fail because the allegations of the Amended Complaint lack the requisite elements to sustain either cause of action. Specifically, the false light publicity claim fails for three reasons: (1) the alleged statements were not "publicized" (as opposed to defamation's requirement of mere "publication"); (2) the matters alleged to be of Plaintiff's "private" life were in fact made in direct relationship to his public life and official position; and (3) if the alleged statements had actually been made and publicized, they were of legitimate concern to the public. To the extent that Plaintiff's claim is really one for a published (not publicized) defamatory statement, the claim is manifestly barred by the statute of limitations. The interference with business relationship claim fails for the obvious reason that the Amended

Complaint does not allege that any actual "interference" took place. In other words, there is no allegation that Plaintiff suffered any loss of a business relationship or resulting damages.

For the foregoing reasons and as set forth more fully in the accompanying Memorandum of Law, Defendants respectfully request this court grant their motion and enter an order of dismissal with prejudice of all allegations against them in the Amended Complaint.

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MEMORANDUM IN SUPPORT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

I. BRIEF STATEMENT OF THE CASE

Plaintiff accuses Defendants of a false light publicity/invasion of privacy tort arising out of statements made privately to either a few individuals or to trainees and staff attending a Columbus Police Department-sponsored counter terrorism workshop for law enforcement officers. Plaintiff also claims that these Defendants intended to interfere with Plaintiff's employment. Plaintiff is the former Multicultural Relations Officer for the Ohio Department of Homeland Security, who was very publicly fired, according to the *Columbus Dispatch*, for dishonesty on his employment application. Interestingly, but not surprisingly, Plaintiff's Amended Complaint, which makes no mention of his termination, does not allege even remotely that these Defendants actually interfered with Plaintiff's employment.

II. THE ALLEGATIONS

As set forth in the Amended Complaint, the relevant allegations against Defendants Todd Alan Sheets, Stephen Coughlin, John Guandolo, and Patrick Poole are as follows:

- In October 2006, the Ohio Department of Public Safety, Office of Homeland Security ("OHS") employed Plaintiff as a "Multicultural Relations Officer," a full-time position. (Amended Compl. at ¶¶ 11, 13).
- Defendant Sheets was a member of the Columbus Police Department ("CPD") and in 2007 became a member of the CPD's Terrorism Early Warning Group ("TEWG"). (Amended Compl. at ¶ 27).
- In 2009, Defendant Sheets "commented to a CPD Officer and TEWG member that Plaintiff . . . was 'dirty' and not trustworthy." (Amended Compl. at ¶ 28).
- "As a member of TEWG, Defendant Sheets organized and conducted training workshops for officers of CPD. In an in-service TEW [sic] training on weapons of

mass destruction in 2009 at the Columbus Police Training Academy, Defendant Sheets included a photo of Plaintiff and labeled Plaintiff as a potential terrorist and/or stated that Plaintiff had affiliations with terrorists and/or terrorist organizations." (Amended Compl. at 29).

- "In 2009, Defendant Sheets made comments to staff at the OHS Fusion Center questioning Plaintiff's integrity and loyalty to OHS. Defendant Sheets warned, 'No one knows what Omar does when he goes out and meets with communities. He could be passing information to these people and that could be very dangerous.'" (Amended Compl. at 30).
- Defendants Sheets and Poole organized a CPD training session entitled, 'Understanding the Threat to America,' from April 13-15, 2010, and invited Defendants Coughlin and Guandolo to conduct the training. The CPD training session took place at the Columbus Police Training Academy. (Amended Compl. at ¶¶ 31-32, 37, 45).
- "As part of the training held on April 13 [through April 15], 2010, Defendants Coughlin, Guandolo and Poole attacked Plaintiff and OHS and labeled Plaintiff a terrorist sympathizer. Defendants Coughlin, Guandolo, and Poole accused Plaintiff of being a 'suspect,' alleged that Plaintiff used his position within OHS to 'connect with terrorists,' and promised to 'keep digging' into Plaintiff's background to 'expose' him as a terrorist or terrorist sympathizer." (Amended Compl. at ¶¶ 33, 39).
- "These statements were false and Defendants Sheets, Coughlin, Guandolo, and Poole[1]

[1] Defendant Poole is not actually mentioned in paragraphs 39 and 47 of the Amended Complaint—the paragraphs alleging that certain Defendants "publicized the false statements"—but we will assume that he is somehow included. (Amended Compl. at ¶¶ 39, 47). Similarly, Sheets is not alleged to have actually made any false statements during the April 13-15 training

made these statements, which a reasonable person would consider offensive, knowing they were false or recklessly disregarding the falsity of these statements." (Amended Compl. at ¶¶ 39, 41-42, 47).

- While the Amended Complaint vaguely claims "Defendants interfered with Plaintiff's employment with OHS," there are no allegations about how that interference occurred nor is there a single allegation about what the actual "interference" was—that is, what were the resulting damages. (Amended Compl. at ¶¶ 45-51).

III. LEGAL ARGUMENT

A. Plaintiff's Claim for False Light Invasion of Privacy Fails as a Matter of Law.

1. The Applicable Law.

In order to pursue a false light publicity/invasion of privacy claim, Plaintiff must minimally allege facts that set out the rudiments of a claim. Since the Ohio Supreme Court's expressed adoption of the false light variant of the tort of invasion of privacy in *Welling v. Weinfeld*, 113 Ohio St. 3d 464, 2007-Ohio-2451, 866 N.E.2d 1051 (2007), the parameters of this tort have been flushed out in numerous appellate decisions. Specifically,

> To recover for "publicity" invasion of privacy, the following elements must ultimately be shown: (1) that there has been a public disclosure; (2) that the disclosure was of facts concerning the private life of an individual; (3) that the matter disclosed would be highly offensive and objectionable to a reasonable person of ordinary sensibilities; (4) that the disclosure was intentional; and (5) that the matter publicized is not of legitimate concern to the public. *Killilea v. Sears, Roebuck & Co*. (1985), 27 Ohio App.3d 163, 166-167, 27 Ohio B. 196, 499 N.E.2d 1291; *Early v. The Toledo Blade* (1998), 130 Ohio App. 3d 302, 342, 720 N.E.2d 107; *Strutner v. Dispatch Printing Co.* (1982), 2 Ohio App.3d 377, 378, 2 Ohio B. 435, 442 N.E.2d 129. The publication must concern a truly private fact, not something that the plaintiff himself has already made public by, *e.g.*, filing a civil lawsuit. *Pollock v. Rashid* (1996), 117 Ohio App. 3d 361, 369, 690 N.E.2d

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session—the event at issue in this litigation—but we will assume for purposes of this motion that he was involved at some level beyond merely organizing the training session. (Amended Compl. at ¶33).

903.

Roe v. Heap, 10th Dist. No. 03AP-586, 2004-Ohio-2504 at ¶53, 2004 Ohio App. LEXIS 2093, 34-35; *see also Curry v. Vill. of Blanchester*, 12th Dist. Nos. CA2009-08-010 & 012, 2010-Ohio-3368 at ¶¶ 59-60, 2010 Ohio App. LEXIS 2855, 31-32 (same).

The court in *Heap* went on to explain the important distinction between the tort of false light's publicity requirement and defamation's element of mere publication:

> In granting summary judgment on appellant's claim for a publicity tort, the trial court found that appellees' e-mails were not a "public disclosure" because they were sent to only a small group of people. The trial court also found that appellees' e-mails contained facts that involved a matter of legitimate concern to the public. Finally, the court found that the facts published by Heap and Scheibeck were public, not private facts. On appeal, appellant challenges each of these findings.
>
> In finding that no public disclosure occurred in the present case, the trial court relied on the case of *Roberts v. Hagen* (Feb. 9, 2000), Medina App. No. 2845-M, 2000 Ohio App. LEXIS 404. In *Roberts*, the plaintiff's claim for invasion of privacy was based on the defendant employer having disclosed to the plaintiff's co-worker negative comments the plaintiff had made about the co-worker. The court held that the invasion of privacy claim could not be maintained when the disclosure was made to only one or even a small group of people. Relying on *Roberts*, the trial court in the present case found that because appellees' e-mails were sent to so few individuals, there had been no public disclosure.
>
> The *Roberts* court relied exclusively on Restatement of the Law 2d, Torts (1977) 384, Section 652D, Comment a, which explains, in pertinent part: "Publicity," . . . means that the matter is made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge. . . . [Publicity is] communication that reaches, or is sure to reach, the public.
>
> A fair reading of *Roberts* reveals that its holding was based less upon the number of direct recipients of the disclosure, and more upon the fact that there was apparently no evidence before the court that the subject matter of the disclosure was substantially certain to become public knowledge. Thus, in determining whether appellees' e-mails were public disclosures, the character of the communications, and the likelihood that they would become public knowledge, wield more persuasive force than the number of persons to whom the disclosures were initially made.
>
> With this in mind, we find no abuse of discretion in the trial court's finding that

> appellees' e-mail messages, sent to a handful of USD officials, were not public disclosures. Appellees' messages were directed specifically to officials involved in a national organization of which appellees' daughters' diving club was a member. The messages sought, *inter alia*, clarification and modification of USD's policies respecting protection of minor children during sponsored events, and were disseminated only to persons presumably possessing some measure of authority and influence over such policies. Moreover, there is no evidence in the record that the content of appellees' e-mail messages were substantially certain to become public knowledge. As such, the messages were private communications, not public.

Id., 2004-Ohio-2504 at ¶¶ 54-58, 2004 Ohio App. LEXIS 2093, 35-37.

2. Plaintiff's Claim of False Light Fails Because There Was No Publicity.

The sum and substance of Plaintiff's allegations against Defendants is that Defendants, as CPD organizers or instructors of a special counterterrorist training course given for and sponsored by the CPD on April 13-15, 2010, identified Plaintiff as a "terrorist sympathizer" and "suspect" in the context of Plaintiff's affiliations with terrorists and Plaintiff's work on behalf of the OHS. Plaintiff also seems to include as part of this claim two statements negatively reflecting on Plaintiff made by Defendant Sheets to fellow offices at some point in 2009. (Amended Compl. at ¶¶ 28, 30). But, these statements, in the context of private police conversations and a highly specialized and quite obviously private CPD training session is exactly not the "publicizing" required for a false light tort claim in Ohio or under the Restatement as expressly set out by the court in *Heap*.[2] Moreover, there is not a single allegation that any of these statements ever saw the public light of day. Finally, there is not a single allegation in the Amended Complaint, nor a reasonable inference from the expressed allegations,

[2] While the Amended Complaint vaguely refers to a "weblog" called the *Jawa Report* as publishing various attacks against Plaintiff, nowhere does the Amended Complaint connect the web postings of the *Jawa Report* to Defendants. (Amended Compl. at ¶¶ 9, 19-23, 40, 48). Even more telling, according to the Amended Complaint, the *Jawa Report* allegedly was posting negative material about Plaintiff well in advance of the April 13-15, 2010, CPD training session, as evidenced by the allegations that in March 2010 the weblog "***increased its scrutiny*** of Plaintiff and its efforts to connect Plaintiff with terrorists." (Amended Compl. at ¶¶ 19-20 [emphasis added]).

that these allegedly private statements made to other officers at work or within the four walls of a CPD training session at the Columbus Police Training Academy would likely ever make their way to the public. On this ground alone, Plaintiff's false light publicity claim fails.

3. Plaintiff's Claim of False Light Fails Because the Facts Disclosed Were Not of Plaintiff's Private Life and Were a Matter of Legitimate Public Interest.

Assuming that a private CPD counterterrorist training session amounts to "publicity" to satisfy the first necessary element of the false light tort (which it does not), the second element of such a claim, as noted by *Heap*, is that the matter disclosed must be of Plaintiff's private life. In this case, even assuming the Amended Complaint's allegations attributing false statements to Defendants are true (which Defendants deny), they were made quite expressly in the context of Plaintiff's professional role with the OHS. Further, Defendants' statements to CPD staff that Plaintiff's terrorist ties made him entirely inappropriate for this role, if true, would have been appropriately based upon Plaintiff's public and professional life. As such, Defendants were not exposing some private matters that would invade Plaintiff's privacy, but making, if true, reasonably appropriate statements to Plaintiff's superiors and colleagues about Plaintiff's professional status and conduct in that professional role.

Moreover, the Amended Complaint itself alleges that the *Jawa Report* had already published the same or similar accusations about Plaintiff's nefarious contacts with terrorists long before the April 2010 CPD training session. The fact that the allegations were already in the public domain by no act or fault of Defendants hardly renders Defendants' alleged statements as an invasion of Plaintiff's **private** life.

Closely associated to the "privacy" element of the false light tort is the element requiring that the matter not be of legitimate concern to the public. Indeed, as the *Heap* court noted, this element is more than just a common law requirement, it is intimately tied to protecting the right

to free speech as public comment. *Roe v. Heap*, 2004-Ohio-2504 at ¶ 65, 2004 Ohio App. LEXIS 2093, 42 ("[T]he trial court [must] determine whether appellees' communications concerned matters of legitimate interest to the public. In the case of *Cox Broadcasting Co. v. Cohn*, 420 U.S. 469, 95 S. Ct. 1029, 43 L. Ed.2d 328 (1975), the United States Supreme Court indicated that an action for invasion of privacy cannot be maintained when the subject matter of the publicity is a matter of 'legitimate concern to the public.'").

In the instant case, the Amended Complaint itself alleges that Defendants were tasked with either organizing or actually instructing on "Understanding the Threat to America" in the context of Defendant Sheet's professional capacity on the CPD "Terrorism Early Warning Group." Whether the allegations about Plaintiff's terrorists connections were true or not, since Defendants, who were professionals employed and retained by a public law enforcement agency to provide instruction relating to understanding and identifying the "threat"—presumably including the insider threat working in the CPD as a "liaison between OHS and Ohio's Muslim and Arab communities," it is hard to imagine how this was not a matter of legitimate public interest. (Amended Compl. at ¶ 11).

4. Plaintiff's Claim of False Light Fails Even If Re-Framed as a Defamation Action Because It Is Barred by the Applicable Statute of Limitations.

Given the quite obvious, intrinsic, and irreparable shortcomings of Plaintiff's tort claim for false light publicity/invasion of privacy, one would be inclined to ask why this allegation was not framed in the first instance as a defamation action, for which publicity is not required—only publication—and for which the publication need only be shown to contain statements that were false and defamatory factual assertions. In this case, Plaintiff alleges that the purported statements by Defendants asserting Plaintiff's terrorist sympathies and ties to terrorists were false and, as such, allegedly defamatory—indeed they would qualify, if false, as defamatory *per se*.

Roe v. Heap, 2004-Ohio-2504 at ¶¶ 17-24, 2004 Ohio App. LEXIS 2093, 13-19. While Defendants most certainly deny they ever defamed Plaintiff, given these allegations, why would Plaintiff have attempted to put this round defamatory peg into an impossible fitting square hole of false light publicity?

The answer is that Plaintiff knows quite well that any defamation claim he might have asserted is barred by the applicable statute of limitations. R.C. 2305.11 ("An action for libel, slander, malicious prosecution, or false imprisonment, . . . shall be commenced within one year after the cause of action accrued . . . .") In this case, based upon the allegations, the alleged defamation took place at the latest on April 13-15, 2010. Indeed, Plaintiff concedes in his Amended Complaint that he was fully aware of these "defamatory" statements at the time they were allegedly made. (Amended Compl. at ¶¶ 34-35). However, the action was not commenced until the filing of the original Complaint in this matter on April 11, 2012, two years after the event.

Now we understand why Plaintiff has attempted—unsuccessfully—to cram a defamation action into a tort for false light publicity claim. For all of the foregoing reasons, Defendants respectfully request that this court dismiss with prejudice Plaintiff's claim for false light publicity.

B. Plaintiff's Claim for Tortious Interference With a Business Relationship Fails Because It Alleges No Actual Interference.

1. The Applicable Law.

"The tort of interference with a business relationship occurs when a person, without a privilege to do so, induces or otherwise purposely causes a third person not to enter into or continue a business relationship with another. The elements of tortious interference with a business relationship are: (1) a business relationship; (2) the wrongdoer's knowledge thereof; (3)

an intentional interference causing a breach or termination of the relationship; and (4) damages resulting therefrom. *Blackburn v. Am. Dental Ctrs*., 10th Dist. No. 10AP-958, 2011-Ohio-5971 at ¶ 34, 2011 Ohio App. LEXIS 4893 at *34 (citations omitted). The Ohio courts have explained the intimate connection between this tort with one labeled interference with contract:

> The tort of interference with business relationship occurs when a person, without privilege to do so, induces or otherwise purposefully causes a third person not to enter into or continue a business relationship with another. The elements of tortious interference with a business relationship are: (1) a business relationship; (2) the tortfeasor's knowledge thereof; (3) an intentional interference causing a breach or termination of the relationship, and; (4) damages resulting therefrom. The main distinction between tortious interference with a contractual relationship and tortious interference with a business relationship is that interference with a business relationship includes intentional interference with prospective contractual relations, not yet reduced to a contract. Such interference must be intentional because Ohio does not recognize negligent interference with a business relationship.

Diamond Wine & Spirits v. Dayton Heidelberg Distrib. Co., 148 Ohio App. 3d 596, 604, 2002-Ohio-3932, ¶ 23 (3rd Dist.).

2. Plaintiff Has Failed to Allege Any Interference or Resulting Damages.

Plaintiff's Amended Complaint quite simply fails to allege any interference by Defendants or any other party in his relationship to his employer, OHS. There is not a single allegation that OHS terminated Plaintiff's relationship with the OHS or some future contemplated relationship, or that such termination (assuming it occurred) had anything to do with Defendants or their alleged statements during the April 13-15, 2010, training session. Moreover, the Amended Complaint does not even attempt to articulate a nexus between the CPD training session and the OHS officials who presumably did something to "interfere" with some kind of business relationship, although we are not told what that was. *See McWreath v. Cortland Bank*, 11th Dist. No. 2010-T-0023, 2012-Ohio-3013 at ¶¶ 56-58, 2012 Ohio App. LEXIS 2662, 25-26 (holding trial court's dismissal of claim for interference with contract was proper because

complaint did not allege any actual interference).

For these reasons, Defendants respectfully request as well that this court dismiss Plaintiff's claim of interference with a business relationship.

Less by way of prospective proof and more by way of judicial notice, Defendants take note of two interesting public facts. One, the *Columbus Dispatch* reported back in July 2010 that Plaintiff was terminated from the OHS not because of anything Defendants may or may not have said, but because Plaintiff did not properly disclose his background when he obtained his employment with the OHS:

> An Ohio Homeland Security official has been fired for failing to fully disclose his background when he began working for the state in late 2006.
>
> Omar Alomari, 59, was fired Tuesday for dishonesty stemming from his failure to list his prior employment at Columbus State Community College, where he was fired after an improper consensual sexual affair with a student.
>
> Alomari also gave "false information" when he was interviewed by investigators, according to his discharge letter from Thomas Stickrath, director of the Ohio Department of Public Safety.
>
> Alomari, who was paid $76,107 a year [as] homeland security's community engagement director, did not list his tenure at Columbus State from 1990 to 1996 when he submitted a job application and filled out background-check materials.
>
> State officials began an administrative investigation of Alomari in May after the Jawa Report, a terrorism-related website, began digging into his background and publishing its findings. Alomari denied any wrongdoing at Columbus State.
>
> Details of the investigation of Alomari were not immediately released. The report should be available Friday, a department spokeswoman said.
>
> Laren Knoll, Alomari's lawyer, declined to comment this afternoon.

(Aff. of David W.T. Carroll, Esq. ["Carroll Aff."] at ¶ 3, filed concurrently herewith).

Moreover, Plaintiff has filed a federal lawsuit against his former employer, the Ohio Department of Public Safety and several supervisors, alleging discrimination and retaliation. (Ex. 1 ["Federal Complaint"] to Caroll Aff. at ¶ 2). Now, while it is true that Plaintiff's Federal

Complaint appears to allege that he complained to his supervisors about statements made by others during a three-day training session in early 2010 at the Columbus Police Academy (presumably the same training session at issue in this lawsuit), the crux of Plaintiff's Federal Complaint is not that he was fired as a result of anything Defendants (herein) might have said about Plaintiff, but because the defendants in the Federal Complaint—Plaintiff's employer and supervisors—discriminated against him on the basis of his race, religion, and national origin, and retaliated against him for complaining about such discrimination. (Fed. Compl. at ¶¶ 29-31, 41-79 at Carroll Aff. at Ex. 1). Similarly, in his Federal Complaint, Plaintiff links actions by a whole host of others (*i.e.*, not the Defendants) for precipitating his subsequent problems with his employer. (Fed. Compl. at ¶¶ 14-28 at Carroll Aff. at Ex. 1).

In other words, even if we assume that Defendants herein acted to somehow interfere with Plaintiff's employment (which they deny), according to Plaintiff's Federal Complaint, it was not Defendants herein who "caused" his dismissal, but any number of other parties and actors, behaving quite independently of Defendants and quite unforeseeably tortiously. *Pandey v. Banachowski*, 148 Ohio App.3d 596, 604, 2011-Ohio-6830, ¶¶ 40-41 (10th Dist.) ("The test used to determine the foreseeability of an intervening cause is whether the original and successive acts may be joined together as a whole, linking each of the actors as to the liability, or whether there is a new and independent act or cause which intervenes and thereby absolves the original negligent actor. The law usually does not require the prudent person to expect the criminal [or tortious] activity of others.") (citations and internal quotations omitted).

IV. CONCLUSION

Because the Amended Complaint makes it clear that Defendants' alleged derogatory statements were made privately and in a private CPD-sponsored counterterrorism training

session at the Columbus Police Training Academy and not to the public at large, Plaintiff cannot sustain a false light publicity/invasion of privacy claim. In addition, because the Amended Complaint makes it clear that the statements were about Plaintiff as a public official, they were not about his private life and were a matter of legitimate public concern. For these reasons as well, Plaintiff cannot sustain a false light publicity/invasion of privacy claim. Finally, the allegations of the Amended Complaint simply do not allege any actual interference with Plaintiff's employment, much less a tortious interference. Thus, Plaintiff has not, and given his claims in the Federal Complaint, cannot make out a claim for interference with a business relationship.

Wherefore, for the foregoing reasons, Defendants respectfully requests that this court dismiss Plaintiff's Amended Complaint with prejudice as against Defendants Todd Alan Sheets, Stephen Coughlin, John Guandolo, and Patrick Poole and such other and further relief as the Court deems appropriate.

[Signature page follows.]

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CERTIFICATE OF SERVICE

On May 28, 2013, I certify that I submitted the foregoing for filing through the court's e-filing system and in accordance with the court's Third Amended Administrative order of November 9, 2012, Section X(C)(2), will be served by e-Service upon the following:

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