

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Gratian Antoniu Dragomir v. Nationwide Mutual Insurance Company, et al.

Dragomir · No. CV-24-03729-PHX-DJH · Decided March 25, 2026

SUMMARY

This order addresses several motions in a pro se plaintiff’s employment-related action against Nationwide Mutual Insurance Company and NCS Arizona LLC. The court denies defendants’ motion to dismiss the defamation per se claim, finding that the alleged workplace communications were conditionally privileged but that actual malice remained a factual issue, and concludes that agency allegations were sufficient at the pleading stage. The court also denies plaintiff’s motion to amend, motion to disqualify the judge, and motion to subpoena witnesses, lifts the stay, and refers further pretrial matters to a magistrate judge.

CASE DETAILS

COURT	United States District Court for the District of Arizona
WRITING FOR THE COURT	Diane J. Humetewa
JURISDICTION	United States District Court for the District of Arizona
DECIDED	March 25, 2026
DOCKET	CV-24-03729-PHX-DJH
DISPOSITION	other
PROCEDURAL POSTURE	The district court ruled on Defendants' Rule 12(b)(6) motion to dismiss a defamation per se claim, Plaintiff's motion for leave to file a fourth amended complaint, Plaintiff's motion to disqualify the judge under 28 U.S.C. § 455(a), and Plaintiff's motion to subpoena witnesses for depositions.
STANDARD OF REVIEW	A Rule 12(b)(6) motion tests the legal sufficiency of the complaint; factual allegations are accepted as true and construed in the nonmoving party's favor, but legal conclusions couched as factual allegations need not be accepted. Leave to amend under Rule 15(a)(2) is reviewed under a liberal standard guided by the policy favoring decisions on the merits. Recusal under 28 U.S.C. § 455(a) is warranted when a reasonable person with knowledge of all the facts could reasonably question the judge's impartiality.

PRECEDENTIAL VALUE	Nonprecedential district court order; precedential status not stated in the opinion.
PARTIES	Gratian Antoniu Dragomir v. Nationwide Mutual Insurance Company, NCS Arizona LLC

TOPICS

defamation motions to dismiss motion to amend discovery dispute civil procedure

PRACTICE AREAS

civil procedure defamation employment law

QUESTIONS PRESENTED

1. Whether Plaintiff plausibly stated a defamation per se claim despite qualified privilege, lack of adequately pleaded actual malice, and alleged failure to plead employer ratification or authority.
2. Whether Plaintiff should be granted leave to file a Fourth Amended Complaint after the amendment deadline.
3. Whether proposed amendments asserting a private cyberstalking claim under 18 U.S.C. § 2261A were futile.
4. Whether the judge should be disqualified under 28 U.S.C. § 455(a) based primarily on allegedly unfavorable prior rulings and courtroom management.
5. Whether Plaintiff's motion to subpoena witnesses for depositions should be granted while discovery disputes and a discovery stay remained unresolved.

HOLDINGS

1. The alleged statements were made in connection with an internal workplace investigation and were conditionally privileged, but the privilege did not require dismissal because Plaintiff sufficiently alleged that Defendants acted with actual malice.
2. Plaintiff could proceed with the defamation claim under an alleged agency relationship because the complaint plausibly suggested that the supervisor made the statements with actual authority and within the scope of employment, even though ratification was not adequately pleaded.
3. Leave to amend was denied because the motion was filed after the amendment deadline without a satisfactory explanation, largely proposed new theories or revisions to existing claims, and included futile proposed cyberstalking amendments.
4. Recusal was denied because Plaintiff identified no extrajudicial source of bias, and adverse rulings and ordinary courtroom administration were insufficient to establish that the judge's impartiality could reasonably be questioned.
5. The motion to subpoena witnesses was denied without prejudice because the discovery stay was being lifted and resolution of the parties' joint discovery dispute could affect which subpoenas were necessary.

KEY QUOTATIONS

“The Court finds that the qualified privilege described in Miller applies to the present circumstances.”
(Opinion § I.C.1)

“Therefore, Plaintiff may proceed with his defamation claim under the alleged agency relationship.” (Opinion § I.C.2.b)

“To the extent plaintiff disagrees with the undersigned’s determinations, such issues are properly raised through an appeal to the Ninth Circuit, not a motion to recuse.” (Opinion § III)

FACTUAL BACKGROUND

Plaintiff was previously employed by Defendants as a security officer. He alleged that coworkers and his supervisor reported that he had engaged in stalking, harassment, aggressive behavior, and voyeurism, including allegedly possessing recordings of coworkers engaging in sexual activity. Defendants' Office of Associate Relations investigated the allegations and reportedly found them unsupported, but Plaintiff claimed the statements damaged his reputation, caused emotional distress, and resulted in lost wages.

PROCEDURAL HISTORY

Plaintiff filed a Third Amended Complaint alleging, among other claims, defamation per se arising from statements by coworkers and a supervisor during an internal workplace investigation. Defendants moved to dismiss Claim VII. Plaintiff moved to amend, disqualify the judge, and subpoena witnesses. The court denied all four motions, denied the subpoena motion without prejudice, lifted the discovery stay, and referred further pretrial matters to a magistrate judge.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand. The court lifted the discovery stay, directed that further pretrial matters be referred to a magistrate judge, and directed the magistrate judge to rule on the unresolved joint discovery dispute.

CASES CITED

- Cook v. Brewer, 637 F.3d 1002, 1004 (9th Cir. 2011)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Balistreri v. Pacifica Police Department, 901 F.2d 696, 699 (9th Cir. 1990)
- Manzarek v. St. Paul Fire & Marine Insurance Co., 519 F.3d 1025, 1031 (9th Cir. 2008)
- Green Acres Trust v. London, 688 P.2d 617, 624 (Ariz. 1984)
- Miller v. Servicemaster by Rees, 851 P.2d 143, 144-45 (Ariz. Ct. App. 1992)
- Aspell v. American Contract Bridge League of Memphis, Tenn., 595 P.2d 191, 192 (Ariz. Ct. App. 1979)

- Corral v. Fidelity Bankers Life Insurance Co., 630 P.2d 1055, 1058 (Ariz. Ct. App. 1981)
- Griego v. Arizona Dental Association, 2014 WL 5463931 (Ariz. Ct. App. 2014)
- Scott v. Allstate Insurance Co., 553 P.2d 1221, 1226 (Ariz. Ct. App. 1976)
- Bronson v. Green Tree Servicing, LLC, 2009 WL 546159, *8 (E.D. Cal. 2009)
- Huffman v. JP Morgan Chase Bank, NA, 2023 WL 2691455, *11-12 (D. Ariz. 2023)
- Reed v. Gershweir, 772 P.2d 26, 28 (Ariz. Ct. App. 1989)
- Brown v. Arizona Department of Real Estate, 890 P.2d 615, 621 (Ariz. Ct. App. 1995)
- Phoenix Newspapers, Inc. v. Church, 537 P.2d 1345, 1359 (Ariz. Ct. App. 1975)
- Swanson v. United States Forest Service, 87 F.3d 339, 343 (9th Cir. 1996)
- United States v. Webb, 655 F.2d 977, 979 (9th Cir. 1981)
- Bonin v. Calderon, 59 F.3d 815, 845 (9th Cir. 1995)
- Kruska v. Perverted Justice Foundation Incorporated.Org, 2010 WL 4791666, *8 (D. Ariz. 2010)
- McDonald v. Donofrio, 2023 WL 4306309, *3 (D. Nev. 2023)
- Kulas v. Flores, 255 F.3d 780, 787 (9th Cir. 2001)
- Moideen v. Gillespie, 55 F.3d 1478, 1482 (9th Cir. 1995)
- McNamara v. Cooley, 72 Fed. Appx. 727, 728 (9th Cir. 2003) (unpublished)
- United States v. Raymond, 10 Fed. App'x 513, 514 (9th Cir. 2001) (unpublished)
- Morissette v. Yu, 21 F.3d 1114, *1 (9th Cir. 1994)
- Federal National Mortgage Association v. Willis, 2018 WL 3544073, *3 (D. Nev. 2018)
- Liteky v. United States, 510 U.S. 540, 555 (1994)
- Chiat v. Washington, 2020 WL 8617399, *2 (W.D. Wash. 2020)

OPINION

1 WO 2 3 4 5 6 IN THE UNITED STATES DISTRICT COURT 7 FOR THE DISTRICT OF
ARIZONA 8 9 Gratian Antoniu Dragomir, No. CV-24-03729-PHX-DJH 10 Plaintiff, ORDER 11
v. 12 Nationwide Mutual Insurance Company, et al., 13 Defendants. 14 15 On August 26, 2025,
Defendants Nationwide Mutual Insurance Company and NCS 16 Arizona LLC (collectively,
“Defendants”) filed a Motion to Dismiss Plaintiff’s Claim VII, 17 defamation per se (Doc.

75). Pro se Plaintiff Gratian Antoniu Dragomir (“Plaintiff”) filed 18 a Response in Opposition
(Doc. 84) as well as a Motion to Amend the Third Amended 19 Complaint. (Doc. 83). Defendants
addressed both Plaintiff’s Response and Motion to 20 Amend in their Reply. (Doc. 86). 21 The
Court will first address Defendants’ Motion to Dismiss followed by Plaintiff’s 22 Motion to
Amend.

Additionally, the Court will rule on Plaintiff’s Motion to Disqualify 23 Judge, which has been
fully briefed (see Docs. 109, 113, 116) as well as Plaintiff’s Motion 24 to Subpoena Witnesses for
Depositions (Doc. 119). At the outset, the Court notes that 25 Plaintiff has filed a subsequent case

against Defendants (see Case No. 25-cv-4148), and 26 there are now several pending motions in that case, including a Motion to Dismiss the First 27 Amended Complaint in that case.

The Court will consider those motions in a separate 28 Order. 1 For the reasons set out below, the Court denies Defendants' Motion to Dismiss, 2 Plaintiff's Motion to Amend, Plaintiff's Motion to Disqualify, and Plaintiff's Motion to 3 Subpoena.

The Court will additionally lift the stay that was previously placed on this case 4 (see Doc. 124) and has determined that all further pretrial matters in this case will be 5 referred to a Magistrate Judge. The Magistrate Judge will rule on the parties' outstanding 6 Joint Discovery Dispute (Doc. 122) that is not resolved by this Order. 7 I. Motion to Dismiss 8 Plaintiff was previously employed by Defendants as a security officer, and this case 9 arises generally from alleged misconduct during his employment.

(Doc. 65 at ¶ 7). While 10 Plaintiff's Third Amended Complaint ("TAC") provides details into the alleged 11 discrimination and harassment that he experienced, for brevity's sake, this background 12 section will focus solely on the allegations underpinning Plaintiff's defamation per se 13 claim. 14 A. Background 15 In filing his TAC, Plaintiff alleges that newly found evidence revealed that 16 Defendants made "statements falsely accusing [Plaintiff] of criminal conduct" and "falsely 17 alleged that [Plaintiff] possessed recordings of coworkers engaging in sexual activity, 18 leading to fabricated claims of voyeurism under ARS § 13-1424." (Id. at ¶ 41).

Plaintiff 19 alleges that his co-workers, Brittany Collins and Antonio Arellano, made these claims, and 20 his "direct leader," Rob Lanning, escalated them into a complaint, resulting in an 21 investigation by Defendants' human resources department, the Office of Associate 22 Relations ("OAR"). (Id. at ¶ 2, 7, 42). Specifically, Plaintiff alleges: 23 • On "February 20, 2024 (1:49 AM) – Lanning, despite knowing that the text 24 and photos at issue were sent on January 19, 2024, submits an 'urgent ' [sic] 25 complaint to OAR and his direct leader, Larry Zahn, falsely alleging that 26 Plaintiff engaged in felony stalking, harassment, and created a hostile work 27 environment, all while conspicuously omitting any mention of recordings," 28 (id. at ¶ 50); 1 • On "February 20, 2024 (8:00 AM) – Less than seven hours later, Lanning 2 abruptly informs OAR that Plaintiff 'Gratian allegedly said he has 3 'recordings' of Antonio and Brittany having sex,' falsely implicating 4 Plaintiff in a violation of ARS § 13-1424 (Voyeurism)," (id. at ¶ 51); and 5 • On "February 21, 2024 (at 7:39 PM) – Following after Lanning, Arellano 6 sends a formal complaint via email to Lanning, reinforcing false allegations 7 against the Plaintiff," (id. at ¶ 52).

8 Based on the foregoing statements, Plaintiff claims that he has been accused of 9 conduct that violates the following criminal statutes "ARS § 13-2923 (Stalking)," "ARS 10 § 13-2921 (Harassment)," "ARS § 13-1424 (Voyeurism)," "ARS § 13-2904 (Disorderly 11 Conduct)," and "ARS § 12-1810 (Workplace Harassment Injunctions)." (Id. at ¶ 53). 12 In alleging his defamation per se claim, Plaintiff asserts: 13 Defendants knowingly and maliciously published false and

defamatory statements about Pro se, falsely accusing him of criminal conduct and 14 workplace misconduct, including, but not limited to: a) Falsely alleging that 15 Pro se stalked and harassed coworkers Antonio Arellano (“Arellano”) and Brittany Collins (“Collins”), including claims that Pro se yelled at Collins at 16 work; b) Falsely asserting that Pro se took photographs of Arellano’s vehicle 17 at Collins’ apartment, recorded Arellano and Collins engaging in sexual activity, and sent such recordings to Arellano’s wife, thereby implying an 18 affair between them; c) Wrongfully claiming that Pro se posed a workplace 19 threat due to alleged aggressive behavior, anger issues, and possession of a firearm and taser, deliberately creating a false perception that Pro se made 20 others feel unsafe.

These false allegations, initially reported by Lanning and 21 supported by statements from Arellano and Collins, were later escalated to the Office of Associate Relations (“OAR”). They were fabricated with 22 malicious intent to harm Pro se’s reputation.

The accusations of anger issues, aggressive behavior, stalking, harassment, and voyeurism constitute 23 Defamation Per Se, as they falsely impute criminal behavior—including 24 felony stalking under Arizona law—and directly damage Pro se’s professional reputation.

Moreover, Lanning falsely alleged that Pro se 25 possessed recordings of coworkers engaging in sexual activity, leading to 26 baseless accusations of voyeurism under A.R.S. § 13-1424. These fabricated claims were intentionally exaggerated to falsely portray Pro se as a criminal. 27 28 1 (Id. at ¶ 98). 1 After the alleged defamatory statements were brought to OAR, it conducted 2 an investigation that “ultimately confirmed that no evidence supported these allegations, 3 and that Collins and Arellano falsely accused Pro se in an attempt to have Pro se’ [sic] 4 terminated.” (Id. at ¶ 98).

Due to the alleged defamation, Plaintiff claims that he has 5 suffered damages, such as emotional distress and lost wages. (Id. at ¶ 101). Defendants 6 have now moved to dismiss Plaintiff’s defamation per se claim. 7 B. Legal Standard 8 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a claim. 9 *Cook v. Brewer*, 637 F.3d 1002, 1004 (9th Cir.

2011). Complaints must make a short and 10 plain statement showing that the pleader is entitled to relief for its claims. 11 Fed. R. Civ. P. 8(a)(2). This standard does not require “‘detailed factual allegations,’ but 12 it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” 13 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*

Corp. v. Twombly, 550 U.S. 14 544, 555 (2007)). There must be “more than a sheer possibility that a defendant has acted 15 unlawfully.” Id. A plaintiff must allege facts sufficient to “raise a right to relief above the 16 speculative level.” *Twombly*, 550 U.S. at 555. A complaint must “state a claim to relief 17 that is plausible on its face.” Id. at 570. “A claim has facial plausibility when the plaintiff 18 pleads factual content that allows the court to draw the reasonable inference that the 19

defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. “Determining 20 whether a complaint states a plausible claim for relief will... be a context-specific task 21 that requires the reviewing court to draw on its judicial experience and common sense.” 22 *Id.* at 679.

23 Dismissal of a complaint for failure to state a claim may be based on either the “lack 24 of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable 25 legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

In 26 reviewing a motion to dismiss, courts will “accept factual allegations in the complaint as 27 true and construe the pleadings in the light most favorable to the nonmoving party.” 28 1 Plaintiff refers to himself as “Pro se” in the TAC. 1 *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). But 2 courts are not required “to accept as true a legal conclusion couched as a factual allegation.” 3 *Twombly*, 550 U.S. at 555 (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

4 C. Discussion 5 Defendants’ challenges to Plaintiff’s defamation per se claim largely do not relate 6 to the elements of said claim.² Instead, Defendants argue that several qualified privileges 7 apply to the alleged statements, Plaintiff did not adequately plead actual malice, and 8 Plaintiff has not and cannot plead Defendants’ ratification of the alleged statements.

9 (Doc. 75 at 3–8). 10 Initially, the Court addresses Plaintiff’s argument that Defendants are precluded 11 from filing this Motion to Dismiss because they did not oppose Plaintiff’s Motion for Leave 12 to file a TAC. (Doc. 84 at 4–5). Defendants assert that their non-opposition to the filing 13 of the TAC does not act as a waiver of their right to move to dismiss.

(Doc. 86 at 2). And 14 the Court agrees. “Defendants’ assertion[] that Plaintiffs fail to state claims for relief is 15 not inconsistent with their failure to oppose the motion to amend, and Defendants do not 16 waive their right to contest the sufficiency of a complaint when they fail to oppose a motion 17 to amend.” *Warren v. Fisher*, 2013 WL 1164492, *6 (D.N.J.

2013); *Facciola v. Greenberg* 18 *Traurig LLP*, 2012 WL 910379, *1 (D. Ariz. 2012) (“The Federal Rules of Civil 19 Procedure...do not require a party to oppose a motion to amend instead of filing a motion 20 to dismiss.”).

Therefore, the Court will turn to the arguments presented in Defendants’ 21 Motion. 22 1. Qualified Privilege 23 Defendants first argue that Plaintiff’s defamation claim should be dismissed because 24 one or more qualified privileges apply to the alleged defamatory statements, and Plaintiff 25 2 To establish a defamation per se claim, Plaintiff must show that Defendants published a 26 statement that would impute to him “conduct constituting a criminal offense ... if the offense imputed is of a type which, if committed in the place of publication, would be (a) 27 punishable by imprisonment in a state or federal institution, or (b) regarded by public opinion as involving moral turpitude.” *Isles v. Family Dollar, Inc.*, 2025 WL 363705, *8 28 (Ariz.

Ct. App. 2025) (citing Restatement (Second) of Torts, § 571 (1977)) (internal quotation marks omitted). 1 has not alleged that any privilege has been abused. (Doc. 75 at 3–6). Plaintiff disagrees, 2 arguing that “[e]ven if a conditional privilege initially applied to internal communications, 3 that privilege was forfeited when Lanning knowingly fabricated a criminal accusation of 4 Voyeurism[.]” (Doc.

84 at 5). 5 The existence of a qualified or conditional privilege is a defense to a defamation 6 action. *Green Acres Tr. v. London*, 688 P.2d 617, 624 (Ariz. 1984). This defense is based 7 on “the social utility of protecting statements required to be made in response to a legal, 8 moral or social duty.” *Id.* Under Arizona law, a two-part analysis is used for determining 9 whether a qualified privilege exists.

Id. “The court must first determine whether a 10 privileged occasion arose, and, if so, whether the occasion for the privilege was abused.” 11 *Id.* The existence of a privilege is a question of law for the Court, whereas the latter 12 consideration is a question of fact for a jury. *Id.* 13 a. Existence of Privilege 14 “To establish that a privileged occasion arose, a defamation defendant must 15 establish that the circumstances in which the communication was made created an 16 obligation to speak.” *Id.* 17 In *Miller v. Servicemaster by Rees*, the plaintiff brought a defamation claim against 18 an employer whose employee believed that the plaintiff was sexually harassing her.

851 19 P.2d 143, 144 (Ariz. Ct. App. 1992). The defendant employer reported the incident to 20 plaintiff’s employer, and plaintiff brought suit against the defendant, claiming “that the 21 written and verbal reports of the incident are defamatory as a matter of law because they 22 adversely damaged his professional reputation.” *Id.* at 144–45.

The court determined that 23 “a conditional privilege exist[ed] because public policy dictates that employees must be 24 protected from workplace sexual harassment.” *Id.* at 145. In so ruling, the court explained 25 “[t]hat interest can only be protected if employees can report perceived acts of sexual 26 harassment regardless whether the acts were intended to harass.” *Id.* Therefore, the report 27 of the incident and the defendant’s conveyance of it “were for the benefit of protecting [] 28 from unwanted harassment, real or perceived, and [were] conditionally protected.” *Id.* 1 The Court finds that the qualified privilege described in *Miller* applies to the present 2 circumstances.

The alleged defamatory statements here were made in the course of an 3 internal investigation to determine the validity of the sexual harassment claims. (See 4 Doc. 65 at ¶ 51). As in *Miller*, employees must be protected from workplace sexual 5 harassment, and thus the reporting of and investigation into claims of such conduct are 6 conditionally privileged.

To the extent that the alleged defamatory statements do not 7 pertain to sexual harassment, Arizona courts have more broadly recognized that “a 8 communication is protected by a conditional privilege when the speaker has a duty to make 9 the communication, and it is made in

the performance of this duty.” *Aspell v. Am. Contract 10 Bridge League of Memphis, Tenn.*, 595 P.2d 191, 192 (Ariz.

Ct. App. 1979). “The duty 11 may be a legal, moral or social one.” *Id.* All of the statements alleged by Plaintiff were 12 made in furtherance of the OAR investigation, and, as Lanning was Plaintiff’s supervisor, 13 it can reasonably be seen that he had an obligation to report instances of stalking, 14 harassment, and aggressive behavior, even if they turned out to be false.

(See Doc. 65 at 15 ¶ 39). Therefore, a qualified privilege applies to the alleged defamatory statements here. 16 b. Abuse of Privilege 17 Nonetheless, a fact issue remains as to whether Plaintiff has alleged that Defendants’ 18 privilege was abused. An abuse of a qualified privilege occurs by publication with “actual 19 malice” or by excessive publication. *London*, 688 P.2d at 624. “An abuse through ‘actual 20 malice’ occurs when the defendant makes a statement knowing its falsity or actually 21 entertaining doubts about its truth.” *Id.* There is no allegation of excessive publication in 22 the TAC, so the parameters of excessive publication are not relevant here.

23 At this juncture, the Court reminds both parties that this is a Rule 12(b)(6) Motion, 24 which means that factual considerations are inappropriate and determining whether an 25 element has been alleged in no way means that it has been proven. With those points in 26 mind, here, Plaintiff has alleged that “Defendants knowingly and maliciously published 27 false and defamatory statements about [Plaintiff]” and that “[t]he defamatory statements 28 were exacerbated by Defendants’ malicious intent[.]” (Doc.

65 at ¶¶ 98–99). While these 1 allegations are relatively conclusory, they give Defendants sufficient notice that Plaintiff 2 is claiming that the defamatory statements were made with actual malice.³ Whether 3 Plaintiff carries his burden of demonstrating actual malice is a consideration for a later 4 stage of proceedings. 5 2. Ratification or Authority 6 Because the alleged defamatory statements were made by Defendants’ employees, 7 Defendants next argue that the TAC does not contain allegations that Defendants 8 authorized or ratified the defamatory statements.

(Doc. 75 at 7). Plaintiff generally argues 9 that the facts alleged in the TAC, when taken together, plausibly allege ratification. (See 10 Doc. 84 at 8–9). The Court again notes that whether an agency relationship exists is 11 generally a question of fact. *Corral v. Fid. Bankers Life Ins. Co.*, 630 P.2d 1055, 1058 12 (Ariz. Ct. App. 1981). 13 Under Arizona law, “a ‘principal is subject to direct liability to a third party harmed 14 by an agent’s conduct’ when ‘the agent acts with actual authority or the principal ratifies 15 the agent’s conduct’ and “the agent’s conduct is tortious, or the agent’s conduct, if that of 16 the principal, would subject the principal to tort liability[.]” ” *Griego v. Arizona Dental 17 Ass’n*, 2014 WL 5463931 (Ariz.

Ct. App. 2014) (citing Restatement (Third) of Agency 18 § 7.03 (2006)). 19 The Court appreciates Defendants’ argument that the TAC fails to identify whether 20 Collins, Arellano, or Lanning was

acting as an agent of either Defendant NCS or Defendant 21 Nationwide when any defamatory statements were made. (Doc. 86 at 4; see generally Doc. 22 65).

To satisfy Fed. R. Civ. P. 8(a)(2), “Plaintiff must specify the claims he is raising 23 against each defendant, what facts form the basis of each claim against each defendant, 24 what each defendant did that makes him or her liable for violating Plaintiff’s rights, and 25 how Plaintiff was injured by a particular defendant’s conduct.” *Myron v. Terhune*, 2012 WL 4483102, *5 (N.D.

Cal. 2012); *In re Bello*, 2013 WL 2367796 (Bankr. App. 9th Cir. 27 2013), *aff’d*, 622 Fed. App’x. 663 (9th Cir. 2015) (unpublished) (“When a plaintiff asserts 28 3 Defendants address actual malice in their discussion of Plaintiff’s ability to plead fault. (See Doc. 75 at 7–8).

The Court’s conclusion here applies equally to those arguments. 1 multiple claims against multiple defendants, this fair notice standard requires that the 2 allegations in the complaint must show which defendants are liable to the plaintiff for 3 which wrongs.”).

However, the TAC universally suffers from the defect of collectively 4 attributing actions to “Defendants.” (See generally Doc. 65). As Defendants have not 5 argued the insufficiency of Plaintiff’s six other claims on these grounds, the Court will not 6 dismiss Plaintiff’s defamation claim for this issue. Nevertheless, Plaintiff should note that, 7 moving forward, he will be required to produce sufficient evidence as to each Defendant’s 8 liability and consider whether he will be able to do so.

Plaintiff’s inability to establish that 9 Collins, Arellano, or Lanning were each acting as an agent of NCS or Nationwide when 10 the alleged defamatory remarks may be grounds for dismissal on summary judgment. 11 a. Ratification 12 In their briefing, the parties primarily discuss whether Plaintiff sufficiently alleged 13 that Defendants ratified the alleged defamatory statements. “In order to hold an employer 14 liable for the consequences of an employee’s tort on the ground of ratification, there must 15 be clear evidence of the approval of the wrongful conduct.” *Scott v. Allstate Ins.*

Co., 553 P.2d 1221, 12226 (Ariz. Ct. App. 1976). Obviously, on a motion to dismiss, the issue is 17 not whether Plaintiff has produced evidence of approval, rather whether Plaintiff alleged 18 that Defendants approved of the defamatory statements. Plaintiff has not done so here. 19 (See generally Doc. 65).

Moreover, Plaintiff attached the results of OAR’s investigation 20 as an exhibit to his TAC. (Doc. 65-2 at 10–11). The findings of the investigation are clear 21 that the defamatory statements were discredited by the OAR, Defendants’ human resources 22 division, and Plaintiff was recommended to return to his role. (*Id.* at 11).

As a result, even 23 if Plaintiff had pled ratification, such an allegation would be contradicted by his own 24 exhibits. See *Bronson v. Green Tree Servicing, LLC*, 2009 WL 546159, *8 (E.D. Cal. 25 2009) (“When an exhibit contradicts facts alleged in the complaint, the facts in the exhibit 26 take precedence.”). 27 b. Authority 28 That said, ratification is not the only means of establishing a principal’s liability for 1 its agent’s act.

A principal can be liable for an agent’s tortious acts when that agent is 2 acting with actual or apparent authority. See *Huffman v. JP Morgan Chase Bank, NA*, 2023 3 WL 2691455, *11-12 (D. Ariz. 2023). “An agent acts with actual authority when... the 4 agent reasonably believes, in accordance with the principal’s manifestations to the agent, 5 that the principal wishes the agent so to act.” Restatement (Third) of Agency § 2.01; see 6 also *Corral*, 630 P.2d at 1058 (“Agency may be proved by direct evidence of express 7 contract of agency between the principal and agent or by proof of facts implying such 8 contract or the ratification thereof.”).

By contrast, apparent authority arises when “the 9 principal has intentionally or inadvertently induced third persons to believe that such a 10 person was his agent although no actual or express authority was conferred on him as 11 agent.” *Reed v. Gershweir*, 772 P.2d 26, 28 (Ariz. App. 2d Div. 1989). 12 Here, Plaintiff has alleged that Lanning served as his “direct leader” during his 13 employment with Defendants and that Lanning reported to OAR that Plaintiff possessed 14 recordings of his co-workers engaging in sexual activities.

(Doc. 65 at ¶ 7, 51). Based on 15 Plaintiff’s allegations, Lanning as well as his co-workers Collins and Arellano were 16 employed by Defendants, and, although it is not explicitly alleged, the existence of such an 17 employment relationship presumably means that they were subject to Defendants’ control 18 and bound by some employment contract. See *Sheppard v. David Evans and Assoc.*, 694 19 F.3d 1045, 1051 (9th Cir.

2012) (drawing reasonable inferences in favor of the non-moving 20 party on a motion to dismiss). While no express contract is required to demonstrate actual 21 authority, the ability to infer the existence of an express contract between Lanning and 22 Defendants further allows one to infer that Lanning was making the reported statements 23 with actual authority and within the scope of his employment.

See *Brown v. Arizona Dept. 24 of Real Est.*, 890 P.2d 615, 621 (Ariz. App. 1st Div. 1995) (“Agency may be proven by an 25 express contract between the parties or by facts implying a contract.”); see also *Phoenix 26 Newspapers, Inc. v. Church*, 537 P.2d 1345, 1359 (Ariz. Ct. App. 1975) (concluding that 27 there is nothing in *Times v. Sullivan* or its progeny “which would purport to change in any 28 way well-settled principles of agency law making the employer liable for defamatory 1 statements made by an employee acting within the scope of his employment.”).

Therefore, 2 Plaintiff may proceed with his defamation claim under the alleged agency relationship. 3 Although the long-term viability of Plaintiff's defamation claim remains to be seen, 4 especially given the results of the OAR investigation, Plaintiff has pled a defamation per 5 se claim sufficient to withstand a 12(b)(6) motion. 6 II. Motion to Amend 7 In addition to his Response in Opposition to Defendants' Motion to Dismiss, 8 Plaintiff filed a Motion for Leave to File a Fourth Amended Complaint (Doc.

83). Plaintiff 9 attached a redlined version of his proposed Fourth Amended Complaint. (See Doc. 83-1). 10 Defendants responded to the Motion to Amend in their Reply to their Motion to Dismiss, 11 generally arguing that the proposed amendments do not change their above arguments or 12 are otherwise futile. (See Doc. 86 at n.1). 13 The court has discretion to grant or deny leave to amend a complaint, *Swanson v. 14 United States Forest Serv.*, 87 F.3d 339, 343 (9th Cir.

1996), though leave should be "freely 15 give[n] when justice so requires." Fed. R. Civ. P. 15(a) (2). "In exercising this discretion, 16 a court must be guided by the underlying purpose of Rule 15 to facilitate a decision on the 17 merits, rather than on the pleadings or technicalities." *United States v. Webb*, 655 F.2d 18 977, 979 (9th Cir. 1981). Consequently, the policy to grant leave to amend is applied with 19 extreme liberality.

Id. However, there is no abuse of discretion "in denying a motion to 20 amend where the movant presents no new facts but only new theories and provides no 21 satisfactory explanation for his failure to fully develop his contentions originally." *Bonin 22 v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995). 23 Having reviewed the Motion to Amend and the proposed amendments, the Court 24 denies Plaintiff's Motion for the following reasons.

First, the only explanation Plaintiff 25 gives for seeking further amendment is that the amendments "reflect[] newly developed 26 factual allegations and a refined legal theory under Defamation Per Se and Cyberstalking." 27 (Doc. 83 at 1). Plaintiff's Motion was filed on September 5, 2025, a day after the deadline 28 to amend. (See Doc. 64). Plaintiff does not undertake any discussion of why any of his 1 proposed amendments could not have been previously made.

2 Second, the amendments to Plaintiff's defamation per se claim do not raise new 3 factual allegations. Instead, they are largely responsive to the arguments raised in 4 Defendants' Motions to Dismiss and revise preexisting claims to more expressly state 5 certain elements. (See, e.g., Doc. 83-1 at 11 ("Defendants' selective disclosure and 6 manipulation of exculpatory evidence reflect actual malice and institutional ratification of 7 false accusations.")).

However, the Court has allowed Plaintiff to proceed with its 8 defamation claim, based on the above ruling, so further amendment of the claim is not 9 necessary. 10 Third, Plaintiff's remaining

amendments are made for the purpose of bringing a 11 cyberstalking claim against Defendants under 18 U.S.C. § 2261A.

As Defendants noted, 12 18 U.S.C. § 2261A is a criminal statute, and no private right of action has been 13 acknowledged under the statute. (See Doc. 86 at n.1); see also *Kruska v. Perverted Justice* 14 Found. Incorporated.Org, 2010 WL 4791666, *8 (D. Ariz. 2010) (“Nowhere does 18 15 U.S.C. § 2261(a)(2) provide a private right of action or recovery.

Because there is not a 16 private right of action or recovery under 18 U.S.C. § 2261A(2), Plaintiff’s claim under this 17 statute is dismissed with prejudice.”). Thus, Plaintiff’s cyberstalking amendments are 18 futile. See, e.g., *McDonald v. Donofrio*, 2023 WL 4306309, *3 (D. Nev. 2023) (“Because 19 Plaintiff cannot bring a civil claim under a criminal statute, this claim is futile and, 20 therefore, supports denying Plaintiff’s Motion to Amend.”).

21 III. Motion to Disqualify 22 Plaintiff seeks to disqualify the undersigned under 28 U.S.C. § 455. (See Doc. 109). 23 Plaintiff argues that there is an appearance of bias and unequal treatment in this case that 24 warrants the Court’s recusal. (See generally *id.*). Defendants oppose disqualification, 25 contending that Plaintiff has not demonstrated bias or prejudice stemming from an 26 extrajudicial source.

(See Doc. 113). 27 “Any justice, judge, or magistrate judge of the United States shall disqualify himself 28 in any proceeding in which his impartiality might reasonably be questioned.” 28 U.S.C.A. 1 § 455(a). “[R]ecusal is appropriate where a reasonable person with knowledge of all the 2 facts would conclude that [the] judge’s impartiality might reasonably be questioned.” 3 *Kulas v. Flores*, 255 F.3d 780, 787 (9th Cir.

2001) (citing *Moideen v. Gillespie*, 55 F.3d 4 1478, 1482 (9th Cir.1995)) (internal quotes omitted). However, “[a]dverse rulings alone 5 do not support a finding that the judges were biased.” *McNamara v. Cooley*, 72 Fed. Appx. 6 727, 728 (9th Cir. 2003) (unpublished). “To provide grounds for recusal, prejudice must 7 result from an extrajudicial source.” *Mayes v. Leipziger*, 729 F.2d 605, 607 (9th Cir.

1984). 8 Here, Plaintiff identifies various grounds that he believes serve as reasons for the 9 Court’s disqualification. First, Plaintiff points to a “pattern of rulings demonstrating bias.” 10 (Doc. 109 at 3). Specifically, he claims that the Court ruled favorably on four of 11 Defendants’ discovery disputes and unfavorably on three discovery disputes brought by 12 Plaintiff.

(*Id.* at 4–5). He argues that the Court inconsistently applied the term “fishing 13 expedition” to discovery requests brought by Plaintiff and Defendants. (*Id.* at 5–7). Next, 14 Plaintiff asserts that the Court refused to entertain his spoliation concerns. (*Id.* at 7–8). 15 Plaintiff further takes issue with what he believes is the Court’s unequal treatment of 16 Plaintiff and Defendants, again primarily based on the Court’s rulings.

(See *id.* at 8–14). 17 Recusal is solely warranted when alleged bias or partiality stemmed from an 18 extrajudicial source. See *U.S. v. Raymond*, 10 Fed. App’x. 513, 514 (9th Cir. 2001) 19 (unpublished). The only suggestion of bias Plaintiff provides is the Court’s prior rulings.⁴ 20 *Morissette v. Yu*, 21 F.3d 1114, *1 (9th Cir. 1994) (“The prior decisions do not demonstrate 21 bias from an extrajudicial source, so they cannot support recusal.”); *Federal National 22 Mortgage Association v. Willis*, 2018 WL 3544073, *3 (D.

Nev. 2018) (“[Plaintiff’s] 23 motion sets forth his disagreements with the court’s findings based on his 24 4 Plaintiff also believes that the undersigned’s courtroom management demonstrates bias, 25 but a review of the record demonstrates that both parties have received full and fair opportunities to litigate their disputes in this case. Indeed, the Court has expended 26 considerable time and energy on this case.

Furthermore, “[a] judge’s ordinary efforts at courtroom administration—even a stern and short-tempered judge’s ordinary efforts at 27 courtroom administration—remain immune [from recusal].” *Liteky v. U.S.*, 510 U.S. 540, 555 (1994). Additionally, Defendants effectively rebut Plaintiff’s claims of biased 28 courtroom behavior and clarify what transpired during the parties’ hearings before the Court.

(See Doc. 113 at 3–5). 1 misunderstanding of the law and the misconstrued and unsubstantiated notion that the 2 court’s findings are the result of the judge’s biases.”). The Court will not re-explain the 3 rationale for all the rulings that have been issued on the parties’ many discovery disputes 4 but will state that they were the result of the Court’s interpretation of the applicable law 5 and facts.

Plaintiff may not agree with the Court’s rulings, but this is not a scenario that is 6 unique to Plaintiff. The Court is perpetually in a role to render decisions that create 7 unfavorable results for one or even both parties. “To the extent plaintiff disagrees with the 8 undersigned’s determinations, such issues are properly raised through an appeal to the 9 Ninth Circuit, not a motion to recuse.” *Chiat v. Washington*, 2020 WL 8617399, *2 (W.D.

10 Wash. 2020). In all, Plaintiff has not demonstrated the existence of legitimate deep-seated 11 favoritism or antagonism that would render fair judgment impossible as necessary to 12 support a § 455 recusal. *Liteky*, 510 U.S. at 555. 13 IV. Motion for Subpoena 14 On November 21, 2025, Plaintiff filed a Motion to Subpoena Witnesses for 15 Depositions (Doc. 119).

The parties then filed a Joint Discovery Dispute (Doc. 122) with 16 the Court, regarding the parties’ disagreements on the order of depositions, the timing of 17 depositions, and which depositions are needed. The Court stayed all discovery in this case 18 on December 3, 2025 (Doc. 124), so both these issues have remained unresolved. 19 The Court denies Plaintiff’s Motion to Subpoena without prejudice because, in 20 ruling on the pending motions in this case, the stay will

be lifted and the forthcoming 21 resolution of the Joint Discovery Dispute will likely impact the subpoenas Plaintiff 22 requires.

Plaintiff may later refile his Motion if needed, but it is first necessary to resolve 23 the parties' Dispute. On a final note, the Court emphasizes that meet and confer 24 requirements are taken seriously, and the parties must engage in good faith efforts to 25 resolve their issues before bringing further disputes to the Court. 26 Accordingly, 27 IT IS ORDERED that Defendants' Motion to Dismiss Claim VII (Defamation Per 28 Se) (Doc.

75) is DENIED. Plaintiff may proceed with his defamation per se claim. 1 IT IS FURTHER ORDERED that Plaintiff's Motion for Leave to File a Fourth 2|| Amended Complaint (Doc. 83) is DENIED. The Third Amended Complaint is the 3 || operative Complaint in these proceedings. 4 IT IS FURTHER ORDERED that Plaintiff's Motion to Disqualify Judge pursuant 5 || to 28 USC § 455(a) and for Reassignment (Doc.

109) is DENIED. 6 IT IS FURTHER ORDERED that Plaintiff's Motion to Subpoena Witnesses for || Depositions (Doc. 119) is DENIED without prejudice. 8 IT IS FURTHER ORDERED that the stay of discovery and other relevant || deadlines in this matter 9(Doc. 124) is LIFTED. 10 IT IS FINALLY ORDERED that all further pretrial matters in this case, including 11 || the Joint Discovery Dispute (Doc.

122), will be referred to a Magistrate Judge by separate || Order. 13 Dated this 24th day of March, 2026. 14 15 oC.. oe ☐☐ 16 norable'Diang/. Hunfetewa 7 United States District Fudge 18 19 20 21 22 23 24 25 26 27 28 -15-