Firm No. 40151

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

CHRISTOPHER S. CYNOWA, Plaintiff, v. CSSS, INC. (CLIENT SERVER SOFTWARE SOLUTION d/b/a CSSS.NET), LISA WOLFORD, and WILLIAM F. SLATER, Defendants.	)	No. 08 L 403

NOTICE OF FILING and CERTIFICATE OF SERVICE

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PLEASE TAKE NOTICE that on Wednesday, March 16, 2011, the undersigned filed with the Clerk of the Circuit Court of Cook County, Illinois, **Defendants' Reply Memorandum in Support of Summary Judgment**, a copy of which is attached hereto.

A copy of this notice and the aforementioned pleading were served upon Plaintiff, as shown above, via electronic delivery and U.S. Mail, postage prepaid, on March 16, 2011.

Respectfully submitted,

CSSS, INC., LISA WOLFORD,
and WILLIAM F. SLATER

By: _____
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

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CHRISTOPHER S. CYNOWA, Plaintiff,	)	
v.	)	No. 08 L 403
CSSS, INC., et al., Defendants.	)	

DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT

Plaintiff concedes, by not responding to Defendants' summary judgment motion as to Counts III, IV, VII and VIII in Plaintiff's complaint, that Defendant William Slater's alleged statement to Police Officer Robert Adrowski did not impute Plaintiff's lack of ability or integrity in his job. Plaintiff also concedes, by failing to respond to Defendants' facts and argument both that Slater's alleged statement could not have caused his damages as to his *per quod* claims (Counts V, VI, VII and VIII) and that the damages he has proffered are insufficient as a matter of law to support an action *per quod*. As a result, the Court should grant Defendants' motion for summary judgment on Counts III, IV, V, VI, VII and VIII of Plaintiff's complaint without delay.

The Court also should grant Defendants' motion on Counts I-II (defamation *per se*), IX (false light), and X (intentional infliction of emotional distress). Plaintiff's defamation *per se* claims are barred by absolute and qualified privileges and the innocent construction rule, and do not involve a statement that is defamatory *per se*. Plaintiff's false light claim is barred by absolute and qualified privileges and summary judgment should be granted because Plaintiff has not shown Defendants put him in a false light or that Defendants' conduct would be highly offensive to a reasonable person. For his intentional infliction of emotional distress claim, Plaintiff lacks evidence that Defendants' conduct was outrageous or that Plaintiff suffered severe emotional distress. For these reasons, and those set forth herein, the Court should grant Defendants' motion for summary judgment.

Procedural History

Contrary to Plaintiff's argument, the Court's previous denial of Defendants' motion to dismiss is of no moment. The Court denied that motion without prejudice and subsequently made clear – by denying Plaintiff's own motion to strike Defendants' affirmative defenses on the same ground he offers here (i.e., that the Court already disposed of Defendants' affirmative defenses) – that its denial of Defendants' motion to dismiss did not dispose of the defenses or issues raised in the motion to dismiss. (Def. Ex. 12.) Plaintiff concedes in his response that the ruling on Defendants' motion to dismiss was without prejudice. (Pl. Br. at 1 n.1.)

Introduction

As shown in Defendants' memorandum in support and herein, Slater's statement to Adrowski is not enough for Plaintiff to survive summary judgment on each of his ten claims. Plaintiff recognizes this reality because his response focuses instead on an alleged conversation between Slater and CSSS management, for which Plaintiff cites the testimony of Larry Carver who was deposed in July 2009. However, no statement from that conversation was ever alleged in the complaint, or in the amended complaint he filed in September, 2010. (Def. Exs. 1 & 6.) Nor was any statement from that conversation ever identified in response to Defendants' First Set of Interrogatories, including Interrogatory No. 7 which expressly asked Plaintiff to identify the defamatory statements at issue with clarity and particularity. (Def. Ex. 17, at 4-5; Def. Ex. 18, at 7-9.)[1] Nevertheless, throughout his response brief Plaintiff consistently conflates the alleged statement to Officer Adrowski – which is the sole statement by Defendants identified in his complaint – with a statement to CSSS management that was never identified in his pleadings.

[1] Plaintiff supplemented his answers to Defendants' First Set of Interrogatories *six* separate times, including in December 2010. (Def. Ex. 19.) He never disclosed a statement by Slater to CSSS management on which his claims are based, and certainly not with the "clarity and particularity" required under Illinois law. *See Lykowski v. Bergman*, 299 Ill. App. 3d 157, 163-64 (1st Dist. 1998) (defamatory statements must be alleged clearly and with particularity).

In evaluating Defendants' motion, the Court's review is limited to the claims in the complaint. *Pagano v. Occidental Chem. Corp.*, 257 Ill. App. 3d 905, 911 (1st Dist. 1994). "If the defendant is entitled to judgment as a matter of law on the claims as pled by the plaintiff, the motion will be granted without regard to the presence of evidentiary material which might create a right of recovery against the moving defendant on some unpled claim or theory." *Id.* "[A] complaint for defamation must clearly identify the specific defamatory statement complained of. Without an allegation of specifically what was communicated, it is impossible to know whether the communication gives rise to a cause of action for defamation." *Heying v. Simonaitis*, 126 Ill. App. 3d 157, 163 (1st Dist. 1984). This rule allows defendants to formulate their defenses to clearly identifiable statements and allows the court to meaningfully review the alleged statements. *Krueger v. Lewis*, 342 Ill. App. 3d 467, 470 (1st Dist. 2003). However, even if the Court considers allegedly defamatory statements that are not properly set forth in the complaint, the Court should still grant Defendants' summary judgment motion as to all claims for the reasons discussed herein.

I. The Court should grant summary judgment on Plaintiff's defamation claims.

A. Absolute privilege bars Plaintiff's defamation claims (Counts I-IX).

Without any citation to the record, Plaintiff makes two arguments to support his position that an absolute privilege does not apply to Slater's alleged statement to Officer Adrowski. Neither is availing. Plaintiff first argues that Slater's statement was "not for the purpose of instituting legal proceedings or to further an interest of social importance" because Slater "never requested that Chris be investigated or charged." (Pl. Br. at 7.) The record belies this bald assertion. According to Plaintiff's own verified allegations, Slater's statement accused Plaintiff of criminal activity. (Def. Ex. 1, at 13-14, 17-18; *Pagano,* 257 Ill. App. 3d at 911 (on summary judgment, the pleadings determine the issues in controversy).) Plaintiff even asserts in his response that he "could have been charged with a felony for bringing an unauthorized weapon into VA property." (Pl. Br. at 7, 10-11.) He also

alleges that Officer Adrowski was "afraid that Plaintiff was armed, dangerous and that plaintiff might shoot his co-workers." (Def. Ex. 1, at 13, ¶ 56; Def. Ex. 18, at 6; Def. Ex. 18, at 8.) He further alleges and argues that, as a result of Slater's statement, Officer Adrowski investigated by asking Plaintiff questions about whether Plaintiff had a gun or any weapons in his car, which Plaintiff asserts could have resulted in his being charged with a felony. (Pl. Br. at 3; Def. Ex. 1, at 13-14, 17-18; Pl. Ex. 2; Def. Ex. 3, at 35-37.) As a result, Plaintiff's own admissions show that Slater's alleged statement resulted in a police officer's investigation, bringing it squarely within the absolute privilege afforded for statements made to a police officer.

Moreover, Plaintiff does nothing to back up the unsupported assertion that Slater's statement was not for the purpose of furthering "an interest of social importance." (Pl. Br. at 7.) He ignores Defendants' argument that Slater's statement "involved a matter of safety or potential violence." (Def. Mem. at 6.) Defendants noted that "[t]he public has an interest in individuals speaking candidly to police without fear of retribution to enable police officers to assess situations that involve potential safety or violence." (*Id.* (citing *Weber v. Cueto,* 209 Ill. App. 3d 936, 941-42 (5th Dist. 1991) ("[a] communication is absolutely privileged when its propagation is so much in the public interest that the publisher should speak fully and fearlessly").) *See also Burhart Randall Div. of Textron, Inc. v. Marshall,* 625 F. 2d 1313, 1325 & n.19 (7th Cir. 1980) (there is an "important social interest in protecting the safety of … workers" in the workplace).

Plaintiff's second argument is that the absolute privilege does not apply "[b]ecause the only purpose of defendant Slater's statement was vindictive…." (Pl. Br. at 7.) However, Slater's allegedly bad intentions are irrelevant. "When absolute privilege attaches, no action for defamation lies, even where malice is alleged." *Vincent v. Williams,* 279 Ill. App. 3d 1, 7-8 (1st Dist. 1996) (citation omitted). Slater had a duty to provide Adrowski with information relating to public safety at the VA – a fact that Plaintiff admitted by failing to provide counter-evidence. (Def. Ex. 2, ¶¶ 6, 14-17; Def. Ex.

20.) *See Weber,* 209 Ill. App. 3d at 942 (statement made pursuant to duty to report is "cloaked with an absolute privilege"); *Komater v. Kenton Court Assocs.*, 151 Ill. App. 3d 632, 636 (2d Dist. 1986) ("consequence of failing to file a counteraffidavit is that any statements and affidavits supporting the motion for summary judgment stand as admitted").

Thus, Slater's alleged statement to Adrowski falls squarely within the absolute privilege afforded to statements made to a police officer. (Def. Mem. at 5-6.) Because each of Plaintiff's defamation claims is based on this privileged statement, the Court should grant Defendants' summary judgment motion on Counts I through IX.

B. Slater's statement to Adrowski is subject to a qualified privilege (Counts I-IX).

Through Slater's declaration and the other evidence cited in their summary judgment motion Defendants show that a qualified privilege covered Slater's alleged statement to Adrowski. Plaintiff attempts to tackle the elements of qualified privilege but, as to each, he ignores the record and fails to present evidence to show a disputed issue of material fact precluding summary judgment. The record shows Slater made the statement to Adrowski in good faith, pursuant to proper interests, in a limited scope, on a proper occasion, and in a proper manner.

Plaintiff first argues that Slater made no effort to verify a statement that he allegedly made *to CSSS management.* (Pl. Br. at 8.) He then says that *Wolford* dismissed Carver's purported concern and instructed Slater to repeat the statement. (*Id.*) Plaintiff's response is not supported by the record. First, his claims are based solely on Slater's alleged statement to Adrowski. (*E.g.,* Def. Ex. 1, p.6 ¶ 21, pp.10-11 ¶ 46, p.12 ¶ 51, p.14 ¶ 51, p.15 ¶ 53, p.16 ¶ 51, p.17 ¶ 51, p.18 ¶ 51, p.19 ¶ 51, p.20 ¶ 51, p.21 ¶ 52 & Ex. E; Def. Ex. 17, at 4-5; Def. Ex. 18, at 7-9.) To determine whether a qualified privilege exists, Illinois courts look "only to the occasion itself for the communication...." *Kuwik v. Starmark Star Marketing & Admin., Inc.*, 156 Ill. 2d 16, 27 (1993). Second, Plaintiff ignores Slater's duty to report potential workplace safety or violence issues to CSSS and Adrowski, facts

Plaintiff admits by failing to counter Slater's declaration in this regard. (Def. Ex. 2, ¶¶ 6, 13; Def. Ex. 20; Def. Ex. 5, ¶¶ 7, 9; *Komater*, 151 Ill. App. 3d at 636.) Third, he cites Wolford's alleged dismissal of Carver's concern but the statement at issue was made by Slater. There also is no evidence Wolford instructed Slater to repeat the statement. Fourth, Carver's concerns cannot be inferred to mean Slater lacked good faith in making the statement to Adrowski. Slater's unrebutted declaration shows he provided the information to Adrowski because Adrowski requested it and because Slater understood Adrowski had the skills to investigate as needed. (Def. Ex. 2, ¶¶ 14-17.) Slater also said he reported information to people he had a duty to provide it to and who he believed had a legitimate need to know it and were best able to determine whether investigation was needed. (*Id.* ¶¶ 15-17.)

Plaintiff also argues that "the statement was not limited in scope ... made on a proper occasion ... [or] made in a proper manner." (Pl. Br. at 9.) In making these arguments, Plaintiff conflates the statement to Adrowski with alleged statements to "numerous CSSS employees." (*Id.*) There is no evidence that Slater published the statement to anyone other than Adrowski. (Def. Ex. 2; Pl. Ex. 2.) Plaintiff only supports his argument by saying "[t]he defamatory statements were published to such an extent that [Plaintiff] heard the statements 'through the grapevine.'" (Pl. Br. at 9.) Plaintiff cites nothing to support this notion. (*Id.*) But the record shows and Plaintiff concedes that the only people Plaintiff identified as having heard anything – Nikiforos and Engregi – could not testify that they heard the statement from Defendants. (Def. Ex. 19, at 4 & Ex. A (12/3/10 email).) *See Scherer v. Rockwell Internat'l Corp.*, 766 F. Supp. 593, 607 (N.D. Ill. 1991) (granting summary judgment on defamation claim where plaintiff failed to offer evidence showing defendant intended to spread rumors or was connected with spread of rumors). Thus, the Court cannot infer that Defendants made a defamatory statement to them. (Pl. Br. at 7.) Also, the statements between Plaintiff and Engregi and Nikiforos are inadmissible hearsay. So, too, are statements between Engregi and Nikiforos and whoever said something to them about Plaintiff following his termination. *See Lajato*

v. AT&T, Inc., 283 Ill. App. 3d 126, 137-38 (1st Dist. 1996) (unsubstantiated hearsay statements cannot be considered in ruling on motion for summary judgment). Finally, Slater's declaration that he spoke with Adrowski in private is unrebutted. (Def. Ex. 2.)

Plaintiff also asserts "[t]he defendant had no interest or duty to uphold." (Pl. Br. at 8.) Plaintiff made no effort to counter Defendants' arguments and factual evidence showing the various interests Slater and Adrowski had in Slater making the statement to Adrowski. (Def. Mem. at 7-8.) Rather, Plaintiff's response and verified pleadings show he admits Defendants had a duty to uphold and he lacks any evidence to show Slater was not acting pursuant to a duty when he made the statements. By contrast, Defendants have shown that Plaintiff has admitted the duty and that there is unrebutted evidence that Slater had a duty and was acting in accordance with that duty when he made the alleged statements. (Def. Ex. 2, ¶¶ 13-17; Def. Ex. 5, ¶¶ 7, 9; Def. Ex. 20.)

Plaintiff's further argument that Slater did not make the alleged statement in a proper manner defies logic. Slater had an admitted duty to report potential workplace safety or violence issues to his supervisors and on-site police. Plaintiff asserts that "defendant Slater apparently concocted this story because he was afraid of disciplining an employee or maybe because he wanted that employee fired." (Pl. Br. at 9.) This is rank speculation for which Plaintiff has no evidence and provides no citation. By contrast, Slater's declaration shows Plaintiff's speculations are wrong. (Def. Ex. 2, ¶¶ 11-17.)

Plaintiff also fails to cite evidence to show Slater acted with malice. Instead, he baldly argues that Slater acted with malice because Plaintiff was at work for several hours before he was terminated and Slater did not mention Plaintiff having a gun when he prepared a memorandum about the reasons Plaintiff was terminated. (Pl. Br. at 9-10.) However, these facts, raised without citation to the record, do not show that Slater had "a direct intention to injure [him], or ... a reckless disregard of [the Plaintiff's] rights and the consequences that may result to him." *Kuwik*, 156 Ill. 2d at 30. In addition,

it is undisputed that Slater reported the information he had that Plaintiff may have a gun to Adrowski and according to Plaintiff himself Slater also reported this to CSSS management.

"[Qualified] privilege is based on the policy of protecting honest communications of misinformation in certain favored circumstances in order to facilitate the availability of correct information." *Id.* at 24. Here, even if Slater had his information wrong, there is no evidence that he knew that the information he conveyed to Adrowski was false and that he intentionally provided false information to Adrowski. In this respect, the only evidence about Slater's intentions, understanding, and motives is in his declaration. At most, Carver testified that he questioned whether the information Slater provided had been verified, but Carver never testified that Slater said or did anything to show he knew the information was false. No other witness says that Slater knew the information was false or that he intended to harm Plaintiff by providing the information to Adrowski. Nor does any witness counter Slater's declaration that his apprehension about Plaintiff's "potentially aggressive or violent reaction ... upon his termination," which Slater "believed to be a potential workplace safety issue," was based in part on Slater's "own experiences in dealing with [Plaintiff]." (Def. Ex. 2, ¶ 12.) This evidence is unrebutted. Thus, with only Slater's declaration to draw from, the only conclusion that can be reached based on the record before the Court is that Slater made the statement to Adrowski in good faith, pursuant to proper interests, in a limited scope, on a proper occasion, and in a proper manner. Further, as a society we want employees to report potential workplace safety or violence concerns to their supervisors and others responsible for on-site safety regardless of whether those concerns are true or even well-founded.

C. The Court should grant Defendants' summary judgment motion on Counts I-IV because Slater's alleged statement is not defamatory *per se*.

1. In the alternative, Slater's alleged statement did not impute a crime.

Plaintiff's sole argument for his defamation *per se* claim is that it is a felony to possess "an unauthorized weapon." (Pl. Br. at 10.) This argument is a truism: it is a crime to do something illegal.

However, Slater's alleged statement to Adrowski says nothing of Plaintiff possessing an "unauthorized" or illegal weapon. (Pl. Ex. 2.) The Deadly Weapons Act only bans guns "designed to shoot ... *automatically* more than one shot without manually reloading by a single function of the trigger...." 720 ILCS 5/24-1(a)(7)(i) (emphasis added).) To be defamatory *per se*, the harm of the statement at issue must be "obvious and apparent on its face." *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009). Given that it is not illegal to have an AK-47 in Illinois unless it is automatic, Slater's words are not so "obviously and naturally harmful" on their face that Plaintiff should be relieved of the burden of showing special damages. *Owen v. Carr,* 113 Ill. 2d 273, 277 (1986).

2. The Court should rule as a matter of law that Slater's statement to Adrowski did not impute Plaintiff's lack of ability or integrity in his job.

Plaintiff did not respond to Defendants' motion as to Counts III, IV, VII and VIII on the basis that the alleged statement is not defamatory *per se* because it did not impute lack of integrity or ability in his job. (Def. Mem. at 9, 11.) By failing to respond, Plaintiff concedes that Slater's statement did not disparage Plaintiff's job skills and that it was directed only to his personal characteristics. *MAJS Investment, Inc. v. Albany Bank & Trust Co.,* 175 Ill. App. 3d 478, 482 (1st Dist. 1988) (failure to respond to arguments constitutes waiver of the issue). Therefore, the Court should grant Defendants' summary judgment motion as to Counts III, IV, VII and VIII.

3. The Court should grant Defendants summary judgment on Plaintiff's *per se* defamation claims (Counts I-IV) under "innocent construction."

Even if the Court does not grant summary judgment as to Counts I-IV for the reasons set forth above, it should still grant summary judgment based on innocent construction. Plaintiff flips the innocent construction rule on its head. (Pl. Br. at 11-12.) Rather than considering the allegedly defamatory statement in the context of whether it can be innocently construed, Plaintiff premises his argument on whether the alleged statement can be pejoratively construed. Thus, he argues that the "common sense understanding" of the alleged statement is that Plaintiff "intended to shoot people"

and that "the statements are about killing people." (Pl. Br. at 11.) Rather than citing to facts, he supports his argument with citations to previous arguments he made in this case and his citations therein to inadmissible information he plucked from the internet. (*Id.*) Neither his argument, nor the hearsay references he cites, nor the wrong standard that he uses, defeat the fact that the statement at issue is subject to innocent construction.

To defeat innocent construction, Plaintiff must show that the statement describes criminal conduct on its face and is not capable innocent construction. *Moore v. People for the Ethical Treatment of Animals*, 402 Ill. App. 3d 62, 70 (1st Dist. 2010). According to Plaintiff, anyone possessing an AK-47 is a criminal, yet that is not true. (Here, too, Defendants' argument is in the alternative.) Only automatic firearms are illegal in Illinois. *See* 720 ILCS 5/24-1(a)(7)(i). Plaintiff cites *Bryson v. News America Publication, Inc.*, 174 Ill. 2d 77, 89 (1996), in which the Court found that the word "slut" could only be construed as referring to the plaintiff's sexual promiscuity. *Id.* at 93. This case is readily distinguishable from *Bryson*. Here, "AK-47" is subject to innocent construction because possessing an AK-47 is not illegal unless it is automatic. (*See supra* p. 9.) The term "AK-47" can be viewed like the word "pornography." Pornography generally is not illegal. But put the word "child" in front of it and the meaning cannot be innocently construed. So, too, unless a word like "automatic" or "illegal" is placed in front of "AK-47," it remains subject to an innocent construction that must prevail. *Muzikowski v. Paramount Pictures Corp.*, 322 F.3d 918, 925 (7th Cir. 2003) (citing *Anderson v. Vanden Dorpel,* 172 Ill. 2d 399 (1996)) ("[I]f a statement is capable of two reasonable constructions, one defamatory and one innocent, the innocent one will prevail.").

D. Summary judgment is proper on Plaintiff's *per quod* claims (Counts V-VIII).

Plaintiff did not respond to Defendants' summary judgment motion as to Counts V-VIII on the basis that the alleged statement is not defamatory *per quod* for the reasons and based on the facts described in Section I.D of Defendants' Memorandum. (Def. Mem. at 10-11; *MAJS Investment*, 175

Ill. App. 3d at 482 (failure to respond constitutes a waiver).) In addition, by failing to offer contrary evidence, Plaintiff has conceded that the decision to terminate his employment was made *before* Slater's alleged statement to Adrowski. (Def. Mem. at 11; *Komater*, 151 Ill. App. 3d at 636.) Plaintiff thus conceded that Slater's statement to Adrowski could not have caused, and did not cause, his damages. (*Id.*) Further, even if the Court does not grant summary judgment as to Counts V-VIII on this basis, Plaintiff further concedes, again by failing to respond, that the type of damages he has proffered are insufficient to support an action *per quod*. (Def. Mem. at 11-12.) Thus, on any one of the foregoing bases, the Court should grant Defendants summary judgment on Counts V-VIII.

E. The Court should grant Defendants' summary judgment motion on Plaintiff's claim that Slater's statement to Adrowski put him in a false light (Count IX).

The only statement underlying all of Plaintiff's claims is the statement to Adrowski. (Def. Ex. 1, *passim*; Def. Ex. 17, at 4-5; Def. Ex. 18, at 7-9.) Slater's declaration shows that the statement was made in private to Adrowski. (Def. Ex. 2, ¶ 14.) Because Plaintiff fails to offer any affidavit in opposition to these facts, the Court must treat them as admitted. *Komater*, 151 Ill. App. 3d at 636. In addition, Plaintiff does not dispute that the statement to Adrowski did not place him before the public. (Compare Def. Mem. at 12 *with* Pl. Br. at 12.) In fact, Plaintiff does not even reference the statement to Adrowski in his response. (*Id.*) Therefore, the Court should grant Defendants' summary judgment motion as to Plaintiff's false light claim.

Instead, Plaintiff discusses statements that are not contained in his complaint and not supported by the record. Any alleged statements to CSSS management, including Wolford, Carver and Theobald, were made – according to the Carver testimony Plaintiff cites (Pl. Br. at 2-3, 6-9, 12-13 & Pl. Ex. 1, at 37, 39-41) – before the decision was made to terminate Plaintiff and therefore before Adrowski was summoned to be present during Plaintiff's termination. By failing to offer contrary evidence, Plaintiff has conceded that the decision to terminate his employment was made *before* Slater's alleged statement to Adrowski. (Def. Mem. at 11; *Komater*, 151 Ill. App. 3d at 636.)

As a result, for a claim based on Slater's statement to Adrowski, Plaintiff cannot support his claim of publication with a statement to CSSS management that happened earlier in time.

Nor can Plaintiff survive summary judgment based on allegations that two co-workers heard rumors about him. Plaintiff cites two cases, *Kurczaba v. Pollock*, 318 Ill. App. 3d 686 (1st Dist. 2000) and *Miller v. Motorola*, 202 Ill. App. 3d 976 (1st Dist. 1990), in support of his claim that this type of alleged publication is enough to place him in a false light before the public. (Pl. Br. at 12.) However, both cases are distinguishable from this matter. Both cases involved a motion to dismiss, rather than a summary judgment motion. In both *Kurczaba* and *Miller*, the plaintiff alleged that the defendant provided false information to people who constituted the public and the defendants did not dispute that they made the statements at issue. By contrast, here, the record lacks evidence that Defendants made any alleged statement to Nikiforos or Engregi. Plaintiff has conceded that Nikiforos and Engregi do not recall who made statements to them about Plaintiff. (Def. Ex. 19, at 4 & Ex. A.) Plaintiff also references Anthony Slatton in his response brief, but Plaintiff has not offered any evidence to show that Slater made any statement to Slatton. (Pl. Br. at 2-6, 12.)

Plaintiff also fails to respond to Defendants' argument that the record lacks any statement by Defendants that placed Plaintiff in a false light that would be highly offensive to a reasonable person. (*Compare* Def. Mem. at 13 *with* Pl. Br. at 12.) Nor has Plaintiff offered any admissible evidence to show that Slater knew his statement was false or made with reckless disregard for the truth. (*Id.*) Plaintiff failed to provide any evidence to refute Slater's declaration that his statement to Adrowski was of a nature that he felt obligated to provide it to Adrowski so that Adrowski could investigate it because Slater heard it first from Flanagan, a fact that Plaintiff has admitted. (Def. Ex. 2, ¶ 16; Def. Ex. 6, ¶¶ 4-6; Def. Ex. 18, at 8, 12-13.) *See also Dark v. USF&G Co*, 175 Ill. App. 3d 26, 32-33 (1st Dist. 1988) (admission in verified pleading binds the pleader and has "the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact") (citation omitted).

Plaintiff also cites a memorandum (Pl. Ex. 8.) as part of the basis for his response to Defendants' summary judgment motion. (Pl. Br. at 5, 12-13.) But, because he has not laid a proper foundation for the document, he cannot rely on it as evidence to oppose Defendants' motion. *Financial Freedom v. Kirgis*, 377 Ill. App. 3d 107, 134-35 (1st Dist. 2007); *Harris Bank Hinsdale, N.A. v. Caliendo*, 235 Ill. App. 3d 1013, 1025-26 (2d Dist. 1992) ("unsworn and uncertified" copy of document properly disregarded in ruling on summary judgment because not properly authenticated). Further, the Carver testimony he references only relates to the decision to terminate him. For all of these reasons, the Court should grant Defendants summary judgment on Plaintiff's false light claim.

II. The Court should grant Defendants' summary judgment motion on Plaintiff's claim for intentional infliction of emotional distress (Count X).

A. The Court should find Defendants' conduct not "outrageous" as a matter of law.

Plaintiff did not respond to Defendants' argument that the Court should grant summary judgment as to Count X on the ground that the record fails to show Defendants' conduct was outrageous. (Def. Mem. at 14-15 (and authorities cited therein); *MAJS Investment,* 175 Ill. App. 3d at 482 (waiver).) Here, Slater's statement to Adrowski about a potential safety or violence issue that Slater had a duty to report – admitted by Plaintiff (Def. Ex. 5, ¶¶ 7, 9) – is not "so outrageous, so atrocious and so utterly intolerable that a reasonable person could not be expected to endure it." *Witkowski v. St. Anne's Hosp. of Chicago, Inc.*, 113 Ill. App. 3d 745, 754 (1st Dist. 1983). (Pl. Ex. 2; Def. Ex. 6, ¶¶ 5-6; Def. Ex. 2, ¶¶ 11-17.) Therefore, on this basis alone, the Court should grant Defendants' summary judgment motion as to Count X.

B. Plaintiff lacks evidence of *severe* emotional distress.

Even if the Court does not grant Defendants' motion based on Plaintiff's admission that Defendants' conduct was not outrageous, then the Court should grant summary judgment because Plaintiff did not suffer severe emotional distress. The only argument Plaintiff makes in response to

Defendants' summary judgment motion on this point is that he suffered severe emotional distress because his blood pressure "rose to a dangerously high level." (Pl. Br. at 13.) However, this assertion does not save his claim. There is no evidence of this purported fact. Plaintiff admitted in his deposition that his blood pressure was "at the level of low-end hypertension." (Def. Ex. 3, at 76.) Plaintiff also admitted that the manifestations of emotional distress he experienced were simply "standard stresses of losing a job unexpectedly." (Def. Ex. 3, at 71.)

Plaintiff makes no effort to address or distinguish the various cases cited by Defendants that show what constitutes "severe" emotional distress under Illinois law. (Def. Mem. at 13-14.) Instead, he only cites one case, *Graham v. Commonwealth Edison Co.*, 318 Ill. App. 3d 736 (1st Dist. 2000), without any analysis. However, *Graham* is readily distinguishable. First, *Graham* involved a motion to dismiss. Second, *Graham* involved different facts. The plaintiff in *Graham* alleged that the defendant's conduct caused him to require the care of a psychologist and a dermatologist, and he experienced stomach pain, sleeplessness, headaches, and stress-related acne. *Id.* By contrast, Plaintiff Cynowa testified that he experienced standard job-loss stress and low-level hypertension, he visited a doctor once, and he never sought the care of a mental health professional. (Def. Ex. 3, at 68-72, 77.)

Viewing this evidence in a light most favorable to Plaintiff, Plaintiff falls well short of presenting disputed issues of material fact concerning Plaintiff's emotional distress claim. Because Plaintiff's claimed emotional distress does not constitute "severe" emotional distress, the Court should grant Defendants summary judgment on Count X.

III. The Court should grant summary judgment to CSSS and Lisa Wolford on all claims.

Plaintiff does not dispute that if the Court grants summary judgment as to all claims against Slater it should also grant summary judgment as to all claims against CSSS. He only argues Wolford is liable because she "supported Slater's defamatory statements," "she ordered him to repeat those statements to the VA police," and "she refused to verify whether the statement was true." (Pl. Br. at

13-14.) Plaintiff's premise is that "all persons who cause or participate in the publication of libelous or slanderous matters are responsible for such publication." (Pl. Br. at 13, citing *Van Horne v. Muller*, 185 Ill. 2d 299 (1999).) In *Van Horne*, the court denied a motion to dismiss by defendant Blanco because she was "an *active participant* in the publication" of the defamatory statement and herself repeated the statement several times. *Id.* at 306, 308. In addition to being distinguishable because it was in the context of a motion to dismiss, the evidence as to Wolford here is not close to the allegations in *Van Horne*. There is no allegation or evidence that Wolford repeated Slater's statement or even participated in the closed-door conversation with Adrowski in which Slater made the alleged statement. There are simply no facts that could make Wolford liable for her own actions or for Slater's alleged actions. In addition, there is no evidentiary support for the assertion that Wolford ordered Slater to repeat anything to the VA police – and Plaintiff cites nothing.

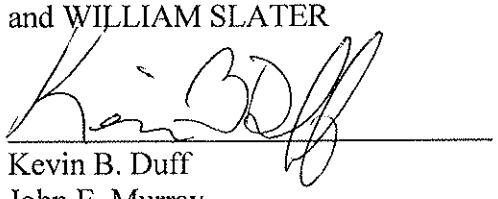
Conclusion

Therefore, for the reasons set forth herein and in their opening summary judgment papers, Defendants CSSS.NET, Inc., Lisa Wolford, and William Slater respectfully request that this Court grant their summary judgment motion on Counts I-X of Plaintiff's Verified Complaint and award them such other relief as the Court deems just and proper.

Dated: March 16, 2011

Respectfully submitted,

CSSS.NET, INC., LISA WOLFORD,
and WILLIAM SLATER

By: 

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