



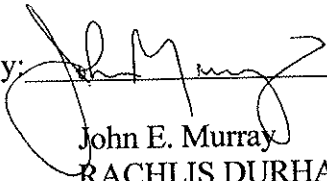
**CERTIFICATE OF SERVICE**

I, John E. Murray, hereby certify that on Friday, September 9, 2011, I caused a true and correct copy of **Defendants' Combined 2-615 & 2-619(a)(9) Motion to Dismiss all Claims against Lisa Wolford and Counts III & VI of Plaintiff's Second Amended Verified Complaint**, to be served upon counsel for Plaintiff listed below via electronic delivery and U.S. Mail, postage prepaid upon:

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

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

**DEFENDANTS' COMBINED 2-615 & 2-619(a)(9) MOTION TO DISMISS  
ALL CLAIMS AGAINST LISA WOLFORD AND COUNTS III & VI OF  
PLAINTIFF'S SECOND AMENDED VERIFIED COMPLAINT AT LAW**

Defendants CSSS.NET, INC., Lisa Wolford, and William F. Slater (collectively, "Defendants"), move to dismiss all claims against Lisa Wolford as well as Counts III & VI of Plaintiff's Second Amended Verified Complaint at Law against all the Defendants pursuant to Sections 2-615 and 2-619(a)(9) of the Illinois Code of Civil Procedure, with prejudice. 735 ILCS 5/2-615 & 5/2-619(a)(9). In support of their Motion, Defendants state as follows:

**Allegations in Plaintiff's Second Amended Verified Complaint**

This case stems from Defendant CSSS's termination of Plaintiff's at-will employment on January 18, 2007. (Plaintiff's Second Amended Verified Complaint (hereafter, "2d Am. Compl.") at 1, ¶ 1, at 8-9, ¶¶ 45-46.) Prior to his termination, Plaintiff was employed by Defendant CSSS as a Senior Systems Engineer at the Hines Veterans Hospital ("Hines VA") of the United States Department of Veterans Affairs located in Hines, Illinois. (*Id.* at 1, ¶¶ 1-2.) Defendant CSSS provides computer support services for the Hines Veterans Hospital under federal contract. (*Id.* at 1, ¶ 2.)

Plaintiff alleges as follows: On January 18, 2007, Defendant Wolford, Larry Carver, Scott Theobald, Defendant Slater and Anthony Slatton participated in a conference call, the purpose of which was to discuss a performance improvement plan arising from the Plaintiff having made various derogatory and ethnically insensitive comments at a holiday party as well as about Wolford individually, or to terminate Plaintiff's employment. (*Id.* at 6, ¶¶ 21-22.) During the conference call Slater stated that "Chris has a temper, has had a few verbal confrontations with the staff, and, Chris mentioned having an AK-47 assault rifle," or in the alternative (or in addition) stated that "Chris has an automatic weapon – an AK-47. If we bring him in to talk to him about performance improvement, he may 'Go Postal'." (*Id.* at 6, ¶¶ 23-24, at 15, ¶¶ 84-85, at 17, ¶ 84.) Later, Slater asked that Department of Veterans Affairs Police standby during Plaintiff's termination. (*Id.* at 6, ¶ 29.) Officer Bob Adrowski was assigned to this task and responded to Slater's office prior to Plaintiff's termination, at which time Plaintiff alleges that Slater told Officer Adrowski in his office that "Mr. Cynowa has a temper and has had a few verbal confrontations with the staff. Mr. Cynowa mentioned having an AK-47 assault rifle." (*Id.* at 7, ¶ 33, at 13, ¶ 76, at 20, ¶ 84, at 25, ¶ 85 & Ex. E attached thereto.) Defendant Slater repeated the above statements to other co-workers, stating to them that "Mr. Cynowa has a temper and has had a few verbal confrontations with the staff. Mr. Cynowa mentioned having an AK-47 assault rifle" and/or "Chris kept a gun in his car. Chris might come back after being fired and 'Go Postal' and shoot people." (*Id.* at 11, ¶¶ 63-64, at 12, ¶¶ 65-68, at 17, ¶¶ 84-85, at 24, ¶ 93.)

Plaintiff contends that the above statements were defamatory *per se* because they imputed to him the commission of a criminal offense and a lack of ability or want of integrity in Plaintiff's employment. (Counts I-III.) Plaintiff also claims that Slater's alleged

statement to Wolford, Carver, Theobald, and Slatton, as well as the statement to Officer Adrowski, are defamatory *per quod* because they essentially characterize Plaintiff as a workplace terrorist and in connection therewith Plaintiff seeks damages for lost wages, inability to pay child support, injuries to professional and personal reputation, costs of allegedly seeking medical treatment and medication, loss of security clearance at the Hines VA and loss of ability to be placed on other federal contracts. (Counts IV & VI.) Count V alleges defamation *per quod* arising out of multiple statements from multiple persons, including Slater's alleged statement to Wolford, Carver, Theobald and Slatton, Slater's later alleged statement to other CSSS employees, and also that Wolford, Carver, Theobald and Slatton stated to other CSSS personnel that Plaintiff "has a temper" and has "an AK-47 assault rifle." Plaintiff further contends that Slater's alleged statements placed him in a false light. (Count VII.) Finally, Plaintiff alleges intentional infliction of emotional distress, in which Plaintiff claims Defendants' conduct resulted in "grave injury" and manifested itself when his "blood pressure reached dangerous levels" and caused Plaintiff to incur "medical expenses." (Count VIII.)

For purposes of the instant Motion, Defendant Lisa Wolford moves to dismiss all claims against her because Plaintiff has failed to set forth any facts with "clarity and particularity" – as required under Illinois law – showing that Wolford made any defamatory statements about Plaintiff. In addition, Counts III & VI – *i.e.*, defamation *per se* and *per quod* stemming from Slater's alleged statement to Officer Adrowski in Slater's office – must be dismissed in favor of all the Defendants on the grounds that the alleged statement is subject to an absolute privilege.

## Argument

### I. The Court should dismiss all claims against Lisa Wolford pursuant to Section 2-615.

The Court should dismiss all claims against Lisa Wolford, pursuant to Section 2-615, because Plaintiff has failed to set forth any facts with “clarity and particularity” as required under Illinois law showing that she made any defamatory statement about Plaintiff. (2d Am. Compl., *passim*.)

In ruling on a Section 2-615 motion, the court must consider only those facts apparent from the face of the pleadings, matters subject to judicial notice, and judicial admissions in the record. *Parkway Bank & Trust Co. v. Meseljevic*, 406 Ill. App. 3d 435, 442 (1<sup>st</sup> Dist. 2010) (citing *Gillen v. State Farm Mut. Auto Ins. Co.*, 215 Ill. 2d 381 (2005)). While the court deciding the motion must take all reasonable inferences from the plaintiff’s well-pled facts as true, it must “disregard all conclusory allegations and surplusage....” *Parkway Bank & Trust Co.*, 406 Ill. App. 3d at 442.

As it relates to defamation claims, a plaintiff must show that the defendant: (1) made a false statement concerning the plaintiff; (2) made an unprivileged communication of that statement to a third party; and (3) damaged the plaintiff by publishing the statement. *Goldberg v. Brooks*, 409 Ill. App. 3d 106, 111 (1<sup>st</sup> Dist. 2011). In addition, a complaint for defamation “must set forth the words alleged to be defamatory ‘clearly and with particularity,’” with adequately stating to whom the allegedly defamatory statement was made comprising an integral component. *E.g., Lykowski v. Bergman*, 299 Ill. App. 3d 157, 163-64 (1<sup>st</sup> Dist. 1998) (allegations that defendant accused plaintiff of “certain unethical acts and improper conduct” published “to the newspapers” were insufficiently specific to state a

claim because complaint failed to adequately state to whom the alleged defamatory statement was made) (*quoting Mittelman v. Witous*, 135 Ill. 2d 220 (1989)).

Here, as was the case in *Lykowski*, Plaintiff has failed to state any claim or specific allegation against Wolford. In addition, Plaintiff's second amended complaint is completely devoid of any allegations setting forth with clarity and particularity the statement Wolford allegedly made. In addition, Plaintiff's pleading fails to identify with clarity and particularity (as it must) *to whom Wolford's alleged statement was communicated*. (2d Am. Compl., *passim*.) Rather, Plaintiff's second amended complaint only asserts in a conclusory fashion (in the alternative) that "...Defendant Lisa Wolford...repeated Defendant Slater's statement *to other CSSS personnel*" without any facts identifying to whom any such alleged statement was made. (*Id.* at 17-18, ¶ 90, at 24, ¶ 90.) (emphasis added.) Plaintiff's pleading thus falls short of the standard for pleading defamation claims under Illinois law. *Lykowski*, 299 Ill. App. 3d at 164 ("The allegations that the libelous statements were transmitted 'to the newspapers' and to 'plaintiff's employer' is not particularly helpful..."). On this basis, the Court should dismiss all claims against Lisa Wolford.

**II. The Court should dismiss Counts III & VI pursuant to Section 2-619 because Slater's allegedly defamatory statement to Officer Adrowski is barred by an absolute privilege.**

A section 2-619 motion to dismiss admits as true all well-pleaded facts, along with all reasonable inferences that can be gleaned from those facts. *Porter v. Decatur Memorial Hosp.*, 227 Ill. 2d 343, 352 (2008). When ruling on a section 2-619 motion the court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party. *Id.*

Even assuming, *arguendo*, that Slater’s alleged statement to Officer Adrowski – that “Mr. Cynowa has a temper and has had a few verbal confrontations with the staff. Mr. Cynowa mentioned having an AK-47 rifle” – is true, and is either defamatory *per se* or *per quod*, Plaintiff is barred from recovery for Counts III & VI because the statement is absolutely privileged.

Illinois cloaks statements made to law enforcement officials with an absolute privilege. *Morris v. Harvey Cycle & Camper, Inc.*, 392 Ill. App. 3d 399 (1<sup>st</sup> Dist. 2009); *see also Benitez v. American Standard Circuits, Inc.*, 2009 WL 742686, at \*7 (N.D. Ill. 2009); *Woodward v. American Family Mutual Insurance Co.*, 950 F. Supp. 1382, 1392 (N.D. Ill. 1997); *Vincent v. Williams*, 279 Ill. App. 3d 1, 7 (1<sup>st</sup> Dist. 1996); *Bradley v. Avis Rental Car System, Inc.*, 902 F. Supp. 814, 820 (N.D. Ill. 1995); *Wainwright v. Doria*, 1994 WL 178454, at \*6 (N.D. Ill. 1994); *Starnes v. International Harvester Co.*, 184 Ill. App. 3d 199, 205 (4<sup>th</sup> Dist. 1989), *rev’d on other grounds*, *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 108 (1996). Statements made to a police officer are subject to “complete immunity from civil action, *even though the statements are made with malice...* because public policy favors the free and unhindered flow of such information.” *Layne v. Builders Plumbing Supply Co.*, 210 Ill. App. 3d 966, 969 (2d Dist. 1991) (emphasis added). This policy trumps a plaintiff’s interest to be free from defamation from such statements. *Id.* at 972.

In *Layne*, the plaintiff, a former employee of defendant who sought to recover for defamation, false light and intentional infliction of emotional distress, had her claims dismissed, based on defendants’ statement to the police that plaintiff had “threatened, harassed, and assaulted a co-worker.” *Id.* In affirming dismissal of the plaintiff’s claims,



the court found that “the defendant was immune from plaintiff’s defamation” claims on the basis of absolute privilege. *Id.* at 969.

Similarly, in *Morris*, the absolute privilege barred the plaintiff’s claims even though the purpose of the statements to police was not to institute legal proceedings of any kind. *Morris*, 392 Ill. App. 3d at 406. In *Morris*, the defendant auto dealership attempted to force the plaintiff to cosign a car loan for the plaintiff’s sister. *Id.* at 400-01. When the plaintiff refused, the dealership demanded the return of the car. *Id.* at 400. The dealership then called the police, and falsely reported the car as stolen. *Id.* at 401. The police considered the dealership’s complaint to be a false report. *Id.* at 406 (“Plaintiff here alleges a report of criminal activity to the police was not only false, but was used to intimidate and exert pressure on her to cosign a loan and not to institute legal proceedings.”). Thus, in *Morris*, the court held the allegedly false statements to police absolutely privileged, reaffirming “the long-standing law in Illinois that statements to law enforcement officials are absolutely privileged.” *Id.*

Here, the allegedly defamatory statement that forms the basis of Counts III & VI is also subject to absolute privilege. *Morris* underscores the breadth of the absolute privilege afforded under Illinois law because those counts are solely based on a statement to a police officer. Slater’s alleged statement was made to Officer Adrowski with no one else in Slater’s office. (2d Am. Compl. at 7, ¶ 37, at 18, ¶ 92, at 20, ¶ 85; Ex. E to 2d Am. Compl.) Plaintiff also alleges that Slater’s alleged statement to Adrowski – that “Mr. Cynowa has a temper and has had a few verbal confrontations with the staff. Mr. Cynowa mentioned having an AK-47 rifle” – accuses Plaintiff of a crime. (See 720 ILCS 5/24-1(a)(7)(i) & 18

U.S.C. § 930.) Therefore, as a matter of law, Slater's statement to Officer Adrowski is absolutely privileged. Accordingly, the Court must dismiss Counts III & VI with prejudice.

**Conclusion**

Lisa Wolford should be dismissed from this lawsuit because the Plaintiff has not made any claim or specific allegation that identifies any specific statement made by her to specific individuals that was defamatory or intentionally caused the Plaintiff emotional distress. In addition, Counts III & VI cannot survive against all the Defendants because Slater's alleged statement to Officer Adrowski is protected by an absolute privilege.

**WHEREFORE**, for the foregoing reasons, Defendants respectfully request that the Court grant their Motion pursuant to 735 ILCS 5/2-615 and 5/2-619(a)(9) and award such other relief as the Court deems just and appropriate.

Dated: September 9, 2011

Respectfully submitted,

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

By: 

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