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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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Daniel Hamilton,

Plaintiff,

v.

Yavapai Community College District;
Guidance Academy LLC; John L.
Stonecipher; Amanda Alsobrook; John
Morgan; April Morgan,

Defendants.

No. CV-12-08193-PCT-GMS

ORDER

Guidance Academy LLC; Amanda
Alsobrook; John L. Stonecipher,

Counterclaimants,

v.

Daniel Hamilton,

Counterdefendant.

22 Pending before the Court is Plaintiff-Relator/Counter-Defendant Daniel
23 Hamilton’s Motion for Judgment on the Pleadings and Alternative Motion to Stay the
24 Proceedings. (Doc. 216.) For the following reasons, the Court denies both motions.

BACKGROUND

26 Counter-Defendant Hamilton is a former employee of the
27 Counterclaimants’ business partner, Yavapai College (“Yavapai”). (Doc. 132 at 23.)
28 Hamilton served as Director of Aviation Programs from September 2011 until May 2012.

1 (*Id.*) Yavapai contracted with the Counterclaimants to provide pilot and helicopter
2 training to flight students. (*Id.*) A portion of these students were funded through veteran
3 education benefit funds administered through the Department of Veteran’s Affairs
4 (“VA”). (*Id.*)

5 In 2013, Hamilton filed a qui tam suit under the False Claims Act alleging that the
6 Counterclaimants and Yavapai filed claims for veteran education benefits despite
7 knowing that their programs violated VA funding regulations. (Doc. 8.) In their answer to
8 these claims, Guidance and Stonecipher filed claims for defamation and for intentional
9 interference with contractual relations against Hamilton. Specifically, the counterclaims
10 allege that Hamilton developed a “personal vendetta” against the Counterclaimants
11 because they “refused to support his proposal to incorporate religious ministry into YC’s
12 and Counterclaimants aviation instruction programs.” (Doc. 132 at 23-24.)

13 This vendetta allegedly led Hamilton to tell members of the community and media
14 outlets, including the Prescott Daily Courier and the Los Angeles Times, that
15 “Counterclaimants had conspired to defraud and defrauded the United States by violating
16 VA regulations regarding educational benefits.” (Doc. 132 at 24.) In March of 2015, the
17 VA suspended educational support for the veterans enrolled in the Counterclaimants’
18 flight program. (Doc. 132 at 24.) This lack of funding left Yavapai unable to continue its
19 contract with the Counterclaimants. (*Id.*)

20 DISCUSSION

21 I. Legal Standard

22 A motion for judgment on the pleadings pursuant to Federal Rule of Civil
23 Procedure 12(c) “is properly granted when, taking all the allegations in the non-moving
24 party’s pleadings as true, the moving party is entitled to judgment as a matter of law.”
25 *Fajardo v. Cnty. of L.A.*, 179 F.3d 698, 699 (9th Cir. 1999). To survive
26 a Rule 12(c) motion, a plaintiff must allege sufficient facts to state a claim to relief that is
27 plausible on its face. *See, e.g.*, Fed. R. Civ. Pro. 8(a); *Ashcroft v. Iqbal*, 556 U.S. 662, 678
28 (2009); *United States ex rel. Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047,

1 1054 n.4 (9th Cir. 2011) (finding *Iqbal* applies to Rule 12(c) motions because Rule
2 12(b)(6) and Rule 12(c) motions are “functionally identical”). To satisfy the plausibility
3 standard, the plaintiff must plead “factual content that allows the court to draw the
4 reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556
5 U.S. at 678. However, “conclusory allegations of law and unwarranted inferences are not
6 sufficient to defeat a motion to dismiss.” *Pareto v. F.D.I.C.*, 139 F.3d 696, 699 (9th Cir.
7 1998).

8 Contrary to Hamilton’s assertions, the Counterclaimants are not required to satisfy
9 the heightened pleading standard of Rule 9(b).¹ (Doc. 216 at 3-4.) Defamation is not
10 listed in the causes of action outlined in Rule 9(b), and “nearly all of the circuits have
11 now disapproved any heightened pleading standard in cases other than those governed by
12 Rule 9(b).” *Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119, 1125 (9th Cir. 2002). Thus,
13 the pleading requirement of Rule 8(a) applies to the counterclaims.

14 **II. Analysis**

15 **A. The Motion for Judgment on the Pleadings is Denied.**

16 To establish a prima facie case for defamation, a plaintiff must establish the
17 existence of “(1) a false defamatory statement, (2) publication to a third party, and (3)
18 negligence on the part of the publisher.” *Boswell v. Phoenix Newspapers, Inc.*, 152 Ariz.
19 1, 3, 730 P.2d 178, 180 (Ct. App. 1985). Hamilton asserts that dismissal is appropriate
20 due to Counterclaimants’ failure to plead their defamation claim with sufficient detail to
21 make it plausible and their perceived failure to predict and preempt Hamilton’s
22 affirmative defenses. These arguments are rejected for the reasons set forth below. ²

24 ¹ Judge Rosenblatt’s Order stated that because the Counter-Defendant’s claims
25 “sound[ed] in fraud,” those specific claims had to satisfy the heightened pleading
26 standards of Rule 9(b). (Doc. 127 at 31.) The order does not mean that all tort claims in
this case must be pled with Rule 9(b) particularity.

27 ² Hamilton makes no independent argument as to why the cause of action for
28 intentional interference with contractual relations should be dismissed, and thus the
motion to dismiss the intentional interference with contractual relations is also denied.
(Doc. 216 at 13.)

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1. The Complaint Sufficiently Alleges the Content as well as the Third Party Recipients of the Defamatory Statement.

“A complaint need not contain detailed factual allegations; rather, it must plead ‘enough facts to state a claim to relief that is plausible on its face.’ ” *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1022 (9th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007)). The content and context of the alleged statement is crucial to the determination of a defamation case. *Phoenix Newspapers, Inc. v. Church*, 103 Ariz. 582, 587, 447 P.2d 840, 845 (1968). Therefore, a plaintiff’s complaint in a defamation case needs to provide sufficient content and context of the alleged defamatory statement to ensure that the defendant is on notice of the allegations against him.

Counterclaimant’s defamation claim alleges that Hamilton told YC employees, members of the community and media outlets, specifically the Prescott Daily Courier and Los Angeles Times, that “Counterclaimants had conspired to defraud and defrauded the United States by violating VA Regulations regarding educational benefits for its veteran students.” (Doc. 132 at 24.) The Counterclaimant further alleges that these statements were false, and that Hamilton knew that they were false. (Doc. 132 at 24.) This provides sufficient information to put the defendant on notice of the allegations against him and establish a defamation claim that is “plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007).

2. The Plaintiffs Adequately Allege Actual Malice in the Complaint.

If a defamation action involves a matter of public concern, a plaintiff must establish the presence of actual malice. *Peagler v. Phoenix Newspapers, Inc.*, 114 Ariz. 309, 312, 560 P.2d 1216, 1219 (1977). Actual malice does not refer to the defendant’s state of mind; rather, it is established by demonstrating that a defendant made the defamatory statement “with knowledge of its falsity or in reckless disregard of whether it was true.” *Id.*

“ ‘Whether . . . speech addresses a matter of public concern must be determined by [the expression's] content, form, and context . . . as revealed by the whole record.’ ”

1 *Turner*, 174 Ariz. at 205 (quoting *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*,
2 472 U.S. 749, 761 (1985) (plurality opinion)). Thus, the public concern analysis is a fact
3 intensive analysis that should not be undertaken at this stage of the proceedings. *Id.*

4 However, even if the defamatory statements do involve a matter of public
5 concern, the plaintiffs adequately pled actual malice in the complaint. The complaint
6 states that the Counter-defendant “continued to knowingly and falsely state . . . that
7 Counterclaimants had defrauded the United States” even after “this Court dismissed all
8 claims against the Counterclaimants for the first time on September 9, 2014.” (Doc. 132
9 at 24.) Taking this allegation as true, it is plausible that the Counter-defendant made these
10 statements with reckless disregard for their truth.

11 **3. Privilege is an Affirmative Defense.**

12 Privilege is an affirmative defense to a defamation action. The burden is not on the
13 Counterclaimants to allege that privilege does or does not apply. Thus their failure to do
14 so does not result in a meritorious motion to dismiss. Rather, Hamilton may raise
15 privilege during the proceedings if he preserved this defense in his answer. *See Green*
16 *Acres Trust v. London*, 141 Ariz. 609, 612, 688 P.2d 617, 620 (1984).

17 **4. The Defamation Allegation Falls within the Business** 18 **Category, and Thus it is Per Se Actionable.**

19 Oral defamation is per se actionable “without a need to plead or prove special
20 damages” if the utterance falls into the business category. *Modla v. Parker*, 17 Ariz. App.
21 54, 56, 495 P.2d 494, 496 (1972). To fall into the business category, “the slanderous
22 utterance must prejudice the person in the profession, trade or business in which he is
23 actually engaged.” *Id.* The Counterclaimants allege that Hamilton told individuals that
24 they “purposefully defrauded the United States” during their business ventures. (Doc. 132
25 at 24.) Thus, the defamatory statement fits within the business category, and the
26 statement is per se actionable.

27 At this stage in the proceedings, the Court will take the “material allegations in the
28 complaint as true,” and it will not consider extrinsic evidence. *NL Indus., Inc. v. Kaplan*,

1 792 F.2d 896, 898 (9th Cir. 1986). Thus, while the VA Suspension Letter may be relevant
2 to the issue of damages, it is insufficient to grant the motion to dismiss.

3 **5. Statute of Limitations is an Affirmative Defense.**

4 Statute of limitations is an affirmative defense to defamation. *Lim v. Superior*
5 *Court In & For Pima Cty.*, 126 Ariz. 481, 482, 616 P.2d 941, 942 (Ct. App. 1980).
6 Therefore, the Counterclaimants had no affirmative duty to plead compliance with the
7 statute of limitations in their counterclaim.

8 **B. The Motion to Stay is Denied.**

9 The Federal Claims Act does not bar a qui tam defendant from raising
10 counterclaims against the relator. Rather, “denying a qui tam defendant recourse to
11 damages offends procedural due process.” *U.S. ex rel. Madden v. Gen. Dynamics Corp.*,
12 4 F.3d 827, 831 (9th Cir. 1993). In some instances, “it is possible to resolve the issue of a
13 qui tam defendant's liability before reaching the qui tam defendant's counterclaims,” and
14 courts may stay the counterclaim proceedings until the counterclaimant’s liability is
15 established. *Id.* It is “incumbent on the district court to separate those claims for damages
16 which ‘only have the effect of offsetting liability’ from those that are not dependent on a
17 qui tam defendant's liability under the FCA.” *Cell Therapeutics, Inc. v. Lash Grp., Inc.*,
18 586 F.3d 1204, 1209 (9th Cir. 2009) (quoting *Madden*, 4 F.3d at 831).

19 At this point, there is no reason to stay the proceedings in this case, and thus
20 Hamilton’s motion is denied. This Court may consider bifurcating trial to take up the
21 counterclaims if Plaintiff does not succeed on his Quit Tam claims, but sees no reason at
22 this point why pretrial discovery and motion practice concerning the counterclaims
23 should be stayed.

24 **CONCLUSION**

25 The Counterclaimants allege sufficient facts to state a claim for defamation and
26 intentional interference with contractual relations. Thus, the Motion for Judgment on the
27 Pleadings is denied. The Court also denies the alternative Motion to Stay the
28 Proceedings.

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IT IS THEREFORE ORDERED:

1. The Motion for Judgment on the Pleadings (Doc. 216) is **DENIED**.
2. The Alternative Motion to Stay the Counterclaims Proceedings (Doc. 216) is **DENIED**.

Dated this 7th day of October, 2016.



Honorable G. Murray Snow
United States District Judge