

1 After full consideration of the written and oral submissions by the parties, the Court rules
2 as follows:

3 As to the third cause of action for Retaliation in Violation of Plaintiff's Right to Free
4 Speech, the claim requires a five-step analysis:

5
6 1. The Court needs to determine whether the plaintiff spoke on a matter of public
7 concern.

8 2. Whether the plaintiff spoke as a private citizen or public employee.

9
10 3. Whether the plaintiff's protected speech was a substantial or motivating factor in the
11 adverse employment action.

12 4. Whether the state had an adequate justification for treating the employee differently
13 from other members of the public.

14 5. Whether the state would have taken the adverse employment action even absent the
15 protected speech. (*Eng v. Cooley* (2009 9th Cir.) 552 F.3d 1062, 1070.)

16
17 Plaintiff bears the burden of showing the speech was spoken in the capacity of a private
18 citizen and not a public employee. (*Garcetti v. Ceballos* (2006) 547 U.S. 410.) Statements are
19 made in the speaker's capacity as a citizen if the speaker had no official duty to make the
20 questioned statements, or if the speech was not the product of performing the tasks the employee
21 was paid to perform.

22
23 "When public employees make statements pursuant to their official duties, the employees
24 are not speaking as citizens for First Amendment purposes, and the Constitution does not
25 insulate their communications from employer discipline." (*Garcetti v. Ceballos* (2006) 547 U.S.
26 410, 421.)
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1 In the case before the Court, the First Amended Complaint contains no allegations that
2 she was retaliated against for statements she made as a private citizen. The First Amended
3 Complaint alleges that Plaintiff's statements were made in the scope of her employment as the
4 general manager of CPCSD. For example, paragraph 24 of the First Amended Complaint
5 contains an allegation that Plaintiff tried to personally address her workplace concerns and
6 warned the directors and Mr. Biegler that she would not tolerate harassment and inappropriate
7 treatment of her female staff members.
8

9
10 There is no question from the allegations in the First Amended Complaint that they were,
11 in fact, made as part of Plaintiff's job responsibilities as the general manager of CPCSD. She
12 was clearly acting as a public employee when the statements were made, and because of that,
13 there was no protected speech that led to an adverse employment action.
14

15 Accordingly, Defendants' (Cameron Park Community Services District, David Johnson
16 and Alan Clarke) Motions to Dismiss the 3rd cause of action are granted. The Court also grants
17 the motions to dismiss with prejudice. The Court finds that there is no basis for maintaining this
18 claim. There is no evidence before the Court or any allegations raised during the oral argument
19 that convinces the Court that this claim could be amended and therefore maintained. Allowing
20 leave to amend would be futile as a matter of law. Thus, the Court grants the motions to dismiss
21 with prejudice.
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23 On the motions filed by Defendants Johnson and Clarke for a more definite statement as
24 to the 11th cause of action for conversion, the Court grants the motions with 20 days leave to
25 amend. The Complaint needs to include as best it can the date and time and the property that
26 was allegedly converted.
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1 The motion filed by Cameron Park Community Services District to dismiss the 12th cause
2 of action for Breach of Implied Covenant of Good Faith and Fair Dealing is denied. Plaintiff has
3 alleged enough to maintain this claim. (First Amended Complaint at ¶ 102.)
4

5 THEREFORE IT IS ORDERED that the Federal Rules of Civil Procedure, Rule 12(b)(6)
6 Motions to Dismiss the 3rd cause of action for Retaliation for Engaging in Protected Speech
7 which were brought by Defendants Cameron Park Community Services District, David Johnson
8 and Alan Clarke are granted without leave to amend. The Motions for a More Definite
9 Statement filed by Defendants Johnson and Clarke against the 11th cause of action for conversion
10 are granted with leave to amend. The Federal Rules of Civil Procedure, Rule 12(b)(6) Motion to
11 Dismiss filed by Cameron Park Community Services District against the 12th cause of action is
12 denied.
13

14 IT IS SO ORDERED:
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16 Dated: July 15, 2010
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18 /s/ John A. Mendez
19 UNITED STATES DISTRICT JUDGE
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1 **Approved as to form:**

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3 Dated: July 15, 2010

EVANS WIECKOWSKI & WARD, LLP

4 By: /s/ James K. Ward
5 James K. Ward
6 Attorney for Defendant
7 CAMERON PARK COMMUNITY
8 SERVICES DISTRICT

9
10 Dated: July 15, 2010

Law Offices of Mary-Alice Coleman

11 By: /s/Michael Ahmad
12 Michael Ahmad
13 Attorneys for Plaintiff
14 TAMMY MEFFORD

15
16 Dated: July 15, 2010

LAPLANTE SPINELLY & DONALD

17 By: /s/Domenic Spinelli
18 Domenic Spinelli
19 Attorneys for Defendant
20 DAVID M. JOHNSON

21
22 Dated: July 15, 2010

PORTER SCOTT

23 By: /s/Carl L. Fessenden
24 Carl L. Fessenden
25 Derek J. Haynes
26 Attorneys for Defendant
27 ALAN CLARKE
28

1 **DECLARATION OF SERVICE**

2 [Federal Rules of Civil Procedure, Rule 5(b)]
3 [CCP §§1011, 1012, 1012.5, 1013 and 1013a]

4 I am a citizen of the United States, over the age of 18 years, and not a party to or
5 interested in the within-entitled case. I am an employee of EVANS, WIECKOWSKI & WARD,
6 LLP, and my business address is 745 University Avenue, Sacramento, California 95825.

7 On this date, I served the following document:

8 by causing a true copy thereof to be delivered to the party or parties at the address(es)
9 listed below, by and/or through the services of:

10 Electronic Mail

<p>11 Law Office of Mary-Alice Coleman 12 Mary-Alice Coleman 13 Thomas B. Gill 14 1109 Kennedy Place, Suite #2 15 Davis, CA 95616 T: (916)498-9131 F: (916)304-0880 MailTo:info@lawofficemac.com</p>	<p>Domenic Spinelli Laplante Spinelli & Donald 815 S Street 2 Fl Sacramento, CA 95814 T: (916)448-7888 F: (916)448-6888 MailTo:domenics@lsdnlaw.com</p>
<p>16 Anthony Diepenbrock 17 DIEPENBROCK & COTTER 18 1545 River Park Dr., #201 19 Sacramento, CA 95815 T: (916)565-6222 F: (916)565-6220 MailTo:td@diepenbrockcotter.com</p>	<p>William Schmidt William Schmidt and Associates 1419 21st Street Sacramento, CA 95814 T: (916)447-2451 F: (916)447-8066 MailTo:wscmidt@wscmidtandassociates.com Carl L. Fessenden, Esq. PORTER SCOTT 350 University Ave., Ste. 200 Sacramento, CA 95825 MailTo:cfessenden@porterscott.com</p>

21 I am familiar with the business practice of EVANS, WIECKOWSKI & WARD, LLP,
22 with regard to collection and processing of documents for mailing with the United States Postal
23 Service. The documents described above were sealed and placed for collection and mailing on
24 the date stated below. Pursuant to said business practices, documents were deposited with the
25 United States Postal Service in Sacramento, California, that same day in the ordinary course of
26 business.

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I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed at Sacramento, California, on March____, 2010.

Andrea Cervantes