

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

KRISHNA REDDY,)	Case No.: CV 12-01324-PSG
)	
Plaintiffs,)	ORDER GRANTING DEFENDANTS'
v.)	MOTION TO DISMISS
)	
MEDQUIST, INC. et al.,)	(Re: Docket Nos. 68, 76, 84, 86)
)	
Defendants.)	
)	
)	

Plaintiff Krishna Reddy (“Reddy”) sued three groups of Defendants in this case: the “MedQuist entities,” consisting of MedQuist, Inc, (“MedQuist”) MedQuist Transcriptions, Ltd., (“MQT”), CBay Systems Holdings, Ltd. (“CBay”), Koninklijke Philips Electronics NV (“KPNV”), and Philips Electronics North America Corporation (“Philips”); the “MedQuist employees,” consisting of Stephen Rusckowski (“Rusckowski”), Kathy Pinkstaff, April Porter, Mayra Figueras, Russell Dunn, Steven Allen, Judy Compagno, Jason Gerster, John Quaintance, John Suender, and Ethan Cohen; and the “MedQuist attorneys,” consisting of Winston & Strawn LLP (“W&S”), Neal

1 Marder (“Marder”), Stephen Smerek (“Smerek”), Sullivan & Cromwell LLP (“S&C”), Michael
2 Steinberg (“Steinberg”), and Orly Elson (“Elson”). Reddy’s claims arise from her employment and
3 termination at MedQuist, as well as the litigation that followed. Defendants now move to dismiss.
4 The court found this matter suitable for disposition without oral argument pursuant to Civ. L.R. 7-
5 1(b). Having considered the papers, the court GRANTS Defendants’ motion.

6 I. BACKGROUND¹

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8 In September 1992, Reddy began working as a medical transcriptionist for Transcriptions,
9 Limited, Inc., which later became MedQuist. In 1996, to supplement her income, Reddy began
10 working at a second medical transcription company (which later became MRC Group). Shortly
11 thereafter, she took an additional medical transcriptionist job at yet another company, Your Office
12 Genie (“YOG”), in Monrovia, California. MedQuist later acquired both MRC Group and YOG. In
13 2000, Philips purchased MedQuist and took over the day-to-day operations.

14
15 After MedQuist acquired both these latter medical transcription companies, MedQuist
16 asked Reddy to work at only one branch and she chose Monrovia. Following this transition,
17 Reddy’s pay fell below what she was entitled to for several reasons. First, MedQuist reduced the
18 pay per line for medical transcriptionists to achieve a higher profit ratio for the company.
19 MedQuist also used a different rate to pay medical transcriptionists, which resulted in a calculation
20 of fewer lines per assignment as compared to the rate used to bill clients. Reddy also was paid a
21 lower rate than other transcriptionists. In response, Reddy complained to management about what
22 she viewed as unfair billing practices and applied for a transfer out of the Monrovia branch. In
23 September 2003, Reddy was fired and marked ineligible for rehire at any MedQuist office.

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25 In September 2006, three years after her termination, Reddy filed suit three years later
26 against MedQuist, Philips, and the MedQuist employees in the District of New Jersey.² Reddy

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28 ¹ Unless otherwise noted, the factual background is taken as alleged by Reddy’s complaint. See
Docket No. 1.

1 brought claims for violations of the RICO Act, fraud, civil conspiracy, interference with
2 employment contract, breach of contract, and intentional and negligent infliction of emotional
3 distress.³ On August 1, 2007 the New Jersey court dismissed all claims except for her claim for
4 breach of contract.⁴ In January 2009, the New Jersey court granted summary judgment on the
5 breach of contract claim, the sole remaining claim against MedQuist, and dismissed Reddy's
6 complaint in its entirety against all other defendants for failure to serve timely process.⁵ Final
7 judgment was entered on August 4, 2009; Reddy did not appeal.⁶

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9 On June 19, 2009, Reddy sued MedQuist for the second time, this time in the Southern
10 District of California, and adding CBay Systems as a defendant.⁷ Reddy's complaint asserted the
11 same set of claims as asserted in New Jersey, based on nearly identical facts.⁸ Because of the final
12 judgment entered in Reddy's prior New Jersey case, the court granted MedQuist's motion to
13 dismiss on res judicata grounds.⁹ With respect to Defendants Philips and Rusckowski, the court
14 found that venue was improper and transferred the case to the Central District of California.¹⁰ The
15 Central District then dismissed all claims asserted against Defendants Philips and Rusckowski for
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18 ² See Reddy v. MedQuist, Inc., Case No. 06-4410 (RBK/AMD), 2009 WL 250050 (D.N.J. Jan. 29,
19 2009).

20 ³ See *id.*

21 ⁴ See Docket No. 70, Ex. 1-C.

22 ⁵ See Docket No. 70, Ex. 1-D, Ex. 1-E.

23 ⁶ See Docket No. 70, Ex. 1-A.

24 ⁷ See Reddy v. MedQuist, Inc., Case No. 09CV1325-LBLM, 2010 WL 816154, at *1 (S.D. Cal.
25 Mar. 5, 2010).

26 ⁸ See *id.*

27 ⁹ See *id.* at 8.

28 ¹⁰ See Docket No. 70, Ex. 2-A.

1 lack of personal jurisdiction.¹¹ The Central District later dismissed the complaint in its entirety
2 against all remaining defendants because of Reddy’s failure to timely serve. This time, Reddy
3 appealed, but the Ninth Circuit affirmed.¹²

4 On March 16, 2012, Reddy filed the present action against MedQuist, Philips, various
5 MedQuist employees and their attorneys as well as additional related corporate entities.¹³ Her
6 claims are essentially based on the same set of factual assertions surrounding her past employment
7 at MedQuist and she asserts nearly identical causes of action as in her prior lawsuits.¹⁴ She brings
8 claims of (1) RICO Act violations, (2) Cal. Lab. Code § 2751 violations, (3) breach of written
9 contract, (4) breach of the covenant of good faith and fair dealing, (5) “violation of public policy,”
10 (a whistleblower claim relating to the Sarbanes-Oxley Act), (6) promissory estoppel, (7) fraud,
11 deceit and civil conspiracy, (8) intentional and negligent interference with contract and prospective
12 economic advantage, (9) Cal. Lab. Code §§ 1050 and 1052 violations, (10) violation of civil and
13 constitutional rights, (11) intentional and negligent infliction of emotional distress, and (12) a new
14 claim for “unconstitutional offshoring of medical information.”¹⁵

17 II. LEGAL STANDARDS

18 A complaint must contain “a short and plain statement of the claim showing that the pleader
19 is entitled to relief.”¹⁶ If a plaintiff fails to proffer “enough facts to state a claim to relief that is
20 plausible on its face,” the complaint may be dismissed for failure to state a claim upon which relief
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23 ¹¹ See Docket No. 70, Ex. 3-B.

24 ¹² See Reddy v. Medquist, Inc., 467 Fed. App’x 647, 649 (9th Cir. 2012).

25 ¹³ See Docket No. 1.

26 ¹⁴ See id.

27 ¹⁵ Id.

28 ¹⁶ Fed. R. Civ. P. 8(a)(2).

1 may be granted.¹⁷ A claim is facially plausible “when the pleaded factual content allows the court
2 to draw the reasonable inference that the defendant is liable for the misconduct alleged.”¹⁸
3 Accordingly, under Fed. R. Civ. P. 12(b)(6), which tests the legal sufficiency of the claims alleged
4 in the complaint, “[d]ismissal can be based on the lack of a cognizable legal theory or the absence
5 of sufficient facts alleged under a cognizable legal theory.”¹⁹

6 On a motion to dismiss, the court must accept all material allegations in the complaint as
7 true and construe them in the light most favorable to the non-moving party.²⁰ The court’s review is
8 limited to the face of the complaint, materials incorporated into the complaint by reference, and
9 matters of which the court may take judicial notice.²¹ However, the court need not accept as true
10 allegations that are conclusory, unwarranted deductions of fact, or unreasonable inferences.²²
11 “Dismissal with prejudice and without leave to amend is not appropriate unless it is clear . . . that
12 the complaint could not be saved by amendment.”²³

13 14 **III. DISCUSSION**

15 **A. Failure to Properly Serve**

16 As a preliminary matter, none of the MedQuist employees except MedQuist CEO
17 Rusckowski have appeared in this court. Noting that Reddy tried to serve the MedQuist employees
18 simply by mailing notice to MedQuist’s Tennessee headquarters, the court ordered Reddy to show
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21 ¹⁷ Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

22 ¹⁸ Ashcroft v. Iqbal, 556 U.S. 662, 663 (2009).

23 ¹⁹ *Balistreri v. Pacifica Police Dep’t.*, 901 F.2d 696, 699 (9th Cir. 1990).

24 ²⁰ See *Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1061 (9th Cir. 2008).

25 ²¹ See *id.* at 1061.

26 ²² See *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); see also *Twombly*,
27 550 U.S. at 561 (“a wholly conclusory statement of [a] claim” will not survive a motion to
28 dismiss).

²³ *Eminence Capital, LLC v. Asopeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

1 cause as to why the Medquist employee defendants had not been properly served under Fed. R.
2 Civ. P. 4(e).²⁴ Rule 4(e) requires that an individual be served with the summons and complaint
3 either by following state law for service in the state where the district court is located, or doing any
4 of the following: (A) personal delivery, (B) leaving a copy at the individual's dwelling or usual
5 place of abode with someone of suitable age and discretion who resides there, or (C) delivering a
6 copy to an agent authorized by appointment or law to receive service of process.

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8 None of the three specified options were satisfied here. Reddy never personally delivered
9 the complaint, nor did she leave a copy at anyone's residence or deliver to an authorized agent.
10 Although she claims that the person she delivered the documents to, Lisa King ("King"), was
11 authorized to receive service on behalf of the MedQuist employees, the summons returned
12 executed indicates King is the authorized agent for MedQuist itself, not its employees.²⁵

13 Reddy claims that her purported service was effective under California Code of Civil
14 Procedure sections 415.20 and 415.40 because she personally served an authorized person at the
15 defendants' business address and thereafter mailed a summons and complaint to the same address
16 via certified mail.²⁶

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18 But California law requires more. Section 415.20 states "if a copy of the summons and
19 complaint cannot with reasonable diligence be personally delivered to the person to be served... a
20 summons may be served by leaving a copy of the summons and complaint at the person's dwelling,
21 house, usual place of abode, usual place of business, or usual mailing address other than a United
22 States Postal Service post office box."²⁷ Reddy has not demonstrated that she was not able to serve
23 the MedQuist employees after exercising reasonable diligence. She also failed to mail the
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25 ²⁴ See Docket No. 150.

26 ²⁵ See Docket No. 151.

27 ²⁶ See id.

28 ²⁷ Cal. Civ. Proc. Code § 415.20.

1 summons and the complaint to any of the employee’s usual place of business, which her complaint
2 itself alleges is in California,²⁸ instead sending copies to MedQuist’s headquarters in Tennessee.

3 Reddy alternatively claims that her mailings satisfied Section 415.40, which states that
4 services may be made on “a person outside this state in any manner provided by this article or by
5 sending a copy of the summons and of the complaint to the person to be served by first-class mail,
6 postage prepaid, requiring a return receipt.”²⁹ But neither her complaint nor her response to the
7 order to show cause demonstrate that any of the MedQuist employees reside outside of California.
8

9 Because Reddy has failed show cause as to why proper service has not been executed, and
10 120 days have passed since the filing of her complaint,³⁰ Reddy’s claims against Kathy Pinkstaff,
11 April Porter, Mayra Figueras, Russell Dunn, Steven E. Allen, Judy Compagno, Jason Gerster, John
12 W. Guaintance, John M. Suender, and Ethan Cohen are dismissed.

13 **B. Motion to Dismiss**

14 Defendants argue that Reddy’s claims should be dismissed on the grounds of res judicata,
15 collateral estoppel, expiration of the applicable statutes of limitations, and failure to state a claim
16 upon which relief may be granted. The court discusses each of these bases below in turn.
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18 **1. Res Judicata**

19 The doctrine of res judicata “ensures the finality of decisions” and “serves to protect
20 adversaries from the expense and vexation of attending multiple lawsuits... and to foster reliance
21 on judicial action.”³¹ Res judicata applies when the earlier suit involved (1) an identity of claims,
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25 ²⁸ See Docket No. 1, 38-47.

26 ²⁹ Cal. Civ. Proc. Code § 415.40.

27 ³⁰ Fed. R. Civ. P. 4(m).

28 ³¹ *Americana Fabrics, Inc. v. L & L Textiles, Inc.*, 754 F.2d 1524, 1529 (9th Cir. 1985).

1 (2) a final judgment on the merits, and (3) identity or privity between parties.³² If applicable, res
2 judicata “bars not only all claims that were actually litigated, but also all claims that could have
3 been asserted in the prior action.”³³

4 Several of the claims brought by Reddy in the current suit have already been litigated on the
5 merits. The District of New Jersey and the Southern District of California both previously entered
6 final judgment in favor of MedQuist and CBay on Reddy’s claims for RICO, fraud, civil
7 conspiracy, interference of employment contract, breach of contract, breach of the covenant of
8 good faith and fair dealing, and intentional and negligent infliction of emotional distress. In those
9 cases, Reddy relied on the same facts and legal rights to support her claims as she does now.³⁴
10 Specifically, she again alleges that MedQuist violated her employment contract by paying her less
11 per transcription line and refusing to rehire her. The rights established by MedQuist in the New
12 Jersey case and recognized in the Southern California case would be substantially impaired, if not
13 outright extinguished, by allowing Reddy to litigate anew legal claims that had previously been
14 adjudicated.
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17 Although final judgment on the merits was not entered in New Jersey as to Philips, the only
18 allegations in the complaint against Philips stem from its ownership of MedQuist. As succeeding
19 owner of MedQuist, Philips is in privity with the other MedQuist entities and receives the benefit
20 of res judicata.³⁵
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24 ³² See *Turtle Island Restoration Network v. U.S. Dep’t of State*, 673 F.3d 914, 917 (9th Cir. 2012).

25 ³³ *Int’l Union of Operating Eng’rs-Employers Constr. Indus. Pension, Welfare & Training Trust*
26 *Funds v. Karr*, 994 F.2d 1426, 1429 (9th Cir. 1993).

27 ³⁴ See *Kay v. City of Rancho Palos Verdes*, 504 F.3d 803, 809 (9th Cir. 2007); *Turtle Island*
Restoration Network, 673 F.3d at 917.

28 ³⁵ See *Taylor v. Sturgell*, 553 U.S. 880, 894 (2006). See also Reddy, 2010 WL 816154, at *4.

1 Reddy argues that her prior suit in New Jersey does not have preclusive effect because a
2 final judgment on the merits was not in fact entered. That assertion is incorrect. Both summary
3 judgment and Fed. R. Civ. P. 12(b)(6) dismissal are “judgments on the merits” that wield
4 preclusive effect.³⁶ In any event, the docket plainly shows that on August 4, 2009, the complaint
5 was dismissed in its entirety and final judgment was entered.³⁷

6 2. Collateral Estoppel

7 Although final judgment on the merits was not entered as to Rusckowski in the New Jersey
8 action,³⁸ he can assert its preclusive effect under the doctrine of non-mutual issue preclusion. Issue
9 preclusion may also prevent Reddy from recasting the same suit under different claims, if the
10 underlying issues remain the same. The Supreme Court has long recognized that the “defensive
11 use of collateral estoppel precludes a plaintiff from re-litigating identical issues by merely
12 switching adversaries.”³⁹

13 Issue preclusion prevents a party from re-litigating issues from a prior action if (1) there
14 was a fully and fair opportunity to litigate the issue in the previous action, (2) the issue was
15 actually litigated in the previous action, (3) the issue was lost as a result of a final judgment in that
16 action, and (4) the person against whom collateral estoppel is asserted in the present action was a
17 party or in privity with a party in the previous action.⁴⁰

18 Reddy alleges a number of wrongs – the MedQuist entities and employees breached her
19 employment contract by paying her less per transcription line, they engaged in conspiracy and
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23 ³⁶ See *Federated Dep’t Stores v. Moitie*, 452 U.S. 394, 399 n. 3 (1981); *Hells Canyon Pres.*
24 *Council v. U.S. Forest Serv.*, 403 F.3d 683, 686 (9th Cir. 2005).

25 ³⁷ See Docket No. 70, Ex. 1-A.

26 ³⁸ As noted previously, the New Jersey and Central District of California both dismissed Reddy’s
27 claims against the MedQuist employees for procedural and jurisdictional reasons.

28 ³⁹ *Parklane Hosiery Co. Inc. v. Shore*, 439 U.S. 322, 329, 99 S.Ct. 645, 58 L.Ed.2d 552 (1979).

⁴⁰ See *In re Palmer*, 207 F.3d 566, 568 (9th Cir. 2000).

1 fraud to do so, they unfairly terminated and refused to rehire her, misappropriated confidential
2 medical information of United States citizens, and the MedQuist attorneys harassed her. With the
3 exception of the medical offshoring and attorney harassment claims, the employment-related
4 allegations are not new and have already been litigated. Reddy had a full and fair opportunity to
5 present these issues in the New Jersey suit, in her complaint and advocacy at the motion to dismiss
6 and summary judgment stages, and yet the court ruled against her. The law is clear that Reddy
7 may not re-litigate these same issues in new claims against new parties. As her claims for Cal.
8 Lab. Code § 2751 violations, “violation of public policy,” promissory estoppel, and violations of
9 Cal. Lab. Code §§ 1050 and 1052 rest on the same allegations regarding her employment and
10 termination at MedQuist, these claims are subject to collateral estoppel. This leaves only her tenth,
11 eleventh, and twelfth claims, which allege litigation misconduct and illegal offshoring of private
12 medical data.
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14 **3. Statute of Limitations**

15 Even if res judicata and collateral estoppel did not apply to Reddy’s employment-related
16 claims, all of these claims are necessarily time-barred. All of the events giving rise to Reddy’s
17 employment-related claims took place sometime between 1993 and 2003, the period when Reddy
18 was employed at MedQuist or one of its acquisitions. Reddy filed the present action in March
19 2012, more than nine years after her termination at MedQuist. The longest applicable statute of
20 limitations for any of her claims arising during her employment is four years, as set forth below:
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23 RICO claims	four years ⁴¹
24 California Labor Code § 2751 claim	four years ⁴²

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26 _____
27 ⁴¹ See Agency Holding Corp., v. Malley-Duff & Assocs., Inc., 483 U.S. 143, 156-57 (1987).

28 ⁴² See Cal. Code Civ. Proc. § 337.

1	Breach of a written contract	four years ⁴³
2	Breach of the covenant of good faith and fair dealing	four years ⁴⁴
3	Violation of public policy	two years ⁴⁵
4	Promissory estoppel	two or four years ⁴⁶
5	Fraud and civil conspiracy	three years ⁴⁷
6	Intentional and negligent interference with contract and	two years ⁴⁸
7	prospective economic advantage	
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9	California Labor Code sections 1050 and 1052	three years ⁴⁹
10	Intentional and negligent infliction of emotional distress	one or three years ⁵⁰

11
12 Reddy argues that her claims should be tolled during the prior litigation dismissed on the
13 merits, but cites no authority to support her contention. Even if Reddy were correct, her claims still
14 have exceeded any applicable statute of limitations. The New Jersey action was filed in 2006
15 dismissed in its entirety in 2009, totaling only three years. Even accounting for this unexplained
16 tolling period, more than six years have elapsed since Reddy's termination from MedQuist,
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19 ⁴³ See *id.*

20 ⁴⁴ See *Harrell v. 20th Century Ins. Co.*, 934 F.2d 203, 208 (9th Cir. 1991).

21 ⁴⁵ See 18 U.S.C. § 1514A(b)(2)(A) (procedures under § 42121(b) govern SOX whistleblower
22 claims); 29 C.F.R. § 1980.112(a); Cal. Civ. Proc. Code § 335.1.

23 ⁴⁶ See Cal. Code Civ. Proc. § 337; Cal. Civ. Proc. Code § 339.

24 ⁴⁷ See Cal. Code Civ. Proc. § 338(d); *Gardner v. UICI*, 508 F.3d 559, 562 (9th Cir. 2007).

25 ⁴⁸ See Cal. Code Civ. Proc. § 339.

26 ⁴⁹ See Civ. Code Proc. § 338(a).

27 ⁵⁰ See Cal. Code Civ. Proc. § 335.1; *Unruh-Haxton v. Regents of Univ. of Cal.*, 162 Cal. App. 4th
28 343, 356-57 (2008); *Averbach v. Vnesheconombank*, 280 F.Supp. 2d 945, 958, n.6 (2003).

1 precluding any claims based on her employment there. As any amendment would be futile, these
2 claims are dismissed with prejudice.

3 **4. Failure to State a Claim Upon Which Relief Can Be Granted**

4 Defendants also challenge Reddy's claims because they fail to state a claim upon which
5 relief can be granted.

6 **i. Tenth Claim for Civil and Constitutional Rights Violations**

7 Reddy alleges civil and constitutional rights violations under 42 U.S.C. § 1985 and 18
8 U.S.C. §§ 251 and 252. Sections 251 and 252 do not exist, but earlier on in Reddy's complaint she
9 cites 18 U.S.C. §§ 241 and 242. Even if the court assumes this was Reddy's intended reference,
10 the sections cited are criminal statutes that do not provide a private civil cause of action.⁵¹

11 Section 1985 prohibits conspiracies interfering with civil rights.⁵² To state a claim under
12 Section 1985, "a complaint must allege (1) a conspiracy, (2) to deprive any person or a class of
13 persons of the equal protection of the laws, or of equal privileges and immunities under the laws,
14 (3) an act by one of the conspirators in furtherance of the conspiracy, and (4) a personal injury,
15 property damage or a deprivation of any right or privilege of a citizen of the United States."⁵³

16 Reddy alleges two factual bases for her Section 1985 claim, both of which are unavailing.
17 First, she argues that Defendants indulged in "oppressive behavior that lacked basic human
18 conscience or decency by intimidating" her through "oppressive name-calling."⁵⁴ Even if accepted
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24 ⁵¹ See *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980).

25 ⁵² *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1039 (9th Cir. 1990).

26 ⁵³ *Jules v. Croley*, Case No. CIVS07-2797LEW EFBPS, 2008 WL 1349847, at *2 (E.D. Cal. Apr.
27 9, 2008) (citing *Sanchez*, 936 F.2d at 1039).

28 ⁵⁴ Docket No. 1 ¶ 100.

1 as true, “verbal harassment or abuse” or mere “name-calling” is insufficient to show that the
2 plaintiff suffered a constitutional deprivation.⁵⁵

3 Second, Reddy alleges that Defendants precluded her from “seeking justice in a Court of
4 law.”⁵⁶ While 42 U.S.C. 1985(2) prohibits conspiracies to deter, by force, intimidation, or threat,
5 any party or witness in any court of the United States from attending such court, no facts in her
6 complaint support her contention that Defendants intimidated her or used physical force to prevent
7 her from attending a court of law. The only statement in her complaint that could possibly be
8 construed to support this claim is that Defendants moved the court to declare Reddy a vexatious
9 litigant, a motion which the court granted.⁵⁷ That fact alone cannot sustain her claim because
10 violations of 42 U.S.C. § 1985(2) must be based on conduct outside of the litigation, as opposed to
11 argument within the litigation.⁵⁸ Such statements are barred by the litigation privilege, which
12 immunizes statements made in a judicial proceeding.⁵⁹ Reddy also does not allege that she was
13 hampered in her ability to present her case, as required by the statute.⁶⁰

14
15 Further, Reddy fails to allege any facts showing conspiracy, which is required under both
16 1985(2) and (3). The bare assertion that Defendants engaged in a conspiracy will not suffice; the
17 complaint must state a set of facts that would nudge her claims “across the line from conceivable to
18 plausible.”⁶¹

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21 ⁵⁵ *Oltarzewski v. Ruggiero*, 830 F.2d 136, 139 (9th Cir. 1987); *Jules*, 2008 WL 1349847, at *2.

22 ⁵⁶ Docket No. 1 ¶ 100.

23 ⁵⁷ See Docket No. 121.

24 ⁵⁸ See *Kinnard v. Brisson*, Case No. C-03-3127 MMC, 2004 WL 1465693, at *4 (N.D.
25 Cal. June 21, 2004)

26 ⁵⁹ See *Action Apartment Ass’n Inc. v. City of Santa Monica*, 41 Cal. 4th 1232, 1242 (2007).

27 ⁶⁰ See *Rutledge v. Arizona Bd. of Regents*, 859 F.2d 732, 735 (9th Cir. 1988).

28 ⁶¹ *Twombly*, 550 U.S. at 546, 570.

1 Because Reddy offers no basis upon which to believe any amendment would not be futile,
2 and her repetitive litigation tactics demonstrate bad faith and prejudice to the opposing parties,⁶²
3 this claim is dismissed without leave to amend.

4 **b. Reddy’s Eleventh Claim for Intentional and Negligent Infliction of**
5 **Emotional Distress**

6 Reddy brings an intentional and negligent infliction of emotional distress claim against all
7 defendants. As noted above, res judicata and the statute of limitations bar this claim as arising
8 from Reddy’s employment. She also asserts this claim outside of the employment context against
9 MedQuist, CBay, Philips, Rusckowski, and their respective attorneys, which the court now
10 evaluates.

11 Intentional infliction of emotional distress requires the plaintiff to allege (1) outrageous
12 conduct, (2) intent to cause, or reckless disregard of the probability of causing (3) severe emotional
13 distress, and (4) an actual and proximate causal link between the tortious conduct and the
14 emotional distress.⁶³ For conduct to qualify as outrageous, it must be so extreme that it “goes
15 beyond all possible bounds of decency so as to be regarded as atrocious and utterly intolerable in a
16 civilized community.”⁶⁴ Severe emotional distress means “emotional distress of such substantial
17 quality or enduring quality that no reasonable [person] in civilized society should be expected to
18 endure it.”⁶⁵ Reddy alleges that she endured name-calling by MedQuist’s attorneys during her
19 employment lawsuit. But mere name-calling cannot give rise to any plausible inference that
20 Defendants acted in such a way that went “beyond all possible bounds of decency so as to be
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24 ⁶² Foman v. Davis, 371 U.S. 178, 182 (1962) (reasons for denying leave to amend include “undue
25 delay, bad faith or dilatory motive on the part of the movant... [and] undue prejudice to the
opposing party by virtue of allowance of the amendment).

26 ⁶³ See Nally v. Grace Cmty. Church, 47 Cal. 3d 278, 300 (1988).

27 ⁶⁴ Gomon v. TRW, 28 Cal. App. 4th 1161, 1172 (1994).

28 ⁶⁵ Hughes v. Pair, 46 Cal. 4th 1035, 1051, (2009).

1 regarded as atrocious and utterly intolerable in a civilized community.”⁶⁶ “Insults, indignities,
2 annoyances, petty oppressions, or other trivialities” plainly do not suffice.⁶⁷ Moreover, as noted
3 previously, the litigation privilege again bars allegations based on Defendants’ conduct in judicial
4 proceedings.⁶⁸

5 As to Reddy’s claim for negligent infliction of emotional distress, she fails to plead the
6 basic elements of negligence. California courts have repeatedly held that negligent infliction of
7 emotional distress is not an independent tort, but merely a variety of negligence, which requires
8 pleading of duty, breach, causation, and damages.⁶⁹ Reddy does not do so, and so her claim is
9 insufficient.
10

11 As before, because amendment would be futile and her litigation history against Defendants
12 show bad faith, these claims are dismissed without leave to amend.

13 **c. Plaintiff’s Twelfth Claim for “Unconstitutional Offshoring”**

14 Reddy’s final claim alleges MedQuist deprived individual citizens of their constitutional
15 right to privacy when it sent private medical records to India for transcription.⁷⁰ But a
16 constitutional deprivation requires state action, and Reddy has not alleged any facts by which one
17 might plausibly conclude that MedQuist is a state actor.⁷¹ Reddy also cannot establish standing
18 because she cannot show injury-in-fact.⁷² Her only allegation in support of this claim is that
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22 ⁶⁶ Gomon, 28 Cal. App. 4th at 1172.

23 ⁶⁷ Id.

24 ⁶⁸ See *Action Apartment Ass’n Inc.*, 41 Cal. 4th at 1242.

25 ⁶⁹ See *Burgess v. Superior Court*, 2 Cal. 4th 1064, 1072 (1992).

26 ⁷⁰ See Docket No. 1.

27 ⁷¹ See *Whalen v. Roe*, 429 U.S. 589, 598-600, n.23 (2003).

28 ⁷² *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

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MedQuist stores confidential medical records of patients outside the United States. Reddy was an employee, not a patient with records handled by MedQuist, evidenced by the fact that she does not allege her own records were improperly handled or transmitted offshore.

Because of the lack of a state actor and Reddy's inability to establish standing, this claim cannot be cured and is dismissed without leave to amend.

V. CONCLUSION

Reddy's claims are dismissed without leave to amend.

IT IS SO ORDERED.

Dated: July 18, 2013



PAUL S. GREWAL
United States Magistrate Judge