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DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE)

Sally K. Favaloro,

Plaintiff,

vs. Case No.: 2017-CP-21-2331

Robert Colones, Ronald Boring, Marie Segars, Debbie Locklair, Shannon Carr, Michael Rose, and McLeod Regional Medical Center,

Defendant.

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SC Court of Appeals

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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS

THIS MATTER IS BEFORE THE COURT upon the Motions to Dismiss filed by each of the Defendants in this matter.

The Court has thoroughly reviewed Plaintiff's Complaint, each of the Motions to Dismiss, and Plaintiff's filings in response and opposition to Defendants' Motions to Dismiss. The Court held a hearing on Defendants' Motions on April 16, 2018, which Plaintiff willfully failed to attend notwithstanding clear notice of the hearing and her filing of pleadings opposing the Motions in the Courthouse as the hearing took place. For the reasons set forth below, the Court hereby **GRANTS** Defendants' Motions and **DISMISSES** Plaintiffs' Complaint, **with prejudice**.

I. PROCEDURAL HISTORY AND PLAINTIFF'S WILLFUL FAILURE TO ATTEND HEARING, NOTWITHSTANDING NOTICE THEREOF

Plaintiff filed her Complaint in this action on August 28, 2017. On October 17, 2017, Defendant Dr. Michael Rose timely filed his Motion to Dismiss Plaintiff's Complaint. On November 16, 2017, the remaining Defendants (Robert Colones, Ronald Boring, Marie Segars,

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Debbie Locklair, Shannon Carr, and McLeod Regional Medical Center ("McLeod")) timely filed their Motions to Dismiss Plaintiff's Complaint.

On December 11, 2017, the Court notified the parties that a hearing on Defendants' Motions was scheduled to occur on January 4, 2018, at 9:30 a.m. Also on December 11, 2017, counsel for Defendants notified Plaintiff in writing of the hearing's date and time. The Court was forced to reschedule the hearing due to inclement weather, and counsel for Defendants notified Plaintiff in writing of the cancellation.

On March 19, 2018, the Court notified the parties that the hearing on Defendants' Motions was rescheduled to occur on April 16, 2018, at 9:30 a.m. Also on March 19, 2018, counsel for Defendants notified Plaintiff in writing of the date, time, and location for the rescheduled hearing.

At 8:00 a.m. on April 16—the day of the hearing—Plaintiff sent Defendants' counsel a copy of (1) Plaintiff's Response to Defendants' Filings Served October 17 and November 16, 2017, and (2) Plaintiff's Memorandum in Opposition to Defendants' Filings Served October 17 and November 16, 2017.[1] Plaintiff's e-mail to Defendants' counsel acknowledged Plaintiff's notice of the hearing, describing the documents as "relating to today's hearing in this case."

The hearing proceeded as scheduled on April 16, 2018, at 9:30 a.m. Notwithstanding Plaintiff's notice of the hearing, she willfully failed to appear for the hearing. During the hearing, the court clerk informed the Court that (1) a male adult personally delivered the documents referenced above for filing that morning, (2) the male adult informed the clerk that Plaintiff would not be appearing for the hearing and that he could not stay, (3) the clerk

[1] These documents, while captioned as a response and opposition to Defendants' Motions, do not actually respond to any of the arguments or address the legal deficiencies raised in Defendants' Motions. Nowhere in either of these documents does Plaintiff explain why or how her claims are viable or should be allowed to proceed.

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encouraged Plaintiff and/or her representative to attend the hearing, and (4) the male adult reiterated that Plaintiff would not be attending the hearing and that he could not stay. Accordingly, the hearing proceeded in Plaintiff's absence based on her willful failure to attend.

II. FACTUAL BACKGROUND

Plaintiff's actual Complaint is entirely devoid of factual allegations regarding the basis for her claims against Defendants. Looking to the attachments to Plaintiff's Complaint—confusing letters Plaintiff penned—the Court believes the following are the "facts" in the light most favorable to Plaintiff:

- Defendant Rose was Plaintiff's supervisor during her employment with McLeod (July 7, 2015 Letter at 3 of 8, ¶ 4(d) ("Dr. Rose . . . was, until April 30, 2015, a supervisor over [Plaintiff]."));
- Rose participated in a meeting in which Plaintiff was placed on administrative leave (July 7, 2015 Letter at 4 of 8, ¶ 9 ("[Rose] then sat down, pointedly avoiding eye contact, spoke briefly, then fixed direct eye contact at [Plaintiff] to make the following statement: 'I'm placing you on administrative leave.'"));
- Plaintiff believes that Rose actually terminated her employment during the April 30, 2015 meeting (July 7, 2015 Letter at 4 of 8, ¶ 10 ("Dr. Rose was not placing [Plaintiff] on administrative leave . . . . Instead, he was terminating [Plaintiff]."));
- Rose was not Plaintiff's employer (July 7, 2015 Letter at 7 of 8, ¶ 25(d) ("A non-employer, as in Dr. Rose on May 5, cannot terminate or professionally evaluate a non-employee, as in Sally Favaloro."));
- Plaintiff contends that the termination of her employment was "wrongful [and] was an egregious Policy violation." (July 21, 2015 Letter at 2 of 8, ¶ (5)(c)); and

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- Plaintiff contends that there are "highly suspicious documents" in her personnel file at McLeod Health (July 31, 2015 Letter).

These are the only salient facts asserted. Beyond these, Plaintiff states legal claims, opinions, and conclusions with no factual underpinning.

Significantly, the Complaint is devoid of any meaningful references to and/or factual allegations against most of the Defendants. Scouring Plaintiff's Complaint,

- There is only 1 reference to Defendant Robert Colones:
    - The vague contention on Page 3 of 3 of Plaintiff's first attachment to the Complaint ("AVP Summary – Reading Time: 15 Minutes") that Colones needed to provide prior approval for the alleged termination of Plaintiff's employment.
- There are 0 factual allegations related to Defendant Ronald Boring. The only reference to Boring anywhere in the Complaint is his identification as the recipient of a letter Plaintiff sent on September 10, 2015, in an apparent attempt to challenge her alleged "wrongful termination" months after her separation from employment with McLeod Health.
- There are only 2 references to Defendant Marie Segars:
    - The conclusory allegation in Paragraph 105.7 (Plaintiff's Claim 5.7 for criminal conspiracy) that Segars "performed one or more acts in furtherance of the results described in Claims 1, 2, and 5.1 – 10"; and
    - The vague contention on Page 3 of 3 of Plaintiff's first attachment to the Complaint ("AVP Summary – Reading Time: 15 Minutes") that Segars needed to provide prior approval for the alleged termination of Plaintiff's employment.
- There are only 2 references to Defendant Debbie Locklair:

- The conclusory allegation in Paragraph 105.7 (Plaintiff's Claim 5.7 for criminal conspiracy) that Locklair "performed one or more acts in furtherance of the results described in Claims 1, 2, and 5.1 – 10"; and
- The contentions on Pages 6-7 of 9 of Plaintiff's September 10, 2015 letter (attached to the Complaint) that Locklair (as Chairperson of a Committee that considered Plaintiff's post-separation internal appeal) sent a letter rejecting Plaintiff's post-separation internal appeal, the accuracy of which Plaintiff disputes (Sept. 10, 2015 Letter at 6 of 9 ("In [Locklair's] letter [rejecting Plaintiff's appeal], Locklair: (a) falsely claimed to be "Chairperson" of the August 20 Review Team; and (b) falsely denied the fact that the Review Team found that Dr. Rose's AVP termination violated McLeod policies."); *id.* at 7 of 9 ("[Locklair's] letter's multiple oddities prohibit [the] letter ***itself*** from being taken seriously.")).

- There are only 3 references to Defendant Shannon Carr:
  - The conclusory allegation in Paragraph 105.7 (Plaintiff's Claim 5.7 for criminal conspiracy) that Carr "performed one or more acts in furtherance of the results described in Claims 1, 2, and 5.1 – 10";
  - The references to Carr (in her Human Resources capacity) attending and participating in the April 30, 2015 meeting at which Plaintiff was placed on administrative leave (July 7, 2015 Letter at 4-6 of 8; Sept. 10, 2015 Letter at 2 of 9); and
  - The allegations regarding Carr arranging Plaintiff's internal post-separation appeal process (Sept. 10, 2015 Letter at 2 of 9 & 6 of 9).

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I. Claim 5.2: S.C. Code § 16-13-30 – Larceny ("Claim 5.2") – Against Defendants Rose and McLeod

Claim 5.2 alleges a claim for "larceny," apparently based on the same contentions as Claim 2. Claim 5.2 against McLeod fails based on the following: **(1)** there is no private right of action under section 16-13-30 of the South Carolina Code, as it is a purely criminal statute; **(2)** Plaintiff does not allege any facts indicating that Rose or McLeod hold or have control over Plaintiff's alleged property or otherwise engaged in any conduct that could even potentially be considered "larceny"; and **(3)** Claim 5.2 is duplicative of Claim 2. Claim 5.2 fails to state facts sufficient to constitute a cause of action and is dismissed.

J. Claim 5.3: S.C. Code § 16-13-10 – Forgery ("Claim 5.3") – Against Defendants Locklair, Rose, and McLeod

Claim 5.3 pursues a cause of action for "forgery" and vaguely lists various documents (many of which are the letters Plaintiff wrote herself and attaches to her Complaint, and the others of which appear to be McLeod employment/personnel records). Claim 5.3 is subject to dismissal for at least three reasons: **(1)** there is no private right of action under section 16-13-10 of the South Carolina Code, as it is a purely criminal statute; **(2)** Plaintiff does not identify any actions by Locklair that could even potentially constitute "forgery"—the only document connected to Locklair is her August 20 letter rejecting Plaintiff's internal post-separation appeal (with which Plaintiff apparently disagrees), and potentially the "highly suspicious" documents in her personnel file (the author/creator of which Plaintiff acknowledges she is not aware in paragraph 4 of her July 31, 2015 letter attached to the Complaint—"to protect the Review Team from being deceived by Dr. Rose or whoever is responsible for adding these highly suspicious pages to my HR file" (emphasis added)); **(3)** the only documents purportedly connected to Rose are his May 5 letter (which paragraph 25 of Plaintiff's July 7, 2015 Letter attached to the Complaint simply references as allegedly "null and void") and the "highly suspicious"

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documents in her personnel file (the author/creator of which Plaintiff acknowledges she is not aware), none of which indicate any plausible "forgery" on Rose's part; **(4)** none of the documents purportedly connected to McLeod indicate any plausible "forgery" on McLeod's part—Rose's May 5 letter, Debbie Locklair's August 20 letter, and the "highly suspicious" documents in her personnel file (the author/creator of which Plaintiff acknowledges she is not aware); and **(5)** there are no facts in the Complaint alleging that McLeod, Locklair (in her individual capacity), or Rose (in his individual capacity) committed the supposed violation. Claim 5.3 is dismissed accordingly.

K. <u>Claim 5.4: S.C. Code § 16-7-150 – Slander and Libel ("Claim 5.4") – Against Defendants Segars, Locklair, Rose, and McLeod</u>

Claim 5.4 purports to state a claim for "slander and libel" but references the section of the South Carolina Code involving criminal slander and libel. Claim 5.4 fails based on the following: **(1)** there is no private right of action under section 16-7-150 of the South Carolina Code, as it is a purely criminal statute—the text of the statute expressly differentiates itself from "an action for damages for libel or slander under the existing law"; **(2)** Plaintiff has not alleged with any degree of specificity facts sufficient to identify the allegedly defamatory statement, how/when/to whom the allegedly defamatory statement was published, how Segars, Locklair, Rose, or McLeod were involved in the unidentified publication, or how Plaintiff was allegedly harmed by the supposed defamatory statement; **(3)** if Plaintiff is relying on the "highly suspicious" documents in her personnel file, Paragraph 4 of her July 31, 2015 letter attached to the Complaint makes clear that Plaintiff does not know the author/publisher of those vaguely described documents—"to protect the Review Team from being deceived by Dr. Rose <u>or whoever is responsible for adding these highly suspicious pages to my HR file</u>" (emphasis added)); **(4)** there are no facts in the Complaint alleging that Locklair, Segars, or Rose, in their

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individual capacities, made the allegedly defamatory statement; **(5)** there are no facts in the Complaint alleging that McLeod, or any of its agents, made the allegedly defamatory statement; and **(6)** a common law cause of action for libel or slander must be brought within 2 years of the date on which the alleged defamatory statement was made, and all alleged statements the Court is able to discern from the Complaint occurred more than 2 years before filing, S.C. Code Ann. § 15-3-550.[4] Therefore, Claim 5.4 is dismissed under Rule 12(b)(6).

L. <u>Claim 5.5: S.C. Code § 41-15-510 – Retaliation ("Claim 5.5") – Against Defendants Segars, Rose, and McLeod</u>

Claim 5.5 contends that Defendants "retaliated and discriminated against Plaintiff" because she allegedly "challenged Defendants' misconduct." Claim 5.5 is allegedly based on S.C. Code Ann. § 41-15-510, which prohibits "discharge or . . . discriminat[ion]" against an employee who engages in protected activity "relating to statutes, rules or regulations regarding occupational safety and health." Claim 5.5 is facially deficient because: **(1)** Plaintiff has not alleged <u>any</u> facts showing that she engaged in any protected activity under any "statutes, rules or regulations regarding occupational safety and health"; **(2)** Plaintiff has not fulfilled the conditions precedent to an action for a violation of S.C. Code Ann. § 41-15-510, which require an employee, "within thirty days after the violation occurs, [to] file a complaint with the Director of the Department of Labor, Licensing and Regulation alleging the discrimination," S.C. Code Ann. § 41-15-520; **(3)** section 41-15-520 limits actions for alleged violations of section 41-15-510 against private sector employees to those brought by the Director of the DLLR; **(4)** Plaintiff has not alleged any facts that would establish an employment relationship with Segars or Rose;

[4] To the extent Plaintiff is contending that Rose's May 5 letter or Locklair's August 20 letter (neither of which are attached to the Complaint and are not described with any degree of particularity) are defamatory, McLeod contends that those letters would be subject to a privilege as a matter of law and that Plaintiff has alleged no facts indicating even a plausible ability to overcome the privilege.

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(5) Plaintiff admits that Rose was not her employer (July 7, 2015 Letter at 7 of 8, ¶ 25(d) ("A non-employer, as in Dr. Rose on May 5, cannot terminate or professionally evaluate a non-employee, as in Sally Favaloro.")); and **(6)** Plaintiff does not allege <u>any</u> facts indicating that Segars or Rose, in their individual capacities, discriminated against or discharged her. Claim 5.5 is dismissed accordingly.

M. <u>Claim 5.6: S.C. Code § 1-13-80 (F) – Discrimination ("Claim 5.6") – Against Defendants Segars, Rose, and McLeod</u>

Claim 5.6 alleges discrimination under the South Carolina Human Affairs Law. Claim 5.6 against fails as a matter of law based on the following: **(1)** Plaintiff failed to exhaust her administrative remedies under S.C. Code Ann. § 1-13-90, having never filed a charge with the South Carolina Human Affairs Commission; **(2)** Claim 5.6 is extremely untimely under section 1-13-90, with her Complaint filed on August 28, 2017—nearly two years after the applicable 180-day statute of limitations had expired; **(3)** Plaintiff failed to bring the action within one year of the wrongful acts occurring, pursuant to §1-13-90(d)(6); **(4)** Plaintiff has not identified a single protected characteristic on which Claim 5.6 is based; **(5)** Plaintiff has not alleged any facts that would establish an employment relationship with Segars or Rose; **(6)** Plaintiff states that Rose was not her employer (July 7, 2015 Letter at 7 of 8, ¶ 25(d) ("A non-employer, as in Dr. Rose on May 5, cannot terminate or professionally evaluate a non-employee, as in Sally Favaloro.")); **(7)** Plaintiff does not allege <u>any</u> facts indicating that Segars or Rose, in their individual capacities, unlawfully discriminated against her; and **(8)** Plaintiff does not allege <u>any</u> facts indicating that McLeod, or any of its agents, unlawfully discriminated against her based on any protected characteristic. Claim 5.5 is subject to dismissal as a matter of law.

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N. Claim 5.7: S.C. Code §16-17-410 – Conspiracy ("Claim 5.7") – Against Defendants Segars, Locklair, Carr, Rose, and McLeod

Claim 5.7 contends that four individual defendants conspired with McLeod Health in violation of S.C. Code § 16-17-410. Claim 5.4 fails based on the following: **(1)** there is no private right of action under section 16-17-410 of the South Carolina Code, as it is a purely criminal statute; **(2)** there are no facts in the Complaint alleging that any of the individuals, in their individual capacity, engaged in the vaguely alleged conspiracy; and **(3)** conspiracy requires the combination of two or more persons to conspire together for the purpose of accomplishing an unlawful objective or lawful objective by unlawful means, all of the alleged conspirators appear to be agents of McLeod Health, there is no allegation that any of the individuals were acting outside of their scope of employment, and a party cannot conspire with itself (which is precisely what McLeod would allegedly be doing if its agents were conspiring with each other within the scope of their employment), *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 887 (2006) ("[W]e believe that it is well settled that a corporation cannot conspire with itself."); *id.* ("[A]gents for a corporation acting in the scope of their duties cannot conspire with the corporation absent the guilty knowledge of a third party." (citing *Goble v. Am. Ry. Express Co., et. al.*, 124 S.C. 19, 26-27, 115 S.E. 900, 903 (1923))). Therefore, Claim 5.7 is dismissed.

O. Claim 5.8: S.C. Reg. 61-16 § 505 B, D, E – Illegal Treatment of Nurses ("Claim 5.8") – Against Defendants Carr, Rose, and McLeod

Claim 5.8 purports to be a claim based on the Department of Health and Environmental Control ("DHEC") regulations regarding nursing services. The specific regulations cited require (a) a hospital to have 24-hour nursing service under the direction of a registered nurse with nurses licensed in the state of South Carolina, S.C. Code Ann. Regs. 61-16 § 505(B); (b) a hospital to employ other personnel to assist registered nurses in providing care, assigned based

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on education, training and competence, *id.* § 505(D); and (c) a hospital's nursing personnel to be under the supervision of nursing leadership and subject to the policies and procedures of the facility, *id.* § 505(E). Claim 5.8 must be dismissed because: **(1)** there is no private right of action under the cited regulations; **(2)** Plaintiff has not alleged any facts that would establish an employment relationship with Carr or Rose; **(3)** Plaintiff states that Rose was not her employer (July 7, 2015 Letter at 7 of 8, ¶ 25(d) ("A non-employer, as in Dr. Rose on May 5, cannot terminate or professionally evaluate a non-employee, as in Sally Favaloro.")); **(4)** Plaintiff does not allege <u>any</u> facts indicating that Carr or Rose, personally or in their individual capacities, failed to comply with the cited regulations; **(5)** Plaintiff does not allege <u>any</u> facts indicating that McLeod failed to comply with the cited regulations; and **(6)** the Complaint contains no factual allegations regarding how any of the Defendants in any way violated the cited regulations. Claim 5.8 is dismissed accordingly.

P. <u>Claim 5.9: S.C. Reg. 61-16 § 506 A, C – Illegal Hospital Records Practices ("Claim 5.9") – Against Defendants Locklair, Carr, Rose, and McLeod</u>

Like Claim 5.8, Claim 5.9 is based exclusively on DHEC regulations regarding healthcare facilities in South Carolina. The specific regulations cited require (a) the CEO of the facility to designate an individual to conduct Human Resources Management and be responsible for various Human Resources functions, S.C. Code Ann. Regs. 61-16 § 506(A); and (b) the licensee of a healthcare facility to maintain certain personnel records, *id.* § 506(C). Claim 5.9 fails for the same reasons that Claim 5.8 fails: **(1)** there is no private right of action under the cited regulations; **(2)** Plaintiff has not alleged any facts that would establish an employment relationship with any of the individual Defendants; **(3)** Plaintiff states that Rose was not her employer (July 7, 2015 Letter at 7 of 8, ¶ 25(d) ("A non-employer, as in Dr. Rose on May 5, cannot terminate or professionally evaluate a non-employee, as in Sally Favaloro.")); **(4)** Plaintiff

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does not allege <u>any</u> facts indicating that McLeod or any of the individual Defendants (personally, in their individual capacities, or otherwise) are "licensees" covered by the regulations; **(5)** Plaintiff has in no way alleged that McLeod or any of the individual Defendants (personally, in their individual capacities, or otherwise) failed to comply with the cited regulations; and **(6)** the Complaint contains no factual allegations regarding how any of the Defendants in any way violated the cited regulations. Claim 5.9 is thus subject to dismissal as a matter of law.

Q. Claim 5.10: *State v. Carson*, 274 S.C. 316 (1980) Misprision of Felony ("Claim 5.10") – Against all Defendants

Claim 5.10 claims that all of the Defendants committed the crime of misprision of a felony by not remedying the previous vaguely alleged criminal actions. Claim 5.10 must be dismissed because: **(1)** there is no private right of action for misprision of a felony, as it is a purely criminal matter—the case Plaintiff cites involves a criminal prosecution by the State, and has nothing to do with a civil right of action; and **(2)** there are no facts in the Complaint alleging that McLeod or any of the individual Defendants (personally, in their individual capacities, or otherwise) engaged in the purported violation of the law. Rule 12(b)(6) mandates dismissal of Claim 5.10.

R. Claim 5.11: 18 U.S.C. § 4 – Misprision of Felony ("Claim 5.11") – Against all Defendants

Claim 5.11 is identical to Claim 5.10 (even citing only to Claim 5.10 as the basis for the claim), but relies on a federal criminal statute instead of a South Carolina judicial opinion. Claim 5.11 is equally deficient to Claim 5:10: **(1)** there is no private right of action for misprision of a felony, as it is a purely criminal matter—the statute specifically references criminal penalties and makes no mention of an available civil claim; **(2)** there are no facts in the Complaint alleging that McLeod or any of the individual Defendants (personally, in their individual capacities, or

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otherwise) violated the federal statute; and **(3)** Claim 5.11 is entirely duplicative of Claim 5.10. Claim 5.11 is dismissed accordingly.

S. Claim 5.12: 18 U.S.C. § 1512(b)-(c) – Witness and Evidence Tampering ("Claim 5.12") – Against Defendants Carr, Rose, and McLeod

Claim 5.12 alleges a violation of 18 U.S.C. § 1512, which is a federal criminal statute related to "[t]ampering with a witness, victim, or an informant," as made clear by the official name of the statute. Like the rest of Plaintiff's claims, Claim 5.12 is subject to immediate dismissal: **(1)** there is no private right of action under 18 U.S.C. § 1512, as it is a criminal statute that does not create or even contemplate any civil remedies; **(2)** there are no facts in the Complaint alleging that McLeod or the individual Defendants (personally, in their individual capacities, or otherwise) violated the statute; and **(3)** there are no factual allegations in the Complaint beyond Plaintiff's conclusory contentions that any of the Defendants have violated the statute. Claim 5.12 is dismissed.

T. Claim 5.13: Occupational Safety and Health Act of 1970 § 11(c) – Retaliation ("Claim 5.13") – Against Defendants Rose and McLeod

Identical to Claim 5.5 (even relying exclusively on Claim 5.5 as supposed support), Claim 5.13 contends, with no explanation, that Rose and McLeod somehow retaliated against Plaintiff in violation of the federal Occupational Safety and Health Act. Claim 5.13 is facially deficient for the same reasons as Claim 5.5: **(1)** Plaintiff has not alleged <u>any</u> facts showing that she engaged in any protected activity "under or related to" the federal Occupational Safety and Health Act, 29 U.S.C. § 660(c); **(2)** Plaintiff has not fulfilled the conditions precedent to an action for a violation of 18 U.S.C. § 660(c), which require an employee, "within thirty days after [an alleged] violation occurs, [to] file a complaint with the Secretary [of Labor] alleging such discrimination"; **(3)** 18 U.S.C. § 660(c) limits actions for alleged violations of the section to those brought by the Secretary of Labor, and there is no private right of action; **(4)** Plaintiff

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admits that Rose was not her employer (July 7, 2015 Letter at 7 of 8, ¶ 25(d) ("A non-employer, as in Dr. Rose on May 5, cannot terminate or professionally evaluate a non-employee, as in Sally Favaloro.")); **(5)** Plaintiff has not alleged any facts that would establish an employment relationship between Rose and Plaintiff; and **(6)** Plaintiff does not allege <u>any</u> facts indicating that Rose, in his individual capacity, discriminated against or discharged her. Claim 5.13 is dismissed accordingly.

U. <u>Claim 6: Negligence ("Claim 6") – Against Defendants Rose and McLeod</u>

Claim 6 alleges that Rose and McLeod were somehow negligent through the "termination of, and refusal to reinstate, Plaintiff." While the claim is captioned as one for "negligence," the elements Plaintiff lists suggest Plaintiff is attempting to set forth a claim for negligent misrepresentation. Both claims fail as a matter of law: **(1)** based on the exclusivity provision of the South Carolina Workers' Compensation Act, an employee is disallowed from maintaining "a negligence cause of action against his direct employer or his statutory employer," *Edens v. Bellini*, 359 S.C. 433, 445, 597 S.E.2d 863, 869 (Ct. App. 2004) (citing *Neese v. Michelin Tire Corp.*, 324 S.C. 465, 478 S.E.2d 91 (Ct. App. 1996), *overruled on other grounds by Abbott v. The Limited, Inc.*, 338 S.C. 161, 526 S.E.2d 513 (2000)); *see also* S.C. Code Ann. § 42-1-540 (explaining that the "rights and remedies" of the Act "shall exclude all other rights and remedies of such employee . . . , at common law or otherwise, on account of" any work-related accident or injury, including alleged negligence in the workplace); **(2)** Plaintiff does not allege <u>any</u> facts indicating that McLeod owed Plaintiff any alleged duty, breached the unidentified and nonexistent duty, or made any false representation; **(3)** there are no facts in the Complaint that would even potentially establish a duty that Rose, personally or in his individual capacity, owed to Plaintiff; **(4)** Plaintiff states that Rose was not her employer (July 7, 2015 Letter at 7 of 8,

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¶ 25(d) ("A non-employer, as in Dr. Rose on May 5, cannot terminate or professionally evaluate a non-employee, as in Sally Favaloro.")); **(5)** Plaintiff has not alleged any facts that would establish an employment relationship between Rose and Plaintiff; **(6)** Plaintiff does not allege any facts indicating that Rose, in his individual capacity, breached any alleged duty or made any false representation; and **(7)** Plaintiff has not alleged any facts that would establish her justifiable reliance on any alleged misrepresentation. Thus, the Court dismisses Claim 6.

V. Claim 7: Breach of Contract ("Claim 7") – Against Defendant McLeod

Plaintiff's Claim 7 for breach of contract against McLeod is based on unspecified "Policies and Procedures," which Plaintiff contends McLeod violated "by terminating her employment and refusing to reinstate her." Plaintiff has not identified—with any degree of specificity—what alleged policies or procedures created contractual obligations, how the supposed contractual obligations were created, or how McLeod breached the alleged obligations.[5] This is far from sufficient to state a plausible claim for breach of contract, mandating dismissal of Claim 7 as a matter of law.

W. Claim 8: Fraud ("Claim 8") – Against Defendants Rose and McLeod

Claim 8 alleges Rose and McLeod committed fraud through the "termination of, and refusal to reinstate, Plaintiff." Claim 8 must be dismissed because: **(1)** the Complaint does not comply with Rule 9(b), SCRCP—which plainly requires that all "averments of fraud . . . shall be stated with particularity"—as Plaintiff has not clearly identified the supposed representation or alleged any facts plausibly showing how or why it was false, the materiality of the representation, Defendants' knowledge of the falsity or reckless disregard of truth or falsity,

[5] To the extent Plaintiff is relying on McLeod's employee handbook—which the Court cannot determine based on the factually deficient nature of Plaintiff's Complaint—McLeod argues that the handbook contains a clear and conspicuous disclaimer that would preclude contractual obligations as a matter of law.

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Defendants' intent that Plaintiff act on the representation, Plaintiff's ignorance of the falsity, Plaintiff's reliance on its truth, Plaintiff's right to rely thereon, or Plaintiff's consequent and proximate injury; and **(2)** Plaintiff does not allege <u>any</u> facts indicating that McLeod or Rose (in his individual capacity) made any false representation or engaged in conduct that would satisfy the remaining 8 elements of a claim for fraud. Claim 8 is dismissed accordingly.

X. <u>Claim 9: Defamation ("Claim 9") – Against Defendants Rose and McLeod</u>

Plaintiff's Claim 9 alleges a cause of action for defamation against Rose and McLeod, relying entirely on the same "facts" that purportedly support her claim for "forgery." Claim 9 fails for the same reason that Claim 5.4 fails: **(1)** Plaintiff has not alleged with any degree of specificity facts sufficient to identify the allegedly defamatory statement (as required by Rule 9(h), SCRCP), how/when/to whom the allegedly defamatory statement was published, how McLeod was involved in the unidentified publication, or how she was allegedly harmed by the supposed defamatory statement; **(2)** if Plaintiff is relying on the "highly suspicious" documents in her personnel file, paragraph 4 of her July 31, 2015 letter attached to the Complaint makes clear that Plaintiff does not know the author/publisher of those vaguely described documents— "to protect the Review Team from being deceived by Dr. Rose <u>or whoever is responsible for adding these highly suspicious pages to my HR file</u>" (emphasis added)); **(3)** there are no facts in the Complaint alleging that Rose (in his individual capacity), McLeod, or any of McLeod's agents made the allegedly defamatory statement; and **(4)** a common law cause of action for libel or slander must be brought within 2 years of the date on which the alleged defamatory statement was made, S.C. Code Ann. § 15-3-550, and the only alleged statements the Court can discern

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from the Complaint occurred more than 2 years before filing.[6] Therefore, Claim 9 is dismissed under Rule 12(b)(6).

Y. Claim 10: Common Law Conspiracy ("Claim 10") – Against Defendants Rose and McLeod

Claim 10 simply refers to Claim 5.7, apparently attempting to allege that Rose—an agent of McLeod Health—conspired with McLeod Health. Claim 10 fails just like Claim 5.7: **(1)** there are no facts in the Complaint alleging that Rose (in his individual capacity) or McLeod engaged in the vaguely alleged conspiracy; and **(2)** conspiracy requires the combination of two or more persons to conspire together for the purpose of accomplishing an unlawful objective or lawful objective by unlawful means, Rose is an agent of McLeod Health, there is no allegation that Rose was acting outside of his scope of employment, and a party cannot conspire with itself (which is precisely what McLeod would allegedly be doing if Rose conspired with McLeod within the scope of his employment), *McMillan*, 367 S.C. at 564, 626 S.E.2d at 887 ("[W]e believe that it is well settled that a corporation cannot conspire with itself."); *id.* ("[A]gents for a corporation acting in the scope of their duties cannot conspire with the corporation absent the guilty knowledge of a third party." (citing *Goble*, 124 S.C. at 26-27, 115 S.E. at 903)). Therefore, Claim 10 is dismissed.

Z. Claim 11: Costs, Attorney's Fees, and Related Non-Taxable Expenses – Against Defendant McLeod

Claim 11 does not actually assert a claim, but reiterates Plaintiff's claims under Claims 1 through 10. Accordingly, Claim 11 is dismissed for the same reasons as Claims 1 through 10.

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[6] To the extent Plaintiff is contending that Rose's May 5 letter or Locklair's August 20 letter (neither of which are attached to the Complaint and are not described with any degree of particularity) are defamatory, McLeod contends that those letters would be subject to a privilege as a matter of law and that Plaintiff has alleged no facts indicating even a plausible ability to overcome the privilege.

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V. CONCLUSION

Of the 24 "claims" against McLeod and the individual Defendants, there are recurring deficiencies that mandate dismissal as a matter of law:

- 7 are based on criminal statutes or holdings that have no private or civil right of action (Claims 5.2, 5.3, 5.4, 5.7, 5.10, 5.11, and 5.12);
- 4 are based on statutes under which Plaintiff has not complied with the conditions precedent (Claims 2, 5.5, 5.6, and 5.13);
- 3 are based on statutes under which Plaintiff's claims are untimely, placing aside the absence of a private right of action under the statutes (Claims 5.5, 5.6, and 5.13);
- 2 others are untimely under the applicable statute of limitations (Claims 5.4 and 9);
- 5 are based on non-criminal statutes, rules, or regulations that contain no private right of action (Claims 4, 5.8, 5.9, and 5.13);
- 2 request that the Court compel speech in violation of the First Amendment (Claims 3.2 and 4); and
- All are duplicative of other claims and rely on entirely circular reasoning that is devoid of plausible facts.

While the Court is obligated to liberally construe Plaintiff's *pro se* Complaint, even the most liberal construction cannot overcome the obvious and controlling deficiencies in her claims. Plaintiff has made a litany of irrelevant, unsupported, and conclusory allegations against McLeod and the individual Defendants that appear to be for the sole purpose of embarrassing and harassing McLeod and its agents. This is precisely the scenario under which Courts are called to

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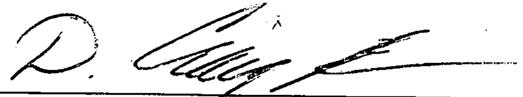
apply Rule 12(b)(6) and dismiss claims that have no basis in fact and set forth no plausible entitlement to relief.

For all of the reasons set forth above, **IT IS ORDERED** that, Defendants' Motions to Dismiss are hereby **GRANTED** pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, and Plaintiff's Complaint is hereby **DISMISSED, with prejudice,** this 7 of May, 2018.



THE HONORABLE D. CRAIG BROWN
SOUTH CAROLINA CIRCUIT JUDGE

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED
2018 MAY -7 PM 2:49
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

FILED
2018 MAY -9 AM 8:32
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP2102331

PLAINTIFF(S)	DEFENDANT(S)	
Sally K Favaloro	Robert Colones Marie Segars Shannon Carr Mcleod Regional Medical Center	Ronald Boring Debbie Locklair Michael Rose

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: ______

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: ______

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: ______

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: ______

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

RECEIVED
SEP 05 2018
SC Court of Appeals

Circuit Court Judge ______ Judge Code ______ Date 5/8/2018

For Clerk of Court Office Use Only

This judgment was entered on **May 7, 2018**, and a copy mailed first class or placed in the appropriate attorney's box on **May 9, 2018**, to attorneys of record or to parties (when appearing pro se) as follows:

Sally K Favaloro 2002 Chickadee Ct Florence, SC 29501

ATTORNEY(S) FOR THE PLAINTIFF(S)

Michael Montgomery Shetterly PO Box 2757 Greenville, SC 29602

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Doris P. O'Hara

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.