

IN THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA  
IN AND FOR PINELLAS COUNTY  
CIVIL DIVISION

SHERIDAN A. ROHDE,

Plaintiff,

v.

Case No.: 09-021314-CI-007

AGORA MARKETING SOLUTIONS, INC.

Defendant.

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS  
WITH INCORPORATED MEMORANDUM OF LAW

COMES NOW the Plaintiff, SHERIDAN A. ROHDE (“Ms. Rohde”), by and through her undersigned counsel, pursuant to the Court’s Jan. 28, 2010 *Order Directing the Plaintiff to Show Cause Why Relief Should Not Be Granted* and in accordance with the *Florida Rules of Civil Procedure*, and hereby 1) responds in opposition to the Defendant’s Jan. 19, 2010 *Motion to Dismiss (“Motion”)* certain of Ms. Rohde’s allegations and 2) shows cause that the Defendant’s *Motion* must be denied. In support thereof, Ms. Rohde hereby incorporates to this *Response* a memorandum of law and—in summary—states as follows:

1. In its *Motion*, the Defendant claims only that the cloak of statutory privilege shields it from accountability for knowingly and maliciously spreading false and deliberately misleading information about Ms. Rohde—*i.e.*, that she is a purveyor of illegal drugs.

2. Contrary to that singular assertion, the statutory privilege claimed by the Defendant is—by its plain language—inapplicable to the scenario alleged by Ms. Rohde.

3. Indeed, the privilege claimed by the Defendant was abolished by the Florida Legislature in 1991.

4. Additionally and alternatively, the privilege claimed by the Defendant is qualified and, thus, pierced when defamatory publications are made, as alleged in Ms. Rohde's *Complaint*, maliciously, deliberately and with knowledge of their falsity and misleading nature.

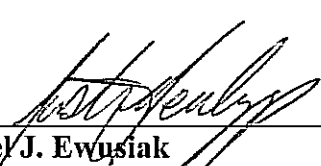
5. Accordingly, the Defendant cannot, as a matter of law, shield itself from accountability for the defamatory, misleading and damaging statements it maliciously—and with knowledge of their falsity—published concerning Ms. Rohde.

6. Finally, privilege is an affirmative defense which is not properly pled at this stage of this litigation.

FOR THE FOREGOING REASONS, which are more fully set forth in the memorandum of law incorporated to this *Response*, Plaintiff, SHERIDAN A. ROHDE, respectfully requests this Court to DENY the Defendant's *Motion to Dismiss*.

Respectfully Submitted,

**FORIZS & DOGALI, P.A.**



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**Joel J. Ewusiak**  
**Justin S. Hemlepp**

## MEMORANDUM OF LAW

### I. INTRODUCTION

#### a. Alleged Facts

Plaintiff, Ms. Sheridan A. Rohde (“**Ms. Rohde**”), 61, is a five-time heart attack victim who was employed for nine years by the Defendant, Agora Marketing Solutions, Inc. (“**Defendant**”), and its predecessors. *Compl.* ¶¶ 3, 6, 7. The Defendant in May 2009 suspended Ms. Rohde’s employment due to a false accusation that she sold cocaine at her desk. *Id.* ¶ 9. Ms. Rohde denied that allegation. *Id.* Nonetheless, the Defendant subsequently terminated Ms. Rohde’s employment despite having no evidence whatsoever to substantiate its allegation. *Id.* ¶¶ 10, 15.

Prior to and subsequent to Ms. Rohde’s termination, the Defendant advised various individuals and entities, including, but not limited to, potential employers, that Ms. Rohde was terminated for “selling illegal drugs.” *Id.* ¶¶ 11-14. The Defendant, thus, interfered with Ms. Rohde’s potential business relationships. *Id.* ¶¶ 36-37. Additionally, the Defendant published this defamatory statement to Florida’s Agency for Workforce Innovation (“**Agency**”). *Id.*<sup>1</sup> ¶ 14, Ex. A.

As a result of the Defendant’s conduct, Ms. Rohde has suffered damages, including, but not limited to, the inability to obtain employment, extreme emotional distress, anxiety, humiliation and lost income. *Id.* ¶¶ 13, 16, 23, Ex. A.

#### b. Procedural History

~~Ms. Rohde filed her *Complaint* with this Court on Dec. 9, 2009. Ms. Rohde’s *Complaint*~~ (hereby appended as **Exhibit “A”**) included three counts: defamation, defamation *per se* and tortious interference with prospective business relationships. *See generally id.* The Defendant was served process on Dec. 28, 2009.

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<sup>1</sup> The *Complaint* identifies this same Agency as the “Florida Office for Unemployment Benefits.” *See Compl.* ¶ 14.

The Defendant filed its *Motion to Dismiss* (“**Motion**”) (hereby appended as **Exhibit “B”**) on Jan. 19, 2010. In its *Motion*, the Defendant claims only that it is immune from suit for any a communication with the Agency, based on the statutory privilege set forth in Fla. Stat. § 443.041(3). See *Motion* ¶ 3. On Jan. 28, 2010, this Court issued its *Order Directing the Plaintiff to Show Cause Why Relief Should Not Be Granted* (hereby appended as **Exhibit “C”**).

This *Response* sets forth first that the privilege claimed by the Defendant was abolished by the Florida Legislature in 1991. Second, even if the privilege remains intact, it has since 2003 been qualified and thus does not cloak the Defendant’s expressly malicious, knowingly false and deliberately misleading statements in immunity. Finally, notwithstanding the purported existence of a privilege, it is not properly raised in a motion to dismiss as a matter of procedure.

**c. Standard for Denying a Motion to Dismiss Based On A Privilege**

When considering a motion to dismiss that is based on the assertion of a privilege, the Court must look solely to “four corners” of the *Complaint*. *Kirk v. Gulfstar Dev. Corp.*, 687 So. 2d 841, 842 (Fla. 2d DCA 1996) (quashing order dismissing defamation claim because the court went beyond the “four corners” of the complaint in considering the motion). The Court must accept “as true all well pleaded facts [in the *Complaint*] as well as all reasonable inferences arising therefrom.” *Kirvin v. Clark*, 396 So.2d 1203 (Fla. 1st DCA 1981) (reversing dismissal of defamation claim based on qualified privilege because privilege must be raised as a defense).

~~Where, as in the instant case, the Defendant’s *Motion to Dismiss* claims only that a statutory~~ privilege immunizes it from accountability for its defamatory statements about Ms. Rohde, the Court need only determine whether such a privilege appears on the face of the Plaintiff’s *Complaint*. See *Fariello v. Gavin*, 873 So. 2d 1243, 1245 (Fla. 5th DCA 2004) (reversing dismissal of defamation claim based on qualified immunity because the privilege was not disclosed by the

allegations in the complaint). If such a privilege is not apparent, the motion to dismiss must be denied. *See id.*

## II. ARGUMENT

Once upon a time, the Defendant's conduct *was* protected by a statutory absolute privilege. *See Fla. Stat. § 443.041 (1991); Torres v. Consol. Bank, N.A.*, 653 So. 2d 492 (Fla. 3d DCA 1995) (affirming dismissal of defamation action based on Fla. Stat. § 443.041(3) (1991)); *Perl v. Omni Int'l of Miami, Ltd.*, 439 So. 2d 316 (Fla. 3d DCA 1983) (affirming dismissal of defamation action based on Fla. Stat. § 443.041(3) (1981)). This privilege was said to have codified, "in part, the common law of defamation as applied to unemployment compensation."<sup>2</sup> *Perl, supra*, 439 So. 2d at 317 (citing W. Prosser, *Law of Torts* § 114 at 777-81 (4th ed. 1971)).

In 1991, however—almost 20 years ago—the Florida Legislature **abolished** the privilege claimed by the Defendant in the *Motion sub judice*; communication between an employer and the Agency is no longer protected by any privilege. *See Laws 1991, c. 91-269, § 11, eff. Oct. 1, 1991* (codified at Fla. Stat. § 443.041(3) (1992)). This revision, which remains effective today, *see Fla. Stat. § 443.041(3) (2009)*, also overruled the pre-1991 privilege applied by the courts in *Perl, supra*, and *Torres, supra*. Moreover, even if the purported privilege still existed, the statute's provision of an "absolute[]" privilege was eliminated in 2003.<sup>3</sup> *See Laws 2003, c. 2003-36, § 19* (codified at Fla. Stat. § 443.041(3) (2004)). Accordingly, the privilege, if it exists, is now "qualified." *See Nodar v. Galbreath*, 462 So.2d 803, 809 (Fla. 1985). A qualified privilege does not protect the Defendant's expressly malicious, knowingly false and deliberately misleading statements. *See Am. Ideal Mgmt*,

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<sup>2</sup> The *Perl* court cited no case law for the proposition that the common law protected communication from an employer to an unemployment agency.

<sup>3</sup> Notwithstanding the 2003 Florida Legislature's plain intent to remove any provision of *absolute* privilege from the statute, the Defendant claims its defamatory communication to the Agency for Workforce Innovation is "absolutely privileged." *Motion* ¶ 3; *see infra*.

*Inc. v. Dale Village, Inc.*, 567 So. 2d 497 (Fla. 4th DCA 1990). Finally, the Defendant's *Motion* also must be denied because the assertion of a privilege is not properly pled at this stage of the litigation.

**a. No Statutory Privilege Immunizes the Defendant's Unlawful Statements**

The plain language of the one statute cited by the Defendant in its *Motion* has not since 1991 provided the privilege the Defendant today claims. In 1991, Section 443.041(3), *Florida Statutes*, provided that:

All letters, reports, communications, or any other matters, either oral or written, *from the employer or employee to each other or the division or any of its agents, representatives or employees* which shall have been written, sent, delivered, or made in connection with the requirements and administration of this chapter, shall be absolutely privileged and shall not be made the subject matter or basis for any suit for slander or libel in any court of the state.

Fla. Stat. § 443.041(3) (1991) (emphasis added). Thus, in 1991, the statute protected communications between six classes of individuals and entities:

- from employer to employee;
- from employee to employer;
- from employer to the Agency's predecessor;
- from employee to the Agency's predecessor;
- from employer to the Agency's predecessor's agents, representatives or employees; and
- from employee to the Agency's predecessor's agents, representatives or employees.

Fla. Stat. § 443.041(3) (1991).

That year, however, the statute was amended to eliminate the privilege protecting communication from an employer to the Agency's predecessor—among others.<sup>4</sup> *See* Laws 1991, c.

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<sup>4</sup> After the 1991 revision, the statute provided that:

All letters, reports, communications, or any other matters, either oral or written, *between an employer and an employee or between the division and any of its agents, representatives, or employees* which are written, sent, delivered, or made in connection with the requirements and administration of this chapter, are absolutely privileged and may not be the subject matter or basis for any suit for slander or libel in any court of the state.

91-269, § 11, eff. Oct. 1, 1991.

Since the 1991 revision, the Florida Legislature has made four revisions to Section 443.041. *See* Laws 1994, c.94-347, § 2, eff. June 3, 1004; Laws 1997, c. 97-103, § 140, eff. July 1, 1997; Laws 2000, c. 2000-153, § 101, eff. July 4, 2000; Laws 2003, c. 2003-36, § 19, eff. Oct. 1, 2003.<sup>5</sup> But, despite these many revisions, state lawmakers have not chosen to again provide a statutory privilege to communication from an employer to the Agency.<sup>6</sup>

Today, the statute cited by the Defendant provides that:

All letters, reports, communications, or any other matters, either oral or written, *between an employer and an employee or between the Agency for Workforce Innovation or its tax collection service provider and any of their agents, representatives, or employees* which are written, sent, delivered, or made in connection with this chapter, are privileged and may not be the subject matter or basis for any suit for slander or libel in any court of the state.

Fla. Stat. §443.041(3)(2009) (emphasis added). By its plain language, the modern statute protects communication between five classes of individuals and entities:

- between an employer and an employee;
- between the Agency and any of its agents, representatives, or employees;
- between the Agency's tax collection service provider and any of its agents, representatives, or employees;
- between the Agency and its tax collection service provider's agents, representatives, or employees; and
- between the Agency's tax collection service provider and the Agency's agents, representatives, or employees.

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Fla. Stat. § 443.041(3) (1992) (emphasis added); *see* Laws 1991, c. 91-269, § 11, eff. Oct. 1, 1991. At this point, the statute protected communication between two classes of individuals and entities:

- between an employer and an employee; and
- between the division and any of its agents, representatives, or employees.

*Id.*

<sup>5</sup> The text of each version of the statute referenced herein—and an explanation of the privilege conferred by these versions—is attached hereto as **Exhibit “D.”**

<sup>6</sup> *See also Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) (“[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.”).

*Id.* Communication between an employer and the Agency, thus, is not protected by today's statute.

The one and only case cited by the Defendant in support of its outdated proposition that its unlawful statements are cloaked in privilege is *Perl, supra*, a 1983 case based on 1981 Florida law. The law has since changed dramatically. As set forth above, the Florida Legislature in 1991 abolished the privilege that once cloaked communication "from the employer . . . to . . . the division or any of its agents, representatives or employees." Fla. Stat. §443.041(3) (1991); *see* Laws 1991, c. 91-269, § 11, eff. Oct. 1, 1991. The privilege now only cloaks communication "between an employer and an employee or between the Agency for Workforce Innovation or its tax collection service provider and any of their agents, representatives, or employees." Fla. Stat. §443.041(3) (2009).

In the case at bar, the Defendant alleges that any statement from an employer to the Agency is privileged. However, as set forth above, such statements no longer are cloaked in statutory immunity. *See id.* Indeed, such a privilege has not existed for almost 20 years. *See id.* As a result, the Defendant's *Motion to Dismiss*, which is based solely on the invocation of this non-existent privilege, must be denied.

**b. Defendant's Unlawful Statements Would Not Be Protected Even if The Now-Abolished Qualified Privilege Were Still In Force**

Even if the defunct privilege claimed by the Defendant was effective today, it would be ~~"qualified" and, thus, would not immunize the expressly malicious, knowingly false and~~ deliberately misleading statements made by the Defendant about Ms. Rohde.<sup>7</sup> *See* Fla. Stat. §

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<sup>7</sup> The Defendant claims that "any statement by an employer to the Agency . . . is absolutely privileged . . ." *Motion* ¶ 3. However, the Florida Legislature in 2003 abolished the absolute nature of the privilege. What remains is, thus, a qualified—or conditional—privilege. Fla. Stat. § 443.041(3); Laws 2003, c. 2003-36, § 19, eff. Oct. 1, 2003; *see Capella v. City of Gainesville*, 377 So. 2d 658, 660 (Fla. 1979) ("When the legislature amends a statute by omitting words, we presume it intends the statute to have a different meaning than that accorded it before the amendment.").



443.041(3) (2009).

The Florida Supreme Court outlined the scope of such qualified immunity in *Nodar v. Galbreath*, 462 So.2d 803 (Fla. 1984),<sup>8</sup> the “essential elements” of which were outlined in *Am. Ideal Mgmt., supra*, 567 So. 2d at 499.<sup>9</sup> In any case, however, “[t]he qualified privilege vanishes . . . when the defamatory statement is made with express malice.” *Id.* Such is the case in the matter presently before this Court.

Here, Ms. Rohde alleges that the Defendant maliciously and knowingly made false and deliberately misleading statements about her. *See Compl., passim.* Accordingly, even if the purported privilege claimed by the Defendant actually existed today, Ms. Rohde’s factual allegations substantiate the piercing of that immunity. Consequently, the Defendant’s *Motion to Dismiss* must be denied.

### **c. Privilege May Not Be Pled At This Stage of the Instant Litigation**

Moreover, the Defendant’s assertion of a privilege is prematurely pled. As a general principal, “immunity is an affirmative defense that should be pled by the party asserting it, and

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<sup>8</sup> In *Nodar*, 462 So.2d 803, the Florida Supreme Court explained:

One who publishes defamatory matter concerning another is not liable for the publication if (a) the matter is published upon an occasion that makes it conditionally privileged and (b) the privilege is not abused. . . . The law of Florida embraces a broad range of the privileged occasions that have come to be recognized under the common law. . . . A communication made in good faith on any subject matter by one having an interest therein, or in reference to which he has a duty, is privileged if made to a person having a corresponding interest or duty, even though it contains matter which would otherwise be actionable, and though the duty is not a legal one but only a moral or social obligation.

*Id.* at 809 (internal citations and quotation marks removed) (quoted by *Am. Ideal Mgmt., Inc., supra*, 567 So. 2d at 499 (holding summary judgment was precluded by fact issue of “express malice”). The *Nodar* decision was, with respect to publication of “job performance” information to a potential employer by a former employer, subsequently modified by a statute codifying the common law. *See Linafelt v. Beverly Enterprises-Florida, Inc.*, 745 So. 2d 386, 388 (Fla. 1st DCA 1999) (citing Fla. Stat. 768.095 (1997)).

<sup>9</sup> The elements are “(1) good faith; (2) an interest in the subject by the speaker or a subject in which the speaker has a duty to speak; (3) a corresponding interest or duty in the listener or reader; (4) a proper occasion, and (5) publication in a proper manner.” *Am. Ideal Mgmt.*, 567 So. 2d at 499 (citing *Nowik v. Mazda Motors of America (East)*, 523 So.2d 769 (Fla. 1st DCA 1988)).

which may thereafter be *considered after the facts are fleshed out by summary judgment or trial.*" *Fariello, supra*, 873 So. 2d at 1245 (reversing dismissal of defamation claim based on qualified immunity); *O'Neal v. Tribune Co.*, 176 So. 2d 535, 538 (Fla. 2d DCA 1965) (explaining that, in the proceedings below, "the case was tried on the issues created on the libel charged in the complaint and the defense of qualified privilege."). In other words, "the affirmative defense of qualified immunity presents a fact intensive issue that should ordinarily not be resolved by a motion to dismiss." *Fariello*, 873 So.2d at 1245.

This rule applies in all but "exceptional cases in which the facts giving application to the defense are clearly apparent on the face of the complaint, in which case the defense may be raised by motion to dismiss." *Id.* (citing *Kirvin, supra*, 396 So.2d 1203 (reversing dismissal of defamation claim based on absolute privilege)); *see also Panagakos v. Laufer*, 779 So. 2d 296, 298 (Fla. 2d DCA 1999) (denying *certiorari* review of denial of motion to dismiss a defamation claim based on privilege). The trial court's consideration of such a motion to dismiss must remain within the "four corners" of the *Complaint*. *See Kirk, supra*, 687 So. 2d at 842.

Finally, a qualified immunity defense "is analogous to a statute of limitations defense. A limitations defense is generally raised affirmatively in an answer or other responsive pleading, but may be asserted in a motion to dismiss if its applicability is demonstrated on the face of the complaint or exhibits." *Fariello*, 873 So. 2d at 1245.

~~In the instant case, the Defendant's *Motion to Dismiss* is premature and improper at this~~ stage of the proceedings. There is no privilege apparent within the four corners of Ms. Rohde's *Complaint*. Indeed, as set forth, *supra*, the privilege claimed by the Defendant does not even exist, has not for almost 20 years and, therefore, cannot possibly be apparent on the face of Ms. Rohde's *Complaint*. Accordingly, the Defendant's *Motion* must be denied.

### III. CONCLUSION

For the foregoing reasons, Plaintiff, SHERIDAN A. ROHDE, respectfully requests this Court to DENY the Defendant's *Motion to Dismiss*.

#### CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing, *Plaintiff's Response in Opposition to Defendant's Motion to Dismiss With Incorporated Memorandum of Law*, has been furnished by both facsimile and U.S. Mail to Gregory A. Hearing, Esq., and Charles J. Thomas, Esq., of Thompson, Sizemore, Gonzalez & Hearing, P.A., 201 North Franklin Street, Suite 1600, Tampa, FL 33602.

This 11<sup>th</sup> day of February, 2010.

#### **FORIZS & DOGALI, P.A.**

  
\_\_\_\_\_  
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IN THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA  
IN AND FOR PINELLAS COUNTY  
CIVIL DIVISION

SHERIDAN A. ROHDE,

Plaintiff,

v.

Case No.: 0901314 C 7007

AGORA MARKETING SOLUTIONS, INC.,

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

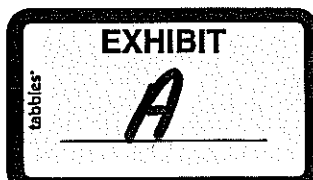
Plaintiff, SHERIDAN A. ROHDE, by and through undersigned counsel, sues Defendant, AGORA MARKETING SOLUTIONS, INC., and alleges as follows:

JURISDICTION AND VENUE

1. Jurisdiction is proper because this is an action for damages which exceeds \$15,000.00, exclusive of attorney fees, interest and costs.
2. Venue is proper in this Court because the causes of action accrued in Pinellas County, Florida, and Defendant's principal place of business is located in Largo, Pinellas County, Florida.

PARTIES

3. Sheridan A. Rohde (hereinafter "Plaintiff" or "Ms. Rohde") is a resident of Pinellas County, Florida. Ms. Rohde is sixty-one (61) years of age and has suffered five (5) heart attacks during her lifetime.
4. Agora Marketing Solutions, Inc. (hereinafter "Defendant" or "AMS") is a foreign



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profit corporation, with its principal place of business located in Largo, FL. AMS has previously operated under the names, merged with and/or acquired the companies, Special Data Processing Corp. and National Magazine Exchange, Inc.

### FACTUAL ALLEGATIONS

5. AMS is allegedly an \$81 million independent direct marketer of consumer products and services. AMS sells products and services, primarily magazines, via inbound calls that are generated from direct mail.

6. Sheridan A. Rohde was employed for over nine (9) years at AMS and its predecessors.

7. During the time of her employment, Ms. Rohde worked in various departments within AMS. At all material times, she was employed as a sales representative selling magazines.

8. During the time of her employment with AMS, Ms. Rohde consistently received above-average reviews of her job performance and regular increases in salary.

9. On or about May 2, 2009, Ms. Rohde was abruptly called into an office by her floor supervisor and the human resources director for a meeting. During this meeting, Ms. Rohde was advised that she was being suspended immediately for allegedly selling cocaine at her office desk. Ms. Rohde was told that "someone" observed her provide another employee with a bag containing a white substance and in return, receive a payment of money. Ms. Rohde adamantly denied engaging in any such conduct, and in fact, did not sell any illegal drugs in the office. In fact, Ms. Rohde has never used or sold any illegal drugs in her lifetime, especially in light of her heart condition.

10. On or about May 3, 2009, Ms. Rohde was told that she was terminated from her position, effective immediately, for "selling illegal drugs."

11. Prior to and after Ms. Rohde's termination, AMS advised various individuals and entities that Ms. Rohde was fired for "selling illegal drugs."

12. More specifically, AMS advised various employees in the office that Ms. Rohde was fired for "selling illegal drugs" in the office.

13. Additionally, following her termination, Ms. Rohde has applied for various positions of employment. To date, Ms. Rohde has applied for approximately forty (40) different positions. Upon information and belief, AMS has advised several of these prospective employers that she was terminated for "selling illegal drugs."

14. Moreover, during her search for a new position of employment, Ms. Rohde was required to apply for unemployment compensation. AMS advised the Florida Office for Unemployment Benefits ("FOUB") that Ms. Rohde was terminated for "being on the job trafficking a controlled substance." A copy of the Notice of Determination from FOUB is attached hereto as "Exhibit A."

15. AMS possessed no evidence whatsoever to substantiate the allegation that Ms. Rohde was "selling illegal drugs" on the job, and yet, AMS published this false information to various individuals and entities, as alleged herein.

16. The publication of this false information by AMS has caused Ms. Rohde to suffer damages, including, but not limited to, extreme emotional distress, anxiety and humiliation, and lost income.

17. All conditions precedent to the maintenance of this action have been met, satisfied or waived, including compliance with any applicable notice requirements under Florida Statutes.

**COUNT I - DEFAMATION**

18. The allegations in paragraphs 1 - 17 above are hereby incorporated by reference.

19. As further alleged herein, AMS made various written and oral statements to third parties that Ms. Rohde was "selling illegal drugs" on the job.

20. AMS's statements to third parties that Ms. Rohde was "selling illegal drugs" on the job were false and defamatory (hereinafter "AMS's statements" within this Count).

21. AMS's statements were made with intent, with reckless disregard for the truth, and/or with negligence.

22. AMS's statements were not made in good faith, but rather, were knowingly false or deliberately misleading.

23. As a result of AMS's statements, Ms. Rohde has suffered damages, including, but not limited to, extreme emotional distress, anxiety and humiliation, and lost income.

WHEREFORE Plaintiff demands judgment against Defendant for compensatory damages, interest, costs, and any other relief deemed just and proper.

**COUNT II - DEFAMATION PER SE**

24. The allegations in paragraphs 1 - 17 above are hereby incorporated by reference.

25. As further alleged herein, AMS made various written and oral statements to third parties that Ms. Rohde was "selling illegal drugs" on the job.

26. AMS's statements to third parties that Ms. Rohde was "selling illegal drugs" on the job were, when considered alone, without innuendo, statements that tend to injure a person in a trade or profession and/or attribute to a person characteristics incompatible with the proper exercise of a lawful trade or profession (hereinafter "AMS's statements" within this Count).

27. AMS's statements were slander per se, actionable on their face, and damages are presumed.

28. AMS's statements were made with intent, with reckless disregard for the truth, and/or with negligence.

29. AMS's statements were not made in good faith, but rather, were knowingly false or deliberately misleading.

30. As a result of AMS's statements, Ms. Rohde has suffered damages, including, but not limited to, extreme emotional stress, anxiety and humiliation, and lost income.

WHEREFORE Plaintiff demands judgment against Defendant for compensatory damages, interest, costs, and any other relief deemed just and proper.

**COUNT III -**  
**TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONSHIPS**

31. The allegations in paragraphs 1 - 17 above are hereby incorporated by reference.

32. As further alleged herein, AMS made various written and oral statements to third parties, including prospective employers, that Ms. Rohde was "selling illegal drugs" on the job.

33. AMS's statements to prospective employers that Ms. Rohde was "selling illegal drugs" on the job were false, defamatory and constitute defamation per se (hereinafter "AMS's statements" within this Count).

~~34. As further alleged herein, Ms. Rohde has attempted to establish employment relationships with prospective employers.~~

35. Upon information and belief, AMS has knowledge of these employment relationships by virtue of advising certain prospective employers that Ms. Rohde was terminated



for "selling illegal drugs" in the office.

36. AMS intentionally, and unjustifiedly, interfered with the prospective employment relationships by making such statements.

37. As a result of AMS's conduct, Ms. Rohde has suffered damages, including, but not limited to, extreme emotional distress, anxiety and humiliation, and lost income.

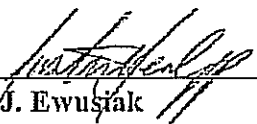
WHEREFORE Plaintiff demands judgment against Defendant for compensatory damages, interest, costs, and any other relief deemed just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial on all issues so triable.

Dated: December 4, 2009.

**FORIZS & DOGALI, P.A.**

  
\_\_\_\_\_  
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AGENCY FOR WORKFORCE INNOVATION  
UNEMPLOYMENT COMPENSATION PROGRAM  
CLAIMS AND BENEFITS

ID#: 2009123 01 20100502  
SOCIAL SECURITY NO: 114-38-4152  
CLAIM FILED EFFECTIVE: 05/03/09  
CLAIM OFFICE NO: 3643  
ISSUE CODE: 1 01 270001  
DATE MAILED: 06/05/09  
ADJ NAME: A J WILLIAMS

**SECTION I. NOTICE OF DETERMINATION**

THE CLAIMANT WAS DISCHARGED FOR ALLEGEDLY BEING ON THE JOB TRAFFICKING A CONTROLLED SUBSTANCE. INFORMATION HAS NOT BEEN SUBMITTED TO SUBSTANTIATE THIS ALLEGATION.

**SECTION II. DETERMINATION**

In accordance with Section 443, Florida Statutes:  
Benefits are payable because:  
THE DISCHARGE WAS FOR REASON OTHER THAN MISCONDUCT CONNECTED WITH THE WORK.

ANY BENEFITS RECEIVED FOR WHICH YOU WERE NOT ENTITLED ARE OVERPAYMENTS AND SUBJECT TO RECOVERY.

**SECTION III. EMPLOYER CHARGEABILITY**

BENEFITS PAID WILL BE CHARGED TO THE EMPLOYER'S ACCOUNT.

**Español: Vea el dorso del documento**

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THIS DETERMINATION WILL BE FINAL UNLESS AN APPEAL IS FILED WITHIN 20 CALENDAR DAYS AFTER THE MAILING DATE SHOWN ABOVE. IF THE 20TH DAY IS A SATURDAY, SUNDAY OR STATE HOLIDAY, AN APPEAL MAY BE FILED ON THE NEXT BUSINESS DAY. FILE AN APPEAL ON-LINE AT [WWW.FLUIDNOW.COM/APPEALS](http://WWW.FLUIDNOW.COM/APPEALS) OR MAIL TO UC APPEALS; MSC 347 CALDWELL BUILDING; 107 EAST MADISON STREET; TALLAHASSEE, FL 32399-4143; OR FAX TO (850) 921-3524. INCLUDE THE CLAIMANT'S NAME AND SOCIAL SECURITY NUMBER. IF FILED ON-LINE, THE CONFIRMATION DATE IS THE FILING DATE. IF MAILED, THE POSTMARK DATE IS THE FILING DATE. IF FAXED, THE DATE STAMPED RECEIVED IS THE FILING DATE. CALL (800) 204-2418 WITH ANY QUESTIONS ABOUT THIS CLAIM OR FILING AN APPEAL.

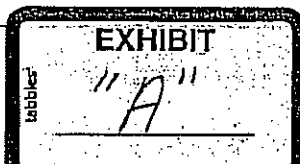
IF UNEMPLOYED, YOU MUST CONTINUE REPORTING ON YOUR CLAIM UNTIL ALL REDETERMINATIONS/APPEALS ARE RESOLVED.

**CLAIMANT / AGENT ADDRESS**

SHERIDAN A ROHDE  
6230 HAINES RD N  
ST PETERSBURG FL 33702

**EMPLOYER / AGENT ADDRESS**

AGORA MARKETING SOLUTIONS INC  
8285 BRYAN DAIRY RD STE 150  
SEMINOLE FL 33777-1306



IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION

SHERIDAN A. ROHDE,

Plaintiff,

vs.

Case No.: 09-021314-CI-007

AGORA MARKETING SOLUTIONS, INC.,

Defendant.

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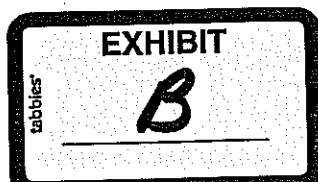
DEFENDANT'S MOTION TO DISMISS

Defendant, AGORA MARKETING SOLUTIONS, INC. ("Defendant"), by and through its undersigned counsel and pursuant to Rule 1.140(a), Fla. R. Civ. P., hereby moves to dismiss certain allegations in the Complaint of Plaintiff, SHERIDAN ROHDE ("Plaintiff"), with prejudice, stating as follows:

1. Plaintiff, alleging herself to be a former employee of Defendant, has filed a three-count Complaint, with Counts I and II alleging causes of action for defamation.
2. Among the defamatory statements allegedly published by Defendant is a purported statement by Defendant to the Florida Agency for Workforce Innovation, made in response to Plaintiff's claim for unemployment compensation. According to Plaintiff, Defendant related to the agency that Plaintiff was terminated for "being on the job trafficking a controlled substance." See Complaint, ¶¶ 14-16 and Exh. A.<sup>1</sup>

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<sup>1</sup> The Complaint erroneously refers to the state unemployment agency as "the Florida Office for Unemployment Benefits."



77LJ  
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3. Pursuant to Florida's unemployment compensation statute, any statement by an employer to the Agency for Workforce Innovation is absolutely privileged and may not form the subject matter of any suit for defamation as a matter of law. Specifically:

All letters, reports, communications, or any other matters, either oral or written, between an employer and an employee or between the Agency for Workforce Innovation or its tax collection service provider and any of their agents, representatives, or employees which are written, sent, delivered, or made in connection with this chapter, are privileged and may not be the subject matter or basis for any suit for slander or libel in any court of the state.

§ 443.041(3), Fla. Stat. (emphasis added); see also Perl v. Omni International of Miami, Ltd., 439 So.2d 316, 317 (Fla. 3d DCA 1983)(slander count based on employer's response to plaintiff's claim for unemployment benefits "clearly barred" by statute).

WHEREFORE, for all the foregoing reasons, Defendant, AGORA MARKETING SOLUTIONS, INC., respectfully requests that this Court enter an Order dismissing with prejudice all Plaintiff's defamation claims premised upon Defendant's alleged communications to the Florida Agency for Workforce Innovation, granting Defendant such other and further relief as the Court finds just and proper.

Dated this 19 day of January, 2010.

Respectfully submitted,

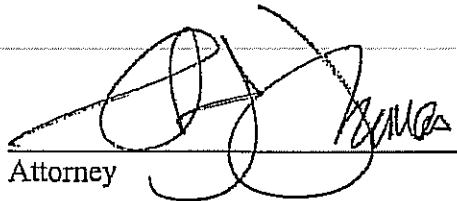


GREGORY A. HEARING  
Florida Bar No. 0817790  
CHARLES J. THOMAS  
Florida Bar No. 0986860  
THOMPSON, SIZEMORE, GONZALEZ  
& HEARING, P.A.  
201 North Franklin Street, Suite 1600  
Tampa, Florida 33602  
(813) 273-0050  
Fax: (813) 273-0072  
Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss has been furnished by Fax and U.S. Mail, on this 19 day of January, 2010, to the following:

Joel J. Ewusiak, Esq.  
Justin S. Hemlepp, Esq.  
Forizs & Dogali, P.A.  
4301 Anchor Plaza Parkway, Suite 300  
Tampa, Florida 33634  
Attorneys for Plaintiff



Attorney

REC'D FEB 01 2010

HB

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION  
CASE NO.: 09-021314-CI-007**

SHERIDAN A. ROHDE,

Plaintiff(s),

vs.

AGORA MARKETING SOLUTIONS, INC.,,

Defendant(s).

**ORDER DIRECTING PLAINTIFF TO SHOW CAUSE WHY RELIEF  
SHOULD NOT BE GRANTED**

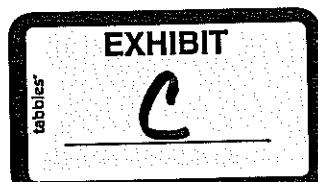
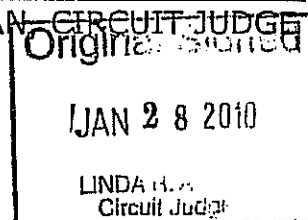
**THIS CAUSE** came on before the court on Defendant's Motion to Dismiss, the court having reviewed and considered same, it is thereupon

**ORDERED AND ADJUDGED** that the Plaintiff show cause in writing within 15 days of the date of this order why the relief sought should not be granted. If the Plaintiff does not file a written response to this order, the motion will be granted. A courtesy copy of any written response must be forwarded to the judge's chambers.

**DONE AND ORDERED** this \_\_\_\_\_ day of January, 2010 in chambers in Clearwater, Pinellas County, Florida.

LINDA R. ALLAN, CIRCUIT JUDGE

Copies furnished to:  
Joel J. Ewusiak, Esq.  
Gregory A. Hearing, Esq.



**From 1939<sup>1</sup> to 1991:**

(3) Privileged communications.--All letters, reports, communications, or any other matters, either oral or written, from the employer or employee to each other or the division or any of its agents, representatives or employees which shall have been written, sent, delivered, or made in connection with the requirements and administration of this chapter, shall be absolutely privileged and shall not be made the subject matter or basis for any suit for slander or libel in any court of the state.

**Privileged Communication**

- from employer to employee
- from employee to employer
- from employer to the Agency's predecessor
- from employee to the Agency's predecessor
- from employer to the Agency's predecessor's agents, representatives or employees
- from employee to the Agency's predecessor's agents, representatives or employees

Historical Notes: Laws 1991, c. 91-269, § 11, eff. Oct. 1, 1991 (reenacted subsec. (3); in subsec. (3), substituted "between an employer and an employee or between the division and" for "from the employer or employee to each other or to the division or" following "written," substituted "may not be" for "shall not be made" following "privileged and", and made nonsubstantive language and punctuation changes).

**From 1992 to 2003:**

(3) Privileged communications.--All letters, reports, communications, or any other matters, either oral or written, between an employer and an employee or between the division and any of its agents, representatives, or employees which are written, sent, delivered, or made in connection with the requirements and administration of this chapter, are absolutely privileged and may not be the subject matter or basis for any suit for slander or libel in any court of the state.

**Privileged Communication**

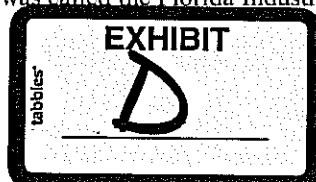
- between an employer and an employee
- between the division and any of its agents, representatives, or employees

Historical Notes: ~~Laws 1994, c.94-347, § 2, eff. June 3, 1994 (amended a different subsection of the statute); Laws 1997, c. 97-103, § 140, eff. July 1, 1997 (removed gender-specific references to human beings without any substantive changes in legal effect); Laws 2000, c. 2000-153, § 101, eff. July 4, 2000 (revised a different subsection of this statute); Laws 2003, c. 2003-36, § 19, eff. Oct. 1, 2003 (rewrote the entire statute, see *infra* ).~~

**From 2004 to today:**

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<sup>1</sup> This subsection has had other non-substantive changes. *e.g.*, the name of Florida's unemployment agency has changed throughout time. In 1939, it was called the Florida Industrial Commission.



(3) Privileged communications.--All letters, reports, communications, or any other matters, either oral or written, between an employer and an employee or between the Agency for Workforce Innovation or its tax collection service provider and any of their agents, representatives, or employees which are written, sent, delivered, or made in connection with this chapter, are privileged and may not be the subject matter or basis for any suit for slander or libel in any court of the state.

**Privileged Communication**

- between an employer and an employee
- between the Agency for Workforce Innovation and any of its agents, representatives, or employees
- between the Agency's tax collection service provider and any of its agents, representatives, or employees
- between the Agency for Workforce Innovation and its tax collection service provider's agents, representatives, or employees
- between the Agency's tax collection service provider and the Agency's agents, representatives, or employees



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CELEBRATING 10 YEARS  
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OF COUNSEL:  
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\*BOARD CERTIFIED IN CONSTRUCTION LAW  
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**DATE:** February 11, 2010      **OUR FILE #:** 01805-0001

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**PLEASE DELIVER THE FOLLOWING PAGES TO:**

**NAME:** Gregory A. Hearing and Charles Thomas  
Thompson, Sizemore & Gonzalez, P.A.

**FAX NO.:** (813) 273-0072

**FROM:** Joel J. Ewusiak

**RE:** Rohde, Sheridan A. vs. Agora Marketing Solutions, Inc. et al

**MESSAGE:** Transmitting Plaintiff's Response in Opposition to Defendant's Motion to Dismiss  
with Incorporated Memorandum of Law

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