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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

7 GENNIFER FLOWERS,

8 Plaintiff,

9 v.

10 JAMES CARVILLE; GEORGE
11 STEPHANOPOULOS; LITTLE, BROWN
& COMPANY; and HILLARY RODHAM
12 CLINTON

13 Defendants.

CV-S-99-1629 PMP (LRL)

ORDER

14 Plaintiff Gennifer Flowers commenced this diversity action on November 18,
15 1999, against Defendants James Carville, George Stephanopoulos, and Little, Brown &
16 Company. The Complaint was amended on January 20, 2000, to add Hillary Rodham
17 Clinton as a Defendant. The First Amended Complaint contained causes of action for
18 defamation, false light, invasion of privacy, and conspiracy. In March of 2000, the
19 Defendants filed motions to dismiss. Flowers filed motions for leave to amend her
20 complaint in May and August of 2000. On August 24, 2000, this Court granted
21 Defendants' motions to dismiss and denied Flowers' request for leave to amend her
22 complaint. Flowers v. Carville, et al., 112 F. Supp. 2d at 1202 (D. Nev. 2000). Over two
23 years later, the Ninth Circuit Court of Appeals reversed this Court's dismissal of Flowers'
24 defamation and false light claims, vacated the denial of Flowers' motion for leave to amend
25 the complaint and the dismissal of her conspiracy claims, and remanded the action for
26 further proceedings. Flowers v. Carville, et al., 310 F.3d 1118 (9th Cir. 2002). On

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1 February 24, 2003, Flowers filed her Fourth Amended Complaint (#130) alleging claims for
2 defamation (Count I), false light (Count II), and conspiracy (Count III) against Defendants
3 Carville, Clinton, Little, Brown & Company, and Stephanopoulos.

4 Presently before this Court is a Motion to Dismiss (Doc. #135) filed by
5 Defendant Clinton on March 26, 2003.¹ Also on March 26, 2003, Defendant Carville filed
6 a Motion to Dismiss Count III of Plaintiff Flowers' Fourth Amended Complaint for
7 conspiracy (Doc. #137). Plaintiff Flowers filed a Joint Opposition to Defendants' Motions
8 to Dismiss (Doc. #139) on April 14, 2003. Carville filed a Reply in Support of his Motion
9 to Dismiss Count III of the Fourth Amended Complaint (Doc. #140) on April 28, 2003.

10 Stephanopoulos and Little, Brown & Company filed Reply Points and Authorities in
11 Support of their Motion to Dismiss (Doc. #141) on April 28, 2003. Clinton filed a Reply in
12 Support of her Motion to Dismiss (Doc. #142) on April 28, 2003.

13 **I. BACKGROUND**

14 In her Fourth Amended Complaint, Flowers realleges many of the facts set forth
15 in her original Complaint filed over three years earlier. In particular, Flowers alleges that
16 during William Clinton's 1992 campaign for election as President of the United States,
17 Defendant Hillary Rodham Clinton created a "War Room" to coordinate attacks on people,
18 including Flowers, "who were perceived to be adverse to Bill Clinton's candidacy and the
19 interests of Defendant Clinton." (Fourth Am. Compl. ¶ 8.) Flowers alleges that sometime
20 during the 1992 campaign it was revealed that she "was involved in a long-term sexual
21 relationship with Bill Clinton and had audio tapes of conversations between herself and
22 then-Gov. Clinton." (Id.)

23
24 ¹ Defendant George Stephanopoulos joins in Parts I and II of Defendant Clinton's Motion to
25 Dismiss, which relate to the conspiracy claim (Count III) alleged in Plaintiff Flowers' Fourth Amended
26 Complaint. Defendant Little, Brown & Co. joins in Parts I, II and III of Defendant Clinton's Motion
to Dismiss, which relates to all three claims contained in Plaintiff Flowers' Fourth Amended Complaint
(Doc. #136).

1 Flowers further alleges that as part of the “War Room,” Defendant Clinton
2 conspired with Carville and Stephanopoulos “to defame Plaintiff to deflect attention from
3 the truth and carried out acts in furtherance of that conspiracy.” (Fourth Am. Compl. ¶ 8.)
4 Flowers claims that Carville and Stephanopoulos, in concert with Clinton, continued to
5 defame Flowers and hold her in false light from the 1992 presidential campaign until May
6 2002. (Id. ¶ 10.)

7 Flowers specifically alleges that Carville caused defamatory statements about her
8 to be published in his book All’s Fair: Love, War and Running for President and made
9 misleading statements on *Larry King Live*. (Fourth Am. Compl. ¶¶ 12-13.) Flowers also
10 claims that Stephanopoulos made misleading statements on *Larry King Live* and accused
11 her of “selectively editing” tape-recorded conversations between Flowers and Mr. Clinton
12 when Stephanopoulos appeared on CNBC’s *Tim Russert Show*. (Id. ¶¶ 14, 16.) Flowers
13 further alleges that Stephanopoulos’s statements were published in Stephanopoulos’s book,
14 All Too Human: A Political Education, which was published by Little, Brown & Company.
15 (Id. ¶¶ 5, 26.)

16 **II. LEGAL STANDARD**

17 In considering “a motion to dismiss, all well-pleaded allegations of material fact
18 are taken as true and construed in a light most favorable to the non-moving party.” Wylor
19 Summit P’Ship v. Turner Broad. Sys., Inc., 135 F.3d 658, 661 (9th Cir. 1998) (citation
20 omitted). However, the court does not necessarily assume the truth of legal conclusions
21 merely because they are cast in the form of factual allegations in plaintiff’s complaint. See
22 Clegg v. Cult Awareness Network, 18 F.3d 752, 754-55 (9th Cir. 1994). There is a strong
23 presumption against dismissing an action for failure to state a claim. See Gilligan v. Jamco
24 Dev. Corp., 108 F.3d 246, 249 (9th Cir. 1997) (citation omitted). ““The issue is not whether
25 a plaintiff will ultimately prevail but whether [he] is entitled to offer evidence in support of
26 the claims.”” Id. (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other

1 grounds, Harlow v. Fitzgerald, 457 U.S. 800, 807 (1982)). Consequently, the court should
2 not grant a motion to dismiss “for failure to state a claim unless it appears beyond doubt that
3 the plaintiff can prove no set of facts in support of his claim which would entitle him to
4 relief.” Conley v. Gibson, 355 U.S. 41, 45-46 (1957); see also Hicks v. Small, 69 F.3d 967,
5 969 (9th Cir. 1995).

6 **III. DISCUSSION**

7 **A. CIVIL CONSPIRACY**

8 **1. HEIGHTENED FIRST AMENDMENT SCRUTINY**

9 In Nevada, an actionable civil conspiracy is defined as “a combination of two or
10 more persons, who by some concerted action, intend to accomplish some unlawful objective
11 for the purpose of harming another which results in damage.” Collins v. Union Fed. Sav. &
12 Loan Ass’n, 662 P.2d 610, 622 (Nev. 1983) (citing Wise v. Southern Pac. Co., 35 Cal. Rptr.
13 652 (Cal. Ct. App. 1963) and Bliss v. Southern Pac. Co., 321 P.2d 324 (Or. 1958)). “A civil
14 conspiracy claim operates to extend, beyond the active wrongdoer, liability in tort to actors
15 who have merely assisted, encouraged or planned the wrongdoer’s acts.” 16 Am. Jur. 2D
16 Conspiracy § 57 (1998). “While the essence of the crime of conspiracy is the agreement,
17 the essence of civil conspiracy is damages.” Id. at § 50. The damages result from the tort
18 underlying the conspiracy. In fact, “a cause of action for defamation is a necessary
19 predicate to a cause of action for conspiracy to defame.” Id. at § 59.

20 In Franchise Realty Interstate Corp. v. San Francisco Local Joint Executive
21 Board of Culinary Workers, the Ninth Circuit Court of Appeals held:

22 What we do hold is that in any case, whether antitrust or something else,
23 where a plaintiff seeks damages or injunctive relief, or both, for conduct
24 which is prima facie protected by the First Amendment, the danger that the
mere pendency of the action will chill the exercise of First Amendment
rights requires more specific allegations than would otherwise be required.

25 542 F.2d 1076, 1082 (9th Cir. 1976).

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1 Defendants argue that the underlying tort of defamation alleged in this case is
2 political speech. As a result, Defendants argue that the alleged conspiratorial conduct
3 implicates the First Amendment and must be plead with particularity. (Clinton’s Mot. to
4 Dismiss at 6.) According to Defendants, this heightened standard requires Flowers to “set
5 forth specific facts such as meetings, conferences, telephone calls or joint signatures on
6 written recommendations to indicate conspiracy.” (Id. at 7.) Flowers responds that
7 Defendants’ alleged defamation does not constitute political speech because it is an attack
8 on someone not in the political arena. (Pl.’s Joint Opp’n to Defs.’ Mot. to Dismiss at 8.)

9 Even if the defamation claim alleged in Count I of Flowers’ Fourth Amended
10 Complaint falls under the Franchise Realty Interstate Corp. heightened pleading
11 requirement, it is not clear that the heightened pleading standard would extend beyond the
12 defamation claim and encompass the claim of civil conspiracy. See Collins, 662 P.2d at
13 622.

14 2. RULE 8(a)

15 All Defendants claim that Flowers’ allegations are insufficient to state a claim for
16 civil conspiracy. Pursuant to Fed. R. Civ. P. 8(a)(2), a pleading shall contain “a short and
17 plain statement of the claim showing that the pleader is entitled to relief.” The purpose of
18 this section is to “avoid technicalities and to require that the pleadings discharge the
19 function of giving the opposing party fair notice of the nature and basis or grounds of the
20 claim and a general indication of the type of litigation involved; the discovery process bears
21 the burden of filling in the details.” 6 Charles Alan Wright and Arthur R. Miller, Federal
22 Practice and Procedure, § 1215, at 137 (2d ed. 1990).

23 Defendants argue that even if the heightened pleading standard of Franchise
24 Realty does not apply to this case, Flowers’ civil conspiracy “complaint must set forth
25 specific facts such as meetings, conferences, telephone calls or joint signatures on written
26 recommendations *to indicate a conspiracy.*” (Clinton’s Mot. to Dismiss. at 11 (emphasis in

1 original) (quoting Marino v. Cross Country Bank, 2003 WL 503257 (D. Del. 2003)). In
2 Marino v. Cross Country Bank, the case from which Defendants draw the above principle,
3 the District Court based its decision upon Delaware law. Although Nevada law and
4 Delaware law are similar with respect to civil conspiracy, this Court has not found, nor have
5 Defendants provided, authority that suggests that Nevada's courts adhere to similar
6 pleading requirements.

7 In defining civil conspiracy, Nevada has looked to both California and Oregon
8 law. See Collins, 662 P.2d at 622. Neither California nor Oregon employ a heightened
9 pleading standard for conspiracy in cases where the underlying tort requires a heightened
10 pleading standard. In California, "where a cause of action for civil conspiracy to defame
11 the plaintiff is pleaded, explicit details concerning the manner in which the defendants
12 conspired to publish the alleged defamatory matter are not required." Bradley v. Hartford
13 Accident & Indem. Co., 106 Cal. Rptr. 718, 722 (1973), overruled on other grounds, 786
14 P.2d 365 (Cal. 1997). A plaintiff's Complaint is adequate if it "sufficiently apprises the
15 defendants of the character and type of the facts and circumstances upon which he relies to
16 establish the conspiracy" Id. at 722 - 23; see also Applied Equip. Corp. v. Litton Saudi
17 Arabia Ltd., 869 P.2d 454, 457 (Cal. 1994) (quoting Mox, Inc. v. Woods, 262 P. 302, 303
18 (Cal. 1927)) (stating the elements of a civil conspiracy). Similarly, a review of Oregon law
19 persuades this Court that Oregon does not require a heightened pleading standard for any
20 type of civil conspiracy. See e.g., Yanney v. Koehler, 935 P.2d 1235, 1238 (Or. 1997)
21 (listing the requirements of alleging a civil conspiracy); Bliss, 321 P.2d at 327-29
22 (discussing civil conspiracy); Bonds v. Landers, 566 P.2d 513 (Or. 1977) (discussing civil
23 conspiracy). Because no Nevada authority suggests that a heightened pleading requirement
24 applies to civil conspiracy, and because the states Nevada has relied upon in defining civil
25 conspiracy do not have such a requirement, the Court finds there is no heightened pleading
26 requirement for a civil conspiracy predicated upon defamation in Nevada.

1 Flowers has sufficiently pled the required elements of a civil conspiracy under
2 Nevada law. Flowers claims that in 1992 Clinton organized and directed a conspiracy with
3 Carville and Stephanopoulos to defame her. (Fourth Am. Compl. ¶ 8.) She further cites
4 specific examples of allegedly defamatory statements made by Carville and
5 Stephanopoulos. (Id. ¶¶ 12-16.) Finally, Flowers alleges that as a result of the conspiracy
6 she was damaged. (Id. ¶ 21.) The alleged defamatory statements made from 1998 - 2000
7 are arguably consistent with such a conspiracy.

8 The Court must also reject Defendants' argument that the claim for conspiracy
9 should be dismissed for failing to put them on notice of the allegations and grounds upon
10 which they rest. Flowers alleges that Defendants Carville, Clinton, and Stephanopoulos
11 entered into a conspiracy to defame her during the 1992 election campaign and continuing
12 to 2000. Flowers' allegations rest on the connection of each Defendant with the 1992
13 Clinton Presidential election campaign and the allegedly defamatory statements made by
14 Carville and Stephanopoulos. Whether Flowers will be able to prevail on these allegations
15 cannot be determined on Defendants' Motion to Dismiss.

16 It is, however, unclear from Flowers' Fourth Amended Complaint whether she is
17 suing Little, Brown & Company for conspiracy under Count III. Although the heading
18 under the Fourth Amended Complaint states that Count III is alleged as to "All
19 Defendants," Flowers makes no demand for judgment against Defendant Little, Brown &
20 Company for conspiracy. More importantly, Flowers makes no allegations regarding the
21 involvement of Defendant Little, Brown & Company in the alleged conspiracy. Therefore,
22 Flowers' purported claim for conspiracy (Count III) must fail as it relates to Defendant
23 Little, Brown & Company.

24 C. DEFAMATION

25 Defendants Clinton and Little, Brown & Company argue that Flowers has failed
26 to state a claim for defamation against them in Count I of her Fourth Amended Complaint.

1 In Nevada, “the general elements of a defamation claim require a plaintiff to prove: ‘(1) a
2 false and defamatory statement by [a] defendant concerning the plaintiff; (2) an
3 unprivileged publication to a third person; (3) fault, amounting to at least negligence; and
4 (4) actual or presumed damages.” Pegasus v. Reno Newspapers, 57 P.3d 82, 90 (Nev.
5 2002) (citing Chowdhry v. NLVH, Inc., 851 P.2d 459, 462 (Nev. 1993)). Statements of
6 opinion are generally not defamatory because “‘there is no such thing as a false idea.’”
7 Pegasus, 57 P.3d at 87 (quoting Gertz v. Robert Welch, Inc., 418 U.S. 323, 339-40 (1974)).
8 However, an opinion could be defamatory if a speaker suggests defamatory facts in the
9 opinion. Id. at 88.

10 Whether a statement is capable of a defamatory construction is a question of law
11 for the court to decide. Branda v. Sanford, 637 P.2d 1223, 1225 (Nev. 1981). “A statement
12 is defamatory when, ‘under any reasonable definition[,] such charges would tend to lower
13 the subject in the estimation of the community and to excite derogatory opinions against
14 him and to hold him up to contempt.” Posadas v. City of Reno, 851 P.2d 438, 442 (Nev.
15 1993). In determining whether a statement is actionable, “the court must ask ‘whether a
16 reasonable person would be likely to understand the remark as an expression of the source’s
17 opinion or as a statement of existing fact.’” Pegasus, 57 P.3d at 88. If it is possible for a
18 statement to have different meanings, one of which is defamatory, the trier of fact will
19 resolve the ambiguity. Posadas, 851 P.2d at 442.

20 “[A] defendant [cannot] be held liable for damages in a defamation action
21 involving a public official plaintiff unless ‘actual malice’ is alleged.” Pegasus, 57 P.3d at
22 90 (citing New York Times Co. v. Sullivan, 376 U.S. 254 (1964)). “Actual malice has
23 been defined as ‘knowledge that it [the statement] was false or with reckless disregard of
24 whether it was false or not.’” Id. at 90 (alteration in original) (quoting New York Times
25 Co., 376 U.S. at 280).

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1 Clinton correctly points out that Flowers' Fourth Amended Complaint contains
2 no allegations that Clinton made any statements, defamatory or otherwise. Instead, Flowers
3 claims that Clinton directed Carville and Stephanopoulos to defame her as part of the
4 conspiracy. Because Flowers has failed to allege that Clinton actually made a defamatory
5 statement, the Court finds that she has failed to plead an actionable claim for defamation
6 against Clinton in Count I of the Fourth Amended Complaint. See Pegasus, 57 P.3d at 90.

7 Flowers has, however, pled a sufficient claim of defamation against Defendant
8 Little, Brown & Company. Although Little, Brown & Company correctly argues that it
9 cannot be held liable for statements made by Defendants Stephanopoulos and Carville on
10 the *Larry King* and *Tim Russert* broadcasts, Little, Brown & Company is the publisher of a
11 book authored by Stephanopoulos that allegedly contains defamatory statements. (Fourth
12 Am. Compl. ¶¶ 5, 15.) Moreover, Flowers, as a public figure for purposes of this
13 controversy, has alleged the requisite malice by claiming that Little, Brown & Company
14 "knew" that statements made in the Stephanopoulos book were false.

15 **D. FALSE LIGHT**

16 Defendants Clinton and Little, Brown & Company also contend that Flowers has
17 failed to state a claim of false light against them. There is little Nevada case law
18 mentioning the privacy tort of false light. The Restatement (Second) of Torts states, "[o]ne
19 who gives publicity to a matter concerning another that places the other before the public in
20 false light is subject to liability to the other for invasion of his privacy." Restatement
21 (Second) of Torts § 652E (1977). "False light, like defamation, requires at least an implicit
22 false statement of objective fact." Flowers, 310 F.3d at 1131 (citing Restatement (Second)
23 of Torts § 652E(b)). Moreover, like defamation, false light requires actual malice. Id. at
24 1131. In Nevada, "[t]he false light privacy action differs from a defamation action in that
25 the injury in privacy actions is mental distress from having been exposed to public views,
26 while the injury in defamation actions is damage to reputation." People for the Ethical

1 Treatment of Animals v. Bobby Berosoni, Ltd., 895 P.2d 1269, 1273 n.4 (Nev.1995)
2 (quoting Rinsley v. Brandt, 700 F.2d 1304, 1307 (10th Cir. 1983)), overruled in part on
3 other grounds, 940 P.2d 134 (Nev. 1997).

4 Flowers alleges that false statements were included in Stephanopoulos's book,
5 which was published by Little, Brown & Company. (Fourth Am. Compl. ¶¶ 5, 15.)
6 Furthermore, she alleges that Little, Brown & Company acted with actual malice and that
7 she has suffered emotional distress. (Fourth Am. Compl. ¶¶ 31, 32.) Flowers has thus
8 alleged all of the elements of an actionable claim of false light against Little, Brown &
9 Company.

10 Flowers, however, has made no allegation that Clinton has made any false
11 statements. Instead, she claims that Carville and Stephanopoulos acted as the
12 "instrumentality" of Clinton. (Fourth Am. Compl. ¶ 31.) As the Ninth Circuit Court of
13 Appeals stated, "[f]alse light . . . requires at least an implicit false statement of objective
14 fact." Flowers, 310 F.3d at 1131 (citing Restatement (Second) of Torts § 652E(b)).
15 Flowers has failed to show this minimum requirement. Therefore, Flowers' claim of false
16 light against Clinton must be dismissed.

17 18 **IV. CONCLUSION**

19 Based upon the foregoing, the Court concludes that the Motions to Dismiss filed
20 or joined by Defendants (Docs. #135, #137, and #140) must be granted to the following
21 extent:

22 Plaintiff Flowers' claim for Defamation (Count I) is hereby dismissed as to
23 Defendant Hillary Rodham Clinton;

24 Plaintiff Flowers' claim for False Light (Count II) is hereby dismissed as to
25 Defendant Hillary Rodham Clinton;

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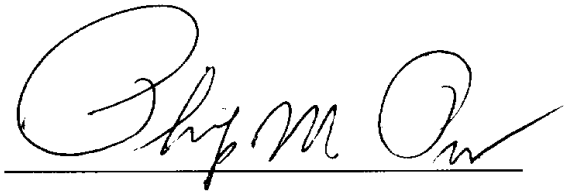
Plaintiff Flowers' claim for Conspiracy (Count III) is hereby dismissed as to Defendant Little, Brown & Company.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that Defendants' Motions to Dismiss (Docs. #135, #137 and #140) are denied in all other respects.

IT IS FURTHER ORDERED that the parties shall forthwith meet and confer and shall, not later than August 19, 2003, file a Joint Discovery Plan and Scheduling Order in full compliance with the provisions of Local Rule 26-1 of the Rules of Practice of the United States District Court for the District of Nevada.

DATED: July 21, 2003



PHILIP M. PRO
Chief United States District Judge