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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Cristobal Rodriguez, et al.,

10 Plaintiffs,

11 v.

12 Taylor & Francis Group LLC, et al.,

13 Defendants.
14

No. CV-23-00576-PHX-GMS

ORDER

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16 Pending before the Court is Defendant Taylor & Francis Group, LLC’s Motion to
17 Dismiss Plaintiff’s Second Amended Complaint for Failure to State a Claim (Doc. 10). For
18 the reasons detailed below, Defendant’s Motion is granted with one final leave to amend.

19 **BACKGROUND**

20 This action concerns Dr. Cristobal Rodriguez’s (“Plaintiff”) allegations of
21 defamation and trade libel against Taylor & Francis Group, LLC (“Defendant”). Dr.
22 Rodriguez is the Associate Dean of Equity, Inclusion, and Community, as well as an
23 Associate Professor of Educational Leadership and Policy studies, at the Mary Lou Fulton
24 Teachers College at Arizona State University. (Doc. 9 at 2). He researches inclusion and
25 equity in education for “dual language learners, Black, Latino, and Indigenous” families
26 and students. (*Id.*). On March 7, 2022, Dr. Rodriguez and two other authors published an
27 article in *Educational Studies* entitled “Our Separate Struggles Are Really One”: Building
28 Coalitions and Solidarity for Social and Racial Justice in Education (“Rodriguez Article”).

1 (*Id.*) *Educational Studies* is an education journal published by Defendant. (*Id.* at 3).

2 Soon after publication, Dr. Sonya Douglass Horsford contacted Defendant and
3 reported substantial overlap between the Rodriguez Article and an article she and two co-
4 authors published in 2019. (*Id.*). She titled that article Our Separate Struggles are Really
5 One: Building Political Race Coalitions for Educational Justice (“Horsford Article”).
6 (Doc. 10-3 at 2). Defendant then contacted Plaintiff and his co-authors and told them that
7 Dr. Horsford raised concerns. (Doc. 9 at 3). On March 12, 2022, Dr. Rodriguez contacted
8 Defendant to dispute any allegations of plagiarism and offered to make changes to the
9 Rodriguez Article to alleviate their concerns. (*Id.*). Plaintiff and his co-authors submitted
10 a revised draft of the Rodriguez Article that included different citations and a new title.
11 (*Id.* at 4). Defendant only responded to Plaintiff by informing him that the editorial board
12 was investigating the matter. (*Id.*).

13 On June 20, 2022, Defendant informed Plaintiff that it would retract the Rodriguez
14 Article but gave Plaintiff no specific reason. (*Id.*). Defendant then retracted the Rodriguez
15 Article and published a public notice of retraction on its website. (*Id.* at 5). The notice
16 referenced both the Rodriguez Article and the Horsford Article, and included a brief
17 explanation of Defendant’s reasoning:

18 Since publication, significant concerns have been raised about
19 the fact that this article has substantial overlap with the
20 following article, particularly in title, references, and ideas
21 pertinent to the content . . . As plagiarism is a serious breach of
22 publishing ethics, we are retracting the article from the journal.
23 We have been informed in our decision-making by our policy
on publishing ethics and integrity and the COPE guidelines on
retractions.

24 (Doc. 10-2 at 2). Dr. Rodriguez alleges that “[t]he continued presence of the retraction
25 statement on Defendant’s website has the extreme potential to cause harm to Dr. Rodriguez
26 and his professional reputation, including prohibiting and preventing him from
27 opportunities for future professional advancement.” (Doc. 9 at 6). Additionally, Plaintiff
28 alleges that Arizona State University placed him on administrative leave and that he lost

1 his administrative position because of Defendant’s public notice. (*Id.* at 7). The loss of
2 that position, Plaintiff alleges, included a substantial loss in income. (*Id.*).

3 Plaintiff has two pending claims against Defendant: one for defamation and one for
4 trade libel. (Doc. 9 at 7–8). Plaintiff originally filed his Complaint in the Superior Court
5 of Arizona in Maricopa County on November 9, 2022. (Doc. 1 at 2). On March 2, 2023,
6 Plaintiff filed his First Amended Complaint. (Doc. 1-5 at 9). Defendant removed the action
7 to this Court on April 5, 2023. (Doc. 1). This Court has subject matter jurisdiction pursuant
8 to 28 U.S.C. § 1332. On April 27, 2023, Plaintiff filed his Second Amended Complaint
9 (“Complaint”) (Doc. 9).

10 DISCUSSION

11 I. Legal Standard

12 To survive dismissal for failure to state a claim pursuant to Federal Rule of Civil
13 Procedure 12(b)(6), a complaint must contain more than a “formulaic recitation of the
14 elements of a cause of action”; it must contain factual allegations sufficient to “raise a right
15 to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
16 When analyzing a complaint for failure to state a claim, “allegations of material fact are
17 taken as true and construed in the light most favorable to the non-moving party.” *Smith v.*
18 *Jackson*, 84 F.3d 1213, 1217 (9th Cir. 1996). However, legal conclusions couched as
19 factual allegations do not receive a presumption of truthfulness, and “conclusory
20 allegations of law and unwarranted inferences are not sufficient to defeat a motion to
21 dismiss.” *Pareto v. F.D.I.C.*, 139 F.3d 696, 699 (9th Cir. 1998).¹

22 II. Analysis

23 1. Defamation

24 “To state a claim for defamation under Arizona law, a plaintiff
25 must plead: (1) a false and defamatory statement of and

26 ¹ Defendant’s Motion to Dismiss (Doc. 10) includes three documents attached as
27 appendices: the Rodriguez Article, Defendant’s public notice of retraction, and the
28 Horsford Article. These documents may be properly considered by the Court without
converting the Motion to Dismiss into a Motion for Summary Judgment based on the
“incorporation by reference” doctrine, because the Plaintiff relies on the documents in his
complaint, the Defendant attached the documents to its motion to dismiss, and neither party
disputes their authenticity. See *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005).

1 concerning the plaintiff; (2) an unprivileged publication of that
2 statement to a third party; and (3) fault amounting to at least
3 negligence on the part of the publisher or ‘actual malice,’
4 depending on the status of the plaintiff as a private or public
5 figure and whether the statement at issue involves a matter of
6 public concern.”

7 *Greschner v. Becker*, No. CV-14-02352-PHX-GMS, 2015 WL 685156, at *2 (D. Ariz. Feb.
8 18, 2015) (quoting *Boswell v. Phx. Newspapers, Inc.*, 152 Ariz. 1, 3, 730 P.2d 178, 180
9 (Ariz. Ct. App. 1985). Because Plaintiff is a teacher employed by a public institution, the
10 parties agree that he is a public figure subject to a higher showing of “actual malice.” (Doc.
11 10 at 8–10; Doc. 13 at 7–9); see also *Sewell v. Brookbank*, 119 Ariz. 422, 425, 581 P.2d
12 267, 270 (Ariz. Ct. App. 1978). “A statement is made with ‘actual malice’ when it is made
13 ‘with knowledge that it was false or with reckless disregard of whether it was false or not.’”
14 *Greschner v. Becker*, No. CV-14-02352-PHX-GMS, 2016 WL 3969941, at *4 (D. Ariz.
15 July 25, 2016) (quoting *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279–80 (1964)). “Actual
16 malice” means knowledge of falsity or conscious disregard of the truth. *Scottsdale Publ’g*
17 *v. Superior Court of Maricopa Cnty.*, 159 Ariz. 72, 82, 764 P.2d 1131, 1141 (Ct. App.
18 1988). (defining “actual malice” as either “knowingly” publishing a false statement or
19 doing so when the defendant “entertained serious doubts as to the truth of the accusation,
20 but proceeded in conscious disregard of such doubts”). Other cases suggest that the
21 standard is either knowing or publishing a false statement with a subjectively “high degree
22 of awareness of [its] probable falsity.” *Harte-Hanks Commc’ns v. Connaughton*, 491 U.S.
23 657, 688 (1989). Importantly, the actual malice standard applies to the truthfulness of the
24 Defendant’s statement—it is not to be confused with the intent behind Defendant’s
25 statement. *Id.* (citations omitted). “Under Arizona defamation law, actual malice may be
26 shown by circumstantial evidence.” *Shoen v. Shoen*, 48 F.3d 412, 417 (9th Cir. 1995)
27 (citing *Currier v. W. Newspapers*, 175 Ariz. 290, 294, 855 P.2d 1351, 1355 (Ariz. 1993)).

28 Plaintiff has failed to plead sufficient facts to make plausible his claims of actual
malice. Plaintiff has alleged: (1) that he denied all charges of plagiarism and (2) that
Defendant ignored all of Plaintiff’s attempts to address any plagiarism concerns. (Doc. 9

1 at 3–5; Doc. 13 at 7–8). Yet, even taking these allegations as true, they do not, without
2 more, give rise to an inference that when the Defendant made its statements about
3 plagiarism in connection with the retraction, it was doing so with reckless disregard for the
4 truth. This is true, even if Defendant did not respond to Plaintiff, or if Plaintiff volunteered
5 to correct the similar part of his article.

6 There is no apparent dispute that the Rodriguez and Horsford Articles share
7 a title and some content. Plagiarism does not require a complete identity between
8 articles. *See, e. g., Definition of plagiarism?*, COMM. ON PUB. ETHICS (COPE),
9 <https://publicationethics.org/case/definition-plagiarism> (last visited Mar. 18, 2024). In
10 other words, a claim that two works contain *some* differences does not necessarily absolve
11 an author of plagiarism—even where those claims are accurate. Generalized allegations
12 alone are too conclusory and thus insufficient to make the actual malice element plausible.
13 *Cf. Harte-Hanks*, 491 U.S. at 688. “[T]he press need not accept ‘denials, however
14 vehement; such denials are so commonplace in the world of polemical charge and
15 countercharge that, in themselves, they hardly alert the conscientious reporter to the
16 likelihood of error.’” *Id.* at 691 n.37 (quoting *Edwards v. Nat’l Audubon Soc., Inc.*, 556
17 F.2d 113, 121 (2d Cir. 1977)). The same is true of academic publishers. And thus, Dr.
18 Rodriguez’s denial of plagiarism, even if true, does not give rise to an inference that
19 Defendant made the retraction statement recklessly absent Plaintiff having provided
20 Defendant some exonerating information in connection with his denials that would make
21 plausible his claim that Defendant acted with malice when it proceeded with retraction
22 statement without further consulting him.

23 Nor is it true that Defendant can always ignore the Plaintiff’s denials with impunity,
24 depending upon the specific information that Plaintiff might have provided Defendant in
25 conjunction with his denials. “The purposeful avoidance of the truth is in a different
26 category” from the failure to investigate. *Harte-Hanks*, 491 U.S. at 692. But Plaintiff has
27 not alleged what, if any information he provided Defendant, that is sufficient to infer
28 malice, nor has he alleged other “obvious reasons” that would suggest that Defendant

1 should have “doubted the veracity” of its statements regarding perjury. *Amant v.*
2 *Thompson*, 390 U.S. 727, 732 (1968).

3 **2. Trade Libel**

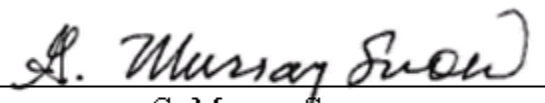
4 Under Arizona law, claims for trade libel “are subject to the same first amendment
5 requirements that govern actions for defamation.” *UnelkoCorp. v. Rooney*, 912 F.2d 1049,
6 1057—58 (9th Cir. 1990). This includes the actual malice pleading standard. Thus, until
7 Plaintiff can plead facts sufficient to make the element of malice in the statement plausible,
8 Plaintiff similarly fails to make out a claim of trade libel. Plaintiff’s claim for trade libel
9 is, therefore, also dismissed.

10 **CONCLUSION**

11 Accordingly,

12 **IT IS THEREFORE ORDERED** Defendant’s Motion to Dismiss Plaintiff’s
13 Second Amended Complaint for Failure to State a Claim is **GRANTED**. Plaintiff has one
14 last chance to amend his complaint. Should he wish to amend his Second Amended
15 Complaint he must do so within thirty days of the date of this Order. Otherwise, the Clerk
16 of Court shall terminate this matter.

17 Dated this 29th day of March, 2024.

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20 G. Murray Snow
21 Chief United States District Judge
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