**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF PENNSYLVANIA**

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| JOSEPH A. AMES,<br><br>Plaintiff,<br><br>v.<br><br>AMERICAN RADIO RELAY LEAGUE INCORPORATED, TOM GALLAGHER, RICK RODERICK, and DR. JAMES BOEHNER,<br><br>Defendants. | Civil Action No. 16-03660 |

**ORDER**

AND NOW, this ____ day of _____, 2016, upon consideration of Defendants' Motion to Dismiss Plaintiff's Complaint, and any response thereto, it is hereby ORDERED that the Motion is GRANTED. Plaintiff's Complaint is dismissed with prejudice.

_____
C. Darnell Jones, II
United States District Court Judge

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF PENNSYLVANIA**

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| JOSEPH A. AMES,<br><br>Plaintiff,<br><br>v.<br><br>AMERICAN RADIO RELAY LEAGUE INCORPORATED, TOM GALLAGHER, RICK RODERICK, and DR. JAMES BOEHNER,<br><br>Defendants. | Civil Action No. 16-03660 |

**DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants American Radio Relay League Incorporated, Tom Gallagher, Rick Roderick, and Dr. James Boehner ("Defendants"), by and through undersigned counsel, respectfully move this Court for an Order dismissing Plaintiff's Complaint. The factual and legal support for this Motion are set forth in the accompanying Memorandum of Law, which is incorporated herein by reference.

Defendants request oral argument on this Motion pursuant to Local Rule 7.1(f).

**WHEREFORE**, Defendants respectfully request this Court enter an Order granting this Motion and dismissing Plaintiff's Complaint.

Respectfully submitted,

COZEN O'CONNOR

*/s/ Paul K. Leary, Jr.*

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*Attorneys for Defendants American Radio Relay League Incorporated, Tom Gallagher, Rick Roderick, and Dr. James Boehner*

Dated: August 22, 2016

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF PENNSYLVANIA**

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| JOSEPH A. AMES,<br><br>Plaintiff,<br><br>v.<br><br>AMERICAN RADIO RELAY LEAGUE INCORPORATED, TOM GALLAGHER, RICK RODERICK, and DR. JAMES BOEHNER,<br><br>Defendants. | Civil Action No. 16-03660 |

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Plaintiff's Complaint is a combination of contradiction and speculation. The vast majority of Plaintiff's allegations are simply improper legal conclusions, unconnected to any factual allegations. The few factual allegations that do exist in the Complaint are exposed as pure fiction when examined against the exhibits attached to the Complaint. As set forth below, Plaintiff was removed from his volunteer positions for the very conduct described in his Complaint and detailed in his exhibits. He violated specific policies and procedures, was warned to cease such activity, yet persisted and was let go. The publication or "communication" at issue merely re-states Plaintiff's conduct to explain a then vacant volunteer position. Plaintiff simply has not satisfied the necessary pleading predicates to support a defamation claim. Rather, at best he has a vindictive bone to pick with Defendants, who he views as "meddling," "abusive," and playing "mommy." (*See* Compl. Ex. I.) Given the number of fatal defects in the Complaint, dismissal is the only option.

## I. FACTUAL BACKGROUND[1]

The American Radio Relay League ("ARRL") is the national association for Amateur Radio in the United States. (Compl. n. 1.) ARRL is a nonprofit organization dedicated to, among other things, organizing and training volunteer "ham" radio operators to serve their communities by providing public service and emergency communication. One of the ways ARRL carries out this important civic purpose is through coordination with local, state, and federal government agencies, including the Federal Emergency Management Agency ("FEMA"). In short, ARRL plays a vital role in providing real-time, valuable information to the public and emergency responders during local and national emergencies. *See, e.g.*, Pub. L. No. 103-408 (1994) (joint resolution recognizing that "the amateur radio service community has provided invaluable emergency communications services following such disasters as Hurricanes Hugo, Andrew, and Iniki, the Mt. St. Helens eruption, the Loma Prieta earthquake, tornadoes, floods, wild fires, and industrial accidents in great number and variety across the Nation."). Because ARRL's communications with the federal government must be coordinated and consistent, one of the main tenets of ARRL's policies and procedures is that all communications with federal agencies must go through designated points of contact within ARRL.

ARRL is governed by a Board of Directors composed of 15 directors elected regionally by "Division." There are 15 Divisions in the United States, each of which is further divided into "Sections." Each Section has a "Section Manager," who is periodically elected to the position by the members in that Section. The Section Managers administer ARRL volunteer field organization programs within their respective Sections. One of the key functions of a Section

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[1] Defendants assume the truth of the factual allegations in the Complaint for purposes of this Motion to Dismiss only.

Manager is to ensure that volunteer field organization programs within their Section adhere to ARRL rules and regulations.

One ARRL volunteer field organization program is the "National Traffic System" or "NTS." The NTS program's function is to train amateur radio operators to relay messages point-to-point using standardized message formats and formalized communication protocols, and to deliver them to both amateur and non-amateur recipients. The NTS field organization program is divided into three areas, Eastern, Central, and Pacific, with each area headed by an Area Chair. (*See* Compl. n. 1.) NTS, like all ARRL volunteer field organization programs, is subject to all ARRL policies, procedures, rules, and regulations.

Plaintiff Joseph Ames ("Ames" or "Plaintiff") was an ARRL member. (*See* Compl. ¶ 2.) Ames had been elected as the Section Manager of the Eastern Pennsylvania Section of ARRL and was the self-appointed Eastern Area Chair of NTS. (*See* Compl. ¶ 1.) Between May 2015 and August 2015, Plaintiff, purportedly in his capacity as the Eastern Pennsylvania Section Manager and the Eastern Area Chair of NTS, unilaterally communicated and fostered a relationship with officials at FEMA without ARRL authorization and in direct contravention of ARRL's policies and protocols:

- On or about May 28, 2015, Plaintiff responded to an email sent by Chris Turner of FEMA. (Compl. Ex. H.) Plaintiff did not consult with anyone on ARRL's Board of Directors before making this unilateral communication with FEMA. (*See id.*) Nor did Plaintiff direct FEMA to the designated point of contact between FEMA and ARRL or copy the designated point of contact between FEMA and ARRL on his response. (*See id.*)

- On or about July 10, 2015, Plaintiff sent a letter to Eric Edwards of FEMA. (Compl. Ex. A.) Plaintiff sent this letter on letterhead utilizing the NTS logo, which is trademarked property of ARRL. (*See id.*) Plaintiff did not copy any member of the ARRL Board of Directors or the designated point of contact between FEMA and ARRL on this letter. (*See id.*) Nor did he consult with anyone on ARRL's Board of Directors before making this unilateral communication with FEMA.

Such communications were in direct violation of explicit ARRL policies and bylaws and the Memorandum of Understanding ("MOU") between ARRL and FEMA. As a result of these violations, on August 10, 2015 then-ARRL CEO David Sumner specifically instructed Plaintiff to cease all communications with FEMA. (See Aug. 10, 2015 Ltr. from Sumner to Griffin, Phillips, and Ames, attached as Exhibit A.) Sumner also instructed Plaintiff that "any communication with FEMA pertaining to the National Traffic System and any other ARRL programs is to be conducted only through [Michael] Corey." (*Id.*)

Yet Plaintiff ignored this instruction and persisted with his unauthorized communications:

- On or about October 1, 2015, as Hurricane Joachim approached the East Coast of the United States, Plaintiff had a conversation with Chris Turner of FEMA in which Plaintiff "confirm[ed] NTS's willingness to help [FEMA] however we can" should Joachim make landfall. (Compl. Ex. F.) Plaintiff did not consult with anyone on ARRL's Board of Directors before confirming this commitment to FEMA on behalf of NTS. (*See id.*) Nor did Plaintiff direct Turner to Michael Corey, the designated point of contact between FEMA and ARRL, before making this commitment. (*See id.*)

- On or about February 11, 2016, Plaintiff emailed Chris Turner of FEMA to "accept FEMA's invitation to participate in the upcoming exercise, *Cascadia Rising*." (Compl. Ex. G.) While Plaintiff copied a number of ARRL members on this email, he did not consult with any member of the ARRL Board of Directors before "accepting" FEMA's invitation. (*See id.*) Nor did he direct FEMA to Michael Corey, the designated point of contact between FEMA and ARRL before accepting FEMA's invitation. (*See id.*)

Due to Plaintiff's failure to heed Sumner's directive and the explicit policies and procedures of ARRL, on or about June 20, 2016, the Executive Committee of the ARRL Board of Directors cancelled Plaintiff's appointments as Eastern Pennsylvania Section Manager and Eastern Area Chair of NTS. (Compl. Ex. K.) The following day, an article was posted on the ARRL website describing the circumstances surrounding Plaintiff's removal. (Compl. ¶ 15.) Specifically, the article stated:

> **Ames unilaterally and repeatedly communicated with officials of the Federal Emergency Management Agency (FEMA) on behalf of NTS, making commitments on behalf of ARRL without authority and in violation of the rules and regulations of the ARRL Field Organization. Those actions were contrary to the terms of the *Memorandum of Understanding* between FEMA and ARRL, which states clearly that ARRL Headquarters staff will be the single point of contact between FEMA and ARRL. There is no independent relationship between NTS and FEMA; the ARRL/FEMA *Memorandum of Understanding* is the operative document.**
>
> **In August 2015, then-ARRL CEO David Sumner, K1ZZ, wrote to Ames and instructed him that, unless otherwise authorized by ARRL, any communication with FEMA with respect to NTS is to be conducted through ARRL authorized representatives. ARRL learned that Ames repeatedly acted contrary to Sumner's directive, which led to the decision to cancel Ames's Field Organization appointments and to declare the office of the Section Manager for Eastern Pennsylvania vacant.**

(Compl. ¶ 16, Ex. B.) (the "Communication").

Plaintiff now alleges that the Communication is defamatory, despite the overwhelming evidence to the contrary. Indeed, Plaintiff references in and attaches to the Complaint some of the very evidence that shows the Communication is ***not*** defamatory, but is in fact true and nothing more than a summary of now admitted conduct by Plaintiff. There is no factual dispute pertaining to Plaintiff's unilateral, unauthorized communications to FEMA on behalf of NTS (as evidenced by Plaintiff's own exhibits!), nor is there any dispute that he was specifically instructed to cease these communications but disregarded that instruction. Plaintiff's subsequent removal as Section Manager and Eastern Area Chair, and the Communication by ARRL explaining why Plaintiff was removed, merely summarized Plaintiff's improper conduct to provide an explanation for a then vacant Section Manager seat. The Court should not allow Plaintiff's spurious case to proceed to discovery. Rather, for the reasons detailed below, the Court should grant this Motion and dismiss Plaintiff's Complaint.

## II. LEGAL STANDARD

To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. at 570). Plaintiffs must allege facts sufficient to "nudge[] their claims across the line from conceivable to plausible." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement." *Iqbal*, 556 U.S. at 678 (internal quotation and citation omitted).

Accordingly, in evaluating Defendants' Motion to Dismiss, the Court must take the following three steps. First, it must take note of the elements Plaintiff must plead to state a claim. Second, it should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. Finally, where there are well-pleaded factual allegations, the Court should assume their veracity and determine whether they plausibly give rise to an entitlement for relief. *Santiago v. Warminster Twp.*, 629 F.3d 121, 130 (3d Cir. 2010); *see also Fowler v. UPMC Shadyside*, 578 F.3d 203, 210-11 (3d Cir. 2009). Applying this three-step process, Plaintiff's Complaint fails to allege facts sufficient to state a plausible defamation claim. The Court should therefore dismiss the Complaint.

## III. ARGUMENT

The Complaint fails to state a plausible claim for defamation. To state a plausible claim for defamation under Pennsylvania law[2], Plaintiff must allege facts, which if true, would satisfy the following elements:

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[2] Because this case is purportedly based on diversity of citizenship, the Court must apply Pennsylvania's choice of law rules. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 497

(1) The defamatory character of the communication;

(2) Its publication by the defendant;

(3) Its application to the plaintiff;

(4) The understanding by the recipient of its defamatory meaning;

(5) The understanding by the recipient that it is intended to be applied to the plaintiff;

(6) Special harm resulting to the plaintiff from its publication; and

(7) Abuse of a conditionally privileged occasion.

42 Pa.C.S.A. § 8343; *see also In re Phila. Newspapers, LLC*, 690 F.3d 161, 173-74 (3d Cir. 2012); *Casselli v. City of Phila.*, 54 F. Supp. 3d 368, 376 (E.D. Pa. 2014). Plaintiff's Complaint fails to allege facts to show the defamatory character of the communication, its publication, and special harm. With respect to Gallagher, Roderick, and Boehner (collectively, the "Individual Defendants"), Plaintiff fails to allege facts attendant to any defamatory conduct by these individuals, and in any event, Roderick and Boehner are immune from suit under the Volunteer Protection Act.

**A. The Communication is not defamatory.**

To be defamatory, a statement must "tend[] to blacken a person's reputation or expose him to public hatred, contempt or ridicule or injure him in his business or profession." *Dempsey v. Bucknell Univ.*, 76 F. Supp. 3d 565, 580 (M.D. Pa. 2015) (quoting *Cosgrove Studio & Camera Shop, Inc. v. Pane*, 182 A.2d 751, 753 (Pa. 1962)); *see also Burton v. Teleflex, Inc.*, 707 F.3d 417, 434 (3d Cir. 2013) ("[To be defamatory, a] statement must do more than merely annoy or embarrass the purported victim; she must have suffered the kind of harm which has grievously fractured her standing in the community of respectable society.") (internal quotation omitted).

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(1941). Under Pennsylvania's choice of law rules, the law of the state in which the plaintiff is domiciled will normally control in a defamation suit. *See, e.g.*, *Buckley v. McGraw-Hill, Inc.*, 782 F.Supp. 1042, 1047 (W.D. Pa. 1991).

To be actionable as defamatory under Pennsylvania law, a statement must be "untrue, unjustifiable, and injurious to the reputation of another." *Joseph v. Scranton Times L.P.*, 959 A.2d 322, 334 (Pa. Super. 2008). A true statement cannot be defamatory. *Bobb v. Kraybill*, 511 A.2d 1379, 1380 (Pa. Super. 1986) ("Truth is an absolute defense to defamation in Pennsylvania."). Whether a statement is capable of being defamatory is a threshold matter for the Court to decide. *See Maier v. Maretti*, 671 A.2d 701, 704 (Pa. Super. 1995) ("[I]t is the function of the court to determine whether the communication complained of is capable of a defamatory meaning.").

Here, the statements at issue cannot be defamatory because they are demonstrably true, as evidenced on the face of the Complaint and supporting exhibits. Plaintiff takes issue with the following three statements by ARRL in the Communication:

- Plaintiff unilaterally communicated with FEMA. (Compl. ¶ 18.)
- Plaintiff made commitments on behalf of ARRL without authority and in violation of the rules and regulations of the Field Organization. (Compl. ¶ 22.)
- ARRL learned that Ames repeatedly acted contrary to then-ARRL CEO David Sumner's August 2015 directive that all communications with FEMA with respect to NTS were to be conducted through the designated ARRL representative. (Compl. ¶¶ 30-31.)

Oddly, however, Plaintiff's own allegations demonstrate that all of these statements are true, and thus cannot be defamatory as a matter of law. *See Kurowski v. Burroughs*, 994 A.2d 611, 619 n.5 (Pa. Super. 2010) ("It is essential to a claim of defamation that the statements are false."). The Complaint repeatedly references unilateral communications Plaintiff had with Chris Turner, Deputy Director of FEMA. (*See* Compl. ¶¶ 19, 20, 24-25.) Plaintiff admits that some of these communications occurred after he received Sumner's August 2015 directive. (*See* Compl. ¶¶ 32-34.) And Plaintiff references communications in which he purported to make commitments on behalf of NTS, and thus on behalf of ARRL. (*See* Compl. ¶ 28, Ex. A ("[W]e

envision a formal memorandum of agreement or understanding between NTS and FEMA, outlining our cooperation and setting goals for development of a beneficial relationship."), Ex. G ("NTS is delighted to accept FEMA's invitation to participate in the upcoming exercise, *Cascadia Rising*.")). All of this conduct has been conceded by the Plaintiff to be true. Moreover, Plaintiff has not established with the necessary pleading specificity any statements by ARRL about Plaintiff that are false.

Instead, Plaintiff makes a post hoc rationalization of these unauthorized communications with FEMA because he "looped in" ARRL leadership ***after*** the unilateral communications occurred, and the "looped in" individuals did not publically object. (*See* Compl. ¶¶ 19, 20, 32, 33, 34.) Plaintiff's attempt to put the toothpaste back into the container does not remedy the undeniable fact that he repeatedly and unilaterally communicated with governmental officials in violation of ARRL's rules and regulations. The purported failure to object to Plaintiff's unilateral communications with FEMA after they occurred does not make the statements in the Communication false. To the contrary, the face of the Complaint shows that Plaintiff did, in fact, unilaterally communicate and make commitments with FEMA, both before and after Sumner directed him to stop doing so in August 2015. (*See, e.g.*, Compl. ¶ 32 ("ARRL is well aware that ***Ames had been communicating with Chris Turner following Dave Sumner's August 2015 letter to Ames.***) (emphasis added)).

Tellingly, Plaintiff does not identify any statement in the Communication as false and defamatory, or support that legal conclusion with *factual* allegations or exhibits tending to *show* that the statement was false and defamatory. *See Bell Alt. Corp.*, 550 U.S. at 555 n.3 ("Rule 8(a)(2) . . . requires a 'showing,' rather than a blanket assertion, of entitlement to relief.") He does not deny that he unilaterally communicated with FEMA, he just alleges that ARRL knew

about it. (*See, e.g.*, Compl. ¶ 32.) He insists that he never made any commitments with FEMA, but the exhibits attached to the Complaint tell a different tale. (*See, e.g.*, Compl. Ex. A, Ex. G.) He does not deny that in August 2015 Sumner told him that he was violating ARRL policies and procedures, he merely cites to an irrelevant certificate as evidence that ARRL was "satisfied with his work." (Compl. ¶ 31, Ex. J.)[3] And he does not dispute that he continued to unilaterally communicate with FEMA after Sumner told him to stop and after the certificate purportedly showing that ARRL was "satisfied with his work" was issued. (Compl. ¶ 32, Ex. J.)

In short, Plaintiff's own allegations and Plaintiff's own exhibits show that the complained of statements in the Communication are absolutely true. The Court is entitled to disregard any legal conclusions and supposed "factual" allegations to the contrary. *See ALA, Inc. v. CCAIR, Inc.*, 29 F.3d 855, 859 n.8 (3d Cir. 1994) ("Where there is a disparity between a written instrument annexed to a pleading and an allegation in the pleading based thereon, the written instrument will control."). Because the allegedly defamatory statements are true, the Court must dismiss the Complaint. *See, e.g.*, *Whiting v. Safe Auto Ins. Co.*, No. 15-cv-6791, 2016 WL 3940827, at *4 (E.D. Pa. July 20, 2016) (dismissing defamation claim where allegations in the complaint did not plausibly establish that the allegedly defamatory statement was false).

**B. The recipients are not specifically identified.**

"An allegation of defamation is subject to a more stringent standard of pleading than is usually the case." *Smith v. Sch. Dist. of Phila.*, 112 F. Supp. 2d 417, 429 (E.D. Pa. 2000). The Complaint must "specifically identify what allegedly defamatory statements were made by whom and to whom." *Id.* (quotation omitted).

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[3] Ames' A-1 Operator Club certificate is completely irrelevant here. Membership in the Club is based on a nomination from two other Club members, not from ARRL itself, and recognizes a member's on-the-air operating abilities, and nothing more. *See* http://www.arrl.org/a-1-op. Ames' suggestion that the certificate somehow shows that Sumner and the ARRL were "satisfied with his work" as a general matter is simply wrong.

Here, Plaintiff cannot even hope to meet this more stringent standard because he does not specifically identify who received the Communication, connect those recipients to an alleged loss of reputation, or demonstrate how the receipt of the truthful statements in the Communication by these unidentified individuals caused him special harm. Instead, he makes the incredibly vague allegation that "many" ARRL members saw the Communication. (Compl. ¶ 17.) It is well-established law that such an imprecise allegation regarding the recipient of an allegedly defamatory communication is insufficient to state a defamation claim. *See, e.g.*, *Turk v. Salisbury Behavioral Health, Inc.*, No. 09-cv-6181, 2010 WL 1718268, at *4 (E.D. Pa. Apr. 27, 2010) ("[P]laintiff has not identified any specific recipient of the alleged communications, and thus has failed to connect the defamatory statements to his failure to obtain a job, harm to his reputation, or any other claimed injury. As such, plaintiff has not sufficiently plead [sic] facts which satisfy the elements of defamation under Pennsylvania law."); *Zugarek v. S. Tioga Sch. Dist.*, 214 F. Supp. 2d 468, 480 (M.D. Pa. 2002) ("Plaintiffs, ambiguously claiming that Lindner made allegedly defamatory statements to 'several individuals' and 'the general public,' fail to identify specifically to whom Lindner made the allegedly [sic] statements. . . . Accordingly, plaintiffs have failed to state a claim of defamation upon which relief can be granted."). This is yet another reason why the Court should dismiss the Complaint.

**C. Plaintiff did not suffer actual or special harm.**

In a defamation action under Pennsylvania law, the plaintiff bears the burden of proving special harm resulting from the publication of an alleged defamatory communication. 42 Pa.C.S.A § 8343; *Baird v. Dun & Bradstreet*, 285 A.2d 166, 171 (Pa. 1971) ("It is a general rule that defamatory words are not actionable, absent proof of special damage."). "Special harm requires proof of a specific ***monetary or out-of-pocket loss*** as a result of the defamation." *Synygy, Inc. v. Scott-Levin, Inc.*, 51 F. Supp. 2d 570, 580 (E.D. Pa. 1999) (emphasis added).

General allegations of reputational harm do not meet the special harm requirement. *See McCabe v. Village Voice, Inc.*, 550 F.Supp. 525, 529 n.8 (E.D. Pa. 1982) ("Special damages means actual and concrete damages; damages capable of being estimated in money, established by specific instances, such as actual loss due to withdrawal of trade of particular customers. And the statement of claim must allege such damages with certainty and particularity.") (citing *Shaines v. R.G. Dunn & Co.*, 8 Pa. D. & C. 597, 598 (Phila. Cnty. 1927)) (quotation omitted).

Plaintiff, who was serving in a non-paid position, does not allege facts to show that he was damaged at all, let alone facts to show that he suffered specific monetary or out-of-pocket loss. Plaintiff does no more than make the conclusory statement that his reputation has been "devastated" and his ability to obtain employment has been "significantly tarnished." (Compl. ¶ 7.) Of course, Plaintiff presents no factual allegations detailing how his reputation has been devastated, how his ability to obtain employment (either paid or unpaid) has been tarnished, or how he has incurred specific monetary loss. He offers no allegations about a specific paid position he either lost or is now unable to obtain due to the Communication. The fact that he was serving as a non-compensated volunteer makes it virtually impossible for Plaintiff to allege he suffered a monetary loss. His conclusory statements, which the Court is entitled to ignore, are utterly unsupported by any factual allegation. *Iqbal*, 556 U.S. 662, 678 (2009) ("[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions."). Once again, this failure is fatal to his case.

Defendants note that this is not a case in which Plaintiff is relieved of the special harm requirement. Under Pennsylvania law, a communication that is considered defamation per se does not require proof of special harm. Statements are considered defamation per se if and only if they impute criminal offense, loathsome disease, business misconduct, or serious sexual

misconduct. *Clemente v. Espinosa*, 749 F.Supp. 672, 677 (E.D. Pa. 1990). The Communication obviously does not impute criminal offense, loathsome disease, or serious sexual misconduct.

Moreover, it does not impute business misconduct. To fit into that category, a communication must "be more than mere general disparagement. It must be of the type that would be particularly harmful to an individual engaged in the plaintiff's business or profession." *Synygy, Inc. v. Scott-Levin, Inc.*, 51 F. Supp. 2d 570, 580 (E.D. Pa. 1999). The Communication does not even come close to meeting that standard. *See* Restatement (Second) Torts § 573 cmt. e ("Disparaging words, to be actionable per se under the rule stated in this Section, must affect the plaintiff in some way that is peculiarly harmful to one engaged in his trade or profession. Disparagement of a general character, equally discreditable to all persons, is not enough unless the particular quality disparaged is of such a character that it is peculiarly valuable in the plaintiff's business or profession.")

Here, Plaintiff does not even allege what his business or profession is, let alone specify how the Communication was particularly harmful to the conduct of that business or profession. Again, Plaintiff's position with ARRL was voluntary and unpaid. Plaintiff also fails to explain in his Complaint or supporting exhibits how ARRL's explanation of his removal was false. His exhibits confirm the very conduct that lead to his removal. Because the Communication does not constitute defamation per se and Plaintiff has failed to allege facts to show he suffered damages or special harm, the Court must dismiss the Complaint.

**D. The Individual Defendants did not publish the Communication.**

Plaintiff's claims against the Individual Defendants fail for additional reasons. First, there is no allegation that any of them actually "published" the allegedly defamatory Communication. Once again, to satisfy the publication prong, "[t]he complaint on its face must ***specifically identify what allegedly defamatory statements were made by whom and to whom.***"

*Smith v. Sch. Dist. of Phila.*, 112 F. Supp. 2d 417, 429 (E.D. Pa. 2000) (emphasis added) (quotation omitted).

Plaintiff's Complaint does not even allege that the Individual Defendants made any defamatory statements, let alone what those statements were or to whom they were made. With regard to Gallagher, the Complaint only states that he "reviews everything before it gets published." (Compl. ¶ 39.) Reviewing a communication ***before*** publication, however, is not the same as publication, which requires that the defendant actually communicate the statement to a third party. *Davis v. Res. for Human Dev.*, 770 A.2d 353, 358 (Pa. Super. 2001) ("It is clear that in Pennsylvania, the communication must be expressed to a third party in order to be 'published.'"). There is no allegation in the Complaint that Gallagher communicated the allegedly defamatory statements to anyone.[4]

The allegations against Roderick and Boehner do not even get that far. Plaintiff simply alleges that Roderick and Boehner are "equally responsible" for the publication of the Communication because the recommendations of the committees on which they are the chairs were cited in the Communication. (Compl. ¶¶ 40, 41.) Plaintiff, however, does not provide any factual support to suggest that Roderick and Boehner actually communicated any of the statements that Plaintiff alleges are defamatory. Indeed, it is just as likely that the allegedly defamatory statements were communicated *to* Roderick and Boehner rather than *by* Roderick and Boehner. Plaintiff's claims against these defendants are bare speculation. He has failed to nudge

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[4] Because the publication element requires that an allegedly defamatory statement be communicated to ***someone other than the allegedly defamed plaintiff***, Gallagher's termination letter to Plaintiff cannot form the basis of a defamation claim against Gallagher. *See Jones v. RCA Music Serv.*, 530 F.Supp. 767, 768 (E.D. Pa. 1982) ("Pennsylvania law requires, as an essential element of defamation, that the falsehood be communicated to one other than the person defamed. The letters, according to the complaint, were communicated only to [plaintiff]. Therefore, they were unpublished, and cannot constitute the basis for a libel action.") (internal citations omitted).

the claims against them over the line from possible to probable, and for that reason, the claims against them must be dismissed. *See Suppan v. Kratzer*, 660 A.2d 226, 229 (Pa. Cmwlth. 1995) ("A necessary element of a defamation action is publication or communication to a third party. . . . An allegation which merely avers that the alleged defamatory statement was published to a third person is defective.").

**E. Roderick and Boehner are immune under the Volunteer Protection Act.**

Even if Plaintiff had stated a plausible claim against Roderick and Boehner, which he has not, those defendants are immune from suit under the Volunteer Protection Act, 42 U.S.C. § 14501-14505 (the "VPA"). With certain exceptions that are not relevant here, the VPA provides immunity from liability for volunteers of nonprofit organizations where the volunteer is acting within the scope of his or her responsibilities within the nonprofit organization. *See* 42 U.S.C. § 14503(a). As stated above, ARRL is a nonprofit organization. Moreover, Roderick and Boehner are volunteers within the organization. Roderick and Boehner do not receive any compensation for fulfilling their ARRL duties, and they are not ARRL employees or independent contractors. There are no allegations in the Complaint to even suggest that they were acting outside the scope of their volunteer responsibilities when they took the acts with which Plaintiff takes issue, whatever they may be. To the contrary, Plaintiff alleges that Roderick and Boehner were acting in their capacities as ARRL chairmen at all relevant times. (*See* Compl. ¶¶ 40, 41.) As such, Roderick and Boehner are entitled to immunity under the VPA, and the Court must dismiss the claims against them.

## IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court grant their Motion and dismiss Plaintiff's Complaint.

Respectfully submitted,

COZEN O'CONNOR

*/s/ Paul K. Leary, Jr.*

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*Attorneys for Defendants American Radio Relay League Incorporated, Tom Gallagher, Rick Roderick, and Dr. James Boehner*

Dated: August 22, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of August, 2016, the forgoing Motion to Dismiss Plaintiff's Complaint, and accompanying Memorandum of Law was filed via the Court's ECF system, thereby serving a copy upon all counsel of record.

*/s/ Paul K. Leary, Jr.*
Paul K. Leary, Jr.

# Exhibit A

ARRL The national association for AMATEUR RADIO®
Advancing the Art and Science of Radio—Since 1914

ADVOCACY
MEMBERSHIP
PUBLIC SERVICE
EDUCATION
TECHNOLOGY

August 10, 2015

Rob Griffin, K6YR
Steve Phillips, K6JT
Joe Ames, W3JY

Dear Rob, Steve, and Joe:

The correspondence between Programs & Services Committee Chairman Brian Mileshosky, N5ZGT, and yourselves has come to my attention.

Your letter of July 29 sets out a number of grievances that deserve serious attention and discussion, although I must note for the sake of historical accuracy that George Hart was neither the first nor the only Communications Manager of the ARRL. I am certain you will be hearing separately from the P&SC; the purpose of this letter is limited to expanding on the reference to Bylaw 31 in Brian's email of July 24.

Bylaw 31 reads in relevant part: "The President...shall, subject to instructions from the Board of Directors, and with the assistance of the Chief Executive Officer, represent the League in its relationships with the public and the various governments, governmental agencies and officials with which the League may be concerned, and shall be the official spokesman of the Board of Directors in regard to all matters of League policy."

Board policy includes the following additional guidance:

> The Chief Executive Officer is responsible to the President for contacts made by staff, including the Regulatory Information Manager and the Chief Technology Officer, in the performance of their duties. From time to time, assignments involving Federal government contact may be made by the Board to individuals or to ad hoc Committees, task groups or task forces; in such cases, the extent of contact authorized will be determined by the terms of reference.
>
> It is important for the policies of the Board to be communicated to Federal government personnel in a consistent manner, and for the League to present a position of unity at all times. Accordingly, the only contact with FCC, congressional and other Federal government personnel which involves, or could be construed to involve, ARRL or Amateur Radio policy matters, shall be as outlined above.



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This policy applies to communication with FEMA and other federal government agencies on behalf of the ARRL and any of its programs. Any communication that is not in accordance with this policy, including but not limited to the telephone conference that apparently took place on July 7 and the letter of July 10 signed by Messrs. Ames and Wades, is unauthorized.

The ARRL-designated point of contact with respect to the implementation of the Memorandum of Agreement between DHS/FEMA and the ARRL is Mike Corey, KI1U, of the Headquarters staff. Unless otherwise authorized by President Craigie, any communication with FEMA pertaining to the National Traffic System and any other ARRL programs is to be conducted only through Mr. Corey.

Sincere 73,

David Sumner, K1ZZ
Chief Executive Officer

cc: Jim Wades, WB8SIW
Al Nollmeyer, W3YVQ