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Bisimwa, Franck

St. John Fisher College
Travaglini in her Official Capacity as Assistant Dean, Terri L.
Travaglini Individually, Terri L.

Total Fees Paid: $0.00

Employee: JM

State of New York

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ADAM J BELLO

MONROE COUNTY CLERK

STATE OF NEW YORK
SUPREME COURT MONROE COUNTY

FRANCK BISIMWA,

Plaintiff,

-vs-

ST. JOHN FISHER COLLEGE, and
TERRI L. TRAVAGLINI,

Index #: E2019005959

Defendants.

Special Term
October 9, 2019

APPEARANCES

Desiree Murnane, Esq.
Attorney for Plaintiff

Joshua Agins, Esq.
Attorney for Defendants

DECISION AND ORDER

Odorisi, J.

This action arises out of dispute with a former college student. Pending before this Court is Defendants' pre-answer dismissal motion.

Based upon a review of: Defendants' NYSCEF Docket #'s 8, 10-18 - all submitted in support of the dismissal motion; Plaintiff's Docket #'s 21-23 - all submitted in opposition to the motion; and, Docket # 26 - which is submitted under seal; as well as upon oral argument heard at Special Term, this Court hereby **DENIES IN PART AND GRANTS IN PART** the motion for the reasons set forth hereinafter.

LAWSUIT FACTS

Background Information

Plaintiff Franck Bisimwa was a full-scholarship freshman at Defendant St. John Fisher College ("Fisher"), and was criminally charged for an alleged on-campus rape of a fellow student on November 15, 2014. Plaintiff was promptly expelled from Fisher for sexual misconduct, but was later acquitted of the criminal charge in 2016 after a trial.

In March of 2017, the parties entered into a Settlement and Release Agreement ("Agreement") in which new evidence from the criminal trial was noted; thus, Plaintiff's disciplinary record was expunged and a non-disparagement clause was put in place. With the Agreement in place, Plaintiff set about applying to new colleges.

Defendant Terri L. Travaglini ("Travaglini") is Fisher's Assistant Dean of Students and Residential Life, and in the Summer of 2017 and 2018 she provided three colleges with information that Plaintiff was found responsible for sexual misconduct, sexual assault, and actual harm [Docket #'s 12-16]. Plaintiff was denied admission to those schools.

Procedural History

This action was commenced on June 27, 2019, and it sets forth claims for:

* **1st** - Breach of contract
* **2nd** - Breach of contract
* **3rd** - Libel
* **4th** - Tortious interference with a contract
* **5th** - Negligence
* **6th** - Negligent misrepresentation

[Docket # 17].

Plaintiff asks for compensatory damages, punitive damages, and attorney's fees.

Legal Discussion

Defendants are not entitled to a complete dismissal, but some causes of action are infirm - as discussed below.

1st & 2nd - Breach of Contract

Defendants contend that the Agreement precluded only the release of actual disciplinary records, not summarized disciplinary information, so the subject letter disclosures did not run afoul of the same. Therefore, it is Defendants' position that the Agreement permitted Travaglini's conduct and is thus documentary proof negating the breach of contract claims pursuant to CPLR 3211 (a) (1).

In order for evidence submitted in support of a CPLR 3211 (a) (1) motion to warrant a dismissal it must "utterly refute[] plaintiff's factual allegations, conclusively establishing a defense as a matter of law." Goshen v. Mut. Life Ins. Co. of New York, 98 NY2d 314, 326 (2002). See also Higgitt, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR 3211, C3211:10 ("Documentary evidence" actually encompasses precious few documents, making CPLR 3211 (a) (1) a decidedly **narrow** ground on which to seek dismissal." {emphasis added}). "In order for evidence submitted in support of a CPLR 3211 (a) (1) motion to qualify as 'documentary evidence,' it must be 'unambiguous, authentic, and undeniable'" Eisner v. Cusumano Const., Inc., 132 AD3d 940, 941 (2d Dept 2015).

Defendants did not substantiate a right to dismissal based upon "documentary evidence" per the Agreement. See.e.g. Goshen, 98 NY2d at 326 (ruling that documents submitted in support of dismissal motion did not bar the plaintiffs' claims); Eisner, 132 AD3d at 941 (deciding that motion exhibits did not qualify as "documentary proof").

To adopt Defendants' isolated construction of Agreement Paragraph 13 would negate the entire purpose of the overall Agreement, namely to insulate Plaintiff from the negative implications of the now likely flawed disciplinary findings given the noted new proof. See generally Slatt v. Slatt, 64 NY2d 966, 967 (1985). To narrowly construe Paragraph 13 to permit Travaglini to "summarize" the initial confidential records in her letters to the colleges is unreasonable.

More importantly, Defendants' stance ignores the independent Non-Disparagement Clause at Paragraph 11 which prohibits any release of the subject student conduct history information. The Agreement must be read as a whole to effectuate all of its provisions. See Beal Sav. Bank v. Sommer, 8 NY3d 318, 324 (2007) ("A reading of the contract should not render any portion meaningless"); Calocerinos v. C & S Worldwide Holdings, Inc., 162 AD3d 1498, 1500 (4th Dept 2018) (rejecting proposed interpretation as it "violates the well-settled rule that 'a court should not read a contract so as to render any term, phrase, or provision meaningless or superfluous'" {emphasis added and internal citation omitted}). As in Calocerinos, this Court declines to follow Defendants' skewed reading of the Agreement to ignore another legal obligation unequivocally set forth therein. See also Audino v. Lincoln First Bank of Rochester, 105 AD2d 1091, 1093 (4th Dept 1984) (refusing to follow interpretation that would have certain language "serve no purpose" thereby becoming "nugatory"), aff'd, 65 NY2d 631 (1985); Info. Scis., Inc. v. Mohawk Data Science Corp., 56 AD2d 706 (4th Dept 1977) (rebuffing claim that would render a clause meaningless), aff'd, 43 NY2d 918 (1978).

Also, Defendants' legal authority does not support a CPLR 3211 (a) (1) dismissal. For example, in Sheriff's Silver Star Ass'n, Inc. v. County of Oswego, 27 AD3d 1104 (4th Dept 2006) the Appellate Division sustained the dismissal of a breach of contract claim under CPLR 3211 (a) (1) because the subject contract did not have any of the provisions that the plaintiff alleged existed [Docket # 9, p. 12]. Unlike Sheriff's Silver Star Ass'n, Inc., the subject Agreement has both a non-disclosure provision and also a non-disparagement clause that arguably cover the alleged infractions. In Barrett v. Grenda, 154 AD3d 1275 (4th Dept 2017), the appellate court dismissed a breach of contract claim when the plaintiff was unable to "identify the particular contractual provision that was breached." Again, the present Plaintiff cites specific Agreement provisions that Defendants violated thereby rendering Barrett factually distinguishable. Accordingly, neither Sheriff's Silver Star Ass'n, Inc. nor Barrett are persuasive authority compelling a pre-answer dismissal of the breach of contract causes of action.

Defendants' secondary argument is that no breaches occurred when the information was disclosed per Plaintiff's written authorizations. This ties into Defendants' equitable estoppel and waiver positions. See Nassau Trust Co. v. Montrose Concrete Products Corp., 56 NY2d 175 (1982); Marshall v. Pittsford Cent. Sch. Dist., 100 AD3d 1498 (4th Dept 2012), lv denied, 20 NY3d 859 (2013). The authorization for SUNY Buffalo expressly referenced the November 15, 2014, purported rape date, so there may be a strong argument that Plaintiff forfeited his right to confidentiality. However, Travaglini's response was not complete and gave only a partial picture of the entire disciplinary history as the cited new criminal trial evidence

and favorable expungement were not mentioned. See e.g. Rochester City School Dist. v. County of Monroe, 13 AD3d 1052, 1053 (4th Dept 2004) (finding no basis for application of the estoppel doctrine). Thus, even if Defendants could disclose the history in response to the authorization, they were still under an obligation to do so fully. The one-sided disclosure was prejudicial, and should be the subject of discovery and likely further motion practice. See e.g. Fundamental Portfolio Advisors, Inc. v. Tocqueville Asset Mgt., L.P., 7 NY3d 96 (2006) (affirming denial of summary judgment given actual issues surrounding the defenses of waiver and/or estoppel) [Docket # 9, p. 13]. As decreed in Defendants' case of Fundamental Portfolio Advisors, Inc., "the existence of an intent to forgo such a [contract] right is a **question of fact**." Id. at 104 (emphasis added). See also Town of Mexico v. County of Oswego, 175 AD3d 876 (4th Dept 2019) (reinstating contract claim given disputed waiver being an issue of fact). Contrary to Defendant's assertion at oral argument, Town of Mexico is not distinguishable as it reinforces the legal principle that "whether [a] party intended to waive a contractual right is a question of fact." This exact factual dispute in the case at hand prevents a pre-answer dismissal.

The Buffalo State authorization was not as specific so it too should not be construed at this early stage to block the litigation. Once more, the response to Buffalo State was only half true thereby still exposing Defendants to contractual liability. On a related note is Defendants' heavy reliance on the release of liability language in the Buffalo State authorization as follows:

> I agree to indemnify and hold harmless the agency and the person(s) to whom this authorization is presented, as well as their agents and employees, from and against all claims,

> damages, losses and expenses, including reasonable attorney's fees, arising out of or by reason of complying with this authorization.

[Docket # 15].

Defendants first call into question Plaintiff's *mens rea* by insisting that Plaintiff knew from both SUNY Buffalo and SUNY Stonybrook that Travaglini disclosed his initial disciplinary findings. See Park v. Lewis, 139 AD2d 961 (4th Dept 1988). Despite this, Plaintiff signed yet another authorization for Buffalo State. Defendants indicate in their Reply Memorandum of Law that Plaintiff's motivation, which they placed into question, behind the release is irrelevant, as the plain language of the same controls. Even looking at the release's verbiage alone, it did not grant Defendants a green light to breach the Agreement and/or defame Plaintiff. Any release language needed to be tested against the Agreement, which in this case it is too early to know how this document discrepancy was handled, as well as what Plaintiff's awareness was at the time of release's execution.

Defendants' final submission against the contract claims is that Travaglini is not a party to the Agreement so she has no personal liability. This is strictly correct, but ignores the fact that Travaglini was also sued in her official capacity as a college administrator - and it was in that formal role that she acted. Therefore, this Court will not relieve her of any possible breach of contract responsibility.

In sum, both breach of contract claims remain intact.

2nd & 3rd - Defamation /Libel

Defendants contend that: any defamation in regard to SUNY Buffalo and SUNY Stonybrook is time-barred: any timely conveyance to Buffalo State was not defamatory

because it was true, *i.e.*, the complaint fails to state a valid cause of action; and, they are protected by a qualified privilege.

As to the statute of limitations, Defendants are correct. See CPLR 3211 (a) (5); Ezeh v. Condon, 162 AD3d 1596 (4th Dept 2018) (affirming dismissal of stale defamation claims); Wendover Fin. Services v. Ridgeway, 137 AD3d 1718, 1719 (4th Dept 2016) (court properly granted dismissal motion per CPLR 3211 (a) (5) as the action was barred by the statute of limitations), lv denied, 140 AD3d 1715. As in Ezeh, the 2017 SUNY Buffalo and early 2018 SUNY Stonybrook defamation/libel claims must be dismissed as running afoul of the applicable limitations periods. See also Ely-Cruikshank Co., Inc. v. Bank of Montreal, 81 NY2d 399, 400 (1993) (dismissing untimely complaint).

Defendants properly point out that defamation/libel claim[s] are covered by a one year limitations period. See CPLR 215 (3). That year begins to run upon the first publication for libel claims. See Gelbard v. Bodary, 270 AD2d 866 (4th Dept 2000) (the plaintiff's defamation claims were subject to dismissal as time-barred). See also Nussenzweig v. diCorcia, 9 NY3d 184, 187 (2007).

Here, the 2017 and early 2018 disclosures are no longer legally actionable. See e.g. Di Orio v. Utica City School Dist. Bd. of Educ., 305 AD2d 1114, 1115 (4th Dept 2003) (lower court properly granted dismissal of defamation cause of action); Stamp v. Schenk, 267 AD2d 1017 (4th Dept 1999) (affirming statute of limitations dismissal). Rather, Plaintiff is limited to the purported defamation that occurred in July of 2018 with Buffalo State. See Brooks v. AXA Advisors, LLC, 104 AD3d 1178, 1180 (4th Dept 2013) (dismissing old claim).

In regard to the substance of the timely Buffalo State defamation/libel, it does not falter on the face of the Complaint as Defendants urge.

In determining a CPLR 3211 (a) (7) motion, the subject pleading is to be afforded a liberal construction. See CPLR 3026; Leon v. Martinez, 84 NY2d 83, 87 (1994) (motion to dismiss should have been denied); 190 Murray St. Assoc., LLC. v. City of Rochester, 19 AD3d 1116 (4th Dept 2005) (reversing order granting motion to dismiss). Under this liberal construction, "[t]he facts pleaded are to be presumed to be true and are to be accorded every favorable inference" in a plaintiff's favor to see if they fit within any cognizable legal theory. Younis v. Martin, 60 AD3d 1373 (4th Dept 2009) (affirming denial of motion to dismiss). See also 511 West 232nd Owners Corp. v. Jennifer Realty Co., 98 NY2d 144, 152 (2002) (the complaint was sufficient to survive a motion to dismiss). Thus, the criterion is whether the plaintiff has a cause of action, not whether he or she has properly stated one. See Guggenheimer v. Ginzburg, 43 NY2d 268, 275 (1977) (reversing grant of motion to dismiss); Syracuse Indus. Dev. Agency v. Gamage, 77 AD3d 1353, 1354 (4th Dept 2010) (affirming denial of dismissal motion).

This Court disagrees with Defendants that the lone timely disciplinary statement to Buffalo State was truthful as it failed to convey the entirety of Plaintiff's disciplinary history, which included the beneficial Agreement terms. See e.g. Davis v. Boeheim, 24 NY3d 262, 274 (2014) ("At this early stage of the litigation, on this pre-answer motion to dismiss," . . . "There is a reasonable view of the claims upon which [the plaintiffs] would be entitled to recover for defamation; therefore the complaint must be deemed to sufficiently state a cause of action"); Crane-Hogan Structural Sys., Inc. v. Belding, 142 AD3d 1385, 1386 (4th Dept 2016) (affirming decision not to dismiss libel claim).

"'Defamation by implication" is premised not on direct statements but on false suggestions, impressions and implications arising from **otherwise truthful statements**." Armstrong v. Simon & Schuster, Inc., 85 NY2d 373, 380–381 (1995) (emphasis added). See also Partridge v. State, 173 AD3d 86, 90-91 (3d Dept 2019) ("defamation by implication can include statements whose falsity is based not on what was said, but rather 'by omitting or strategically juxtaposing key facts'"). This is the theory on which Plaintiff relies, and which this Court thinks has a likelihood of success thereby barring an early dismissal now. See also Accadia Site Contr., Inc. v. Skurka, 129 AD3d 1453 (4th Dept 2015) (lower court erred in dismissing defamation suit per CPLR 3211 (a) (7)).

Additionally, Plaintiff did not authorize the inaccurate rendition of his disciplinary history, so he did not consent to a partial publication. Some of Defendants' cited cases on this issue are unavailing. In Spring v. County of Monroe, 151 AD3d 1694 (4th Dept 2017), lv denied, 153 AD3d 1677, the Appellate Division sustained the decision not to dismiss a defamation claim [Docket # 9, p. 17]. Consequently, Spring actually undermines Defendants' motion. See also D'Amico v. Correctional Med. Care, Inc., 120 AD3d 956, 962 (4th Dept 2014) (court erred in dismissing some defamation claims).

Next is Defendants' qualified privilege claim, which falters. See e.g. Mihlovan v. Grozavu, 72 NY2d 506 (1988) (reversing and denying motion to dismiss because statements were maliciously made and could overcome qualified privilege defense).

As the Fourth Department has explained:

> Defendant contends in the alternative that he is entitled to qualified privilege. Qualified privilege is an **affirmative defense that must be pleaded and proved by the**

> **defendant** . . . . Thus, consideration of the issue of qualified privilege is **premature where issue has not yet been joined.**

Kroemer v. Tantillo, 270 AD2d 810, 811 (4th Dept 2000) (emphasis added and internal citation omitted).

Pursuant to Kroemer, Defendants' motion stance is premature without an answer alleging a qualified privilege affirmative defense.

Moreover, and even if properly before the Court, Plaintiff's insistence that Travaglini was biased against him, and therefore acted with malice, is sufficient to call into question the validity of any such potential defense. See Liberman v. Gelstein, 80 NY2d 429, 437 (1992) ("The shield provided by a qualified privilege may be dissolved if plaintiff can demonstrate that defendant spoke with 'malice'"); Kondo-Dresser v. Buffalo Pub. Schools, 17 AD3d 1114, 1115 (4th Dept 2005) (finding that "the complaint contains sufficient allegations that [the defendant] acted with malice in making the alleged defamatory statements to withstand that part of defendants' motion seeking dismissal of the defamation cause of action"). See also Front, Inc. v. Khalil, 24 NY3d 713, 719 (2015) (recognizing that "if the privilege is 'qualified, it can be lost by plaintiff's proof that defendant acted out of malice'") [Docket # 9, p. 18].

Lastly, defamation spurred by malice exposes a defendant to punitive damages, so Defendants' request to dismiss this form of monetary relief is erroneous. See Nellis v. Miller, 101 AD2d 1002 (4th Dept 1984) (citing Toomey v. Farley, 2 NY2d 71 (1956)).

In sum, the defamation and libel claims are limited to the 2018 Buffalo State interaction.[a]

[a] The Court pauses to note that, the proof of the prior conduct may be relevant and admissible to show a pattern of malice, so any distinct admissibility issue is not being made at this time.

4th - Tortious Interference

Defendants assail the tortious interference with a contract claim against Travaglini on the ground that it is improperly duplicative of the defamation/libel claims, and that the Agreement was not with a third party. This attack is valid in part.

First of all, this Court is not convinced by Defendants' duplicative contention. Although the conduct is indeed the same, the damages may be different. The defamation/libel causes of action seek redress for the injury to Plaintiff's reputation, while the tortious interference seeks a remedy for failure to abide by the Agreement resulting in admissions denials. As it is permissible to plead claims in the alternative, Plaintiff's strategy is not flawed in this limited respect. See CPLR 3014 & 3017 (a). Defendants' case of Dobies v. Brefka, 273 AD2d 776 (3d Dept 2000) negated the interference claim only because there was no contract or business relationship to breach [Docket # 9, p. 19]. Unlike Dobies, there is an agreement in place in this case.

However, the Agreement was between the parties - Defendants' second and more compelling ground to dismiss. As to the elements of a tortious interference claim, the Court of Appeals has decreed:

> The tort of inducement of breach of contract, now more broadly known as interference with contractual relations, consists of four elements: (1) the existence of a contract between plaintiff **and a third party**; (2) defendant's knowledge of the contract; (3) defendant's intentional inducement **of the third party to breach** or otherwise render performance impossible; and (4) damages to plaintiff.

Kronos, Inc. v. AVX Corp., 81 NY2d 90, 94 (1993) (emphasis added). See also Aldridge v. Brodman, 100 AD3d 1537, 1539 (4th Dept 2012).

In this matter, Plaintiff had a contract with Fisher - a named Defendant - and Travaglini is an employee thereof, sued - in part - in that official capacity. It is more akin to a traditional breach of contract than a true tortious interference claim as no third-party breached the Agreement. This Court is unconvinced that Travaglini interfered with a contract to which she is bound and via conduct taking place in her official role at the college. See e.g. First Am. Commercial Bancorp, Inc. v. Saatchi & Saatchi Rowland, Inc., 55 AD3d 1264 (4th Dept 2008) (trial court erred by not dismissing tortious interference claim premised of contracting party's agent's acts). In other words, Travaglini's own conduct breached the Agreement. Additionally, there was no contract with the prospective, new colleges that Travaglini procured a breach of, so that cannot be a basis of liability. See Canandaigua Natl. Bank and Tr. Co. v. Acquest S. Park, LLC, 170 AD3d 1663, 1664-1665 (4th Dept 2019); Weaver v. Town of Rush, 1 AD3d 920, 924 (4th Dept 2003) (as the plaintiff had no enforceable leases with her tenants, the defendants could not have procured any breach thereof).

In all, the tortious interference claim is dismissed.

5th & 6th - Negligence and Negligent Misrepresentation

Defendants once more assert that these last two tort-based causes of action are duplicative of the time-barred defamation/libel claims, and further that they had no independent tort duty and are immune from a negligence suit due to a release. This Court partially agrees.

In regard to the renewed duplicity assertion, and as already mentioned, the causes of action pursue slightly different forms of harm so they are not improperly repetitive. Cf. Colon v. City of Rochester, 307 AD2d 742, 744 (4th Dept 2003) (as the

plaintiff was seeking only injury to reputation, negligence cause of action was properly dismissed as repetitive of defamation claim) [Docket # 9, p. 20].

Nevertheless, one of Defendants' other submissions is meritorious. In particular, Defendants are right that there was no duty of care separate and apart from the Agreement's terms. See e.g. Sestito v. Vickers, 175 AD3d 955 (4th Dept 2019) (concluding that the circumstances of this case did not warrant imposition of an independent duty).

As the Court of Appeals set forth:

> It is a well-established principle that a simple breach of contract is not to be considered a tort unless a legal duty independent of the contract itself has been violated . . . This legal duty must spring from circumstances extraneous to, and not constituting elements of, the contract, although it may be connected with and dependent upon the contract

Clark-Fitzpatrick, Inc. v. Long Is. R. Co., 70 NY2d 382, 389 (1987) (dismissing negligence claim) (internal citation omitted). See also Dormitory Auth. v. Samson Constr. Co., 30 NY3d 704, 711 (2018); Gallup v. Summerset Homes, LLC, 82 AD3d 1658, 1660 (4th Dept 2011) (the plaintiffs' tort causes of action were not viable because there was no legal duty owed independent of the contract).

In the case at bar, Plaintiff avers that Defendants owed him a tort duty of care to accurately report information. This is and of itself is true, but the measure of accuracy in this case is against the Agreement's terms. See e.g. Rich v. Orlando, 108 AD3d 1039, 1041 (4th Dept 2013) (negligence counterclaim was invalid as it stemmed from only a contractual breach). In other words, it is solely the Agreement's expungement and non-disparagement clauses that may have rendered the disclosures infirm and/or

inaccurate and thus legally actionable. Without the Agreement, Defendants did nothing wrong. As the Agreement once again controls the propriety of Defendants' actions, there is no basis for independent tort liability.

In sum, the negligence and negligent representation claims are dismissed.

Conclusion

Based upon all of the foregoing, it is the Decision and Order of this Court that: (1) Defendants' motion is **DENIED** as to the breach of contract claims and the Buffalo State defamation cause of action; and, (2) Defendants' motion is **GRANTED** as the SUNY Buffalo and SUNY Stonybrook defamation claims, the tortious interference cause of action, and the negligence and negligent representation claims. Accordingly, Defendants have ten (10) days from service of this Decision and Order, with Notice of Entry, to answer. See CPLR 3211 (f).

SCHEDULING ORDER

In this Court's discretion to manage its own cases, and after appropriate and due consideration; it is hereby

ORDERED, that time for completion of all discovery, including any depositions, shall be **May 15, 2020**; and it is further

ORDERED, that a Note of Issue and Statement of Readiness is to be filed on or before **May 29, 2020**. **FAILURE OF THE PLAINTIFF TO FILE A NOTE OF ISSUE AND CERTIFICATE OF READINESS BY THE DATE PROVIDED HEREIN WILL RESULT IN THIS MATTER BEING DEEMED STRICKEN "OFF" THE COURT'S CALENDAR WITHOUT FURTHER NOTICE PURSUANT TO 22 NYCRR § 202.27.** If so dismissed, the case may be restored without motion within one year of such

dismissal by: (1) the filing of a Note of Issue and Certificate of Readiness; and, (2) the forwarding of a copy thereof with a letter requesting restoration to the Court's Assignment Clerk. Also, restoration after one year shall, before the filing of a Note of Issue and Certificate of Readiness, require the additional documentation of a sworn affidavit by a person with knowledge showing a reasonable excuse for the delay, a meritorious cause of action, a lack of prejudice to the defendant, and the absence of intent to abandon the case. **THIS COURT SHALL AT ANYTIME AFTER THE DATE LISTED ABOVE, ENTERTAIN A DEFENSE MOTION TO DISMISS FOR WANT OF PROSECUTION WHICH RELIEF COULD INCLUDE A DISMISSAL OF THE COMPLAINT. THIS ORDER SHALL SERVE AS VALID 90-DAY DEMAND UNDER CPLR 3216 IF SO PROPERLY SERVED**; and it is further

ORDERED, that pursuant to CPLR 3212 (a) summary judgment motions are due within **ninety (90) days** of the Note of Issue filing date; and it is further

ORDERED, that any extensions of the above deadlines will be granted only upon the showing of good cause, set forth in writing, and on notice to opposing counsel, at least ***ten (10) business days*** in advance of the date to be extended. That writing **must be accompanied by a proposed Amended Scheduling Order**!

Signed at Rochester, New York on November 20, 2019.

HONORABLE J. SCOTT ODORISI
Justice of the Supreme Court