UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BRIDGET BITTMAN, Plaintiff, v. MEGAN FOX, an individual; KEVIN DUJAN, an individual; DAN KLEINMAN, an individual; ADAM ANDRZEJEWSKI, an individual; and FOR THE GOOD OF ILLINOIS, an Illinois Not for Profit Organization, Defendants.	)	Civil Action No.: 1:14-cv-8191

DEFENDANTS FOX AND DUJAN'S PARTIAL MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT AND MOTION FOR AN EXTENSION OF TIME TO ANSWER THE REMAINING COUNTS OF THE AMENDED COMPLAINT

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Megan Fox and Kevin DuJan respectfully move the Court to dismiss, with prejudice, Counts 1, 2, 7, 10, 11, 12, and 13 of Plaintiff Bridget Bittman's Amended Complaint, and request that this Court extend time to answer the remaining counts of the Amended Complaint until 14 days after ruling on the Partial Motion to Dismiss. As set forth more fully in Defendants Fox and DuJan's Memorandum in Support of their Partial Motion to Dismiss Plaintiff's Amended Complaint and Motion for an Extension of Time to Answer the Remaining Counts of the Amended Complaint (the "Memorandum in Support"), Plaintiff has failed to state causes of action for each of the following claims: violation of the Computer Fraud and Abuse Act ("CFAA") in Count 1; violation of the Stored Communications Act ("SCA") in Count 2; Assault in Count 7; Defamation in Count 10; False Light in Count 11; Intentional Infliction of Emotional Distress in

Count 12; and Injunctive Relief in Count 13. These claims should be dismissed for the following reasons:

1. In Counts 1 and 2, Plaintiff brings claims under the Computer Fraud and Abuse Act ("CFAA") and the Stored Communications Act ("SCA"), statutes designed to prevent computer hacking and electronic information theft. Plaintiff attempts to apply these statutes to a satirical Facebook Page, but her factual allegations fall far outside the scope of these statutes and thus fail to state viable claims. As discussed in the Memorandum in Support, Plaintiff's allegations about the Facebook Page do not meet the statutory standards of computer access "without authorization" or "exceeding authorized access" as required by both the CFAA and SCA. *See Matot v. CH*, 975 F. Supp. 2d 1191, 1192 (D. Or. 2013).

2. Plaintiff's CFAA claim fails on additional grounds. A civil cause of action under the CFAA may be raised only where the defendants' substantive violation caused "damage" or "loss." 18 U.S.C. § 1030(g). Plaintiff has not alleged any harm falling within the CFAA's statutory definitions of either of these elements. "Damage" encompasses the "destruction, corruption, or deletion of electronic files, the physical destruction of a hard drive, or any diminution in the completeness or usability of the data on a computer system." *SBS Worldwide, Inc. v. Potts*, No. 13 C 6557, 2014 WL 499001, at *8 (N.D. Ill. Feb. 7, 2014). Similarly, the CFAA definition of "loss" only includes costs related to computer impairment after an interruption in service. *See id.* at *9. Plaintiff makes no claims that defendants destroyed, corrupted, or deleted any electronic data, nor does she allege costs related to computer repair. Thus, Plaintiff has not pled facts within the CFAA's definition of either "damage" or "loss." Additionally, because Plaintiff has failed to claim any cognizable "loss," she has failed to meet

the CFAA's requirement that a civil plaintiff allege losses of $5,000 within a one year period. *See* 18 U.S.C. § 1030(c)(4)(A)(i)(I).

3. Plaintiff's claims for defamation and false light based on the Facebook Page, set forth in Counts 10 and 11, are insufficient because Plaintiff fails to identify any statements on the Page about herself, and the statements she does identify are capable of innocent construction and are statements of opinion. Claims for defamation and false light will be dismissed where the disputed statements are subject to innocent construction or merely state opinions. *See Mancari v. Infinity Broad. East, Inc.*, No. 04 C 3599, 2004 WL 2958765, at *5 (N.D. Ill. Nov. 25, 2004); *Green v. Rogers*, 917 N.E.2d 450, 464–65 (Ill. 2009); *Rose v. Hollinger Int'l, Inc.*, 889 N.E.2d 644, 648 (Ill. App. 2008); *Schivarelli v. CBS, Inc.*, 776 N.E.2d 693, 701 (Ill. App. 2002), *appeal denied* 787 N.E.2d 170 (Ill. 2002). The innocuous statements Plaintiff identifies on Sassy Plants cannot sustain a cause of action for either defamation or false light.

4. Plaintiff's allegations in Count 7 that DuJan "followed and approached" her do not constitute a claim for assault. *See* Amended Complaint ¶ 285. A plaintiff alleging assault must plead facts indicating that the defendant created a reasonable fear of imminent injury through a verbal threat and threatening physical gesture. *See Slaughter v. Waubonsee Cmty. Coll.*, No. 94 C 2525, 1995 WL 106420, at *2 (N.D. Ill. March 9, 1995). Here, as in *Slaughter*, "The complaint contains no allegations that he ever made any attempt to touch plaintiff, or ever threatened to touch plaintiff," and therefore the claim should be dismissed. *Slaughter*, 1995 WL 106420, at *2.

5. In Count 12, Plaintiff's allegations are not sufficiently "extreme and outrageous" to state a claim for intentional infliction of emotional distress. To establish such a claim, Plaintiff must allege "extreme and outrageous conduct" intended to cause distress that is "so

severe that no reasonable man could be expected to endure it." *Milton v. Wal-Mart Stores, Inc.*, No. 11 C 7872, 2012 WL 1953197, at *3 (N.D. Ill. May 25, 2012). Allegations that Defendants posted online material that offends Plaintiff simply fail to meet the objective pleading standard for "extreme and outrageous conduct," and therefore Plaintiff has not adequately pleaded this claim. *See Duffy v. Orlan Brook Condo. Owners' Ass'n*, 981 N.E.2d 1069, 1079 (Ill. App. Ct. 2012) (liability does not extend to "mere insults, indignities, threats, annoyances, petty oppressions, or trivialities").

6. The final claim of Plaintiff's complaint fails to state a substantive ground for relief. Injunctive relief is a remedy, not a separate claim. *CustomGuide v. CareerBuilder, LLC*, 813 F. Supp. 2d 990, 1002 (N.D. Ill. 2011). Count 13 is simply an improper request for an injunction and should be dismissed.

7. In addition to requesting dismissal of the above claims, Defendants Fox and DuJan respectfully move the Court to extend time to answer the remaining counts of the Amended Complaint. Filing a partial motion to dismiss under Rule 12(b) extends the time to file an answer to the entire complaint, including the claims not at issue in the Rule 12(b) motion. *See Intercom Ventures, LLC v. FasTV, Inc.*, No. 13 C 232, 2013 WL 2357621, at *6–7 (N.D. Ill. May 28, 2013). Defendants therefore request that this Court extend time to answer the remaining counts of Plaintiff's Amended Complaint until 14 days after the Court rules on the Partial Motion to Dismiss.

For all of these reasons, and those set forth in the accompanying Memorandum in Support, Defendants respectfully request that this Court dismiss with prejudice Counts 1, 2, 7, 10, 11, 12, and 13 of Plaintiff's Amended Complaint, and extend time to answer the remaining counts of the complaint until after this Court's ruling on the Partial Motion to Dismiss.

Dated: February 19, 2015

Respectfully submitted,

s/ Daniel R. Lombard

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CERTIFICATE OF SERVICE

I certify that on February 19, 2015, I caused the foregoing MOTION to be served via Electronic Court Filing ("ECF") and/or electronic mail in compliance with the Federal Rules of Civil Procedure on the following counsel:

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