IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

BRIDGET BITTMAN, Plaintiff, v. MEGAN FOX, KEVIN DUJAN, DAN KLEINMAN, ADAM ANDRZEJEWSKI, and FOR THE GOOD OF ILLINOIS, Defendants.	)	Case No. 1:14-cv-8191 (JFH) (SEC)

DEFENDANT DAN KLEINMAN'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(2) and 12(b)(6)

Pursuant to Rule 12(b)(2) and Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Dan Kleinman respectfully moves this Court to dismiss, with prejudice, the claims brought against him in Counts 5, 6, 8, 9, and 13 of Plaintiff Bridget Bittman's Amended Complaint. As set forth more fully in Defendant Dan Kleinman's Memorandum in Support of his Motion to Dismiss Plaintiff's Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(6), this Court lacks personal jurisdiction over Defendant Kleinman; alternatively, Plaintiff's Amended Complaint fails to state a claim against Defendant Kleinman, for which relief could be granted.

Specifically, Plaintiff's claims against Defendant Kleinman should be dismissed for the following reasons:

1. This Court lacks both general and specific personal jurisdiction over Defendant Kleinman, a New Jersey resident who has never been to Illinois. Defendant Kleinman does not

have such "continuous and systematic" contacts with the State of Illinois, such that he should be subjected to general personal jurisdiction here. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984). Additionally, Defendant Kleinman has not "purposefully directed" any activities at Illinois, such that specific personal jurisdiction is proper. *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 472 (1985). Specifically, he has not "expressly aimed" any conduct at Illinois or Illinois residents. *Tamburo v. Dworkin,* 601 F.3d 693, 703 (discussing *Calder v. Jones*, 465 U.S. 783) (1984)). Finally, subjecting Defendant Kleinman to specific personal jurisdiction in Illinois would "offend traditional notions of fair play and substantial justice" as laid out by the U.S. Supreme Court. *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945).

2. Alternatively, Plaintiff's defamation claims against Defendant Kleinman in Counts 5 and 8 are also suitable for dismissal pursuant to Rule 12(b)(6). As a public figure, Plaintiff has not sufficiently pled that Kleinman exercised actual malice in posting a blog article documenting the events giving rise to this litigation. *See, e.g., Pippen v. NBC Universal Media, LLC,* 734 F.3d 610, 614 (7th Cir. 2013). Plaintiff's defamation claim related to Defendant Kleinman's blog post also fails because his statements are capable of innocent construction. *Tuite v. Corbitt*, 866 N.E.2d 114, 121 (Ill. 2006). Finally, the allegations that Plaintiff was defamed in connection with certain vaguely pled statements—the so-called "Gay Hater Statement and "homophobic" characterization (Compl. ¶¶ 128-29) fail for two reasons: (1) there is not a sufficient allegation that they were published. *Krasinski v. United Parcel Serv. Inc.*, 530 N.E.2d 468, 471 (Ill. 1988); and (2) even if they were published, they would have constituted non-actionable opinion. *Stevens v. Tillman*, 855 F.2d 394, 398 (7th Cir. 1988)(citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339-40 1974)).

3. Plaintiff's false light claims against Kleinman in Counts 6 and 9 fail for similar reasons. Plaintiff has not established that Defendant Kleinman acted with actual malice, as required to set forth a false light claim. *See, e.g., Pope v. Chronicle Pub. Co.*, 95 F.3d 607, 616 (7th Cir.1996); *Kolegas v. Heftel Broad. Corp.*, 607 N.E.2d 201, 209 (Ill. 1992). Additionally, Plaintiff does not allege that or how the so-called Gay Hater Statement or the "homophobic" characterization were "placed … before the public" as also required to establish a false light claim. *See Pope,* 95 F.3d at 616; *Kolegas,* 607 N.E.2d at 209. Even if these statements were placed before the public, they would have constituted non-actionable opinion. *Schivarelli v. CBS Inc.*, 776 N.E.2d 693, 701 (Ill. App. Ct. 2002).

4. Finally, injunctive relief is a remedy, not a separate cause of action. *See, e.g.*, *CustomGuide v. CareerBuilder, LLC,* 813 F. Supp. 2d 990, 1002 (N.D. Ill. 2011). Thus, Count 13 should be dismissed.

For all of these reasons, and those set forth in the accompanying Memorandum in Support of Defendant Dan Kleinman's Motion to Dismiss, Defendant Kleinman respectfully requests that this Court dismiss, with prejudice, the claims brought against him in Counts 5, 6, 8, 9, and 13 of Plaintiff's Amended Complaint.

Dated: February 19, 2015

Respectfully submitted,

/s/ Benjamin M. Shrader____
Attorney for Defendant,
Dan Kleinman

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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") in compliance with the Federal Rules of Civil Procedure on counsel of record for all parties.

s/ Benjamin M. Shrader____
Attorney for Defendant,
Dan Kleinman