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 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)

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INTRODUCTION

Defendant Dan Kleinman lives in New Jersey. He is a "library watchdog" and journalist who has voiced critical opinions about library policies and practices, nationwide, which allow library patrons to access and view pornography on public library computers. On his editorial blog,[1] SafeLibraries, Kleinman publishes frequently on this and other library policy-related topics. His work as a library watchdog is often cited in print and electronic media, and he has been recognized as an expert on library-related issues and laws.

During the course of his work, Kleinman has voiced critical opinions regarding the Orland Park Public Library's pornography-related policies, particularly in the context of criticizing the American Library Association's policies and practices regarding such matters. This lawsuit is a thinly veiled attempt to silence Kleinman's critical opinions about the Orland Park Public Library and other libraries, and to chill the exercise of his First Amendment rights.

BACKGROUND

Plaintiff Bridget Bittman ("Plaintiff") is a public official and figure, currently serving as the Orland Park Public Library's spokesperson and Public Information Coordinator. *See* Dkt. 1, Am. Compl. (hereinafter "Compl.") ¶¶ 1-2. As laid out in her Amended Complaint, Plaintiff and the Orland Park Public Library have been embroiled in conflict with local community activists, who have openly criticized the Library's policies. Compl. ¶¶ 26-28. These community activists have also criticized Plaintiff and the Library by posting videos on social media and the Internet,

[1] According to Merriam-Webster's, a blog is "a Web site on which someone writes about personal opinions, activities, and experiences or "a Web site that contains online personal reflections, comments, and often hyperlinks provided by the writer." *Available at* http://www.merriam-webster.com/dictionary/blog.

which included statements of opinion about Plaintiff and other Library employees. Compl. ¶¶ 53, 73-74.

Defendant Kleinman has never been to the Orland Park Public Library; in fact, he has never set foot in Illinois. *See* Declaration of Dan Kleinman (hereinafter "Kleinman Decl.") ¶ 5. On July 27, 2014, Kleinman posted an article to his publicly accessible blog, SafeLibraries, documenting a dispute between library critics, Plaintiff, and other Library employees, which had occurred on July 8, 2014. Compl. ¶ 93. In this article, referenced in ¶ 93 of Plaintiff's Amended Complaint, Kleinman posted a link to a video of the dispute (which included commentary and statements of opinion made by the video's creator); linked to an online article written by a local community activist; and provided editorial opinions on the incident, the Orland Park Public Library in general, and other general library-related policies.

In response to the ongoing dispute among Plaintiff, co-defendants, and others, Plaintiff has filed a 13-count Complaint. Based on Kleinman's editorial blog post and other vaguely alleged statements purportedly made by Kleinman, Plaintiff brings the following claims against him: defamation *per se* (Counts 5 and 8); false light (Counts 6 and 9); and "injunctive relief" (Count 13). The allegations against Kleinman appear to stem from his editorial activity on the SafeLibraries blog.

ARGUMENT

This Court lacks personal jurisdiction over Defendant Kleinman, and all of Plaintiff's claims against Defendant Kleinman should be dismissed, pursuant to Rule 12(b)(2). Alternatively this Court should dismiss Plaintiff's claims against Kleinman pursuant to Rule 12(b)(6). Defendant Kleinman does not waive his personal jurisdiction-related defenses by also moving to dismiss pursuant to Rule 12(b)(6). Fed R. Civ. P. 12(b).

I. THIS COURT LACKS PERSONAL JURISDICTION OVER DAN KLEINMAN

Plaintiff asserts that Defendant Kleinman has "sufficient contacts" and is therefore subject to general personal jurisdiction in this District "and/or" he has "directed conduct" toward Plaintiff in this jurisdiction to a sufficient degree for this Court to exercise specific personal jurisdiction over him. Compl. ¶ 12. It is true that there are two types of personal jurisdiction—general and specific. The nature of a defendant's contacts with the forum state determines not only whether jurisdiction is proper, but its scope—that is, whether general or specific jurisdiction is proper. *See, e.g., Tamburo v. Dworkin*, 601 F.3d 693, 701 (7th Cir. 2010)(citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984)). As described below, this Court lacks both general and specific personal jurisdiction over Defendant Kleinman.

A. This Court Lacks General Personal Jurisdiction over Defendant Kleinman

As noted by the *Tamburo* court, "the threshold for general jurisdiction is high; the contacts must be sufficiently extensive and pervasive to approximate physical presence." 601 F.3d at 701 (citing *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d at 787 n. 16). "Isolated or sporadic" contacts are not sufficient to establish general personal jurisdiction. *Tamburo*, 601 F.3d at 701. (noting that occasional visits to the forum state are insufficient for general jurisdiction). That is because "sporadic contacts with Illinois do not approach the level of 'continuous and systematic' contacts necessary to establish general personal jurisdiction." *Id.* at 701-02. Importantly, "the maintenance of a public Internet website [is not] sufficient, without more, to establish general jurisdiction." *Id.* at 701.

As Plaintiff has recognized, Defendant Kleinman is a resident and citizen of New Jersey. Compl. ¶ 6. Dan Kleinman has never lived in Illinois. Kleinman Decl.¶ 4. In fact, Dan Kleinman has never even set foot in Illinois. *Id.* at ¶ 5. As noted above, and throughout Plaintiff's Complaint, Defendant Kleinman operates a blog. *See, e.g.*, Compl. ¶ 93. This blog,

SafeLibraries, is publicly available and accessible for anyone with an Internet connection to read. Kleinman Decl. ¶ 8. Kleinman operates this blog from his home state of New Jersey. *Id.* at ¶ 7.

Quite simply, this Court lacks general personal jurisdiction over Defendant Kleinman. Mr. Kleinman has never even made one visit to Illinois, let alone occasional visits. *See Tamburo*, 601 F.3d at 701. He has never lived in Illinois and he has never worked in Illinois. Kleinman Decl.¶ 5. Defendant Kleinman simply does not have such "continuous and systematic" contacts with the State of Illinois, such that he should be subjected to general personal jurisdiction here. *See Helicopteros*, 466 U.S. at 416. And as the *Tamburo* court has noted, operating a publicly available Internet website—like the SafeLibraries blog—is not enough on its own to establish general personal jurisdiction over Defendant Kleinman. 601 F.3d at 701.

B. This Court Lacks Specific Personal Jurisdiction over Defendant Kleinman

Specific personal jurisdiction is only appropriate in cases where (1) the defendant has purposefully directed his activities at the forum state or purposefully availed himself of the privilege of conducting business in that state, and (2) the alleged injury arises out of the defendant's forum-related activities. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). A court's "exercise of specific personal jurisdiction must also comport with traditional notions of fair play and substantial justice as required by the Fourteenth Amendment's Due Process Clause." *Tamburo*, 601 F.3d at 701 (citing *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945)).

1. Defendant Kleinman did Not Purposefully Direct any Activities at Illinois

In this case, this Court lacks specific personal jurisdiction over Defendant Kleinman because he never "purposefully directed" any activities at the forum state. *See Burger King*, 471 U.S. at 472. Courts have suggested three requirements for personal jurisdiction in this area: "(1) intentional conduct (or "intentional and allegedly tortious" conduct); (2) expressly aimed at the forum state; (3) with the defendant's knowledge that the effects would be felt—that is, the

plaintiff would be injured—in the forum state." *Tamburo*, 601 F.3d at 703 (discussing *Calder v. Jones*, 465 U.S. 783) (1984)). *See also Tamburo*, 601 F.3d at 709 n. 7 (noting that *Calder* applies to cases involving alleged torts committed over the Internet).

Defendant Kleinman operates his blog from his home state of New Jersey. Kleinman Decl. ¶ 7. On his blog, Defendant Kleinman publishes articles about topics of interest from all over the country. *Id.* at ¶ 9. He does not direct these articles to any particular forum or state. *Id.* at ¶ 10. Notably, Plaintiff does not allege that Defendant Kleinman's blog post regarding the "July 8 Video" was directed to Illinois (or any other forum). Compl. ¶ 93-94.

In this case, the complained of blog post was not directed or aimed at Illinois residents or readers in any way. Kleinman Decl. ¶ 11. *Young v. New Haven Advocate*, a Fourth Circuit case, is therefore instructive here. *Young* involved allegedly defamatory statements published online by a Connecticut newspaper about Virginia residents; the article was available for anyone to read over the Internet. 315 F.3d 256, 258-59 (4th Cir. 2002). The *Young* court held that, in order for personal jurisdiction to be present under *Calder*, the publisher of the online content must "manifest an intent to target and focus on" readers in the subject forum. *Id.* at 263. According to that court, if a publisher of online content does not manifest intent to reach the subject forum—even if the content is available for anyone to read, including people in the subject forum—it does not have sufficient contacts with the forum state to permit a district court to exercise specific personal jurisdiction over it. *Id.* at 264 (reversing the district court's denial of defendant newspaper and employees' motion to dismiss for lack of personal jurisdiction). *See also Tamburo*, 601 F.3d at 710 n. 10 (discussing *Young* decision and allowing that "[i]n a case involving a stand-alone Internet-based defamation, *Calder* might require a showing that the defendant intended to reach forum-state readers").

Keeping with this theme, subjecting a foreign defendant to personal jurisdiction requires not only an alleged injury in the forum state, but "something more" directed at that state. *See Tamburo*, 601 F.3d at 706 (discussing *Janmark, Inc. v. Reidy*, 132 F.3d 1200 (7th Cir. 1997) and noting that personal jurisdiction under *Calder* was only proper due to Illinois-based injury *and* the fact that the defendant acted with the purpose of interfering with sales originating in Illinois)(emphasis in original)). The fact that Kleinman's blog post was available to be read by someone in Illinois, without more, is not sufficient to establish specific personal jurisdiction. *See Young*, 315 F.3d at 263. Defendant Kleinman did not "express[ly] aim" the allegedly defamatory statements at the forum state. *See Tamburo*, 601 F.3d at at 703. Thus, the "something more" required to subject him to personal jurisdiction here is missing. *Id.* at 706 (internal citations omitted).

In her Amended Complaint, Plaintiff briefly and vaguely alleges that Defendant Kleinman defamed her and portrayed her in a false light by making two other statements: the so-called "Gay Hater Statement" (Compl. ¶ 128); and characterizing her as a "homophobe." Compl. ¶ 129. As discussed in Section II, *infra*, these allegations are so vague as to be ripe for dismissal on other grounds. For purposes of Defendant Kleinman's Rule 12(b)(2) motion, he merely points them out here to note that there is no allegation that either statement was "purposefully directed" towards readers or citizens in Illinois; in fact, Plaintiff's Complaint does not specify how, where, or to whom these statements were even published (if they were). Compl. ¶¶ 128-29. In sum, these two vague allegations are not sufficient to establish personal jurisdiction over Defendant Kleinman in this case.

2. Subjecting Defendant Kleinman to Specific Personal Jurisdiction would Violate Notions of Fair Play and Substantial Justice

Defendant Kleinman has never been to Illinois. Kleinman Decl. ¶ 5. Allowing Plaintiff to drag him into court here, based on an editorial blog post that he published to a national readership about a topic of interest involving not only an Illinois library and its employees, but American libraries in general, would place a substantial burden on Mr. Kleinman. *Tamburo*, 601 F.3d at 709 (citing *Burger King*, 471 U.S. at 477). Furthermore, this blog post was not "purposefully directed" at Illinois. *See Burger King*, 471 U.S. at 472. And it was not "express[ly] aimed" at Illinois. *Tamburo*, 601 F.3d at 703. Accordingly, Defendant Kleinman could not have anticipated being hailed into court here, and doing so would "offend traditional notions of fair play and substantial justice." *Tamburo*, 601 F.3d at 709 (citing *Int'l Shoe*, 326 U.S. at 316).

In sum, this Court lacks personal jurisdiction over Defendant Kleinman. Accordingly, the claims against him in Counts 5, 6, 8, 9, and 13 of Plaintiff's Amended Complaint should be dismissed with prejudice against Defendant Kleinman pursuant to Fed. R. Civ. P. 12(b)(2).

II. PLAINTIFF'S DEFAMATION AND FALSE LIGHT CLAIMS AGAINST KLEINMAN SHOULD BE DISMISSED PURSUANT TO FED. R. CIV. P. 12(b)(6)

In her Amended Complaint, Plaintiff brings claims for defamation *per se* and false light against all defendants in Counts 5 and 6 and against Defendants Fox, Dujan, and Kleinman in Counts 8 and 9. Her claims against Defendant Kleinman are based on two different scenarios. In Counts 5 and 6, Plaintiff alleges that Kleinman defamed her and portrayed her in a false light based on the so-called Republication Statement in connection with the July 8 Video. Compl. ¶¶ 246-50; 263-64. In Counts 8 and 9, Plaintiff alleges that Kleinman defamed her and portrayed

her in a false light based on the so-called Gay Hater Statement and by "characterizing" her as a "homophobe." Compl. ¶¶ 302-05; 313-22.[2]

To survive dismissal pursuant to Fed. R. Civ. P. 12(b)(6), a complaint must allege facts sufficient to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Allegations in the form of legal conclusions are insufficient to survive a Rule 12(b)(6) motion, and allegations supported by "mere conclusory statements, do not suffice." *McReynolds v. Merrill Lynch & Co., Inc.*, 694 F.3d 873, 885 (7th Cir. 2012)(citing *Iqbal*, 556 U.S. at 678). "[A] plaintiff has the obligation to provide factual grounds of his entitlement to relief (more than mere labels and conclusions), and a formulaic recitation of the elements of a cause of action will not do." *Bissessur v. Ind. Univ. Bd. Of Trs.*, 581 F.3d 599, 602 (7th Cir. 2009)(internal quotation marks omitted). A plaintiff's complaint must "actually suggest that that plaintiff has a right to relief, by providing allegations that raise a right to relief above the speculative level." *Indep. Trust. Corp. v. Stewart Info. Servs. Corp.*, 665 F.3d 930, 935 (7th Cir. 2012).

A. Plaintiff's Defamation Claims Against Defendant Kleinman (Counts 5 and 8) Should be Dismissed

To state a claim for defamation under Illinois law, a plaintiff must set out sufficient facts to show (1) the defendant made a false statement concerning the plaintiff; (2) the statement was published to a third party; and (3) the publication of the false statement caused damage to the plaintiff." *See, e.g. Intercon Solutions, Inc. v. Basel Action Network*, 969 F. Supp. 2d 1026, 1056

[2] Counts 8 and 9 also reference the so-called Police Report Statement and the so-called Google Photo Statement. *See generally,* Counts 8-9. However, it is not alleged in Plaintiff's Amended Complaint that Defendant Kleinman made or republished either of those statements. Compl. ¶¶ 36-40.

(N.D. Ill. 2013)(citing *Krasinski v. United Parcel Serv. Inc.*, 530 N.E.2d 468, 471 (Ill. 1988)). In Illinois, there are five recognized categories of defamation *per se*:

> (1) statements imputing the commission of a crime; (2) statements imputing infection with a loathsome communicable disease; (3) statements imputing an inability to perform or want of integrity in performing employment duties; (4) statements imputing a lack of ability or that otherwise prejudice a person in his or her profession or business; and (5) statements imputing adultery or fornication.

Tuite v. Corbitt, 866 N.E.2d 114, 121 (Ill. 2006). Plaintiff alleges that the first, third, and fourth types are at issue in this case. Compl. ¶¶ 247-49.

To establish a claim for defamation *per se*, Plaintiff—as a public figure—must show that the allegedly defamatory statements were published with actual malice; "in other words, that the defendants either knew the statements to be false or were recklessly indifferent to whether they are true or false." *See, e.g., Pippen v. NBC Universal Media, LLC*, 734 F.3d 610, 614 (7th Cir. 2013)(internal citations omitted). "States of mind may be pleaded generally, but a plaintiff still must point to details sufficient to render a claim plausible." *Id.* (citing *Twombly*, 550 U.S. at 570 and *Iqbal*, 556 U.S. at 662). The showing of actual malice must be made with convincing clarity. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 244 (1986) ("actual malice" may not be presumed and requires "clear and convincing evidence."). To establish actual malice, Plaintiff must show that Kleinman either knew the statements that he allegedly republished and made were false, or that he had serious doubts about their truth, and that he chose to post them on his blog anyway. *See Desnick v. American Broadcasting Companies, Inc.*, 233 F.3d 514, 517-18 (7th Cir. 2000).

1. Count 5 – July 8 Video/Blog Post on SafeLibraries

In Count 5, Plaintiff alleges that she suffered defamation *per se* at the hands of all Defendants, in connection with the publication and alleged republication of the so-called July 8 Video and its related caption. Compl. ¶¶ 224-61. Additionally, Plaintiff alleges that, in his blog

post about the July 8 Video, Defendant Kleinman defamed her *per se*, by stating that Plaintiff "attacked a 'gay man.'" Compl. ¶¶ 94; 246.

Plaintiff has not pled actual malice with enough specificity. In her Amended Complaint, Plaintiff merely provides a conclusory allegation that Defendants, including Kleinman, made and republished the alleged defamatory statements related to the July 8 Video with actual malice, or in the alternative, reckless disregard for the falsity of these statements. Compl. ¶¶ 258-59. Specifically, Plaintiff provides no details as to why or how Defendant Kleinman knew, or would have known the statements contained in the July 8 video and related caption—a video and caption that he did not produce—were false.

Additionally, even if a statement falls within one of the five enumerated categories of defamation *per se*, it is not actionable if it is reasonably capable of an innocent construction. *Tuitte*, 866 N.E.2d at 121. Plaintiff alleges that Defendant Kleinman "falsely imputes" that Plaintiff engaged in criminal activity—the first category of defamation *per se*—when he wrote on his blog that she "attacked a 'gay man.'" Compl. ¶¶ 246-47. However, in this context, the word "attack" is "reasonably capable of innocent construction." *Tuitte*, 866 N.E.2d at 121. For example, according to Merriam-Webster's, "attack" can be defined as follows: "to criticize (someone or something) in a very harsh and severe way." *See* Merriam-Webster's online dictionary, available at http://www.merriam-webster.com/dictionary/attack. Harsh criticism alone is not a crime. Furthermore, as laid out above, Plaintiff and the community activists portrayed in the video have been embroiled in long-standing conflict. Compl. ¶¶ 26-28. In the context of this conflict and Defendant Kleinman's blog post (cited by Plaintiff at Compl. ¶¶ 93-94), it is reasonable to read those words as referring to a harsh criticism by Plaintiff of the people in the video. The word "attack" is reasonably capable of just such an innocent construction. It is

therefore not actionable under Illinois law. Count 5 should be dismissed with prejudice against Kleinman.

2. Count 8 - "Gay Hater Statement"

Count 8 of Plaintiff's Complaint alleges that Defendants Fox, Dujan, and Kleinman defamed Plaintiff *per se*, through the so-called Police Report Statement, the Google Photo Statement, and the Gay Hater Statement. The only statement relevant to Defendant Kleinman in Count 8 is the so-called Gay Hater Statement. Compl. ¶ 128. In making this allegation, Plaintiff vaguely alleges that on August 21, 2014, Defendant Kleinman "characterized" Plaintiff as a "gay hater." *Id.* Plaintiff's Amended Complaint does not allege that Defendant Kleinman made or republished either of the other two statements at issue in Count 8. Compl. ¶¶ 36-40. Plaintiff also vaguely and generally asserts that, at some unknown point, Defendant Kleinman characterized Plaintiff as a "homophobe." Compl. ¶ 129. Though this is not separately alleged specifically in Count 8, Defendant Kleinman addresses that allegedly defamatory statement here, as it suffers from the same pleading deficiencies as the so-called Gay Hater Statement.

As detailed above, to establish a defamation claim in Illinois, a plaintiff must establish that the allegedly offending statement was published to a third party. *Krasinski v. United Parcel Serv. Inc.*, 530 N.E.2d 468, 471 (Ill. 1988). Even viewing Plaintiff's Complaint in a light most favorable to her, the throwaway and conclusory allegation that the Gay Hater Statement and the other statements at issue in Count 8 were published is inadequate ("publication of the statements"; Compl. ¶ 310). Plaintiff does not allege how or to whom the Gay Hater Statement was published on August 21, 2014. Allegations in the form of legal conclusions are insufficient to survive a Rule 12(b)(6) motion, and allegations supported by "mere conclusory statements, do not suffice." *McReynolds v. Merrill Lynch & Co., Inc.*, 694 F.3d 873, 885 (7th Cir. 2012)(citing *Iqbal*, 556 U.S. at 678). Plaintiff's allegations regarding the Gay Hater Statement fall well short

of putting Defendant Kleinman on notice of the claims being raised against him, and do not provide sufficient information for him to formulate an answer or identify affirmative defenses. *See Green v. Rogers*, 917 N.E.2d 450, 459 (Ill. 2009).

Plaintiff's allegation that Defendant Kleinman "characterized" her as a "homophobe" is even less specific. Compl. ¶ 129. Not only does Plaintiff fail to allege that this statement was published to a third party, she fails to allege how or when it was published, and to whom. This vague and conclusory allegation falls well short of the requirements set forth under Illinois substantive and Federal procedural law.

Additionally, the First Amendment "prohibits attaching civil liability to statements of 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)). "[I]f it is plain that the speaker is expressing a subjective view, an interpretation, a theory, conjecture, or surmise, rather than claiming to be in possession of objectively verifiable facts, the statement is not actionable" as defamation. *Haynes v. Alfred Knopf, Inc.*, 8 F.3d 1222, 1227 (7th Cir. 1993)(collecting cases). In the Seventh Circuit, unverifiable propositions are generally not actionable. *See, e.g., Wilkow v. Forbes, Inc.*, 241 F.3d 552, 556 (7th Cir. 2001)("rob creditors"); *Sullivan v. Conway*, 157 F.3d 1092, 1097 (7th Cir. 1998)("poor lawyer"); *Stevens v. Tillman*, 855 F.2d 394, 400-02 (7th Cir. 1988)("racist" school principal). And to ensure freedom of the press, only readily verifiable statements of fact may form the basis of a defamation claim against a media defendant. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19-20 (1990).

Even assuming, *arguendo*, that the Gay Hater Statement and the characterization of Plaintiff as a "homophobe" were published to a third party, they would constitute Defendant Kleinman's opinion. Neither statement is "objectively verifiable" as fact. *See Wilkow*, et al.

Instead, assuming Defendant Kleinman even made them in the first place, these statements would constitute his subjective view, rather than an objective, verifiable fact. *Haynes,* 8 F.3d at 1227. In sum, Count 8 should be dismissed with prejudice against Defendant Kleinman.

B. Plaintiff's False Light Claims Against Defendant Kleinman (Counts 6 and 9) Should Also be Dismissed

Plaintiff's false light claims against Defendant Kleinman fail for many of the same reasons as her defamation claims. Like her defamation claims, Plaintiff's false light claims against Defendant Kleinman are based on two different scenarios. In Count 6, Plaintiff alleges that Kleinman portrayed her in a false light based on the so-called Republication Statement in connection with the July 8 Video. Compl. ¶¶ 263-64. In Count 9, Plaintiff alleges that Kleinman portrayed her in a false light based on the so-called Gay Hater Statement and by "characterizing" her as a "homophobe." Compl. ¶¶ 313-22.

To state a claim for false light under Illinois law, a plaintiff must allege: (1) the defendant placed her in a false light before the public; (2) a trier of fact could find the false light "highly offensive to a reasonable person"; and (3) defendant acted with actual malice. *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).

1. Count 6 – July 8 Video/Blog Post on SafeLibraries

As detailed above, Plaintiff merely provides a conclusory allegation that Defendants, including Kleinman, made and republished the alleged statements related to the July 8 Video with actual malice. Compl. ¶ 272. Specifically, Plaintiff provides no details as to why or how Defendant Kleinman would have known the statements contained in the July 8 video and related caption—a video and caption that he did not produce—were false, or that he indeed knew they were false. As detailed more fully on pages 9-10, *supra*, Plaintiff's Amended Complaint does not

sufficiently establish that Defendant Kleinman acted with actual malice in connection with the July 8 Video and his related blog post. Count 6 should therefore be dismissed with prejudice against Kleinman.[3]

2. Count 9 - "Gay Hater Statement"

The same deficiencies as discussed above related to the so-called Gay Hater Statement, and Defendant Kleinman's alleged "characterization" of Plaintiff as a "homophobe" doom Count 9 of Plaintiff's Amended Complaint, just as they doomed Count 8. Specifically, Plaintiff vaguely alleges that on August 21, 2014, Defendant Kleinman "characterized" Plaintiff as a "gay hater." Compl. ¶ 128. Plaintiff does not allege that or how the Gay Hater Statement was "placed … before the public." *See Pope*, 95 F.3d at 616 (7th Cir.1996); *Kolegas*, 607 N.E.2d at 209 (Ill. 1992). Similarly, Plaintiff fails to allege that the "homophobe" characterization was placed before the public, let alone how or when. By making these vague and conclusory allegations, Plaintiff fails to adequately plead a false light claim in Count 9.

Additionally, assuming again, *arguendo*, that in the context of Plaintiff's false light claim, the Gay Hater Statement and the characterization of Plaintiff as a "homophobe" were placed before the public by Defendant Kleinman, they would constitute Defendant Kleinman's opinion. Under Illinois law, opinions are not actionable as false light. *See Schivarelli v. CBS Inc.*, 776 N.E.2d 693, 701 (Ill. App. Ct. 2002). Accordingly, Count 9 should be dismissed with prejudice against Defendant Kleinman.

[3] Though actual malice is addressed in this Memorandum specifically when discussing Counts 5 and 8, the lack of specific pleading on this issue warrants dismissal of Counts 6 and 9 as well.

III. COUNT 13 SHOULD BE DISMISSED – INJUNCTIVE RELIEF IS NOT A CAUSE OF ACTION

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)(dismissing with prejudice a claim for injunction, and noting that an injunction is not a separate cause of action). *See also Town of Cicero v. Metro. Water Reclamation District of Greater Chi.*, 976 N.E.2d 400, 414-15 (Ill. App. Ct. 2012)(upholding dismissal of injunctive relief claim because an injunction is not its own separate cause of action). Accordingly, Count 13 should be dismissed with prejudice.

CONCLUSION

For the foregoing reasons, Defendant Dan Kleinman respectfully requests that this Court grant his Motion to Dismiss the claims brought against him in Counts 5, 6, 8, 9, and 13 of Plaintiff's Amended Complaint, and dismiss those claims against him with prejudice.

Dated: February 19, 2015

Respectfully submitted,

/s/ Benjamin M. Shrader____
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CERTIFICATE OF SERVICE

I certify that on February 19, 2015, I caused the foregoing MEMORANDUM 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