UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

BRIDGET BITTMAN,	)	
	)	
Plaintiff,	)	Civil Action No.: 1:14-cv-8191
	)	
v.	)	Judge James F. Holderman
	)	
MEGAN FOX, et al,	)	Magistrate Judge Susan E. Cox
	)	
Defendants.	)	

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO THE MOTION TO DISMISS FILED BY FOR THE GOOD OF ILLINOIS AND ADAM ANDRZEJEWSKI

NOW COMES the PLAINTIFF BRIDGET BITTMAN ("Plaintiff"), by and through her counsel, Mudd Law Offices, and respectfully submits her Memorandum in Opposition to Defendants For the Good of Illinois' and Adam Andrezjewski's ("Andrezjewski") (collectively "Andrezjewski Defendants") Motion to Dismiss Plaintiff's Amended Complaint, and states as follows:

INTRODUCTION

The gravamen of the Andrezjewski Defendants' argument in their Motion to Dismiss ("Motion") is that the Plaintiff through her Amended Complaint seeks "solely to silence and chill the First Amendment-protected speech of [the Defendants]." Mem. in Supp. of Mot. to Dismiss ("Supp. Mem."). While the Plaintiff vigorously denies this assertion, as she seeks redress for the tortious acts of the Andrezjewski Defendants and those of the other Defendants, it should be noted that this argument is disingenuous, as the Andrezjewski Defendants' campaign to harass and defame the Plaintiff was, ironically, brought on by the Plaintiff's efforts to protect First

Amendment free speech through the Orland Park Public Library's ("OPPL") policy of providing unfiltered Internet access on adult computers. Am. Compl. ¶ 26 ("Am. Compl."). Indeed, the Andrezjewski Defendants should not be permitted to disregard the First Amendment when it protects speech they find objectionable (unfiltered access to the Internet) and then rely on the First Amendment to attempt to protect speech in which they wish to engage (the false and defamatory statements they made about the Plaintiff). In any case, the substantive arguments raised by the Andrezjewski Defendants have no merit. As demonstrated below, the Andrezjewski Defendants erroneously argue that: (1) the Court lacks subject matter jurisdiction; (2) the Illinois Citizen Participation Act, 735 ILCS 110/1 ("ICPA") applies to this action; and (3) the Plaintiff has failed to state a claim. See generally Supp. Mem. For these reasons, as articulated more fully below, the Motion should be denied.

FACTUAL BACKGROUND

The OPPL employs Ms. Bittman as its marketing and public relations coordinator. Am. Compl. ¶¶ 16-17. Beginning in the fall of 2013, Defendants Fox and DuJan complained about the OPPL's unfiltered access Internet policy. Id. ¶ 26. Based on Ms. Bittman's responses to their public complaints, both Fox and DuJan launched a public and relentless campaign to harass Ms. Bittman personally, including making false and defamatory statements about Ms. Bittman on the Internet, including on Fox's Facebook Page "Fans of Megan Fox" ("Fox Facebook Page"). Id. ¶¶ 26-28, 31, 36, 37, 41.[1]

Rather than limit their personal attacks against Ms. Bittman to the Fox Facebook Page, Fox and DuJan created a Facebook Page to impersonate Ms. Bittman's personal floral arrangement business ("Sassy Plants Facebook Page"). Am. Compl. ¶¶ 101-103. On Sassy

[1] To be sure, by pursuing this litigation, Ms. Bittman does not intend to stifle legitimate public comments and debate, but rather seeks to end Defendants' unlawful conduct.

Plants Facebook Page, Fox and DuJan used Ms. Bittman's personal photographs and included descriptions portraying Ms. Bittman as unprofessional and unreliable. Id. ¶¶ 105-109, 115.

Additionally, Fox and DuJan confronted Ms. Bittman on a public sidewalk. Id. ¶ 53. Fox and other individuals filmed the exchange. Id. ¶ 53. The exchange was posted on Fox's YouTube channel ("July 8 Video") with the claim that Ms. Bittman "committ[ed] disorderly conduct and breach of peace" ("July 8 Caption"). Id. ¶ 56. Ms. Bittman did not commit a criminal act in the exchange. Id. ¶¶ 58, 59, 61, 64. Fox and DuJan claimed she committed multiple crimes. Am. Compl. ¶¶ 54, 56, 60, 65.

Kleinman, who runs a blog that vilifies libraries for many of the same policies held by the OPPL, shared the July 8 Video and July 8 Caption on his own website. Id. ¶ 93. Kleinman included with the July 8 Video and July 8 Caption a description stating that Ms. Bittman attacked a gay man in the video (referring to DuJan). Id. ¶ 94.

Andrzejewski, the founder of the watch-dog organization For the Good of Illinois, also shared the July 8 Video. Am. Compl. ¶¶ 90-91. In a further effort to disseminate the July 8 Video and the July 8 Caption, Andrzejewski sent an electronic statement to nearly 60,000 of his followers that commented on and directed their attention to Ms. Bittman's purported criminal conduct and the July 8 Video. Id. ¶ 91; Supp. Mem., Exhibit.

Despite knowing that Ms. Bittman did not commit disorderly conduct, did not breach the peace, and did not use derogatory language, Fox and DuJan continued to share the false and defamatory July 8 Video and July 8 Caption and encourage others to do the same. Id. ¶¶ 90, 131-132. Additionally, by their comments and publications, Andrezjewski and Kleinman acted with actual malice, or, at a minimum, reckless disregard as to whether Ms. Bittman actually committed any crime in the July 8 Video or used any derogatory language. Id. ¶¶ 258-259. As

the raw video demonstrates, Ms. Bittman does no more than exchange a few words with DuJan and his companions.

STANDARD

When a defendant challenges the sufficiency of the allegations regarding subject matter jurisdiction in a Fed. R. Civ. P. 12(b)(1) motion, the Court must accept all well-pleaded factual allegations as true and draw all reasonable inferences in favor of the plaintiff. United Phosphorus, Ltd. v. Angus Chem. Co., 322 F.3d 942, 946 (7th Cir. 2003) (en banc). Further, under Fed. R. Civ. P. 12(b)(6), a complaint is to be construed "in the light most favorable to the plaintiff, accepting as true all well-pleaded facts alleged, and drawing all possible inferences in her favor." Tamayo v. Blagojevich, 526 F.3d 1074, 1081 (7th Cir. 2008). Indeed, a motion brought pursuant to Fed. R. Civ. P. 12(b)(6) should only be granted when it appears without a doubt that the plaintiff can prove no set of facts in support of his claims which would entitle him to relief. Chicago Bd. of Options Exchange v. Conn. General Life Ins. Co., 713 F.2d 254, 257 (7th Cir. 1983).

ARGUMENT

For the reasons articulated below, the Andrezjewski Defendants' Motion must be denied.

I. Supplemental Jurisdiction Exists Over Plaintiff's State Law Claims Because They Are Part of a Common Scheme

This Court has supplemental jurisdiction over the Plaintiff's state law claims against the Andrezjewski Defendants and, as such, the Motion brought pursuant to Fed. R. Civ. P. 12(b)(1) should be denied. "[J]udicial power to hear both state and federal claims exists where the federal claim has sufficient substance to confer subject matter jurisdiction on the court, and the state and federal claims derive from a common nucleus of operative facts." Ammerman v. Sween, 54 F.3d 423, 424 (7th Cir. 1995) (quoting 28 U.S.C. § 1367(a)). As explained by the

Seventh Circuit, "[a] loose factual connection between the claims is generally sufficient." Id.

Specifically, when state law and federal law claims are all "based on alleged conduct comprising part of [a] scheme, there is, at a minimum, a loose factual connection" between the state law and federal law claims for purposes of establishing supplemental jurisdiction. Int'l Sports Mgmt. v. Stirling Bridge Group, Inc., 2004 U.S. Dist. LEXIS 8716, at *8 (N.D. Ill. May 17, 2004) (holding that, where the plaintiff alleged an "orchestrated scheme" to poach clients and start a competing company, the court had supplemental jurisdiction over, among other claims, plaintiff's state law commercial defamation claim); Lait v. Genova, 2001 U.S. Dist. LEXIS 17101 (N.D. Ill. Oct. 17, 2001). Similarly, the "loose factual connection" between the state law and federal law claims can be established where they "involve the same individuals" and the "same basic subject matter" and "where the factual allegations are intertwined to some extent." MJ & Partners Restaurant Ltd. Pshp. v. Zadikoff, 126 F. Supp. 2d 1130, 1134 (N.D. Ill. 2000).

Here, the Court has supplemental jurisdiction over the Plaintiff's state law claims of defamation *per se* (Count 5) and false light (Count 6)[2] because the allegations of the Amended Complaint demonstrate that the state and federal law claims share a "loose factual connection" according to both definitions listed above. See Int'l Sports Mgmt., 2004 U.S. Dist. LEXIS 8716, at *8; see also MJ & Partners Restaurant Ltd. Pshp., 126 F. Supp. 2d at 1134.

To begin with, the Court has supplemental jurisdiction over the Plaintiff's state law claims because the state and federal law claims are all part of the same "scheme" to harass, damage and disparage the Plaintiff. See Int'l Sports Mgmt., 2004 U.S. Dist. LEXIS 8716, at *8. As discussed above in the Factual Background, all of the Defendants in this case, including the Andrezjewski Defendants, participated in a common and orchestrated scheme to harass, defame,

[2] The Plaintiff concedes that a separate count for injunctive relief is not necessary and will voluntarily dismiss Count 13 of her Amended Complaint.

discredit, disparage, and damage the Plaintiff's personal and professional reputation after they unsuccessfully challenged the long-standing policy of allowing unfiltered access to the Internet on adult computers at the OPPL. See generally Am. Compl. The Defendants in this case shared the common goal of harassing and defaming the Plaintiff with the ultimate goal of causing the Plaintiff harm.

This same orchestrated scheme relates to all of the claims in the Amended Complaint, both state and federal. The Plaintiff alleges in Counts 1 through 4 that Defendants Fox and DuJan violated federal statutes through the creation of the Sassy Plants Facebook Page in an effort to harass the Plaintiff and her business. Specifically, in Counts 1, 2, and 3, the Plaintiff alleges that Defendants Fox and DuJan violated the Computer Fraud and Abuse Act, the Store Communications Act, and the Electronic Communications Privacy Act, by, in summary, creating the Sassy Plants Facebook Page with her personal information and without her authorization in an effort to: (i) impersonate the Plaintiff and her business; (ii) intercept and obtain electronic communications meant for the Plaintiff; and, (iii) ultimately harm and harass the Plaintiff. Am. Compl. ¶¶ 145-150, 159-160, 172-174, 181, 186, 192-195, 199. Similarly, in Count 4, the Plaintiff alleges that Defendants Fox and DuJan committed copyright infringement, 17 U.S.C. §§ 101, *et seq.*, by publishing without authorization a copyrighted photograph on the Sassy Plants Facebook Page for the purpose of harassing and damaging the Plaintiff. Am. Compl. ¶¶ 211, 215, 221. Indeed, at every turn, Defendants Fox and DuJan seek to use the Plaintiff's life outside the OPPL against her.

The Andrezjewski Defendants participated in this same scheme to harass and damage the Plaintiff when they published false and defamatory statements about the Plaintiff, as alleged in the Count 5 (defamation *per se*) and Count 6 (false light). Specifically, in Count 5, the Plaintiff

alleges that the Andrezjewski Defendants expressly joined in the scheme when they further distributed and published the July 8 Video and July 8 Caption. Am. Compl. ¶¶ 90-92, 224-261. In Count 6, the Plaintiff alleges that all of the Defendants cast her in a false light through the previously mentioned false statements in the July 8 Video and the July 8 Caption. Am. Compl. ¶¶ 53-89, 90-92, 224-261, 262-274. In sum, the false statements contained in the July 8 Video and the July 8 Caption constitute a part of the same scheme to harass and harm the Plaintiff, the same scheme involved in the Plaintiff's federal claims. Therefore, the Court has supplemental jurisdiction over the state law claims. See Int'l Sports Mgmt., 2004 U.S. Dist. LEXIS 87166, at *8.

Further, the Court's supplemental jurisdiction exists over the Plaintiff's state law claims because those claims involve the same individuals and subject matter as (and are intertwined to some extent with) the federal claims. See MJ & Partners Restaurant Ltd. Pshp., 126 F. Supp. 2d at 1134. Here, the state and federal law claims involve the same individuals – individuals who sought to retaliate against her personally after the campaign to change the OPPL Internet policy failed.[3] See *supra.* Likewise, the state and federal claims involve the same basic subject matter, *i.e.*, the scheme to harass, defame, discredit, and damage the Plaintiff and her business after the campaign to change the OPPL Internet policy failed. Finally, the claims are intertwined to some extent in the common scheme. As such, supplemental jurisdiction has been established under both standards, and the Motion to Dismiss should be denied. See Int'l Sports Mgmt., 2004 U.S. Dist. LEXIS 8716, at *8; MJ & Partners Restaurant Ltd. Pshp., 126 F. Supp. 2d at 1134.

[3] Moreover, not all of the Plaintiff's claims need to be filed against all of the Defendants for the Court to have supplemental jurisdiction. See Lait v. Genova, 2001 U.S. Dist. LEXIS 17101, at *1-2 (holding that the Court had supplemental jurisdiction over the state law extortion claim against a defendant who was not a party to the other claims in the complaint).

II. Plaintiff's Amended Complaint Should Not Be Dismissed Pursuant to the ICPA Because it is Not a Strategic Lawsuit Against Public Participation.

The Plaintiff's claims against the Andrezjewski Defendants do not constitute a SLAPP and should not be dismissed pursuant to the ICPA because the claims represent her legitimate and genuine attempt to recover damages from the Defendants, including the Andrezjewski Defendants, for their tortious actions. To begin with, Federal Rules of Civil Procedure and not the ICPA dictate the standard which applies to dismissing claims in federal court. See Abbas v. Foreign Policy Group, LLC, 2015 U.S. App. LEXIS 6782, at *7, *17 (D.C. Cir. Apr. 24, 2015) (holding that a federal court should not apply an Anti-SLAPP Act's special motion to dismiss provision). As such, the special motion to dismiss provision in the ICPA is inapplicable here. Id. Assuming, *arguendo*, the special motion to dismiss provision of the ICPA did apply (it does not), the Andrezjewski Defendants' argument regarding the ICPA still fails because the Amended Complaint is not a SLAPP. While the Andrezjewski Defendants cite the recent Illinois Supreme Court case which changed the interpretation of the ICPA and SLAPPs, Sandholm v. Kuecker, 962 N.E.2d 418, 430 (Ill. 2012), they fail to recognize that, based on this case, the ICPA is not applicable. Specifically, in Sandholm the Illinois Supreme Court "construed the phrase based on, relates to, or is in response to" in the ICPA "to mean *solely* based on, relating to, or in response to any act or acts of the moving party in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government." Cartwright v. Cooney, 2012 U.S. Dist. LEXIS 40393, at *17 (N.D. Ill. Mar. 26, 2012) (emphasis in original) (internal quotations omitted) (quoting and interpreting Sandholm,, 962 N.E.2d at 430). As such:

> Stated another way, where a plaintiff files suit genuinely seeking relief for damages for the alleged defamation or intentionally tortious acts of defendants, the lawsuit is not solely based on defendants' rights of petition, speech, association, or participation in government. In that case, the suit would not be subject to dismissal under the [ICPA]. It is clear from the express language of

> the [ICPA] that it was not intended to protect those who commit tortious acts and then seek refuge in the immunity conferred by the statute.

Cartwright, 2012 U.S. Dist. LEXIS 40393, at *17-18 (quoting Sandholm, 962 N.E.2d at 430).

Here, the Plaintiff seeks to recover damages based on the campaign of harassment that all of the Defendants, including the Andrzejewski Defendants, have engaged in against her personally. See *supra* Factual Background pp. 2-4; Sec. I pp. 4-8. She does not seek to chill the lawful First Amendment rights of any of the Defendants. Instead, she genuinely seeks to recover damages for the tortious actions of the Defendants. Id. These tortious actions include, among others, the Andrezjewski Defendants defaming the Plaintiff and casting her in a false light when they published the July 8 Video and the July 8 Caption which falsely state that, among other things, the Plaintiff was arrested for breach of peace and disorderly conduct, used an anti-gay hateful term, and lacks integrity in her employment. As such, the Plaintiff's claims do not constitute a SLAPP. See Cartwright, 2012 U.S. Dist. LEXIS 40393, at *17-18.

The Andrezjewski Defendants also erroneously argue that the Plaintiff's claims are retaliatory and, as such, should be dismissed pursuant to the ICPA. However, as discussed above, the Plaintiff did not file this lawsuit in retaliation or to chill the Andrezjewski Defendants' speech. Rather, the Plaintiff seeks to recover damages from the campaign of harassment in which all of the Defendants have engaged.

Based on the foregoing, the Andrezjewski Defendants have failed to carry their initial burden that the Amended Complaint is "solely a SLAPP in retaliation for the Defendants' exercise of their 'rights of petition, speech, association, or to otherwise participate in government.'" See World Kitchen, LLC v. Am. Ceramic Soc'y, 12 C 8626, 2013 U.S. Dist. LEXIS 135225, at *18 (N.D. Ill. Sept. 19, 2013) (quoting Sandholm, 962 N.E.2d at 431). As

such, their argument fails. The Amended Complaint is not a SLAPP, and the Motion should be denied. See id.; see also Cartwright, 2012 U.S. Dist. LEXIS 40393, at *17-18.

III. Plaintiff's Claims Against the Andrezjewski Defendants are Not Meritless

The Andrezjewski Defendants attempt to overcome the holding in Sandholm by unsuccessfully arguing in their Motion that the Plaintiff's claims are "meritless." Supp. Mem., pp. 6-13. After Sandholm, the burden is on the Andrezjewski Defendants to demonstrate the Plaintiff's claims are a SLAPP by putting forward evidence that the Plaintiff filed her Amended Complaint solely because of the Andrezjewski Defendants' exercise of their First Amendment rights. See Corvus Group, Inc. v. Kaster, 2012 U.S. Dist. LEXIS 72202, at *9 (N.D. Ill. May 24, 2012) (holding defendant failed to meet their burden because the lawsuit was, at least in part, undertaken to protect plaintiff's reputation in the community); Cartwright, 2012 U.S. Dist. LEXIS 40393, at *22-23. The Andrezjewski Defendants attempt to meet this burden by arguing that the Plaintiff's claims for defamation and false light lack merit because they have not published the false statements and the Plaintiff has not alleged actual malice. Supp. Mem., pp. 6-10. In fact, the Plaintiff has sufficiently pled claims against the Andrezjewski Defendants for defamation and false light. Consequently, the Andrezjewski Defendants have not met their burden.

A. Plaintiff Has Sufficiently Plead Defamation

In their Motion, the Andrezjewski Defendants' erroneously argue that the Plaintiff has not stated a claim for defamation.

1. Plaintiff has sufficiently plead a claim for defamation

To state a claim for defamation, a plaintiff must allege (1) the defendant (2) made a false statement (3) concerning the plaintiff; that there was (4) an unprivileged (5) publication of the

statement to a third party; and that (6) the plaintiff suffered damages. Frain Group, Inc. v. Steve's Frozen Chillers, 2015 U.S. Dist. LEXIS 29435, *6-7 (N.D. Ill. Mar. 10, 2015) (citing Green v. Rogers, 234 Ill. 2d 478, 491 (2009). The Plaintiff has alleged facts in support of each of these elements in her Amended Complaint. Am. Compl. ¶¶ 91-92, 131-32, 142-43. 224-261. Further, the Plaintiff has alleged that the statements are defamatory *per se* because they accuse her of the commission of a crime, impute an inability to perform or want of integrity in the discharge of her duties, and prejudice her in her profession. Am. Compl. ¶¶ 133-39; see Tuite v. Corbitt, 224 Ill.2d 490, 501-502 (2006). As such, the Plaintiff has stated a claim for defamation and the Andrezjewski Defendants' argument has no merit.

2. The defamatory content was published to a third party

In their Motion, the Andrezjewski Defendants erroneously argue that the Plaintiff has not alleged that they published the allegedly defamatory material because they "merely sent an email providing a link to the YouTube webpage for the July 8 Video." Supp. Mem., p. 7. To begin with, the Andrezjewski Defendants have done more than provide a link to the July 8 Video. The Andrezjewski Defendants also commented on the Plaintiff's conduct, as follows:

> **"Breach of the Peace" citation:** Kevin DuJan was cited for "breach of the peace" by Orland Park police for his meeting "conduct." Bridget Bittman signed the complaint. Really?
>
> **Gay Slurs:** Was DuJan subject to gay slurs by Bridget Bittman and Board Member Diane Jennings? You decide: watch YouTube video of incident.

Supp. Mem. at Exhibit (emphasis in original). As such, the cases on which the Andrezjewski Defendants rely for this proposition are inapplicable. And, in fact, where a link accompanies comments about the link, publication exists. Kyle v. Apollomax, LLC, 2013 U.S. Dist. LEXIS 156842, at *17 (D. Del. Nov. 1, 2013) (holding that the plaintiff met the publishing requirement

for a defamation claim by alleging the defendant sent an email to a third party titled "The devil is at work" with a link to an article discussing plaintiff's arrest on stalking charges). Consequently, as the Andrezjewski Defendants sent a link with comments about the Plaintiff (Supp. Mem. at Exhibit; Am. Compl. ¶ 91), the Plaintiff has sufficiently alleged the Andrezjewski Defendants published the alleged defamatory statements. See Kyle, 2013 U.S. Dist. LEXIS 156842, at *17-18.

Moreover, this argument is based upon a fundamental misunderstanding of the Illinois Single Publication Act ("ISPA"). "[The ISPA] does not bar a separate cause of action arising out of a single defamatory statement when (1) someone other than the original libelor consciously republishes the statement, and (2) the alleged republication is not incidental to a mass distribution of the statement." Dubinsky v. United Airlines Master Exec. Council, 708 N.E.2d 441, 454 (Ill. App. Ct. 1st Dist. 1999) (quoting Wathan v. Equitable Life Assurance Soc., 636 F. Supp. 1530, 1536 (C.D. Ill. 1986)). Here, the Andrezjewski Defendants constitute "someone other than the original libelor" - the original "libelors" being Defendants Fox and Dujan. In addition, the Andrezjewski Defendants "consciously republishe[d] the statement" when they sent an electronic statement to nearly 60,000 followers about the Plaintiff. Am. Compl. ¶ 91. Moreover, this republication was not incidental to a mass distribution because it was a single electronic statement sent to specific identifiable individuals, and not an article in a newspaper, the publishing of a book or something similar in the mass media. See Hukic v. Aurora Loan Servs., 588 F.3d 420, 436 (7th Cir. 2009) (The ISPA does not apply to multiple adverse credit reports because, unlike cases involving mass publications, it was easy to determine exactly when and to whom the information was disseminated). As such, the ISPA is inapplicable here, and the Motion must be denied as to this argument. See Dubinsky, 708 N.E.2d at 454.

3. The Communications Decency Act is inapplicable

The Andrezjewski Defendants incorrectly argue that they are not the publisher of the defamatory material under §230 of the Communications Decency Act ("CDA"), 47 U.S.C. §230. Supp. Mem., p. 8. As Judge Easterbrook in the 7th Circuit has stated, "What §230(c)(1) says is that an online information system must not 'be treated as the publisher or speaker of any information provided by someone else.'" Chi. Lawyers' Comm. for Civ. Rights Under Law, Inc. v. Craigslist, Inc., 519 F.3d 666, 671 (7th Cir. Ill. 2008) (holding that Craigslist cannot be held liable under the CDA for posts made by third parties on its website), quoting 47 U.S.C. §230(c)(1). Here, the CDA is inapplicable because the Andrezjewski Defendants themselves, and not someone else, provided information to 60,000 of their followers in an electronic communication. Am. Compl. ¶ 91.

Moreover, the CDA does not apply when a defendant attaches their "own commentary" to an electronic communication containing "third-party content." Doe v. City of New York, 583 F. Supp. 2d 444, 449 (S.D.N.Y. 2008). In City of New York, the Court held that, when the defendant added his own allegedly tortious speech to the third-party content he forwarded, he fell out of the CDA's protections. Id. (defendant forwarded an article entitled "Is the Arabic Language 'Perfect' or 'Backwards'?" and with it added "the language may not be backwards but the people speaking it are."). Here, the Andrezjewski Defendants added their "own commentary" about the Plaintiff. Am. Compl. ¶ 91; See Sect. III-A-2 p. 11 *supra*; Supp. Mem. at Exhibit. As such, the Andrezjewski Defendants' CDA argument fails.

4. Plaintiff is a private figure and need not plead actual malice

The Andrezjewski Defendants erroneously argue that the Plaintiff, as a "limited purpose public figure," has failed to allege actual malice as required for a defamation claim. Supp.

Mem., p. 9. To start with, the Plaintiff is in fact a private figure and need not plead actual malice. See Plaintiff's Mem. in Opp. to Defendant Dan Kleinman's Motion to Dismiss Plaintiff's Am. Compl. Pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(6) ("Mem. Opp. Kleinman"), p. 9; Am. Compl. ¶¶ 17-18; Kapetanovic v. Stephen J. Cannell Prods., Inc., 1998 U.S. Dist. LEXIS 22215, *7-9 (N.D. Ill. Aug. 4, 1998) (denying a motion to dismiss and reasoning "[a] private individual is not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts public attention"). Thus, the Motion must be denied on this argument.

5. Plaintiff has sufficiently plead actual malice

In the alternative, even if the Plaintiff could be construed as a limited purpose public figure, the Amended Complaint alleges sufficient facts to show the false statements were published with actual malice because the Andrezjewski Defendants could merely watch the July 8 Video to learn of the July 8 Caption's falsity. See Mem. Opp. Kleinman, pp. 10-11. Accordingly, the Motion must be denied with respect to their argument regarding malice.

B. Plaintiff has Pled Sufficient Facts for a False Light Claim

In their Motion, the Andrezjewski Defendants erroneously argue that the Plaintiff has not stated a claim for false light. In actual fact, the Plaintiff has sufficiently pled false light. To state a claim for false light, the allegations in the complaint must first show that the plaintiff was placed in a false light before the public as a result of the defendant's actions. Kolegas, 154 Ill. 2d at 17-18. The Andrezjewski Defendants placed the Plaintiff in a false light before the public. As explained above, the Andrezjewski Defendants published the July 8 Video and the July 8 Caption to a wide Internet audience and cast the Plaintiff in a false light by, among other things, falsely imputing criminal conduct by the Plaintiff. Am. Compl. ¶ 91, 263-264, 267-269. A trier

of fact could find this false light "highly offensive to a reasonable person." See Kolegas, 154 Ill. 2d at 17. Lastly, the Andrezjewski Defendants knew the falsity of the statements, or alternatively, acted with reckless disregard for whether the statements were true or false, and thus, acted with actual malice. See Kolegas, 154 Ill. 2d at 17-18. As such, the Motion should be denied on this issue, as the false light claim is not "meritless." See id.

2. Plaintiff Sufficiently Alleges Actual Malice

The Andrezjewski Defendants argue that the Plaintiff's allegation as to the July 8 Video and July 8 Caption fail to sufficiently allege actual malice with respect to the false light claim. For the same arguments supporting Plaintiff's defamation claims, the Motion must be denied with respect to this argument. See Sect. III, p. 14, *supra*.

C. The Plaintiff has No Claim for Civil Conspiracy

The Andrezjewski Defendants argue that Plaintiff's civil conspiracy claim is meritless. However, the Plaintiff has no claim for civil conspiracy. See generally Am. Compl. The Plaintiff merely alleges that there was a concerted effort by all of the Defendants. Am. Compl. ¶¶ 131-132. As such, the "conspiracy claim" cannot be meritless and this argument fails.

CONCLUSION

In sum, for the foregoing reasons, this Court must deny the Motion in its entirety.

Dated: Chicago, Illinois
May 4, 2015

Respectfully submitted,
PLAINTIFF BRIDGET BITTMAN

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