Exhibit B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

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

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 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 (March 3, 2015) (Dkt. No. 48) ("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 when 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. (January 21, 2015) (Dkt. No. 34, Para. 26) ("Am. Compl."). Indeed, the Andrezjewski Defendants should not be permitted to disregard the First Amendment when it protects speech they find objectionable (the unfiltered access to the Internet at the OPPL) and then in the same breath 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) to further support their strained interpretation of the First Amendment. 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. For these reasons, as articulated more fully below, the Motion should be denied.

PROCEDURAL HISTORY

On January 21, 2015, Plaintiff Bridget Bittman filed her Amended Complaint against Defendants Megan Fox, Kevin Dujan, Dan Kleinman, Adam Andrzejewski, and For the Good of Illinois, an Illinois Not for Profit Organization, that included claims for violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 ("CFAA"), Stored Communications Act, 18 U.S.C. §§ 2701, et seq. ("SCA"), the Electronic Communications Privacy Act, 18 U.S.C. § 2510 ("ECPA"); and the United States Copyright Act of 1976, 17 U.S.C. §§ 101, et seq. ("Copyright Act"); defamation *per se*; false light; intentional infliction of emotional distress; and, assault. Am. Compl. While not all of these claims apply to each Defendant, they all arise from conduct engaged in by all of the Defendants to defame, discredit, disparage, and damage the Plaintiff. See Am. Compl. Of these claims, the Plaintiff alleges two claims – defamation *per se* and false light

– against the Andrezjewski Defendants. The Andrezjewski Defendants have moved to dismiss these claims against them pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

FACTUAL BACKGROUND

Fox Facebook Page

The OPPL employs Ms. Bittman to provide marketing and public relations for it. Am. Compl. ¶¶ 16-17. The OPPL provides unfiltered access to the Internet for adults. Id. ¶ 26. Beginning in the fall of 2013, Defendant Megan Fox and Defendant Kevin DuJan complained about the OPPL's unfiltered access Internet policy. Id. ¶ 26. In her position with the OPPL, Ms. Bittman publicly responded to these complaints and reiterated the OPPL's policy. Id. ¶ 27. Based on Ms. Bittman's responses to Fox and DuJan's public complaints, both Fox and DuJan launched a public and relentless campaign to harass Ms. Bittman personally.[1] Am. Compl. ¶¶ 28, 31. As early as November 4, 2013, the Defendants began 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. ¶ 36. Among other things, Fox claimed Ms. Bittman filed false police reports against Fox and DuJan. Id. ¶ 37. Fox also claimed that Ms. Bittman drank while on the job at the OPPL. Id. ¶ 41. Both statements found on the Fox Facebook Page are completely and utterly false, which Fox knew when she posted them. Rather than constituting legitimate critique, Fox posted these statements to harass and harm Ms. Bittman.

Sassy Plants Facebook Page

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] Fox and DuJan also have harassed the Plaintiff professionally and in her official capacity, but the Plaintiff only complains of the personal attacks in her Amended Complaint and those that expressly defame her.

Plants Illinois, Fox and DuJan used Ms. Bittman's personal photographs as well as photographs of her floral arrangements without Ms. Bittman's authorization or permission. Id. ¶¶ 105-109. With these personal photographs, Fox and DuJan included derogatory and suggestive descriptions of the photographs portraying Ms. Bittman as unprofessional and unreliable. Id. ¶ 115. Additionally, while masquerading as Ms. Bittman, Fox and DuJan advertised for her floral business. Id. ¶ 114. The Sassy Plants Facebook Page was created with the intention of harassing Ms. Bittman and suggesting her personal floral arrangement business lacked professionalism and integrity. Fox and DuJan acted with a concerted effort to harass and demean Ms. Bittman personally at every possible opportunity, merely because she publicly responded to their concerns regarding OPPL's Internet policy.

July 8th Video

In a further effort to harass Ms. Bittman, the Defendants publically harassed her in an effort to illicit a negative reaction from Ms. Bittman. While Fox and DuJan were unsuccessful, this did not deter them from falsely imputing unlawful and negative behavior to Ms. Bittman. On July 8, 2014, Fox and DuJan confronted Ms. Bittman on a public sidewalk. Am. Compl. ¶ 53. Fox and two other individuals filmed the exchange. Id. ¶ 53. Ms. Bittman later learned that a video of the exchange had been 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. While DuJan had complained of Ms. Bittman's conduct, the Orland Park Police Department concluded the complaint to be groundless. Id. ¶ 62. To be very clear, Ms. Bittman did not commit a criminal act in the exchange. Id. ¶¶61-64. However, this did not deter Fox or DuJan from claiming she had committed multiple crimes. Am. Compl. ¶¶ 56, 73, 74. The edited video also contained the false July 8 Caption that purportedly represented what Ms.

Bittman said during the exchange. Id. ¶ 69. The video claims Ms. Bittman called DuJan a "fruit," a derogatory term for a homosexual person. Id. Ms. Bittman did not use an anti-gay hateful term during her exchange with the group. Id. ¶¶ 71-72.

Kleinman Involvement

Kevin Kleinman, who runs a blog that vilifies libraries for many of the same policies held by the OPPL and is a close associate of both Fox and DuJan, 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. Despite knowing the falsity of the July 8 Caption and the purported criminal conduct, Kleinman continued to share the July 8 Video and July 8 Caption with his viewers. Id. ¶ 96.

Andrzejewski and For the Good of Illinois

Adam 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.

Concerted Effort

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, Andrzejewski 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 prior to exiting to the parking lot.

STANDARD

Federal Rule of Civil Procedure 12(b)(1) – Subject Matter Jurisdiction

The standard of review for a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction depends on the purpose of the motion. See United Phosphorus, Ltd. v. Angus Chem. Co., 322 F.3d 942, 946 (7th Cir. 2003) (en banc). If a defendant challenges the sufficiency of the allegations regarding subject matter jurisdiction, the Court must accept all well-pleaded factual allegations as true and draw all reasonable inferences in favor of the plaintiff. See Id. If, however, the defendant denies or controverts the truth of the jurisdictional allegations, the Court may look beyond the pleadings and view any evidence submitted to determine if subject matter jurisdiction exists. See Id. "Where jurisdiction is in question, the party asserting a right to a federal forum has the burden of proof, regardless of who raises the jurisdictional challenge." Craig v. Ontario Corp., 543 F.3d 872, 876 (7th Cir. 2008).

Federal Rule of Civil Procedure 12(b)(6) – Failure to State a Claim

"A plaintiff's complaint need only provide a 'short and plain statement of the claim showing that the pleader is entitled to relief,' sufficient to provide the defendant with 'fair notice' of the claim and its basis." Tamayo v. Blagojevich, 526 F.3d 1074, 1081 (7th Cir. 2008) (citing Fed. R. Civ. P. 8(a)(2). Thus, a complaint need not satisfy a "heightened fact pleading of specifics," but rather contain "enough facts to state a claim to relief that is plausible on its face." Killingsworth v. HSBC Bank Nev., N.A., 507 F.3d 614, 618 (7th Cir. 2007). Also, 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, 526 F.3d at 1081; Savory v. Lyons, 469 F.3d 667, 670 (7th Cir. 2006). Indeed, a motion to dismiss brought

pursuant to F.R.C.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

In her Amended Complaint, the Plaintiff sufficiently establishes that supplemental jurisdiction exists over her state law claims for defamation *per se* and false light against the Andrezjewski Defendants. Moreover, Plaintiff's Amended Complaint should not be dismissed pursuant to the ICPA because it is not a Strategic Lawsuit Against Public Participation ("SLAPP"), but rather the Plaintiff's genuine attempt to recover damages for defamation and false light, among other claims. In addition, as discussed below, her claims for defamation and false light are well plead and not meritless. For these reason and those articulated below, the Andrzjewski Defendants' Motion must be denied.

I. This Court Has Supplemental Jurisdiction Over The Plaintiff's State Law Claims Because The State and Federal Claims Share a Loose Factual Connection Through Allegations 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 Rule 12(b)(1) should be denied. The supplemental jurisdiction statute, 28 U.S.C. § 1367(a), "confers supplemental jurisdiction to the limits Article III of the Constitution permits, authorizing federal courts to hear all claims that 'are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.'" Ammerman v. Sween, 54 F.3d 423, 424 (7th Cir. 1995) (quoting 28 U.S.C. § 1367(a)). Thus, "judicial 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." Id. 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., No. 03 C 9027, 2004 U.S. Dist. LEXIS 8716, 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, No. 01 C 5125, 2001 U.S. Dist. LEXIS 17101 (N.D. Ill. Oct. 17, 2001) (holding that, where plaintiff sued various city officials for retaliating against him for cooperating with a federal investigation, the court had supplemental jurisdiction over a $50 state law extortion claim against the mayor's wife where it was "all part of a common scheme"). Similarly, the "loose factual connection" between the state law and federal law claims can be established where the claims "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) (holding that the court had supplemental jurisdiction over state law defamation claims).

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 Complaint demonstrate that the state and federal law claims share a "loose factual connection" according to

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

both definitions listed above, *i.e*, the claims (1) involve a common scheme and (2) involve the same individuals and subject matter and are intertwined to some extent. 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, 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.[3] The Defendants in this case shared the common goal of harassing and defaming the Plaintiff with the ultimate goal of causing Plaintiff damages and destroying her reputation and business – a business unrelated to the OPPL and its policies.

This same orchestrated scheme relates to all of the claims in the Amended Complaint, both state and federal. To begin with, the Plaintiff alleges in Counts 1 through 4 of the Amended Complaint 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 CFAA, the SCA, and the ECPA, 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)

[3]To be clear, the Plaintiff does not complain of comments made about in her in professional capacity, however distasteful those comments may be.

ultimately harm and harass the Plaintiff. Am. Compl. ¶¶145-150, 159-160, 172-174, 181, 186, 192-195, 199. Similarly, in Count IV, the Plaintiff alleges that Defendants Fox and DuJan committed copyright infringement, 17 U.S.C. §§101, *et seq.*, by publishing without authorization the Green Dress Photograph on the Sassy Plants Facebook Page for the purpose of harassing and damaging the Plaintiff. Am. Compl. ¶¶211, 215 at 221. Indeed, at every turn, Defendants Fox and DuJan seek to use the Plaintiff's life outside the OPPL against her.

Likewise, the Andrezjewski Defendants participated in this same scheme to harass and damage the Plaintiff after the campaign to change the OPPL Internet policy failed 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 this same scheme to harass and damage the Plaintiff 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.

In addition, the Court's supplemental jurisdiction further 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. MJ & Partners Restaurant Ltd. Pshp., 126 F. Supp. 2d at 1134 (N.D. Ill. 2000). 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.[4] See *supra.* Likewise, the state and federal claims involve the same basic subject matter, *i.e.*, as discussed more fully above, 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; See MJ & Partners Restaurant Ltd. Pshp., 126 F. Supp. 2d at 1134 (N.D. Ill. 2000).

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

The Plaintiff's claims against the Andrezjewski Defendants do not constitute 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 the Andrezjewski Defendants' Motion. See Abbas v. Foreign Policy Group, LLC, No. 13-7171k, 2015 U.S. App. LEXIS 6782, 7, 17 (D.C. Cir. Apr. 24, 2015) (holding that a federal court exercising diversity jurisdiction 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. However, even assuming *arguendo* that the special motion to dismiss provision of the ICPA did apply here (it does not), the

[4]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 (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).

Andrezjewski Defendants' argument regarding the ICPA still fails because the Amended Complaint is not a SLAPP.

As pointed out by the Andrezjewski Defendants in their Motion, the ICPA "applies where (1) the defendants' acts were in furtherance of their rights to petition, speak, associate, or otherwise participate in government to obtain favorable government action; (2) the plaintiff's claim is based on, related to, or in response to the defendant's 'acts in furtherance'; and (3) the plaintiff fails to produce clear and convincing evidence that the defendant's acts were *not* genuinely aimed at procuring favorable governmental action." Corvus Group, Inc. v. Kaster, No. 12 C 1269, 2012 U.S. Dist. LEXIS 72202, 6-7 (N.D. Ill. May 24, 2012) (emphasis in original).

However, 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 here. 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, 10 C 1691, 2012 U.S. Dist. LEXIS 40393, 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:

> "[s]tated 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, 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 as an individual. See *supra* Factual Background pp. 3-6; Section I pp. 9-11. She does not seek to chill the 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 Andrzejewski 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.[5] As such, the Plaintiff's claims do not constitute a SLAPP. See Cartwright, 2012 U.S. Dist. LEXIS 40393, 17-18.

The Andrezjewski Defendants also erroneously argue that the Plaintiff's claims against them are retaliatory, and, as such, should be dismissed pursuant to the ICPA. However, as discussed above, the Plaintiff here did not file this lawsuit in retaliation or to chill the Andrezjewski Defendants' speech. Rather, the Plaintiff seeks to recover damages due to the campaign of harassment that all of the Defendants, including the Andrezjewski 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, 18 (N.D. Ill. Sept. 19, 2013) ("[D]ismissal [was] not appropriate" when a

[5]Again, to be clear, the Plaintiff has not included claims in her Amended Complaint regarding actions taken by the Defendants related to her official conduct. See Am. Compl. The Plaintiff's official conduct is not at issue in this case.

plaintiff "sufficiently stated a claim" for trade disparagement); 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, 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." However, after Sandholm, the burden is on the Andrezjewski Defendants to demonstrate the Plaintiffs 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 (holding that because defendants have failed to put forward evidence that plaintiff filed this lawsuit solely because of defendants' exercise of their First Amendment rights, the suit is not subject to dismissal under the ICPA, explaining that the lawsuit was, at least in part, undertaken to protect plaintiff's reputation and good will in the community); Cartwright, U.S. Dist. LEXIS 40393 at 22-23 (holding that the case was not subject to dismissal under the ICPA because defendant has not met his burden of showing that plaintiff's suit was based solely on defendant's petitioning activities; rather, it is clear that plaintiff seeks to remedy the damage caused to her reputation by defendant's allegedly defamatory statements on the Internet).

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. Mem. Supp. 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 because: (1) linking to a web page cannot be considered publishing; (2) under the Communications and Decency Act the Andrezjewski Defendants cannot be considered the publishers; and, (3) the Plaintiff has not alleged actual malice. As demonstrated below. The Andrezjewski Defendants are wrong. Thus, their Motion must be denied.

1. Plaintiff sufficiently plead a claim for defamation

"A statement is considered defamatory if it tends to cause such harm to the reputation of another that it lowers that person in the eyes of the community or deters third persons from associating with him." Kolegas v. Heftel Broadcasting Corp., 154 Ill. 2d 1, 10 (1992); Restatement (Second) of Torts § 559 (1977). To state a claim for defamation in Illinois, a plaintiff must allege that (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 Andrezjewski Defendants published the defamatory content to a third party when they forwarded the July 8 Video and the July 8 Caption to their 60,000 followers

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. As can be seen in the exhibit the Andrezjewski Defendants attached to their Motion, they also commented on the July 8 Video and 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 the Andrezjewski Defendants rely on for the proposition that "[l]inking to a web page is not publication or republication of that web page" are inapplicable here, since the Andrezjewski Defendants did more than just link to a web page. Supp. Mem., p. 7. Moreover, a federal district court case addressing a situation remarkably similar to what occurred here concluded that the plaintiff stated a claim for defamation. In Kyle v. Apollomax, LLC, the court held 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. 12-152-RGA, 2013 U.S. Dist. LEXIS 156842, 17 (D. Del. Nov. 1, 2013). In this case, the Andrezjewski Defendants' similarly sent a link with comments about the Plaintiff. As such, the

Plaintiff has sufficiently alleged the Andrezjewski Defendants published the alleged defamatory statements. Id.

Moreover, this argument is based upon a fundamental misunderstanding of the Illinois Single Publication Act.[6] "[The Illinois Single Publication Act] 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).[7] Here, the Andrezjewski Defendants are "someone other than the original libelor" - the original "libelors" are 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 that directed their attention to and commented on the Plaintiff's purported criminal conduct and the July 8 Video. 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 (7th Cir. 2009) (The Illinois Single Publication Act does not 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 Illinois

[6] The Andrezjewski Defendants also cite non-binding single publication rule cases from the Third Circuit Court of Appeals, the Western District of Kentucky and the Superior Court of New Jersey which are distinguishable from the facts in this case because, as discussed immediately above, the Andrezjewski Defendants did more than just forward a link. They also made comments about the Plaintiff.

[7] An additional case cited by the Andrezjewski Defendants, Pippen v. NBCUniversal Media, LLC, 734 F.3d 610, 616 (7th Cir. 2013), favorably cites Dubinsky, which clearly holds the Illinois Single Publication Act is inapplicable here.

Single Publication Act is inapplicable here and the Motion must be denied in regard 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 Seventh Circuit has put it, "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 Andrezjewski Defendants themselves, and not someone else, provided information to 60,000 of their followers in an electronic communication. Am. Compl. ¶ 91. As such, the CDA does not apply to the Andrezjewski Defendants.

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). Specifically, in City of New York the plaintiff alleged that the 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." Id. 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. The Court further reasoned that the CDA "is clearly not meant to immunize [the defendant's] conduct from liability" because "doing so would exempt virtually all Internet use from liability" for tortious acts. Id. In the case at bar, the Andrezjewski Defendants added their "own commentary" about

the Plaintiff when they forwarded the link to the July 8 Video. Am. Compl. ¶ 91; See Sect. III-A-2 p. 16 *supra*; Supp. Mem. at Exhibit. As such, the Andrezjewski Defendants argument regarding the CDA fails. City of New York, 583 F. Supp. 2d at 449.

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: an employee of the OPPL responsible for marketing and public relations functions. 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 libel and false light claims for failing to allege actual malice, where plaintiffs were depicted on a news program addressing matters of public concern, reasoning that "[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" and the issue was more appropriately raised in a motion for summary judgment), citing Wolston v. Reader's Digest Ass'n, Inc., 443 U.S. 157, 167 (1979). The Plaintiff's sole participation in the public sphere stems from her role as an OPPL employee. Beyond that, the Plaintiff is a well-respected member of the community who volunteers with local organizations and operates a small, part-time business in floral design. Am. Compl. ¶¶ 22-23.

As a private figure, the Plaintiff need not plead actual malice to state a claim. See Rosner v. Field Enterprises, Inc., 205 Ill. App. 3d 769, 815 (Ill. App. Ct. 1st Dist. 1990) (holding that the plaintiff, as a private physician, was required to allege and prove negligence for a claim of defamation *per se*). Accordingly, as a private figure, the Plaintiff need not plead actual malice to survive a motion to dismiss. The Andrezjewski Defendants published the July 8 Video and July

8 Caption negligently because they knew the caption to be false, or at the very least, lacked reasonable grounds for the belief that it was true. Am. Compl. ¶¶ 91, 132. Thus, the Defendant's Motion must be denied with respect to this argument.

5. Even if the Plaintiff is a limited purpose public figure, she alleges sufficient facts to establish that the July 8 Video and July 8 Caption were published with 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. "While the bare assertion of actual malice is not enough to state a cause of action, allegations that the statements made were false, were made with knowledge of their falsity, or were made in reckless disregard as to their truth or falsity have been held by our supreme court to be sufficient to withstand a motion to dismiss." Krueger v. Lewis, 342 Ill. App. 3d 467, 472-473 (1st Dist. 2003) (internal citations omitted) (actual malice sufficiently alleged where the complaint stated that statements were made by defendant to plaintiff upon information and belief in full knowledge that they were untrue or in reckless disregard of their truth or falsity); Colson v. Stieg, 89 Ill. 2d. 205, 215-216 (1982) (actual malice sufficiently alleged where complaint stated that statement was made by defendant "knowing it to be false" and was made maliciously, intentionally, and willfully); Weber v. Woods, 31 Ill. App. 3d 122, 127 (1st Dist. 1975) (actual malice sufficiently alleged where complaint stated that defendant, knowing the facts, maliciously intended to injure plaintiff and bring him into public scandal, disrepute, and disgrace, by falsely and maliciously publishing statements concerning plaintiff that were false, scandalous, malicious, and defamatory).

Whether or not they personally produced the July 8 Video and July 8 Caption, the Andrezjewski Defendants knew, or should have known, that the statements contained in the July

8 Video and July 8 Caption were false. The raw video demonstrates that the Plaintiff does no more than exchange a few words with the Defendant DuJan and companions while exiting to the parking lot. Am. Compl. ¶¶ 53, 58-61. Meanwhile, the title of the July 8 Video directly and clearly imputes commission of a crime: "Bridget Bittman commits Disorderly Conduct/Breach of Peace on 7/8/14 according to Officer Schmidt." Am. Compl. ¶ 54. The July 8 Caption further imputes commission of a crime: "Outside the Orland Park Civic Center 7/8/14 at 1:15 pm Bridget Bittman commits disorderly conduct/breach of peace 8 6 1 1." Am. Compl. ¶ 56. Because the Andrezjewski Defendants could merely watch the video to learn of the caption's falsity, the Andrezjewski Defendants published the July 8 Video and July 8 Caption with actual malice, or at the least, with reckless disregard for its truth or falsity. Accordingly, the Andrezjewski Defendant's Motion must be denied with respect to their argument regarding malice.

B. The Plaintiff has Pled Sufficient Facts for a False Light Claim Against the Andrezjewski Defendants

In their Motion, the Andrezjewski Defendants argue that the Plaintiff has not stated a claim for false light because: (1) the Plaintiff has not adequately alleged actual malice; (2) linking to a web page cannot be considered publishing; and (3) the statements do not meet the highly offensive to a reasonable person standard. For the following reasons, the Andrezjewski Defendants' Motion must be denied on this issue.

1. The Plaintiff sufficiently plead a claim for false light

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 when they sent an electronic statement to nearly 60,000 of their followers that directed their attention to the Plaintiff's purported criminal conduct and the video. Am. Compl. ¶ 91, 263-264, 267-269.

The July 8 Video and July 8 Caption cast the Plaintiff in a false light by falsely imputing criminal conduct by the Plaintiff and by falsely portraying her as lacking the abilities to perform and integrity in her employment. Id. at 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. 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."

2. The Plaintiff Sufficiently Alleges Actual Malice for a False Light Claim

In their Motion, 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 Andrezjewski Defendants' Motion must be denied with respect to this argument. See Sect. III, pp. 4-5, *supra*.

C. The Plaintiff has No Claim for Civil Conspiracy, and As Such, it Cannot be a "Meritless" Claim

The Andrezjewski Defendants argue that Plaintiff's civil conspiracy claim is meritless. However, the Plaintiff has no claim for civil conspiracy anywhere in the Amended Complaint. The Plaintiff merely alleges that, as discussed above in the Fact Section and Section I, there was a concerted effort by all of the Defendants to harass and defame the Plaintiff. Am. Compl. ¶¶ 131-132. Nowhere does the Plaintiff allege a civil conspiracy. See generally Am. Compl. As such, the nonexistent "conspiracy claim" cannot be meritless and this argument fails.

CONCLUSION

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

Dated: Chicago, Illinois
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Respectfully submitted,
PLAINTIFF BRIDGET BITTMAN

By: Larry J. Lipka

/s/ Larry J. Lipka

One of Her Attorneys
Larry J. Lipka
Mudd Law Offices
3114 West Irving Park Road, Suite 1W
Chicago, Illinois 60618
773.588.5410
ARDC: 6297043