UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

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

NOW COMES the PLAINTIFF BRIDGET BITTMAN ("Plaintiff"), by and through her counsel, Mudd Law Offices, and respectfully submits her Memorandum in Opposition to Defendant Dan Kleinman's Motion to Dismiss the Plaintiff's Amended Complaint filed by Defendant Dan Kleinman ("Defendant" or "Kleinman"), and states as follows:

INTRODUCTION

This litigation arises from the collective efforts of Defendants Megan Fox, Kevin Dujan, Dan Kleinman, Adam Andrzejewski, and For the Good of Illinois (collectively, "Defendants") to defame, discredit, disparage, and damage Bridget Bittman's ("Ms. Bittman") reputation and life. In her capacity as the marketing and public relations coordinator for the Orland Park Public Library ("OPPL"), Ms. Bittman publicly articulated its policy to provide adults with unfiltered access to the Internet. After realizing their efforts to change the OPPL policy had failed, Defendants Fox and Dujan began to attack, harass, and publicly convey false statements about Ms. Bittman. Indeed, they targeted her home, her personal life, and her plant business (that has no relation to library policy). Moreover, they began to falsely state that she had engaged in

criminal activity and discriminated against a certain class of individuals. Dan Kleinman, Adam Andrzejewski, and For the Good of Illinois collaborated in and furthered this latter conduct. Indeed, Kleinman has continued to intentionally publish defamatory statements about Ms. Bittman. In January 2015, Ms. Bittman could endure no more as her distress and fear for the safety of her family increased significantly. On January 21, 2015, Plaintiff Bridget Bittman filed her Amended Complaint against the Defendants. To be sure, by pursuing her litigation, Ms. Bittman does not intend to stifle legitimate public comments and debate, but rather seeks to end the Defendants' unlawful harassing conduct directed to destroying her life and reputation.

Kleinman moves to dismiss the defamation *per se* and false light claims brought against him pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6). Mem. in Supp. of Mot. to Dismiss (February 19, 2015) (Dkt. No. 40) ("Supp. Mem."). For the reasons articulated below, the Motion must be denied.

FACTUAL BACKGROUND

The OPPL employs Ms. Bittman as its marketing and public relations coordinator. Am. Compl. (January 21, 2015) (Dkt. No. 34, Paras. 16-17) ("Am. Compl."). The OPPL provides unfiltered access to the Internet for adults. Id. ¶ 26. Beginning in the fall of 2013, Defendants Fox and 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 OPPL's policy. Id. ¶ 27. When they realized these efforts had failed, Defendants Fox and DuJan launched a relentless, public campaign to destroy Ms. Bittman's reputation and personal life. Am. Compl. ¶¶ 28, 31. In November 4, 2013, Defendants Fox and DuJan began making false and defamatory statements about Ms. Bittman on the Internet. Id. ¶ 36. Kleinman later joined in intentionally publishing false and defamatory statements about Ms. Bittman on the Internet.

July 8th Video

As one of many efforts to harass Ms. Bittman, the Defendants confronted Ms. Bittman on a public sidewalk on July 8, 2014 in a planned attempt to illicit a negative reaction from her, and filmed the exchange on video ("July 8 Video"). Id. ¶ 53. Ms. Bittman had a short exchange with them and then went to her car. She later learned that a video of the exchange appeared on Fox's YouTube channel alleging that she "commits disorderly conduct and breach of peace." Id. ¶ 56. Ms. Bittman did not commit any criminal act in the exchange. Am. Compl. ¶¶ 56, 73, 74. The edited July 8 Video also contained captions that falsely represented Ms. Bittman's statements during the exchange ("July 8 Caption," as described in the Amended Complaint). Id. ¶ 69. The July 8 Video claims Ms. Bittman called DuJan a "fruit," a derogatory term for a homosexual person. Id. She did not use this term. Id. ¶¶ 71-72.

Kleinman Involvement

Dan Kleinman, who runs a blog that vilifies libraries for the type of unfiltered Internet policy held by the OPPL ("SafeLibraries.org" or "SafeLibraries") and is a close associate of Fox and DuJan, shared the July 8 Video on his website. Am. Compl. ¶ 93. Kleinman included a description falsely stating that Ms. Bittman attacked a gay man in the July 8 Video. Id. ¶ 94. Despite knowing the falsity of the July 8 Video's contents and the purported criminal conduct, Kleinman continued to share the July 8 Video with his national audience. Id. ¶ 96. Moreover, Kleinman categorized Ms. Bittman as a "Gay Hater" and "homophobe" on SafeLibraries. Id. ¶ 128-29. Kleinman acted intentionally in concert with the other Defendants and with knowledge of his statements' falsity, or, if not with clear knowledge and intent, a reckless disregard for whether the accusations he published about Ms. Bittman were true. Id. ¶ 131-132.

ARGUMENT

In her Amended Complaint, the Plaintiff sufficiently establishes personal jurisdiction over Kleinman. She also sufficiently states claims for defamation *per se* and false light against Kleinman. For these reasons and those articulated below, Kleinman's Motion must be denied.

I. THIS COURT HAS SPECIFIC PERSONAL JURISDICTION OVER KLEINMAN

Where a motion to dismiss raises the issue of personal jurisdiction, a plaintiff need only make a *prima facie* showing of jurisdictional facts. Tamburo v. Dworkin, 601 F.3d 693, 700 (7th Cir. 2010). All well-pleaded facts alleged in the complaint are taken as true and any factual disputes are resolved in the Plaintiff's favor. Id. The Illinois long-arm statute allows the exercise of jurisdiction to the full extent permitted by the 14th Amendment's Due Process Clause. 735 ILCS § 5/2-209(c). The key inquiry is whether a defendant has sufficient "minimum contacts" with Illinois such that the lawsuit "does not offend traditional notions of fair play and substantial justice." Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (internal citations omitted).

A. This Court Has Specific Personal Jurisdiction over Kleinman

Specific jurisdiction is appropriate where (1) a defendant purposefully directed 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 activities in the forum state. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985) (internal citations omitted). Defendant availed himself of the laws of Illinois by operating a website with webpages specifically directed to Illinois residents. Am. Compl. ¶ 93. Moreover, he availed himself of the laws of Illinois by operating a website with a webpage specifically targeting the Plaintiff in her residence and place of employment. Id. Furthermore, the Plaintiff's harm arises directly out of the content of the

webpage. Id. ¶ 133-39. Consequently, the exercise of personal jurisdiction over Kleinman is proper and comports with the notions of fair play and substantial justice. Id.; Int'l Shoe Co., 326 U.S. at 316. For these reasons and those articulated below, Kleinman's Motion must be denied.

1. Kleinman Purposefully Directed Activities against Bittman at Illinois

Although Kleinman operates his blog out of New Jersey, his tortious conduct is expressly aimed at Illinois because he knows the conduct would have a potentially devastating impact on the Plaintiff and that she would feel the brunt of the injury in Illinois. Am. Compl. ¶¶ 93-94, 128-29; See Calder v. Jones, 465 U.S. 783, 789-90 (1984). Contrary to Defendant's erroneous argument, Supp. Mem., p. 5, Plaintiff's allegations about the July 8 Video and the "Gay Hater" and "homophobe" statements sufficiently allege that Kleinman purposefully directed statements toward Illinois. Kleinman published the July 8 Video on SafeLibraries, characterizing the Plaintiff as a "Gay Hater" and a "homophobe." Am. Compl. ¶¶ 93, 128, 129. As the subject of the post was the Plaintiff and the OPPL in Illinois, Kleinman was fully aware the Plaintiff resides in Illinois and would feel injury in her personal and professional life in Illinois. Thus, by directing his tortious conduct toward the Plaintiff, knowing the Plaintiff lives and works in Illinois, the pleadings clearly allege the Defendant purposefully directed the statements to Illinois.

Despite the Defendant's contentions, Supp. Mem., pp. 3-4, "[j]urisdiction cannot be avoided merely because the defendant did not physically enter the forum State . . . [and, in fact,] potential defendants should have some control over—and certainly should not be surprised by—the jurisdictional consequences of their actions." Tamburo, 601 F.3d at 701 (internal citations omitted). Indeed, the Seventh Circuit has applied the Supreme Court's "express aiming" test to tortious acts committed over the Internet, finding that specific personal jurisdiction exists where

there is: (1) intentional tortious conduct; (2) expressly aimed at the forum state; (3) with the defendant's knowledge that the effects would be felt in the forum state. Id. at 703; see Calder, 465 U.S. at 789-90. In Tamburo, the Seventh Circuit found a prima facie case of personal jurisdiction where the defendants blasted emails to defame and generate a boycott, knowing that the plaintiff lived and worked in Illinois and would be injured in Illinois. Tamburo, 601 F.3d at 708. Kleinman's activities of blogging false and defamatory statements to damage the Plaintiff, knowing that the Plaintiff lives and works in Illinois, and would suffer the "brunt of the injury" in Illinois, clearly constitute sufficient facts for a prima facie case of personal jurisdiction. Am. Compl. ¶¶ 44-52, 132; see Tamburo, 601 F.3d at 706.

Despite this, Kleinman mistakenly argues that because he publishes articles about topics of interest from all over the country, and that he does not direct articles to any particular forum or state, he did not direct his conduct at Illinois. Supp. Mem., p. 5. Nonetheless, all that matters for establishing specific personal jurisdiction is that he directed the activities at issue in this litigation toward Illinois. See uBID, Inc. v. GoDaddy Group, Inc., 623 F.3d 421, 428 (7th Cir. 2010); see Keeton v. Hustler Magazine, 465 U.S. 770, 774 (1984). Here, Kleinman published the July 8 Video and statements on SafeLibraries with a complete understanding that those statements concerned an Illinois public library and an Illinois citizen. Am. Compl. ¶¶ 93, 132. As such, Kleinman's argument has no merit.

In a further effort to avoid jurisdiction, Kleinman incorrectly argues, relying on Young v. New Haven Advocate, that "something more" is necessary beyond availability of the defamatory content in Illinois. Supp. Mem., p. 5; 315 F.3d 256, 258-59 (4th Cir. 2002). As discussed above in relation to the "express aiming" test, Seventh Circuit jurisprudence differs from that cited by Kleinman. Tamburo, 601 F.3d at 708. As such, the Defendant's argument once more has no

merit. Even so, the present case is distinguishable from Young. For example, in Hare v. Richie, the court distinguished Young because the defendant invited users to submit information and the website targeted a national audience rather than a local audience outside the forum state. 2012 U.S. Dist. LEXIS 122893, *33-34 (D. Md. Aug. 29, 2012). Here, SafeLibraries is not a static site that merely contains posts, but rather is an interactive website inviting users to report libraries for perceived violations and comment on blog posts. SafeLibraries also targets a national audience, including webpages for state & city laws. Accordingly, even if this Court follows Young, the Defendant's statements involve "something more" than availability of defamatory content in Illinois. Thus, Kleinman's Motion must be denied on this argument.

In sum, it could not be clearer that Kleinman directed his conduct to Illinois, and his arguments to the contrary lack merit.

2. Notions of Fair Play and Substantial Justice Not Violated

In assessing whether the exercise of personal jurisdiction by Illinois offends traditional notions of fair play and substantial justice, courts consider: "the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the States in furthering fundamental substantive social policies." Burger King, 471 U.S. at 477 (internal quotation marks omitted). In this context, exercising *specific* personal jurisdiction over Kleinman comports with notions of fair play and substantial justice. First, "Illinois has a strong interest in providing a forum for its residents and local businesses to redress for tort injuries suffered within the state and inflicted by out-of-state actors." Tamburo, 601 F.3d at 709; Levin v. Posen Found., 2015 U.S. Dist. LEXIS 706, *19-20 (N.D. Ill. Jan. 6, 2015). Further, as above, Kleinman purposefully directed the

SafeLibraries post at Illinois under the "express aiming" test and, thus, Kleinman should have anticipated being haled into court in Illinois. See Tamburo, 601 F.3d at 706. Also, given Kleinman resides in a separate state, it is "far more reasonable to conclude that the Defendants should anticipate being haled into court in [Plaintiff's] home state of Illinois rather than a court in [each] codefendant's home jurisdiction." Id. at 709-710. Accordingly, the exercise of personal jurisdiction comports with traditional notions of fair play and substantial justice. Id. at 710; Levin, 2015 U.S. Dist. LEXIS at *19-20. Thus, Kleinman's Motion must be denied with respect to this argument.

II. PLAINTIFF SUFFICIENTLY ALLEGES DEFAMATION AND FALSE LIGHT

Ms. Bittman sufficiently pleads defamation per se and false light against Kleinman.

A. Standard of Review under Federal Rule of Civil Procedure 12(b)(6)

"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)). A complaint need not satisfy a "heightened fact pleading of specifics," but rather contain "enough facts to state a claim for relief that is plausible on its face." Killingsworth v. HSBC Bank Nev., N.A., 507 F.3d 614, 618 (7th Cir. 2007). 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). A 12(b)(6) motion should only be granted when it appears without a doubt that a plaintiff can prove no set of facts in support of the claims that would entitle her to relief. Zellner v. Herrick, 639 F.3d 371, 378 (7th Cir. 2011).

B. Plaintiff Sufficiently States a Claim for Defamation Against Kleinman

In his motion, Kleinman essentially argues that the Plaintiff has not alleged actual malice but, if she has, innocent construction protects him. He then suggests that, if he is wrong on this point, his statements constitute opinion. In short, Kleinman's arguments have no merit.

Here, the Plaintiff has sufficiently alleged each required element to state a claim for defamation *per se* against Kleinman. To state a claim for defamation, a plaintiff must allege the defendant made a false and unprivileged statement concerning the plaintiff to a third party that caused the plaintiff to suffer 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)). Ms. Bittman has alleged this in her complaint. Am. Compl. ¶¶ 93-95, 127-32, 142-43. Further, the Plaintiff has alleged the statements constitute defamation *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. Id. ¶¶ 133-39; see Tuite v. Corbitt, 224 Ill.2d 490, 501-502 (2006).

1. Plaintiff is a private figure

Despite the sufficiency of her allegations, Kleinman argues that Ms. Bittman has not alleged actual malice. Supp. Mem., p. 9. In so doing, it seems Kleinman erroneously presumes Ms. Bittman to be a public figure. Id. In fact, the Plaintiff is not a public figure but a private figure despite being employed by the OPPL for marketing and public relations functions. Am. Compl. ¶¶ 17-18; see also 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)). To the extent Kleinman disagrees, this issue is more appropriate for a motion for summary judgment. See id. As a private figure, the Plaintiff need not plead actual malice to state a claim. 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*); Troman v. Wood, 62 Ill. 2d 184, 198 (1975).

2. Sufficient facts allege actual malice

Regardless, the Amended Complaint alleges sufficient facts to show the false statements were published with actual malice. "[A]llegations 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) (actual malice sufficiently alleged where complaint stated defendant made statements to plaintiff upon information and belief in full knowledge they were untrue or in reckless disregard of their truth or falsity) (citing Colson v. Stieg, 89 Ill. 2d 205, 215-216 (1982)). Here, the Amended Complaint alleges actual malice. Am. Compl. ¶ 140. It also specifically alleges that the statements were false. See generally Am. Compl, and ¶¶ 224-261. Moreover, the Amended Complaint specifically alleges that Kleinman, as a Defendant, knew the falsity of the statements in the July 8 Video and July 8

Caption. Am. Compl. ¶ 258.[1] As such, the Plaintiff has sufficiently alleges actual malice. Thus, Kleinman's Motion must be denied on this argument.

3. The statements cannot be innocently constructed

Next, as to the false statement that the Plaintiff "attacked a gay man," Kleinman appeals to the doctrine of innocent construction to protect him. Supp. Mem., p. 10. His appeal to innocent construction lacks merit because the false allegation that the Plaintiff "attacked a gay man" cannot be innocently constructed. Courts interpret defamatory statements "as they appeared to have been used and according to the idea they intend to convey to the reasonable reader." Bryson v. News. Am. Publs., 174 Ill. 2d 77, 93 (1996). Courts need not "strain to find an unnatural innocent meaning for a statement when a defamatory meaning is far more reasonable." Tuite v. Corbitt, 224 Ill. 2d 490, 504-505 (2006). Thus, "when a defamatory meaning was clearly intended and conveyed, [Illinois courts] will not strain to interpret allegedly defamatory words in their mildest and most inoffensive sense in order to hold them non-libelous under the innocent construction rule." Giant Screen Sports v. Canadian Imperial Bank of Comm., 553 F.3d 527, 533 (7th Cir. 2009), citing Bryson, 174 Ill. 2d at 93.

Here, Kleinman mistakenly, if not incredulously, argues that "attack" can be interpreted as "harsh criticism." Supp. Mem., p. 10. However, the statement "attacked a gay man" clearly imputes commission of a crime by the Plaintiff. 720 ILCS 5/12-7.1. Under Illinois law, "a person commits a hate crime when, by reason of the actual or perceived . . . sexual orientation . . . of another individual . . . he commits . . . disorderly conduct." 720 ILCS 5/12-7.1(a).

[1] Beyond this, the Amended Complaint alleges facts supporting a position that Kleinman should have known the falsity of the statements. It alleges the raw video demonstrates the Plaintiff does no more than exchange a few words with DuJan and companions while exiting to the parking lot. Am. Compl. ¶¶ 53, 58-61. It alleges that the July 8 Video's title directly imputes commission of a crime: "Bridget Bittman commits Disorderly Conduct/Breach of Peace on 7/8/14 according to Officer Schmidt." Id. ¶ 54. It alleges the July 8 Caption further imputes commission of a crime: "Bridget Bittman commits disorderly conduct/breach of peace." Id. ¶ 56.

Considered in the context of the July 8 Video and July 8 Caption, an innocent construction would be unreasonably strained. In conjunction with the July 8 Video's title and July 8 Caption alleging the Plaintiff committed disorderly conduct, breach of peace, brandished a weapon, and intended to start a fight, the Defendant's statement that the Plaintiff "attacked a gay man" clearly conveys a meaning that the Plaintiff engaged in more than harsh criticism. Am. Compl. ¶¶ 54, 56, 66-67, 80, 93-95. Indeed, the statement clearly intends to convey to the reasonable reader that the Plaintiff committed a hate crime. See Bryson, 174 Ill. 2d at 93. Alternatively, even if the word "attack" meant "harsh criticism" as Kleinman argues, Supp. Mem., p. 10, the statement nonetheless could reasonably impute the commission of a hate crime. See *supra*. Therefore, Kleinman's innocent construction argument completely lacks merit, and the Motion must be denied with respect to this argument.

4. Kleinman's statements impute facts

Next, despite Kleinman's limited appeal to opinion, Supp. Mem., pp. 12-13, his "Gay Hater" and "homophobe" statements constitute actionable false statements of facts. To determine whether a statement is fact or opinion, courts consider whether the statements "cannot 'reasonably be interpreted as stating actual facts.'" Kolegas v. Heftel Broadcasting Corp., 154 Ill. 2d 1, 14-15 (1992). Illinois courts emphasize, "the totality of the circumstances, and whether the statement can be reasonably interpreted as stating actual facts objectively verified as true or false." Skolnick v. Correctional Med. Servs., 132 F. Supp. 2d 1116, 1125 (N.D. Ill. 2001) (internal citations omitted). Here, Kleinman categorized the Plaintiff as a "Gay Hater" and "homophobe" without any additional information. Am. Compl. ¶ 128-29. Where a defendant makes certain harmful statements without explanation and context, the statements can constitute actionable statements of fact. See Patlovich v. Rudd, 949 F. Supp. 585, 592-593 (N.D. Ill. 1996)

(where the statements at issue contained "vague hints" to a "coverup," rather than a complete description of the "cover up," the court held the "implications of unstated facts" constituted an actionable statement). Without a description supporting Kleinman's characterization, the statements constitute, if nothing more, "vague hints" implying that unstated facts establishing the Plaintiff as a hateful or discriminatory individual form the basis for his 'opinion'. See id. at 593. Accordingly, the "Gay Hater" and "homophobe" statements do not constitute opinion and, thus, are actionable. See id. Therefore, Kleinman's Motion must be denied on this argument.

5. The Amended Complaint sufficiently alleges publication

Finally, despite Kleinman's fleeting comment to the contrary, Supp. Mem., p. 11, the Amended Complaint sufficiently alleges his republication of the "Police Report Statement" and "Google Photo Statement." The Plaintiff alleges concerted activity among the Defendants, in that "[w]here any one Defendant did not actually post . . . such Defendant collaborated and worked in concert with the other Defendants to cause such statements or photos to be posted." Am. Compl. ¶ 132. Because the court must take all sufficiently pled allegations as true and draw all inferences in the Plaintiff's favor, she has sufficiently pled publication in this instance. See Tamburo, 601 F.3d at 700. Likewise, despite Defendant's contention, Supp. Mem., p. 11-12, the Plaintiff sufficiently alleges that Kleinman published the "Gay Hater" and "homophobe" statements. Am. Compl. ¶ 255-257. The existence of defamatory statements on Kleinman's website, coupled with the prospect of dissemination of that content to the Internet, sufficiently alleges publication. Am. Compl. ¶ 255-257; see Jaffe v. Federal Reserve Bank, 586 F. Supp. 106, 108 (N.D. Ill. 1984) (citing Zurek v. Hasten, 553 F. Supp. 745, 746-48 (N.D. Ill. 1982) (establishing standard for sufficiently alleging publication on a motion to dismiss on a due process of law claim)). His publication comment has no merit.

6. Conclusion

Based on the foregoing, the Plaintiff has sufficiently alleged defamation per se against Kleinman to survive his motion to dismiss.

C. Plaintiff Sufficiently States a False Light Claim against Kleinman

To state a claim for false light, the allegations in the complaint must 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. Kleinman placed the Plaintiff in a false light before the public when, as explained above in Section I, Kleinman published the "Gay Hater" statement to a wide Internet audience, identifying the Plaintiff by name. Am. Compl. ¶¶ 314-15. The "Gay Hater" statement cast the Plaintiff in a false light by falsely portraying the Plaintiff as lacking integrity in her employment; by falsely portraying her as lacking the abilities to perform in her employment; prejudicing her in her employment; and falsely imputing criminal conduct. Id. ¶ 317-20. A trier of fact could find the false light "highly offensive to a reasonable person." Kolegas, 154 Ill. 2d at 17. Lastly, Kleinman knew the falsity of the statements, or alternatively, acted with reckless disregard for whether the statements were true or false, thus acting with actual malice. Am. Compl. ¶¶ 258-259; Kolegas, 154 Ill. 2d at 17-18.

Contrary to his mistaken argument, Supp. Mem., p. 13-14, Kleinman knew the July 8 Video and July 8 Caption statements were false and acted with actual malice. As discussed above on pages 10-11, "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, 342 Ill. App. at 472-473. Here, the Plaintiff clearly alleges that Kleinman knowingly published false and defamatory statements portraying the Plaintiff in a false light to the Plaintiff's community

and the Internet via SafeLibraries. Again, simply comparing the raw footage of the July 8 Video against the July 8 Caption, Kleinman would be fully aware of the statements' falsity. See supra, Sect. II. Nevertheless, Kleinman republished the July 8 Video and July 8 Caption knowing the falsity of the statements. Am. Compl. ¶ 272. Under Illinois law, this allegation is sufficient to survive a motion to dismiss. Krueger, 342 Ill. App. 3d at 472-473. Accordingly, the Motion must be denied with respect to this argument.

Moreover, despite Defendant's argument, Supp. Mem., p. 14, the Plaintiff sufficiently alleges a false light claim with respect to the "Gay Hater" and "homophobe" statements. Contrary to the Defendant's hollow argument, the "Gay Hater" and "homophobe" statements, as detailed above on pages 12-13, constitute actionable statements of fact. Moreover, as stated above, the allegation that Kleinman posted the statements on SafeLibraries sufficiently alleges the publication element. Am. Compl. ¶¶ 93, 255-257; see Jaffe, 586 F. Supp. at 108. Thus, the Defendant's Motion must be denied with respect to these arguments.

CONCLUSION

WHEREFORE, for the foregoing reasons, this Court must deny Defendant Kleinman's Motion in its entirety.

Dated: Chicago, Illinois
April 30, 2015

Respectfully submitted,
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By: /s/ Tatyana L. Ruderman
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