

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

MEANITH HUON,)	
)	
Plaintiff,)	
)	
v.)	Case No. 11-cv-03054
)	
BREAKING MEDIA, LLC <i>et al.</i> ,)	District Judge John J. Tharp, Jr.
)	
Defendants.)	Magistrate Judge Jeffrey T. Gilbert

**ATL DEFENDANTS’ MOTION TO DISMISS
PLAINTIFF’S FOURTH AMENDED COMPLAINT**

Defendants Breaking Media, Inc. (formerly known as Breaking Media, LLC), David Lat, Elie Mystal, John Lerner, and David Minkin (the “ATL Defendants”) respectfully request that the Court dismiss Plaintiff’s claims against them in the Fourth Amended Complaint, with prejudice. In support of their motion, the ATL Defendants state as follows:

1. Plaintiff Meanith Huon alleges nine claims against the ATL Defendants based on a post on the website AboveTheLaw.com (the “Post”): (I) defamation *per se*, (II) defamation *per quod*, (III) false-light invasion of privacy, (IV) intrusion upon seclusion, (V) intentional infliction of emotional distress, (VI-VII) conspiracy, (VIII) tortious interference with economic advantage, and (IX) cyberstalking and cyberbullying.

2. Federal Rule of Civil Procedure 12(b)(6) permits a court to dismiss a complaint that fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). These motions challenge whether a plaintiff has alleged facts sufficient to “state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570).

3. The Court should dismiss Plaintiff's defamation claims because the statements (a) are privileged as fair reports of judicial proceedings, (b) are non-actionable opinion and rhetorical hyperbole, (c) can be innocently construed, (d) would not tend to harm Plaintiff's reputation, (e) are not about Plaintiff, and/or (f) are not actually contained in the Post. Plaintiff also fails to plead special damages for the defamation *per quod* claim.

4. The Court should dismiss Plaintiff's claim for false-light invasion of privacy for the same reasons set forth *supra* in paragraph 3.

5. The Court should dismiss Plaintiff's claim for intrusion upon seclusion because it is barred by the First Amendment and has not been adequately alleged.

6. The Court should dismiss Plaintiff's claim for intentional infliction of emotional distress because the statements at issue are subject to the fair report privilege and are non-actionable opinion and rhetorical hyperbole. In addition, Plaintiff has not alleged extreme and outrageous conduct.

7. The Court should dismiss Plaintiff's claim for tortious interference with economic advantage because Plaintiff has not pled intent or adequately alleged any of the tort's elements.

8. The Court should dismiss Plaintiff's claim of conspiracy because he has no underlying tort claim and has not adequately alleged a conspiracy.

9. The Court should dismiss Plaintiff's claim of cyberstalking and cyberbullying under 720 ILCS 5/12-7.5 because that statute does not provide a private cause of action, the statute does not apply to the Post, and Plaintiff's claim is based on constitutionally-protected fair reports of governmental proceedings.

10. The ATL Defendants are submitting a memorandum of law in further support of this motion.

WHEREFORE, the ATL Defendants respectfully request that the Court dismiss the claims against them in Plaintiff's Fourth Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) with prejudice, and grant such further relief as is just.

Dated: January 7, 2013

Respectfully submitted,

BREAKING MEDIA, INC. f/k/a BREAKING MEDIA, LLC, DAVID LAT, ELIE MYSTAL, JOHN LERNER, AND DAVID MINKIN

By: /s/ Steven P. Mandell
One of their attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a true and correct copy of the foregoing **ATL DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FOURTH AMENDED COMPLAINT** has been served on January 7, 2012 via the Court's CM/ECF system on all counsel of record who have consented to electronic service.

Any other counsel of record will be served by electronic mail and regular mail.

/s/ Steven P. Mandell