UNITED STATES DISTRICT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MEANITH HUON,	**)**	
Plaintiff,	**)**	
v.	**)**	**CIVIL ACTION NO.: 1: 11-cv-3054**
	)	
NICK DENTON, et. al.,	**)**	
Defendants	**)**	

PLAINTIFF, MEANITH HUON'S RESPONSE TO THE GAWKER DEFENDANTS' FRCP 12(b)(6) MOTION TO DISMISS

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Plaintiff, Meanith Huon, responds to the the FRCP 12(b)(6) Motion and Memorandum of Defendants, Gawker Media, Gawker Media Group Inc., Gawker Media LLC, Gawker Entertainment LLC, Gawker Sales LLC, Gawker Technology LLC, Irin Carmon, Gabby Darbyshire, Nick Denton, (collectively, "Gawker", or "Defendants")[1] as follows:

INTRODUCTION

Meanith Huon is an attorney with more than 16 years' experience and has never been disciplined by the State Bar. He is a victim of Gawker' defamation—calling him a "**Rapist**" when he is not one. Indeed, Mr. Huon was found **not guilty** of sexual assault by a jury of his peers, and the statements made by Defendants were false.

Then, rubbing salt on the wound, Gawker engages in a character assassination of Mr. Huon with allegations which are, once again, false. This smear campaign is an attempt to misdirect this Court's attention from the facts relevant to this case, which are that Gawker called Mr. Huon a "**Rapist**" on its website, thereby harming Mr. Huon's reputation, character, and career.[2] Gawker committed this injustice by: (1) writing a defamatory story; (2) linking, quoting, and republishing another defamatory story; (3) falsely suggesting that it knew what the jury relied on in finding Mr. Huon not guilty, when it never spoke to any juror; (4) drafting, editing, promoting or modifying the comments below the story about Mr. Huon to mislead the public into believing that those statements were created by third parties; (5) encouraging and inviting its 4 million daily visitors to submit comments by "invitation only" to disparage Mr. Huon and shaping and choreographing the content of those comments; and (6) calling Mr. Huon

[1] See email from Gawker's attorney identifying the Gawker Defendants bringing the motion to dismiss. Exhibit "A".

[2] Gawker resorts to hyperbole and personal attacks against Mr. Huon to obscure the facts in this case. Mr. Huon responds to Gawker's Preliminary Statement at the end of this Response brief.

a "**Rapist**" in their headline for their story, despite his acquittal, all to maximize Defendants' own profit at the expense of Mr. Huon.

Gawker wrote a "news" story, created or controlled comments to that story, and invited, solicited, or promoted third party comments—by "invitation only"-- to the story to shape a public view of Mr. Huon that would drive traffic to Gawker's websites—20 million+ page views a day globally. Gawker created its own headline calling Mr. Huon the "**Acquitted Rapist**," posted a comment saying that even though Mr. Huon was not guilty, he was still a "**Rapist**", fabricated a claim that the jury relied on the "strength" of a bartender's testimony that the victim had been drunk, when Gawker in fact never interviewed any juror, and edited the comments to its own story. Gawker republished the AboveTheLaw.com ("ATL") story , reported the defamatory headline "**Rape Potpourri**," and summarized parts of the story.[3]

Gawker developed and enforces a system of commenting on its websites by invitation only that monetizes the comments.[4] Gawker shapes the contents of the conversation of the comments and gives the advertiser " a reasonably large degree of control of the conversation that most people see in that post".[5] A user of Gawker's websites cannot post a comment unless it is first approved by Gawker. Nick Denton described the goal of the commenting system as "to erase the traditional distinctions between writers, editors, readers, subject, and sources."[6] Gawker's writers are under constant pressure to generate web traffic to keep their jobs; writers'

[3] The original headline is attached as Exhibit "H" calling Mr. Huon the "**Acquitted Rapist".** Gawker spoliated evidence or attempted to cover up its misdeeds by altering the original headline.

[4] Paragraphs 109 to 127, 4th Amended Complaint.

[5] Paragraphs 112 to 113, 4th Amended Complaint.

[6] Columbia Journalism Review, "Gawker's New Comment System", July 6, 2012. http://www.cjr.org/behind_the_news/no_comments.php?page=all . Exhibit "B".

compensation is based on the amount of web traffic the story generates.[7] Journalist Drew Johnson has traced hundreds of "anonymous" comments posted to promote Gawker stories to actual Gawker employees– ginning up their own pages.[8]

THE PARTIES

MEANITH HUON

Mr. Huon is admitted to practice law in Illinois and before the Federal Courts sitting in Illinois, including the Federal Trial Bar of the Northern District of Illinois and the 7th Circuit. He has never been convicted of a felony or misdemeanor; he has no pending criminal charges.

While Gawker attempts to improperly include a great deal of misleading, inflammatory, and irrelevant evidence, what happened is that Mr. Huon was falsely accused of sexual assault by "Jane Doe" in case no. 2008 CF 1496 in Madison County, Illinois .[9] After Mr. Huon's arrest, Jane Doe Googled Mr. Huon's name and a found a blog on God and life. Unable to get Mr. Huon to accept a plea deal in case no. 2008 CF 1496, the State's Attorney's Office charged Mr. Huon with cyber stalking and harassment of a witness in case no. 2009 CF 1688. After deliberating approximately 2 hours, a jury found Mr. Huon not guilty of sexual assault. The remaining charges were stricken from the trial call and left up in the air for 7 months until the then-Madison County State's Attorney left office. All remaining charges were dropped.

More than a year after being acquitted, Gawker ran its story on Mr. Huon calling him a "**Rapist**" on its blog Jezebel.com and began a vigilante smear campaign of treating Mr. Huon

[7]See Exhibit "B" and Nick Denton's Internal Memorandum marked as Exhibit "C". Gawker tracks the web traffic for each of its writer. http://gawker.com/stats-month.

[8]. See http://gawkersucks.blogspot.com. Exhibit "D".

[9] Mr. Huon filed a motion to strike an exhibit revealing the name and hometown of the complaining woman in 2008 CF 1496, because she was the complainant in a sexual assault case. Docket No. 50.

like a registered sex offender who needs to be outed and tracked. The Gawker story republished the ATL story about Mr. Huon posing as a talent scout. There was no evidence in the original proceedings that Mr. Huon posed as a talent scout. *After* the Gawker story was posted, Mr. Huon was falsely accused by Stephanie Andrews of posing as a talent scout.[10] By the second court date, the Cook County prosecutor agreed that the charges should be dropped.

The copycat case happened *after* the Gawker story and there are no defamation claims made about that case. Gawker included the copycat case in its brief to denigrate Mr. Huon.[11]

THE GAWKER DEFENDANTS

After denigrating Mr. Huon, Gawker describes itself as a "news" website reporting on "media and politics." What Gawker leaves out is the fact that its irresponsible brand of Internet "journalism" has made it the one of the most sued collection of tabloid websites on the Internet.[12] In fact, the complaint of Mr. Huon in this case is in line with the lack of fact checking that has become a hallmark of the Gawker websites (*see e.g.*, the *Los Angeles Times* article, dated May 20, 2011, entitled "*Schwarzenegger child: How Gawker named wrong 'baby mama*'"). [13]

Indeed, Gawker engages in unethical tactics that violate the canons and ethics of journalism. The invasion of Mr. Huon's privacy is consistent with Gawker's history of targeting individuals and disclosing private facts about their lives. Journalist Drew Johnson has

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[10] A Google of Ms. Andrews' name and "Chicago" reveals that Ms. Andrews worked as a keyword editor at Info.com http://www.linkedin.com/in/scandrews29.

[11] Mr. Huon incurred attorneys' fees in defending himself in the charges and, thus, has suffered special damages.

[12] Bollea v. Gawker Media, LLC, 2012 U.S. Dist. LEXIS 185667 (M.D. Fla. Dec. 20, 2012); Biro v. Condé Nast, 2012 U.S. Dist. LEXIS 113188 (S.D.N.Y. Aug. 10, 2012); HarperCollins Publrs. L.L.C. v. Gawker Media LLC, 721 F. Supp. 2d 303 (S.D.N.Y. 2010). See Exhibit "E".

[13] See Exhibit "F". Gawker's targets can be anyone, not just celebrities. A 19 year old former high school student contended that Gawker posted altered yearbook photos on its websites showing her exposing herself. Gawker posted the photograph of a 16 year old rape victim. http://gawker.com/5980588/there-might-be-a-way-to-prosecute-steubenville-rape-crew-leader-michael-nodianos?tag=Steubenville

investigated Gawker and writes "they'll plaster your personal information online for everyone to see, and generally make you look bad on any future Google searches." [14] Gawker seems to treat lawsuits as a cost of doing business. Gawker's $300 million blog empire generates advertising dollars by posting salacious, unchecked "gossip" without any semblance of journalism.

ARGUMENT

I. GAWKER'S STORY IS *PER SE* DEFAMATORY AND PLACES MR. HUON IN A FALSE LIGHT.

The Gawker Defendants argue that simply because Mr. Huon was charged with two crimes (never mind that he was found not guilty), they cannot be held accountable for defamation. That is not the rule. The Seventh Circuit noted, "such a rule 'would strip people who had done bad things of any legal protection against being defamed; they would be defamation outlaws.'" *Desnick v. American Broadcasting Companies, Inc.,* 44 F.3d 1345, 1350 (7th Cir. 1995). "A statement need not state the commission of a crime with the particularity of an indictment to qualify as defamatory *per se*." *Parker House v. O' Lite Corp,*324 Ill.App.3d 1014, 1025; *Van Horne v. Muller*, 185 Ill.2d 299, 308 (Ill. 1998). Reporting that plaintiff has been charged with a crime when there are no pending charges is defamatory *per se*. *Gazette, Inc. v. Harris,* 229 Va. 1, 325 S.E.2d 713 (Va.,1985); *Cianci v. New Times Pub. Co.,* 639 F.2d 54 (C.A.N.Y., 1980) In *Van Horne,* the Illinois Supreme Court held that a newscaster defamed the plaintiff when the newscaster repeated the false account of a story during her news broadcast that the plaintiff had assaulted a disc jockey. The Court held, "In general, '[a]ll persons who cause or participate in the publication of libelous or slanderous matters are responsible for such publication.'" *Van Horne*, 185 Ill.2d at 308. Hyperlinking a defamatory content is a re-

[14] See http://gawkersucks.blogspot.com.

publication of the defamatory content. *Pisani v. Staten Island University Hosp*., 440 F.Supp.2d 168 (E.D.N.Y.,2006); *In re Perry*, 423 B.R. 215 (S.D.Tex.,2010).

It is well established that it is defamatory to call or imply that someone is a "rapist". As the U.S. Supreme Court stated, No one will deny "that it is libelous falsely to charge another with being a rapist". *Beauharnais v. People of State of Ill.,* 343 U.S. 250, 72 S.Ct. 725 U.S. (1952); *Cooper v. Dupnik*, 924 F.2d 1520 (9th Cir. 1991); *In re Thompson*, 162 B.R. 748 (E.D.Mich.,1993). False accusations of criminal conduct, such as calling someone a "**Rapist**" more than a year after he has been acquitted, are *per se* defamatory and places him in a false light. But in addition to calling him a "**Rapist**," Gawker then posted a comment to their own story that said that even though Mr. Huon was found not guilty, he is still a rapist. That, as well, is *per se* defamatory. *Goehring v. Wright*, 858 F.Supp. 989 (N.D. Cal. 1994); *Fisher v. Larsen*, 138 Cal.App.3d 627 (1982); *Axelbank v. Rony*, 277 F.2d 314 (9th Cir. 1960). This type of *per se* defamation supports a finding of malice and punitive damages in this case.[15] Gawker knew that Mr. Huon had sued ATL for calling him a rapist. But Gawker tried to bolster the story that Mr. Huon is a rapist by offering the excuse that ATL was sloppy with its facts and that Mr. Huon was upset that he was called a serial rapist when he is just a one-time "**Rapist**".

Following its *modus operandi* of vigilante cyber bullying, Gawker posted the "**Rapist**" story on its feminist website Jezebel.com and invited submissions for comments from its daily 4

[15] *See St. Amant v. Thompson*, 390 U.S. 727, 88 S.Ct. 1323 (1968); *Curtis Publishing Company v. Butts*, 388 U.S. 130, 87 S.Ct. 1975 (1967). The following actions by Gawker can be used to show its malice in this case: (i) Gawker fabricated what the jury relied on in finding Mr. Huon innocent; (ii) Gawker fabricated what it means to be found not guilty; (iii) Gawker called Mr. Huon a "rapist" after he was found not guilty; and (iv) Gawker republished a defamatory headline with a copy of Mr. Huon's mugshot a year after he was acquitted, and published a link to the defamatory article from AboveTheLaw.com.

million visitors to disparage Mr. Huon .[16] Gawker created or controlled comments calling Mr. Huon "crazy", a "rapist", a "one-time" rapist."

Gawker argues that the number of words used somehow removes the defamatory meaning. That is not the law. In the context of defamation law, statements charging a person with unfair business practices, impugning his integrity, prejudicing his practice of law, and/or implying that he committed a crime falls within several of the recognized categories of defamation *per se.* *Solaia Technology, LLC v. Specialty Pub. Co.,* 221 Ill.2d 558, 590 (Ill. 2006). Accusing someone of being a "**Rapist**", a stalker, a rapist who got away with rape, posing as a talent scout, a sex offender, the "**Acquitted Rapist**", having pending criminal charges are all defamatory *per se*. Mr. Huon adopts his arguments in his Response Brief to the Above the Law Defendants' Motion to Dismiss.[17]

II. THE FAIR REPORT PRIVILEGE DOES NOT APPLY.

The fair report privilege does not protect a reporter's personal "additions" or an indictment by "innuendo" as to the integrity of any of the parties.[18] The Gawker story falls outside of this privilege because, *inter alia*, it (1) adds that Mr. Huon is an "acquitted rapist," calling him a "rapist" even though he was found not guilty; (2) adds, incorrectly, that acquittal does not mean that he did not commit rape; and (3) adds innuendo (also fabricated) that the jury acquitted on the "strength" of a bartender's testimony that the victim had been drinking.

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[16] See the Gawker's public statistics on http://www.quantcast.com/p-d4P3FpSypJrlA. Exhibit "G".

[17] Mr. Huon was not charged with "Rape" in 2008. He was charged with sexual assault. Rape" is defined as forcible vaginal intercourse. People v. Defrates, 33 Ill. 2d 190, 194 (Ill. 1965). It is not oral sex. The FBI changed its definition in 2012. http://www.fbi.gov/news/pressrel/press-releases/attorney-general-eric-holder-announces-revisions-to-the-uniform-crime-reports-definition-of-rape The single word "Rape" alone is defamatory per se.

[18] Restatement (Second) of Torts § 611, Comment *f*, at 300–01 (1977); *Snitowsky v. NBC Subsidiary (WMAQ-TV), Inc., 297 Ill.App.3d 314, 310 (1st Dist. 1988).*

The Restatement, which has been adopted by Illinois for defamation,[19] provides that the statements made by Gawker's reporter are not privileged. Restatement (Second) of Torts § 611, Comment *f*, at 300–01 (1977). *Solaia Tech., LLC.*, cited by Defendants, held that statement regarding an attorney was not a fair abridgement of a complaint, and thus the fair report privilege did not apply. 221 Ill. 2d 558, 593 (Ill. 2006). The defamation privilege for fair reports of judicial proceedings can be lost if the report is inaccurate or unfair, if the account is discolored or garbled, or if comments or insinuations are added.[20] The privilege does not permit the expansion of the official report by the addition of fabricated evidence designed to improve the credibility of the defamation. *Snitowsky v. NBC Subsidiary* (WMAQ-TV), Inc., 297 Ill.App.3d 314, 310 (1st Dist. 1988). The privilege does not apply to an inaccurate account of the proceedings; *Myers v. The Telegraph*, 332 Ill.App.3d 917, 922 (5th Dist. 2002); *Lowe v. Rockford* ,179 Ill.App.3d 592, 597 (2nd Dist. 1989).

Accordingly, there can be no privilege here for the comments and text that were added by Gawker, including that Mr. Huon is a "**Rapist**," a statement that is not anywhere in the criminal complaint, and is contrary to the express findings of the jury. In addition, Gawker's comment to its own story that just because Mr. Huon was found not guilty does not mean that he is not a rapist was an unprivileged comment or insinuation. Moreover, Gawker fabricated and discolored facts. As an extreme example, Gawker claimed that the jury, in finding Mr. Huon not guilty, relied "on the strength of a bartender's testimony that the woman had been drinking," when Gawker never interviewed or spoke to any jury members to find out what they did or did not rely

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[19] *Kuwik v. Starmark Star Marketing and Admin., Inc.*, 156 Ill.2d 16, 27-28 (1993).

[20] Hon. Robert S. Hunter et al, *Trial Handbook for Illinois Lawyers* – Civil § 1:11 (8th ed. 2012)

on. The statement was plain make-believe. It is for a jury to decide whether these are a fair report of the complaint, but these defamatory items are nowhere in the original proceedings.

Here, either the fair report privilege does not apply at all, or Gawker lost the privilege based upon its conduct. Either way, there is no privilege for these statements. In fact, Gawker's actions relating to its story do not meet its own test for the fair report privilege because Gawker's statements were not a "substantially correct account" of either the not guilty findings or what the jury relied on in making its determination. Specifically, the Fourth Amended Complaint alleges, *inter alia:*

- Gawker posted a comment to its own article: "Just because a man is acquitted of rape does not mean he did not commit rape";
- Gawker simply fabricated that the Jury relied "partly on the strength of a bartender's testimony that the woman [accuser] had been drinking" when Gawker never spoke to a single juror to ask what they did or did not rely on;[21]
- Gawker republished the defamatory headline "**Rape Potpourri**", which means "a miscellaneous collection" of rape stories, along with a mugshot of Mr. Huon, and along with the sentence: "We've got a couple of rape stories"; and
- Finally, absent from Gawker's analysis is the headline that it now wants to ignore. Gawker initially published the story calling Mr. Huon an "**Acquitted Rapist**". Gawker then changed the headline to its current title.[22]

These statements are not protected by privilege.[23]

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[21] *See Eastwood v. National Enquirer, Inc.*, 123 F.3d 1249, 1256 (9th Cir. 1997) (language suggesting that actor Clint Eastwood and the reporter had conversed was improper and actionable). Just as Eastwood never spoke to the reporter, the reporter here never talked to a juror to determine what the jury relied on in finding Mr. Huon not guilty.

[22] The original headline is attached as Exhibit "H" calling Mr. Huon the "**Acquitted Rapist".** Gawker spoliated evidence or attempted to cover up its misdeeds by altering the original headline.

[23] The Gawker Defendants contend that there is "nothing that supports Plaintiff's theory of recovery concerning omitted items." First, this is not Mr. Huon's theory. He is suing for what Gawker did say, and not what was omitted. Second, the law is plain that omissions by a reporter, inventing facts, and the failure to investigate absolutely give rise to defamation, particularly where the failure to investigate takes place on an issue that is not "breaking news" or "hot news." *Widener v. Pacific Gas & Electric Co.*, 75 Cal.App.3d 415, 434 (1977), *partially*

Gawker also added its own "comments" to the article and edited others' comments to cause Gawker to be liable for the defamatory content therein. Or worse, according to one journalist, Gawker likely wrote this comment itself.[24] For brevity sake, Mr. Huon adopts his arguments in his Response Brief to the Above the Law Defendants' Motion to Dismiss that Defendants are not journalists and reporters and, thus, are not entitled to the privilege. While Gawker creates and develops content, that content is not "news".

III. THE GAWKER ACTIONS ARE NOT PROTECTED OPINION.

The Illinois Supreme Court has held that accusing someone of a crime is a statement of fact.[25] *Catalano v. Pechous,* 83 Ill. 2d 146, 159-161 (Ill. 1980). The Illinois Supreme Court relied on *Cianci v. New Times Publishing Co.* in which the Second Circuit held that accusations of criminal activity-- committing a rape 12 years ago—is not a constitutionally protected opinion (2d Cir. 1980), 639 F.2d 54. Calling someone a "**Rapist**" is *not* a matter of opinion. It is a fact, which is capable of being proved true or false. Saying: "Just because a man is acquitted of rape does not mean he did not commit rape" is not only a statement of fact (he committed rape), it is a completely incorrect statement of what it means to be found not guilty. Saying that the jury found Mr. Huon not guilty because it relied on the "strength" of a bartender's testimony that the victim had been drinking is another fact that was simply made up by the Gawker writer.

Gawker relies on outdated cases before the law changed and that do not apply--the 1986

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overruled on other grounds; *see also Fisher v. Larsen*, 138 Cal.App.3d 627, 639–40 (1982).

[24] *See* http://gawkersucks.blogspot.com

[25] *Catalano v. Pechous,* 83 Ill. 2d 146, 159-161 (Ill. 1980).

O'Donnell case and the 1988 *Horowitz* case.[26] However, in 1990, the United States Supreme Court reexamined the opinion defense and rejected what it called "the creation of an artificial dichotomy between 'opinion' and fact." *Milkovich v. Lorain Journal Co.,* 497 U.S. 1, 19 (1990) (First Amendment did not protect the story with the headline "Maple beat the law with the 'big lie,'" beneath which appeared plaintiff's photograph). .[27] The court held that there is no separate First Amendment privilege for statements of opinion, and that a false assertion of fact can be libelous *even if couched in terms of an opinion*. *Id*. at 18.

In this case, Gawker took screen shots of the Above The Law article and posted them to its website. Below is an exact picture of what the Gawker "reporter" posted:

Above the picture is the headline in bold black letters: "**Acquitted Rapist Sues Blog for Calling Him Serial Rapist.**" The Gawker article takes the defamatory headline "**Rape Potpourri**" and

[26] *O'Donnell v. Field Enters., Inc.,* 145 Ill.App.3d 1032, 1036 (1986); and *Horowitz v. Baker,* 168 Ill.App.3d 603 (1988).

[27] 'In my opinion Jones is a liar,' can cause as much damage to reputation as the statement, 'Jones is a liar.' As Judge Friendly aptly stated: '[It] would be destructive of the law of libel if a writer could escape liability for accusations of [defamatory conduct] simply by using, explicitly or implicitly, the words 'I think.' *Milkovich,* 497 U.S. at 19.

republishes it next to Mr. Huon's mug shot. The original ATL article did not have Mr. Huon's mugshot.[28] The Gawker story quotes the first line of the ATL article, which states, "We got a couple rape stories . . . ." The Gawker article summarizes the ATL story, fabricates having interviewed jurors to determine whether they thought a bartender's testimony was strong, and then provides a link to the ATL story. The Gawker then posted comments to their own story about Mr. Huon. Facts analogous to Gawker's claim that the jury believed Mr. Huon because it relied on the strength of the bartender's testimony have been held to be unprotected opinion. *See Carson v. Allied News Co.*, 529 F. 2d 206 (7th Cir. 1976). As explained by the Seventh Circuit *Carson*:

> If a writer can sit down in the quiet of his cubicle and create conversations as 'a logical extension of what must have gone on' and dispense this as news, it is difficult to perceive what First Amendment protection such fiction can claim.

The Gawker article states the alleged victim's version of events at length and then suggests that Gawker has firsthand knowledge that the jury relied on the bartender's testimony—but nowhere in the record of the proceedings is there any evidence that the jury relied on that testimony. Gawker cites to a link to support its statement that the jury relies on the "strength" of the bartender's testimony. That link takes a reader to a newspaper article that mentions a bartender testified. The article does not say that the jury relied on the strength of the bartender's testimony. Like in the *Carson* case, Gawker imagined that scenario and then reported it as true.

IV. NO ACTIONABLE HARM IS NOT A VIABLE DEFENSE

Gawker's "No Actionable Harm" defense is not recognized in Illinois. The Illinois Court of Appeal has specifically rejected this defense in Illinois. It explained in *Myers v. The Telegraph*:

[28] The ATL story is attached as Exhibit "L".

> No court in Illinois has explicitly adopted the incremental-harm defense. We decline to do so now. To establish the defense, a defendant would need to come forward with evidence establishing the plaintiff's deserved reputation. In turn, the plaintiff would be forced to either accept the defendant's characterization of his reputation or attempt to refute the claim. Consequently, a myriad of collateral, unrelated evidence will be presented, diverting the trial from the main objective-determining whether the offending statement is true or false. Additionally, the incremental-harm defense conflicts with the common law principles governing *per se* actions. 332 Ill.App.3d 917, 925, 773 N.E.2d 192, 200 (Ill.App. 5th Dist. 2002).

The cases that have analyzed the related defense of "substantial truth" have held that *discovery is required* and this cannot be decided on a 12(b)(6) motion. Judge Lefkow looked at Gawker's *Haynes* opinion, and explained that whether or not the defense is viable in Illinois, it is not properly raised until after the Plaintiff has been given the opportunity to conduct discovery. Specifically, in *Trudeau v. ConsumerAffairs.com, Inc*., the Court held: " Because there has been no discovery and the court has not taken judicial notice of the documents defendants attached to their motion for the truth of the matters asserted therein, the court cannot say that Trudeau could not have been harmed by the false statements in the article. 2011 WL 3898041 (N.D.Ill. 2011).

In this case, a Google Search of "Meanith Huon" will retrieve the Gawker story as the 1st or 2nd search result. The ATL Defendants and the news organizations have removed their defamatory post. It is for the jury to decide if Mr. Huon has been harmed by the Gawker story.

V. PLAINTIFF STATES A CLAIM FOR INFLICTION OF EMOTIONAL DISTRESS

As discussed in the preceding paragraphs, Defendants engaged in extreme and outrageous conduct. More than a year after a jury acquitted Mr. Huon, Defendants disseminated a story calling Mr. Huon a "rapist." For brevity sake, Mr. Huon adopts his arguments in his Response Brief to the Above the Law Defendants' Motion to Dismiss.

VI. PLAINTIFF STATES A CLAIM FOR CIVIL CONSPIRACY

Plaintiff states a claim for conspiracy. "To state a claim for civil conspiracy, a plaintiff

must allege the agreement and also a tortious act committed in furtherance of that agreement."[29] The elements of civil conspiracy are: (1) a combination of two or more persons; (2) for the purpose of accomplishing, by some concerted action, either an unlawful purpose or a lawful purpose by unlawful means; (3) in the furtherance of which one of the conspirators committed an overt tortuous or unlawful act. *Time Savers, Inc. v. LaSalle Bank, N.A.*, 371 Ill.App.3d 759, 309 Ill.Dec. 259, 863 N.E.2d 1156 (2nd Dist. 2007).

Here, each of these elements is stated in the Fourth Amended Complaint. To the extent Gawker demands more specificity, it is well-settled that Mr. Huon is not required to plead with specificity and precision the facts that are within the defendant's control and knowledge. *Time Savers, Inc.*, 371 Ill. App. 3d at 771, 863 N.E.2d at 1167–68. Mr. Huon alleges that there was a combination of two or more persons: Gawker Media and its entities, Nick Denton, Gabby Darbyshire, Irin Carmon.[30] The combination was for, among other things, to defame Mr. Huon by calling him a "**Rapist**" and to invite third parties to submit salacious and defamatory comments about Mr. Huon for posting.[31] One of the conspirators committed an overt tortuous or unlawful act: Mr. Denton, the principal and moving force behind Gawker, created a website and a business plan for monetizing comments based on defaming individuals; Ms. Darbyshire refused Mr. Huon's request to remove the story and managed the development of the content; Ms. Carmon wrote the Gawker story. The combination of these individuals and entities to act caused the defamatory story and comments to be published on the World Wide Web.

[29] Robert S. Hunter et al., *Trial Handbook for Illinois Lawyers – Civil* § 22:42 (8th ed. 2012), (citing *Burgess v. Abex Corp. ex rel. Pneumo Abex Corp*., 311 Ill.App.3d 900, 244 Ill.Dec. 319, 725 N.E.2d 792 (4th Dist. 2000)).

[30] Paragraphs 24 to 48 of the 4th Amended Complaint.

[31] Paragraphs 48 to 57, 100 to 137, 145 to 147, of the 4th Amended Complaint.

VII. THE COURT SHOULD CREATE A PRIVATE CAUSE OF ACTION FOR CYBERBULLYING AND/OR CYBERSTALKING.

The Courts can create a private right of action based on a criminal statute. *Sawyer Realty Group, Inc. v. Jarvis Corp*., 89 Ill.2d 379, 1386 (Ill. 1982). "It has long been held that when a statute is enacted to protect a particular class of individuals, courts may *imply* a private right of action even though no express remedy has been provided in the statute." *Eagle Marine Industries, Inc. v. Union Pacific R. Co.*, 363 Ill.App.3d 1166, 1177, (5th Dist. 2006) (emphasis added), *judgment rev'd on other grounds*, 227 Ill.2d 377, 317 Ill.Dec. 642, 882 N.E.2d 522 (2008). The following factors are considered: (1) whether the plaintiff is a member of the class for whose benefit the statute was enacted; (2) whether the plaintiff's injury is one the statute was designed to prevent; (3) whether a private right of action is consistent with the underlying purpose of the statute; and (4) whether implying a private right of action is necessary to provide an adequate remedy for violations of the statute. *Id*.

Here, Mr. Huon is a victim of cyber stalking and cyber bullying. Mr. Huon's injury is one the statute was designed to prevent, meaning repeated or continued harassment of a person using the Internet. Gawker invited its 4 million a day visitors to treat Mr. Huon like a rapist. Gawker posted the untrue and inflammatory comments for more than 24 hours, which caused Mr. Huon emotional distress. The post and comments have remained on the Internet for almost 2 years. A private right of action is consistent with the underlying purpose of the statute. [32] There is no public policy in encouraging false statements to show up about in real time Google

[32] Addressing the American Psychological Association's ("APA") Annual Convention, Dr. Elizabeth Carll, of the APA Media Psychology Division, stated: "It is my observation that the symptoms related to cyberstalking and e-harassment may be more intense than in-person harassment, as the impact is more devastating due to the 24/7 nature of online communication, inability to escape to a safe place, and global access of the information.

search result or to go viral. Implying a private right of action is necessary to provide an adequate remedy for violations of the statute. The criminal statute are inadequate to protect victims like Mr. Huon, as the Madison County criminal case showed when the prosecutors charged Mr. Huon with cyber stalking, after Jane Doe admitted to looking for his online presence by Googling him.

VIII. SECTION 230 OF THE COMMUNICATIONS DECENCY ACT ("CDA") DOES NOT APPLY.

A. Gawker created the content.

Gawker may not seek the protection of Section 230 because Gawker is an "information content provider" for the defamatory statements in question. Gawker created the content by calling Mr. Huon the "**Rapist**", despite a jury finding that he was not guilty, and by modifying the original ATL article. Gawker, and not some other party, fabricated the claim that the jury relied on the strength of a bartender's testimony. Gawker's assertion of the Fair Reporting privilege concedes that Gawker created content.

The immunity of Section 230 has nothing to do with the facts of this case. Section 230 provides: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."[33] 47 U.S.C. § 230. Section 230 does not protect website operators from liability as publishers

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http://www.telegraph.co.uk/technology/internet/8687956/Cyberstalking-more-dangerous-than-traditional-bullying.html.

[33] 47 U.S.C. 230(c)(1) (emphasis added). . The idea behind the legislation was: how can Facebook be held liable for something that it did not even know was posted on its website. Tara E. Lynch, *Good Samaritan or Defamation Defender? Amending the Communications Decency Act to Correct the Misnomer of Section 230 . . . Without Expanding ISP Liability,* 19 SYRACUSE SCI. & TECH. L. REP. 1, 8 (2008). Here, Gawker wrote the story, Gawker must approve each comment, even modified and wrote the comments to its story, and Gawker blocked Mr. Huon from posting a rebuttal.

who authored the content. *MCW, Inc. v. Badbusinessbureau.com, L.L.C.*, 2004 U.S. Dist. LEXIS 6678, 31-32 (N.D. Tex. 2004) (Defendants wrote defamatory messages about plaintiff with titles such as "Con Artists," "Scam," and "Ripoff," organizing the reports under headings such as "Con Artists" and "Corrupt Companies"). Gawker wrote the story, including the improper headline calling Mr. Huon a "**Rapist**".

B. Gawker created or controlled the comments.

Gawker wrote the comments to its own story, or at least acted in a manner so as to be considered an "information content provider" of those comments. Journalist Drew Johnson has traced hundreds of "anonymous" comments posted to promote Gawker stories to actual Gawker employees– ginning up their own pages. [34] Mr. Johnson has investigated Gawker writers creating aliases to promote their own stories and Gawker employees creating fake accounts to promote Gawker stories on Reddit.com. He concluded that the practice of creating fake accounts to post "anonymous" comments online to promote Gawker's stories appear to be a companywide policy.

The immunity afforded by the CDA is not absolute and may be forfeited if the site owner invites the posting of illegal materials or makes actionable postings itself. *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157 (9th Cir. 2008) (en banc); *Jones v. Dirty World Entm't Recordings, LLC*, 766 F. Supp. 2d 828, 836 (E.D. Ky. 2011) (holding website liable for comments posted by third parties).

In this case, Mr. Huon alleges that certain commenters may actually be Jezebel Defendants' employees, posting under an alias, and several defamatory statements about Mr.

[34] Exhibit "I". *See* http://gawkersucks.blogspot.com.

Huon by unidentified "commenters" are actually Gawker employees.[35]

Furthermore, Gawker's commenting system is by "invitation only" and every comment must be approved by Gawker. Gawker knows about the comments because it approves them.

C. Gawker provided the infrastructure and developed and choreographed the content of the commenting system to make money off of the most defamatory comments.

Gawker's business model is to monetize comments and conversation.[36] Nick Denton described the goal of the commenting system "to erase the traditional distinctions between writers, editors, readers, subject, and source"[37] and to make money by monetizing comments from the 20 million+ page view Gawker gets each day. Gawker's writers are under constant pressure to generate web traffic to keep their job, and the writers' compensation is based on the popularity of their stories and the amount of web traffic the story generates.[38] There is a high turnover with Gawker's writers. A writer left Gawker after possibly posting child porn on Gawker.[39] Another Gawker's writer left after the writer was reported as having written fake stories or for having created fake accounts to promote his own stories.[40] Journalist Drew Johnson has traced hundreds of "anonymous" comments posted to promote Gawker stories to actual Gawker employees. But Nick Denton, the principal and moving force behind Gawker,

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[35] Paragraph 110, 4th Amended Complaint.

[36] Paragraphs 112 to 113, 4th Amended Complaint.

[37] Columbia Journalism Review, "Gawker's New Comment System", July 6, 2012. http://www.cjr.org/behind_the_news/no_comments.php?page=all . Exhibit "B".

[38]See Exhibits "B" and Nick Denton's Internal Memorandum marked as Exhibit "C". Gawker tracks the web traffic for each of its writer. http://gawker.com/stats-month.

[39] See "Was Gawker writer fired for posting child porn?" http://gawkersucks.blogspot.com/2012/12/was-gawker-writer-fired-for-posting.html. Exhibit "I".

[40] See http://gawkersucks.blogspot.com/2013/02/and-now-hes-gone.html. Exhibit "I".

continues to run Gawker business model of defaming individuals to generate advertising dollars.

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In *Fair House. Council v. Roommates.com*, LLC, 521 F.3d 1157, 1171-1172 (9th Cir. Cal. 2008), the 9th Circuit modified its prior holding in *Carafano*:

> As we explain above, see pp. 3458-64 supra, even if the data are supplied by third parties, a website operator may still contribute to the content's illegality and thus be liable as a developer. n31 Providing immunity every time a website uses data initially obtained from third parties would eviscerate the exception to section 230 for "develop[ing]" unlawful content "in whole or in part." 47 U.S.C. § 230(f)(3).
>
> FOOTNOTES
>
> n31 We disavow any suggestion that *Carafano* holds an information content provider automatically immune so long as the content originated with another information content provider. 339 F.3d at 1125.
>
> We believe a more plausible rationale for the unquestionably correct result in *Carafano* is this: The allegedly libelous content there--the false implication that Carafano was unchaste--was created and developed entirely by the malevolent user, **without prompting or help from the website operator**. To be sure, the website provided neutral tools, which the anonymous dastard used to publish the libel, but the website did absolutely nothing to encourage the posting of defamatory content--indeed, the defamatory posting was contrary to the website's express policies. **The claim against the website was, in effect, that it failed to review each user-created profile to ensure that it wasn't defamatory**. That is precisely the kind of activity for which Congress intended to grant absolution with the passage of section 230. With respect to the defamatory content, the website operator was merely a passive conduit and thus could not be held liable for failing to detect and remove it. n32. *Fair Hous. Council v. Roommates.com, LLC*, 521 F.3d 1157, 1171-1172 (emphasis supplied) (9th Cir. Cal. 2008).

The 9th Circuit explained that Roommate.com, LLC was directly involved with developing and enforcing a system that subjects subscribers to allegedly discriminatory housing practices. *Fair Hous. Council v. Roommates.com, LLC,* 521 F.3d 1157, 1171-1172 (9th Cir. Cal. 2008). Causing a particular statement to be made, or perhaps causing the illegal content of a statement might be sufficient to create liability for a website. *Chi. Lawyers' Comm. for Civ.*

Rights Under Law, Inc. v. Craigslist, Inc., No. 07-1101, 2008 U.S. App. LEXIS 5472 (7th Cir. Mar. 14, 2008); *Fair Hous. Council v. Roommates.com, LLC*, 521 F.3d 1157, 1171-1172 (9th Cir. Cal. 2008).

Here, Gawker is directly involved in developing and enforcing a system by "invitation only" that defames individuals, discloses private facts, posts sex videos online, bullies individuals. Gawker invites users to submit the most outrageous and offensive comments to increase the chances that the comments will be posted. Gawker must approve each comment. Gawker's only posts comments it loves under its comment by invitation only system:

> How do I get approved to comment?
>
> We only approve the comments we love—so make sure you're adding something of quality to the post. Stay on-topic and seek to further the conversation. Leave us a juicy story on the #tips page or throw your hat into the ring of our open forums . . .
> Do you have any tips for auditioning?
> Leaving multiple high-quality comments on different threads with your newly created account increases your chances of getting approved.[41]

Mr. Huon could not even post a rebuttal. Defendants blocked and prevented Mr. Huon from posting a reply under his legal name. On a later date, Defendants moderated or censored Mr. Huon's attempt to post a reply by removing or redacting his post. None of the other users had their post redacted.[42] Thus, Gawker is developing and choreographing the content.

Moreover, the inflammatory "**Rapist**" story created by Gawker generated and provoked more users to submit comments and discussions, thereby, generating more web traffic. By calling Mr. Huon the "**Rapist**", Gawker provoked more comments, and thus, contents, like the

[41] Paragraph 116-117, 4th Amended Complaint.

[42] Paragraph 123 to 124, Fourth Amended Complaint.

following: "So he is actually upset about the 'Serial' rapist part, actually he is just a one-time accused rapist".[43] The reason why so many disparaging comments were made about Mr. Huon is because Gawker posted a false and defamatory story calling Mr. Huon the "**Acquitted Rapist**".

Gawker has a financial interest in developing the information that gets posted, since every post can affect the number of web traffic and advertising dollars. Gawker brags that the Gawker system gives the advertiser a reasonably high degree of control and that it makes money off of the conversation.

In *FTC v. Accusearch, Inc.,* the offending content was the disclosed confidential information itself. The 10th Circuit concluded that Accusearch was responsible for the development of that content--for the conversion of the legally protected records from confidential material to publicly exposed information. Accusearch solicited requests for such confidential information and then paid researchers to obtain it. It knowingly sought to transform virtually unknown information into a publicly available commodity. And as the district court found and the record shows, Accusearch knew that its researchers were obtaining the information through fraud or other illegality. 570 F.3d 1187, 1199 (10th Cir. Wyo. 2009).

Here, Gawker knew that its editors, writers, or employees were defaming individuals—because Gawker approved and promoted the comments it loved by "invitation only". Gawker paid its writers based on web traffic to their pages, Gawker invited submission from users or created its own comments, and it shaped the conversation—all to generate advertising dollars.[44]

[43] Paragraph 122, 4th Amended Complaint.

[44] On February 25, 2013, Gawker had over 4 million visits per day to its website and more than 27 million page views a day. Gawker ranked 37 in the US for website traffic. By creating defamatory content, Gawker invites and encourages users to submit the most offensive comments. Disparaging statements draws traffic. Even a 1% response of 4 million visits is 270,000—270,000 potential comments. Gawkers can edit or promote the most inflammatory comments and generate even more traffic. Gawker can search through the hundreds, if not thousands,

In *Jones v. Dirty World Entertainment Recordings, LLC,* the court found that defendant service provider was a developer for the comments on its website and was responsible for the development of offensive content because it encouraged the development of offensive about the content. 840 F. Supp. 2d 1008, 1011 (E.D. Ky. 2012). Here, Gawker posts the defamatory story that starts the conversation, encourage its readers to post offensive comment about Mr. Huon, and shapes the conversation.

D. A question of fact exists as to whether Gawker created the content.

A Federal Court has already held the CDA issues here cannot be decided on a motion to dismiss. *Hy Cite Corp. v Badbusinessbureau.com, L.L.C.,* 418 F.Supp.2d 1142, 1147-1149 (D. Ariz. 2005). When the defendants actively solicits or causes defamatory statements to be made, it is a question for the jury as to whether the Defendants created the content within the meaning of Section 230 of the CDA. *Doctor's Assocs. v. QIP Holder LLC,* 2010 U.S. Dist. LEXIS 14687, 66-71 (D. Conn. Feb. 19, 2010).

In *Doctor's Assocs.,* Quiznos ran an internet-based contest entitled "Quiznos v. Subway TV Ad Challenge". Quiznos' website invited customers to log onto the Contest website and enter the contest by uploading video submissions. Quiznos contended that these videos were posted as they were submitted, and without altering the creative content, in a manner that made it clear that the content was created by the contestants rather than by Quiznos. The District Court still held that whether the Defendants are responsible for creating or developing the contestant videos is an issue of material fact for jury. A reasonable jury may well conclude that the Defendants did not merely post the arguably disparaging content contained in the contestant

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of disparaging comments, post the most offensive comments, and shape the conversation. Exhibit "F".

videos, but instead actively solicited disparaging representations about Subway and thus were responsible for the creation or development of the offending contestant videos.[45]

In this case, Gawker actively solicited disparaging content about Mr. Huon. Gawker called him a "**Rapist**" who got away with rape on a feminist blog and invited angry and disparaging submissions. Moreover, Gawker's own Terms and Conditions state "Do not post threatening, harassing, defamatory, or libelous material." But Gawker approved disparaging statements about Mr. Huon yet blocked Mr. Huon's response to clear his name. A reasonable jury can conclude that Gawker invited submissions to disparage Mr. Huon.[46]

E. The Gawker Defendants' Cases Support Mr. Huon or do not apply.

The 9th Circuit does not read *Carafano* as granting CDA immunity to those who actively encourage, solicit and profit from the tortious and unlawful communications of others. *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 489 F.3d 921, 927-928 (9th Cir. Cal. 2007). By providing a forum designed to publish sensitive and defamatory information, and suggesting the type of information that might be disclosed to best harass and endanger the targets, this website operator might well be held responsible for creating and developing the tortious information. *Id.* *Chi. Lawyers' Comm. for Civ. Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666, 671 (7th Cir. 2008) stated that "causing a *particular* statement

[45] See also *Woodhull v. Meinel*, 145 N.M. 533, 540 (N.M. Ct. App. 2008), (a genuine issue of fact exists as to whether defendant's actions went beyond those intended to be immunized under the CDA. Instead of merely editing an email from a third party, defendant apparently requested potentially defamatory material for her own stated purpose of making fun of' plaintiff. That material was incorporated into an overall larger posting containing her own thoughts and contributions.)

[46] A FRCP 12(b)(6) is not grounds to strike part of the defamation claim (*i.e.*, the comments).

to be made, or perhaps [causing] the *discriminatory content of a statement*" might be sufficient to create liability for a website. *Id.* at 671–72 (emphasis added).

In *Shiamili v Real Estate Group of N.Y., Inc.,* the court never decided whether to apply the Ninth Circuit's view of "development" of the content by the website, because there was no allegation that the website invited the submission, created defamatory comments, approved every comment, or posted a disparaging story. 17 N.Y.3d 281, 291 (N.Y. 2011).

Explaining Ben Ezra, Weinstein, and Co., Inc. v. Am. Online Inc., 206 F.3d 980, 986 (10th Cir. N.M. 2000), the 10th Circuit in *F.T.C. v. Accusearch Inc.* said " In *Ben Ezra*, however, America Online **had done nothing to encourage what made the content offensive—**its alleged inaccuracy. . . [**A] website helps to develop unlawful content, and thus falls within the exception to section 230, if it contributes materially to the alleged illegality of the conduct** (emphasis supplied)." 570 F.3d 1187, 1199-1201 (10th Cir. 2009. Here, Gawker's actions were intended to generate the unlawful and offensive content. Gawker compares Nick Denton to the dark overlord Darth Vader running an evil empire.[47]

Dimeo v. Max, 248 Fed. Appx. 280 (3d Cir. Pa. 2007) is not binding precedent and the 3rd Circuit states it is not precedential. Defendant in *Dimeo* did not encourage members to post defamatory statements or create or shape content.

VIII. PLAINTIFF STATES CLAIMS AGAINST DENTON AND DARBYSHIRE.

Nick Denton is the sole incorporator of Blogwire, Inc., the predecessor to Gawker Media, LLC. Mr. Denton signed a document as the manager of Gawker Media, LLC, and Ms.

[47] Exhibit "C".

Darbyshire signed a document as a member of Defendant, Gawker Media, LLC.[48] Documents from the Secretary of State, attached as exhibits to the 4th Amended Complaint, rebut Defendants FRCP Rule 7.1 disclosure of affiliates. [49] Gawker's attorney has disclosed that Gawker Media, LLC is the sole member of the Gawker Entertainment LLC, Gawker Sales LLC, Gawker Technology LLC is.[50] Mr. Denton is the *alter ego* of Gawker Media. Section 805 ILCS 180/10-10(d) does not bar corporate veil piercing, such as *alter ego*, fraud, or undercapitalization. *Westmeyer v. Flynn,* 382 Ill.App.3d 952, 960 (1st Dist. 2008). Accordingly, Mr. Huon can sue Denton under a theory of piercing the corporate veil. *See Fontana v. TLD Builders, Inc.,* 362 Ill.App.3d 491 (2nd Dist. 2005).

Mr. Huon asked Defendant Darbyshire, who is the COO of Gawker Media, LLC, to remove the defamatory posts. She has the power to republish the defamatory posts, which continues to be republished daily. Officers of a corporation can be personally liable for engaging in tortious conduct. *See, e.g., Kohler Co. v. Kohler Intern., Ltd.,* 196 F.Supp.2d 690 (N.D.Ill. 2002); *Drink Group, Inc. v. Gulfstream Communications, Inc.,* 7 F.Supp.2d 1009, 1010 (N.D.Ill. 1998). Separate causes of action for defamation may be stated against additional defendants for separate publication of defamatory material serving as a basis for another defamation claim. *Dubinsky v. United Airlines Master Executive Council,* 303 Ill.App.3d 317 (1st Dist. 1999). The republication rule applies to Internet postings. *Firth v. State of New York*, 306 A.D.2d 666

[48] See Exhibit "3" to the 4th Amended Complaint. The Secretary of State Documents attached to the 4th Amended Complaint are attached here again as Exhibit "M".

[49] Defendants' 7.1 Disclosure states that "Gawker Media Group Inc is the only member of Gawker Media LLC" and that "The parent company of GAWKER MEDIA LLC is GAWKER MEDIA GROUP INC." These statements contradict each other. A member of an LLC cannot be its parent company.

[50] See Feige email attached as Exhibit "J". The Secretary of State documents attached as Exhibits 3 to 7 to the 4th Amended Complaint rebut Defendants' 7.1 Disclosure and Mr. Feige's email.

(N.Y.A.D. 3 Dept. 2003). Moreover, these Defendants are liable under the conspiracy cause of action. The simple fact is that Gawker sensationalizes and fabricates stories to bring traffic to its website, and these Defendants participated in that conduct.

IX. GAWKER IS LIABLE FOR REPUBLICATION

Since the beginning of United States defamation law, directing someone to libel has been held to be a republication for which liability attaches. .[51] Under common law, a person who republished a defamatory statement made by another was himself liable for defamation even though he gave the name of the originator. *Catalano v. Pechous* (1980), 83 Ill. 2d 146; *Owens v. CBS, Inc.*, 173 Ill. App. 3d 977, 992-993 (Ill. App. Ct. 5th Dist. 1988).

X. GAWKER USED AN IMPROPER HEADLINE.

Gawker's headline "**Acquitted Rapist**" and Gawker's republication of the headline "**Rape Potpourri**" are enough to take this matter to a jury and are actionable defamation. *See Kaelin v. Globe Communications Corp.*, 162 F.3d 1036 (9th Cir. 1998). In *Kaelin*, the court made clear that Gawker could be successfully sued for libel over a false and defamatory headline, even when the story to which it referred was substantially accurate. *Id.* at 1042–43. There, an actor sued the *National Examiner* for the headline, "Cops Think Kato Did It."

The Gawker story and the republished ATL headline imply that even though Mr. Huon was acquitted, Mr. Huon is a "**Rapist**." In *Eastwood v. National Enquirer, Inc.*, 1997 WL 489027 (9th Cir. 1997), the Enquirer's front page touted an "Exclusive Interview" with Clint Eastwood. The court found that the language used, including descriptions of Eastwood's quotes and his demeanor while making certain statements, suggested "that the writer and the movie star

[51] Even repeating a defamatory statement made by a third person is defamation. Id; Restatement (Second) of Torts § 571, Comment c, at 187 (1977); Restatement, Second, Torts § 578 (1977); 1 Harper & James, supra, § 5.20 at 417; Prosser, Torts § 113 at 768 (4th ed. 1971).

had conversed." Eastwood never spoke to the Enquirer. *Id.* Illinois has followed this rule.[52] As noted in *Eastwood*, the issue of whether the use of the headlines is defamatory is one for a jury. Moreover, in addition to the headlines, as separate grounds for defamation, the Gawker story itself, like the *Eastwood* case, suggests Gawker spoke to a juror and was informed by the juror that the jury decided for Mr. Huon on the "strength" of the bartender's testimony.

XII. DEFENDANTS DOES NOT MOVE TO DISMISS THE REMAINING COUNTS

Defendants do not move to dismiss Counts IV (Invasion of Privacy – Unreasonable Intrusion Upon the Seclusion of Another - Against the All Defendants). Mr. Huon adopts his arguments in his Response to the Above the Law Defendants' Motion to Dismiss. In this case, Gawker disclosed private facts about Mr. Huon, including his personal life, and, worse, invented private facts about him being a "**Rapist**."

XII. RESPONSE TO DEFENDANTS' PRELIMINARY STATEMENT.

Defendants and its attorneys engage in name-calling and in focusing on matters not connected to the litigation instead of trying to focus on the legal arguments. The Gawker Defendants denigrate Mr. Huon as a "serial plaintiff". Mr. Huon has filed the same number of lawsuits as the Defendants' attorney, David Feige: 3.[53] Defendants make the false statement that Mr. Huon has sued more than 500 defendants, without offering any support. Mr. Feige, as a

[52]*Naked City, Inc. v. Chicago Sun-Times*, 77 III. App. 3d 188, 395 N.E.2d 1042 (1979); *Reed v. Albanese*, 78 III.App.2d 53, 223 N.E.2d 419, 422 (1966); *Spanel v. Pegler*, 160 F.2d 619 (7th Cir. 1947).

[53] On information and belief, David Feige, has appeared as a Class Action Plaintiff in *Feige v. RCN Corp*., 2008 U.S. Dist. LEXIS 26922 (S.D.N.Y. Apr. 3, 2008) , 1:07-cv-08539-AKH (S.D.N.Y); 1:00-cv-02621-WHP (S.D.N.Y.); **In re Trans Union Corp. Privacy Litig**., 2005 U.S. Dist. LEXIS 17548 (N.D. Ill. Aug. 17, 2005), 1:00-cv-04729 (N.D.Ill.),; *Feige v. RCN Corp.*, 2008 U.S. Dist. LEXIS 26922 (S.D.N.Y. Apr. 3, 2008) Mr. Feige served as a Class Action Plaintiff in 1:00-cv-02621-WHP (S.D.N.Y.) and in *Feige v. RCN Corp*., 2008 U.S. Dist. LEXIS 26922 (S.D.N.Y. Apr. 3, 2008).

serial Class Action plaintiff, brought a lawsuit against 190 million people seeking more than 19 billion dollars with no actual damages.[54] Mr. Feige cannot cite to any case where Mr. Huon has filed a meritless lawsuit.[55] In contrast, Mr. Feige was chastised by the Federal Court for bringing a meritless class action case because the defendant placed him on hold for 45 minutes.[56]

Mr. Feige's personal attacks are telling:

First, it supports the claim that Gawker was engaged in a vigilante style form of cyber bullying by treating Mr. Huon as a registered sex offender:

> There is certainly a public interest in knowing about alleged sex crimes, and indeed, there has been a great deal of legislative effort and attention to tracking and reporting on sex offenders . . .
>
> It is curious, and somewhat frightening that the defendants Huon has targeted for his harassing lawsuits are those who publish on the internet precisely the place he has used as a stalking ground **on at least two occasions**, and the very tool he has used in the past for bullying . . .
>
> It is understandable that Plaintiff is familiar with the "cyberstalking" statute. He has, after all been criminally charged with violating it (emphasis supplied).[57]

Second, Mr. Huon has never been charged with stalking "on at least two occasions", is not a "sex offender," and has no pending criminal charges.[58] Borrowing a playbook from Gawker, Mr. Feige demonstrates the same style of sloppy investigation and inventing facts that

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[54] "In the instant case, approval of a class action could result in statutory minimum damages of over $ 19 billion, which is grossly disproportionate to any actual damage*." In re Trans Union Corp. Privacy Litig*., 211 F.R.D. 328, 350-351 (N.D. Ill. 2002).

[55] In *Huon v Johnson and Bell, Ltd*. the Seventh Circuit stated that "The court was probably misled by the defendants' . . ." and that, as a result, "Huon's federal case has been languishing for almost two years". *Huon v. Johnson and Bell, Ltd., et.al. 657 F.3d 641 (7th Cir.).*

[56] "Plaintiff's second cause of action is equally meritless." *Feige v. RCN Corp*., 2008 U.S. Dist. LEXIS 26922 (S.D.N.Y. Apr. 3, 2008).

[57] (Defendants' Memorandum, pages 12, 16, Docket 58).

Gawker did in its story.

CONCLUSION

Therefore, the matter should proceed to discovery and then to trial so that Mr. Huon can present his case to the jury.

WHEREFORE, Plaintiff, Meanith Huon, requests that this Honorable Court deny the Gawker Defendants' Motion to Dismiss.

/s/Meanith Huon

Meanith Huon

CERTIFICATE OF SERVICE

Under penalties of law, I attest the following documents or items have been or are being electronically served on all counsel of record for all parties on March 12, 2013:

MEANITH HUON'S RESPONSE TO THE GAWKER DEFENDANTS' MOTION TO DISMISS AND MEMORANDUM OF LAW

/s/ Meanith Huon

Meanith Huon
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[58]See verdict of not guilty in Case No. 08 CF 1496, nolle prosse order in Case No. 09 CF 1688, and nolle prosse Case No. order in No. 11123163101, Exhibit "K".