

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

MEANITH HUON,)	
)	
Plaintiff,)	
)	
v.)	Case No. 11-cv-03054
)	
ABOVETHELAW.COM et al.,)	Judge Aspen
)	
Defendants.)	Magistrate Judge Gilbert

**ABOVE THE LAW DEFENDANTS’
MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)**

Defendants Breaking Media, LLC (erroneously sued as AboveTheLaw.com, BreakingMedia.com, and Breaking Media), 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 Second Amended Complaint, with prejudice.

1. Plaintiff Meanith Huon (“Plaintiff”) alleges six claims against the ATL Defendants based on a post on the website AboveTheLaw.com (the “Post”): (I) false-light invasion of privacy, (II) intentional infliction of emotional distress, (III) defamation, (IV) defamation per se, (V) cyberstalking, and (VI) civil conspiracy.

2. The Court should dismiss Plaintiff’s defamation claims because the statements that Plaintiff identifies either (a) are privileged as fair reports of judicial proceedings, (b) are non-actionable opinion and rhetorical hyperbole, (c) are allegations of defamation per quod that are not supported by allegations of special damages, (d) would not tend to harm Plaintiff’s reputation, (e) are not about Plaintiff, and/or (f) are not actually contained in the Post.

3. The Court should dismiss Plaintiff’s claim for false-light invasion of privacy for the same reasons.

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

5. The Court should dismiss Plaintiff's claim of cyberstalking 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.

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

7. 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 Second Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) with prejudice, and provide such further relief as is just.

Dated: September 21, 2011

Respectfully submitted,

BREAKING MEDIA, LLC (erroneously sued as AboveTheLaw.com, BreakingMedia.com, and Breaking Media), DAVID LAT, ELIE MYSTAL, JOHN LERNER, AND DAVID MINKIN

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