

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

FACEBOOK, INC.,	)	
	)	
Plaintiff	)	
	)	
v.	)	C.A. No. 10-CV-11917-DPW
	)	
PHOENIX MEDIA/COMMUNICATIONS	)	
GROUP, INC., PEOPLE2PEOPLE	)	
GROUP, INC., TELE-PUBLISHING, INC.,	)	
AND FNX BROADCASTING LLC,	)	
	)	
Defendants.	)	

**DEFENDANT TELE-PUBLISHING, INC.’S OPPOSITION TO  
PLAINTIFF’S MOTION FOR LEAVE TO FILE A SUR-REPLY**

Defendant Tele-Publishing, Inc. (“TPI”) opposes Plaintiff Facebook, Inc.’s Motion for Leave to File a Sur-Reply to TPI’s Motion to Dismiss.

The plaintiff already filed a 20 page brief and 42 exhibits not mentioned in its Complaint to explain how it can state a claim against TPI. A sur-reply, especially one which attaches an additional 30 pages of exhibits, is inappropriate on a Motion to Dismiss because only the allegations pled in the Complaint, not arguments in briefing, determine whether the plaintiff states a claim. *See, e.g., Klein v. MHM Corr. Services, Inc.*, No. 08-11814-MLW, 2010 WL 3245291, at \*2 (D. Mass. Aug. 16, 2010) (granting motion to disregard new facts alleged in plaintiff’s briefing on motion to dismiss); *Keane v. Navarro*, 345 F. Supp. 2d 9, 12 (D. Mass. 2004) (court refused to consider new allegations in plaintiff’s opposition to motion to dismiss). *See also Sims v. Paramount Gold and Silver Corp.*, No. CV 10-356-PHX-MHM, 2010 WL 5364783, \*8 (D. Ariz. Dec. 21, 2010) (denying leave to file sur-reply in opposition to motion

dismiss). If the plaintiff could have stated a claim, its Complaint and Opposition would have provided ample opportunity to explain how.

WHEREFORE, the Court should deny Plaintiff's Motion for Leave to File a Sur-Reply.

TELE-PUBLISHING, INC.,

By its attorneys,

/s/ Benjamin L. Mack  
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Dated: January 6, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was filed through the electronic filing system and served electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Benjamin L. Mack