IN THE CIRCUIT COURT FOR THE 19TH JUDICIAL CIRCUIT
LAKE COUNTY – WAUKEGAN, ILLINOIS

SHARON GOLAN,

PLAINTIFF

Vs.

ROBERT T. MOORMAN,

DEFENDANT.

NO. 13 L 510

DEFENDANT'S SEPARATE MOTIONS TO DISMISS: ONE PURSUANT TO 735 ILCS 5/2-619 BASED UPON 735 ILCS 110/5 AND ONE PURSUANT TO 735 ILCS 5/2-615

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I. INTRODUCTION

The lawsuit initiated by this plaintiff is a classic "SLAPP" action. "SLAPP" is an abbreviation for "Strategic Lawsuits Against Public Participation" which are typically aimed at preventing citizens from exercising their political rights or punishing those who have done so. Plaintiff in this case, Sharon Golan ("Golan or Plaintiff") was the former President of the Lake Forest High School Board ("School Board"). She filed this case after she left office against a lifelong Lake Forest resident and military hero, Lt. Colonel Robert T. Moorman ("Colonel Moorman"), following his successful election to the School Board. Part of his campaign criticized Golan while she was School Board President for failing to publicly disclose that members of her family had a financial interest in Pepper Construction Company ("the Pepper Connection") which was awarded a contract by the School Board worth between $50,000,000 and $70,000,000.

Plaintiff's complaint (attached as Exhibit A) is a two count complaint sounding in defamation and invasion of privacy – false light. Paragraphs 33-35 of the Complaint briefly describe Colonel Moorman. To supplement Plaintiff's description, Colonel Moorman attended Lake Forest High School and received a Bachelor's Degree from the University of Illinois after which he joined the U.S. Air Force earning his wings in March 1984. During his service in the U.S. Air Force, he received a Master's Degree in Finance from California State University. He flew 500 hours of missions in the first Gulf War, returned to Lake Forest in 1991, became a United Airlines pilot and continued his service as an Air Force Reserve pilot. He racked up thousands of hours in the second Gulf War until a plane he was in crashed, severely injuring him. He was honorably discharged as a disabled military veteran. He is married with two children and lives in his hometown of Lake Forest, Illinois where he continues his public service to the

community as an elected member of the Board of Lake Forest High School District #115. This election to the School Board triggered Plaintiff's lawsuit. He is also the Community Relations Director for the Lake Forest/Lake Bluff Lions Club.

Plaintiff's Complaint

The crux of Plaintiff's Complaint is its conclusory claim that Colonel Moorman falsely made statements that Plaintiff did not disclose the Pepper Connection. Saliently, the Complaint *does not* allege that Golan did in fact disclose *to the public* the Pepper Connection. The Complaint alleges *only* that Golan disclosed the Pepper Connection to other members of the School Board. Golan then complains about six instances where Colonel Moorman allegedly described her failure to disclose the Pepper Connection to the public. The first such allegation appears at the Complaint's ¶ 44 where Colonel Moorman is alleged to have said the following:

> I'm concerned that our Board President has not disclosed a beneficial financial interest her family has in Pepper Construction which completed the $54 million project. Just 2 weeks ago the board awarded another no bid contract to that company.

As part of this allegedly false statement Golan includes a quote alleged in the complaint at ¶66:

> I am concerned the LFHA Board President did **not** publicly disclose her family's relationship and interest in Pepper Construction Co. which completed the $54 million project that actually cost $67 million. (Emphasis in the original)

The second purportedly false statement is alleged in the complaint at ¶ 76:

> I am concerned there is no record of the public meeting at which the Board reviewed and approved the original Pepper Construction contract as required by State law.

The third purportedly false statement is alleged in the complaint at ¶ 80:

> I am concerned that the LFHS School Board President was one of only two Board members on the Board's Operations committee which vetted

the construction bids and developed a recommendation to the Board for her family's firm.

The fourth purportedly false statement is alleged in the complaint at ¶ 85:

> I am concerned that on the recommendation of our new Superintendant, the Board awarded a **no bid** construction management contract to that same construction company last month. (Emphasis in the original)

The fifth purportedly false statement is alleged in the complaint at ¶ 90:

> I am concerned that the Board voted unanimously to consolidate the school's bank accounts at a bank where the then-Superintendent was a **paid** member of the Bank's Board of Directors. (Emphasis in the original) I am concerned that in defense of the Board's unanimous vote on the bank matter, the High School Board President claimed she does not know what a bank board does, even though she has served on our school boards for 16 consecutive years.[1]

The sixth purportedly false statement is alleged in the complaint at ¶ 95:

> "I am concerned that the Board calls special meetings on important public matters with little notice and then summarizes 2 and 3 hours of content in one single sentence. . ."[2]

Saliently and similar to the impact ¶ 92 of the complaint has on ¶ 90, ¶ 51(b) actually admits the Plaintiff's "husband's uncle and cousins had a beneficial and financial interest in Pepper Construction" which was disclosed to the "High School Board". So it is undisputed in this record that Plaintiff's family has a Pepper Connection. Aside from the lack of merit in Plaintiff's complaint as demonstrated below, ¶¶ 92 and 51(b) negate *any* allegation of false statements purportedly made by the Colonel. As is axiomatic, truth is always a defense in a defamation case. *Parker v. Bank of Marion,* 296 Ill.App.3d 1035 (1998).

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[1] Ironically the complaint's ¶ 92 says: "Moorman's Written False Statement . . .was false and misleading because Sharon's actual statement made to a third party was that she knows what a school board does; but not a bank board." Plaintiff admits paragraph 90 was true!

[2] We find it ludicrous that this statement, if made, could be construed as defamatory as to the School Board or Golan.

II. SUMMARY OF ARGUMENT

Plaintiff's SLAPP lawsuit should be dismissed pursuant to 735 ILCS 5/2-619 as the affirmative matter is immunity of Colonel Moorman found under 735 ILCS 110/5. Moreover, each of Golan's two counts fail to state a claim under Illinois Common Law and fly in the face of the protection afforded to Colonel Moorman by the First Amendment to the United States Constitution.

By claiming defamation *per se,* Golan seeks to avoid the usual requirement that a defamation plaintiff must plead and prove special damages. Demonstrably, she has none. That said, her Count I *per se* claim cannot stand under rules of Illinois law which strictly limit the defamation *per se* tort – rules designed to prevent plaintiffs from obtaining windfall recoveries via *per se* claims despite being unable to prove that they suffered any monetary loss as a result of the publication they challenge.

Plaintiff's defamation *per se* allegation is insufficient to state a claim under Illinois law for two reasons. *First,* Plaintiff is indisputably a public figure as the Complaint in ¶¶ 7 and 9 demonstrates. She was elected to the Lake Forest High School District 115 Board of Education and was President of the Lake Forest High School Board from 2007 to 2013. *See Johnson v. Board of Junior Collect Dist.*, 334 N.E.2d 442 (1975) and *Basarich v. Rodeghero,* 24 Ill.App.3rd (1974). As such, she is required to plead that Colonel Moorman published the challenged statements with "actual malice", *i.e. a high degree of awareness of their probable falsity or despite in fact entertaining serious doubts as to their truth.* (*Harte-Hanks Commonwealth v. Connaughton*, 491 U.S. 657 (1989). She has not and cannot do so.

Plaintiff's claim for false light invasion of privacy, Count II of the Complaint, fares no better. It is a "throw in" cause of action based on the same facts that Plaintiff alleges in her

claim of defamation *per se*. Under the First Amendment, a public figure like Plaintiff cannot evade the requirement of pleading facts showing actual malice by the artifice of placing another label, such as false light, on claims based on the publication of allegedly false information. However, apart from this constitutional defect, Plaintiff's false light claim is also deficient as a matter of law because the Complaint does not plead special damages with particularity, which is required under Illinois law whenever a plaintiff asserts a false light claim based on statements that, like the statements Plaintiff challenges here, cannot sustain a defamation *per se* claim.

Second, assuming, as we must under §§ 2-619 and 2-615, that Colonel Moorman stated Golan failed to disclose the Pepper Connection and that statement was false, Plaintiff's *per se* claim fails as a matter of law under the Illinois innocent construction rule. That rule provides that if a defendant's alleged statement, when read in context, is open to *any reasonable construction* that is not defamatory *per se,* then the plaintiff's *per se* claim must fail even if there is another reasonable reading that *would* be defamatory *per se*. Here, Colonel Moorman's challenged statement that Golan failed to disclose is subject to a reasonable construction that Golan failed to "publicly disclose" or "disclose to the public". Plaintiff's Complaint contains no allegation that she did in fact "*publicly* disclose" the Pepper Connection. It therefore must be taken as true that she did not "publicly" disclose.

III. STANDARD FOR DISMISSAL PURSUANT TO 735 ILCS 5/2-619 AND 735 ILCS 5/2-615

Under § 735 ILCS 5/2-619, a complaint must be dismissed if the claim is barred by some affirmative matter. Under 735 ILCS 5/2-615, a complaint must be stricken if it is substantially insufficient in law. *Tuite v. Corbitt,* 224 Ill. 2d 490, 509 (Ill. 2006).

MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-619 BASED UPON 735 ILCS 110/1: THE ANTI-SLAPP STATUTE

A lawsuit should be dismissed based upon immunity under 735 ILCS 110/1 within 90 days of the filing of a 735 ILCS 110/1 motion in accordance with § 20 of 735 ILCS 110 (the "Act") if: (1) the defendant's acts were in furtherance of his right to petition, speak, associate, or otherwise participate in government to obtain favorable government action, (2) the plaintiff's claims are solely based on, related to, or in response to the defendant's acts in furtherance of his rights and (3) the plaintiff fails to produce clear and convincing evidence that the defendant's acts were not genuinely aimed at solely procuring favorable government action. As the Illinois Supreme Court ruled in *Wright v. Walsh,* 238 Ill.2d 620 (2010), "To overcome the immunity of the Anti-SLAPP Statute, the responding party is required to produce 'clear and convincing' evidence demonstrating the 'act or acts' at issue were 'not immunized from liability by this Act." 735 ILCS 110/20"[3]

The 2nd requirement for dismissal under the Act requires a determination of whether the claim is retaliatory. That requirement depends on two nonexclusive factors: (1) the time between the protected activity and the filing of the complaint, and (2) whether the damages requested are reasonably related to the facts alleged in the complaint and present a good-faith estimate of the injury sustained. Said the 2nd District Illinois Appellate Court in *Ryan v. Fox Television,* 979 N.E.2d 954 (2012):

> . . .the legislature enacted the Citizen Participation Act in order to combat the rise of what have been termed 'strategic Lawsuits Against Public Participation,' commonly called SLAPPs. A SLAPP is a meritless lawsuit that is used to retaliate against a defendant for attempting to participate in a government by exercising some first amendment right such as the right to free speech or the right to petition. See *Sandholm v. Kuecker,* 2012 IL 111443, ¶¶ 33-34, 356 Ill.Dec. 733, 962 N.E.2d 418. 'Plaintiffs in SLAPP suits do not intend to win but rather to chill a defendant's speech or protest activity and discourage opposition by others through delay, expense, and distraction.

[3] We have attached the *Wright* decision as Exhibit B to these motions because of its significance to Illinois SLAPP lawsuits.

> While the case is being litigated in the courts, however, defendants are forced to expend funds on litigation costs and attorney fees and may be discouraged from continuing their protest activities.' *Id.* ¶ 34.
>
> . . .
>
> In response to this problem, nearly 30 states have adopted anti-SLAPP legislation that allows for "expedited judicial review, summary dismissal, and recovery of attorney fees for the party who has been 'SLAPPed'." *Sandholm,* 2012 IL 111443, ¶ 35, 356 Ill. Dec. 733, 962 N.E.2d 418."

Here, Golan filed her complaint 96 days after Colonel Moorman was elected.[4] Moreover, in her complaint, she requests compensatory and punitive damages in excess of $500,000, yet describes her damages as "emotional distress, mental anguish and embarrassment." Plaintiff did not suffer lost income. As such, the requested $500,000 is not a "good-faith estimate" of the injury sustained. Based upon the timing of this lawsuit's filing and the relief being requested, especially for punitive damages, it is apparent that plaintiff has brought this suit in an effort to make Colonel Moorman "pay" for having criticized Golan's performance as President of the School Board during his successful campaign for the School Board. Plaintiff's complaint clearly evidences retaliatory intent. Golan's Defamation and False Light counts demonstrate the classic form of a SLAPP lawsuit.

Expanding on the 2nd District Appellate Court's decision in *Ryan,* our Illinois Supreme Court, in *Wright* (Ex. B attached) explains why SLAPP lawsuits are an affront to our judicial process. Said the Court:

> . . .[The] Act's 'public policy' section, . . .states there has been 'a disturbing increase' in SLAPPs in Illinois. . .'The threat of SLAPPs significantly chills and diminishes citizen participation in government, voluntary public service, and the exercise of these important constitutional rights.'. . . 'The information, reports, opinions, claims, arguments, and other expressions provided by citizens are vital to effective law enforcement, the operation of government, the making of public policy decisions, and the continuation of representative democracy.' The Act further notes SLAPPs are an 'abuse of the judicial process' which 'can and ha[ve]

[4] The election was held on April 9, 2013 and this SLAPP suit was filed on July 15, 2013.

> been used as a means of intimidating, harassing, or punishing citizens and organizations for involving themselves in public affairs.'
>
> The Act states four explicit goals are in the 'public interest.'. . . First, the Act attempts 'to strike a balance between the rights of persons to file lawsuits for injury and the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government.' . . . Second, it attempts 'to protect and encourage public participation in government to the maximum extent permitted by law.' . . . The third purpose is 'to establish an efficient process for identification and adjudication of SLAPPs'. . . Finally, the Act 'provide[s] for attorney's fees and costs to prevailing movants.'. . .The Act seeks to extinguish SLAPPs and protect citizen participation by (1) immunizing citizens from civil actions based on acts made in furtherance of a citizen's free speech rights or right to petition government. . .(2) establishing an expedited legal process to dispose of SLAPPs both before the trial court and appellate court.. . . and (3) mandating a prevailing movant be awarded reasonable attorney fees and costs incurred in connection with the motion. . . The legislature provided the 'Act shall be construed liberally to effectuate its purposes and intent fully.' . . .
>
> As an expression of intent to 'protect and encourage public participation in government to the maximum extent permitted by law' . . . the legislature deemed the mere dismissal of SLAPP lawsuits insufficient. The legislature has expressly stated it is in the 'public interest' to 'establish an efficient process for identification and adjudication of SLAPPs.'. . ."

To further demonstrate the Illinois Supreme Court's disdain for SLAPP lawsuits, on February 16, 2011 the Court amended Rule 306 allowing a party to petition for leave to appeal to the Appellate Court from an order of the Circuit Court denying a motion to dispose under the Citizen's Participation Act.

Lastly, in further support of this 2-619 Motion is the affidavit of Colonel Moorman. Colonel Moorman's affidavit clearly establishes the factual basis as to why Plaintiff's complaint is nothing more than an attempt to punish him for his successful election. Moreover, the complaint, on its face, demonstrates a total lack of merit given that its own allegations concede the truth of the Colonel's alleged statements. Additionally, Golan was a public figure at the relevant time. There are no factual allegations of actual malice. As such, the burden now shifts to Plaintiff to demonstrate by clear and convincing evidence that the Defendant is not "immunized from liability" under the Act. (See page 6, *supra.*)

CONCLUSION

Wherefore, for all the above reasons, the complaint should be dismissed pursuant to 735 ILCS 110/1 and this matter should be set for hearing as to the amount of attorneys' fees to be awarded Colonel Moorman.

IV. MOTION TO DIMSISS PURSUANT TO 735 ILCS 5/2-615[5]

There is no dispute that, as a School Board President, Golan was a classic limited purpose public figure. A limited purpose public figure is "an individual [who] voluntarily injects himself or is drawn into a particular public controversy" and thereby "becomes a public figure for a limited range of issues." *Harris v. Quadracci,* 48 F.3d 247, 250 (7th Cir. 1995) (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351-52 (1974)). Plaintiff has voluntarily and repeatedly entered the public arena to address issues related to the School Board. "A person who injects himself [herself] into a public controversy assumes the risk of negative public comment on [her] role in the controversy, both contemporaneously and into the future. *Milsap v. Journal Sentinel, Inc.*, 100 F.3d 1265, 1270 (7th Cir. 1996). Indeed, Plaintiff's unusual, and obviously political, complaint devotes no less than 7 paragraphs (5-12) setting out details of her public career.

A. Plaintiff has failed to plead sufficient facts which allege *actual malice* as required by a public figure.

Where, as here, the plaintiff is a public figure, she must plead and prove, by clear and convincing evidence, that the defendant published a false statement of fact with "actual malice." *Madison v. Frazier,* 539 F.3d 646, 657 (7th Cir. 2008) (public figure "cannot maintain a suit for defamation unless she can prove that the Defendants acted with 'actual malice.'") *see also Douglass v. Hustler Magazine, Inc.*, 769 F.2d 1128, 1141 (7th Cir. 1985) (same). A plaintiff's

[5] Should this Court dismiss Plaintiff's complaint pursuant to § 2-619 based upon 735 ILCS 110/1, it will not have to consider Defendant's § 2-615 Motion.

public figure status is an issue of law to be decided by the court. *Dilworth v. Dudley,* 75 F.3d 307, 309 (7th Cir. 1996). "Actual malice" is a legal term of art requiring proof that the statement at issue was published despite "knowledge of its falsity or in reckless disregard of whether it was false or true." *Madison,* 539 F.3d at 657.

In this context, "[r]eckless disregard is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. *St. Amant v. Thompson,* 390 U.S. 727, 731 (1968))". Rather, "[t]his inquiry is a subjective one – there must be sufficient evidence to permit the conclusion that the defendant published defamatory statements despite a *high degree of awareness of probable falsity or entertaining serious doubts as to its truth.*" *Id.* at 657- 58; *accord Harris v. Quadracci,* 48 F.3d 247, 252 (7th Cir. 1995); 1 Robert D. Sack, *Sack on Defamation* ("Sack") § 5:5.2 (4th ed. 2010) ('It is not enough for a plaintiff to prove that the defendant failed to investigate. . . Because the constitutional balance has been struck in favor of the First Amendment when public figures assert claims like those at issue here, the actual malice standard is purposefully designed to be 'a daunting one.' *McFarlane v. Esquire Magazine,* 74 F.3d 1296, 1308 (D.C. Cir. 1996).

Golan's Complaint, significantly, devotes ¶¶ 48, 50, 53, 63, 70, 74, 78, 88, 93 and 98 to allegations that Colonel Moorman failed to investigate the truth or falsity of his allegedly defamatory statements in an attempt to establish actual malice. However, this attempt doesn't pass muster. In 1989, our Supreme Court in *Harte Hanks v. Cunningham,* 491 US. 657 (1989) made clear that a failure to investigate before publishing an alleged defamatory statement about a public figure is insufficient to establish actual malice. Within the last 60 days, the 7th Circuit on August 21, 2013, in case number 12-3294, *Scottie Pippen v. NBC Universal et. al.,* (attached as

Exhibit C) emphasized the significance of *Harte Hanks.* Addressing that public figure Plaintiff's claim against NBC, and others, that defendants falsely published he filed bankruptcy, said the 7th Circuit:

> "Defendants had many ways to learn whether Pippen had filed for bankruptcy. For example, all bankruptcy court dockets can be searched simultaneously through the federal courts' PACER service. And then there's the tried-and-true journalistic practice of asking a story's subject. If rather than relying on the rumor mill the defendants had conducted even a cursory investigation, they would have discovered that Pippen had not declared bankruptcy – and they concede this. But failure to investigate is precisely what the Supreme Court has said is insufficient to establish reckless disregard for the truth. *Harte-Hanks Communications, Inc. v. Connaughton,* 491 U.S. 657, 688 (1989).

Golan has not alleged and cannot allege sufficient facts to establish actual malice against her as precedent clearly requires cases involving a public figure.

B. Count I fails to state a defamation *per se* claim because of the innocent construction rule.

As stated at page 5, *supra,* a cause of action for libel *per se* presumes damages. Because of the harshness of this presumption, Illinois courts have circumscribed the *per se* cause of action. *First, per se* claims are limited to statements "so obviously and materially harmful to a plaintiff that his injury may be presumed." *Cody v. Harris,* 409 F.3d 853, 857 (7thCir. 2005); *see Anderson v. Vanden Dorpel,* 172 Ill. 2d 399 (1996) ("To be considered defamatory *per se,* the challenged statement 'must be so obviously and naturally harmful to the person to whom it refers that a showing of special damages is unnecessary'") (*quoting Owen v. Carr,* 113 Ill. 2d 273, 1986)). *Second,* a statement must fit within one of five specific categories of statements that Illinois law recognizes as constituting *per se* claims:

> "(1) those imputing the commission of a criminal offense; (2) those imputing infection with a loathsome communicable disease; (3) those imputing an inability to perform or want of integrity in the discharge of duties of office or employment; (4) those imputing a lack of ability, or that prejudice a party in his trade, profession, or business; and (5) those

imputing adultery or fornication." (*Bryson v. News America Publication Inc.* 174 Ill. 2d. 77, 88-80 (1996)[6]

Third, even if a "challenged statement fits within one of the recognized categories that will sustain a *per se* action, recovery will not be allowed if the statement can reasonably be given an innocent construction under the Illinois "innocent construction rule." *Anderson,* 172 Ill. 2d at 412, 667 N.E.2d at 1301.

Whether a statement is defamatory *per se* is a question of law to be *determined* by the court. *See Green v. Rogers,* 234 Ill. 2d 478, (2009). Likewise, whether a statement is reasonably capable of an innocent construction is a question of law for the Court. *Tuite v. Corbitt,* 224 Ill. 2d 490 (2007). Courts routinely dismiss defamation *per se* claims with prejudice at the pleading stage where the challenged statements do not fit into any of the *per se* categories or are reasonably capable of an innocent construction. *See, e.g.*, Cody, 409 F.3d at 856-57 (affirming order dismissing complaint with prejudice where defendants' alleged statements did not fit not any category of defamation per se); *Lott v. Levitt,* 469 F. Supp. 2d 575, 583 (N.D. Ill. 2007) (applying innocent construction rule to dismiss *per se* claim with prejudice), *aff'd* 556 F.3d 564 (7th Cir. 2009); *Seith v. Chicago Sun-Times Inc.,* 371 Ill.App. 3d 124, 134-35 (1st Dist. 2007) (stating that court properly may dismiss complaint with prejudice under innocent construction rule).

To the extent Colonel Moorman's purported statements set forth in ¶¶ 44, 64, 65, 80, 85, 90 and 95 of the Complaint were actually made, these statements can be read to assert that Plaintiff did not disclose her Pepper connection "publicly" i.e. to the voters. Moreover, Plaintiff's complaint is devoid of any allegation that the Pepper Connection *was* disclosed

[6] Categories 3 or 4 are the only ones conceivably relevant to the *per se* claim that Plaintiff has alleged in this case.

"publicly". Indeed, in ¶¶ 20 – 31 the Complaint alleges disclosures privately to other Board members - a telling omission where the complaint concedes Golan never made a *public* disclosure of the Pepper Connection.

The innocent construction rule requires the Court to consider the statements in context and to give the words of the statements and their implications their actual and obvious meanings. *See Green,,* 234 Ill. 2d at 499; *Tuite,* 224 Ill. 2d at 512, "[I]f a statement is capable of two reasonable constructions, one defamatory and one innocent, the innocent one will prevail." *Lott,* 469 F. Supp. 2d at 580. The question in the court's analysis is not whether an innocent construction is "equally or more reasonable" than a defamatory *per se* construction. *Harte v. Chicago Council of Lawyers,* 220 Ill. App. 3d 255, (1st Dist. 1991). The Illinois Supreme Court has made clear that "[t]here is no balancing of reasonable constructions." *Green,* 234 Ill. 2d at 500. Thus, if a statement, when considered in its full context, is capable of *any* reasonable interpretation, as innocent, it is not libelous *per se.* The innocent construction rule requires that the court adopt that interpretation and deem the statement to be nonactionable *per se* as a matter of law, irrespective of whether it also is susceptible of a defamatory *per se* construction – even one that is more reasonable.

V. PLAINTIFF'S FALSE LIGHT CLIAM FAILS AS A MATTER OF LAW.

In Count II, Plaintiff asserts a claim for false light invasion of privacy. An indispensable element of a false light claim under Illinois common law is that the defendant made the statement at issue with actual malice. *Raveling v. Harper Collins Publishers Inc.,* No 04-2963, 2005 WL 900232, at 3 (7th Cir. Mar. 4, 2005). Count II fails to state a false light claim because, as set forth in Section IV above, Plaintiff does not, and cannot plausibly allege that defendant acted

with actual malice. The Complaint merely characterizes defendant as having failed to investigate. Such allegations are insufficient. [See pages 9-11 *supra.*]

Moreover, Plaintiff premises her claim for false light invasion of privacy on the exact same facts as her claim for defamation *per se*: that Colonel Moorman placed her in a false light by publishing purportedly false statements that she failed to disclose the Pepper Connection. However, as discussed in Section IV(B), above, defendant's challenged statements are not, as a matter of law, defamatory *per se*. Illinois law does not permit a plaintiff to circumvent the pleading restrictions of defamation law through the artifice of placing a false light label on a claim based on the publication of allegedly false statements. Thus, where a false light claim is based on a publication that is not defamatory *per se*, the false light claim fails unless the plaintiff alleges special damages with particularity. *Maremont v. Susan Fredman Design Group, Ltd.*, 772 F. Supp. 2d 967, 973 (N.D. Ill. 2011) (dismissing false light claim where plaintiff failed to plead actual malice or special damages); *Schaffer v. Zekman,* 196 Ill. App. 3d 727, (1stDist. 1990);

Golan's Complaint alleges only that the statements at issue injured Plaintiff's reputation and caused her emotional distress and mental pain. *See* Compl. ¶s 101, 107 and 114. Not good enough. *Salamone,* 347 Ill. App. 3d at 843-44 (allegation of harm to reputation and more detailed allegations of emotional distress, including sleeplessness, depression and weight loss, were insufficient). The requirement that special damages be pled with particularity means that the plaintiff must allege facts which, if proven, would establish that she suffered concrete, pecuniary harm. *Maag v. Ill. Coal. For Jobs, Growth & Prosperity,* 368 Ill.App. 3d 844 (5th Dist. 2006). She does not. Thus her false light claim for invasion of privacy must fail as a matter of law.

CONCLUSION

For all these reasons, in the alternative if this Court does not dismiss the complaint pursuant to § 2-619 and set this matter for reimbursement of Defendant's attorney's fees, Defendant asks that it be dismissed pursuant to §2-615.

Respectfully Submitted,

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Moorman/Motionstodismiss

IN THE CIRCUIT COURT FOR THE 19TH JUDICIAL CIRCUIT
LAKE COUNTY – WAUKEGAN, ILLINOIS

SHARON GOLAN, PLAINTIFF Vs. ROBERT T. MOORMAN, DEFENDANT.	NO. 13 L 510

AFFIDAVIT OF ROBERT T. MOORMAN

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure of the State of Illinois, the undersigned certifies that the statements set forth in paragraphs 44, 66, 76, 80, 85, 90 and 95 of Plaintiff's Complaint could only have been made during my successful campaign to become a Board member of the Lake Forest High School Board in 2013. I ran for this Board seat and exercised my constitutional rights so that I could serve the Lake Forest community and correct what I perceived as problems with the School Board before I decided to seek election.

Date: September 10, 2013

Robert T. Moorman