

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

CHICAGO MOTOR CAR CORP.,)	
PARIN SHAH, and FRANK SACCO,)	Civil Action No. 12-cv-8905
Plaintiffs,)	
)	
v.)	
)	
DAVID BATES,)	The Honorable John Z. Lee
Defendant.)	

**DEFENDANT’S MEMORANDUM OF LAW IN SUPPORT OF
HIS RULE 12(b)(6) MOTION TO DISMISS**

Plaintiffs do not like the negative publicity they are receiving as a result of Defendant David Bates’ negative statements about them. But can disgruntled customers criticize a business without subjecting themselves to liability for defamation, tortious interference, and violation of state and federal statutes aimed at deceptive business practices? If Plaintiffs’ Complaint is to be believed, the answer is no. Plaintiffs invoke several legal theories in an attempt to silence Defendant’s criticism. These legal theories, however, fail to state a claim for which relief can be granted and must be dismissed.

First, the various federal and state statutes that Plaintiffs rely upon have very specific pleading requirements to prevent their application to individuals, like David Bates, who engage in consumer criticism. Because Defendant’s statements do not meet these very specific pleading requirements, Plaintiffs cannot state a claim under these statutes. Second, Plaintiffs’ defamation claim is defective because Plaintiffs have not identified the allegedly defamatory statements with sufficient specificity to permit him to respond. Third, the few allegations Plaintiffs do identify are nonactionable statements of opinion and rhetorical hyperbole. Fourth, Plaintiffs do not state a

claim for defamation or false light because Plaintiffs do not sufficiently allege that Defendant acted with actual malice.

FACTS¹

Although this Court's decision on a 12(b)(6) motion is limited to the allegations of the Complaint, a little context goes a long way in this case. David Bates is a former customer of Chicago Motor Cars ("CMC"). His car-buying experience was a nightmare. The vehicle was not what it was advertised to be. Plaintiffs advertised the vehicle as a Mercedes SL600 with an AMG sports package and two master keys. In reality, the vehicle did not have the AMG sports package and Plaintiff did not give Defendant any master keys. Without a master key, Defendant was unable to use several of the vehicle's features (e.g. keyless start, keyless go (which allows the driver to operate the vehicle without placing a key in the ignition)). The vehicle also had visible damage to the front bumper—damage that was not repaired despite Plaintiff Parin Shah's promises to repair the vehicle and have it thoroughly inspected and detailed before delivering it.

When Bates received the vehicle, the damage to the bumper was still evident. The vehicle was dirty inside and out and further inspection revealed that the vehicle had a cracked rim, a serious safety hazard. Bates also learned that the vehicle had been in a serious accident and had undergone bodywork and repainting. To top it all off, CMC did not provide Bates with the title to the vehicle when it delivered the vehicle, which was necessary so that the vehicle could be registered in the state of Wisconsin. Bates attempted to negotiate a lower price for the vehicle

¹ The facts recited herein come from the Exhibits to the Complaint and transcripts of the YouTube videos referenced in the Complaint and attached to Defendant's memorandum of law as **Exhibits A-D**. See *Venture Associates Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir. 1993) ("A plaintiff is under no obligation to attach to her complaint documents upon which her action is based, but a defendant may introduce certain pertinent documents if the plaintiff failed to do so. Documents that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to her claim.") (internal citations omitted).

given the defects he found. Eventually, CMC negotiated to sell the vehicle for \$37,500. Bates agreed to this reduced price but then CMC suddenly reneged on the deal and refused to talk to Bates further.

Bates took to the internet to share his experience with CMC and warn other potential consumers about CMC's deceptive business practices. Bates registered two domain names www.chicagomotorcarsuck.com and www.chicagomotorcars.us and created websites for each of these domains where he shared his story. Bates also collected and reposted complaints others had left about Plaintiffs on various websites. In all, Bates posted his and others' experiences with CMC on the two websites he created, various other review and car enthusiast websites, his personal website, and a number of social media websites like Facebook and Youtube. In response to Bates' actions, Plaintiffs filed the instant suit.

ARGUMENT

To state a claim, the allegations must set forth a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2). Factual allegations must give enough detail to give "fair notice of what the ... claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "[L]abels and conclusions or a formulaic recitation of the elements of a cause of action will not do." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In deciding a 12(b)(6) motion, the Court must consider the entire complaint including the materials incorporated into the Complaint by reference. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007); *Venture*, 987 F.2d at 431.

I. Anticybersquatting Consumer Protection Act ("ACPA") claim

Plaintiffs have failed to state a cause of action under the ACPA because Plaintiffs have not adequately alleged an essential element of an ACPA claim: that the defendant had a bad faith

intent to profit from that mark. A rote recitation of the elements of a cause of action are insufficient to survive a 12(b)(6) motion to dismiss. *Ashcroft*, 556 U.S. at 678. Plaintiffs only make the conclusory allegation that “Defendant registered his www.chicagomotorcars.us and www.chicagomotorcarsuck.com websites in bad faith with intent to profit.” Dkt. 1, ¶57. This is nothing more than a “[t]hreadbare recital[] of the elements of a cause of action” which “do[es] not suffice” to state a claim. *Ashcroft*, 556 U.S. at 678. Without factual allegations to support a conclusory allegation of a bad faith intent to profit, Plaintiffs’ ACPA claim must be dismissed. *Id.* at 679 (“While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.”); *Rodgers v. Lincoln Towing Serv., Inc.*, 771 F.2d 194, 198 (7th Cir. 1985) (“Even the liberal notice pleading allowed by the federal rules requires the complaint to include the operative facts upon which a plaintiff bases his claim.”); *see, e.g., Mayfield v. NASCAR*, 674 F.3d 369, 377-78 (4th Cir. 2012) (finding boilerplate allegations to be “precisely the sort of allegations that *Twombly* and *Iqbal* rejected.”).

Finally, Plaintiffs’ ACPA claim must be dismissed because Defendant has a noncommercial purpose for his website, namely to inform other customers of his experiences with Plaintiffs. *See Lamparello v. Falwell*, 420 F.3d 309, 318-19 (4th Cir. 2005) (“The [ACPA] was not intended to prevent “noncommercial uses of a mark, such as for comment, criticism, parody, news reporting, etc., and thus they are beyond the scope of the ACPA.” (internal quotations omitted)). Defendant lists the purpose of his website in bold, colorful font at the top of the front page: “One customer’s testimony to fully inform any future customers.” Dkt. 1, p. 9. The Complaint even admits that “Defendant is not currently engaged in any legitimate, non-infringing business under the domain names.” *Id.* at ¶62. Numerous courts have held that use of another’s mark in a domain name is nonactionable where the defendant has a noncommercial purpose such as criticism

or informing other consumers. *See, e.g., Utah Lighthouse Ministry v. Found. for Apologetic Info. & Research*, 527 F.3d 1045, 1057-59 (10th Cir. 2008) (finding website used for criticism does not violate ACPA even if it uses a trademark as the domain name); *TMI, Inc. v. Maxwell*, 368 F.3d 433, 436-40 (5th Cir. 2004) (finding no ACPA violation where disgruntled customer registered domain name incorporating plaintiff's mark for the purpose of informing other consumers); *Lucas Nursery & Landscaping, Inc. v. Grosse*, 359 F.3d 806, 811 (6th Cir. 2004) (same).

II. Lanham Act Claim

A. Plaintiffs lack standing to bring false advertising claim

Plaintiffs do not have standing to bring a false advertising claim under the Lanham Act claim because they have not alleged that they are commercial competitors of Defendant. Without standing, a claim must be dismissed. *Arizona Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436, 1442 (2011). To establish standing to bring a false advertising claim under the Lanham Act, Plaintiffs must allege that they are Defendant's commercial competitors. *L.S. Heath & Son, Inc. v. AT&T Info. Sys., Inc.(Heath)*, 9 F.3d 561, 575 (7th Cir. 1993).

Here, Plaintiffs do not allege that they are commercial competitors of the Defendant. Plaintiffs have not done this because they cannot do this. The Defendant is simply an individual expressing his opinions; he does not sell automobiles. Applying the *Heath* court's holding, Plaintiffs' Lanham Act claim must be dismissed because they have not alleged that they are commercial competitors of Defendant. 9 F.3d at 575. The courts of this Circuit have consistently arrived at a similar result. *See Johnny Blastoff, Inc. v. L.A. Rams Football Co.*, 188 F.3d 427, 438-39 (7th Cir. 1999) (finding that a creator and marketer of cartoon characters lacked standing to bring false advertising claim against NFL and a football team); *Marvellous Day Elec. (S.Z.) Co., Ltd. v. Ace Hardware Corp.*, 2012 WL 4579511, at *2 (N.D. Ill. Oct. 2, 2012) (dismissing false adver-

tising claim for lack of standing where parties were not competitors); *Medallion Products, Inc. v. McAlister*, 2008 WL 5046055, at *5 (N.D. Ill. Nov. 20, 2008) (same); *Gail Green Licensing & Design Ltd. v. Accord, Inc.*, 2006 WL 2873202, at *5 (N.D. Ill. Oct. 5, 2006) (same).

B. Plaintiffs fail to state a claim for false advertising because they do not allege that Defendant's statements were "commercial advertising or promotion"

To state a claim for false advertising, Plaintiffs must allege that Defendant's statements are "commercial advertising or promotion." 15 U.S.C. §1125(a)(1)(B); see *Johnson Controls, Inc. v. Exide Corp.(Johnson Controls)*, 152 F. Supp. 2d 1075, 1081 (N.D. Ill. 2001). Plaintiffs do not allege that Defendant's statements were "commercial advertising or promotion" and thus, their false advertising claim must be dismissed. See *Installation Services, Inc. v. Elec. Research, Inc.*, 2005 WL 645244, at *2 (N.D. Ill. Mar. 21, 2005).

Although the Lanham Act does not define the term "commercial advertising or promotion," multiple Circuits and numerous Districts, including several courts in the Northern District of Illinois, have adopted a four prong test for defining these terms. See e.g. *Podiatrist Ass'n, Inc. v. La Cruz Azul de Puerto Rico, Inc.*, 332 F.3d 6, 19 (1st Cir. 2003); *Rice v. Fox Broad. Co.*, 330 F.3d 1170, 1181 (9th Cir. 2003); *Fashion Boutique of Short Hills, Inc. v. Fendi USA, Inc.*, 314 F.3d 48, 56–58 (2d Cir. 2002) (adopting the first, third, and fourth prongs, but not reaching whether the second prong applies); *Proctor & Gamble Co. v. Haugen*, 222 F.3d 1262, 1273–74 (10th Cir. 2000); *Seven-Up Co. v. Coca-Cola Co.*, 86 F.3d 1379, 1384 (5th Cir. 1996); *Installation Services, Inc.*, 2005 WL 645244, at *2 (applying the three prongs used in *Fendi USA, Inc.* and dismissing Lanham Act claim because allegedly false representations did not meet each prong of test); *Johnson Controls*, 152 F. Supp. 2d at 1081. Under the four-prong test, a statement is commercial advertising or promotion only if it is: (1) commercial speech; (2) made by a defendant who is in commercial competition with plaintiff; (3) for the purpose of influencing con-

sumers to buy defendant's goods or services; and (4) must be disseminated sufficiently to the relevant purchasing public to constitute "advertising" or "promotion" within that industry. *Johnson Controls, Inc.*, 152 F.Supp.2d at 1081.

Here, Plaintiffs fail to allege any facts sufficient to establish prongs 1-3 of the test enumerated by the *Johnson Controls* court.

First, Plaintiffs do not allege that Defendant's statements are commercial speech. *See Commodity Trend Serv., Inc. v. Commodity Futures Trading Comm'n*, 149 F.3d 679, 684 (7th Cir. 1998) (defining commercial speech as "speech which does no more than propose a commercial transaction."). Plaintiffs do not allege that Defendant's statements proposed any type of commercial transaction. In fact, the Complaint belies any argument to that effect. The purpose of Defendant's statements are contained on page 9 of the Complaint: to share "One customer's testimony to fully inform any future customers." Dkt. 1, p. 9. Defendant's YouTube videos are just an extension of his mission to inform consumers of what he considers to be Plaintiffs' unsavory business practices. *Id.* at ¶40. This does nothing to propose a commercial transaction and thus is not commercial speech.

Next, Plaintiffs' Complaint does not satisfy the second prong because Plaintiffs do not allege that Defendant is a commercial competitor. Finally, Plaintiffs' Complaint does not satisfy the third prong of the test because they do not allege that Defendant made his statements "for the purpose of influencing consumers to buy *defendant's goods or services.*" *Johnson Controls*, 152 F.Supp.2d at 1081 (emphasis added); *see EventMedia Int'l, Inc. v. Time Inc. Magazine Co.*, 1992 WL 321629, at *3 (S.D.N.Y. Oct. 26, 1992) (dismissing Lanham Act claim because the Act applies only to "commercial speech that a competitor employs for the express purpose of influencing consumers to buy the competitor's goods or services[.]"). In fact, Plaintiffs admit that "De-

fendant is not currently engaged in any legitimate, non-infringing business under the domain names [www.chicagomotorcars.us and www.chicagomotorcarsuck.com].” Dkt. 1, ¶62. Neither do Plaintiffs allege that Defendant is engaged in any non-legitimate, infringing business.

Plaintiffs are attempting to misuse the Lanham Act to stifle Defendant’s criticism. Plaintiffs’ entire Complaint is devoted to alleging that Defendant’s criticisms are allegedly false or misleading and have injured their business. That is insufficient to state a claim for false advertising under the Lanham Act. *See Wojnarowicz v. Am. Family Ass’n*, 745 F.Supp. 130, 141-42 (S.D.N.Y. 1990). Because Plaintiffs have not alleged that Defendant’s statements were commercial advertising or promotion, their Lanham Act claim must be dismissed. *See Johnson Controls, Inc.*, 152 F.Supp.2d at 1082.

III. Illinois Uniform Deceptive Trade Practices Act (“UDTPA”) Claim

Plaintiffs’ UDTPA claim is defective for the same reasons that their Lanham Act claim is defective. *MJ & Partners Rest. Ltd. P’ship v. Zadikoff*, 10 F. Supp. 2d 922, 929 (N.D. Ill. 1998) (“[T]he legal inquiry is the same under the Lanham Act as under the Consumer Fraud Act and the Deceptive Trade Practices Act.”). A claim under “the Deceptive Trade Practices Act, 815 ILCS 510/1 *et seq.*, must rise or fall based on the Lanham Act claim.” *Id.*; *see, e.g., Marvellous Day*, 2012 WL 4579511, at *5. Like the Lanham Act, the UDTPA is only implicated when the allegedly deceptive conduct occurs “in the course of [defendant’s] business, vocation, or occupation.” 815 ILCS 510/2 (West 2012).

Plaintiffs do not allege any facts to support that Defendant made his statements in the course of his business, vocation or occupation. Defendant’s statements are opinions and criticisms. *See* Dkt. 1, p. 9. Alleging that Defendant was critical of Plaintiffs’ business and made

harsh comments is insufficient to state a claim under the Lanham Act. Similarly, it is insufficient to state a claim under the UDTPA.

IV. Defamation Claim

A. Plaintiffs do not sufficiently identify allegedly defamatory statements

Plaintiffs' defamation claim is defective because it does not identify the defamatory statements with sufficient specificity to permit Defendant to respond to the allegations. While Plaintiffs are not required to reproduce each and every defamatory statement verbatim in the Complaint, they must at least give enough detail for Defendant to identify which statements are allegedly defamatory so he can respond appropriately. *Wilton Partners III, LLC v. Gallagher*, 2003 WL 22880834, at *5 (N.D. Ill. Dec. 5, 2003).

Plaintiffs allege that Defendant made defamatory statements. Plaintiffs have identified some statements that they claim are defamatory. *See* Dkt. 1, ¶¶33, 41-44 and Exhibit I to Dkt. 1. However, Plaintiffs are quick to label these statements as “examples” or a “representative sampling” that are provided “without limitation[.]” *See* Dkt. 1, ¶¶28, 32-33, 40. These allegations imply that Plaintiffs believe there are additional unidentified allegedly defamatory statements. According to the Complaint, these other statements appear on no fewer than 16 different websites—10 of which Defendant does not own or control (e.g. audioforums.com, 6speedonline.com, ebay.com)—and in over 40 video clips on YouTube. *See id.* at ¶¶26, 28, 40. Plaintiffs do not definitely state that these are the only websites where Defendant allegedly made defamatory statements. Defendant cannot possibly respond to such broad and vague allegations.

This is not a case where allegedly defamatory statements were made in a book and thus every statement in that book can be attributed to the author. In such a case, it might be sufficient

to allege that “the author, in his book, defamed the plaintiff” without much more specificity. But the instant case is much different and requires a much greater level of specificity.

This case involves millions of comments posted by hundreds of thousands of individuals. And this includes only the websites identified by Plaintiffs. Plaintiffs, however, provide no specifics beyond the fact that they consider an unidentified number of comments made on these (and possibly other unidentified sites) to be defamatory.

A practical example acutely illustrates the defect in Plaintiffs’ allegations. The forum at www.6speedonline.com alone has over 3,555,992 comments posted by its 81,902 members. See **Exhibit E**. Defendant is not the author of every statement on this site mentioning Plaintiffs.² Despite the sheer volume of posts on this website, Plaintiffs only allege generally that Defendant made defamatory statements on this website. Plaintiffs may be ascribing to Defendant authorship of statements he did not even make. Defendant cannot be expected to search through every comment left on a massive site such as www.6speedonline.com and respond to every statement mentioning Plaintiffs—both those he made and those he did not lest Plaintiffs attempt to hold him liable for the statements of others.

Plaintiffs can adequately identify allegedly defamatory statements short of reproducing them verbatim. They can identify (1) each url where each statement is contained, (2) the username of the author, and (3) the date and time the comment was posted. This would permit Defendant to (1) locate the website containing the allegedly defamatory statements, (2) determine the username of the author, and (3) determine the specific statement(s) that Plaintiffs allege is defamatory. Without even this basic level of specificity, Defendant is unable to truthfully and accurately respond to Plaintiffs’ allegations. See *Gallagher*, 2003 WL 22880834, at *6. For this

² A search of “Chicago Motor Cars” on www.6speedonline.com’s forum produces 2,110 results dating as far back as 2008.

reason, Plaintiffs' defamation claim should be dismissed until Plaintiffs identify with some specificity the allegedly defamatory statements.

B. Defendants' statements were opinion, rhetorical hyperbole, or cybergripping

Statements of opinion are not actionable. *Wilkow v. Forbes, Inc.*, 2000 WL 631344, at *12 (N.D. Ill. May 15, 2000) aff'd, 241 F.3d 552 (7th Cir. 2001). Whether a statement is one of opinion is a question of law which can be decided on a motion to dismiss. *Id.* To determine if a given statement is one of opinion and thus not actionable, the Court must consider: (1) does the language have a precise and readily understood meaning, or is the language at issue loose, figurative, rhetorical, or hyperbolic, thus negating the impression that it presents actual facts?; (2) does the general tenor of the context in which the statement appears negate the impression that the statement has factual content?; (3) is the statement objectively verifiable as true or false?; and (4) does the social context and setting in which the statement was published support a conclusion that readers would readily consider the statement to be opinion, not fact? *Id.*

The statements identified by Plaintiffs as allegedly defamatory are contained in paragraph 33 and 41-44. The context for Defendant's statements are found in the YouTube video incorporated into the Complaint in paragraph 40. *See Exhibit A*, the transcript of that video; *Tellabs, Inc.*, 551 U.S. at 322. In that video, Defendant explains that he purchased a vehicle from Plaintiffs advertised as a Mercedes AMG with two master keys. Defendant asserts that the vehicle did not have the AMG sport package nor did Plaintiffs give him any master keys, which are needed to control various functions of the vehicle such as the automatic start, the automatic go (allowing the vehicle to start without placing the key in the ignition). *See id.*

Considering this context, Defendant's statements were opinions criticizing Plaintiffs based on his experiences with them. One needs to look no further than the Complaint to see this.

Page 9 of the Complaint contains a screenshot of Defendant's website where he explains to every visitor to his site in large, conspicuous, colorful font that his website is "One customer's testimony to fully inform any future customers" Dkt. 1, p. 9. In sharing his opinions of Plaintiffs and their business practices, he uses "loose, figurative, rhetorical, or hyperbolic" language. This is not actionable. *Wilkow*, 2000 WL 631344, at *12.

As the *Wilkow* court noted "[a] reader of criticism expects rhetorical hyperbole and vivid metaphor, so the use of lively language is understood as hyperbole and metaphor, not as fact." *Id.* at *13 (quoting *Saenz v. Playboy Enterprises, Inc.*, 653 F. Supp. 552, 567 (N.D. Ill. 1987) aff'd, 841 F.2d 1309 (7th Cir. 1988)). No visitor to Defendant's website would have any doubt that they were reading criticism. *See* Dkt. 1, p. 9 (screenshot of Defendant's website reads in large, bold font "Chicago Motor Cars Sucks!"); *see also* *Taubman Co. v. Webfeats*, 319 F.3d 770, 778 (6th Cir. 2003) (finding use of the word "sucks" to be an expression of opinion). Defendant's website is littered with expressions of opinion (e.g. "worst mistake you will ever make," "worst dealership," "arrogant attitude," "scumbags," "Parin Shah is crooked, a liar and will falsey [sic] advertise cars just for a sale[,] etc., *see* Dkt. 9, p. 9) that clue a reader into the fact that what is being expressed is opinion. *See* *Wilkow*, 2000 WL 631344, at *13; *see, e.g.,* *Art of Living Found. v. Does*, 2011 WL 2441898, at *7 (N.D. Cal. June 15, 2011) (dismissing defamation claim because words like "embezzle," "fraud," "deceitful," "launder your black money" to describe plaintiff were opinion given the context that statements were made on "obviously critical blogs"); *Nicosia v. De Rooy*, 72 F. Supp. 2d 1093 (N.D. Cal. 1999) (dismissing defamation claim because statements made on personal website and in internet forums calling plaintiff "a killer, an embezzler, a criminal, a fraud, a perjurer, and a liar" were opinion and rhetorical hyperbole).

The use of loose and hyperbolic language (“worst,” “scumbags,” “crook,” “scammers,” “liar”) and the tenor (harsh, critical), setting (on a personal website and various internet forums), and context (after a disappointing car-buying experience) of the statements all support a finding that Defendant’s statements are nonactionable statements of opinion. *See Wilkow*, 2000 WL 631344, at *13; *see, e.g., Greenbelt Co-op. Pub. Ass'n v. Bresler*, 398 U.S. 6, 14 (1970) (finding use of the term “blackmail” to describe plaintiff’s conduct nonactionable hyperbole); *Dilworth v. Dudley*, 75 F.3d 307, 310 (7th Cir. 1996) (noting that use of words like “scab,” “traitor,” “amoral,” “scam,” “fake,” “phony,” “a snake-oil job,” and “lazy, stupid, crap-shooting, chicken-stealing idiot” are expressions of opinion and thus nonactionable); *Brown v. GC Am., Inc.*, 2005 WL 3077608, at *8 (N.D. Ill. Nov. 15, 2005) (dismissing defamation claim based on finding that statement that “the entire company was ‘f-ed up’ because [plaintiff] could not get professional articles published” was statement of opinion and clear hyperbole); *Kirk v. CBS, Inc.*, 1987 WL 11831 *4–5 (N.D. Ill. Jun. 4, 1987) (finding statements that plaintiff was an “unscrupulous charlatan,” “cancer con artist,” and “quack” were protected statement of opinion).

C. The allegedly false or misleading statements identified in paragraphs 41-44 cannot support a defamation claim.

In paragraph 41 of the Complaint, Plaintiffs take issue with certain statements Defendant made in a YouTube video. **Exhibit A.** Plaintiffs identify and respond to statements in this video that they deem to be false and misleading. It must be noted that even if a statement is proven to be false, it is not necessarily defamatory. *See* (cite) (stating that a statement is not defamatory unless it causes harm to one’s reputation...). Plaintiffs have not been defamed because Defendant stated that he paid \$37,500 for the vehicle even if that statement is false because they have not suffered harm to their reputation from the statement.

In paragraph 42, Plaintiffs take issue with statements Defendant made in a YouTube video about a BMW 750 being listed on both CMC and another car-dealer's websites. **Exhibit B** hereto is the transcript of that video. Plaintiffs allege they purchased the vehicle from the other car dealer and resold it and that there is nothing illegal about doing so. *See* Dkt. 1, ¶42. Defendant did not state in his video that Plaintiffs engaged in illegal conduct. *See* **Exhibit B**. And even if Defendant's statement is false, Plaintiffs' reputation has suffered no harm.

In paragraph 43, Plaintiffs take issue with allegedly false and misleading statements made in another of Defendant's YouTube videos. **Exhibit C** hereto is the transcript of that video. Plaintiffs allege that the VIN for the vehicle is located on CMC's website. Defendant never stated that it was not. **Exhibit C**. Plaintiffs claim the price of the vehicle is listed on CMC's website. Defendant never stated that it was not. *Id.* Plaintiffs allege that Moran is a CMC employee. Defendant never stated he was not. *Id.* Plaintiffs allege that CMC never listed the car for \$201,000. Defendant never stated that they did, although he did state that they listed the vehicle for \$201,300. Plaintiffs finally allege that Defendant falsely stated that the vehicle came from Bentley Gold Coast when it in fact came from an individual who traded the vehicle in on another vehicle. Even if that is true, Plaintiffs' reputation has suffered no discernible harm.

Plaintiffs incorrectly believe that simply alleging a statement is false is sufficient to state a claim for defamation. This is not an accurate understanding of the law. Because Plaintiffs have identified only statements that even if proven false will not support a defamation claim, their defamation claim should be dismissed.

Plaintiffs' defamation and false light claims must be dismissed because Plaintiffs fail to allege adequately that Defendant acted with actual malice. *Curtis Pub. Co. v. Butts*, 388 U.S. 130, 155 (1967) (defamation claim brought by public figure requires proof of actual malice);

Brennan v. Kadner, 351 Ill. App. 3d 963, 971, 814 N.E.2d 951, 959 (2004) (false light claim requires proof of actual malice). Plaintiffs' only allegations regarding actual malice are boilerplate allegations that Defendant acted with actual malice. *See* Dkt. 1, ¶¶49, 72. This is insufficient to state a claim. *Mayfield*, 674 F.3d at 378 (finding that "[plaintiffs'] assertion that [defendants'] statements 'were known by [them] to be false at the time they were made, were malicious or were made with reckless disregard as to their veracity' is entirely insufficient."); *Besen v. Parents & Friends of Ex-Gays, Inc.*, 2012 WL 1440183, at *6 (E.D. Va. Apr. 25, 2012) (finding boilerplate allegations of actual malice "wholly insufficient."); *Hanks v. Wavy Broad., LLC*, 2012 WL 405065, at *13 (E.D. Va. Feb. 8, 2012) (same).

CONCLUSION

For the reasons stated herein, Defendant respectfully requests that this Court dismiss Counts I-IV and VI of Plaintiffs' Complaint.

DAVID BATES

By: /s/ Andrew C. Murphy
One of his attorneys

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EXHIBIT A

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IN THE UNITED STATES DISTRICT COURT
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EASTERN DIVISION

CHICAGO MOTOR CAR CORPORATION,)
PARIN SHAH, and FRANK SACCO,)
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vs.) No. 12-cv-8905
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) The Honorable
DAVID BATES,) John Z. Lee
)
Defendant.

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12/19/2012

2

1 DAVID BATES: Hey, welcome back to Chicago Motor
2 Cars Liar Liar Pants on Fire.

3 Hey, we're gonna take a look at a 2004
4 Mercedes Benz LS 600 two-door convertible, VIN number
5 ending in 1045. Now, as we look at this car, you're
6 going to notice that this video is going to be totally
7 different than any other video we've done. And the
8 reason why? This is the very car that started this
9 mission that I have against Chicago Motor Cars.

10 So let's get right to work. I want to
11 tell you about this car. Chicago Motor Cars has this
12 car back up for sale on their website for \$43,800.00.
13 Now, the page you're looking at right now is the page
14 that I looked at when I originally purchased the car.

15 When I purchased the car, it had
16 23,000 miles on it. As you can tell by the very first
17 caption, it says 2004 Mercedes Benz SL 600 AMG. Now,
18 that was important to me. But, when I received the car
19 and the car was delivered to me one night on a flatbed
20 trailer, I quickly realized that this car was not an
21 AMG. So Chicago Motor Cars falsely advertised the car
22 to me, and I didn't catch it until the car was

3

1 delivered.

2 They also advertised that the car had
3 keyless go. That never worked. They advertised that
4 the car had keyless start. That never worked. Power
5 hardtop. The hardtop would only go up and down if you
6 manually got out of the car and readjusted the seal
7 flaps to reset the sensors so that the top would
8 complete its travel either up or down.

9 Down at the bottom here it said that the
10 car had two remote master keys. That wasn't accurate.
11 It only had one set of keys; and they were never the
12 master keys, because none of the functions on those
13 keys ever worked all the features on the car.

14 Chicago Motor Cars had this car for sale
15 at the time for \$43,800.00, same thing they have it for
16 sale today. I eventually paid \$37,500.00 for the car.

17 Taking a look at today's listing on this
18 call, you'll quickly notice that the word AMG has been
19 removed. So they somewhat corrected their problems.
20 It still says keyless go and keyless start, but I would
21 lay odds that those things still aren't fixed. I would
22 also lay odds that the powered hardtop is not fixed,

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1 and I would lay odds that it still only has one set of
2 keys.

3 If you notice now they list the car at
4 29,000 miles. That's what the car had when I turned it
5 back in. They had this car up for sale on Ebay, and
6 obviously it never sold. It had three offers on it,
7 but I'm trusting and hoping that these three people
8 interested in this car will take a close look at my
9 video and realize they need to stay away from this car,
10 and especially Chicago Motor Cars.

11 Let's take a little look at some of the
12 information that I gathered while the car was in my
13 possession.

14 This car had a mind of its own. There was
15 a lot of problems with this car. And one of the
16 problems with this car is the dashboard would go on its
17 own little tangent and do whatever it wants.

18 Take a look at this video as I describe
19 what it is. As you can clearly see, the car is driving
20 down the road. The odometer and the tack will bounce
21 in and out. The hazard lights, emergency lights,
22 different warning lights on the dashboard would come on

5

1 and off. Different functions would read in error. Low
2 voltage to the battery. If you look at the gas gauge,
3 it read zero. This car had some serious problems.

4 One of the problems that I found out about
5 this car is when it was shipped to me, it was shipped
6 with bald tires, and it was shipped with tires that had
7 chunks taken out of it. Now, this is no way that a
8 high-end car dealership should ever ship out an SL 600.

9 But, when I went to take it in to get the
10 tires replaced, it didn't take my new dealership too
11 long to figure out that the front driver rim had a huge
12 crack in it. Now, this is a huge safety feature. And
13 Chicago Motor Cars doing their safety check should have
14 caught this right away.

15 Now, during the course of the four months
16 that I had this car, I was never supplied the title,
17 and I wonder why.

18 Maybe this has something to do with it.
19 The previous owner of this car is George Giannoulis
20 out of Chicago, Illinois.

21 Now, I never could figure out if maybe the
22 reason why I never got the title is because the car

12/19/2012

6

1 should have never been sold. You see, George
 2 Giannoulas is currently being sued by the feds for a
 3 \$140 million dollar loss through a bank that he used to
 4 own. That's right. The previous owner is being sued
 5 by the Federal Government because he played games and
 6 laundered out money through bogus loans that should
 7 have never been honored.
 8 So whether or not if that was the reason
 9 why we never seen the title, I'm not sure, but the end
 10 result is we were never issued a title for this
 11 particular car.
 12 As you can see in this PDF, I just want to
 13 point out this was a PDF created by Chicago Motor Cars.
 14 It's where they are advertising that car again,
 15 advertising it right there. 29,614 miles.
 16 I'll show you that they are still up to
 17 their same old games, same old misleading you, never
 18 being legit or honest about the car.
 19 As you can see right here, it clearly
 20 shows they are trying to sell a 2004 Mercedes Benz
 21 SL 600 AMG. Like I told you, this car is not an AMG.
 22 It was falsely advertised. And it just goes on and on.

7

1 Now, when I had the car in my possession,
 2 there were some things that I quickly realized was
 3 wrong with the car. I took it to a body shop of mine
 4 that I take all my vehicles to, and he quickly showed
 5 me that Chicago Motor Cars and Parin Shah was never
 6 honest with the condition of the car.
 7 Parin Shah told me that the car had never
 8 been painted or had any body work done to it. That was
 9 quickly misleading. The car had been hit on the front
 10 passenger bumper. There was damage that was located on
 11 the front driver quarter panel. There was damage found
 12 on the rear driver quarter panel. A lot of Bondo work
 13 there. Poor paint job. Didn't really sand out the
 14 Bondo. You can clearly see the Bondo marks.
 15 There was damage found on the rear trunk
 16 lid. If you open up the trunk lid, look at the chrome
 17 components in there, you could find that there's a lot
 18 of overspray in there.
 19 If you look at the alignment of the
 20 exhaust, you'll quickly realize that on the driver's
 21 side the exhaust is way out of whack, clearly showing
 22 this car has undergone some damage and somebody's tried

8

1 to botch it back together and repair it.
 2 Another classic case Chicago Motor Cars,
 3 Parin Shah not being honest with the cars that they
 4 sell. And this is what put them in the boat that they
 5 are in now.
 6 I am on a mission to expose this
 7 dealership for all the crookedness they do, and will
 8 continue to expose them.
 9 Chicago Motor Cars, Parin Shah, you ought
 10 to be ashamed of yourself, misleading people on the
 11 cars that you have on your lot.
 12
 13
 14 (Which were all of the proceedings
 15 taken from the Tape-Recording
 16 of the above-entitled cause.)
 17
 18
 19
 20
 21
 22

9

1 STATE OF ILLINOIS)
 2) SS.
 3 COUNTY OF DU PAGE)
 4
 5 I, GLORIA APOSTOLOS, C.S.R., duly
 6 qualified and commissioned for the State of Illinois,
 7 County of DuPage, do hereby certify that I reported in
 8 shorthand the proceedings had and testimony taken at
 9 the Tape-Recording of the above-entitled cause, and
 10 that the foregoing transcript is a true, correct, and
 11 complete report of the entire testimony so taken at the
 12 time and place hereinabove set forth.
 13
 14
 15 GLORIA APOSTOLOS
 16 CSR License #084-001205
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EXHIBIT B

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHICAGO MOTOR CAR CORPORATION,)
PARIN SHAH, and FRANK SACCO,)
)
Plaintiffs;)
) Civil Action
vs.) No. 12-cv-8905
)
) The Honorable
DAVID BATES,) John Z. Lee
)
Defendant.

TAPE-RECORDING in the above-entitled
cause, transcribed into typewriting by GLORIA APOSTOLOS
SIOLIDIS, C.S.R., License #084-001205, qualified and
commissioned for the State of Illinois.

COUNTY COURT REPORTERS, INC.
600 S. COUNTY FARM ROAD, WHEATON, IL 60187
(630) 653-1622

EXHIBIT C

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EXHIBIT D

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12/19/2012

2

1 DAVID BATES: Thanks for clicking on this video.
2 This video about Chicago Motor Cars, Parin Shah, Frank
3 Sacco is like no other video we ever created. We have
4 created a lot of videos on their price scamming, their
5 price gouging, changing VIN numbers, selling cars that
6 went back on Lemon Laws. None of them matches this
7 video.
8 You're going to want to sit back, relax,
9 clear your mind and really take this video in. The
10 scam that we expose on this video is like none other,
11 trust me.
12 This all started because of a thread that
13 I had read on a forum about this particular car. The
14 postings that I read on the forum just didn't make any
15 sense to me, so we started researching.
16 It took several days to pull all this
17 information together and to make sense out of it, but
18 that goes to show you how crooked Chicago Motor Cars is
19 and the extent that they will go to hide what they are
20 doing and what they shouldn't be doing and what they
21 don't disclose to you that they did do. That's what
22 this video is all about.

3

1 This is about a 2009 Nissan GTR that
2 Chicago Motor Cars has on their website right now,
3 August 29th, for \$99,800.00. Now, that right there
4 alone should raise some eyebrows, because that car is
5 nowhere worth that.
6 This car ends in the VIN number of 0050.
7 And all these things are important, and it will all
8 make sense when I'm done.
9 This car has 27,000 miles on it. Not bad.
10 Let's go see where this car sat before Chicago Motor
11 Cars bought it. This car sat in Napa, California and
12 it sold for \$60,000.00 even. Chicago Motor Cars is
13 selling it for \$99,800.00, a \$39,800.00 difference.
14 But we've caught Chicago Motor Cars in
15 this before where they just gouged people's eyes out
16 with the intent that they'll buy a car and not do their
17 research. But this one's a little different.
18 What caught my eye on this one is once
19 again verify the VIN number, 0050, so you know we're
20 talking about the same car. The mileage when this guy
21 sold it to Chicago Motor Cars is 23,500.00. So we have
22 a 4,000 mile difference.

4

1 Hey Parin, did you go down to California
2 and drive this back to Chicago? Not really. You
3 didn't do that, did you? We know what you did, and
4 we're going to explain it as this video keeps going.
5 Some of the crucial things that I want to
6 point out before we leave this page of the original
7 seller. As you notice in the description, and you'll
8 be able to read the links that I put in the lower box,
9 there's no add-ons in this car. It's basically the way
10 it came from the factory.
11 But one thing I want you to notice is, and
12 this is crucial, is the black rims and the headlights
13 and the side markers are not tinted. I know it sounds
14 crazy, but stick with me. It's gonna make sense. It's
15 all gonna make sense and tie together. That's why it
16 took us about five days to figure out this car.
17 Today this car has chrome rims, different
18 rims, and the headlights and the side markers are
19 tinted. That's crucial because that's not the way the
20 car came, but that's the way the car is today.
21 Now lets move on. As we kind of joggle
22 down here, we notice what Chicago Motor Cars is

5

1 advertising with this car. Right away, premium AMS
2 package, the full boat. A lot of high-performance
3 equipment was added to this car after they bought it
4 from the gentleman out of California. Why would you do
5 that?
6 Up here in the description it said that
7 there was \$150,000.00 worth of add-ons. Why would you
8 put \$150,000.00 worth of add-ons to a car that you're
9 marking up \$39,000.00?
10 In the bottom of the description it says
11 tinted headlights, side markers and taillights.
12 I know this all kind of sounds confusing
13 and crazy. What's the difference? But it all ties
14 together. It all ties together, because Parin didn't
15 put all this money in this car so he could sell it for
16 a \$39,000.00 profit. And we still have the issue of
17 how did the car get an extra 4,000 miles on it from
18 California to Chicago? How? This is where our
19 research kicks in.
20 So when I started this video, I told you
21 that it all revolved from what I had read on this
22 thread in this forum. Here's that forum, and here's

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6

1 the thread. The gentleman starts off asking about this
 2 car that he seen on Ebay that Chicago Motor Cars was
 3 advertising, and he wants to know if anybody's got any
 4 information about Chicago Motor Cars or the car.

5 This is where it kind of went south,
 6 because people kind of jumped out and said things about
 7 the car they probably shouldn't have. Then there was
 8 some cover-up, see if they couldn't wash it away. And
 9 they didn't quite wash it away, and that's what got my
 10 attention.

11 So this gentleman asked about Chicago
 12 Motor Cars and this car. The very first gentleman
 13 responds, there was a thread in here not that long ago
 14 about them being a shitty dealer.

15 He goes on to talk about a gentleman got a
 16 car. It needed about \$10,000.00 worth of repairs.
 17 Chicago Motor Cars had kind of covered it up, didn't
 18 disclose it, which we ran into that several times with
 19 them. And it started this big discussion on this forum
 20 on a different thread. But we're going to stick with
 21 this Nissan, because this one just amazes me.

22 The fourth person to speak is actually a

7

1 company by the name of AMS. Now, that should click on
 2 a red light to you. If you remember, now that Parin
 3 has this car in his possession, there was all this AMS
 4 after-market equipment put on the car that wasn't there
 5 before on the previous owner.

6 This is the gentleman who speaks next on
 7 the thread. He says this. That car was in here not
 8 that long ago. The customer pieced together his own
 9 Alpha 9 setup and brought it here for tuning. So kind
 10 of piecemealed it together, brought it to this guy to
 11 tune it out, put it on a Dyno. When it was on a Dyno,
 12 it ran very well. We put a pretty conservative tune on
 13 the car, as the customer requests. He did not have
 14 those HRE wheels on the car at the time, but it looks
 15 good on the car.

16 Now, that's crucial to remember. And I
 17 know right now it doesn't mean anything, but it will.

18 If you remember, now he's talking about
 19 the chrome wheels that are now on the car from Chicago
 20 Motor Cars. But when this car was took to him, it
 21 still had those black rims on it. All of this is going
 22 to tie together if you just hang in there, because it

8

1 really points out the crookedness of Chicago Motor
 2 Cars.

3 So the thread goes on, and there's a
 4 couple of gentlemen talking about Chicago Motor Cars
 5 not being that reputable. And he comes back again,
 6 because he's been called out. He's been caught in a
 7 lie, and now this AMS has to try to correct it.

8 Because I'm sure by now, if you kind of read this,
 9 Parin has got ahold of him and said hey, what are you
 10 doing? Don't dog me out on that car. I have it on my
 11 car lot now for sale.

12 So he comes back, because nobody wants to
 13 know what we're going to disclose in a few seconds
 14 here, what happened to this car and where those 4,000
 15 miles came from.

16 But this is what he says, how he tries to
 17 backstroke himself out after obviously Parin got ahold
 18 of him.

19 I'm not trying to defend CMC, but I think
 20 you are confusing two different red Alpha GTR's. "The
 21 red one on the rally was actually bought by a friend of
 22 our media manager here at AMS." Are you kidding me?

9

1 You couldn't think of a better excuse than that?

2 You know you're caught. You know you're
 3 busted. And if your manager would have bought that car
 4 from Parin, you would have known about it. That's not
 5 what happened to that car.

6 "There was an Alpha 6 GTR that we built
 7 mere days before the Gold Rush Rally. Here is the car
 8 in question."

9 Now let me explain a little bit about the
 10 Gold Rush Rally, which is really what this thing is all
 11 about. The Gold Rush Rally is where a bunch of guys
 12 get together with some very high-end cars. These cars
 13 are just souped up to the max. And it starts in L.A.,
 14 goes up to Denver. Then these cars are transported
 15 over to Atlanta. And from Atlanta they get back in
 16 these cars and they trickle down to Miami.

17 But they are not just driving these cars.
 18 They are racing these cars. They are sending these
 19 cars down dragstrips against one another. They are
 20 beating the daylights out of these cars. These cars
 21 are just getting it full board.

22 Do you ever want to own one of these cars?

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10

1 No way. No way, because they have been beat.
 2 Lets carry on. So he goes and he shows
 3 this video, and this video clearly shows this 2009
 4 Nissan GTR, and he's trying to tell you now, wait a
 5 minute, I made a mistake.
 6 The car in the video is not the car that
 7 Parin Shah has on his car lot now, because they don't
 8 want you to know that. Here is the car that was in the
 9 Gold Rush Rally that Parin put in there and they beat
 10 the daylights out of it. What do you notice? Two
 11 things right away. The rims are changed, the side
 12 markers are changed, the headlights. Everything that
 13 was changed to after-market products matches the exact
 14 one that he's currently selling for \$99,000.00. Also
 15 the one that he dumped all the AMS equipment in, the
 16 one he ran in the rally.
 17 He goes on to try to tell you that there
 18 was two different cars. There was never two different
 19 cars. One of his last statements he says, "I'm 90
 20 percent sure that the Alpha 9 being sold did not
 21 compete in the rally at all."
 22 AMS, you know you're lying. You know

11

1 you're trying to cover up for Parin. And it's too
 2 late. Pictures, videos and documentation cannot be
 3 beat.
 4 Parin took this guy's car out of
 5 California, he jacked it up with all this high-
 6 performance equipment for one reason. He was gonna run
 7 it in this Gold Rush Rally, beat the daylights out of
 8 it for his jollies and his kicks. And then after he
 9 beats the crap out of this car, he wants to put it back
 10 on the market and sell it to you, the sucker who
 11 doesn't do your homework and pay attention to what
 12 Parin is doing.
 13 You're paying for his kicks and giggles.
 14 You're paying for a car top dollar that you think has
 15 just been pristine and just handled with care, and now
 16 it has all this high-tech after-market equipment on it;
 17 and in all reality, the car was beat to daylights.
 18 I want to take one second and just find a
 19 quote that a gentleman wrote, and we'll move on to the
 20 rest of our proof.
 21 So now in this thread we're talking about
 22 covering things up. And one thing didn't get covered

12

1 up fast enough and it didn't get removed. You look at
 2 the posting from Z06 Vet. His top posting on
 3 August 14th said, "Statement retracted as AMS found
 4 information providing me wrong."
 5 They deleted his comment while Parin and
 6 AMS tried to get him to delete his comment, but not
 7 before somebody quoted on his comment. And when you
 8 quote on a comment, what it does, it takes their
 9 comment and brings it down, and you can quote
 10 underneath.
 11 Let's see what it said. This gentleman
 12 right here quoted on that comment, and the comment that
 13 was deleted that Parin and AMS got deleted off of this
 14 forum because they just didn't want to see it is this.
 15 This is what the guy said. "I ran with the car at Gold
 16 Rush Rally for about a week straight." So he was
 17 there. "Looked clean and drive without issues all
 18 week. But I didn't ride in it or inspect it too
 19 closely. The car was tracked on the rally and driven
 20 hard all week. But it did run without issues. I
 21 believe it was driven by the owners of Chicago Motor
 22 Cars. So they did have some fun with it. I'd take

13

1 that into consideration and would use it as a
 2 bargaining chip."
 3 So this guy was there. He drove his car
 4 right along with this car. He's telling you Parin Shah
 5 beat the daylights out of this car, ran it hard all
 6 week. Now what do they want to do with that car?
 7 They want to wash it, wax it and try to sell it to you.
 8 The story just keeps getting thicker and
 9 thicker and thicker for Parin. And we're going to make
 10 more sense of it in just one minute.
 11 So have we stumbled across this issue
 12 before, Parin and Frank taking cars that belong to the
 13 dealership, cars that they are trying to sell, and
 14 using them for their own enjoyment, beating the cars,
 15 maybe racing the cars? Have we heard that anywhere
 16 before? Or have I supplied you any proof with that
 17 before? Yes, I did. I stumbled onto this very topic a
 18 while ago, but just never had the proof, not like this.
 19 You see, way back we ran across some
 20 issues where people said to us that Parin and Frank
 21 were using these cars for their own use, and before
 22 they put it on the car lot, they were racing them and

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14

1 beating the daylights out of them, then expecting you
 2 to buy them. And I ran across that in this forum.
 3 This gentleman, it talked about Parin on
 4 this forum basically screwing a guy out of a '93
 5 hardtop. And it went on to say that he basically
 6 didn't disclose all the information about the car. The
 7 car had hidden damage. On and on and on.
 8 But we're gonna stick to the topic of what
 9 the gentleman said and we're going to stick to the car
 10 that we're dealing with now, because we can go on and
 11 on, cars after cars.
 12 But I draw your attention to this comment
 13 that this gentleman posted, and it's always been in the
 14 back of my head, and I just needed the proof, and I got
 15 the proof now.
 16 The gentleman goes on to write this: "Let
 17 it be known that Chicago Motor Cars, Parin is different
 18 than me. Sad to see that when I finally found someone
 19 with the same name as me, he's a douche. Whenever
 20 someone tells me they found a car from their site, I
 21 tell them to stay far, far away. It's just not worth
 22 the troubles. After hearing stories of them racing

15

1 cars that are for sale at the track and on the streets,
 2 no thank you."
 3 Now, if you remember, if you went back to
 4 one of the website sheets that I had posted, I had
 5 supplied you a lot of tickets that Parin and Frank
 6 received in DuPage County, which is where that
 7 dealership is located. They received a lot of
 8 Citations for operating a vehicle without insurance.
 9 It says operated uninsured motor vehicle.
 10 Now, why would you get busted operating an
 11 uninsured motor vehicle? It's very simple. Because
 12 you're taking a vehicle from a lot and using it for
 13 your own personal use.
 14 Now, most dealers do that. I'm not
 15 mocking that. But when you're taking that vehicle and
 16 you're beating the crap out of it for your own kicks
 17 and jollies and not disclosing that to the new buyer,
 18 now I have a problem with that, because you're not
 19 being honest with the car. And you of all people, the
 20 dealer, selling the car, telling people it's pristine.
 21 You should be honest.
 22 So as we go through all these Citations I

16

1 found, they just go on and on. Speeding over statutory
 2 limit, 15 to 20 miles. Operating uninsured vehicle,
 3 two tickets, one incident. Speeding 40 miles an hour
 4 or more over the limit and driving license
 5 clarification violation. That probably means he was
 6 driving on a suspended license.
 7 Here's another one. Parin Shah, speeding
 8 over the limit of 26 to 30 miles an hour. Man, he is
 9 beating the daylights out of all the cars on his lot.
 10 Here's another one by Parin Shah.
 11 Squealing or squelching tires. He got a Citation.
 12 Disobey traffic controls. Operate uninsured motor
 13 vehicle. Another dealer car out on the road. Speeding
 14 over limit 21 to 25 miles an hour. Operate uninsured
 15 motor vehicle. Driving too fast for conditions.
 16 Failure to reduce speed to avoid an accident.
 17 So here's one, operate uninsured motor
 18 vehicle. Driving too fast for conditions, or failure
 19 to reduce speed to avoid an accident. So he got into
 20 an accident with one of the cars that he's potentially
 21 trying to sell. But I bet you \$100.00, you go back and
 22 pull the main record on this, figure out which car it

17

1 was, it was never disclosed that that car was in an
 2 accident. I bet you \$100.00 it wasn't.
 3 Operate uninsured motor vehicle. Operate
 4 a vehicle with cancelled, suspended or revoked Illinois
 5 registration.
 6 Parin, do you ever stop?
 7 Another one by Parin. Speeding 11 to
 8 14 miles over speed limit. We can go on and on and on
 9 with these, trust me.
 10 Another one with Parin. Driving while
 11 license suspended. Driver view obstructed by sign,
 12 poster, window or application, etc. So that's just
 13 proven to you he's driving these cars that he has for
 14 sale on his lot.
 15 He got a Citation, one, driving with a
 16 suspended driver's license; but two, driving the car
 17 off the lot, and it has a big sign in the windshield,
 18 so his view is obstructed.
 19 Operate uninsured vehicle. Improper
 20 display of license plates or registration stickers.
 21 Operate a vehicle with cancelled, suspended or revoked
 22 license. Driving with expired license plates.

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18

1 Unlawful display of registration.

2 Oh, we have more. Don't worry.

3 Here's one from Frank. Failure to

4 transfer title by dealer. Yeah, we've heard that a

5 couple times, haven't we?

6 It just goes on and on and on. It never

7 ends, does it?

8 So Parin, you bought this car out of

9 California. You had it all doctored up, had all these

10 after-market components put on it so that you could be

11 this big-shot and advertise Chicago Motor Cars, beating

12 the daylights out of this car in this Gold Rush Rally,

13 and then you think you're going to come back, put that

14 car on your lot, wax it and polish it and think

15 nobody's gonna figure out what you did.

16 Okay. So I've given you all the proof

17 that that's what Parin did with this car. Now let's

18 talk a little bit about what he did with it while he

19 was down there. That way you can see how much this car

20 got beat up.

21 Here's the car on Gold Rush Rally's

22 Facebook page. And on July 22nd there's a posting

19

1 about this car.

2 Remember, this takes a couple of days.

3 This rally is a couple of days and several, you know,

4 obviously several thousand miles.

5 This one caught my eye because it really

6 ties everything together. This is the caption:

7 "Gorilla is about to breathe some fire on the track at

8 Atlanta Motor Sports Park." So they got this thing out

9 on the racetrack. There it is.

10 Parin's going to open this thing up, pedal

11 to the metal, make this thing rock, and he's going to

12 see what it's all about. He's going to beat the day-

13 lights out of this car. He's going to have his kicks

14 and giggles, because the car's not his. He doesn't

15 care. He's not going to be the one that ends up with

16 the car at the end.

17 But what I think is funny is the posting

18 underneath. Here's the posting underneath about that

19 picture. "Hate the rims, not GTR material." That's

20 right, because that's not the way the car came. It's

21 not the way the car came from California.

22 If you remember, they changed the rims.

20

1 And you remember, there was two people talking about

2 these rims being changed. It's what ties the car all

3 in as the one and only car that Parin dumped all this

4 money into so he could race it.

5 July 24th, there's another posting on the

6 Gold Rush Rally Facebook about this particular car,

7 simply known as the Red Monster. Chicago Motor Cars

8 and Gold Rush Rally.

9 You got the car out there, Parin, beating

10 the daylights out of it. You're showing everybody what

11 a big-wig you are, how you're just trashing this car,

12 because you know what? You don't care. One of your

13 customers is gonna get screwed when they buy this car.

14 That's why you don't care.

15 This right here is that old statement, the

16 nail in the coffin. Parin didn't realize that somebody

17 was taking a picture behind him. You see, if you

18 notice, there was never any photos of behind the car.

19 And they do that to try to protect these guys out

20 there. They don't want their license plate number

21 being exposed. But nobody caught on to this one.

22 August 20th on the Gold Rush Rally

21

1 Facebook, somebody took a back photo of the car. And

2 if you blow it up, this is the funniest thing I've ever

3 seen. If you notice all the other cars, they have

4 actual license plates, personal license plates, because

5 they own the car. Here's a gentleman racing next to

6 him with a Florida license plates.

7 If you notice on the back of the Nissan,

8 and I know this plate all too well because I only live

9 one state away, it's a dealer plate. Parin Shah put an

10 Illinois dealer plate on this car so he could drive it

11 in this rally.

12 Parin, that's what you do every day, don't

13 you? You take the cars off your lot, you beat the crap

14 out of them by putting dealer plates on them, and when

15 you're done trashing them, you get the guy in the back

16 to wash it and wax it and make it look all new, but

17 nobody's disclosing what you've done to it. Nobody

18 discloses what you wanted to see that that car could

19 do, do they? Nobody does, Parin.

20 This last is the actual photo where they

21 drive these cars. They start off in Los Angeles. They

22 drive them over to Phoenix, then they drive them up to

12/19/2012

22

1 Vegas. They have a big party in Vegas. While they are
 2 in Vegas, all these cars are put on a transporter and
 3 they are taken over to Atlanta.

4 When these guys are done partying, they
 5 hop on a plane and they fly to Atlanta. From there the
 6 guys are put back in the car. The cars go from Atlanta
 7 to Panama City, over to Orlando, and the ultimate
 8 destination is Miami.

9 If you remember at the beginning of the
 10 video, there was one thing that didn't make sense to
 11 me, the 4,000 miles, the 4,000 miles put on the car
 12 when it left the original owner to now when Chicago
 13 Motor Cars has it on their lot for sale. Hey, I think
 14 we figured out where it got the 4,000 miles.

15 Hey, AMS, there is no more need to lie to
 16 cover up Parin Shah, Frank Sacco or Chicago Motor Cars.
 17 You do not want to get caught up with these three,
 18 because I will start researching your company. If
 19 you're going to lie for these two clowns, I'm going to
 20 start searching what you're doing.

21 What kind of reputable company is AMS that
 22 you would get on the Internet and lie, and the first

24

1 STATE OF ILLINOIS)
) SS.
 2 COUNTY OF DU PAGE)
 3

4 I, GLORIA APOSTOLOS, C.S.R., duly
 5 qualified and commissioned for the State of Illinois,
 6 County of DuPage, do hereby certify that I reported in
 7 shorthand the proceedings had and testimony taken at
 8 the Tape-Recording of the above-entitled cause, and
 9 that the foregoing transcript is a true, correct, and
 10 complete report of the entire testimony so taken at the
 11 time and place hereinabove set forth.

12
 13
 14
 15 GLORIA APOSTOLOS
 CSR License #084-001205

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1 post you've got on there bragging about how you were
 2 the one who souped up this car? Then you wanted to get
 3 on there and lie to cover it up and say there was two
 4 cars. You're mistaken, there's two cars. And you're
 5 99 percent sure, or you said you were 90 percent sure.

6 AMS, you're a liar. Frank and Parin Shah,
 7 you should be ashamed of yourself that you would beat
 8 the daylights out of this car and put it on your car
 9 lot for sale and try to advertise it as some pristine,
 10 well-maintained car.

11 There's only one place for you two. It's
 12 called jail. Shame on you.

13
 14

15 (Which were all of the proceedings
 16 taken from the Tape-Recording
 17 of the above-entitled cause.)

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EXHIBIT E

SHREDDING COMPETITION

What's Going On?

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Most users ever online was 1,949, 09-29-2008 at 09:43 PM.


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 Forum Contains New Posts

 Forum Contains No New Posts

CERTIFICATE OF SERVICE

I, Andrew C. Murphy, the undersigned attorney, hereby certify that on the 21st day of December, 2012, I caused to be served a copy of the within and foregoing Defendant's Memorandum of Law in Support of His Rule 12(b)(6) Motion to Dismiss, via the Court's CM/ECF system, on all counsel of record.

/s/ Andrew C. Murphy_____