IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TANISHA SYSTEMS, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
PRAKASH CHANDRA,	:	CIVIL ACTION NO.
	:	1:15-CV-2644-AT
	:	
Defendant.	:	

ORDER

This case arises from a broken relationship between a former employer and employee. Plaintiff Tanisha Systems, Inc. ("Tanisha Systems") claims that Defendant Prakash Chandra, a disgruntled ex-employee, conspired with a fellow ex-employee to create an online smear campaign targeting Tanisha Systems. According to the Complaint, Chandra and a co-conspirator not named as a defendant used the Internet as a platform to disseminate false statements about Plaintiff with the intent to tarnish the company's reputation and hinder its ability to retain current and prospective employees. Plaintiff advances claims for tortious interference and defamation. Pending before the Court is Defendant's Motion to Dismiss ("Motion"). [Doc. 5]. For the reasons set forth below, the Court **GRANTS IN PART**[1] and **DENIES IN PART** Defendant's Motion.

[1] The Court only grants Defendant's Motion with respect to Plaintiff's request for punitive damages for its defamation claims, and insofar as the Complaint seeks to allege an independent cause of action for conspiracy (as opposed to a theory of liability for the underlying torts).

Although the Court is largely denying Defendant's Motion, a few general observations – and concerns – about this case are in order. Plaintiff's Complaint passes the threshold of plausibility under Fed. R. Civ. P 8(a) – but only barely. The Complaint contains significant problems which are almost certain to rear their head at summary judgment, trial, or before.

First, much of the misconduct alleged is premised on the existence of a conspiracy between Defendant Chandra and an alleged co-conspirator. But that co-conspirator is not named here. Although a co-conspirator is not a necessary party to a tort lawsuit, *MS Dealer Service Corp. v. Franklin*, 177 F.3d 942, 946 (11th Cir. 1999) (abrogated on other grounds) (citing *Pasco Int'l (London) Ltd. v. Stenograph Corp.*, 637 F.2d 496, 501 n.10 (7th Cir. 1980) for the "'established principle that co-conspirators are not indispensable parties")), the co-conspirator's total absence from this case gives the Court pause since it is the Complaint's allegations regarding the conduct of the Defendant's non-party co-conspirator that are the most "plausible."

The allegations themselves contain more than a hint of vagueness – they contain enough factual material to get past the hurdle of a Rule 12(b)(6) motion, but not by much. For example, the Complaint is unclear as to which Tanisha Systems employees breached their confidentiality agreements after being solicited by defendant, and what kinds of information they divulged. Similarly, the Complaint alleges a conspiracy to defame, but leaves open much of how

Chandra worked with his co-conspirator to develop and spread the content of the allegedly defamatory blog post.

Finally, the Court rejects Plaintiff's contention that the Communications Decency Act does not apply to most (and perhaps all) of Defendant's conduct in forwarding the blog post and providing commentary supportive of its contents.

In sum, this is a Complaint with problems. But it meets the pleading standards of the Federal Rules.

I. STANDARD OF REVIEW

This Court may dismiss a pleading for "failure to state a claim upon which relief can be granted." FED. R. CIV. P. 12(b)(6). If a pleading does not contain allegations that support recovery under any recognizable legal theory, then it fails to state a claim. 5 Charles Alan Wright & Arthur R. Miller, FEDERAL PRACTICE & PROCEDURE § 1216 (3d ed. 2002); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In essence, the pleading "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

The Court construes the complaint in the plaintiff's favor and accepts the allegations of facts therein as true. *See Duke v. Cleland*, 5 F.3d 1399, 1402 (11th Cir. 1993). The plaintiff is not required to provide "detailed factual allegations" to survive dismissal, but the "obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555.

In considering a Rule 12(b)(6) motion, the Court should identify conclusions, which are not entitled to the assumption of truth. *Iqbal*, 556 U.S. at 679. "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Id.* at 679. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. *Twombly*, 550 U.S. at 555 (for the purposes of a motion to dismiss, the Court must take all of the factual allegations in the complaint as true, and the Court is "not bound to accept as true a legal conclusion couched as a factual allegation").

II. FACTUAL BACKGROUND

Plaintiff Tanisha Systems is a provider of custom application development and end-to-end information technology (IT) services.[2] (Compl. ¶ 2.) Tanisha Systems hired Defendant Chandra in March 2010 as a computer programmer analyst. (Compl. ¶ 10.) Chandra's employment was at-will (Compl. ¶ 13), and his continued employment was "dependent upon satisfactory performance." (Compl. ¶ 12.) Per his employment agreement, Chandra could receive some bonus compensation "paid at the discretion of the company," subject to Tanisha Systems' "right to alter or eliminate any bonus plan at any time." (Compl. ¶ 12.) Chandra's employment agreement also contained a confidentiality provision prohibiting him from disclosing confidential company information during and following his employment with Tanisha Systems. (Compl. ¶ 14; Ex. A.)

[2] For purposes of this Motion to Dismiss, the Court accepts as true facts alleged in Plaintiff's Complaint, consistent with the standard above.

On or about August 30, 2011, Chandra communicated his resignation to Tanisha Systems (Compl. ¶ 16) after a dispute about his bonus compensation. (Compl. ¶ 15.) The parting was not amicable. Thus, Chandra, in cooperation with another disgruntled ex-employee, Ashwini Jayaprakash, (Compl. ¶ 6) allegedly devised a joint scheme to harm Tanisha Systems and punish its perceived wrongdoings. (Compl. ¶¶ 73, 74.) The "primary objective" of this plan was to "disrupt [Tanisha Systems'] ability to hire and retain employees," and "ruin the company's reputation." (Compl. ¶ 74.) To achieve their objective, the co-conspirators allegedly:

- Compiled a "hit list" of current and former employees of Tanisha Systems (Compl. ¶¶ 36, 37);
- contacted as many current and former employees as possible on the hit list to pressure them into "join[ing] [the] conspiracy" (Compl. ¶ 20) and to enlist them in the plan (Compl. ¶ 19);
- encouraged current and former employees to divulge confidential information that Chandra might use to harm Tanisha Systems (Compl. ¶ 19);
- used confidential information divulged by current and former employees to "disparage and misrepresent facts to as many prospective and current employees as possible" (Compl. ¶ 20); and

- used social media and the Internet to spread defamatory statements about Tanisha Systems (Compl. ¶ 77) and "to disrupt current employment relationships and prospective ones." (Compl. ¶ 30.)

Chandra and Jayaprakash's efforts resulted in the creation of a blog titled www.tanishasystemsucks.wordpress.com. (Compl. ¶¶ 52, 53, 54.) Tanisha Systems alleges that the blog's posts contain a number of defamatory comments, including:

- ". . . nobody gets out of this company without being terminated or blackmailed to resign;"
- Tanisha Systems "will take your hard earned money and tell you they will give it back as bonus;"
- "When I wasn't getting what I was promised and had to fight to get my correct salary I was terminated;"
- Tanisha Systems broke a promise to Chandra to pay him "balance money" of 80% of his client billings.

(Compl. ¶ 56.)

The blog post was ultimately authored and published in Jayaprakash's name. (Compl. ¶¶ 52.) However, Tanisha Systems alleges that Chandra and Jayaprakash by jointly developing the hit list of former and current employees, requested confidential information from the individuals on the hit list, and combined to use social media to infect search results concerning Tanisha Systems. (Compl. ¶¶ 74-77.) Tanisha Systems also alleges that Chandra

commented on the blog site, "vouching for the correctness of the content by praising the author as . . . having shown 'the real picture of Tanisha Systems,'" (Compl. ¶¶ 57) and emailed the blog post's link to Tanisha Systems employees on his "hit list," urging them to forward the blog and share it widely. (Compl. ¶¶ 59) (Compl. Ex. B.) In essence, Tanisha Systems alleges that Chandra both helped create the blog by virtue of his participation in the larger scheme to harm Tanisha Systems, and extended the reach of the allegedly defamatory blog post by both disseminating it and by posing as an independent commenter who verified what Jayaprakash had written.

Tanisha Systems claims that as a result of Chandra and Jayaprakash's actions, it "has lost revenue, has experienced higher costs associated with hiring, and has suffered injury to its reputation" (Compl. ¶ 24), and that "at least one potential employee explicitly credited Chandra's misrepresentations as his or her reason for looking elsewhere [for employment]." (Compl. ¶ 22.)

Tanisha Systems claims that Chandra's actions amount to tortious interference and defamation and seeks compensatory and punitive damages, attorneys' fees, and injunctive relief. Each of Tanisha Systems' claims will be addressed in turn.

III. ANALYSIS

A. Tortious Interference with Contractual and Business Relations (Count I)

Tanisha Systems first alleges that Chandra tortiously interfered with its contractual and business relations by improperly meddling in Tanisha Systems' current and future employment relationships. To survive a motion to dismiss, Tanisha Systems is required to allege:

> (1) improper action or wrongful conduct by the defendant without privilege; (2) the defendant acted purposely and with malice with the intent to injure; (3) the defendant induced a breach of contractual obligations or caused a party or third parties to discontinue or fail to enter into an anticipated business relationship with the plaintiff; and (4) the defendant's tortious conduct proximately caused damage to the plaintiff.

Disaster Servs., Inc. v. ERC P'ship, 492 S.E.2d 526, 528-29 (Ga. Ct. App. 1997) (citations omitted). The Court finds that Tanisha Systems has met its pleading burden.

1. Improper Action or Wrongful Conduct

A core component of a tortious interference claim is "improper action or wrongful conduct." *Chaney v. Harrison & Lynam, LLC*, 708 S.E.2d 672, 681 (Ga. Ct. App. 2011). In other words, a tort must underlie the "interference." *See Hayes v. Irwin*, 541 F. Supp. 397, 429 (N.D. Ga. 1982) *aff'd*, 729 F.2d 1466 (11th Cir. 1984) (holding that tortious interference is a wrongful tort).

The term "improper action or wrongful conduct" includes any "action that generally involves predatory tactics such as physical violence, fraud or misrepresentation, defamation, use of confidential information, abusive civil suits, and unwarranted criminal prosecutions." *Fortson v. Brown*, 690 S.E.2d 239, 242 (Ga. Ct. App. 2010); *see also Saye v. Deloitte & Touche, LLP*, 670 S.E.2d 818, 824 (Ga. Ct. App. 2008); *Vurv Tech. LLC v. Kenexa Corp.*, No. 1:08-CV-3442-WSD, 2009 WL 2171042, at *9 (N.D. Ga. July 20, 2009).

For example, in *Saye*, the Georgia Court of Appeals reversed the trial court's dismissal of the plaintiff's defamation claims, and then also reversed dismissal of the plaintiff's tortious interference claim because that claim was founded on the defamation claim. 670 S.E.2d at 824. Similarly, in *Vurv Tech*, the district court held that plaintiff's tortious interference claim survived defendant's motion to dismiss where plaintiff alleged that defendants breached their confidentiality agreements with their former employer. 2009 WL 2171042 at *9.

Here, Tanisha Systems alleges that Chandra defamed it[3] and induced disclosure of confidential information. Specifically, Chandra and his co-conspirator allegedly compiled a "hit list" of current and former employees of Tanisha Systems (Compl. ¶¶ 36, 37), contacted at least twenty of such employees (Compl. ¶ 37) and encouraged them to divulge confidential information (Compl. ¶

[3] The sufficiency of Tanisha's defamation claim is addressed in Section B of this Order.

19). Chandra also "recruited others and has implemented his plan" to harm Tanisha Systems. This sufficiently alleges wrongful conduct.

2. Malicious Intent

Tortious interference also requires malicious intent. *See Renden, Inc. v. Liberty Real Estate Ltd. P'ship III*, 444 S.E.2d 814, 817 (Ga. Ct. App. 1994). As used here, the term "malice" is construed liberally. *Id.* at 817. It means "any unauthorized interference, or any interference without legal justification or excuse." *Id.* (citing *Arford v. Blalock*, 405 S.E.2d 698 (Ga. Ct. App. 1997).

For example, in *Arford*, the court found that "persuading a person to break a contract for the indirect purpose of injuring the plaintiff or benefiting the defendant at the expense of the plaintiff is a malicious and actionable act if injury arises from it." *Id.* (citations omitted).

Here, Chandra allegedly used confidential company information and defamatory statements to persuade current employees of Tanisha Systems to break their contracts (including the confidentiality provisions therein) and to dissuade prospective employees from entering into contracts. (Compl. ¶ 77.) And Chandra's purported co-conspirator allegedly claimed that his goal was to "screw" Tanisha Systems and force their company out of business. (Compl. ¶ 73.) Thus, under *Arford*, Tanisha Systems has sufficiently alleged that Chandra's actions are malicious.

3. Inducing Breach or a Similar Harm

Plaintiffs seeking to assert a tortious interference claim must also allege that the defendant "induced a breach of contractual obligations or caused a party or third parties to discontinue or fail to enter into an anticipated business relationship with the plaintiff." *Walker v. Gowen Stores LLC*, 745 S.E.2d 287, 289 (Ga. Ct. App. 2013). "Interference with a contractual right or relationship need not result in a breach of contract to be actionable. It is sufficient if the invasion retards the performance of duties under the contract or makes the performance more difficult or expensive." Charles R. Adams III, GEORGIA LAW OF TORTS § 33.2 (2014-15 ed.)

In his motion to dismiss, Chandra argues that Tanisha Systems' claim that he interfered with contractual or prospective business relationships is speculative and that Tanisha Systems has not adequately alleged that his conduct actually induced any employees to discontinue their employment relationships with Tanisha Systems or to breach any contract between the parties.[4] (Def's Mot. to Dismiss at 6-7.)

[4] The cases cited by Defendant were almost universally decided at the summary judgment stage. *E.g.*, *Stefano Arts v. Sui*, 690 S.E.2d 197 (Ga. Ct. App. 2010) (granting summary judgment for failure to show improper conduct and because defendant was not a stranger to the contract); *Chaney v. Harrison & Lynam, LLC*, 708 S.E.2d 672 (Ga. Ct. App. 2011) (granting summary judgment in favor of defendants when plaintiff failed to demonstrate that unidentified customers spoke to alleged defamers); *Onbrand Media v. Codex Consulting, Inc.*, 687 S.E.2d 168 (Ga. Ct. App. 2009) (granting summary judgment to defendants because they were not strangers to contract); *but see Hongjin Sui v. Wu*, No. 8:11-cv-37, 2011 WL 1396994 at *6-7 (M.D. Fla. April 13, 2011) (denying motion to dismiss when defendant alleged that contract partner declined several contract options).

First, because Tanisha Systems has alleged a claim for interference with both contractual and business relations, it need not allege an actual breach of a contract – only that "the performance of duties under the contract" were made more difficult or expensive. Charles R. Adams III, GEORGIA LAW OF TORTS § 33.2 (2014-15 ed.) Tanisha Systems does not *only* speculate (though there is plenty of speculation peppered throughout the Complaint) that Chandra interfered with its business relationships. Tanisha Systems alleges that "at least one potential employee *explicitly* credited Chandra's misrepresentations as his or her reason for looking elsewhere [for employment]." (Compl. ¶ 22) (emphasis added). This allegation is not particularly strong. But the Court is unable to locate authority requiring Plaintiff to plead the specific identity of this individual at the motion to dismiss stage. Unlike complaints governed by Fed. R. Civ. Proc. 9(b), Tanisha Systems' Complaint need not necessarily state all the particulars of the "who, what, when, where, how, and why" of its claims – though it certainly would help.

Second, Tanisha Systems has alleged that Chandra induced the breach of current employees' confidentiality agreements, including by speaking to one (unnamed) current Tanisha Systems' employee, targeting that individuals employment relationship. (Compl. ¶¶ 19, 21, 37.) In his conversation with this employee, Chandra allegedy stated he had spoken with twenty other Tanisha Systems' employees. Drawing all inferences in Plaintiff's favor, the Court finds that Tanisha Systems has plausibly alleged that its contractual rights in its employees' confidentiality agreements were breached.

4. Damages

Finally, Tanisha Systems has sufficiently alleged that Chandra's conduct proximately caused its damages. Tanisha Systems claims that it "has lost revenue, has experienced higher costs associated with hiring, and has suffered injury to its reputation." (Compl. ¶ 24.) The Court therefore **DENIES** Defendant's motion to dismiss as to Count I.

B. Defamation (Count II)

Tanisha Systems also alleges that Chandra and Jayaprakash published and republished a defamatory blog post about Tanisha Systems as part of their conspiracy to harm it. Tanisha Systems alleges a defamation claim based on this conduct.

Chandra argues that because he was not the original author of the blog post, and because his comments were made as a user of an interactive computer service, he has an absolute defense under the Communications Decency Act ("CDA"). The Court finds that Tanisha Systems has sufficiently pled a defamation claim and that the CDA defense does not apply. However, the Court notes that the CDA immunity provision likely would apply in the event Tanisha Systems had failed to allege that Chandra conspired to develop the content in the allegedly defamatory blog post.

1. Defamation

Tanisha Systems alleges that Chandra defamed it in two ways: first, by commenting on and supporting Jayaprakash's allegedly defamatory blog post

and second, by acting as a co-conspirator with Jayaprakash in the creation of the blog post by virtue of Chandra's alleged assistance in collecting "confidential information . . . to use as fodder for their widely disseminated misrepresentations," and in jointly "infect[ing] any search results concerning Tanisha Systems with false, malicious, and defamatory commercial statements." (Compl. ¶¶ 76-77.) The Court does not reach the issue of Chandra's own comments, e-mails, and postings. This is because Tanisha Systems has sufficiently alleged that Defendant Chandra conspired with Jayaprakash to create the allegedly defamatory blog post at http://tanishasystemssucks.wordpress.com ("the blog post").

Defamation has four elements: "(1) a false and defamatory statement concerning the plaintiff; (2) an unprivileged communication to a third party; (3) fault by the defendant amounting at least to negligence; and (4) special harm or the actionability of the statement irrespective of special harm." *1524948 Alberta Ltd. v. Lee*, No. 1:10-CV-02735-RWS, 2011 WL 2899385, at *8 (N.D. Ga. July 15, 2011) (citing *Infinite Energy, Inc. v. Pardue*, 713 S.E.2d 456, 460 (Ga. Ct. App. 2011)). Tanisha Systems has sufficiently pled each element.

First, Tanisha Systems has alleged that the blog post contains false and defamatory statements. (Compl. ¶¶ 55, 56.) While some of the content of the blog post are plainly hyperbolic statements of opinion that are not traditionally actionable, other content is more factual in nature. For example, the blog post states that Tanisha Systems falsely promises to pay employees bonus money that

in fact it does not pay. (Compl. ¶ 56.) Under Georgia law, a plaintiff may seek to recover for defamation when a defendant makes allegedly false statements that the plaintiff engaged in fraud or fraud-like conduct. *American Southern Ins. Group, Inc. v. Goldstein*, 660 S.E.2d 810, 821 (Ga. Ct. App. 2008) (statements that insurance agent had been fired for misappropriating funds were actionable as slander per se); *Sweeney v. Athens Regional Medical Center*, 709 F. Supp. 1563, 1580-81 (N.D. Ga. 1989) (denying summary judgment despite defendants' attempts to show alleged truthfulness of statements that nurse illegally practiced medicine and was "poorly trained as a nurse-midwife.")[5]

Tanisha Systems has also sufficiently alleged that these statements are unprivileged and that they were communicated to a third party. First, they were posted on a public blog on the internet, which plainly is publication. Chandra's e-mail that forwarded the blog post was also republication[6]. *Deal v. Builders Transport, Inc.*, 385 S.E. 2d 293, 294 (Ga. Ct. App. 1989); *Mitan v. A. Neumann & Associates, LLC*, No. 08-cv-6154, 2010 WL 4782771 at *1 (D.N.J. Nov. 17, 2010) (forwarding an e-mail is republication).

Second, these statements were unprivileged because they were allegedly made with malice. *1524948 Alberta Ltd.*, 2011 WL 2899385 at *8 ("[P]roof that

[5] Chandra claims that at least some of these statements are substantially true. *See* Def.'s Mot. to Dismiss at 20-21. Resolution of the truth or falsity of these statements is plainly inappropriate at the motion to dismiss stage.

[6] As discussed herein, if Plaintiff fails to prove a conspiracy between Chandra and Jayaprakash to publish defamatory comments in the blog or elsewhere, it is very likely that Plaintiff's defamation claims will fail, because republication by forwarding an e-mail (along with a few supportive comments that are not defamatory absent context) is protected under the CDA's immunity provisions.

the defendant acted with actual malice in making the statement . . . defeats the defense of privilege") (citations omitted). Here, Tanisha Systems has alleged that Chandra and Jayaprakash acted "purposely, maliciously, and with the intent to injure Tanisha Systems." (Compl. ¶ 73.) Specifically, Jayaprakash stated that his goal was to "screw" the company and put it out of business. (*See* Compl. ¶ 73.) Even without Jayaprakash's statement, the allegations of the complaint support the inference that Chandra (rightfully or wrongfully) wished to injure Tanisha Systems. At the motion to dismiss stage, this is sufficient to allege actual malice.

Tanisha Systems has also alleged actionable harm. "[D]efamation includes, *inter alia*, '[m]aking charges against another in reference to his trade, office or profession, calculated to injure him therein . . .'" *Id.* (citing *Strange v. Henderson*, 477 S.E.2d 330, 332 (Ga.Ct.App.1996) (quoting O.C.G.A. § 51–5–4(a)(3))). "If such a statement is made, the defamation is actionable per se and damage is inferred." *1524948 Alberta Ltd.*, 2011 WL 2899385 at *9 (internal citations omitted). The statements made in the blog post assert that "Tanisha Systems is not a genuine company; that it will terminate and threaten its employees illegally; that it will harass its employees; and that it commits wage theft." (Compl. ¶ 5.) The statements adversely refer to Tanisha Systems' performance as a trade or profession and are therefore actionable as defamation *per se*.

Finally, Tanisha Systems has also sufficiently alleged that Chandra conspired with Jayaprakash to defame it. Conspiracy to defame is recognized as

a cause of action in Georgia. *Turnage v. Kasper*, 704 S.E. 2d 842, 854 (Ga. Ct. App. 2010) (recognizing claim of conspiracy to slander when "slanderous words spoken by one party . . . [uttered] with the consent of the other party and in furtherance of a common design and purpose"); *Kimball v. Better Bus Bureau*, 613 Fed. Appx. 821, 825-26 (11th Cir. 2015) (reversing district court's application of fraudulent joinder doctrine because plaintiff had sufficiently alleged conspiracy to commit libel under Georgia law); *Pacific & Southern Co., Inc. v. Montgomery*, 210 S.E.2d 714, 716 (Ga. 1974) (question for the jury as to whether television station conspired with an individual consumer to defame a business). The Complaint is replete with references to the joint nature of the allegedly defamatory statements at issue in the blog post. (Compl. ¶¶ 72-77 (describing joint plan to ruin Tanisha System's "commercial reputation").) Under the above authorities, Tanisha Systems has met its pleading burden.

2. CDA Immunity

The Court must next address Defendant's arguments that he is immune from liability under the Communications Decency Act. "The majority of federal courts have interpreted the CDA to establish broad 'federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service.'" *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006) (collecting circuit cases).

The CDA immunity provision provides that (1) "[n]o provider or user" of (2) "an interactive computer service" is to be treated as the publisher or speaker

of any information (3) "provided by another information content provider." 47 U.S.C.. § 230(c)(1).[7] Essentially, "providers and users of interactive computer services" are immunized from liability "when the defamatory or obscene material is 'provided' by someone else." *Batzel v. Smith*, 333 F.3d 1018, 1020 (9th Cir. 2003); *Internet Brands v. Jape*, 760 S.E.2d 1, 3 (Ga. Ct. App. 2014) (citing *Dimeo v. Max*, 433 F. Supp. 2d 523 (E.D. Pa. 2006)). The Court rejects Plaintiff's argument that the CDA does not apply to Chandra's actions in forwarding via e-mail the allegedly defamatory and adding his own statements of approval. It is only because Tanisha Systems has alleged that Chandra conspired with Jayaprakash to defame it that it evades the CDA immunity provision.

i. Chandra "Used" an Interactive Computer Service

The Court assumes that Chandra is a (1) user of (2) an interactive computer service. With respect to (1), his use of e-mail and the commenting features of a blog site plainly constitute "use" under the CDA. *See Directory Assistants*, 884 F. Supp. 2d 446, 452 (E.D. Va. 2012) ("[t]he action of compiling information from a website and e-mailing that information to others clearly constitutes use of that website and its services."); *Barrett v. Rosenthal*, 146 P.3d 510, 526-27 (Ca. 2006).

With respect to (2), courts routinely treat websites as an interactive computer service. *See Fair Hous. Council of San Fernando Valley v.*

[7] The CDA's immunity provision serves "to promote the continued development of the Internet and other interactive computer services and other interactive media," 47 U.S.C.. § 230(b)(1), and "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." 47 U.S.C.. § 230(b)(2).

Roommates.Com, LLC, 521 F.3d 1157 (9th Cir. 2008) (website where subscribers can post housing opportunities). Blogs are treated no differently. *United States v. Cassidy*, 814 F. Supp. 2d 574, 576 (D. Md. 2011) (describing a blog as a website which operates "like a bulletin board and contains whatever material its sponsor decides to post.") Chandra thus satisfies the first two elements of CDA immunity.

The remaining question to be answered is whether Chandra published information provided by "another" information content provider.

ii. Chandra Developed the Defamatory Content

The CDA only provides a defense to those who pass along information provided by "*another*" content provider. 47 U.S.C.. § 230(c)(1). In other words, Chandra can be held liable for the publication (and for his republication via e-mail) of the blog post if he was responsible "in whole or in part" for the creation or development of the post, because that information was not from "another" content provider.

Tanisha Systems does not allege that Chandra directly authored or published the blog post. And Chandra's "adoption" and "vouching" for the blog post (by stating in the blog comments section that it shows "the real picture" of Plaintiff) and his forwarding of the blog link are, without more, insufficient to show he helped develop or create the content of the blog post. *Internet Brands v. Jape*, 760 S.E.2d 1,4 (Ga. Ct. App. 2014) ("the test is not whether the objectionable content was 'endorsed,' but instead whether the content was 'independently created or developed by third-party users.'"); *Directory*

Assistants, Inc. v. Supermedia, LLC, 884 F. Supp. 2d, 446, 451 (E.D. Va. 2012) ("a user of an interactive computer service who finds and forwards via e-mail that content posted online in an interactive computer service by others is immune from liability"). So far, so good for Chandra.

However, these two facts are not dispositive, because a defendant who "materially contrib[utes] to [the statement's] alleged unlawfulness" is not entitled to CDA immunity, even if he did not directly author the statements. *Fair Housing Council v. San Fernando Valley v. Roomates.com LLC*, 521 F.3d 1157, 1167-68 (9th Cir. 2008). In *Fair Housing Council*, the Ninth Circuit held that a website could be responsible for fair housing violations in its users' profile pages, because it solicited improper questions from those users. Thus "every such [user] page [was] a collaborative effort between [the website] and the subscriber." *Id*. at 1166. The facts of *Fair Housing* are significantly different than those alleged here. However, the principle of that case is that a defendant cannot use the CDA to evade liability for defamatory content he helped create, because that content was not truly provided by "another" independent content provider. That principle is sound and applies here.

Tanisha Systems has sufficiently[8] pled that Chandra materially contributed to the development of the blog post. Chandra allegedly developed a "hit list" of employees from which Chandra and Jayaprakash "request[ed] confidential information to . . . use as fodder for their widely disseminated

[8] But not by much.

misrepresentations." (Compl. ¶¶ 75, 77.) The purported co-conspirators then allegedly "use[d] social media and blog postings to infect any search results concerning Tanisha Systems with false, malicious, and defamatory" statements. (*Id*.) Drawing all inferences (generously) in Tanisha System's favor, it appears that Tanisha Systems alleges that Jayaprakash and Chandra operated as a team to create the defamatory blog post at issue and to reinforce its impact by having Chandra post supportive remarks in the guise of an allegedly independent commenter. This kind of assistance plausibly suggests that Chandra "created or developed" the information "in whole or in part." *Fair Housing*, 521 F.3d at 1166; *see also Parisi v. Sinclair*, 774 F. Supp. 2d 310, 317 (D.D.C. 2011) (plaintiff's allegations did not overcome CDA immunity because plaintiff did not allege defendant solicited, encouraged, or communicated with the original source of defamatory statements); *Barrett*, 146 P.3d at 530 ("in a conspiracy to defame . . [the] parties themselves [are not] authentically independent") (concurrence).[9] After all, it would make little sense to allow an individual to work in concert with another to defame someone, but allow him to disclaim liability because he worked behind the scenes, did not initially publish the defamatory statement he helped create, and only "passed along" the defamatory statement once it was out in the air.

[9] The Court offers no opinion on the likelihood of these allegations, but does note that if Tanisha Systems fails to prove that Chandra did more to contribute to the defamatory blog posting than merely echoing it in his comments and forwarding it to friends, it faces a tough road ahead in this litigation with respect to its defamation claim.

C. Attorneys' Fees (Count IV)

Tanisha Systems also asserts a "claim" for statutory attorneys' fees pursuant to O.C.G.A. § 13-6-11. This is better framed as a request for relief. The Court therefore construes Defendant's Motion as a motion to strike this request.

Under Section 13-6-11, a plaintiff who has specially pleaded that defendant has acted in bad faith may be entitled to attorney's fees. Evidence that a defendant committed an intentional tort is sufficient to show bad faith. *Bunch v. Byington*, 664 S.E.2d 842, 848 (Ga. Ct. App. 2008) ("Every intentional tort invokes a species of bad faith and entitles a person . . . [to] attorneys fees.")) For the reasons set forth above, Tanisha Systems has sufficiently pled tortious interference and defamation, both intentional torts. Accordingly, the Court **DENIES** Defendant's motion to strike Plaintiff's request for attorney's fees.

D. Punitive Damages

Tanisha Systems has requested relief of punitive damages under O.C.G.A. § 51-5-11. Chandra argues that Tanisha Systems is not entitled to punitive damages in connection with its defamation claim because Tanisha Systems has not plead compliance with Georgia's retraction demand statute, O.C.G.A. § 51-5-11. Section 51-5-11 states that for any civil action for libel, a plaintiff may receive punitive damages only where "the plaintiff requested retraction in writing at least seven days prior to the filing of the action." O.C.G.A. § 51-5-11(a). If defendant proves "[t]hat no request for correction and retraction was made in writing by the

plaintiff" O.C.G.A. § 51-5-11(2), then "defendant shall be liable only to pay actual damages." O.C.G.A. § 51-5-11(2)(c).

Tanisha Systems concedes that it did not seek a retraction in writing prior to the filing of this lawsuit. (Pl.'s Resp. to Def.'s Mot. to Dismiss at 22-23.) Instead, it alleges that it does not have to and that requesting a retraction in the body of the complaint is sufficient. (*Id.*) Tanisha Systems cites no case law to support its argument. (*See id.*) Because O.C.G.A. § 51-5-11 explicitly requires a request for retraction in writing at least seven days prior to the filing of the action, and because Tanisha Systems did not comply with this requirement, it is not entitled to seek punitive damages as to its defamation claim. *Mathis v. Cannon*, 573 S.E. 2d 376, 385-86 (Ga. 2002) (applying retraction statute to comment posted on internet message board and holding that "all libel plaintiffs who intend to seek punitive damages [must] [] request a correction or retraction before filing their civil action.") The Court therefore **GRANTS** Chandra's Motion with respect to Plaintiff's request for punitive damages for its claims for defamation and conspiracy to defame.

E. Conspiracy

Tanisha Systems also pleads an independent claim for civil conspiracy to defame and tortuously interfere with business relations. "Without an underlying tort, however, there is no liability for civil conspiracy." *Rails Corp. v. Huerfano River Wind, LLC*, 27 F. Supp. 3d 1303 (N.D. Ga. 2014). "In other words, the mere existence of a conspiracy does not create a cause of action." *Id.* (granting

dismissal of claim for conspiracy to convert, but denying dismissal of claim for conspiracy to engage in fraudulent transfer). As a result, some courts in this district have framed a "claim" for conspiracy as a theory of liability. *E.g.*, *Kipperman v. Onex Corp.*, 411 B.R. 805, 870 (N.D. Ga. 2009).

The Court finds, as discussed herein, that Plaintiff has plausibly (though not terribly strongly) alleged the existence of a conspiracy to defame and tortuously interfere with its business relations. *See Cook v. Robinson*, 116 S.E.2d 742, 745 (Ga. 1960) (conspiracy may be pleaded in general terms). However, if the underlying claims for defamation and tortuous interference fail at any juncture in this case, the conspiracy "claim" – whether construed as a claim founded on the underlying torts or a theory of liability - will fail too. The Court therefore **DISMISSES** Count III insofar as it advances a claim solely for conspiracy. The Court does consider the allegations found in Count III in determining the overall sufficiency of the Complaint. And Plaintiff is permitted to proceed on and seek discovery on its theory of liability that Defendant conspired to defame it and tortuously interfere with its contractual and business relations.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN PART** Defendants' motion to dismiss [Doc. 5]. The Motion is **DENIED** as to all counts except (1) Plaintiff's request for punitive damages for its defamation

claim, (2) Plaintiff's Count III insofar as it seeks to advance an independent claim for conspiracy.

Given the weaknesses of the Complaint, the Court **DIRECTS** Plaintiff to provide the following information in its Initial Disclosures, provided in conjunction with Fed. R. Civ. P. 26(a):

(a) identify the Tanisha Systems' employees that it contests have breached their confidentiality obligations as a result of Defendant's alleged conduct;

(b) identify the nature of the confidential information provided (i.e., trade secrets, confidential employment information, or the like); and

(c) identify any Tanisha Systems employees who have terminated their employment relationship with it as a result of Defendant's alleged conduct.

Finally, as a principal form of relief Tanisha Systems apparently seeks is the cessation of Chandra's alleged conduct, a mediated resolution of this matter may well provide the most swift and economically reasonable mode of addressing this case for all parties. Therefore, this matter is **REFERRED** to the next available Magistrate Judge for mediation. Mediation **SHALL** conclude no later than February 15, 2016. The parties are **DIRECTED** to file a status report at the conclusion of the mediation indicating whether this matter is resolved. Discovery **SHALL** be stayed until the conclusion of the mediation.

IT IS SO ORDERED this 4th day of December, 2015.

Amy Totenberg
United States District Judge