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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BRIAN PIETRYLO AND
DOREEN MARINO

Plaintiffs

06 Civ. 06-CV5754 (FSH)

-v-

HILLSTONE RESTAURANT GROUP,
D/B/A HOUSTON'S

AMENDED COMPLAINT
AND JURY DEMAND

Defendant.

Plaintiffs, Brian Pietrylo and Doreen Marino (hereinafter referred to as “Mr. Pietrylo” and “Ms. Marino”), residing at 54 Sunnyside Avenue, Borough of Dumont, County of Bergen, State of New Jersey, by their attorneys, Ramp and Pisani, LLP, complaining of the defendant, says:

JURISDICTION

This action arises under the Electronic Communications Privacy Act (“ECPA”), 18 U.S.C. 2511, et seq. and 18 U.S.C. 2701 et seq. together with various ancillary state law claims. The court has jurisdiction of this matter under 28 U.S.C. 1331 and 28 U.S.C.1332, as well as pendent jurisdiction over the state law claims.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

1. Defendant, Hillstone Restaurant Group (hereinafter referred to as “defendant”), owns and operates a variety of restaurants across the country. Defendant specifically owns and operates Houston’s a restaurant located at the Riverside Square Mall in Hackensack, New Jersey.

2. In March 2004, defendant hired Mr. Pietrylo and Ms. Marino to work as servers at Houston’s in the Riverside Square Mall in Hackensack, New Jersey.

3. Throughout the course of their employment, their work performance met or exceeded defendant’s reasonable expectations of their employees. For example, out of approximately fifty (50) servers, defendant ranked Mr. Pietrylo in the top five (5) each time it did a ranking, and mostly ranked him in the top three (3) servers.

4. During their private off time from work, Mr. Pietrylo and Ms. Marino maintained an account on myspace.com. When you view Mr. Pietrylo’s myspace account you see his home page/profile. The information contained on his home page/profile is public. On top of the home page are various tab categories, such as “Blog”, “Forum” and “Groups”. The various groups Mr. Pietrylo set up cannot be viewed by the public. If you click on the groups tab, you will see the names of the groups but you cannot enter the group and view the information on the group unless you are electronically invited to view it by Mr. Pietrylo. In March 2006, Mr. Pietrylo setup a private group on his myspace.com account. Mr. Pietrylo named the group “The Spectator.” It is a private group not open to the public. Although one could gain access to the home page of Mr. Pietrylo’s myspace.com account, you could not access this private group without Mr. Pietrylo’s permission and his invitation to participate in the group.

In order to be invited, you, first, had to maintain your own profile on myspace.com. Mr. Pietrylo would then send the person an electronic communication inviting the person to

participate in the group. The person could either electronically accept or decline the invitation. Once you accepted the invitation, you were able to access the private group from any computer by using your email address and personal password. Once inside the group, the top of the first page of “The Spectator” contained the following information:

THE SPECTATOR

Category: Other

Type: Private Membership

Founded: Mar 2, 2006

Location: Hackensack, New Jersey-US

Members: 2

“ A place for those of us at Riverside to talk about all the crap/drama/and gossip occurring in our workplace, without having to worry about outside eyes prying in ... but because this group is oh so private, only participants will stay members. Past and present employees welcome”

He invited a number of his fellow Houston’s co-workers to participate in the group. No member of upper management was invited to participate in the group. No member of the group accessed the private group during work hours. “The Spectator” was not accessed over the defendant’s electronic mail/internet system nor over the defendant’s work computers, nor at defendant’s workplace.

5. Mr. Pietrylo setup the group so that the members could exchange personal information about each other, as well as offer comments and even criticisms of the internal operations of their employment., including matters of public concern. For instance, there were discussions, and comments made about increasing the minimum wage at defendant’s

restaurant, what legal means to pursue to make it happen (unionizing, political activism) and about alleged illegal immigration.

6. Once in the group, each member could transmit electronic communications to each other as well as post and store electronic communications on the pages of the private group.

7. At all times relevant herein, Ms. Marino was a member of the private group and assisted Mr. Pietrylo in operating and maintaining the private group.

8. . Based upon information belief, a member and/or members of defendant's upper management discovered Mr. Pietrylo's private group. Defendant's upper management strong-armed and threatened a member of the private group so that this member was forced into providing them with the member's email address and password and/or had the member sign on in their presence so that they could access and monitor the private group. Armed with this private information, they were able to improperly and illegally gain access to the private group. None of defendant's actions mentioned above and below took place at their workplace, over their computers or during work hours.

9. Once defendant accessed the private group, defendant engaged in cyber snooping. Defendant improperly and illegally monitored the private group. They intercepted electronic communications going from one member to another. They accessed and reviewed stored electronic communications in the private group.

10. On or about May 9, 2006, Mr. Pietrylo was called into an impromptu meeting at which time he was terminated. Defendant told him that he was being fired solely for operating and maintaining the private group on his myspace.com account and permitting the electronic communications that were transmitted and stored on the group.

11. In order to save his job, Mr. Pietrylo told the defendant that he was willing to delete the group. Defendant immediately dismissed the suggestion, advising Mr. Pietrylo that their decision to fire him would not be reconsidered.

12. The next day, Ms. Marino was also terminated for the same reasons.

FIRST COUNT
(VIOLATION OF 18 U.S.C. 2511,ET.SEQ.)

13. Plaintiffs repeat and reallege all of the allegations contained in the Factual Allegations Common to All Counts as if same were set forth at length herein.

14. As a result of defendant's conduct described above, defendant has violated the provisions of 18 U.S.C. 2511 et seq. by intercepting and improperly monitoring the electronic communications being transmitted between members of this private group.

15. Defendant used the intercepted electronic communications to wrongfully discharge the plaintiffs.

16. As a result, the plaintiffs have been damaged.

WHEREFORE, plaintiffs, BRIAN PIETRYLO and DOREEN MARINO, demand judgment against defendant, HILLSTONE RESTAURANT GROUP, d/b/a HOUSTON'S, for the following:

- a. For Compensatory Damages
- b. For Statutory Damages, pursuant to 18 USC 2520.
- c. For Punitive Damages
- d. for reasonable attorney fees
- e. for such other and further relief as the court may deem just and equitable.

SECOND COUNT
(VIOLATION OF 18 U.S.C. 2701, ET.SEQ.)

17. Plaintiffs repeat and reallege all of the allegations contained in the Factual Allegations Common to All Counts and the First Count as if same were set forth at length herein.

18. As a result of defendant's conduct described above, defendant has violated the provisions of 18 U.S.C. 2701, et seq. by accessing without permission and improperly monitoring the electronic communications being stored on the plaintiff's private group.

19. Defendant used the improperly accessed and monitored electronic communications to wrongfully discharge the plaintiffs.

20. As a result, the plaintiffs have been damaged.

WHEREFORE, plaintiffs, BRIAN PIETRYLO and DOREEN MARINO, demand judgment against defendant, HILLSTONE RESTAURANT GROUP, d/b/a HOUSTON'S, for the following:

- a. For Compensatory Damages
- b. For Statutory Damages, pursuant to 18 USC 2707.
- c. For Punitive Damages
- d. for reasonable attorney fees
- e. for such other and further relief as the court may deem just and equitable.

THIRD COUNT
(VIOLATION OF NJSA 2A:156A-1, ET.SEQ.)

21. Plaintiffs repeat and reallege all of the allegations contained in the Factual Allegations Common to All Counts, First Count and Second Count as if same were set forth at length herein.

22. As a result of defendant's conduct described above, defendant has violated the provisions of NJSA 2A: 156A- 1 et seq., specifically NJSA 2A: 156A-3 and 156A-4(d), by intercepting and improperly monitoring the electronic communications being transmitted between members of this private group.

23. Defendant used the intercepted electronic communications to wrongfully discharge the plaintiffs.

24. As a result, the plaintiffs have been damaged.

WHEREFORE, plaintiffs, BRIAN PIETRYLO and DOREEN MARINO, demand judgment against defendant, HILLSTONE RESTAURANT GROUP, d/b/a HOUSTON'S, for the following:

- a. For Compensatory Damages
- b. For Statutory Damages, pursuant to NJSA 2A-156A-24.
- c. For Punitive Damages
- d. for reasonable attorney fees
- e for such other and further relief as the court may deem just and equitable.

FOURTH COUNT
(VIOLATION OF NJSA 156A-27,ET.SEQ.)

25. Plaintiffs repeat and reallege all of the allegations contained in the Factual Allegations Common to All Counts, the First Count, Second Count and Third Count as if same were set forth at length herein.

26. As a result of defendant's conduct described above, defendant has violated the provisions of NJSA 2A: 156A-27, et seq. by accessing without permission and improperly monitoring the electronic communications being stored on the plaintiff's private group.

27. Defendant used the improperly accessed and monitored electronic communications to wrongfully discharge the plaintiffs.

28. As a result, the plaintiffs have been damaged.

WHEREFORE, plaintiffs, BRIAN PIETRYLO and DOREEN MARINO, demand judgment against defendant, HILLSTONE RESTAURANT GROUP, d/b/a HOUSTON'S, for the following:

- a. For Compensatory Damages
- b. For Statutory Damages, pursuant to NJSA 2A: 156A-32.
- c. For Punitive Damages
- d. for reasonable Attorney fees
- e. for such other and further relief as the court may deem just and equitable.

FIFTH COUNT

(WRONGFUL TERMINATION IN VIOLATION OF A CLEAR MANDATE OF PUBLIC POLICY: RIGHT TO FREE SPEECH)

29. Plaintiffs repeat and reallege all of the allegations contained in the Factual Allegations Common to All Counts, First Count, Second Count, Third Count and Fourth Count as if same were set forth at length herein.

30. Plaintiffs exercised their right to free speech under both the United States Constitution (First Amendment) and the New Jersey Constitution by creating, maintaining and participating in the private group “The Spectator” established on the plaintiffs myspace.com account.

31. Plaintiffs, and other members of the private group, exercised their right to free speech by periodically commenting and/or criticizing the internal operations of their place of employment. This is protected speech which included protected speech which was a matter of public concern

32. As a result of their cyber snooping, defendant used the information they secured to terminate the plaintiffs.

33. Defendant’s retaliatory actions contravened the First Amendment of the United States Constitution and the liberty of speech and freedom of assembly clauses of the New Jersey Constitution NJ Const. Art. 1, Par. A6, 18.

34. New Jersey law confers First Amendment protection upon the plaintiffs even in the absence of state action. As a result, Defendant wrongfully terminated the plaintiffs in violation of a clear mandate of public policy.

WHEREFORE, plaintiffs, BRIAN PIETRYLO and DOREEN MARINO, demand judgment against defendant, HILLSTONE RESTAURANT GROUP, d/b/a HOUSTON'S, for the following:

- a. For Compensatory Damages
- b. For Statutory Damages
- c. For Punitive Damages
- d. for reasonable Attorney fees
- e for such other and further relief as the court may deem just and equitable.

SIXTH COUNT

(WRONGFUL TERMINATION IN VIOLATION OF A CLEAR MANDATE OF PUBLIC POLICY: INVASION OF PRIVACY)

35. Plaintiffs repeat and reallege all of the allegations contained in the Factual Allegations Common to All Counts, First Count, Second Count, Third Count, Fourth Count and Fifth Count, as if same were set forth at length herein.

36. Plaintiffs' terminations were in violation of a clear mandate of public policy which precludes and employer from terminating an employee in violation of the employee's right to privacy as embodied in New Jersey common law.

WHEREFORE, plaintiffs, BRIAN PIETRYLO and DOREEN MARINO, demand judgment against defendant, HILLSTONE RESTAURANT GROUP, d/b/a HOUSTON'S, for the following:

- a. For Compensatory Damages
- b. For Statutory Damages
- c. For Punitive Damages

d. for reasonable Attorney fees

e for such other and further relief as the court may deem just and equitable.

SEVENTH COUNT

(COMMON LAW: INVASION OF PRIVACY)

37. Plaintiffs repeat and reallege all of the allegations contained in the Factual Allegations Common to All Counts, First Count, Second Count, Third Count, Fourth Count Fifth Count and Sixth Count as if same were set forth at length herein.

38. Defendant's actions constituted an impermissible intrusion upon plaintiffs' seclusion or solitude, and/or their private affairs. Defendant invaded upon something secret, secluded or private pertaining to the plaintiffs. Defendant's invasion would be highly offensive to a reasonable person.

39. Plaintiffs were damaged by such unauthorized actions.

40. Defendant tortuously invaded the privacy of the plaintiffs.

WHEREFORE, plaintiffs, BRIAN PIETRYLO and DOREEN MARINO, demand judgment against defendant, HILLSTONE RESTAURANT GROUP, d/b/a HOUSTON'S, for the following:

a. For Compensatory Damages

b. For Statutory Damages

c. For Punitive Damages

d. for reasonable Attorney fees

e for such other and further relief as the court may deem just and equitable.

JURY DEMAND

Plaintiffs, Brian Piertrylo and Doreen Marino, demand trial of their causes of action herein before a jury.

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Date: September 7, 2007

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