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COMMONWEALTH OF KENTUCKY
KENTON CIRCUIT COURT
3 DIVISION
CASE NO.: 11-CI 3070

FILED
KENTON CIRCUIT/DISTRICT COURT
DEC 8 2 2011
BY JOHN C. MIDDLETON D.C.

MELISSA BERLING, INDIVIDUALLY AND as next friend of
S.B. a minor child and on behalf of those individual members
of a class of similarly situated persons PLAINTIFFS

v.

MULTIBAND EC CORPORATION
9449 SCIENCE CTR DRIVE
NEW HOPE, MINNESOTA 55428

am

SERVE: CT CORPORATION SYSTEMS
306 WEST MAIN STREET
SUITE 512
FRANKFORT, KENTUCKY 40601

BY CERTIFIED MAIL

AND

DIRECTV CORPORATION
2230 E. IMPERIAL HWY
EL SEGUNDO, CALIFORNIA 90245

SERVE: CSC-LAWYER'S INCORPORATING SERVICE
421 WEST MAIN STREET
FRANKFORT KENTUCKY 40601

am

BY CERTIFIED MAIL

AND

3 issued - am

JOSEPH MCCALED, INMATE
CO RIPLEY COUNTY, INDIANA JAIL
P.O. BOX 748
VERSAILLES, INDIANA 47042

DEFENDANTS

am
5/5
SERVE: KENTUCKY SECRETARY OF STATE

BY CERTIFIED MAIL

VERIFIED CIVIL COMPLAINT WITH JURY DEMAND

The Plaintiff, by counsel, for their civil Complaint states as follows:

IDENTITY OF THE PARTIES

1. Melissa Berling is a natural person and citizen of Kenton County, Kentucky. She is the mother of a minor child, S.B. Both women had personal items stolen from their home by the Defendants or their agents.

2. Multiband EC Corporation is a Kentucky corporation and is registered to conduct business in the Commonwealth of Kentucky. It employed Defendant Joseph McCaleb as a satellite television installer. It conducted business activity inside the Commonwealth of Kentucky and availed itself to Kentucky courts.

3. Directv, Inc. is a California corporation licensed and registered to conduct business in the Commonwealth of Kentucky. It employed Multiband EC as its agent to install satellite television to its subscribers including the Plaintiffs. It conducted business activity in this Commonwealth by soliciting subscribers within the borders of Kentucky and by providing satellite television services to subscribers in Kentucky. It has availed itself to the jurisdiction of Kentucky courts.

4. Joseph McCaleb is a natural person and citizen of the State of Ohio. He is a

former employee of Multiband EC and is currently incarcerated in the Ripley County, Indiana jail.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over the Defendants as the amount in controversy is in excess of the jurisdictional limits and Defendants availed themselves of the jurisdiction of this Court under the Kentucky long arm statute. Venue is proper as the events and incidents giving rise to this Complaint occurred in Kenton County, Kentucky.

COUNT ONE

NEGLIGENT HIRING AND SUPERVISION OF JOSEPH MCCALED BY MULTIBAND EC

6. Defendant, Joseph McCaleb, was hired as an employee of Multiband EC.

7. Multiband EC is a corporation whose primary business is to serve as a contractor and employee of satellite television companies by installing the satellite services in residential homes and properties.

8. Upon information and belief Defendant, Joseph McCaleb was terminated from a job with similar duties as he was hired by Multiband EC for questionnaire behavior and activities while on the clock.

9. Defendant McCaleb has a prior record and habitual behavior including bad acts and conduct that would make him a questionable hire for a company where its employees enter private homes.

10. Due to the Defendant, Joseph McCaleb's propensity to harass, stalk, and intimidate an acquaintance to the point that she required a domestic relations order to

protect her from his obsessive and destructive behavior. As a result of the findings Joseph McCaleb was required to give his fingerprints that were placed into a national registry.

11. The civil protection order was issued by Greene County, Ohio Domestic Relations Court under Ohio Revised Code § 3113.31. Shortly after the issuance of the protective order, McCaleb continued to harass an acquaintance. The charges against McCaleb included the following which are part of public records accessible by the public and by potential employers of the Defendant, including Defendant Multiband:

"McCaleb sent retaliatory emails to Hangen in 2004; McCaleb left unsolicited gifts on Hangen's property; McCaleb sent emails that threatened violence causing the victim to relocate; McCaleb intercepted the victim's credit card statements while using his computer."

12. He sent messages from an email account using the initials of his victim called "Imhstalker" and said to his victim in separate conversations, "[d]o you like this email address? A friend created it when you accused me of stalking you..." if you want more time to talk, I'll be more than happy to give it to you but you shouldn't have ignored me, lied about it...As if I'm the type of person who would stalk and kill someone because they wouldn't be my friend...I know where you live. Each time you emailed and Im'd me, it logs your IP address which tells where you are...stop telling me you live outside the state, it's getting old...." McCaleb admitted to posting his victim's address on his instant message profile. His victim was "scared that someday [McCaleb] just won't leave me alone and something bad will happen to my baby." All of this is found in Court records in *Hangen v. McCaleb*, 2006-Ohio-776 (2d Dist.Ct.App.

2006).

13. Defendant McCaleb violated the domestic relations order on more than one occasion causing Mr. McCaleb to be charged with a criminal violation of a domestic relations order in the Greene County Municipal Court. McCaleb was found guilty of violating the civil protection order. That case too is a matter of public record found in *McCaleb v. State, 2006-Ohio-4652 (2d Dist.Ct.App. 2006)*.

14. Despite this public accessible background, Defendant McCaleb was hired by Multiband EC to enter into private homes of Directv customers.

15. After being employed, Defendant McCaleb would enter the homes of Directv subscribers and steal young girl's underwear and women's lingerie. He would purposefully not complete the work and inform the subscribers including the Plaintiffs that he would need to return the next day.

16. At home, McCaleb would take pictures of feminine clothing and write fantasies and nickname the women whom he had visited. He also would attempt to contact the subscribers via the internet using Facebook or text message them.

17. As an employee of Multiband he would access to subscriber's names, addresses, and telephone numbers.

18. On more than one occasion, McCaleb would burglarize subscriber's homes including the Plaintiff.

19. In December 2010, Defendant McCaleb as an employee and agent of Defendants Multiband EC and Directv, Inc. entered the Plaintiffs' residence in Independence, Kenton County, Kentucky.

20. McCaleb presented to install Directv into the Plaintiffs' residence. While

installing the Directv, McCaleb stole numerous articles of the Plaintiffs' clothing including bathing suits, underwear and lingerie. McCaleb told the Plaintiff Berling that he had not completed the work and would need to return the next day to complete the project.

21. McCaleb returned on December 5, 2010 to complete the installation of the satellite television wiring and system. While at the residence, the Defendant engaged the Plaintiff's children in conversation, finding out their names and other information. Upon information and belief, McCaleb had not been issued a work order by Multiband EC to return to the Berling residence.

22. During one of his two visits to the Berling residence, McCaleb stole clothing items. It is believed he also took photographs of the undergarments in the the Plaintiff's daughter's bedroom on her bed.

23. As was customary with many of his victims, he wrote journal entries and other inappropriate writings and fantasies about the Plaintiff and her daughter. McCaleb nicknamed the Plaintiffs based on their clothing and physical features. It is believed McCaleb posted these writings on the internet.

24. Multiband EC had a duty to conduct reasonable background searches and have diligent hiring practices when employing people who had access to private property and personal residences of Directv subscribers.

25. Multiband EC failed in discovering during its hiring practices that Joseph McCaleb had a prior criminal record which a reasonable employer would have discovered through a criminal background check, fingerprint check, or a "google" search of Joseph McCaleb's name. Minimally expensive means could have been

undertaken to prevent the hiring and retention of Joseph McCaleb.

26. As a result and proximate cause of the negligent hiring and retention of an employee with a propensity for inappropriate conduct, including stalking, voyeurism, and verbal threats, the Plaintiffs and many others similarly situated incurred compensatory damages and mental anguish.

27. The Plaintiff discovered the Defendants' actions when notified by local law enforcement that her name, her daughter's name and their personal items were found in the possession of McCaleb after burglary charges were brought against him in another county.

28. Only after being approached by authorities and other victims did Multiband EC terminate McCaleb's employment after finding woman's underwear in his company vehicle.

29. The Plaintiff and others similarly situated have and will incur compensatory damages for their lost personal property and mental anguish that resulted from McCaleb's actions.

COUNT TWO

TRESPASS AND CONVERSION BY INTER ALIA JOSEPH MCCALED

30. The Plaintiff re-incorporates the allegations and averments in paragraphs 1-28 by reference.

31. Defendants Multiband EC and Directv are responsible for the torts of its employees under the doctrine of *respondeat superior*.

32. Upon information and belief, Joseph McCaleb was an employee of Multiband EC and Multiband was an agent or employee of Directv. He used his apparent authority as

an employee of the Multiband EC and Directv to enter the Plaintiff's property on false pretenses and converted the Plaintiffs' personal property.

33. Joseph McCaleb as an employee of Defendant Multiband without express permission of his employer entered the Plaintiff's real property and improvements and took and converted the personal property belonging to the Plaintiffs without their permission.

34. The personal property has not been returned.

35. As a result of the trespass and conversion the Plaintiffs have and will continue to suffer compensatory damages related to pecuniary value of the property taken and kept by the Defendant.

COUNT THREE

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AND OUTRAGE AGAINST JOSEPH MCCALED, MULTIBAND EC AND DIRECTV

36. The Plaintiffs incorporate the allegations in paragraphs 1-35 as if re-stated fully herein.

37. Multiband EC and Directv acted in a reckless and outrageous manner by hiring Joseph McCaleb who had a known and published record of voyeuristic conduct, harassment, stalking, and other inappropriate conduct.

38. To allow a person like Joseph McCaleb to enter private residences as an agent and employee with the ability to interact and having interaction with children with his criminal background offends the accepted standards of decency.

39. As a result of the invasion of the Plaintiffs' residence, the Plaintiff has sought counseling and has continued fears of allowing strangers and workers into her home.

40. She also is fearful of the psychological effects Joseph McCaleb's writings and voyeuristic conduct will have on her daughter.

41. Such emotional distress is severe to warrant damages for the distress caused by Joseph McCaleb and his employers.

COUNT FOUR

PUNITIVE DAMAGES

42. The Plaintiffs incorporate the allegations in paragraphs 1-41 as if re-stated fully herein.

43. Multiband EC, Directiv, and Joseph McCaleb are responsible for punitive damages.

44. McCaleb's employers, Multiband EC or Directv based on Joseph McCaleb's known history and bad acts should have anticipated his conduct once given the authority to enter the Plaintiff's residence and those of others similarly situated.

45. Joseph McCaleb's conduct of entering the Plaintiff's homes, stealing certain and specific feminine clothing, then attempting to contact the women is malicious, writing explicit and derogatory things on the internet and elsewhere was done with a flagrant disregard for the privacy rights of the Plaintiffs and others similarly situated.

46. Joseph McCaleb's conduct was done with the intent to cause duress and emotional outrage and distress to those who unknowingly allowed McCaleb into their home as an employee of Multiband EC and agent of Directv.

WHEREFORE, the Plaintiffs pray for the following relief:

A. A jury trial of the issues alleged herein;

- B. A certification of this action as a class action and a designation of the Plaintiffs as class representative and class plaintiffs;
- C. A judgment against the Defendants for the conduct alleged herein;
- D. For damages, both compensatory, pecuniary, and punitive to compensate the Plaintiffs for the actions of the Defendants and to punish and deter future conduct by the Defendants for their negligent hiring and supervision of Joseph McCaleb and McCaleb's actions that are outside the societal norms;
- E. For attorney's fees and costs related to the bringing of this action;
- F. For any and all other relief the Plaintiffs' may be entitled to at law or equity.

Respectfully submitted,



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VERIFICATION

