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SUPERIOR COURT OF NEW JERSEY

MICHAEL GALLUCCI,)	
)	
Plaintiff,)	BERGEN COUNTY
v.)	LAW DIVISION
)	
)	CIVIL ACTION
NEW JERSEY ON-LINE, LLC)	
)	
Defendant.)	
_____)	

COMPLAINT

1. This case, brought by former Teaneck councilman Michael Gallucci against New Jersey On-Line, LLC (“NJ.com”), arises out of NJ.com’s unlawful release of Mr. Gallucci’s

confidential identifying information. Because of NJ.com's release of Mr. Gallucci's confidential information, which violated both the contract between NJ.com and Mr. Gallucci and the procedures established in *Dendrite v. Internat'l, Inc. v. Doe*, 775 A.2d 756 (N.J. Super. 2001), Mr. Gallucci was forced to resign from his position as a Teaneck Council member. He was publicly humiliated and scorned, to the point that he felt he had to sell his home and move out of Teaneck. This complaint seeks money damages and declaratory relief.

FACTS

MESSAGE BOARDS AND ANONYMOUS SPEECH

2. NJ.com is an internet service provider ("ISP") and hosts a website dedicated to current events, activities, and news in New Jersey. NJ.com also provides distinct forums dedicated to each town within the state. These local forums each feature a "message board," where visitors to the webpage can anonymously post comments related to the locality.

3. The majority of the comments posted on NJ.com's message boards are colloquial in tone, opinionated, speculative, and frequently caustic and derogatory. The comments tend to resemble informal spoken conversation more than formal written communication.

4. To post a comment onto NJ.com's message board a user must register with NJ.com. The username need not relate to or reveal the user's true identity. To register, an individual must provide NJ.com with his or her email address, gender, age, and zip code.

5. NJ.com requires registrants to agree to its "User Agreement" and "Privacy Policy." Among other terms, the Privacy Policy defines the limited circumstances in which NJ.com will share or reveal a user's registration information.

6. The Privacy Policy states that NJ.com will disclose a user's information when it is "legally required" to cooperate with police investigations or legal proceedings.

7. The Privacy Policy recognizes the fact that message boards provide a forum to post comment anonymously and that disclosure of anonymous users' confidential information could be potentially embarrassing and emotionally injurious to message board users.

8. Users of message boards who adopt pseudonyms expect that their identifying information will ordinarily remain confidential, unless the conditions for the release of identifying information as set forth in the ISP's privacy policy are met, and that they will be able to use such message boards to post anonymously.

9. Mr. Gallucci registered on NJ.com and adopted the username "AntiBrennan." By choosing a username that did not refer to or reveal his identity, Mr. Gallucci believed that his confidential information would remain anonymous.

10. Pursuant to NJ.com's User Agreement and Privacy Policy, Mr. Gallucci provided NJ.com with his email address.

11. Given NJ.com's Privacy Policy, Mr. Gallucci trusted that NJ.com would only reveal his confidential information to a third-party should he seek that party's services, or for his benefit.

12. Mr. Gallucci believed that the email address associated with his username would remain confidential to all other third parties.

**BRENNAN LITIGATION AND NJ.COM'S IMPROPER RELEASE OF
MR. GALLUCCI'S CONFIDENTIAL IDENTIFYING INFORMATION**

13. William J. Brennan is a fire-fighter who had been employed with the Teaneck Fire Department.

14. Brennan was a frequent poster on NJ.com's Teaneck message board, where he lodged frequent complaints against the Teaneck Council. Brennan posted comments on the message board under the name "WJBrennan."

15. Prior to December 16, 2005, Brennan had been involved in approximately ten lawsuits involving the Township of Teaneck, as well as the Teaneck council-members. During the period immediately prior to and following December 16, 2005, Brennan was involved in litigation with the Township of Teaneck and the Teaneck council-members regarding his forced removal from a Council meeting in 2000, and his allegations that he had been discriminated and retaliated against by his supervisors in the Fire Department.

16. On March 21, 2005, firefighters responded to a call requesting that they investigate the smell of smoke and a loud bang in a Teaneck home.

17. The firefighters arrived at the home at approximately 8:30 p.m. After inspecting the home and finding nothing of concern, the firefighters left the home. A large fire erupted at the home in the very early hours of March 22, killing four children under the age of sixteen.

18. Although an investigation eventually revealed that the smoke and noise were attributable to a malfunctioning boiler, whereas the fire was attributable to an overloaded circuit breaker, the Teaneck fire department received heavy criticism for months after the fire.

19. Individuals in the community voiced their criticism of the Teaneck Fire Department in a variety of ways, including writing letters directly to the Fire Department and to local newspapers, and by posting comments on message boards, including NJ.com's Teaneck message board.

20. Prior to December 16, 2005, NJ.com's message board devoted to Teaneck contained numerous anonymous postings that were critical of both the Teaneck fire department and Brennan. Many of the comments were hostile in tone.

21. From December 16, 2005 to December 21, 2005, Mr. Gallucci posted anonymous comments on the Teaneck message board. These comments were extremely critical of both Brennan and the Teaneck Fire Department.

22. In his anonymous postings, Mr. Gallucci referred to Brennan as a “litigation terrorist,” “Billy the Baby,” a “pathetic psychopath,” and a “paranoid-delusional-over-paid-under-worked-sicko.”

23. Other anonymous users posted unflattering comments about Brennan as well as unflattering comments about the user “AntiBrennan.”

24. On or about January 5, 2006, counsel for Brennan filed a subpoena duces tecum with NJ.com, seeking the identity of “AntiBrennan,” a user who criticized Brennan on NJ.com’s message board. The subpoena was purportedly issued in connection with the litigation regarding his forced removal from a Council meeting in 2000, and his allegations that he had been discriminated and retaliated against by his supervisors in the Fire Department.

25. In response to the subpoena, NJ.com released AntiBrennan’s identifying information to Brennan without complying with the process set forth in *Dendrite International, Inc. v. Doe*, 775 A.2d 756 (N.J. Super. 2001).

26. NJ.com did not consult with or inform Mr. Gallucci of the release of his confidential information.

27. NJ.com did not post a message on its message board notifying Mr. Gallucci of the imminent release of his personal identifying information.

28. Mr. Gallucci was never given an opportunity to challenge the subpoena or to protect his identity.

29. NJ.com knew or should have known that *Dendrite* forbids the enforcement of a subpoena against anonymous Internet speakers without notice to the anonymous speaker.

30. In releasing Mr. Gallucci's confidential information without providing Mr. Gallucci with an opportunity to challenge the subpoena, NJ.com violated the terms of its Privacy Policy, which forbids NJ.com to release information pursuant to a subpoena unless legally required to do so. Recognizing the threat subpoenas pose to anonymous internet speech, New Jersey law requires that anonymous users be given notice before their confidential information is released, so that the anonymous user can challenge the validity of the subpoena and protect his or her identity. In this case, NJ.com disregarded New Jersey law, and released Mr. Gallucci's identifying information to Brennan even though Mr. Gallucci had not received notice or the opportunity to challenge the subpoena.

31. NJ.com knew or should have known that Brennan, using the username "WJBrennan," had exchanged heated and mean-spirited comments with Mr. Gallucci.

32. NJ.com improperly disclosed Mr. Gallucci's information after receiving a subpoena from Brennan, and thus knew or should have known that Mr. Gallucci was a named defendant in the civil case in New Jersey state court, docket at BER-L-5884-03.

33. NJ.com knew or should have known that disclosure of the confidential information associated with the AntiBrennan username to Brennan would result in embarrassment to Mr. Gallucci.

MR. GALLUCCI'S RESIGNATION

34. On January 5, immediately upon learning the personal information associated with the username "AntiBrennan," Brennan made Mr. Gallucci's information public by posting a message identifying Gallucci on NJ.com's message board.

35. The Council had scheduled a budget hearing for that evening, which Mr. Gallucci did not attend out of fear of the public reaction to Brennan's disclosure.

36. The day after that meeting, on January 6, the Mayor of Teaneck issued a press release, which stated that she would formally call for Mr. Gallucci's resignation if he had not resigned by January 10.

37. The Manager of Teaneck, to whom all Township employees report, issued a press release on January 6 condemning Mr. Gallucci and distancing herself and the rest of the Council members from Mr. Gallucci.

38. On January 7, The Record, a local newspaper, published an article about Mr. Gallucci, in which Mr. Gallucci's anonymous username was revealed and his anonymous postings were reprinted.

39. On January 10, an editorial appeared in The Record, which criticized Mr. Gallucci's conduct and suggested that the sooner Mr. Gallucci resigned from the Council, the better.

40. On January 10, given the demands by the mayor, manager, and unions, Mr. Gallucci tendered his letter of resignation, stating that he would resign from the Council on February 6.

41. Mr. Gallucci's resignation was read into the record of the Council meeting on January 10. That Council meeting was broadcasted by the Teaneck Public Access channel

supported by Cablevision Systems Incorporated. Approximately 9,455 homes received the broadcast of the January 10 Council meeting.

42. During the course of the Council meeting, over a dozen members of the community criticized and condemned Mr. Gallucci's anonymous speech. During the live broadcast, firemen, union members, and citizens described Mr. Gallucci as a coward and a disgrace and demanded that he be removed from the Council immediately.

43. On January 11, Mr. Gallucci received a handwritten letter that was given to the Council. The letter stated: "You are a disgrace to humanity—you jerk. Hope they throw you out on your fanny."

44. On January 12, an article reporting Mr. Gallucci's resignation ran in The Record. The article reprinted one of Mr. Gallucci's anonymous postings and summarized others. It also published the following quote by the president of the Teaneck Fire Officers Union: "Mr. Gallucci is a coward and a disgrace to this council and town."

45. On January 17, the Council voted unanimously to ask Mr. Gallucci to step down immediately.

46. On January 18, the Teaneck Suburbanite published an article about Mr. Gallucci and summarized the content of his anonymous postings. That same day, the Suburbanite published a letter to the editor, which suggested that the Council should not have accepted his letter of resignation and rather should have forced Mr. Gallucci off the Council "in disgrace."

47. On January 19, The Record published another article about Mr. Gallucci's anonymous posts, as well as the comments of Mayor Kates, who described Mr. Gallucci's anonymous postings as "incredibly shameful."

48. On January 20, The Record published a letter to the editor that described Mr. Gallucci's conduct as "bitter and malicious."

49. Rather than resigning on February 6, Mr. Gallucci agreed to make his resignation effective on January 23, to accommodate the Council's desire to swear-in two new Council members.

50. On January 24, The Record published another article about Mr. Gallucci's anonymous postings and his resignation.

51. On January 25, The Suburbanite published an article that summarized Mr. Gallucci's anonymous postings. That same day, The Suburbanite published a letter to the editor describing the Council's loss of Mr. Gallucci as a "win."

MR. GALLUCCI SUFFERED FINANCIAL AND EMOTIONAL DAMAGE AS A RESULT OF NJ.COM'S RELEASE OF HIS CONFIDENTIAL INFORMATION

52. After NJ.com's release of Mr. Gallucci identifying information, Mr. Gallucci received hateful messages in various forms. One anonymous user of NJ.com told Mr. Gallucci to "drop dead." He received emails from union members, one of which referred to Mr. Gallucci as a "disgrace," and demanded Mr. Gallucci's immediate resignation. Hate mail directed at Mr. Gallucci was also delivered to the Council. Several anonymous callers placed phone calls to Mr. Gallucci's home regarding Mr. Gallucci's postings.

53. Major media outlets, including ABC, NBC, CBS and UPN aired stories about Mr. Gallucci and his anonymous postings.

54. As a Council member, Mr. Gallucci received an annual salary of \$7,000, as well as fringe benefits, including health insurance, dental insurance, and eye care insurance for his family and himself. The Council also paid into a pension plan on Mr. Gallucci's behalf, and he and was part of a 403(b) retirement plan.

55. When Mr. Gallucci resigned, he lost the salary associated with his position on the Council, as well as the other benefits.

56. Mr. Gallucci grew up in Teaneck and graduated from the Teaneck public school system. The overwhelming majority of his social network, including his family and friends, was located in Teaneck prior to NJ.com's disclosure of his confidential information. His involvement in Teaneck government was not only a source of income, but the fulfillment of a childhood dream and a source of great personal satisfaction.

57. After NJ.com released Brennan's identifying information, Mr. Gallucci began experiencing anxiety, depression, extreme guilt, and embarrassment.

58. Mr. Gallucci was unable to conduct his day-to-day business or maintain social ties in Teaneck without being subject to harassment and ridicule, and thus refrained from both daily business and social obligations within the township.

59. Largely because of NJ.com's release of his identifying information, Mr. Gallucci decided to move out of Teaneck. Mr. Gallucci's home had a market value of approximately \$520,000. He was unable to sell his home for market value, but was only able to obtain approximately \$480,000 for his home.

60. Mr. Gallucci continues to avoid Teaneck and its residents and continues to send his wife and sister-in-law to run those errands that would require him to go into Teaneck. Mr. Gallucci also continues to avoid social obligations in Teaneck.

61. As a result of the stress induced by the disclosure of Mr. Gallucci's confidential information, Mr. Gallucci suffered from insomnia. He sought assistance from his physician, who prescribed a sleeping aid. After the disclosure of Mr. Gallucci's confidential information, Mr. Gallucci stopped exercising and lost weight.

FIRST CLAIM FOR RELIEF

BREACH OF CONTRACT

62. The User Agreement and Privacy Policy constituted a contract between Mr. Gallucci and NJ.com.

63. NJ.com breached that contract by disclosing Mr. Gallucci's identifying information without following the procedures set forth in *Dendrite*.

64. Emotional damage was a foreseeable result of the public disclosure of the Mr. Gallucci's identifying information.

65. As a result of NJ.com's breach, Mr. Gallucci suffered damages in the form of economic loss, damage to his reputation, and severe emotional distress.

SECOND CLAIM FOR RELIEF

PUBLICATION OF PRIVATE FACT

66. NJ.com disclosed the email associated with "AntiBrennan" to Brennan without following the procedures set forth in *Dendrite*.

67. Mr. Gallucci's adoption of the username "AntiBrennan" and the fact that he posted comments on the NJ.com message board were private facts.

68. NJ.com knew or should have known that disclosure of Mr. Gallucci's identity to Brennan would be embarrassing and injurious to Mr. Gallucci.

69. Mr. Gallucci had a reasonable expectation that his identifying information would remain confidential and that NJ.com would not violate his right to post comment anonymously.

70. As a result of NJ.com's publication of Mr. Gallucci's anonymous identifying information, Mr. Gallucci suffered damages in the form of economic loss, damage to his reputation, and severe emotional distress.

THIRD CLAIM FOR RELIEF

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

71. NJ.com acted recklessly in disclosing the email address associated with the username “AntiBrennan” and violated both the Privacy Policy and *Dendrite*.

72. NJ.com knew or should have known that there was a high probability that the unlawful release of Mr. Gallucci’s confidential information to Brennan would result in severe emotional distress.

73. Given its Privacy Policy and the clear and explicit process set forth in *Dendrite*, NJ.com’s release of Mr. Gallucci’s confidential information was outrageous; NJ.com’s disregard for process and Mr. Gallucci’s right to challenge the subpoena are intolerable in a civilized community that values anonymous speech.

74. As a result of NJ.com’s release of Mr. Gallucci’s confidential information, Mr. Gallucci suffers from severe and continuing emotional distress, in the form of anxiety, embarrassment, guilt, stress, and insomnia. Mr. Gallucci is no longer a part of the social network he maintained before NJ.com’s disclosure.

FOURTH CLAIM FOR RELIEF

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

75. NJ.com should have known that Mr. Gallucci would suffer serious, mental distress if it released his confidential information to Brennan in response to a subpoena that listed Mr. Gallucci as a defendant, in violation of the Privacy Policy and the procedures set forth in *Dendrite*.

76. Despite the reasonable foreseeability of Mr. Gallucci's emotional distress, NJ.com released Mr. Gallucci's confidential information.

77. As a result of NJ.com's release of Mr. Gallucci's identifying information, he continues to suffer from severe and continuing emotional distress in the form of anxiety, embarrassment, guilt, stress, and insomnia. Mr. Gallucci is no longer a part of the social network he maintained before NJ.com's disclosure.

FIFTH CLAIM FOR RELIEF

BREACH OF FIDUCIARY DUTY

78. Pursuant to its Privacy Policy, NJ.com had an obligation to release Mr. Gallucci's confidential identifying information only under specific circumstances.

79. NJ.com had a responsibility to disclose Mr. Gallucci's confidential identifying information only when it was in his best interest, unless it followed the procedures set forth in New Jersey law in response to a legal obligation to disclose. For example, pursuant to NJ.com's Privacy Policy, NJ.com could use Mr. Gallucci's identifying information "to provide [him] with the service [he] requested," or to provide him with advertisements that "meet [his] needs and or match [his] interests."

80. In sharing his confidential identifying information with NJ.com, including his email address, Mr. Gallucci placed his trust and confidence in NJ.com.

81. By disclosing Mr. Gallucci's confidential identifying information, NJ.com breached its duty to disclose Mr. Gallucci's confidential information only when it was in his best interest to do so, or when legally required to do so.

82. As a result of NJ.com's breach of its fiduciary duty, Mr. Gallucci suffered damages in the form of emotional distress, economic loss, and reputational harm.

DEMAND FOR RELIEF

83. Mr. Gallucci demands judgment in the amount of his actual damages, punitive damages, declaratory relief, and such other relief as the Court finds appropriate.

Date: February 5, 2007

Respectfully submitted,

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