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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION NO.

2484CV1528 B

J. DOE 1 and J. DOE 2, pseudonyms,
individually and as representatives of a Class,

Plaintiffs

v.

MATTHEW GORZKOWICZ, in his official
capacity as Secretary of the Executive Office of
Administration and Finance; and NATALIE
MONROE, in her official capacity as, Chief
Administrative Magistrate of the Massachusetts
Division of Administrative Law Appeals,

Defendants

CLASS ACTION
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2024 JUN 10 P 12:25
JOHN E. POWERS III
ACTING CLERK/MAGISTRATE

1. Anyone who knows Plaintiffs' actual names need only conduct a Google search to learn sensitive medical information and other intimate details about their lives. This is not their choice. The public has access to this information because Plaintiffs exercised their right as public employees to seek redress for grievances in appeals filed with the Division of Administrative Law Appeals ("DALA"). DALA needlessly disclosed their identities and private personal information in written decisions it has published online.
2. By publishing these decisions online, DALA violated its duty to refrain from publishing "personal data," which is defined in Mass. Gen. Laws ch. 66A, § 1 to include "any information . . . that can be readily associated with a particular individual" and is not contained in a "public record."

3. Because of this failure, Plaintiffs ask the Court, on their own behalf and on behalf of others similarly situated, to (1) declare DALA's practices of publishing decisions containing personal data unlawful; (2) order the Defendants to withdraw from publication all decisions containing personal data; (3) order the Defendants to refrain entirely from the publishing decisions until it has created and adopted a system that will protect such private information from disclosure as required by Mass. Gen. Laws ch. 66A, § 2; and to (4) award exemplary damages, attorney's fees and costs to Plaintiffs under Mass. Gen. Laws ch. 214, § 3B.

PARTIES

4. J. Doe 1 and J. Doe 2 were each public employees in the Commonwealth of Massachusetts. They filed appeals from unfavorable employment-related decisions that were adjudicated by DALA, which posted the resulting written decisions on the internet.

5. Defendant Matthew Gorzkowicz serves as Secretary of the Executive Office of Administration and Finance ("A&F"). Secretary Gorzkowicz is the executive officer of the governor, in all matters pertaining to the financial, administrative, planning, and policy coordinating functions and affairs of the departments, commissions, offices, boards, divisions, institutions and other agencies within A&F. Under G.L. c. 7, § 4, he is responsible for the exercise of all powers and the performance of all duties assigned by law to A&F and is DALA's executive and administrative head, which operated under his direction, control and supervision. Under G.L. c. 7, § 4H, he appoints DALA's Chief Administrative Magistrate.

6. Defendant Natalie Monroe is the Chief Administrative Magistrate of DALA. Under G.L. c. 7, § 4H, the Chief Administrative Magistrate is appointed by the Secretary of the Executive

Office of Administration and Finance. Her charge is to receive and, with the Secretary's approval, grant requests from other agencies of the Commonwealth to conduct adjudicatory proceedings and to promulgate regulations and establish policies governing such proceedings.

JURISDICTION

7. This Court has jurisdiction over this action under G.L. c. 214 §§ 1B and 3B, and G.L. c. 231 § 2.

FACTS

8. DALA conducts administrative appeals from decisions of various public agencies, including from the Department of Unemployment Assistance, the Office of the Attorney General Fair Labor Division, the Executive Office of Health and Human Services, the Public Employee Retirement Administration Commission, the Executive Office of Veterans Services, the Department of Early Education and Care, the Department of Agricultural Resources, the Board of Registration in Medicine, the Department of Public Health, the Civil Service Commission, the Disabled Persons Protection Commission and the Department of Conservation and Recreation. DALA's has jurisdiction over the potential claims of thousands of public employees.

9. DALA's General Jurisdiction Unit ("GJU") typically conducts more than one hundred evidentiary hearings on administrative appeals every year which result in written decisions by its magistrates. DALA's decisions typically include detailed renderings and analysis of evidence produced at hearings. DALA posts many of these decisions on its Massachusetts Government website.

10. DALA posted several hundred of these decisions since 2021. In 2023, DALA published 142 such decisions online, and at least 80 more thus far in 2024. These decisions are available to anyone with access to the world wide web.

11. As in Plaintiffs' cases, the posted decisions contain appellants' names, employment information and, frequently, intimate details such as mental health diagnoses and other sensitive information that can expose appellants to shame and embarrassment.

12. In most if not all of these cases, it is not necessary to include such information in order to gain the benefits of posting – that is, advancing public knowledge of DALA's interpretations of the law governing public employment.

13. A&F's own regulations, at 801 CMR 3.00 *et seq*, require DALA to protect personal data it holds from disclosure to "any other agency or individual not employed by the holder."

14. DALA's failure to abide by the duty imposed by A&F is manifest in the decisions in Plaintiffs' cases, which recount personal data that DALA is obliged to protect from disclosure.

15. The decisions describe Plaintiffs' testimony regarding the specific nature of mental health challenges, the impact of these conditions on their lives and careers, as well as other sensitive medical information and intimate personal details.

16. Plaintiffs did not waive their right to have this information treated as private.

17. Persons with psychiatric conditions of the sort detailed in these decisions are subject to widespread stigmatization in society.

18. Knowing that the most sensitive aspects of their personal lives are accessible to any persons with whom the Plaintiffs may do business or interact socially, and who may come to see Plaintiffs in a negative light, causes Plaintiffs fear and anxiety.

19. In particular, potential employers' access to the decisions in Plaintiffs' cases, many if not most of whom routinely "Google" job candidates, compromises Plaintiffs' future employment prospects.

20. Other members of the class of persons that Plaintiffs seek to represent in this action may be deterred from exercising their right to appeal from administrative decisions, for fear that doing so will prompt public disclosure of the most intimate details of their lives.

CLASS ACTION ALLEGATIONS

21. The Plaintiff class consists of all public employees of the Commonwealth who have had appeals adjudicated by DALA, or who currently have the right to file an appeal of a negative employment decision for determination by DALA.

22. The class is so numerous that joinder of all claims is impractical. More than fifty (50) decisions which disclose private information exempted from disclosure as public records under G.L. c. 4 § 7(26)(c) are posted on DALA's website. Thousands of present and former employees of public agencies have a right to appeal unfavorable decisions to DALA.

23. The questions of law and facts relevant to Plaintiffs' claims are common to the members of the class and predominate over questions affecting only individual class members. These are: (1) whether Defendants' have failed to establish and maintain a system for holding and releasing personal data that protects plaintiff class members against undue disclosure, as envisioned by G.L.

c. 66A § 2; and (2) whether Defendants' practice of disclosing private information contained in publicly posted decisions violates its duty to refrain from allowing access to personal data under G.L. c. 66A § 2(c).

24. Further, Plaintiffs' claims on the behalf of the class are susceptible to a common remedy. Plaintiffs ask the Court to prevent DALA from continuing to publish or from publishing hearing decisions on its internet site until appropriate policies governing the use and treatment of private personal information are enacted and implemented as required by G.L. c. 66A §. 2.

25. Plaintiffs' claims are typical of the claims of the class, who are equally entitled to have their private personal information kept confidential.

26. Plaintiffs will adequately protect the interests of all class members as they are represented by competent counsel with experience in litigating class actions that seek relief for persons with disabilities.

27. A class action is superior to other available methods for a fair and efficient adjudication of this action. Separate actions could result in inconsistent and varying decisions as well as in conflicting and incompatible standards of conduct for the Defendant.

28. Plaintiffs and the class they represent have no other adequate remedy at law. Monetary relief alone cannot compensate for the violation of their privacy rights.

CLAIMS

29. Defendants are “holder[s] of personal data,” which is, in general, “any information concerning an individual which, because of name, identifying number, mark or description can be readily associated with a particular individual.” Mass. Gen. Laws ch. 66A, §1.

30. DALA decisions that contain information of a highly private nature are not a “public record,” as this term is defined in Mass. Gen. Laws ch. 4, § 7 (26) (c), unless the private information is redacted.

31. Defendants’ conduct, in light of the foregoing allegations, gives rise to the following claims for relief:

COUNT I: Violation of Mass. Gen. Laws ch. 66A, § 2

32. By publishing personal data about Plaintiffs and other class members, Defendants violated Mass. Gen. Laws ch. 66A, § 2, which prohibits holders of personal data from allowing others to have access to it under the circumstances described herein.

33. By failing to establish a system for the proper handling of personal data that assures it is not unduly released to the public, Defendants operate in violation of Mass. Gen. Laws ch. 66A § 2.

COUNT II: Violation of Mass. Gen. Laws. ch. 214, § 1B

34. By allowing the publication of personal data about Plaintiffs, Defendant Monroe caused an unreasonable, substantial, and serious interference with Plaintiffs’ privacy, in violation of Mass. Gen. Laws ch. 214, § 1B.

PRAYER FOR RELIEF

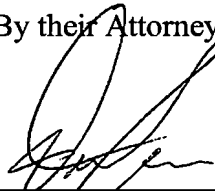
WHEREFORE, Plaintiffs, on behalf of themselves and other class members, pray that this Honorable Court:

1. Declare that the Defendants violated Plaintiffs' privacy rights by publishing personal data regarding them without redacting identifying information such as their names and places of employment.
2. Issue a preliminary and permanent injunction ordering the Defendants to:
 - a. Withdraw from circulation the published decisions pertaining to Doe 1 and Doe 2.
 - b. Withdraw from digital (on-line) circulation all currently posted decisions, and refrain from publishing any new decisions, until Defendants have developed, pursuant to G.L. c. 66A, § 2 and 801 CMR 3.02, a written plan or policy for: 1) determining whether currently posted or subsequently drafted decisions contain private information as defined by G.L. c. 66A, § 2, and 2) for adequately protecting against the undue public disclosure of such information.
3. Order the Defendants to pay each named Plaintiff exemplary damages as well as their reasonable attorney's fee and costs, as is authorized by G.L. c. 214 § 3B; and
4. Order such further relief as the Court deems equitable and just.

Dated: June 10, 2024

Respectfully submitted,

J. DOE 1 and J. DOE 2
By their Attorneys:



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