

FILED

2008 JUL 14 P 1:49

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY

DIANE WARGO)

and)

JOEL WARGO)

and)

DIANE AND JOEL WARGO, individually)
and on behalf of their minor child JOEL)
WARGO, JR.,)

and)

DIANE AND JOEL WARGO, individually)
and on behalf of their minor child JUSTIN)
WARGO,)

Plaintiffs,)

v.)

MARIO LAVANDEIRA dba)
PEREZ.HILTON.COM)
8174 Sunset Blvd.)
Suite 993)
Los Angeles, CA 90046)

MARIO LAVANDEIRA dba PEREZ HILTON)
8174 Sunset Blvd.)
Suite 993)
Los Angeles, CA 90046)

and)

JOHN DOES 1-25)

Defendants.)

CASE NO.:

JUDGE:

PLAINTIFFS' COMPLAINT

Complaint

DAVID T MATIA
CV 08 664752

\$ 100.00	DEPOSITED
1047	
JUL 14 2008	
SECURE COSTS	
GERALD E. FUERST, Clerk of Courts	
PER <i>AF</i>	DEPUTY

For their Complaint, Plaintiffs, by and through counsel, state the following:

1. Plaintiff Diane Wargo is an individual and is now, and at all relevant times was, a resident of Cuyahoga County, Ohio.
2. Plaintiff Joel Wargo is an individual and is now, and at all relevant times was, a resident of Cuyahoga County, Ohio. Joel Wargo is Mrs. Wargo's husband.
3. Plaintiffs Diane and Joel Wargo are now, and at all relevant times were, the parents of Plaintiffs Joel Wargo, Jr. and Justin Wargo, minor children.
4. Upon information and belief, Defendant is a resident of Los Angeles County, State of California doing business as PerezHilton.com.
5. Upon information and belief, Defendant Mario Armondo Lavandeira, Jr. writes a blog under the pseudonym Perez Hilton.¹
6. Plaintiffs do not know the true names of defendants DOES 1 through 25, inclusive, and therefore sues them by those fictitious names. Plaintiffs are informed and believe, and on the basis of that information and belief allege, that each of those defendants was in some manner negligently and proximately responsible for the events and happenings alleged in this Complaint and for Plaintiffs' injuries and damages.
7. Upon information and belief and at all times relevant to this Complaint, Defendants were the agents and employees of their codefendants, and in doing the things alleged in this Complaint were acting within the course and scope of that agency and employment.
8. At all times relevant to this Complaint, Defendants owned and operated the celebrity gossip website and blog, PerezHilton.com.

¹ A blog (an abridgment of the term web log) is a website with regular entries of commentary, descriptions of events, or other material such as graphics or video. Entries are commonly displayed in reverse chronological order. "Blog" can also be used as a verb, meaning to maintain or add content to a blog.

9. As part of PerezHilton.com, Lavandeira posts gossip items about musicians, actors and celebrities.

10. As part of PerezHilton.com, Lavandeira posts tabloid photographs over which he has added his own captions or “doodles.”

11. As part of PerezHilton.com, Lavandeira often “outs” closeted, homosexual celebrities by publically disclosing otherwise private information.²

12. In addition to its own content, visitors to PerezHilton.com can read and post comments, opinions and other information on the website.

13. Defendants profit by having users visit the PerezHilton.com website pursuant to the terms of use by selling advertising next to content provided by PerezHilton.com.

14. Defendants profit by having users submit content to the PerezHilton.com website pursuant to the terms of use by selling advertising next to that submitted content and drawing user to the website.

15. In order to post comments or information on PerezHilton.com, users must provide a valid email address and choose a screen name.³

16. On or about December 27, 2007, as part of the Privacy Notice governing PerezHilton.com, Defendants stated that email addresses would not appear when a user posts a comment on the website.

² Outing refers to “taking someone out of the closet” - that is, publicizing that someone is a homosexual. The term usually refers to any publicizing of a person’s homosexuality without their consent, or to situations where those doing the outing support gay rights and object to what they see as the target’s hypocrisy, i.e., the target’s desire to keep their homosexuality private.

³ A screen name (also called a handle, nickname, or nick on some systems) refers to a public name that can be used to “screen” one’s true name from the public eye.

17. As part of the Conditions of Use governing PerezHilton.com, Defendants state they will protect the privacy of its visitors and will only disclose personal information as specifically provided or by obtaining permission.

18. As part of the Conditions of Use governing PerezHilton.com, Defendants specifically only reserve the right to use and disclose a commenter's screen name: "[y]ou grant PerezHilton.com and its affiliates and sublicensees the right to use the name that you submit in connection with such content, if they choose." (See the Conditions of Use Section of PerezHilton.com from on or about July 31, 2007, attached as Exhibit A).

19. On or about December 27, 2007, Mrs. Wargo visited PerezHilton.com and sent an email in response to harassing emails directed at her by Defendant Lavandeira.

20. In responding to these harassing emails, Mrs. Wargo did so in the manner and language typical of PerezHilton.com.

21. In visiting PerezHilton.com, Mrs. Wargo accepted and justifiably relied on Defendants' promise that her email address and private information would not appear on the website.

22. Shortly after Mrs. Wargo sent her email, Defendants highlighted it by including it in a post entitled "Email of The Day." (See PerezHilton.com from on or about December 27, 2007, attached as Exhibit B).

23. This post reproduced Mrs. Wargo's email and ***included her full name, work email address and name of her employer. Id.***

24. Defendants publicized and reproduced Mrs. Wargo's personal information, including her work email address, without Mrs. Wargo's consent or authority to do so.

25. Several users of the PerezHilton.com website submitted posts indicating that they would contact Mrs. Wargo and her employer with harassing emails and threats, and suggested that others do the same.

26. Mrs. Wargo and her employer began receiving spam⁴ and threatening emails to her email address almost immediately after Defendants posted Mrs. Wargo's email address on PerezHilton.com.

27. Mrs. Wargo received several hundred emails threatening her and her family.

28. The Wargo's also received many threatening phone calls to her listed home phone number.

29. Several of Mrs. Wargo's supervisors received harassing emails, telephone calls and/or facsimile messages from PerezHilton.com users.

30. As a direct result of the negative publicity and ongoing harassing emails and phone calls, Mrs. Wargo was fired from her job. Indeed, Mrs. Wargo would not have been fired, but for the publication of her email address.

31. Defendants had the option to remove, or not even post, threatening user comments, however, Defendants permitted the posting of such threatening comments and failed to remove such threatening comments.

32. On or about February 3, 2008, counsel for Mrs. Wargo requested that Defendants remove Mrs. Wargo's personal information, including email address, from PerezHilton.com. (See the February 3, 2008, Letter from Mrs. Wargo's Counsel to Lavandeira's Counsel, attached as Exhibit C).

⁴ Spamming is the abuse of electronic messaging systems to indiscriminately send unsolicited bulk messages. While the most widely recognized form of spam is e-mail spam, the term is applied to similar abuses in other media.

33. As of the date of filing of this Complaint, Defendants have refused to remove Mrs. Wargo's personal information from PerezHilton.com.

34. As a result of the ongoing nature of this publication, Mrs. Wargo has been precluded from finding additional employment and still receives threats against her safety and that of her family.

COUNT I.
(Breach of Contract Against All Defendants)

35. Plaintiffs reassert and reallege by reference all the prior allegations contained in their Complaint as if herein fully set forth.

36. When Mrs. Wargo emailed PerezHilton.com on or about December 27, 2007 pursuant to the Conditions of Use, the parties entered into a contract relating to the use of PerezHilton.com.

37. As part of that contract the parties agreed that Mrs. Wargo's email address and other personal information (other than the content of the email and her user name) would remain confidential and would not be reproduced or publicized on PerezHilton.com.

38. Defendants breached their contract with Mrs. Wargo by reproducing and publicizing her full name, employer and work email address on PerezHilton.com.

39. In fact, Defendants never intended to protect her privacy and made no efforts to do so.

40. Defendants have failed to mitigate the damages caused by the breach by denying several requests to remove Mrs. Wargo's personal information from PerezHilton.com.

41. As a direct and proximate result of Defendants' acts and omissions as set forth above, Plaintiffs have sustained serious injuries and damages in excess of \$25,000.

COUNT II.
(Promissory Estoppel Against All Defendants)

42. Plaintiffs reassert and reallege by reference all the prior allegations contained in their Complaint as if herein fully set forth. Based on this promise set forth in the Conditions of Use governing PerezHilton.com, Defendants should reasonably have expected that users of PerezHilton.com would expect Defendants to maintain the confidentiality and privacy of user's personal information including email addresses.

43. When she emailed PerezHilton.com, Mrs. Wargo reasonably expected, and did, in fact expect, Defendants to maintain the confidentiality and privacy of her personal information including her email address, based on the promise set forth in the Conditions of Use on PerezHilton.com.

44. As a direct and proximate result of Defendants' acts and omissions as set forth above, Plaintiffs have sustained serious injuries and damages in excess of \$25,000.

COUNT III.
(Fraud Against All Defendants)

45. Plaintiffs reassert and reallege by reference all the prior allegations contained in their Complaint as if herein fully set forth. At all times relevant to this matter, Defendants intended that users and commenters would rely on Defendants' claim that their personal information, including email addresses, would remain confidential and private.

46. Indeed, Defendants stated that “[i]f you visit PerezHilton.com, you accept these **conditions.**” (See Exhibit A, emphasis in original).

47. At all times relevant to this matter, Defendants knew that they would not maintain the confidentiality and privacy of users' personal information, including email addresses.

48. Defendants' concealed this fact from users generally and from Mrs. Wargo specifically.

49. When she emailed PerezHilton.com, Mrs. Wargo reasonably expected, and did, in fact expect, Defendants to maintain the confidentiality and privacy of her personal information including her work email address, based on the promise set forth in the Conditions of Use on PerezHilton.com.

50. As a direct and proximate result of Defendants' fraud as set forth above, Plaintiffs have sustained serious injuries and damages in excess of \$25,000.

COUNT IV.
(Negligence Against All Defendants)

51. Plaintiffs reassert and reallege by reference all the prior allegations contained in their Complaint as if herein fully set forth.

52. At all times relevant to this matter, Defendants failed to maintain the confidentiality and privacy of Mrs. Wargo's personal information, including her work email address.

53. At all times relevant to this matter, Defendants knew, or reasonably should have known, that reproducing and publicizing Mrs. Wargo's personal information, including her work email address, would result in damage to Plaintiffs as set forth in this Complaint.

54. As a direct and proximate result of Defendants' acts and omissions as set forth above, Plaintiffs have sustained serious injuries and damages in excess of the Court's jurisdictional amount of \$25,000.

COUNT V.
(Defamation Against All Defendants)

55. Plaintiffs reassert and reallege by reference all the prior allegations contained in their Complaint as if herein fully set forth.

56. Defendants publicized and reproduced Mrs. Wargo's personal information, including her work email address, without Mrs. Wargo's consent or authority to do so. Defendants publicized and reproduced Mrs. Wargo's personal information in contravention of their own policies and knew, or reasonably should have known, the harmful results that would follow the publication of Mrs. Wargo's personal information.

57. As a result, Mrs. Wargo and her co-workers began receiving spam, threatening emails and harassing telephone calls almost immediately after Defendants posted Mrs. Wargo's email address on PerezHilton.com. Mrs. Wargo also received several hundred emails threatening her and her family. The Wargo's also received many threatening phone calls to their listed home telephone number.

58. In addition to the spam, threatening emails and telephone calls and other harassment, hundreds of PerezHilton.com users posted defamatory statements regarding Mrs. Wargo on PerezHilton.com. A sampling of some of these defamatory statements are set forth below:

- Post 6 from Cbizzle: "I think she is repressing her gay side. Methinks she might be a closet lesbian"
- Post 43 from Sunny: "Diane Wargo is apparently a fat, jealous, close minded cow"
- Post 70 from Courtney: "What a dumb bitch"
- Post 108 from Candi: "What a dumb ho"
- Post 136 from Micky1313: "Apparently Diane Wargo is a skank!"

- Post 304 from Coey: “I think that Diane is the ugly whore. ... this Diane chick has some obvious mental issues, and a problem w/ herself.”
- Post 1106 from Angie M stated: “good to see hateful ppl reaping what they have sewn... MAKE LOVE NOT WAR!!!... Learn to love all Diane and you will be shown some love!”
- Post 1141 from Mob Mentality succinctly stated Defendants’ role in the defamation: “You may not have liked her comments, but the way you all went after this woman was far worse. You all know there have been thousands of comments far ranker on here. I hope you're all real proud of yourselves, and that Perez thinks twice before unleashing the drooling me-too minions, and abusing his hard-won power and going after a sad little woman with a swamp mouth and a crummy little rest-home job.”

59. Despite repeated requests, Defendants have refused to remove Mrs. Wargo’s personal information from the PerezHilton.com website.

60. As a direct result of the negative publicity and ongoing harassing emails and phone calls, Mrs. Wargo was fired from her job. Indeed, Mrs. Wargo would not have been fired, but for the publication of her email address.

61. As a direct and proximate result of Defendants’ acts and omissions as set forth above, Plaintiffs have sustained serious injuries and damages in excess of the Court’s jurisdictional amount of \$25,000.

COUNT VI.
(Invasion of Privacy Against All Defendants)

62. Plaintiffs reassert and reallege by reference the allegations contained in Paragraphs 1-60 of their Complaint as if herein fully set forth.

63. Shortly after Mrs. Wargo emailed PerezHilton.com, Defendants published her personal information, including her work email address, on PerezHilton.com.

64. Mrs. Wargo did not consent, authorize or otherwise grant permission to Defendants to publish her personal information.

65. Defendants, without Mrs. Wargo's consent, authorization or permission, intentionally disclosed Mrs. Wargo's personal information, including her work email address on PerezHilton.com.

66. Defendants' invasion of privacy was offensive and objectionable to a reasonable person of ordinary sensibilities as it consisted of an invasion into Mrs. Wargo's personal affairs and resulted in her and her family being threatened and harassed by PerezHilton.com users; resulted in harassment of her co-workers by PerezHilton.com users and resulted in Mrs. Wargo's losing her job.

67. Defendants' disclosure of Mrs. Wargo's personal information, including her work email address, was of no legitimate concern to the public.

68. As a direct and proximate result of Defendants' acts and omissions as set forth above, Plaintiffs have sustained serious injuries and damages in excess of \$25,000.

COUNT VII.
(Tortious Interference With A Contract Against All Defendants)

69. Plaintiffs reassert and reallege by reference all the prior allegations contained in their Complaint as if herein fully set forth.

70. Mrs. Wargo was employed by a senior living center in Beachwood, Ohio for approximately nine years until December 27, 2007.

71. Prior to December 27, 2007, Mrs. Wargo was considered a good and reliable employee.

72. When Mrs. Wargo emailed PerezHilton.com, she did so using her work email account.

73. When Defendants published Mrs. Wargo's email address, they knew, or reasonably should have known, that it was a work or business email address.

74. Notwithstanding Defendants' knowledge that Mrs. Wargo emailed PerezHilton.com using a work email address, Defendants published, without justification, such email address knowing that Mrs. Wargo would be spammed and knowing that Mrs. Wargo's employer would become aware of her using her work email address to email PerezHilton.com.

75. Defendants knew that such spamming and harassment of Mrs. Wargo and/or Mrs. Wargo's co-workers account would likely result in Mrs. Wargo's termination.

76. As a direct and proximate result of Defendants' acts and omissions as set forth above, Plaintiffs have sustained serious injuries and damages in excess of \$25,000.

COUNT VIII.
(Intentional Infliction of Emotional Distress
Against All Defendants)

77. Plaintiffs reassert and reallege by reference all the prior allegations contained in their Complaint as if herein fully set forth.

78. Defendants intended to cause Mrs. Wargo emotional distress, or knew that their acts or omissions would result in serious emotional distress to Mrs. Wargo.

79. Indeed, various PerezHilton.com users and commenters discussed the likely results of Defendants' posting of Mrs. Wargo's work email address:

- Post 14, from "Jill" stated: "I see some hate mail going to Miss Diane [Wargo]"⁵;
- Post 20, from "Lisa" stated: "I think we need to send her an email"!
- Post 26, from "Emma" stated: "she sure gonna [sic] get spammed lol";⁶
- Post 39, from "Walk Hard" stated: "Sounds like someone will be getting hate mail for the next two weeks";

⁵ All user comments are taken from PerezHilton.com. (See Exhibit B).

⁶ LOL (also written lol and any other combination) is a common element of Internet slang used as an abbreviation for "laughing out loud" or "laugh out loud."

- Post 87, from Aaron surmised that Defendants were directing PerezHilton.com users to damage Mrs. Wargo: “LOL. I love that you posted the email address. Are you subliminally trying to get your readers to email her?”;
- Post 116, from “You Suck” considered posting Mrs. Wargo’s email address to “ruin her career”;
- Post 132, from “Frasia” predicted what would happen when people used the email address to contact her employer: “[a] whole bunch of us need to call the ... Senior Center and get her ass fired”;
- Post 213, from “Stealer” stated: Check out www.menorahpark.org, where Mrs. Wargo apparently works since she’s using their e-mail domain. It’s a senior care facility. This is the type of petty, immature mind taking care of our senior citizens? I think someone needs to alert the administration of Menorah Park to Mrs. Wargo’s misuse of company e-mail resources”;
- Post 248, from “Anthony” foresaw, Mrs. Wargo losing her job as a result of the spamming campaign “[s]tupid ass people, someone is going to loose [sic] her job ... reporting her ass to her employer ...”;
- Post 269, from “Stinky” foresaw the same job loss: “[s]omeone’s about to lose her job with Senior Citizens [sic]” and
- Post 1203, from “Anna” not surprisingly summarized the state of affairs: “[h]e [Defendant Mario Lavandeira] caused her [Mrs. Wargo] intentional harm - losing a job by purposely posting her e-mail. When was the last time Perez posted someone’s private (work related or not) e-mail on his site? What was the purpose of posting the e-mail address on a gossip site. I’m sure her lawyer can sort it out for her.”

80. Even after receiving the postings and comments that confirmed the intent of their users to harass Mrs. Wargo, Defendants chose to continue to post Mrs. Wargo’s personal information and the directives of other users to ruin her life.

81. Even after Defendants were informed that their actions had lead to threats against the personal safety of the entire Wargo family, they refused to remove the private information that they had posted, and in doing so further knowingly encouraged that their users continue to engage in such offensive conduct.

82. By leaving the private information and directives of his users to utilize such information up on PerezHilton.com, Defendants knew that further injury and damage would be caused to Mrs. Wargo.

83. By leaving the private information and directives of his users to utilize such information up on PerezHilton.com, Defendants caused further injury and damage to Mrs. Wargo.

84. Defendants' conduct was so extreme and outrageous as to go beyond all possible bounds of decency and was such that it can be considered as utterly intolerable in a civilized community.

85. As a direct and proximate result of the Defendants' acts and omissions as set forth above, Mrs. Wargo has suffered mental anguish of such a serious nature that no reasonable person could be expected to endure it.

86. As a direct and proximate result of Defendants' acts and omissions as set forth above, Plaintiffs have sustained serious injuries and damages in excess of \$25,000.

COUNT IX.
(Negligent Infliction of Emotional Distress
Against All Defendants)

87. Plaintiffs reassert and reallege by reference all the prior allegations contained in their Complaint as if herein fully set forth. Defendants' conduct was so extreme and outrageous as to go beyond all possible bounds of decency and was such that it can be considered as utterly intolerable in a civilized community.

88. As a direct and proximate result of the Defendants' acts and omissions as set forth above, Plaintiffs have suffered mental anguish of such a serious nature that no reasonable person could be expected to endure it.

89. As a direct and proximate result of Defendants' acts and omissions as set forth above, Plaintiffs have sustained serious injuries and damages in excess of \$25,000.

COUNT X.
(Loss of Filial Consortium Against All Defendants)

90. Plaintiffs reassert and reallege by reference all the prior allegations contained in their Complaint as if herein fully set forth. Defendants owed a duty to Mrs. Wargo to maintain the confidentiality and privacy of her personal information when using PerezHilton.com.

91. Defendants breached their duty by failing to maintain the confidentiality and privacy of Mrs. Wargo's personal information when using PerezHilton.com.

92. As a direct and proximate result of the Defendants' acts and omissions as set forth above, Mrs. Wargo's minor children have suffered loss of filial consortium including, but not limited to, the loss of services, society, companionship, comfort, love and solace of their mother, Mrs. Wargo.

93. As a direct and proximate result of Defendants' acts and omissions as set forth above, Plaintiffs have sustained serious injuries and damages in excess of \$25,000.

COUNT XI.
(Loss of Consortium Against All Defendants)

94. Plaintiffs reassert and reallege by reference all the prior allegations contained in their Complaint as if herein fully set forth.

95. Defendants owed a duty to Mrs. Wargo to maintain the confidentiality and privacy of Mrs. Wargo's personal information when using PerezHilton.com.

96. Defendants breached their duty by failing to maintain the confidentiality and privacy of Mrs. Wargo's personal information when using PerezHilton.com.

97. As a direct and proximate result of the Defendants' acts and omissions as set forth above, Mr. Wargo has been deprived of the love, care and companionship of his wife, Mrs. Wargo.

98. As a direct and proximate result of Defendants' acts and omissions as set forth above, Plaintiffs have sustained serious injuries and damages in excess of \$25,000.

COUNT XII.
(Preliminary Injunction Against All Defendants)

99. Plaintiffs reassert and reallege by reference all the prior allegations contained in their Complaint as if herein fully set forth.

100. When Mrs. Wargo emailed PerezHilton.com on or about December 27, 2007 pursuant to the standardized terms of use, the parties agreed that Mrs. Wargo's email address and other personal information would remain confidential and would not be reproduced or publicized on PerezHilton.com.

101. Defendants breached their duties and contractual obligations to Mrs. Wargo by reproducing and publicizing her full name, employer and work email address on PerezHilton.com.

102. Defendants have refused repeated requests by Mrs. Wargo to remove her personal information from PerezHilton.com.

103. There is a substantial likelihood that Plaintiffs will prevail on the merits of their claims as set forth in their Complaint.

104. Plaintiffs have continued, and will continue, to suffer irreparable injury if a preliminary injunction is not granted and Defendants are permitted to continue publicizing Mrs. Wargo's personal information on PerezHilton.com.

105. Third parties will not be unjustifiably harmed if the injunction is granted.

106. The public interest will be served by granting a preliminary injunction.

107. As a direct and proximate result of Defendants' acts and omissions as set forth above, Plaintiffs should be granted a preliminary injunction enjoining Defendants from publicizing Mrs. Wargo's personal information on PerezHilton.com.

COUNT XIII.

(Breach of Contract/Failure to Arbitrate Against All Defendants)

108. Plaintiffs reassert and reallege by reference all the prior allegations contained in their Complaint as if herein fully set forth.

109. When Mrs. Wargo submitted content to PerezHilton.com on or about December 27, 2007 pursuant to the standardized terms of use, the parties entered into a contract relating to the use of PerezHilton.com.

110. As part of the Conditions of Use governing PerezHilton.com, Defendants stated that:

Any dispute relating in any way to your visit to PerezHilton.com or to products you purchase through PerezHilton.com shall be submitted to confidential arbitration in Los Angeles, California Arbitration under this agreement shall be conducted under the rules then prevailing of the American Arbitration Association. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction.

111. On or about May 7, 2008, Plaintiffs filed a claim with the American Arbitration Association (the "AAA") relating to the claims set forth in this Complaint. (See the May 7, 2008, Letter from Plaintiffs' Attorney to Defendants' Attorney, attached as Exhibit D).

112. Subsequent to Plaintiffs' filing a claim with the AAA, Defendants refused to go forward with, and participate in, the AAA arbitration.

113. Despite the arbitration clause contained in the Conditions of Use governing PerezHilton.com, Defendants continue to refuse to go forward with, and participate in, the AAA arbitration.

114. Defendants breached their contract with Mrs. Wargo by refusing to go forward with, and participate in, the AAA arbitration.

115. As a direct and proximate result of Defendants' acts and omissions as set forth above, Plaintiffs have sustained serious injuries and damages in excess of \$25,000.

COUNT XIV.
(Fraud/Failure to Arbitrate Against All Defendants)

116. Plaintiffs reassert and reallege by reference all the prior allegations contained in their Complaint as if herein fully set forth.

117. At all times relevant to this matter, Defendants intended that PerezHilton.com users would rely on Defendants' claim that any user dispute relating to PerezHilton.com would be submitted to binding arbitration before the AAA. Indeed, Defendants stated that “[i]f you visit PerezHilton.com, you accept these conditions.” (See Exhibit A, emphasis in original).

118. At all times relevant to this matter, Defendants knew that they would not participate in, or go forward with, any AAA arbitration.

119. Defendants' concealed this fact from users generally and from Mrs. Wargo specifically.

120. When she emailed PerezHilton.com, Mrs. Wargo reasonably expected, and did, in fact expect, that any dispute arising from her use of PerezHilton.com would be resolved through binding arbitration through the AAA.

121. On or about May 7, 2008, Plaintiffs filed a claim with the American Arbitration Association (the “AAA”) relating to the claims set forth in this Complaint. (See Exhibit D).

122. Subsequent to Plaintiffs' filing a claim with the AAA, Defendants refused to go forward with, and participate in, the AAA arbitration.

123. Despite the arbitration clause contained in the Conditions of Use governing PerezHilton.com, Defendants continue to refuse to go forward with, and participate in, the AAA arbitration.

124. As a direct and proximate result of Defendants' fraud as set forth above, Plaintiffs have sustained serious injuries and damages in excess of \$25,000.

WHEREFORE, Plaintiffs demand judgment against Defendants, and each of them, for the following:

- a. An award of compensatory damages in the amount of \$25,000,000 for all personal and economic harms suffered by Plaintiffs as a result of Defendants' conduct;
- b. An award of exemplary and punitive damages as permitted by law;
- c. An award of attorneys' fees and costs of the suit incurred herein as permitted by law;
- d. A preliminary injunction as set forth in this Complaint;
- e. An award of such other and further relief as the court may deem proper and just.

Respectfully submitted,



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JURY DEMAND

Pursuant to Rule 38 of the Ohio Rules of Civil Procedure, Plaintiffs demand a trial by jury on all issues so triable of right by a jury.



One of the Attorneys for Plaintiffs