

WILLIAM T. NORRIS,
EDWARD ROSSI,
STEVEN HALPERN,
JIMMY O. PAYNE AND
SUE PACKWOOD

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

V.

HEARST NEWSPAPERS
PARTNERSHIP, L.P.

127TH JUDICIAL DISTRICT

PLAINTIFFS' SECOND AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now come Plaintiffs William T. Norris, Edward Rossi, Steven Halpern, Jimmy O. Payne and Sue Packwood and complain of the Defendant, The Hearst Newspapers Partnership, L.P.

and would show the court as follows:

1. Plaintiffs are residents of Harris County, Texas and/or performed work for Defendant in Harris County, Texas. Defendant is ^{an} entity authorized to transact business in the State of Texas. Defendant has filed an Answer in this lawsuit.
2. Plaintiffs sue Defendant for fraud, criminal activity, and breach of contract due to the facts set out below.
3. Plaintiffs have agreed to do work for Defendant in connection with the distribution of Defendant's daily newspaper. Although the written contracts refer to Plaintiffs as "independent contractors", Plaintiffs are entitled to the status of employees due to the control exercised by Defendant. All Plaintiffs were either terminated or resigned because Plaintiffs either refused to participate in fraud or complained about the fraud and criminal activity required by Defendant. The sole reason for Plaintiffs' termination and/or resignation is that each Plaintiff refused to participate and/or complained about being

required to participate in criminal activity as instructed by Defendant. Plaintiffs are entitled to the status of employees who have been prevented from working because each Plaintiff refused and/or complained concerning participation in criminal activity to create false circulation figures for Defendant. Under the case of *Sabine Pilot Service, Inc. v. Hauck*, 687 S.W.2nd 733, Tex. Sup. Ct., 1985, employees have a cause of action for being terminated because of refusing to commit a crime. Under Section 32.42 to Deceptive Business Practices of the Penal Code, the scheme and acts of Defendant are a crime. ~~☹~~

False Circulation Reports

4. The Hearst Newspapers Partnership, L.P. sells advertising space in its newspapers. Advertisers rely on Defendant's claims of paid subscribers in deciding whether to buy space in Defendant's newspapers. The rate for the advertising is determined by the number of paid subscribers to Defendant's newspapers. Defendant instructs its distributors, including Plaintiffs, to falsely and fraudulently report the amount of paid subscribers.
5. Beginning in the latter half of the 1990's, the newspaper industry entered into a major recession as to advertising revenues due to competition with other forms of media for advertising revenues. Paid circulation figures for the industry and therefore advertising revenues for the industry were declining. Attached as Exhibit "A" is an article entitled "The Ad Drought in Journalism" wherein John Morton of Morton Research discusses this decline in revenues from advertising in the newspaper industry.
6. Contrary to the general trend for the industry, Hearst Newspapers boasts of increased circulation and revenue from advertisers. *(see attached Exhibit B)* In said article, Hearst states as follows:

Hearst Newspapers' top priority in 2002 was to get closer to its customers and nowhere did that effort register more success than in circulation.

Hearst then boasts about its increased circulation at The Houston Chronicle and The San Francisco Chronicle. Gary Randazzo is discussed in the Hearst article concerning both The Houston Chronicle and The San Francisco Chronicle. Gary Randazzo is the architect and executor of the criminal activity complained of by Plaintiffs. Mr. Randazzo came to The Chronicle in the latter part of the 1990s and implemented the intensity of the fraudulent and criminal activity of Defendant in presenting false circulation claims to the Audit Bureau of Circulation. After Randazzo implemented his fraudulent circulation scheme and criminal activity at The Houston Chronicle, ^{he} then was moved to The San Francisco Chronicle where he undertook similar techniques and fraudulent schemes to falsely claim increased circulation figures for The San Francisco Chronicle. Plaintiffs have set out below some of the techniques used by Defendant and Mr. Randazzo during his working at The Houston Chronicle as their Senior Vice President for Sales and Marketing.

7. The fraudulent reporting of paid subscribers for The Houston Chronicle by Defendant increased significantly in 1998 when Gary Randazzo took over the circulation, sales and marketing departments of Defendant. Randazzo set up his "new model." Under the "new model" moneys were paid to the distributors to submit false circulation figures. Under the "new model" the distributors were not able to operate their districts independently. Under the "new model" Defendant controlled the numbers of papers that Plaintiffs and the other distributors were required to take and used financial penalties and rewards to force Plaintiffs and other distributors into creating false circulation figures. Both before and during the "new model" program set up by Randazzo, some of the methods and/or means used by Defendant to create false circulation reports are as

follows: pay per piece programs, service copy adjustments, dock side adjustments, single copy circulation, hawker circulation, school papers, project grad, youth programs, summer programs, CAP program, hotel/motel program, free give-a-ways, NSD program, and any and all other programs and extras that are not specifically contractually agreed to by home delivery subscribers. Prior to the "new model", all of these extra programs were being used to ^{moderately} create false circulation figures. During the "new model", Plaintiffs were ^{greatly increase the} required to use these techniques and other techniques to fraudulently and falsely increase the number of papers under the category of home delivery subscribers. This was done so as to falsify the circulation numbers to the Audit Bureau of Circulation, who was responsible for auditing Defendant's annual report and certify its correctness.

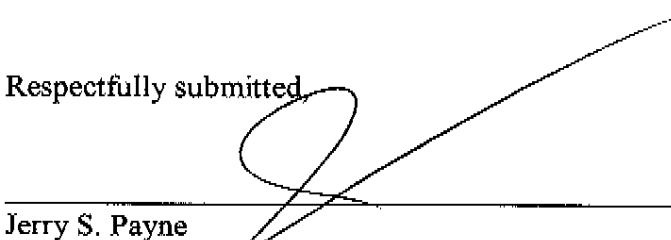
Audit Bureau of Circulation

8. The Audit Bureau of Circulation is an auditing organization responsible to advertisers for the independent verification of the annual circulation reports of newspapers and magazines. Advertisers rely on ABC to audit the annual reports required of newspapers, including Defendant. In regard to Defendant, the ABC has failed to properly audit Defendant's annual reports of paid subscribers due to improper influence by Defendant. The audited are controlling the auditor.
9. Plaintiffs seek actual and punitive damages from Defendant in an amount sufficient to confer jurisdiction on this court as well as cost and attorney's fees. Each Plaintiff has suffered actual damage in the nature of lost earnings, both past and future, mental anguish, both past and future, loss of business reputation, injury to credit standing and other foreseeable consequential damages, such as being forced to sell a residents at a loss due to financial difficulties. Each Plaintiff has been damaged in the amount of \$500,000.00.

Plaintiffs alleged that due to the fraud, criminal activity, malice and willfulness of Defendant's conduct that Plaintiffs are entitled to punitive damages. Plaintiffs further allege that the actual damages to Plaintiffs were done by Defendants with an underlying independent malicious, oppressive, fraudulent and criminal activity intent. These intentional acts of Defendant were done with conscious indifference and willfully in an attempt to force Plaintiffs to commit criminal activity.

WHEREFORE, Plaintiffs demand a trial by jury in this case and pray that a judgment be entered in Plaintiffs' favor for actual, punitive damages, attorney's fees as well as all other relief to which Plaintiffs are entitled.

Respectfully submitted

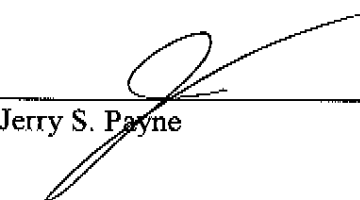


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on the following attorneys of record, by facsimile on 9/17, 2003:

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Jerry S. Payne