

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

NetJets Association of Shared Aircraft Pilots v. NetJets, Inc. et al

Doc. 1

NETJETS ASSOCIATION OF SHARED)		
AIRCRAFT PILOTS,)		Case No.: <u>2:14-cv-2487</u>
Plaintiff,)		
v.)		
NETJETS AVIATION, INC.,)		
NETJETS, INC., and)		(Jury Trial Demanded)
JOHN DOES 1-10,)		
Defendants.)		

**PLAINTIFF’S COMPLAINT
FOR VIOLATIONS OF THE RAILWAY LABOR AND STORED COMMUNICATIONS
ACTS AND FOR DAMAGES AND INJUNCTIVE RELIEF**

Plaintiff NetJets Association of Shared Aircraft Pilots for its complaint against Defendants NetJets Aviation, Inc., NetJets, Inc. and John Does 1-10 states:

JURISDICTION

1. This is an action for legal and equitable relief under the Railway Labor Act (“RLA”), 45 U.S.C. § 151, *et seq.*, and the Stored Communications Act (“SCA”), 18 U.S.C. § 2701, *et seq.* Accordingly, this court has original jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337.

VENUE AND PERSONAL JURISDICTION

2. Venue is proper in the United States District Court for the Southern District of Ohio pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2) because Defendants reside in this district, Defendants conduct substantial operations in this judicial district, and a substantial number of the events giving rise to this Complaint occurred in or relate to operations within the territorial confines of this Court’s jurisdiction.

3. Personal jurisdiction over Defendants exists in this district wherein Defendants are found by either regularly conducting business or maintaining substantial contacts.

PARTIES

4. Plaintiff NetJets Association of Shared Aircraft Pilots (“NJASAP” or “Union”) is a labor organization and is the exclusive bargaining “representative,” as defined by Section 1, Sixth of the RLA, 45 U.S.C. § 151, Sixth, of the approximately 3,000 pilots employed by Defendant NetJets Aviation, Inc. The National Mediation Board certified NJASAP as the exclusive bargaining representative of the craft or class of pilots of Defendant NetJets Aviation, Inc. on August 26, 2008 in *NJASAP*, 35 N.M.B. 245 (2008). NJASAP is headquartered at 630 Morrison Road, Suite 110, Gahanna, Ohio 43230. This action is brought by NJASAP in its own behalf and for and in the interests of all NJASAP-represented pilots in the service of Defendant NetJets Aviation, Inc.

5. Defendant NetJets Aviation, Inc. is a private jet charter company which offers fractional ownership of its fleet of jet aircraft to customers who fly with NetJets pilots and crew manning the aircraft. Defendant NetJets Aviation, Inc. is a “carrier” within the meaning of the Railway Labor Act, 45 U.S.C. § 151, *et seq.*

6. Defendant NetJets Aviation, Inc. is a corporate subsidiary of Defendant NetJets, Inc. NetJets Aviation, Inc. is headquartered at 4111 Bridgeway Ave., Columbus, Ohio 43219-1882.

7. Defendant NetJets, Inc. is a wholly owned subsidiary of Berkshire Hathaway, Inc. NetJets, Inc. is headquartered at 4111 Bridgeway Ave., Columbus, Ohio 43219-1882. NetJets, Inc. fully owns NetJets Aviation, Inc., and there is significant interrelation of operations between the two companies. Further, there is significant overlap in management between the two

companies, including management who are personally involved in the allegations of this case. This overlap also includes centralized control of labor relations for both companies. And furthermore, there is common financial control of both NetJets, Inc. and NetJets Aviation, Inc. NetJets Aviation, Inc. and NetJets, Inc. operate as a single integrated enterprise under the RLA. NetJets Aviation, Inc. and NetJets, Inc. shall be referred to hereinafter collectively as “NetJets.”

8. This Complaint shall be amended to substitute names of individuals or business entities for John Does 1-10 (“Does”) in due course, upon the identification of additional defendants through discovery.

9. Whenever in this Complaint reference is made to the acts of Does, that allegation shall refer collectively to all Defendants who, as more fully alleged below, are, upon information and belief, co-conspirators and/or are engaged in an express or implied principal/agent relationship whereby individual Defendants operated under actual or ostensible authority to perform the acts so alleged, and/or whereby individual Defendants authorized, aided, abetted, furnished the means to, advised, or encouraged the acts of the other individual Defendants.

ALLEGATIONS OF FACT

A. NetJets Unlawfully Accessed and Obtained Confidential Communications from the Password-Protected, Private NJASAP Pilots Message Board.

10. NJASAP and NetJets are parties to a collective bargaining agreement titled the 2007 Basic Agreement and are currently negotiating a successor agreement pursuant to Section 6 of the RLA, 45 U.S.C. § 156.

11. As part of its services to Union member pilots, NJASAP has a website at www.njasap.com. Portions of the website are viewable by the public, but most of the website is confidential and secured for Union member pilots only, via password protection. One such confidential and secure portion of the website is the moderated, private NJASAP Pilots Message

Board (“Message Board”) on which Union member pilots can communicate freely with one another by posting confidential communications. Before any person may access the confidential, password-protected Message Board, such person must agree to the Message Board Terms of Service (“Terms of Service”). The Terms of Service condition any use of the Message Board on being a Union member pilot and on prior agreement to the Terms of Service. The Terms of Service expressly prohibit disclosing, distributing or otherwise sharing the confidential communications contained on the Message Board. Furthermore, the Terms of Service prohibit Union members from consenting to allow third parties to review the confidential communications contained on the Message Board.

12. Union members have an expectation of privacy in the communications that they post to the Message Board. For NetJets pilots, who do not share a central workplace and live all over the country, the Message Board is the most widely used confidential forum for co-workers to discuss with one another and their union representatives their jobs, intra-Union matters, and on-going contract negotiations with NetJets. Union members post to the Message Board confidential communications about their terms and conditions of employment, pay, benefits, retirement, training, safety, working conditions, interactions with management, collective bargaining goals, participation in Union-sponsored events, views on Union services, strategies and officials, and a wide range of other work-related subjects. Union members have an expectation that their confidential communications on the Message Board will not be viewed by NetJets management officials who may wish to retaliate against Union members for protected activity under the RLA. Management access to the Message Board has a profound chilling effect on the ability of Union members to communicate with one another and their Union leadership and interferes with the Union’s ability to fairly represent the craft or class of pilots.

13. Despite the express contractual and statutory restrictions on non-Union members viewing the confidential communications that are posted on the password-protected Message Board, on information and belief, NetJets and Does gained unauthorized access to the Message Board and obtained the confidential communications of Union members stored on the Message Board. Thereafter, on or about September 12, 2014, during an interrogation of NJASAP Vice President Michael Monkevicz, NetJets Senior Vice President and Global General Counsel Colleen K. Nissl had in her possession multiple pages of confidential communications from the Message Board. When Monkevicz confronted Nissl about her possession of confidential Message Board content, Nissl refused to comment.

14. Furthermore, in a letter from NetJets to NJASAP dated November 14, 2014, NetJets Senior Vice President and Global General Counsel Colleen K. Nissl admitted that NetJets had obtained specific confidential communications from the password-protected Message Board. Her letter states in pertinent part:

I quoted from the Pilot Message Board (not a dictionary) when I said the words "Pledge" and "Mantra" were being interpreted by NetJets' pilots to mean the same thing. Importantly, not only have pilots written on the Message Board that these words mean the same thing, but they also understand that the Union's endorsement of the Pledge or Mantra is a call for a "job action." ...

(Emphasis added).

15. By accessing the password-protected Message Board and/or by obtaining confidential communications on the Message Board, NetJets and Does engaged in unlawful surveillance of Union members' and their protected activity under the RLA. Furthermore, by engaging in this activity, NetJets has unlawfully created the impression of surveillance of Union members and their protected activity under the RLA.

B. Using Blogs and Social Media Accounts, NetJets Impersonated Union Members to Unlawfully Interfere with the Union and Union Members' Protected Activity in Violation of the RLA.

16. As part of an effort to coerce, intimidate and retaliate against pilots who refuse to fly NetJets aircraft when they are fatigued or sick, or who refuse to operate NetJets aircraft with maintenance problems in violation of the Federal Aviation Regulations and NetJets' own policies, and for the purpose of manufacturing evidence of a non-existent unlawful job action in violation of Section 2, First of the RLA, 45 U.S.C. § 152, First, NetJets has impersonated an NJASAP member pilot on Internet social media, including without limitation the website Twitter.com, which is widely used by NJASAP and Union member pilots. On information and belief, NetJets has taken these actions through its Vice President of Operational Quality and Standards, Steven Todd Weeber, a member of management, and other agents of NetJets.

17. As part of its efforts described in paragraph 16, above, NetJets has unlawfully impersonated a Union member pilot on a Twitter account with the username "TwinkieTheKid" under the handle "@usedtobeproud" and, thereby, interfered with protected activity under the RLA.

18. Using the funds of the carrier, under the Twitter username "TwinkieTheKid," NetJets has taken action violating the RLA, including without limitation:

- a. encouraging NJASAP and its members to violate the RLA's status quo provisions on November 14, 2014 when NetJets tweeted "#njasap #worktorule" and baited them to endorse and/or participate in an unlawful job action;
- b. interfering with NJASAP and its members' internal union procedures for appointing and electing Union leadership and their choice of

representatives when on November 14, 2014 NetJets tweeted the message “We did NOT vote for Pedro” in a graphic message;

- c. threatening to blacklist NJASAP members from other employment in retaliation for their protected social media messages when NetJets on November 14, 2014 tweeted “Leave #NJASAP for a job with an airline or flight dept? I don’t think so,”; and
- d. posting photographs of and collecting “Tweets” from Union members on November 14, 2014 and November 15, 2014, including without limitation posting photographs of individual Union members conducting lawful picketing, thereby documenting the identities of Union members who engaged in protected activity under the RLA, including participating in and supporting informational picketing authorized by the pilots’ designated RLA representatives.

19. At the same time that NetJets is unlawfully encouraging NJASAP and its members to violate the RLA’s status quo provisions, it is falsely accusing NJASAP of engaging in the same conduct by promoting or supporting an unlawful “job action.” Concurrently, NetJets is threatening to fire pilots if they participate in the very same unlawful job action NetJets is surreptitiously promoting on Twitter.

20. By the actions described in Paragraph 19, NetJets has unlawfully interfered with and damaged the Union by, among other things, manufacturing evidence of an unlawful job action among pilots so that NetJets may sue the Union, obtain injunctive relief against it, chill NJASAP members’ protected activity under the RLA, weaken the Union as an institution and ultimately destroy it.

21. By posting photographs on Twitter and collecting and “retweeting” Union member Twitter messages related to support for and/or participation in an informational picketing event authorized by pilots’ designated representatives, NetJets has conducted surveillance of NJASAP members’ protected activity under the RLA and/or created the impression that it is conducting surveillance of NJASAP members protected activity under the RLA to chill such protected activity, weaken the Union as an institution and ultimately destroy it.

22. By using carrier funds to interfere with NJASAP and its members’ internal procedures for appointing and electing Union leadership and choice of representatives, NetJets is attempting to foment internal divisions within the Union for the purpose of weakening the Union as an institution and ultimately destroying it.

23. NetJets has posted photographs of Union members in its corporate headquarters without the consent of these members who were lawfully engaged in informational picketing against NetJets. The purpose of posting the photographs is to unequivocally communicate to NetJets employees that their lawful protected activity under the RLA was under surveillance by NetJets and/or to create the impression of such surveillance.

24. NetJets has hung a Twinkie snack cake on the walls of its corporate headquarters ratifying the unlawful activity through the “TwinkieTheKid” Twitter account.

25. NetJets’ conduct, as evidenced by its activities described in this Complaint, is motivated by anti-union animus and is interfering with, influencing, and coercing the employees’ choice of bargaining representatives for the purpose of weakening the union as an institution and ultimately destroying it.

26. On information and belief, NetJets, through their agents, posted or instructed others to post anti-Union content on blogs and other social media while posing as a non-

management employee and Union member, including without limitation communication through the following social media:

- a. <http://captain-qs-goose.blogspot.com>
- b. <https://twitter.com/captainqsgoose>
- c. <http://savethegoldengoose.blogspot.com>
- d. <https://twitter.com/qsgoose>

27. By and through the posts on the social media referred to above, NetJets has engaged in conduct motivated by anti-union animus and is interfering with, influencing, and coercing the employees' choice of bargaining representatives for the purpose of weakening the Union as an institution and ultimately destroying it.

28. By and through the actions described above, NJASAP members have been dissuaded from using social media for protected activity under the RLA, from using the NJASAP website and Message Board to discuss terms and conditions of employment and intra-Union matters, and from engaging in other protected activity under the RLA for fear of being blacklisted and/or losing their jobs. The Union and its members are being deliberately and systematically injured and undermined by the unlawful actions of NetJets. Said actions are designed to destroy support for the Union, weaken NJASAP and ultimately destroy it, and said damage cannot be remedied at law.

CAUSES OF ACTION

COUNT I

(Violation of the Stored Communications Act, 18 U.S.C. §§ 2701, 2707)

29. The allegations of paragraphs 1 through 28 of the Complaint are incorporated by reference pursuant to Fed. R. Civ. P. 10(c).

30. The NJASAP Message Board is a facility through which electronic communication services are provided, as that term is used in 18 U.S.C. § 2701. The Message Board is not generally accessible by the public, but instead is restricted to authorized Union member pilots who agree to the password-protected Message Board's Terms of Service.

31. On information and belief, without Plaintiff's knowledge or consent, NetJets and Does knowingly and intentionally accessed the Message Board and obtained the private and confidential communications of the Union and its members.

32. On information and belief, by accessing the Message Board, NetJets and Does knowingly and intentionally accessed without authorization facilities through which electronic communication services are provided and thereby obtained Plaintiff's wire or electronic communications while they were in electronic storage in those electronic communication systems.

33. By engaging in this misconduct, NetJets and Does violated the Federal Stored Communications Act, 18 U.S.C. §2701.

34. As a result of Defendants' intentional and malicious misconduct, Plaintiff has been damaged and continues to be damaged, which includes without limitation loss of Union members' use of the Message Board as a secure communication facility, loss of Union member support, and attorneys' fees and other costs associated with trying to keep the Message Board secure from NetJets' further attempts to obtain private communications stored there.

COUNT II
(Violation of Section 2, First of the RLA)

35. The allegations of paragraphs 1 through 34 of the Complaint are incorporated by reference pursuant to Fed. R. Civ. P. 10(c).

36. Section 2, First of the RLA, 45 U.S.C. §152, First, states:

It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

37. By encouraging NJASAP leadership and members to violate the RLA's status quo provisions while simultaneously accusing NJASAP of sponsoring or condoning an unlawful job action and threatening to fire pilots during negotiations for amendments to the collective bargaining agreement between NetJets and NJASAP, NetJets is in violation of Section 2, First of the RLA, 45 U.S.C. §152, First, in that NetJets has not exerted every reasonable effort to make and maintain agreements as to rates of pay, rules and working conditions, nor to settle disputes in order to avoid any interruption to commerce or to the operation of NetJets.

COUNT III
(Violation of Section 2, Third of the RLA)

38. The allegations of paragraphs 1 through 37 for the Complaint are hereby incorporated by reference pursuant to Fed. R. Civ. P. 10(c).

39. Section 2, Third of the RLA, 45 U.S.C. §152, Third, provides;

Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives

40. By surreptitiously publishing messages related to NJASAP and its members' procedures for electing and appointing Union leadership and choice of representatives, NetJets interfered with, influenced and/or coerced NetJets pilots in the exercise of their right to designate representatives of their choosing and the right of the Union and its members to freely participate in protected activity under the RLA.

41. By encouraging NJASAP leadership and members to violate the RLA's status quo provisions while simultaneously accusing NJASAP of sponsoring or condoning an unlawful job action and threatening to fire pilots, NetJets interfered with, influenced and/or coerced NetJets pilots in the exercise of their right to designate representatives of their choosing and the right of the Union and its members to freely participate in protected activity under the RLA.

42. By surveilling or otherwise creating the impression that it is surveilling the Message Board conversations and activities of Union members, NetJets interfered with, influenced and/or coerced NetJets pilots in the exercise of their right to designate representatives of their choosing and the right of the Union and its members to freely participate in protected activity under the RLA.

43. By posting photographs on Twitter and collecting Union member Twitter messages, thereby creating the impression that NJASAP members support for or participation in lawful informational picketing was under surveillance, NetJets interfered with, influenced and/or coerced NetJets pilots in the exercise of their right to designate representatives of their choosing and the right of the Union and its members to freely participate in protected activity under the RLA.

44. By posting images of Union members engaged in informational picketing authorized by pilots' designated representatives on the walls of its corporate office located in Columbus, Ohio, thereby creating the impression that NJASAP members' support for or participation in lawful informational picketing was under surveillance, NetJets interfered with, influenced and/or coerced NetJets pilots in the exercise of their right to designate representatives of their choosing and the right of the Union and its members to freely participate in protected activity under the RLA.

45. The actions of NetJets referenced herein were motivated by anti-union animus and taken for the purpose of impairing the ability of the Union and its members to function and freely associate, to destroy support for the Union, weaken NJASAP and ultimately destroy it.

46. By engaging in said actions, Defendants violated Section 2, Third of the RLA, 45 U.S.C. § 152, Third.

COUNT IV
(Violation of Section 2, Fourth of the RLA)

47. The allegations of paragraphs 1 through 46 of the Complaint are hereby incorporated by reference pursuant to Fed. R. Civ. P. 10(c).

48. Section 2, Fourth of the RLA, 45 U.S.C. § 152, Fourth, provides:

Employees shall have the right to organize and bargain collectively through representatives of their own choosing. . . . No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier . . . to influence or coerce employees in an effort to induce them . . . not to join or remain members of any labor organization.

49. By publishing messages related to NJASAP and its members' procedures for electing and appointing Union leadership and choice of representatives, NetJets interfered with the right of employees to organize and bargain collectively, interfered with the organization of its employees, used funds of the carrier in an effort to induce them not to join or remain members of the Union and interfered with the right of the Union members to freely participate in protected activity under the RLA.

50. By encouraging NJASAP leadership and members to violate the RLA's status quo provisions while simultaneously accusing NJASAP of sponsoring or condoning an unlawful job

action and threatening to fire pilots, NetJets interfered with the right of employees to organize and bargain collectively, interfered with the organization of its employees, used funds of the carrier in an effort to induce them not to join or remain members of the Union and interfered with the right of the Union members to freely participate in protected activity under the RLA.

51. By surveilling or otherwise creating the impression that it is surveilling the Message Board conversations and activities of Union members, NetJets interfered with the right of employees to organize and bargain collectively, interfered with the organization of its employees, used funds of the carrier in an effort to induce them not to join or remain members of the Union and interfered with the right of the Union members to freely participate in protected activity under the RLA.

52. By posting photographs on Twitter and collecting or “retweeting” Union member Twitter messages, thereby creating the impression that NJASAP members support for or participation in lawful informational picketing was under surveillance, NetJets interfered with the right of employees to organize and bargain collectively, interfered with the organization of its employees, used funds of the carrier in an effort to induce them not to join or remain members of the Union and interfered with the right of the Union members to freely participate in protected activity under the RLA.

53. By posting images of Union members engaged in informational picketing authorized by pilots’ designated representatives on the walls of its corporate office located in Columbus, Ohio, thereby creating the impression that NJASAP members support for or participation in lawful informational picketing was under surveillance, NetJets interfered with the right of employees to organize and bargain collectively, interfered with the organization of its employees, used funds of the carrier in an effort to induce them not to join or remain members of

the Union and interfered with the right of the Union members to freely participate in protected activity under the RLA.

54. The actions of NetJets referenced herein were motivated by anti-union animus and taken for the purpose impairing the ability of the Union and its members to function and freely associate, to destroy support for the Union, to weaken NJASAP and ultimately destroy it.

55. By engaging in said actions, Defendants violated Section 2, Fourth of the RLA, 45 U.S.C. § 152, Fourth.

PRAYER FOR RELIEF

Plaintiffs request judgment against Defendants on each and every claim in the Complaint and for the following relief:

- A. That the Court grant preliminary and permanent injunctive relief enjoining Defendants and their agents, employees, representatives, and successors and predecessors in interest from:
1. accessing restricted and private data hosted on Plaintiff's website or Message Board, or other confidential communications of the Union and its members;
 2. engaging in surveillance of the Union and its members;
 3. unlawfully interfering with the Union by using carrier funds to interfere with NJASAP and its members' internal procedures for appointing and electing Union leadership and choice of representatives;
 4. unlawfully interfering with, influencing, and/or coercing the NetJets pilots represented by the NJASAP and its representatives from engaging in lawful protected activity under the RLA; and
- B. That the Court order Defendants to destroy all wrongfully obtained communications

and refrain from any use of said communications, and further to remove all unlawful content posted by Defendants regarding NJASAP and its leadership and members from the Internet and in all other communications; and

- C. That Defendants be ordered to conspicuously post copies of this Court's Order at Defendants' headquarters, fixed base operator locations used by NetJets, crew room locations and flight operations facilities for a period of one-hundred eighty (180) days; and
- D. That Defendants be ordered to provide a copy of this Court's Order to every NetJets pilot who has been covered under the NetJets-NJASAP pilot collective bargaining agreement since December 31, 2007, by certified mail at their most current address of record, in order to ameliorate the effects of Defendants' unlawful conduct on these pilots' rights under the RLA; and
- E. That the Court award damages and monetary relief as follows:
 - 1. Damages in an amount to be determined at trial in the form of the Plaintiff's actual economic and non-economic damages under 18 U.S.C. § 2707;
 - 2. Punitive and exemplary damages in an amount to be determined at trial, to serve as punishment and deterrent in light of Defendants' wrongful acts committed with oppression, fraud, and malice under 18 U.S.C. § 2707;
 - 3. Plaintiff's attorney's fees pursuant to 18 U.S.C. § 2707;
 - 4. Plaintiff's costs; and
 - 5. Plaintiff's pre-judgment and post-judgment interest.
- F. Such other further relief to which Plaintiff may be entitled as a matter of law or

equity, or which the Court determines to be just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury for all claims that may be triable to a jury.

Dated: December 2, 2014.

Respectfully submitted,

/s/ James Petroff

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