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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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HANNAH R. AMAROSA,

Plaintiff,

v.

DOCTOR JOHN’S INC., KEN GREENTREE  
and JOHN COIL,

Defendants.

**MEMORANDUM DECISION AND  
ORDER DENYING MOTION TO  
DISMISS JOHN COIL**

Case No. 2:11-CV-676 DN

District Judge David Nuffer

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Defendants Doctor John’s, Inc. and John Coil filed a motion<sup>1</sup> requesting dismissal of John Coil, an individual defendant. They assert that John Coil is not a subject of the remaining cause of action, which alleges violation of the Employee Polygraph Protection Act (EPPA).<sup>2</sup> The motion is denied.

### DISCUSSION

John Coil was specifically mentioned by name in Plaintiff’s second cause of action for violation of the Fair Labor Standards Act<sup>3</sup> and in Plaintiff’s third cause of action for defamation.<sup>4</sup> Both those claims have been dismissed.<sup>5</sup> Plaintiff’s first cause of action for violation of the EPPA pleads “for relief and judgment against the Defendants . . . .”<sup>6</sup> While the

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<sup>1</sup> Motion to Dismiss Second Cause of Action, [docket no. 99](#), filed July 17, 2014.

<sup>2</sup> 29 U.S.C. § 2001 et seq.

<sup>3</sup> 29 U.S.C. § 201 et seq.

<sup>4</sup> Complaint at 12-13, ¶¶ 73, 75, 77, 79, and 81-82, [docket no. 2](#), filed July 22, 2011.

<sup>5</sup> Memorandum Decision and Order [dismissing Plaintiff’s Third Cause of Action for Defamation], [docket no. 84](#), filed July 2, 2014; docket text order, docket no. 113, filed July 21, 2014.

<sup>6</sup> Complaint at 11.

cause of action does not include his name, the first cause of action pleads for relief against John Coil.

Under the EPPA, “[t]he term ‘employer’ includes any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee.”<sup>7</sup> This has been interpreted broadly, and includes (among others) a person who “decided whether the examined employee would be subjected to disciplinary action.”<sup>8</sup> Because the proof at trial may show that John Coil affirmed Plaintiff Amarosa’s termination, and concealed the polygraph issues related to her termination,<sup>9</sup> he may qualify as an employer under the EPPA. Of course, the proof at trial will determine whether this issue will be submitted to the jury.

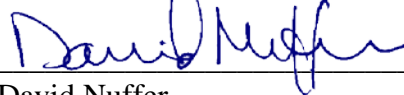
### ORDER

Because the first cause of action pleads for relief against John Coil and because the EPPA is broad enough to permit a claim to be stated against Coil,

IT IS HEREBY ORDERED that the motion to dismiss John Coil<sup>10</sup> is DENIED.

Dated July 25, 2014.

BY THE COURT:



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David Nuffer  
United States District Judge

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<sup>7</sup> 29 U.S.C. § 2001(2).

<sup>8</sup> *Calbillo v. Cavender Oldsmobile, Inc.*, 288 F.3d 721, 727 (5<sup>th</sup> Cir. 2002).

<sup>9</sup> Complaint ¶¶ 46, 75, 77 and 82.

<sup>10</sup> Motion to Dismiss Second Cause of Action, [docket no. 99](#), filed July 17, 2014.