

CIVIL ACTION COVER SHEET

DOCKET NO.(S)

06-4970 E

Trial Court of Massachusetts Superior Court Department
County: _____



PLAINTIFF(S) **Maxine Whitaker, Robert Lightbourne, and Leila Walton**

DEFENDANT(S) **Lincoln Technical Institute, Inc. Kathleen A. Devine**

ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE **Sandy P. Botelho McKenzie & Associates, P.C. 44 School Street, Suite 1100 Boston, MA 02108 (617) 723.0400**
Board of Bar Overseers number: **336420**

ATTORNEY (if known)

Origin code and track designation

Place an x in one box only:

- 1. F01 Original Complaint
- 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F)
- 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)

- 4. F04 District Court Appeal c.231, s. 97 &104 (After trial) (X)
- 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X)
- 6. E10 Summary Process Appeal (X)

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

CODE NO.	TYPE OF ACTION (specify)	TRACK	IS THIS A JURY CASE?
<u>B22</u>	Employment Discrimination	(F)	(x) Yes () No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(Attach additional sheets as necessary)

A.	Documented medical expenses to date:	
1.	Total hospital expenses	\$
2.	Total Doctor expenses	\$
3.	Total chiropractic expenses	\$
4.	Total physical therapy expenses	\$
5.	Total other expenses (describe)	\$
	Subtotal	\$
B.	Documented lost wages and compensation to date	\$
C.	Documented property damages to date	\$
D.	Reasonably anticipated future medical and hospital expenses	\$
E.	Reasonably anticipated lost wages	\$
F.	Other documented items of damages (describe)	\$
G.	Brief description of plaintiff's injury, including nature and extent of injury (describe)	
	All Plaintiff's were former instructors at Lincoln Technical Institute, Inc.'s Brockton Campus. The Plaintiff's were subjected to employment discrimination based on race/national origin and wrongfully terminated their positions.	TOTAL \$1,000,000,

SUFFOLK SUPERIOR COURT
 CIVIL DIVISION
 2006 NOV 30 PM 1:15
 MICHAEL J. CLERK, CLERK

CONTRACT CLAIMS

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL S.

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rule Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

COMMONWEALTH OF MASSACHUSETTS
The Trial Court
Superior Court Department

Suffolk, ss

06-4935 -

D
BKS

SCOTT RODRIGUES)
Plaintiff)
v.)
THE SCOTTS COMPANY, LLC)
Defendant)

COMPLAINT
and jury trial demand

2006 NOV 29 AM 10:20
MICHAEL JOSEPH DONOHUE
CLERK/HONORARY CLERK
SUFFOLK SUPERIOR COURT

Introduction

1. In this civil action the plaintiff alleges that he was fired by his employer because he smoked cigarettes in private, off-duty, away from work. The employer has a policy of refusing to employ persons who smoke tobacco. The complaint alleges that this policy violates Rodrigues' rights under the Massachusetts Privacy Statute and constitutes a violation of his civil rights. In more general terms, this case challenges the right of an employer to control employees' personal lives and activities by prohibiting legal private conduct the employer finds to be dangerous, distasteful or disagreeable. The plaintiff seeks a declaration that the corporation's policy violates Massachusetts law, and compensatory damages.

Parties

2. The plaintiff Scott Rodrigues is an adult resident of Buzzards Bay, Barnstable County, Massachusetts.
3. The defendant The Scotts Company, LLC ("Scotts") is an Ohio corporation registered to do business in Massachusetts. Scotts is a subsidiary of Scotts-Miracle-Gro Company, which holds itself as the world's largest marketer of branded consumer lawn and garden

products. Scotts has more than 6,000 employees and has more than \$2.7 billion in annual sales. Scotts LawnServices is a division of Scotts that provides on-site lawn, tree and shrub fertilization, insect control and other related services. Scotts operates a Scotts LawnServices branch in, among other places around the country, Sagamore Beach, Barnstable County, Massachusetts.

Facts

4. In December 2005, Scotts announced that it would institute a policy prohibiting smoking of tobacco products by its employees at any time and at any place, whether or not in the workplace or during work hours. Scotts announced that it would conduct random urine sampling of employees and that employees who tested positive for nicotine would be fired.
5. Scotts' stated purpose for its nicotine-free policy was to save money on medical insurance costs and to promote healthy lifestyles among its employees.
6. In March 2006, Rodrigues responded to an advertisement placed by Scotts for a "lawn service technician."
7. He was hired by Scotts and assigned to Scotts' Sagamore Beach, Massachusetts business location.
8. Rodrigues was issued a Scotts' uniform and worked for Scotts, servicing Scotts' customers and operating Scotts' equipment. He performed all of his job duties competently. He was paid by Scotts for this work.
9. Pursuant to Scotts' nicotine-free policy, Scotts required Rodrigues to submit to a urine sampling procedure after he was hired.

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10. After successfully working for Scotts without incident, Rodrigues was told that he had failed the drug test because his urine sample tested positive for nicotine.
 11. Rodrigues was fired by Scotts because he tested positive for nicotine.
 12. Scotts provided Rodrigues with no reason for his termination other than the results of his urine analysis.
 13. Rodrigues smoked cigarettes while a Scotts employee. He did not smoke on the job or during work hours. He did not smoke during breaks from work or in the presence of other Scotts employees or Scotts customers or vendors.
 14. Scotts has no policies compelling employees to abstain from other legal but unhealthy practices, including obesity, consumption of alcohol, failure to exercise, skydiving, excessive television viewing, eating processed sugars, owning dangerous pets, flying private aircraft, mountain climbing, downhill ski racing, single-handed sailing, or spreading toxic chemicals on lawns.
 15. In future job applications to which Rodrigues responds truthfully, he will be compelled to inform potential employers that he was fired by Scotts because he failed a drug test. Even if he explains that he tested positive for nicotine, this is such an unusual reason for a termination that potential employers are likely to disbelieve him and to conclude that he failed a drug test for illegal drugs.

COUNT ONE
Violation of privacy
Mass. G.L. c. 214 § 1B

The plaintiff realleges the foregoing.

16. Rodrigues was compelled by Scotts to urinate and to provide a sample of his urine for nicotine testing, on threat of termination of his employment if he refused to comply.
17. Rodrigues had a reasonable expectation of privacy in regard to being compelled to urinate and to provide a urine sample for nonmedical purposes.
18. Rodrigues also had a reasonable expectation of privacy in regard to the information that could be obtained from his urine sample, including nonmedical information that related solely to his legal activities outside of the workplace and outside of work hours.
19. There was nothing about the nature of Rodrigues' job with Scotts that created any business necessity for him to be nicotine-free. Scotts' nicotine-free policy applies to every Scotts employee regardless of the nature of their positions.
20. Scotts had no legitimate business interest in compelling Rodrigues to provide a urine sample for nicotine testing.
21. Scotts had no legitimate business interest in prohibiting Rodrigues from smoking in his private life, away from work.
22. Whatever business interests Scotts may have had in compelling Rodrigues to provide a urine sample for nicotine testing and in prohibiting Rodrigues from smoking in his private life failed to outweigh Rodrigues' privacy interests in not being compelled to provide a urine sample and in maintaining the privacy of his out-of-the-workplace conduct involving legal activities, including smoking.

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23. Compelling Rodrigues to urinate and to submit a urine sample for nicotine testing constituted an unreasonable, substantial and serious interference with Rodrigues' privacy and private life, in violation of Mass. G.L. c. 214 § 1B.

COUNT TWO
Massachusetts Civil Rights Act violation
Mass. G.L. c. 12 § 11I

The plaintiff realleges the foregoing.

24. Rodrigues had the right to be secure from unreasonable searches of his person, as protected by art. 14 of the Massachusetts Declaration of Rights, and to be free from unreasonable, substantial and serious interference with his personal privacy, as protected by G.L. c. 214 § 1B.
25. Rodrigues' right to smoke cigarettes in his private life, away from the workplace, was further protected by G.L. c. 214 § 1B and the Massachusetts Declaration of Rights, art. 1, 7, and 56.
26. Compelling Rodrigues to urinate and provide a sample of his urine to Scotts, and testing that sample for nicotine violated the above rights.
27. Firing Rodrigues because he smoked cigarettes in his private life away from the workplace violated the above rights.
28. Scotts threatened to fire Rodrigues if he refused to urinate and to provide a urine sample for nicotine testing.
29. Scotts threatened to fire Rodrigues if his urine sample revealed that he had smoked cigarettes in his private life while a Scotts employee.

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30. Scotts' implementation of its nicotine-free policy violated Rodrigues' rights as described above by means of threats, intimidation or coercion, in violation of Mass. G.L. c. 12 § 11I.

**COUNT THREE
WRONGFUL TERMINATION**

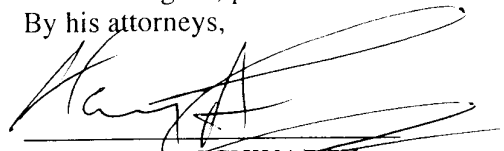
The plaintiff realleges the foregoing.

31. The public policy of the Commonwealth, as expressed in G.L. c 214 § 1B and in art. 1 and 14 of the Declaration of Rights, is to protect citizens from unreasonable searches and seizures of their persons and from unreasonable, substantial and serious interference with their personal privacy.
32. Rodrigues had the right to refuse to provide a urine sample for nicotine testing.
33. Rodrigues had the right to smoke cigarettes in his personal life, outside of the workplace and work hours.
34. Rodrigues was fired by Scotts in violation of those rights. This termination constituted a wrongful termination of his employment for a reason in violation of the public policy of the Commonwealth.
35. As a result of all of the above conduct by Scotts, Rodrigues was injured. He suffered loss of income and benefits, embarrassment, humiliation, emotional distress and his rights were otherwise violated.
36. Wherefore, Rodrigues demands judgment against the defendant Scotts as follows:
- a. A declaratory judgment finding that Rodrigues' rights as described above were violated when he was compelled to provide a urine sample for nicotine testing and when he was fired for having smoked cigarettes outside the workplace;
 - b. An award of compensatory damages, plus interests and costs;

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- c. An award of punitive damages;
 - d. An award of his reasonable costs and fees of this action, including his reasonable attorneys fees.

Jury demand – The plaintiff demands a jury trial.

Scott Rodrigues, plaintiff
By his attorneys,



~~HARVEY A. SCHWARTZ~~

BBO. # 448080

LAURIE A. FRANKL

BBO # # 647181

Rodgers, Powers & Schwartz

18 Tremont Street

Boston, MA 02108

(617) 742-7010

Date: November 29, 2006