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VENTURA SUPERIOR COURT

Brian M. Heit, Esq., SBN 302474  
HEIT LAW GROUP, P.C.  
340 South Lemon Avenue, Suite 8933  
Walnut, CA 91789  
Telephone (310) 744-5227  
Facsimile (850) 254-1950  
Email Brian@heitlawgroup.com  
Attorney for Plaintiff, Eva McMillin

OCT 13 2020

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF VENTURA

Case Number:

(UNLIMITED CIVIL ACTION)

COMPLAINT FOR DAMAGES:

1. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
2. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
3. VIOLATION OF OBLIGATIONS IMPOSED BY LAW: CALIFORNIA CIVIL CODE § 1708.85

DEMAND FOR JURY TRIAL

By FAX

EVA MCMILLIN, an individual

Plaintiff,

vs.

JOHN DAVID KIMBLE, an individual,  
MICHELLE KIMBLE, an individual,  
ANTHONY MCMILLIN, an individual, and  
DOES 1-50, inclusive

Defendants.

COME NOW PLAINTIFF Eva McMillin (hereinafter referred to as "Plaintiff") and files this complaint for three causes of action against JOHN DAVID KIMBLE, an individual, MICHELLE KIMBLE, an individual, and ANTHONY MCMILLIN, an individual, and DOES 1-50, inclusive, (hereinafter referred to as "Defendants") and alleges as follows:

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2 **I. INTRODUCTION AND SUMMARY OF THE COMPLAINT**

3 1. Plaintiff brings this Action against all Defendants for violating her privacy by  
4 transmitting and sending intimate photographs of herself that she had sent to JOHN KIMBLE  
5 amid an ongoing extramarital relationship.

6 2. Plaintiff did not give direct consent to any of the Defendants to distribute sexually  
7 related materials to any third party. These photos were shared by all Defendants in an attempt to  
8 “get back” at Plaintiff. For JOHN KIMBLE, it was because Plaintiff refused to leave her then  
9 husband at his demand, for MICHELLE KIMBLE, it was to get revenge on Plaintiff for having  
10 an affair with her husband, and for ANTHONY MCMILLIN, he used it as an excuse to leave an  
11 already failing marriage.

12 3. Amid all the domestic turmoil, JOHN and MICHELLE KIMBLE became friends  
13 with ANTHONY MCMILLIN. JOHN and MICHELLE KIMBLE shared Plaintiff’s intimate  
14 photos with ANTHONY MCMILLIN, who later shared the same photos to Plaintiff’s sister, in  
15 order to inflict emotional and negligent distress on Plaintiff and in violation of *California Civil*  
16 *Code* Sections 1708.85.

17 **II. PARTIES**

18 **A. Plaintiff**

19 4. EVA MCMILLIAN, (“PLAINTIFF”) was domiciled in and was a citizen of the  
20 State of California when she learned about the violations of her privacy and of her intimate  
21 photographs, which were transmitted and sent to Plaintiff’s husband and her extended family.

22 **B. Defendant**

23 5. Plaintiff is informed and believes and thereon alleges that Defendant JOHN  
24 DAVID KIMBLE, an individual, and is now, and was at all relevant times, an individual with  
25 whom she engaged in an extramarital affair. Based on information and belief, Defendant resides  
26 in Ventura County in the State of California.

27 6. Plaintiff is informed and believes and thereon alleges that Defendant MICHELLE  
28 KIMBLE, an individual, and is now, and was at all relevant times, an individual with whom she

1 engaged in an extramarital affair. Based on information and belief, Defendant resides in Ventura  
2 County in the State of California.

3 7. Plaintiff is informed and believes and thereon alleges that Defendant ANTHONY  
4 MCMILLIN, an individual, was Plaintiff's husband for approximately 15 years. Based on  
5 information and belief, Defendant resides in Ventura County in the State of California.

6 8. Plaintiff does not know the true names or legal capacities of the Defendants  
7 designated herein as DOES 1 through 50, inclusive, and therefore sues said Defendants under the  
8 fictitious name of "DOE." Plaintiff is informed and believes and thereon allege that each of the  
9 Defendants designated herein as a DOE is legally responsible in some manner for the matters  
10 alleged in this complaint and is legally responsible in some manner for causing the injuries and  
11 damages of which Plaintiff complain. Plaintiff is informed and believes and thereon allege that  
12 each of the Defendants designated herein as a DOE Defendant was, at all times relevant to the  
13 matters alleged within this complaint, acting in conjunction with the named Defendant, whether  
14 as a participant, or co-conspirator. When the identities of DOE Defendants 1 through 50 are  
15 discovered, or otherwise made available, Plaintiff will seek to amend this Complaint to allege  
16 their identity and involvement with particularity.

17 **III. JURISDICTION & VENUE**

18 **A. Jurisdiction is Proper in a California Superior Court**

19 9. The California Superior Court has jurisdiction over the Action because (a)  
20 Plaintiff is domiciled in and is a citizen of the State of California; (b) Plaintiff's husband and her  
21 extended family received the unlawful intimate photographs pictures triggered a series of life  
22 altering events, initiating a contentious divorce with Mr. McMillin, then the photos Mr. Kimble  
23 surreptitiously saved and sent to Mr. McMillin were then sent to Ms. McMillin's family, which  
24 reasonably created foreseeable emotional distress; (c) the amount in controversy is more than  
25 \$25,000.00; and (d) the Defendant resides in California.

26 **B. Venue is Proper in the County of Los Angeles**

27 10. Venue is proper in the County of Los Angeles because Defendants' residences are  
28 within the county of Los Angeles pursuant to Cal. Civ. Proc. Code § 395.

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IV. GENERAL ALLEGATIONS

SEXUALLY INTIMATE PHOTOS RELEASED TO THIRD PARTIES

11. Plaintiff alleges Defendants engaged in sending her private sexually suggested photographs to third parties without her permission in order to portray themselves as the victims of Plaintiff not separating and divorcing her husband. Meanwhile, Defendant kept Plaintiff's photographs sent to her through snapchat which she would assume would remain private, because photos sent through that phone applications are generally deleted immediately upon opening. However, it seems like Defendant somehow was able to retain and keep some of the intimate private photos Plaintiff would send to him.

12. On October 13, 2019, Plaintiff became aware that Defendants, JOHN and MICHELLE KIMBLE had sent Plaintiff's private intimate photos to Defendant, ANTHONY MCMILLIN, in an attempt to "get back" at Plaintiff.

13. As a result, Defendant, ANTHONY MCMILLIN, decided to also send the photos to Plaintiff's sister, stating that it was the reason why he was going to leave Plaintiff.

14. The photos that ANTHONY MCMILLIN had sent to Plaintiff's sister, were photos that were privately sent to Defendant, JOHN KIMBLE.

15. In short, all Defendants, ANTHONY MCMILLIN, JOHN KIMBLE, and MICHELLE KIMBLE, all partook in the disclosure of Plaintiff's private photos, with the intent to harm her and without her permission.

16. Since the photos disclosed, were primarily shared via snap chat, a phone application that auto deletes photos upon opening them by the recipient, shows that she had a reasonable expectation of privacy, and was not aware that Defendant kept these photos until she became aware of this violation of privacy.

A. Photographs at Issue are "Private", Recipients and Counts

17. Section 1708.85 of the California Civil Code states that:

A private cause of action lies against a person who intentionally distributes by any means a photograph, film, videotape, recording, or any other reproduction of another, without the other's consent, if (1) the person knew that the other person had a reasonable expectation that the material would remain private, (2) the distributed material exposes an intimate body part of the other

1 person, or shows the other person engaging in an act of  
2 intercourse, oral copulation, sodomy, or other act of s sexual  
3 penetration, and (3) the other person suffers general or special  
4 damages . . . .

4 18. The transmitted photographs are “unsolicited” because Plaintiff neither gave  
5 “direct consent” to or had a “preexisting extramarital relationship” with Defendant.

6 **B. Defendants’ Actions Were Willful and Preclude any Reduction in General or**  
7 **Special Damages**

8 19. California Civil Code Section 1708.86(e)(1) states:

9 A prevailing plaintiff who suffers harm as a result of the violation  
10 of subdivision (b) may recover any of the following:  
11 (A) An amount equal to the monetary gain made by the defendant  
12 from the creation, development, or disclosure of the sexually  
13 explicit material.

12 **V. CAUSES OF ACTION**

13 **FIRST CAUSE OF ACTION**

14 *Intentional Infliction of Emotional Distress*

15 *(Against all Defendants)*

16 20. Plaintiff refers to and incorporates by reference paragraphs 1 through 19 above,  
17 inclusive, as though set forth in full herein, and alleges this First Cause of Action for Intentional  
18 Infliction of Emotional Distress, against all Defendants as follows:

19 21. Defendants received the sexually suggestive **photographs at issue within one year**  
20 prior to filing this Complaint.

21 22. Under California law, intentional infliction of emotional distress is a cause of action  
22 that allows a victim to recover compensatory damages and punitive damages. The claim arises when  
23 the defendant’s outrageous conduct causes the victim to suffer emotional distress and it was done  
24 intentionally, or with a reckless disregard for its effect on the victim which here in this Complaint is  
25 the Plaintiff.

26 23. Plaintiff is informed and believes and thereon alleges that in undertaking the actions  
27 set forth herein above, Defendants intended to cause, or acted in reckless disregard to the probability  
28 of causing the Plaintiff severe emotional distress.

1 24. As approximate result of the conduct, Plaintiff did suffer severe emotional distress all  
2 to her general damages in an amount in the excess of the minimum jurisdiction of the court and  
3 according to proof.

4 25. As a further proximate result of Defendants' reproduction of Plaintiff's intimate  
5 photos has harmed Plaintiff in that she has suffered shame, mortification, humiliation, anxiety,  
6 emotional distress and mental anguish, due to the reproduction of her intimate photos to her  
7 family. Thus, Defendants are both personally liable to Plaintiff for their violation of her privacy  
8 and thus intentionally inflicting emotional distress upon Plaintiff.

9 26. The wrongful conduct of Defendants was perpetrated upon Plaintiff intentionally,  
10 willfully, fraudulently, in conscious disregard for her rights and safety and with a callous  
11 indifference to the injurious consequences which were substantially certain to occur and was  
12 shameful, despicable and deplorable.

### 13 SECOND CAUSE OF ACTION

#### 14 *Negligent Infliction of Emotional Distress*

15 *(Against all Defendants)*

16 27. Plaintiff refers to and incorporates by reference paragraphs 1 through 26 above,  
17 inclusive, as though set forth in full herein, and alleges this Second Cause of Action for  
18 Negligent Infliction of Emotional Distress, as against all Defendants as follows:

19 28. The Defendants' conduct pled above, was negligent towards Plaintiff.

20 29. Plaintiff is informed and believes and thereon alleges that in undertaking the  
21 actions set forth herein above, Defendants either knew or should have known that distributing  
22 Plaintiff's intimate photos, caused and continues to cause Plaintiff severe emotional distress.

23 30. As a proximate result of Defendants' conduct, Plaintiff did suffer emotional  
24 distress all to her general damages in an amount in excess of the minimum jurisdiction of the  
25 court and according to proof.

26 31. Defendants' negligence was a substantial factor in causing Plaintiff's serious  
27 emotional distress.

1 32. As a proximate result of Defendants’ wrongful conduct, Plaintiff has been harmed  
2 in that she has suffered shame, mortification, humiliation, anxiety, emotional distress, and mental  
3 anguish, and has been injured in the mind.

4 33. The wrongful conduct of Defendants was perpetrated upon Plaintiff intentionally,  
5 willfully, in conscious disregard of her rights and safety and with a callous indifference to the  
6 injurious consequences which were substantially certain to occur and was shameful, despicable,  
7 and deplorable.

8 **THIRD CAUSE OF ACTION**

9 *Violation of Obligation Imposed by Law Civil Code § 1708.85*

10 *(Against all Defendants)*

11 34. Plaintiff refers to and incorporates by reference paragraphs 1 through 33 above,  
12 inclusive, as though set forth in full herein, and alleges this Third Cause of Action for Violation  
13 of Obligation Imposed by Law Pursuant to Civil Code section 1708.85. , as against all  
14 Defendants as follows:

15 35. Plaintiff claims that Defendants violated her right to privacy by distributing her  
16 intimate photos to her then husband.

17 36. Defendants in this case intentionally violated her right to privacy by distributing  
18 Plaintiff’s intimate photos to Plaintiff’s then husband. This ultimately resulted in the photos  
19 being further shared to Plaintiff’s family.

20 37. Defendants knew that Plaintiff had a reasonable expectation that the photographs  
21 would remain private.

22 38. An “intimate body part” means any portion of the genitals, and in the case of a  
23 female, also includes any portion of the breast below the top of the areola, that is uncovered or  
24 visible through less than fully opaque clothing. The photos shared in this case do expose intimate  
25 body parts of Plaintiff.

26 39. As a proximate result of Defendants’ wrongful conduct, Plaintiff has been harmed  
27 in that she has suffered shame, mortification, humiliation, anxiety, emotional distress, and mental  
28 anguish, and has been injured in the mind.

1 40. The wrongful conduct of Defendants was perpetrated upon Plaintiff intentionally,  
2 willfully, in conscious disregard of her rights and safety and with a callous indifference to the  
3 injurious consequences which were substantially certain to occur and was a substantial factor in  
4 causing Plaintiff's harm.

5 **VI. PRAYER FOR RELIEF**

6 Plaintiff hereby prays for judgment against Defendants as follows:

- 7 1. An order from this Court declaring that Defendants violated California Civil Code  
8 sections 1708.85 by violating Plaintiff's privacy in transmitting and sending her intimate  
9 photographs to third parties.  
10 2. If it is found that the unlawful act was committed with malice, the award of statutory  
11 damages may be increased to a maximum of \$150,000 each or \$30,000 each.  
12 3. Punitive Damages  
13 4. For attorney's fees, the costs of suit herein incurred; and,  
14 5. For such other and further relief as this Court may deem proper.

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff hereby demands a trial by jury in this matter.

17  
18 Dated: October 12, 2020

**HEIT LAW GROUP, P.C.**

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21 By: *Brian M. Heit, Esq.*

22 Brian M. Heit, Esq.  
23 *Attorney for Plaintiff Eva McMillin*  
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IP: 50.81.239.7



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