

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

2018 JUN 13 AM 11:12

US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

KATHRYN NOVAK,

Plaintiff,

vs.

CASE NO. 6:18-CV-922-ORL-37-TBS

BRANDON SIMPSON, DELTA SIGMA PHI,
JACOB PELKEY, ANDRE PERALES,
JONATHAN LANDRUM, and MATT
FARLEY,

Defendants.

COMPLAINT

Plaintiff KATHRYN NOVAK hereby sues Defendants, BRANDON SIMPSON, DELTA SIGMA PHI, JACOB PELKEY, ANDRE PERALES, JONATHAN LANDRUM, and MATT FARLEY (collectively, "Defendants") and alleges:

PRELIMINARY STATEMENT

1. Defendant BRANDON SIMPSON (hereinafter, "SIMPSON") published intimate video and photos of Plaintiff engaged in private sexual activity with SIMPSON to DELTA SIGMA PHI at the UNIVERSITY OF CENTRAL FLORIDA without Plaintiff's consent, in a form of "revenge porn," which is widely recognized as cyber-harassment, that causes its victims significant psychological and other harm. See Florida Statutes Title XLVI. Crimes § 784.049. On information and belief, the images have been republished multiple times to untold parties.

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THE PARTIES

2. Plaintiff KATHRYN NOVAK is a young woman who is a citizen of Arizona, and who resides in Prescott, Arizona, where she is a full time student.

3. Defendant BRANDON SIMPSON is an individual. Upon information and belief, he is a citizen of Florida and resides in Orlando, Florida. Defendant SIMPSON was, during the relevant time, enrolled as a student at UNIVERSITY OF CENTRAL FLORIDA and a member of the Defendant DELTA SIGMA PHI fraternity.

4. On information and belief, Defendant's apartment is operated and/or facilitated by the University of Central Florida, and is located in walking distance of the Orlando Campus of University of Central Florida at 2913 Einstein way, Orlando FL 32826.

5. The UNIVERSITY OF CENTRAL FLORIDA is an American public research university in Orlando, Florida. It is the largest university in the United States by undergraduate enrollment, and the second largest by total enrollment.

6. Defendant DELTA SIGMA PHI Delta Sigma Phi is a national social fraternity organization. Its headquarters are in Indianapolis, Indiana.

7. Defendant JACOB PELKEY is an individual. Upon information and belief, he is a citizen of Florida and resides in Orlando, Florida. On information and belief, Defendant SIMPSON was, during the relevant time, enrolled as a student at UNIVERSITY OF CENTRAL FLORIDA and a member of the Defendant DELTA SIGMA PHI fraternity.

8. Defendant ANDRE PERALES is an individual. Upon information and belief, he is a citizen of Florida and resides in Orlando, Florida. On information and belief, Defendant SIMPSON was, during the relevant time, enrolled as a student at UNIVERSITY OF CENTRAL FLORIDA and a member of the Defendant DELTA SIGMA PHI fraternity.

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9. Defendant JONATHAN LANDRUM is an individual. Upon information and belief, he is a citizen of Florida and resides in Orlando, Florida. On information and belief, Defendant SIMPSON was, during the relevant time, enrolled as a student at UNIVERSITY OF CENTRAL FLORIDA and a member of the Defendant DELTA SIGMA PHI fraternity.

10. Defendant MATT FARLEY is an individual. Upon information and belief, he is a citizen of Florida and resides in Orlando, Florida. On information and belief, Defendant SIMPSON was, during the relevant time, enrolled as a student at UNIVERSITY OF CENTRAL FLORIDA and a member of the Defendant DELTA SIGMA PHI fraternity.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1332 (diversity jurisdiction) because Plaintiff and Defendant are citizens of different states and because the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

12. This Court has personal jurisdiction over all Defendants because, among other things, they all reside in Florida, they purposefully directed their unlawful activities towards Florida, they knew or should have reasonably known that these activities would cause harm in Florida, and they did in fact harm Plaintiff in Florida through these activities.

13. The Middle District of Florida is the appropriate venue for resolving this dispute under 28 U.S.C. § 1391(b) because, among other things, and as set forth more particularly below, Defendants performed tortious acts in this District whose “locus of injury” was in the Middle District of Florida. Venue is also appropriate under 28 U.S.C. § 1400(a) because, among other things, and as set forth more particularly below, Defendants can all be “found” in the Middle District of Florida.

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FACTUAL ALLEGATIONS

14. Between October of 2017 and February 2018, PLAINTIFF and Defendant BRANDON SIMPSON were in a long-distance relationship. They would occasionally see each other, approximately a couple times a month, and would otherwise communicate via electronic messaging daily.

15. During this period, when PLAINTIFF was travelling to visit Defendant BRANDON SIMPSON, PLAINTIFF would routinely engage in consensual, private sexual relations with Defendant BRANDON SIMPSON, most often in Defendant's apartment.

16. Defendant SIMPSON captured video recordings of at least one of these private sexual activities using digital recording devices.

17. On information and belief, Plaintiff's face and nude body were readily identifiable in the aforementioned video recordings.

18. In or around October 2017, Defendant SIMPSON proceeded to distribute one such video recording, recorded in October of 2017, to various members of the Defendant DELTA SIGMA PHI fraternity. The video, recorded and distributed in October of 2017, is hereinafter referred to as the "OCTOBER VIDEO."

19. After recording the OCTOBER VIDEO, Defendant SIMPSON forwarded the recording directly to at least five members ("brothers") of the Defendant DELTA SIGMA PHI fraternity. Additionally, Defendant SIMPSON and other members of the Defendant DELTA SIGMA PHI fraternity subsequently widely disseminated the OCTOBER VIDEO recording to other members of the Defendant DELTA SIGMA PHI fraternity to view during their "chapter" or fraternity house meeting.

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20. On information and belief, more than two hundred members of the Defendant DELTA SIGMA PHI fraternity and UNIVERSITY OF CENTRAL FLORIDA students ultimately received the OCTOBER VIDEO depicting PLAINTIFF engaged in private sexual activities with Defendant SIMPSON.

21. On information and belief, no member or representative of the Defendant DELTA SIGMA PHI fraternity ever requested Defendant SIMPSON to delete the OCTOBER VIDEO, dissuaded him from publishing it, or to take it down after it was posted.

22. Instead, Defendants DELTA SIGMA PHI and UNIVERSITY OF CENTRAL FLORIDA permitted a “frat boy” culture to predominate with respect to DELTA SIGMA PHI and failed to reign in the excesses.

23. Additionally, during their relationship, in the period between October 2017 and February 2018, when PLAINTIFF was at home in Arizona, she would routinely engage in intimate conversations with Defendant BRANDON SIMPSON, including the sharing of intimate and erotic pictures with him. In these pictures and video recordings, PLAINTIFF’s face and nude body were also readily identifiable.

24. Defendant SIMPSON would routinely encourage this sharing of intimate and erotic pictures with PLAINTIFF. PLAINTIFF acquiesced and engaged in this exchange of intimate conversations with the explicit understanding that any such pictures and videos would remain private and confidential as between PLAINTIFF and Defendant SIMPSON.

25. However, on information and belief, Defendant BRANDON SIMPSON disseminated, without PLAINTIFF’s consent, a number of the aforementioned pictures and/or videos obtained in such a manner from PLAINTIFF. Defendant SIMPSON disseminated such

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material to the same individuals mentioned herein above (members of the chapter of the Defendant DELTA SIGMA PHI fraternity at UNIVERSITY OF CENTRAL FLORIDA).

26. Additionally, on information and belief, the chapter of the Defendant DELTA SIGMA PHI fraternity at UNIVERSITY OF CENTRAL FLORIDA maintained a secret Facebook page called the “Dog Pound” where fraternity brothers routinely posted electronic video and images of their sexual “conquests.” This facilitated the unauthorized dissemination of PLAINTIFF’s image.

27. On information and belief, when the postings pertained to videos of sexual encounters between Defendant DELTA SIGMA PHI fraternity brothers and unsuspecting women, these were obtained and/or disseminated without the consent of the female participants depicted.

28. On information and belief, when the postings pertained to videos or images obtained by Defendant DELTA SIGMA PHI fraternity brothers by means of intimate texting these were disseminated without the consent of the female participants.

29. On information and belief, members of Defendant DELTA SIGMA PHI fraternity use the “Dog Pound” page to post nude videos and nude pictures of their girlfriends and other unwitting female victims, including images depicting the young women engaged in private sexual activities.

30. In order to conceal the sexual cyber exploitation from the female victims of said activity, the members of Defendant DELTA SIGMA PHI fraternity, have set up the “Dog Pound” Facebook page as a “secret” group page that, unlike a “private” page, cannot be openly searched or searched for, and is hence hidden from anyone except invited fraternity brothers.

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31. On information and belief, Defendants' conduct herein above violated UNIVERSITY OF CENTRAL FLORIDA's published Student Handbook, which in its section 10- Title IX Policy and Procedures, defines Sexual Exploitation as follows:

(j) Sexual Exploitation: Sexual Exploitation is purposely or knowingly doing or attempting to do any of the following:

1. Recording or photographing private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
2. Disseminating or posting images of private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
3. Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., Skype or livestreaming of images) ...

32. PLAINTIFF serendipitously discovered the existence of the offending video and the fact that it had been published in the manner described above in or about March 2018, during Spring Break, when one of Defendant SIMPSON's fraternity brothers (an individual named Steven Brady) sent Defendant SIMPSON a text message that mentioned the video tape. Plaintiff was in Defendant SIMPSON's company when he received the text message from Brady and, when she asked him about it, Defendant SIMPSON admitted to the facts set forth above, and informed PLAINTIFF of the "Dog Pound" Facebook page.

FIRST CAUSE OF ACTION

INVASION OF PRIVACY

33. PLAINTIFF incorporates by reference the allegations in paragraphs 1–32 above.

34. Defendants violated PLAINTIFF's right to privacy by the publishing videos and images of PLAINTIFF, including the OCTOBER VIDEO, on multiple social media platforms on or around October 2017 and on subsequent occasions.

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35. A reasonable person in PLAINTIFF's position would consider the publicity of her nude body and depictions of her engaging in private sexual conduct to be highly offensive.

36. At all times relevant, DEFENDANTS did not have PLAINTIFF's consent to post videos and images depicting her private sexual activity or her nude body, including the OCTOBER VIDEO.

37. DEFENDANTS knew, or acted with reckless disregard of the fact, that a reasonable person in PLAINTIFF's position would consider the publicity of her private nude body and personal sexual activity highly offensive.

38. The videos and images of PLAINTIFF, including the OCTOBER VIDEO, were not of legitimate public concern as such information was entirely devoid of all social value.

39. As a direct and proximate result of DEFENDANTS' wrongful conduct, PLAINTIFF was harmed.

40. DEFENDANTS' conduct in publicizing the videos and images, including the OCTOBER VIDEO, was a substantial factor in causing PLAINTIFF harm, including emotional distress, harm to her reputation, and harm to her property, business, profession, or occupation.

41. By engaging in the conduct as hereinabove alleged, DEFENDANTS acted with malice, fraud, and oppression and/or conscious disregard of PLAINTIFF's rights, and well-being, and intended to subject PLAINTIFF to unjust hardship thereby warranting an assessment of punitive damages in an amount sufficient to punish DEFENDANTS and deter others from engaging in similar conduct.

42. As a direct and proximate result of DEFENDANTS' conduct, as alleged herein, PLAINTIFF has suffered, and will continue to suffer the damages herein mentioned, in an amount according to proof at trial.

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SECOND CAUSE OF ACTION

INTRUSION

43. PLAINTIFF incorporates by reference the allegations in paragraphs 1–42 above.

44. PLAINTIFF has at all times considered and continues to consider the encounter depicted in the OCTOBER VIDEO at issue here to be private in nature, did not intend its occurrence or any aspect of it to be published to the public, and she has always conducted herself with an actual expectation of such privacy.

45. Likewise, PLAINTIFF has at all times considered and continues to consider the intimate images shared with Defendant SIMPSON to be private in nature, did not consent and did not intend for any aspect of it to be published to the public, and she has always conducted herself with an actual expectation of such privacy.

46. Before the misconduct alleged in this complaint occurred, PLAINTIFF understood that Defendant SIMPSON was the only other person who was privy to the activities depicted in the videos and pictures at issue here, including the OCTOBER VIDEO.

47. Defendant SIMPSON either implicitly or explicitly assured PLAINTIFF that he considered the subject matter to be private.

48. PLAINTIFF's expectation of privacy in the videos and images at issue here, including the OCTOBER VIDEO, was objectively reasonable, as the typical person would have also considered the subject matter to be highly personal in nature and hence private.

49. By posting and/or viewing and otherwise sharing the videos and images at issue here, including the OCTOBER VIDEO, DEFENDANTS intruded upon PLAINTIFF's zone of privacy. PLAINTIFF is informed and believes that DEFENDANTS intruded upon her privacy

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intentionally, as demonstrated in part by DEFENDANTS' statements to PLAINTIFF, the number of means and forums DEFENDANTS used to distribute, disseminate and display the subject videos and images, including the OCTOBER VIDEO, and the time period during which the same were posted, forwarded, resent, viewed and re-viewed by Defendants.

50. Defendants' misconduct would be highly offensive to the reasonable person.

51. PLAINTIFF is informed and believes that DEFENDANTS engaged in this misconduct willfully and maliciously.

52. PLAINTIFF was significantly harmed by DEFENDANTS' misconduct.

THIRD CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

53. PLAINTIFF incorporates by reference the allegations in paragraphs 1–52 above.

54. By their conduct, including but not limited to posting and distributing the videos and images at issue here, including the OCTOBER VIDEO, and concealing the matter in a way that kept PLAINTIFF in the dark about the ongoing damage to her reputation, thus preventing her from stemming said damage, DEFENDANTS engaged in outrageous misconduct.

55. DEFENDANTS' misconduct was so extreme as to go beyond all possible bounds of decency, and a reasonable person would view DEFENDANTS' misconduct as intolerable in a civilized society.

56. DEFENDANTS intended to cause PLAINTIFF emotional distress and acted with reckless disregard for the probability that PLAINTIFF would suffer great emotional distress.

57. PLAINTIFF suffered severe emotional distress, and DEFENDANTS' misconduct was, at the very least, a substantial factor in causing this severe emotional distress.

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FOURTH CAUSE OF ACTION

NEGLIGENCE

58. PLAINTIFF incorporates by reference the allegations in paragraphs 1–57 above.

59. DEFENDANTS owed PLAINTIFF a duty of care, including a duty to not cause PLAINTIFF harm.

60. DEFENDANTS breached this duty of care by engaging in the actions described above and as specifically alleged in paragraphs 14-32.

61. As a result of DEFENDANTS’ negligence, PLAINTIFF was injured.

62. DEFENDANTS’ negligence was, at the very least, a substantial factor in causing PLAINTIFF’s injuries.

FIFTH CAUSE OF ACTION

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

63. PLAINTIFF incorporates by reference the allegations in paragraphs 1–62 above.

64. PLAINTIFF alleges that DEFENDANTS owed PLAINTIFF a general duty of care to avoid taking actions that would injure PLAINTIFF.

65. DEFENDANTS breached this duty of care by engaging in the actions described above and as specifically alleged in paragraphs 14-32.

66. As a result of DEFENDANTS’ negligence, PLAINTIFF suffered severe emotional distress.

67. DEFENDANTS’ negligence was, at the very least, a substantial factor in causing PLAINTIFF’s severe emotional distress.

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SIXTH CAUSE OF ACTION

VIOLATION OF FLORIDA STATUTES TITLE XLVI. CRIMES § 784.049

68. PLAINTIFF incorporates by reference the allegations in paragraphs 1–67 above.

69. DEFENDANTS engaged in a pattern of conduct the intent of which was to publish sexually explicit images and videos of PLAINTIFF, including the OCTOBER VIDEO, that contained or conveyed the personal identification information of PLAINTIFF to an Internet website without PLAINTIFF’s consent, for no legitimate purpose, with the intent of causing substantial emotional distress to PLAINTIFF, as alleged in paragraphs 14-32 above.

70. As a result of DEFENDANTS’ violation of Florida Statutes Title XLVI. Crimes §784.049, as set forth above, PLAINTIFF suffered severe emotional distress.

71. DEFENDANTS’ actions were, at the very least, a substantial factor in causing PLAINTIFF’s injuries.

PRAYER FOR RELIEF

PLAINTIFF demands trial by jury on all counts and respectfully requests judgment as follows:

1. A preliminary and permanent injunction prohibiting Defendants from further posting or otherwise using the videos and images of PLAINTIFF, including the OCTOBER VIDEO, under Florida Statutes Title XLVI. Crimes § 784.049(5)(a);

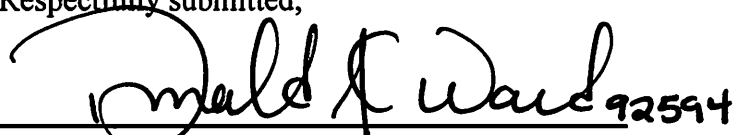
2. Compensatory damages in an amount to be proven at trial, but at least in excess of \$75,000;

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3. Statutory damages under 17 U.S.C. § 504(c) and Florida Statutes Title XLVI. Crimes § 784.049(5)(b);
4. Punitive damages under Florida Statute 768.72;
5. Attorney fees under Florida Statutes Title XLVI. Crimes § 784.049(5)(c);
6. Costs of suit;
7. Interest on the sum of the compensatory, statutory, and punitive damages; and
8. Any other relief the Court deems just and proper.

Dated: June 12, 2018

Respectfully submitted,


SEARCY, DENNEY, SCAROLA, BARNHART
& SHIPLEY, P.A.

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