

**IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE**

A.D.,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Case No. _____
	§	
DIVINE OGBONNAYA and	§	
KIONTE GRAY,	§	
	§	
<i>Defendants.</i>	§	

VERIFIED COMPLAINT

I. INTRODUCTION

1. This action concerns the Defendants’ ongoing publication and dissemination of sexually explicit videos of the Plaintiff without her consent—a vicious crime commonly known as “revenge porn.” In an effort to humiliate the Plaintiff and cause her painful embarrassment, the Defendants recently began publishing videos of the Plaintiff engaged in sex acts and disseminating them to an increasingly large number of people—including the Plaintiff’s fifteen-year-old brother. Revenge porn is a crime in Tennessee. *See* Tenn. Code Ann. § 39-17-318. It has also been held actionable by multiple courts under multiple tort theories. This Verified Complaint seeks redress.

2. The Defendants’ dissemination of sexually explicit videos in which the Plaintiff is readily identifiable subjects the Plaintiff to immediate and irreparable injury and risks creating a situation where she cannot prevent the videos from being published to the internet on a massive scale. Thus, an order restraining the Defendants from disseminating any sexually explicit video of the Plaintiff is necessary before notice can be given and a hearing had on her claims, and a temporary restraining order should issue.

II. PARTIES

3. Plaintiff A.D. is a citizen of Tennessee and a resident of Nashville, Davidson County. Plaintiff A.D. may be contacted through her counsel.

4. Defendant Kionte Gray is a citizen of Tennessee. Defendant Gray may be served at his residence located at 4124 Empire Maker Way, Murfreesboro, Tennessee, 37128, or wherever he may be found.

5. Defendant Divine Ogbonnaya is a citizen of Tennessee. Defendant Ogbonnaya may be served at her residence located at 3018 Elliot Dr., Mt. Juliet, Tennessee, 37122, or wherever she may be found.

III. JURISDICTION, AUTHORITY AND VENUE

6. This is an action of an equitable nature with a demand that exceeds \$50.00. Accordingly, this Court has exclusive jurisdiction over the Plaintiff's claims pursuant to Tenn. Code Ann. § 16-11-103.

7. This Court has all the powers, privileges and jurisdiction properly and rightfully incident to a court of equity, including the authority to issue injunctions and other extraordinary process, pursuant to Tenn. Code Ann. § 16-11-101 and Tenn. Code Ann. § 29-1-106.

8. As the county where the Plaintiff's causes of action arose, venue is proper in this Court pursuant to Tenn. Code Ann. § 20-4-101(a).

IV. FACTUAL ALLEGATIONS

9. Approximately two to three years ago, the Plaintiff was romantically involved with Defendant Kionte Gray.

10. In 2018 or 2019, Defendant Gray recorded several deeply private videos of the Plaintiff engaged in sex acts. Defendant Gray falsely promised to delete the private

videos after the Plaintiff and Defendant Gray broke off their relationship. Instead, however, Defendant Gray retained them without the Plaintiff's knowledge or consent.

11. In a calculated, deliberate, and malicious effort to humiliate the Plaintiff and cause her pain, embarrassment, and mental anguish, Defendant Gray began disseminating and publishing sexually explicit videos of the Plaintiff sometime within the past several days or weeks. Defendant Gray published one or more such videos to a wide audience on social media, and he disseminated many more to Defendant Ogbonnaya.

12. Within the past several days, after receiving the sexually explicit videos of the Plaintiff from Defendant Gray, Defendant Ogbonnaya also began disseminating the videos. In a calculated and malicious effort to humiliate the Plaintiff and cause her pain, embarrassment, and mental anguish, Defendant Ogbonnaya disseminated the videos to at least four individuals, including the Plaintiff's younger fifteen-year-old brother.

13. The Defendants' actions are criminal, and they are tortious.

14. The Plaintiff is identifiable in the sexually explicit videos that the Defendants have disseminated and continue to disseminate. The Plaintiff is completely nude in most of them, and the videos depict her genital area, buttocks, and breasts. The sexually explicit videos of the Plaintiff were also recorded under circumstances where the parties agreed or understood that they would remain private. The Defendants' publication and dissemination of the sexually explicit videos at issue have additionally caused the Plaintiff to suffer—and were calculated to cause her to suffer—severe emotional distress. Accordingly, the Defendants' actions violate Tenn. Code Ann. § 39-17-318, which provides that:

(a) A person commits unlawful exposure who, with the intent to cause emotional distress, distributes an image of the intimate part or parts of another identifiable person if:

(1) The image was photographed or recorded under circumstances where the parties agreed or understood that the image would remain private; and

(2) The person depicted in the image suffers emotional distress.

(b) As used in this section:

(1) “Emotional distress” has the same meaning as defined in § 39-17-315; and

(2) “Intimate part” means any portion of the primary genital area, buttock, or any portion of the female breast below the top of the areola that is either uncovered or visible through less than fully opaque clothing.

(c) Nothing in this section precludes punishment under any other section of law providing for greater punishment.

(d) A violation of subsection (a) is a Class A misdemeanor.

Id.

15. Revenge porn (sometimes called “non-consensual pornography” in legal literature and case law) of the kind that the Defendants are committing has been held actionable by multiple courts under multiple tort theories. *See generally* Emily Poole, *Fighting Back Against Non-Consensual Pornography*, 49 U.S.F. L. REV. 181, 200–02 (2015) (discussing cases applying tort theories to acts of non-consensual pornography), *available* *at*

<https://repository.usfca.edu/cgi/viewcontent.cgi?article=1375&context=usflawreview>;

Caroline Drinnon, *When Fame Takes Away the Right to Privacy in One's Body: Revenge Porn and Tort Remedies for Public Figures*, 24 WM. & MARY J. WOMEN & L. 209 (2017), *available* *at*

<https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1467&context=wmjowl>

(discussing tort theories available to public-figure victims of non-consensual

pornography); 147 Am. Jur. Trials 319, *Litigation of Liability for Internet Posting of “Revenge Porn”* (Aug. 2021 Update) (discussing the availability of claims for Intentional Infliction of Emotional Distress, Intrusion Upon Seclusion, False Light Invasion of Privacy, Defamation, and Public Disclosure of Private Fact). *See also Wood v. Hustler Mag., Inc.*, 736 F.2d 1084, 1089 (5th Cir. 1984) (“Under public disclosure of private facts, Hustler gave publicity to the highly private fact of LaJuan’s nude appearance, the publication of which, absent her consent, would be highly offensive to a reasonable person and was not of legitimate public concern.”); *Doe v. Hofstetter*, No. 11-CV-02209-DME-MJW, 2012 WL 3398316, at *1 (D. Colo. Aug. 14, 2012) (awarding \$155,000.00 in damages in revenge porn lawsuit premised upon claims of intentional infliction of emotional distress and public disclosure of private fact); *Pohle v. Cheatham*, 724 N.E.2d 655 (Ind. Ct. App. 2000) (affirming damages award in revenge porn lawsuit based on theories of intentional invasion of privacy and intentional infliction of severe emotional distress); *Patel v. Hussain*, 485 S.W.3d 153, 184 (Tex. App. 2016) (affirming \$345,000 damages award, as remitted, based on invasion of privacy claims); *Taylor v. Franko*, 2011 WL 2118270 at *8–9 (D. Haw. 2011) (finding all elements of a claim for public disclosure of private fact, IIED, NIED, and defamation to be established), *report and recommendation adopted*, 2011 WL 2115836 (D. Haw. 2011); Brian Rogers, *Jury Awards \$500,000 in ‘Revenge Porn’ Lawsuit*, HOUSTON CHRONICLE (Feb. 21, 2014, 10:33 PM), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Jury-awards-500-000-in-revenge-porn-lawsuit-5257436.php>. *Accord Doe v. Doe*, No. 16 CIV. 0332 (NSR), 2017 WL 3025885, at *6 (S.D.N.Y. July 14, 2017); *Matter of Jones*, No. A19-8027, 2020 WL 908445, at *2 (Bankr. D. Neb. Feb. 25, 2020) (citing *In re Grossman*, 538 B.R. 34 (Bankr. E.D. Cal. 2015)); *In re Boland*, 596 B.R. 532, 550 (B.A.P. 6th Cir. 2019)

(“Boland’s intentional acts of creating and displaying the images of the Appellants in pornographic acts would lead an average person to know that Appellants’ privacy and reputation interests would be invaded.”).

16. Absent: (i) a temporary restraining order, (ii) a temporary injunction, and, ultimately, (iii) a permanent injunction enjoining the Defendants’ criminal and tortious publication and dissemination of private, sexually explicit videos of the Plaintiff engaged in sex acts, the Defendants’ publication and dissemination of sexually explicit videos of the Plaintiff in which she is readily identifiable and without her consent will cause the Plaintiff to suffer immediate and irreparable harm. In particular, absent temporary, preliminary and permanent injunctive relief, the Plaintiff will be unable to prevent the videos from being published across the internet on a massive scale, which would cause her permanent and lifelong humiliation and embarrassment, reputational harm, and invasions of her privacy that can never be adequately remedied by a money judgment.

V. CAUSES OF ACTION

Count #1: Invasion of Privacy

17. The Plaintiff incorporates and realleges the foregoing allegations as if fully set forth herein.

18. Tennessee tort law recognizes four types of invasion of privacy, including unreasonable publicity given to another’s private life and intrusion upon seclusion.

19. By publishing deeply private, sexually explicit videos of the Plaintiff that were retained underhandedly and then posted on social media to a public audience without the Plaintiff’s consent and in a manner calculated to reach the public, Defendant Gray gave publicity to a matter that would be highly offensive to a reasonable person.

20. Private, sexually explicit videos of the Plaintiff—a private figure—that were

recorded with the understanding that they would never be made public are not of any legitimate concern to the public.

21. By publishing and disseminating deeply private, sexually explicit videos of the Plaintiff that were retained underhandedly and then published and disseminated to others without the Plaintiff's consent, both Defendants intentionally intruded upon the Plaintiff's solicitude, seclusion, private affairs, and concerns.

22. The Defendants' intentional intrusion upon the Plaintiff's seclusion would be highly offensive to a reasonable person.

23. The Defendants' invasions of the Plaintiff's privacy caused—and continue to cause—the Plaintiff profound emotional harm, humiliation, and damage her reputation.

Count #2: Intentional Infliction of Emotional Distress

24. The Plaintiff incorporates and realleges the foregoing allegations as if fully set forth herein.

25. The Defendants published and disseminated sexually explicit videos of the Plaintiff intentionally, repeatedly, with premeditation, and with deliberation—all in a manner that was calculated to humiliate her and cause her profound emotional pain.

26. The Defendants' publication and dissemination of sexually explicit videos of the Plaintiff to third parties—including her younger teenage brother—in a manner that was maliciously calculated to humiliate the Plaintiff and cause her maximum emotional injury is so outrageous that it is not tolerated by civilized society. Indeed, civilized society has criminalized the Defendants' unlawful conduct, which is punishable by up to 11 months and 29 days in jail. *See* Tenn. Code Ann. § 39-17-318.

27. At the time the Defendants publicized and disseminated sexually explicit videos of the Plaintiff to third parties, the Defendants were actually aware that the

Plaintiff was still suffering from, coping with, and struggling with the death of a sibling who was brutally murdered in 2018, and that adding to the Plaintiff's pre-existing trauma by disseminating sexually explicit videos of the Plaintiff to the public and her family would cause her severe emotional distress.

28. The Defendants' conduct caused—and it was calculated to cause—serious mental injury to the Plaintiff.

29. The Defendants' conduct caused—and it was calculated to cause—the Plaintiff to suffer serious or severe emotional injuries which would disable a reasonable, normally constituted person from coping adequately with the stress resulting from the Defendants' tortious and criminal acts.

30. The Defendants' intentional infliction of emotional distress caused—and continues to cause—the Plaintiff profound emotional harm, humiliation, and damage to her reputation for which the Defendants are liable.

Count #3: Temporary Restraining Order and Injunctive Relief

31. The Plaintiff incorporates and realleges the foregoing allegations as if fully set forth herein.

32. The specific facts in this Verified Complaint clearly show that immediate and irreparable injury, loss, or damage will result to the Plaintiff before the Defendants can be heard in opposition; that the Plaintiff's rights, as protected by Tenn. Code Ann. § 39-17-318, are being or will be violated by the Defendants; and that the Plaintiff will suffer immediate and irreparable injury, loss or damage before notice can be served and a hearing had thereon.

33. Pursuant to Tenn. R. Civ. P. 65.03, undersigned counsel for the Plaintiff certifies: (a) that notice of this Verified Complaint will be provided to the Defendants

immediately upon the filing of this action by electronically serving, via email through the Court's e-filing system, or texting to each Defendant the Odyssey e-file link to the Plaintiff's stampfiled Verified Complaint; (b) that this Verified Complaint is being filed along with completed summonses and instructions for personal service upon both Defendants by the Sheriff; and (c) that while the need for an immediate temporary restraining order merits issuing a restraining order before service can be effected, the Plaintiff is willing and eager to accommodate a hearing as quickly as the Defendants and the Court desire. Service should not be required before a restraining order issues, however, both because delay will expose the Plaintiff to the possibility of irreparable injury and because the limited restraining order sought by the Plaintiff serves only to restrain the Defendants from engaging in acts that are already criminal in nature. *See* Tenn. Code Ann. § 39-17-318. Consequently, a temporary restraining order should issue that provides as follows: **“Defendants are temporarily restrained and forbidden from publishing or disseminating to any person any sexually explicit video of the Plaintiff pending a temporary injunction hearing.”**

34. The Plaintiff has clearly shown by Verified Complaint that her rights are being or will be violated by the Defendants; that absent a temporary injunction, the Plaintiff will suffer immediate and irreparable injury, loss or damage pending a final judgment in this action; and that the acts of the Defendants will tend to render such final judgment ineffectual.

35. Absent a temporary injunction, the harm to the Plaintiff will be severe. By contrast, because disseminating sexually explicit, intimate videos of the Plaintiff without the Plaintiff's consent is already criminally proscribed, *see* Tenn. Code Ann. § 39-17-318, the injury to the Defendants that would result from granting a temporary injunction is

non-existent.

36. Like many plaintiffs before her who have been victimized by revenge porn and other tortious non-consensual pornography, the probability that the Plaintiff will succeed on the merits of her claims is high. *See supra*, ¶ 15.

37. There is significant public interest value in mandating compliance with Tenn. Code Ann. § 39-17-318, a duly enacted law, and enforcing a valid law necessarily serves the public interest. *Cf. New Motor Vehicle Bd. of California v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (“any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.”).



38. An oath page—executed by the Plaintiff upon personal knowledge, and verified by the Plaintiff under penalty of perjury—verifying the foregoing allegations is attached hereto as **Attachment #1**. Upon review of it, the Plaintiff respectfully requests that the Court maintain her oath page under seal to protect the Plaintiff’s identity, mitigate her damages, and protect her from future anguish, humiliation, and harm.

VI. PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays:

1. That process issue and be served upon the Defendants, and that the Defendants be required to appear and answer this Verified Complaint within the time required by law;
2. That this Court award the Plaintiff all compensatory, consequential and incidental damages to which she is entitled in an amount not less than \$500,000.00;

3. That this Court award punitive damages in an amount not less than \$1,000,000.00;
4. That the Plaintiff be awarded the discretionary costs of trying this action;
5. That pre-judgment and post-judgment interest be awarded to the Plaintiff;
6. That all costs be taxed against the Defendants;
7. That this Court issue a temporary restraining order forbidding the Defendants from disseminating any sexually explicit video of the Plaintiff pending a temporary injunction hearing;
8. That this Court hold a hearing and adjudicate the Plaintiff's claims for temporary and permanent injunctive relief;
9. That this Court award the Plaintiff any other relief that the Court deems just and proper.

Respectfully submitted,

By: /s/ Daniel A. Horwitz
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