

PHILLIP SHERMAN AND
TINA SHERMAN

vs

CASE NO. CV-2008-4379-4

MCDONALD'S CORPORATION;
MATHEWS MANAGEMENT COMPANY, AND
AARON BRUMMLEY

PLAINTIFFS
FILED

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WASHINGTON CO AR
DEFENDANTS
CIRCUIT CLERK
D. STAMPS

COMPLAINT

Comes now the Plaintiffs, Phillip Sherman and Tina Sherman, by and through their attorney Tina M. Damron of the Damron Law Firm, PLLC, and for their Complaint at Law state and allege as follows:

PARTIES

1. Plaintiffs Phillip Sherman and Tina Sherman are residents of the City of Bella Vista, Benton County, Arkansas.
2. Defendant McDonald's is a corporation organized under the laws of the State of Illinois with numerous, purposeful and sufficient contact with the state of Arkansas and Washington County by virtue of its many McDonald's franchise agreements, control of such franchisees such as Mathews Management Company and by availing itself to the protections and benefits of the laws of the state of Arkansas by virtue of the same.
3. Defendant Aaron Brummley is a resident of Washington County Arkansas.
4. Defendant Mathews Management Company (hereinafter "Mathews") is a corporation organized and incorporated under the laws of the State of Arkansas with its principal place of business in Springdale, Arkansas.

JURISDICTION AND VENUE

5. The actions complained of and set forth in this Complaint at Law occurred and took place in Washington County, Arkansas.
6. The Court has jurisdiction over the parties and subject matter herein and venue is proper

STATEMENT OF THE CASE

7. On Saturday July 5, 2008 Plaintiffs, Phillip Sherman and Tina Sherman traveled to Fayetteville to visit friends with Rob and Beth Morgan. On the way home to Bella Vista, Plaintiffs and the Morgans stopped at Defendants' Mathews' and McDonald's restaurant located on 6th Street in Fayetteville, Arkansas. Afterwards Plaintiffs and the Morgans continued home.

8. Thereafter, Phillip Sherman's mother, Sara Sherman, answered a telephone call placed to her husband's cellular phone.

9. Sara Sherman spoke to Defendants McDonald's and Mathews' manager of the restaurant located at 6th Street Fayetteville, Arkansas, Defendant Aaron Brummley, who while acting within the scope of his employment for Defendants, informed her that he, Aaron Brummley was in possession of a cellular phone which Sara Sherman identified as belonging to Plaintiff Phillip Sherman.

10. Defendant Brummley, individually and as an agent and an employee Defendants McDonald's and Mathews acting within the scope of his employment as a manager, stated he would turn Plaintiff Phillip Sherman's cellular phone off, would put it in a safe place in the Defendants McDonald's and Mathews office, and that in order for Phillip Sherman to retrieve the cellular phone the following day he would need to describe it and give his name.

11. Around 10:00 p.m. as Plaintiffs and the Morgans were in Bentonville purchasing gas the Plaintiffs were informed that Defendants were in possession of Plaintiff Phillip Sherman's cellular telephone and agreed to turn it off and keep it safe until the following day.

12. Plaintiffs and the Morgans continued home toward Bella Vista.

13. At approximately 2:00 a.m. Plaintiffs separately left their home to assist in Plaintiff Phillip Sherman's second job, delivering newspapers.

14. On the way, Plaintiff Tina Sherman noticed she had several missed calls, voicemails and text messages. The messages and missed calls were received after the Defendants voluntarily took possession of and assumed the duty to protect and keep safe Plaintiff Phillip Sherman's cellular telephone. Two of the text messages were from Plaintiff Phillip Sherman's

cellular phone. One stated "Hey do you know who I am?" and the second message read "I've seen your pictures Tina, I liked what I saw."

15. Plaintiff Tina Sherman realized that the Defendants had not turned off Plaintiff Sherman's cellular phone and kept the same safe as the Defendants, through their agent and employee Aaron Brummley acting within the scope of his employment as the Defendants' manager, agreed to do when they assumed possession of the cellular telephone, but that the Defendants invaded the contents of the same and accessed private nude photographs of Plaintiff Tina Sherman which she had previously sent in confidence to her husband Plaintiff Phillip Sherman.

16. Plaintiff Tina Sherman asked Defendant Phillip Sherman to come look at the messages. After Plaintiff Phillip Sherman read the first message he texted in reply to his own cellular telephone in Defendants' possession "This is my husband's phone. Please turn it off, thank you for your consideration."

17. When another message came through on Plaintiff Tina Sherman's cellular telephone Plaintiff Phillip Sherman replied and was forwarded to an internet link where Defendants, through their agents and employees acting within the scope of his employment, downloaded and posted nude photographs of Plaintiff Tina Sherman.

18. Plaintiff Tina Sherman began crying hysterically and could not believe this was really happening; she felt physically ill, victimized and helpless.

19. Plaintiff Phillip Sherman took Plaintiff Tina Sherman's cellular telephone and called the man who previously sent text messages to his wife, Plaintiff Tina Sherman. The man observed nude photographs of Plaintiff Tina Sherman and Plaintiff Tina Sherman's cellular telephone number online. During this call Plaintiff Tina Sherman was experiencing an extreme panic attack involving hysterical crying and difficulty breathing.

20. Additional text messages continued to appear on Plaintiff Tina Sherman's cellular telephone. One such message stated "Hey baby what are you wearing?" and another read "C your tits: [site address]".

21. After this, Plaintiff Tina Sherman became nauseated and had even more difficulty breathing.

22. Plaintiff Phillip Sherman was outraged and extremely emotionally disturbed as a result and called his cellular telephone in the Defendants' possession located at Defendants' 6th Street restaurant. When Defendants' employee answered Plaintiff Phillip Sherman's telephone Plaintiff Phillip Sherman demanded he turn the phone off and to stay out of his private property.

23. The Defendants through their agents and employees acting within the scope of their employment made numerous calls to Plaintiff Tina Sherman between 1:44 a.m. and 3:30 a.m. after Defendants' voluntarily assumed the duty to protect and hold secure Plaintiff Phillip Sherman's cellular telephone.

24. The Plaintiffs became scared not only for themselves, but for their ten-year-old son. As a result Plaintiffs Tina Sherman began shaking uncontrollably.

25. Plaintiff Tina Sherman then listened to her voicemails. The first one stated "I'm going to find you and know what's gonna happen when I do." Plaintiff Tina Sherman froze, terrified by the thought of someone coming to her home and possibly hurting her and her family. The next voicemail was of two men who referred to Plaintiff Tina Sherman by her full name and informed her that they had seen Plaintiff Tina Sherman's nude photographs on a website and described in detail how they would be ejaculating to the photographs later.

26. The two males on the voicemail then began informing her how the Defendants' got her pictures from a phone that was left at the Defendants' McDonald's restaurant.

27. Plaintiff Tina Sherman felt disgusted, helpless and defenseless.

28. Based on the disgusting, offensive, and dangerous contacts received by the Plaintiffs, Plaintiff Phillip Sherman determined he could not allow his cellular phone to remain in the possession of the Defendants.

29. Minutes before Plaintiff Phillip Sherman arrived to retrieve his cellular telephone Plaintiff Tina Sherman received an additional offensive voice mail from the Defendants' utilizing Plaintiff Phillip Sherman's cellular phone which was still in the Defendants' possession.

30. When Plaintiff Phillip Sherman arrived at the 6th Street McDonald's location, he attempted to enter the building, but the doors were locked. Instead, Plaintiff Phillip Sherman went to the drive-through speaker and informed the Defendants' thorough their agents and employees who he was, that he left his phone there earlier and was there to pick it up.

31. As he was doing this, Plaintiff Phillip Sherman observed at least three of Defendants' agents and employees running to the back of the store.

32. One of the Defendants' agents and employees came to the window and handed Plaintiff Phillip Sherman his cellular telephone without asking Plaintiff Phillip Sherman to describe it or give his name, as Defendant Aaron Brummley indicated would be required to obtain possession of the cellular telephone.

33. Plaintiff Tina Sherman then went to Plaintiff Phillip Sherman's e-mail account and retrieved the link to the website where her photographs and personal information were posted so she could contact the website administrator and have them remove the pictures and information from the website.

34. The Defendants' thorough their agents and employees acting within the scope of their employment, posted the nude photographs of Plaintiff Tina Sherman and Defendants described how they retrieved the photographs from a phone left at Defendants' McDonald's restaurant while they were working that night.

35. Plaintiff Tina Sherman observed two additional photographs of her as well as her full name and phone number. The members on the site posted how they found Plaintiff Tina Sherman's MySpace page also.

36. Plaintiff Tina Sherman immediately e-mailed the site administrator and demanded the business to remove the pictures and thread immediately, but the thread continued for two more hours.

37. Plaintiff Tina Sherman attempted to close both her and Plaintiff Phillip Sherman's MySpace accounts, but was notified that it would take up to 72 hours to completely delete the

pages. Plaintiff Tina Sherman, became more and more mortified, crying uncontrollably and continued to suffer extreme emotional distress.

38. A member on the cite saw that the Plaintiffs had a son and posted “we need to get these pictures to her son, it will be hard, but we can do it.”

39. Plaintiff Tina Sherman was terrified of these people contacting her family. The website was filled with graphic and disgusting comments and pictures. One display picture for a member was a grown man lowering an infant onto his penis. Tina was appalled that the type of people who would frequent such a site that not only had nude pictures of her, but her phone number, address, knew about her family, and had access to her friends’ and family’s pictures through MySpace. The members posting in the thread stated they were going to call Plaintiff Tina Sherman, and immediately thereafter the Plaintiff’s phone rang.

40. There were also local members posting in the thread. One male stated Plaintiff Tina Sherman lived 40 miles from him. The other members responded by posting suggestions of what he should do when he arrived at Plaintiff Tina Sherman’s home. Some members suggested painting the Plaintiff’s dog and their house and shooting fireworks at their home. Another member responded “it has to be good—it has to make the news.” The member from Fayetteville told everyone to stay there until he got back and he’d tell them all about it. Several people confirmed they would be there, so the Fayetteville member said he was on his way the Plaintiffs’ home.

41. Plaintiff Tina Sherman was alone and terrified as Plaintiff Phillip Sherman’s employment required him to deliver all papers by 6:30 a.m. As a result of these threats Plaintiff Tina Sherman immediately went make sure the security alarm was set, and went to get Plaintiff Phillip Sherman’s shotgun. Plaintiff Tina Sherman continued to suffer severe emotional distress and fear and was again crying uncontrollably. Plaintiff Tina Sherman then began to vomit.

42. Plaintiff Tina Sherman informed Plaintiff Phillip Sherman about the man who stated he was coming to their home. Plaintiff Phillip Sherman returned and immediately trained his wife, Plaintiff Tina Sherman how to use the shotgun, but Plaintiff Phillip Sherman was forced

to leave the home again to finish his route. Over the next hour, while Plaintiff Tina Sherman waited for Plaintiff Phillip Sherman to return home, she sat and cried, listening to the phone ring over and over and waiting for the man who stated he was on his way to her home.

43. When Plaintiff Phillip Sherman returned home, Plaintiff Tina Sherman observed the content of the postings on the thread and he observed all the threats and explicit posts concerning his wife and family. Plaintiff Phillip Sherman suffered extreme emotional distress and concern for the safety of his family.

44. Plaintiff Tina Sherman continued to receive phone calls and text messages until after 6:15 a.m. Plaintiff Tina Sherman finally fell asleep from mental and emotional exhaustion after 7:00 a.m. When Plaintiff Tina Sherman woke up a couple hours later, Plaintiff Phillip Sherman had removed the address from the front of their home.

45. The Defendants individually and through their agents and employees acting within the scope of their employment additionally sent from Plaintiff Phillips Sherman's cellular telephone a nude photograph of his wife, Plaintiff Tina Sherman, to her father-in-law and Plaintiff Phillip Sherman's father. Plaintiff Tina Sherman broke down in tears again.

46. Plaintiff Tina Sherman was emotionally and physically unable to work the following day. Plaintiff Tina Sherman attempted to go to work the next day but ended up suffering from multiple panic attacks and, ultimately, vomiting while she was there. Unfortunately, Plaintiff Tina Sherman had no where to go because she was terrified to go home alone because of the incident and fear of attack, so she called her husband, Plaintiff Phillip Sherman and he was forced to leave work early to care for Plaintiff Tina Sherman. Plaintiff Tina Sherman spent the remainder of the day crying, trying to come to terms with what had happened. Plaintiff Tina Sherman was forced to disclose what occurred to her employer and was unable to work for the remainder of the week caused by severe social anxiety.

47. To date the Plaintiffs have no security and continue to suffer severe emotional distress while remaining in their own residence.

COUNT ONE: OUTRAGE

48. Plaintiffs incorporate by reference paragraphs 1 through 47 of this Complaint as if restated herein.

49. The Defendants individually and through their agents and employees acting within the scope of their employment, utilizing their positions with the Defendants McDonald's and Mathews and not unexpectedly in view of the employees' duties, intended that severe emotional distress result by the acts and conduct identified herein or, pleading the alternative, should have known that their intentional acts of not turning off and safe guarding Plaintiff Phillip Sherman's cellular telephone; searching the contents of such cellular telephone; publishing personal and private information on line; forwarding personal and private photographs to Plaintiff Tina Sherman's father-in-law and Plaintiff Phillip Sherman's father; making graphic, lewd, and threatening phone calls and text messages from Phillip Sherman's cellular telephone while the same was in their care and custody to Plaintiff Tina Sherman; and publishing the Plaintiffs identifying information along with private photographs on a web site, which by the additional contents of the site, was frequented by pedophiles and perverts would result in severe emotional distress, physical injury and other damages to the Plaintiffs.

50. The Defendants' intentional acts individually and through their agents and employees acting within the scope of their employment were done with malice and intent to harm the Plaintiffs or, pleading in the alternative, with reckless disregard for the consequences of their conduct. As such Plaintiffs are entitled to punitive damages in an amount determined by the jury but in no event less than One Million Dollars (1,000,000.00).

51. The Defendants' acts individually and through their agents and employees within the scope of their employment were extreme and outrageous, beyond all possible bounds of decency, and are utterly intolerable in a civilized society where privacy of personal information is valued.

52. As a direct and proximate cause of the aforementioned outrageous conduct, Plaintiffs Phillip Sherman and Tina Sherman have suffered severe mental and emotional distress,

physical injury, and pain and suffering, both past and future; physician, drug, medicine and other health care, medical services and compensatory damages, both past and future; loss of earnings and/or ability to earn, both past and future; embarrassment, damage to reputation, fear, both past and future; and any and all damages and expenses related to relocation and moving the Plaintiffs to a new residence.

53. Plaintiffs are entitled to recover of and from the Defendants, jointly and severally, a sum to be determined by the facts, such sum being in excess of the jurisdictional limits of this court and in excess of the amount required by Federal Court jurisdiction in diversity of citizenship cases in a sum to be determined by the trier of fact.

COUNT TWO: PUBLIC DISCLOSURE OF PRIVATE FACTS

54. Plaintiffs incorporate by reference paragraphs 1 through 53 of this Complaint as if restated herein.

55. Defendants intentional acts individually and through their agents and employees acting within the scope of their employment, utilizing their positions with the Defendants McDonald's and Mathews and not unexpectedly in view of the employees' duties, entering the private and personal cellular telephone of Plaintiff Phillip Sherman, publishing nude photos and personal information of Plaintiff Tina Sherman from Plaintiff Phillip Sherman's cellular telephone on a vulgar and perverted web cite is a highly objectionable type of publicity regarding private information about the Plaintiffs.

56. The Defendants' intentional acts individually and through their agents and employees acting within the scope of their employment were done with malice and intent to harm the Plaintiffs or, pleading in the alternative, with reckless disregard for the consequences of their conduct. As such Plaintiffs are entitled to punitive damages in an amount determined by the jury but in no event less than One Million Dollars (1,000,000.00).

57. As a direct and proximate cause of the aforementioned outrageous conduct, Plaintiffs Phillip Sherman and Tina Sherman have suffered severe mental and emotional distress,

physical injury, and pain and suffering, both past and future; physician, drug, medicine and other health care, medical services and compensatory damages, both past and future; loss of earnings and/or ability to earn, both past and future; embarrassment, damage to reputation, fear, both past and future; and any and all damages and expenses related to relocation and moving the Plaintiffs to a new residence.

58. Plaintiffs are entitled to recover of and from the Defendants, jointly and severally, a sum to be determined by the facts, such sum being in excess of the jurisdictional limits of this court and in excess of the amount required by Federal Court jurisdiction in diversity of citizenship cases in a sum to be determined by the trier of fact.

COUNT THREE: FALSE LIGHT IN THE PUBLIC EYE

59. Plaintiffs incorporate by reference paragraphs 1 through 58 of this Complaint as if restated herein.

60. Defendants intentional acts individually and through their agents and employees acting within the scope of their employment, utilizing their positions with the Defendants McDonald's and Mathews and not unexpectedly in view of the employees' duties, in invading the private and personal cellular telephone of Plaintiff Phillip Sherman, publishing nude photos and personal information of Plaintiff Tina Sherman found on Plaintiff Phillip Sherman's phone portrayed Plaintiff Tina Sherman in a false light to anyone who saw or heard of the publication and did so in a highly offensive way.

61. The Defendants' acts individually and through their agents and employees acting within the scope of their employment were done with malice and intent to harm the Plaintiffs or, pleading in the alternative, with reckless disregard for the consequences of their conduct. As such Plaintiffs are entitled to punitive damages in an amount determined by the jury but in no event less than One Million Dollars (1,000,000.00).

62. As a direct and proximate cause of the aforementioned outrageous conduct, Plaintiffs Phillip Sherman and Tina Sherman have suffered severe mental and emotional distress,

physical injury, and both pain and suffering, past and future; physician, drug, medicine and other health care, medical services and compensatory damages, both past and future; loss of earnings and/or ability to earn, both past and future; embarrassment, damage to reputation, fear, both past and future; and any and all damages and expenses related to relocation and moving the Plaintiffs to a new residence.

63. Plaintiffs are entitled to recover of and from the Defendants, jointly and severally, a sum to be determined by the facts, such sum being in excess of the jurisdictional limits of this court and in excess of the amount required by Federal Court jurisdiction in diversity of citizenship cases in a sum to be determined by the trier of fact.

COUNT FIVE: NEGLIGENCE

64. Plaintiffs incorporate by reference paragraphs 1 through 63 of this Complaint as if the same were stated herein word for word.

65. Defendant individually and through their agents and employees acting within the scope of their employment, utilizing their positions with the Defendants McDonald's and Mathews and not unexpectedly in view of the employees' duties, voluntarily assumed the duty to safe guard and protect Plaintiff Phillip Sherman's cellular telephone and its contents when they took possession of the phone and warranted that the cellular telephone would be turned off and place in a safe location for pick up the following day.

66. Defendant individually and through their agents and employees acting within the scope of their employment, utilizing their positions with the Defendants McDonald's and Mathews and not unexpectedly in view of the employees' duties, breached their duty to protect and secure the cellular telephone belonging to Plaintiff Phillip Sherman by failing to turn off the cellular telephone and safeguard the same by placing it in a secure location, invading the private and personal contents of the cellular telephone; searching through Plaintiff Phillip Sherman's cellular telephone while the same was in their care and custody; publishing the Plaintiffs' identifying information along with private nude photographs of Plaintiff Tina Sherman on a web

cite, which by the additional contents of the cite, was frequently by pedophiles and perverts, contacting Plaintiff Tina Sherman with obscene threatening text messages and voice messages, and forwarding such photographs to Plaintiff Tina Sherman's father in law.

67. As a direct and proximate cause of the aforementioned negligence, Plaintiffs Phillip Sherman and Tina Sherman have been suffered severe mental and emotional distress, physical injury, and pain and suffering, past and future; physician, drug, medicine and other health care and medical services and compensatory damages, both past and future; loss of earnings and/or ability to earn, both past and future; embarrassment, damage to reputation, fear, both past and future; and any and all damages and expenses related to relocation and moving the Plaintiffs to a new residence and Plaintiffs are entitled to recover of and from the Defendants, jointly and severally, a sum to be determined by the facts, such sum being in excess of the jurisdictional limits of this court and in excess of the amount required by Federal Court jurisdiction in diversity of citizenship cases in a sum to be determined by the trier of fact.

COUNT SIX: NEGLIGENT SUPERVISION

69. Plaintiffs incorporate by reference paragraphs 1 through 68 of this Complaint as if the same were stated herein word for word.

70. Defendants individually and through their agents and employees acting within the scope of their employment, had a duty to use reasonable care in the supervision of their employees and duty to control employees for the protection of third parties.

71. Defendants individually and through their agents and employees acting within the scope of their employment, utilizing their positions with the Defendants McDonald's and Mathews and not unexpectedly in view of the employees' duties, breached such duties by failing to adequately supervise their employees; by their failure to stop the invasion of the private and personal contents of the Plaintiff Phillip Sherman's cellular telephone, publishing the same as stated herein, and making graphic, lewd, and threatening phone calls and text messages from Phillip Sherman's cellular telephone to Plaintiffs and, upon information and belief, by failing to

provide adequate training and/or to establish and implement written rules, manuals, regulations, and/or workbooks to govern the behavior and conduct of their employees when personal property is left on the premises or, in the alternative, by failing to provide adequate supervision to enforce any and all such rules, regulations, manuals and/or workbooks and/or the Defendantys knew or should have known that the above identified conduct by their employees would subject third parties to an unreasonable risk of harm, physical and emotional damage and distress, and violation of third parties' right to privacy.

72. As a direct and proximate cause of the aforementioned negligence, Plaintiffs Phillip Sherman and Tina Sherman have been suffered severe mental and emotional distress, physical injury, and pain and suffering, past and future; physician, drug, medicine and other health care and medical services and compensatory damages, both past and future; loss of earnings and/or ability to earn, both past and future; embarrassment, damage to reputation, fear, both past and future; and any and all damages and expenses related to relocation and moving the Plaintiffs to a new residence.

73. Plaintiffs are entitled to recover of and from the Defendants, jointly and severally, a sum to be determined by the facts, such sum being in excess of the jurisdictional limits of this court and in excess of the amount required by Federal Court jurisdiction in diversity of citizenship cases in a sum to be determined by the trier of fact.

74. Plaintiffs hereby demand a trial by jury of all issues and claims identified herein and so triable.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, Phillip Sherman and Tina Sherman, prays for entry of a judgment against the Defendants, McDonald's, Mathews and Aaron Brummley, jointly and severally, for all damages alleged and identified herein such sum being in excess of the jurisdictional limits of this court and in excess of the amount required for Federal Court jurisdiction in diversity of citizenship cases in a sum to be determined by the trier of fact with pre-judgment interest and costs and all other relief to which this Court may deem Plaintiffs entitled.

Phillip Sherman and Tina Sherman,
Plaintiffs

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