

State Court of Fulton County

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LeNora Ponzio, Clerk

Civil Division

IN THE STATE COURT OF FULTON COUNTY

STATE OF GEORGIA

JANE DOE )

Plaintiff, )

v. ) Civil Action File NO.

CELEBRITY BODY SCULPTING )

AND COSMETIC SURGERY CENTER, LLC )

d/b/a CELEBRITY BODY SCULPTING, ) JURY TRIAL DEMAND

JOHN DOE 1 AND JOHN DOE 2 )

Defendants. )

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

COMES NOW, JANE DOE, Plaintiff, in the above styled action by and through her attorney, Ricardo S. Mushy, and The Mosby Law Firm PC. and files this her Complaint averring the following in support thereof:

PARTIES, JURISDICTION, and VENUE

1.

Plaintiff, Jane Doe ("hereinafter referred as Plaintiff), is an adult residing in the State of Georgia and submits herself to the jurisdiction of this Court.

2.

Defendant Celebrity Body Sculpting and Cosmetic Surgery Center, LLC d/b/a Celebrity Body Sculpting ("Celebrity Body Sculpting") (hereinafter referred as "Celebrity") is a limited liability company duly organized and existing under the laws of the State of Georgia and can be served with summons and process upon its registered agent John Homes, 3695 Cascade Road, Building F, Suite 2] 1, Atlanta, Fulton County, Georgia 30331 or anywhere they can be found in the State of Georgia as allowed by law.

3.

Upon information and belief, Defendant John Doe 1, (hereinafter referred as "Doe 1") may be served anywhere they can be found in the State of Georgia as allowed by law.

4.

Upon information and belief, Defendant John Doe 2 (hereinafter referred as "Doe 2"), may be served anywhere they can be found in the State of Georgia as allowed by law.

5.

As a vast majority of the events in controversy occurred within the boundaries of this county, venue is proper.

FACTS

6.

On July 1, 2016, Plaintiff was examined by the agents and or employees of Defendant

Celebrity at their medical office located at 4550 Jonesboro Road, Union City, Georgia 30291.  
7.

During the initial examination of July 1, 2016, the Plaintiff signed the Defendants' Notice of Privacy Practices Acknowledgement pursuant to the Health Insurance Portability & Accountability Act of 1996 (HIPAA).

8.  
Pursuant to the signing of this document and the protections under HIPAA, Plaintiff had a reasonable expectation of privacy of her personal information.

7.  
The purpose for the medical examination on July 1, 2016 was to determine whether the Plaintiff was a "good" candidate for cosmetic surgery.

8.  
After the July 1, 2016 assessment the Plaintiff was approved and treated at Celebrity's office and underwent a cosmetic procedure performed on July 7, 2016.

9.  
Plaintiff again underwent a second follow-up procedure, which was performed to correct issues on October 21, 2016.

10.  
Following these procedures Plaintiff became aware nude pictures of her entire body, taken by the Defendants, were being prominently exposed and displayed on the Defendant's business website ([www.atlantaganlasticsurgeon.com](http://www.atlantaganlasticsurgeon.com)).

11.  
Plaintiff further became aware Defendants also exposed and displayed these nude pictures of the Plaintiff, for their own advertisement purposes, on various websites on the world wide web.

12.  
Plaintiff never consented to nor authorized the usage of her nude pictures, or her image and likeness to be published for public exposure.

13.  
The photos of the Plaintiff were taken by employees of the Defendant for the sole purpose of medical health care assessment and were to be kept private and confidential in her protected medical records.

14.  
The Plaintiff had no reason to believe that the Defendants would violate a patient's privacy and confidentiality by exposing the Plaintiff's nude pictures on the Defendants' website or to the world at large on various other websites.

15.  
The Defendants knew these photos were private, confidential and protected by State and Federal health laws.

16.  
On or about May 24, 2017, the Plaintiff through her previous attorney, Christopher Gant, sent a certified letter to Defendant Celebrity demanding the nude pictures of the Plaintiff be

immediately removed from its website and from their paid advertisements on Yelp, Facebook and any other sites it had been disseminated.

17.

To date while the Defendants have removed the photos from their website, the photos still exist on Yelp, and Facebook, and many other places on the internet.

18.

The nude photos of the Plaintiff have identifying and recognizable marks (tattoo) which further makes the Defendant's exploitation and disclosure of these photos offensive, oppressive, and objectionable to a reasonable person of ordinary sensibilities under the circumstances given

that the Plaintiff never consented or authorized any disclosure of these photos to the public.

19.

The Defendants breach of the Plaintiff's privacy is abhorrent, intolerable, unlawful and against public policy.

20.

The dissemination of Plaintiff's photos have caused damage to the Plaintiff, which is continuing and ongoing.

COUNT I

INVASION OF PRIVACY — PUBLIC DISCLOSURE OF PRIVATE FACTS

21.

Plaintiff incorporates herein by reference paragraphs 1 through 17 of this complaint as if fully set forth herein.

22.

Defendants unlawfully exposed nude photographs of the Plaintiff knowing that they contained identifying and recognizable marks which are a clear invasion of her privacy and public disclosure of private facts.

23.

Defendants invasion of Plaintiff's privacy have intentionally caused harm to the Plaintiff and which is continuing and ongoing.

24.

Plaintiff had a legal right her privacy and she is protected by federal and state laws.

25.

Defendants had no authority or consent to publish and or exploit these nude photographs and Defendants, which were secured by Defendants subject to the Plaintiff's right to privacy.

26.

The invasion of her privacy is "offensive" to the Plaintiff in that it caused Plaintiff pain, suffering, anguish, embarrassment, and humiliation, which is continuing and ongoing.

27.

The Defendants acts were a direct and proximate cause of Plaintiff injuries and they are liable to the Plaintiff for an amount to be proven at trial for the Invasion of Privacy and Public Disclosure of Private Facts.

## COUNT II

### BREACH OF CONTRACT AND MISREPRESENTATION

28.

Plaintiff incorporates herein by reference paragraphs 1 through 27 of this complaint as if fully set forth herein.

29.

The Defendants represented to Plaintiff that her photos might be used for educational and training purposes, which Plaintiff detrimentally relied on.

30.

Defendants never advised Plaintiff her nude image and likeness would be published to the general public, thus, their publication of her pictures and image and likeness were a misrepresentation and breach of their agreement.

## COUNT III

### BREACH OF FIDUCIARY DUTY

31.

Plaintiff incorporates herein by reference paragraphs 1 through 30 of this complaint as if fully set forth herein.

32.

The Defendants had a fiduciary duty to protect the medical records of all patients, including those belonging to the Plaintiff.

33.

The Defendants breached their fiduciary duty to Plaintiff when they publicly exposed nude photographs taken for the purpose of medical assessment of the Plaintiff for their own personal gains and professional recognition.

34.

The Defendants have been unjustly enriched by the publishing, exposing and exploitation of the Plaintiff's nude pictures for their own personal gains and professional recognition.

35.

The Defendants knew or should have known that by breaching this duty that they would cause sufficient harm to the Plaintiff both privately and professionally.

36.

The Defendant's breach of their fiduciary duty in the exposure of the Plaintiff's private information for their own personal gains and professional recognition are the proximate cause of the Plaintiff's harm and they are liable to the Plaintiff for damages.

## COUNT IV

### VIOLATION OF STATE AND FEDERAL HEALTHCARE LAWS

37.

Plaintiff incorporates herein by reference paragraphs 1 through 36 of this complaint as if fully set forth herein.

38.

The Defendants are in the medical field and know or should have known both Federal and State laws regulate medical records, the requirement of confidentiality and the non-disclosure of the same.

39.

The Defendants violated the State and Federal laws that protected the Plaintiff's confidential medical information.

40.

As a direct and proximate result of the Defendants' actions they have violated the laws protecting the confidentiality of the Plaintiff's medical records and have caused the Plaintiff to suffer injuries of a personal and pecuniary nature, including but not limited to physical pain and suffering, and physical and emotional trauma for which she is entitled to recover.

QM

#### INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

41.

Plaintiff incorporates herein by reference paragraphs 1 through 40 of this complaint as if fully set forth herein.

42.

The Defendant's exposed the Plaintiff's nude pictures, image and likeness for personal and financial gain.

43.

Plaintiff is an evangelist and was heavily involved in the ministry prior to the unauthorized exposure of her nude pictures.

44.

As a result of the publication of her nude image and likeness the Plaintiff has suffered great humiliation and embarrassment and has completely terminated her involvement in ministry activities.

45.

The Defendants acts of wanton disregard for the Plaintiff's privacy and well-being were the direct and proximate cause of the emotional distress endured by the Plaintiff.

46.

As a direct and proximate result of Defendants intentional acts, the Plaintiff has suffered and continues to suffer severe emotional distress for which she is entitled to recover.

#### COUNT VI

#### NEGLIGENCE PER SE

47.

Plaintiff incorporates herein by reference paragraphs 1 through 47 of this complaint as if fully set forth herein.

48.

Defendants' negligence in not keeping the Plaintiff's medical records confidential and safe, violated HIPAA law, OCGA 24-9-41 and 45 CFR Section 164.304 and constitutes negligence per se, or negligence as a matter of law.

49.

As a direct and proximate result of Defendants negligence per se, Plaintiff suffered and will continue to suffer damages.

#### COUNT VII

## VICARIOUS LIABILITY

50.

Plaintiff incorporates herein by reference paragraphs I through 49 of this complaint as if fully set forth herein.

51.

On July 1, July 7, and October 21, 2016 the Defendants and the medical staff at their medical facility took pictures of the Plaintiff for medical assessment purposes.

52.

Defendant Celebrity controlled the means, method and manner of services provided by personnel at Celebrity Body Sculpting.

53.

Defendants' agents, employees and representatives are all associated with and under the control of Defendant Celebrity.

54.

As a direct and proximate cause of the actions of the employees, and agents of Defendant Celebrity, acting as the alter—egos of Defendant Celebrity, Plaintiff has suffered damages, which are continuous and ongoing.

## COUNT VIII

### INJUNCTIVE RELIEF

55.

Plaintiff incorporates herein by reference paragraphs I through 54 of this complaint as if fully set forth herein.

56.

The Defendants have refused to remove the pictures of the Plaintiff from their website and from the advertisements on Yelp and Facebook despite numerous attempts by the Plaintiff and her attorneys, without court intervention.

10

57.

The Defendants are aware how these pictures have impacted and caused irreparable harm to the Plaintiff and will continue to harm in the absence of an injunction.

58.

From the facts presented herein, clearly the Plaintiff has suffered, and continues to suffer irreparable injury, loss and damage, which have resulted and will continue to result before Plaintiff

or her attorney can be heard on the matter.

## COUNT IX

### PUNITIVE DAMAGES

56.

Plaintiff incorporates hereby reference paragraphs 1 through 55 of this Complaint as if fully set forth herein.

57.

The forgoing acts of Defendants amount to willful misconduct, malice, wantonness, oppression, or the total want of care which would raise the presumption of conscious indifference

to the consequences of their actions.

58.

Defendants intentional acts authorize an award of punitive damages.

59.

The foregoing acts of the Defendants have been the actual and proximate cause of Plaintiff's injuries and damages, which are described herein above and include, but are not limited

to, physical, emotional and mental pain and suffering, anguish, embarrassment and humiliation.

11

60.

Plaintiff is entitled to recover reasonable attorney fees punitive damages from the Defendants for all purposes set forth in O.C.G.A. Section 51-12-5-1

, including but not limited to

detering the Defendants from repeating such acts and omissions with other patients, which may

result in similar or worse consequences to other individuals.

COUNT X

RECOVERY ATTORNEY'S FEES

61.

Plaintiff hereby incorporates by reference paragraphs 1 through 60 of this Complaint as if fully set forth herein.

62.

Plaintiff is entitled to reasonable attorney fees and expenses of litigation for having to bring this action.

PRAYER

WHEREFORE, Plaintiff prays for judgment and relief as follows:

a. That process and summons issue requiring Defendants to appear as provided by law and to answer allegations of this Complaint;

b. That Plaintiff has a trial by jury;

c. That Plaintiff recovers a verdict and judgment against Defendants for general and special damages in an amount to be proven at trial;

d. That Plaintiff be granted an injunction to prevent the Defendants from further exploiting the Plaintiff's pictures on their website and advertisements on the worldwide web.

12

e. That Plaintiff recovers a verdict and judgment against the Defendants for punitive damages pursuant to O.C.G.A. 51-12-5.1; and

f. That Plaintiff recovers a verdict and judgement against Defendants for attorney's fees and expenses of litigation; and

g. That all costs be cast against the Defendants; and

h. For such other relief as this Court deems just and proper.

This 22<sup>nd</sup> day of June 2018.

Respectfully submitted,

Georgia Bar No.2 6839

Please Serve:

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13