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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

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13)
14 SPENCER ELDEN,) CASE NO. _____
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Plaintiff,

v.

NIRVANA, L.L.C.,
UNIVERSAL MUSIC GROUP, INC.,
THE DAVID GEFLEN COMPANY,
GEFFEN RECORDS,
WARNER RECORDS, INC.,
MCA MUSIC, INC.,
KIRK WEDDLE,
KURT COBAIN, DECEASED,
COURTNEY LOVE, AS EXECUTOR OF THE
ESTATE OF KURT COBAIN,
HEATHER PARRY, AS MANAGER OF THE
ESTATE OF KURT COBAIN,
GUY OSEARY, AS MANAGER OF THE ESTATE
OF KURT COBAIN,
KRIST NOVOSELIC,
CHAD CHANNING,
DAVID GROHL, and
ROBERT FISHER,

Defendants.

**Verified Complaint
Pursuant to
18 U.S.C. 2255**

1 Spencer Elden, through his attorney Robert Y. Lewis of Marsh Law Firm
2 PLLC, alleges for his complaint as follows:

3 **NATURE OF THE ACTION**

4 1. This is a suit for damages arising out of each of the Defendant's
5 violations of federal criminal child pornography statutes 18 U.S.C.

6 2252A(a)(5)(B), 2252A(a)(1), 2252A(a)(2)(a); 2252A(a)(2)(b);

7 2252A(a)(3)(a)2252A(a)(3)(b), 2252A(a)(6) and 1591.

8 2. 18 U.S.C. 2255 allows victims of child pornography to recover the
9 actual damages they sustain, or liquidated damages in the amount of \$150,000, and
10 the cost of the action—including reasonable attorney's fees and other litigation
11 costs reasonably incurred. The Court may also award punitive damages and grant
12 such other preliminary and equitable relief as the Court determines to be
13 appropriate.

14 3. This suit arises from injuries Spencer Elden ("Spencer") sustained as a
15 result of Kirk Weddle's, Kurt Cobain's, Krist Novoselic's, Chad Channing's, David
16 Grohl's, Robert Fisher's, and Nirvana, L.L.C.'s commercial child sexual
17 exploitation of him from while he was a minor to the present day.

18 4. Defendants knowingly produced, possessed, and advertised
19 commercial child pornography depicting Spencer, and they knowingly received
20 value in exchange for doing so.

1 5. Defendants reproduced child pornography depicting Spencer knowing
2 and intending that it would be distributed internationally and that they would
3 receive value from such widespread worldwide distribution.

4 6. Despite this knowledge, Defendants failed to take reasonable steps to
5 protect Spencer and prevent his widespread sexual exploitation and image
6 trafficking.

7 7. Defendants knowingly benefited and continue to benefit from their
8 participation in Spencer's commercial sexual exploitation.

9 8. As a result of the above, Spencer has suffered and will continue to
10 suffer lifelong damages.

11 9. Defendants intentionally commercially marketed Spencer's child
12 pornography and leveraged the shocking nature of his image to promote
13 themselves and their music at his expense.

14 10. Defendants used child pornography depicting Spencer as an essential
15 element of a record promotion scheme commonly utilized in the music industry to
16 get attention, wherein album covers posed children in a sexually provocative
17 manner to gain notoriety, drive sales, and garner media attention, and critical
18 reviews.

PARTIES

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11. Plaintiff “Spencer Elden” is an adult residing in the State of California in Los Angeles County.

12. At all relevant times, Plaintiff was a minor as indicated in this complaint.

13. At all relevant times, Defendant “Nirvana, L.L.C” was a domestic corporation incorporated in the State of New Mexico.

14. To the extent that Nirvana, L.L.C was a different entity, corporation, or organization during the time when Spencer was commercially sexually exploited, such entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit and is included in the caption and this complaint as “Nirvana, L.L.C.”

15. To the extent that Nirvana, L.L.C is a successor to a different entity, corporation, or organization which existed during the period of time during when Spencer was commercially sexually exploited, including any entity, corporation, or organization that subsequently or eventually merged into Nirvana, L.L.C, such predecessor entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit and is included in the caption and this complaint as “Nirvana, L.L.C.”

1 16. All such entities, corporations, or organizations related to Nirvana,
2 L.L.C. are also collectively identified and referred to herein as “Nirvana, L.L.C.”

3 17. At all relevant times, Defendant “David Geffen Company”
4 (hereinafter “DGC Records”) was a domestic corporation incorporated in the State
5 of California and authorized to do business in the United States.

6 18. At all relevant times, Defendant “Geffen Records” was a domestic
7 corporation incorporated in the State of California and authorized to do business in
8 the United States.

9 19. To the extent that Geffen Records was a different entity, corporation,
10 or organization during the period of time when Spencer was commercially sexually
11 exploited, such entity, corporation, or organization is hereby on notice that it is
12 intended to be a defendant in this lawsuit and is included in the caption and this
13 complaint as “Geffen Records.”

14 20. To the extent that Geffen Records is a successor to a different entity,
15 corporation, or organization which existed during the period of time when Spencer
16 was commercially sexually exploited, including any entity, corporation, or
17 organization that subsequently or eventually merged into Geffen Records, such
18 predecessor entity, corporation, or organization is hereby on notice that it is
19 intended to be a defendant in this lawsuit and is included in the caption and this
20 complaint as “Geffen Records.”

1 21. All such entities, corporations, or organizations related to Geffen
2 Records are also collectively identified and referred to herein as “Geffen Records.”

3 22. Upon information and belief, “DGC Records” launched in 1990 as a
4 subsidiary of Geffen Records.

5 23. To the extent that DGC Records was a different entity, corporation, or
6 organization during the period of time when Spencer was commercially sexually
7 exploited, such entity, corporation, or organization is hereby on notice that it is
8 intended to be a defendant in this lawsuit and is included in the caption and this
9 complaint as “DGC Records.”

10 24. To the extent that DGC Records is a successor to a different entity,
11 corporation, or organization which existed during the period of time when Spencer
12 was commercially sexually exploited, including any entity, corporation, or
13 organization that subsequently or eventually merged into DGC Records, such
14 predecessor entity, corporation, or organization is hereby on notice that it is
15 intended to be a defendant in this lawsuit and is included in the caption and this
16 complaint as “DGC Records.”

17 25. All such entities, corporations, or organizations related to DGC
18 Records are also collectively identified and referred to herein as “DGC Records.”

1 26. At all relevant times, Defendant “Warner Records, Inc.” was a
2 domestic corporation incorporated in the State of Delaware and authorized to do
3 business in the United States.

4 27. To the extent that Warner Records, Inc. was a different entity,
5 corporation, or organization during the period of time when Spencer was
6 commercially sexually exploited, such entity, corporation, or organization is hereby
7 on notice that it is intended to be a defendant in this lawsuit and is included in the
8 caption and this complaint as “Warner Records, Inc.”

9 28. To the extent that Warner Records, Inc. is a successor to a different
10 entity, corporation, or organization which existed during the period of time when
11 Spencer was commercially sexually exploited Plaintiff, including any entity,
12 corporation, or organization that subsequently or eventually merged into Warner
13 Records, Inc. such predecessor entity, corporation, or organization is hereby on
14 notice that it is intended to be a defendant in this lawsuit and is included in the
15 caption and this complaint as “Warner Records, Inc.”

16 29. All such entities, corporations, or organizations related to Warner
17 Records, Inc. are also collectively identified and referred to herein as “Warner
18 Records, Inc.”

19 30. Upon information and belief, “Warner Records, Inc.” served as the
20 distributor for “DCG Records” and “Geffen Records” until 1991 when MCA

1 Music, Inc. and its parent company Polygram acquired the David Geffen Company
2 (DCG Records).

3 31. At all relevant times, Defendant “MCA Music, Inc.” was a domestic
4 corporation incorporated in the State of Delaware and authorized to do business in
5 the United States.

6 32. To the extent that MCA Music, Inc. was a different entity, corporation,
7 or organization during the period of time when Spencer was commercially sexually
8 exploited, such entity, corporation, or organization is hereby on notice that it is
9 intended to be a defendant in this lawsuit and is included in the caption and this
10 complaint as “MCA Music, Inc.”

11 33. To the extent that MCA Music, Inc. is a successor to a different entity,
12 corporation, or organization which existed during the period of time when Spencer
13 was commercially sexually exploited, including any entity, corporation, or
14 organization that subsequently or eventually merged into MCA Music, Inc. Such
15 predecessor entity, corporation, or organization is hereby on notice that it is
16 intended to be a defendant in this lawsuit and is included in the caption and this
17 complaint as “MCA Music, Inc.”

18 34. All such entities, corporations, or organizations related to MCA
19 Music, Inc. are also collectively identified and referred to herein as “MCA Music,
20 Inc.”

1 35. Upon information and belief, “DCG Records” became dormant in
2 1999 and re-established itself as “Interscope Geffen A&M Records” (also known
3 as “A&M Records Group”) in 2007 under the ownership of “Universal Music
4 Group, Inc.” (hereinafter “UMG, Inc.”).

5 36. Defendant UMG, Inc. is a domestic corporation incorporated in the
6 State of Delaware and authorized to do business in the United States.

7 37. To the extent that UMG, Inc. was a different entity, corporation, or
8 organization during the period of time when Spencer was commercially sexually
9 exploited, such entity, corporation, or organization is hereby on notice that it is
10 intended to be a defendant in this lawsuit and is included in the caption and this
11 complaint as “UMG, Inc.”

12 38. To the extent that UMG, Inc. is a successor to a different entity,
13 corporation, or organization which existed during the period of time when Spencer
14 was commercially sexually exploited, including any entity, corporation, or
15 organization that subsequently or eventually merged into UMG, Inc., such
16 predecessor entity, corporation, or organization is hereby on notice that it is
17 intended to be a defendant in this lawsuit and is named in the caption and this
18 complaint as “UMG, Inc.”

19 39. All such entities, corporations, or organizations related to UMG, Inc.
20 are also collectively identified and referred to herein as “UMG, Inc.”

1 40. Defendant Kirk Weddle is an individual residing in the State of Texas.

2 41. When Weddle commercially sexually exploited Spencer, both Weddle
3 and Spencer were residents of the State of California and Spencer was a minor.

4 42. Defendant Courtney Love is an individual residing in the State of
5 California.

6 43. Love was the Executor of the “Estate of Kurt Cobain” which is an
7 estate in the State of Washington.

8 44. Defendant Heather Parry is an individual residing in the State of
9 California.

10 45. Parry is a manager of “Estate of Kurt Cobain.”

11 46. Defendant Guy Oseary is an individual residing in the State of
12 California.

13 47. Oseary is a manager of “Estate of Kurt Cobain.”

14 48. When Defendants commercially sexually exploited Spencer, Cobain
15 was a resident of the State of Washington.

16 49. At all relevant times, Cobain was the lead singer of Defendant
17 Nirvana, L.L.C.

18 50. Defendant Krist Novoselic is an individual residing in the State of
19 Washington.

20 51. At all relevant times, Novoselic was the bassist of Nirvana, L.L.C.

1 52. Defendant Chad Channing is an individual residing in the State of
2 Washington.

3 53. At all relevant times, Channing was a drummer of Nirvana, L.L.C.

4 54. Defendant David Grohl is an individual residing in the State of
5 Virginia.

6 55. At all relevant times, Grohl was a drummer of Nirvana, L.L.C.

7 56. Defendant Robert Fisher is an individual residing in the State of
8 California.

9 57. At all relevant times, Fisher was the art director for Defendant
10 Nirvana, L.L.C.

11 **JURISDICTION AND VENUE**

12 58. Federal subject matter jurisdiction is proper pursuant to 28 U.S.C.
13 1331 because this is a civil action arising under 18 U.S.C. 2255.

14 59. Venue is proper pursuant to 28 U.S.C.1391(b)(1) and (2) because
15 (i) this is a civil action brought in the judicial district where at least one of the
16 above-named Defendants resides and (ii) a substantial part of the events or
17 omissions giving rise to the Plaintiff's claims occurred in this judicial district.

FACTUAL BACKGROUND

Defendants each Possessed Child Pornography Depicting Spencer in Violation of 18 U.S.C. 2252A(a)(5)(B), 2252A(a)(1), 2252A(a)(2)(a); 2252A(a)(2)(b); 2252A(a)(3)(a)2252A(a)(3)(b), 2252A(a)(6) and 1591

60. In 1987, near Seattle, Washington, Defendants Cobain and Novoselic created an alternative punk-rock band, “Nirvana,” which at all relevant times operated as Nirvana, L.L.C.

61. Soon after, Channing joined Nirvana as a band member and drummer.

62. Nirvana—a budding grunge band—released their first punk-rock album in 1989.

63. By 1990, Grohl joined Nirvana as a band member and drummer.

64. Nirvana, L.L.C began working with the music label DGC Records that same year.

65. At that time, Nirvana was practically unknown to the general public.

66. Sometime in 1990, DCG Records hired Fisher to design cover artwork for Nirvana, L.L.C. with the primary purpose of facilitating the creation, promotion, advertisement, trade, sale, distribution, and commercial success of their music records.

1 67. According to Fisher, Nirvana, L.L.C. wanted images of nude babies
2 for the production of their 1991 *Nevermind* album cover.¹

3 68. Nirvana, L.L.C. ultimately decided to use a dollar bill on a fishhook as
4 a prop—after an extensive debate between the use of a dollar bill, raw meat, a dog,
5 and other objects commonly associated with prurient interests.²

6 69. Cobain added a fishhook specifically to make the image more
7 menacing.³

8 70. Cobain, Weddle, and Fisher determined that they had to “make [the
9 photo] more than just a baby underwater.”⁴

10 71. The concept and creation of this image replicated previous
11 controversial campaigns used to promote music with sexually explicit material
12 depicting a child or outright child pornography, including the album covers for
13 Scorpion’s *Virgin Killer*,⁵ Blind Faith’s *Blind Faith*, and Van Halen’s *Balance*.

¹ Ollie Campbel, *The Designer of Nirvana’s Nevermind Cover on Shooting Babies and Working with Kurt Cobain: The Work behind the Work*, <https://milanote.com/the-work/the-designer-of-nirvanas-nevermind-album-cover> (last visited Aug 1, 2021).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Internet Watch Foundation, *IWF statement regarding Wikipedia webpage* <https://web.archive.org/web/20090607023004/http://iwf.org.uk/media/news.archive-2008.251.htm> (last visited Aug 1, 2021).

1 72. In 1991, Weddle, a photographer, took explicit photos of Spencer, who
2 was then a 4-month-old baby, in a pool at the Pasadena Aquatic Center in
3 Pasadena, California.

4 73. Weddle took a series of sexually graphic nude photographs of
5 Spencer.

6 74. To ensure the album cover would trigger a visceral sexual response
7 from the viewer, Weddle activated Spencer’s ‘gag reflex’ before throwing him
8 underwater in poses highlighting and emphasizing Spencer’s exposed genitals.

9 75. Fisher purchased fishhooks from a bait and tackle shop to add to the
10 scene.⁶

11 76. At least one or more film cartridges were exposed in a short period of
12 time which included at least 40 or 50 different image shots of Spencer.

13 77. Cobain chose the image depicting Spencer—like a sex worker—
14 grabbing for a dollar bill that is positioned dangling from a fishhook in front of his
15 nude body with his penis explicitly displayed.

16 78. Fisher admired “[t]he positioning, the look on the baby’s face, the way
17 that his arms were stretched out like he was reaching for something.”⁷

⁶ Ollie Campbel, *The Designer of Nirvana’s Nevermind Cover on Shooting Babies and Working with Kurt Cobain: The Work behind the Work*, <https://milanote.com/the-work/the-designer-of-nirvanas-nevermind-album-cover> (last visited Aug 1, 2021).

⁷ *Id.*

1 79. Weddle produced these sexually graphic images with the goal of
2 enhancing and increasing the commercial success of Nirvana, L.L.C.'s *Nevermind*
3 album.

4 80. Weddle produced these photographs for Nirvana, L.L.C. which then
5 distributed an image lasciviously displaying Spencer's genitals on a worldwide
6 scale as the cover art for *Nevermind*.

7 81. Like other controversial album covers, the Defendants sought to
8 garner attention with an explicit image which intentionally focused on Spencer's
9 carefully positioned enlarged genitals.⁸

10 82. Weddle created commercial child pornography of Spencer which
11 helped propel the *Nevermind* album to international recognition.

12 83. Lead singer Cobain was instrumental in selecting Spencer's image for
13 the album cover.

14 84. Upon receiving pushback from others, Cobain agreed to redact
15 Spencer's image by releasing the album with a sticker strategically placed over
16 Spencer's genitals with the text: "If you're offended by this, you must be a closet
17 *pedophile*."⁹

⁸ Kim Wok, Shock and Awe: Top 10 Controversial Album Covers, TIME, 2012, <https://entertainment.time.com/2012/04/20/top-10-controversial-album-covers/slide/nirvana-nevermind/> (last visited Aug 1, 2021).

⁹ *Id.* (emphasis added).

1 85. The sticker, however, was never incorporated into the album cover.

2 86. As a result, Nirvana released the original, unredacted, album cover
3 depicting commercial child pornography.

4 87. Nirvana, L.L.C. and Fisher created an image which focused on
5 Spencer's genitals to increase the shockingly obscene nature of the image.

6 88. Weddle later told TIME Magazine, "[i]t was a great concept—a baby
7 underwater, unable to breathe, going after money on a fishhook."¹⁰

8 89. The debut of *Nevermind* occurred in September of 1991. The album
9 debuted at number 144 on the Billboard 20—a score which systematically ranks
10 music albums based on their overall sales and popularity.¹¹

11 90. Within approximately 3 months, *Nevermind* rose to number 1 on the
12 Billboard 200 ranking.¹²

13 91. The Recording Industry Association of America certified *Nevermind*
14 as a Platinum Record just months after its release.

¹⁰ Kenneth Bachor, *Rare Nirvana Photos Nevermind Album*, TIME, 2015, <https://time.com/4111653/see-rare-nirvana-photos-nevermind-album/> (last visited Aug 1, 2021).

¹¹ Kevin Rutherford, *Nirvana's 'Nevermind': 9 Chart Facts About the Iconic Album*, Billboard Magazine, 2016, <https://www.billboard.com/articles/columns/chart-beat/7518783/nirvana-nevermind-nine-chart-facts-anniversary> (last visited Aug 1, 2021).

¹² *Id.*

1 92. *Nevermind* is known publicly as a climacteric of American music
2 history and is regarded and recognized specifically for the commercial child
3 pornography as its album cover artwork.¹³

4 93. Weddle's commercial child pornography depicting Spencer's genitals
5 became the iconic image associated with Nirvana.

6 94. Spencer's true identity and legal name are forever tied to the
7 commercial sexual exploitation he experienced as a minor which has been
8 distributed and sold worldwide from the time he was a baby to the present day.

9 95. Prior to the controversial album cover depicting Spencer's
10 commercial child pornography image, Nirvana was a relatively unknown local
11 grunge band.

12 96. Album art was a crucial aspect of music marketing at the time
13 Spencer's commercial child pornography image was created.

14 97. Defendants commercialized Spencer's image and received and
15 continue to receive value for the ongoing distribution of music and paraphernalia
16 featuring this image, including licensing the image for use in Nirvana branded
17 items like Snapchat filters, t-shirts, and posters.

¹³ To determine whether a pornographic photo of a minor constitutes a lascivious exhibition of the genitals, the trier of fact must look to multiple factors and the circumstances under which the image was created. *See United States v. Dost*, 636 F. Supp. 828 (S.D. Cal. 1986), *aff'd sub nom. United States v. Wiegand*, 812 F.2d 1239 (9th Cir. 1987), and *aff'd*, 813 F.2d 1231 (9th Cir. 1987).

1 98. Created in the pre-digital music era, *Nevermind* is not only available
2 online but was, during all relevant times, widely distributed in physical format and
3 continues to be distributed in various mediums to this day.

4 99. Geffen Records originally shipped just 46,521 copies of *Nevermind* to
5 retailers in hopes of eventually selling 200,000 copies.

6 100. The Defendants eventually sold and profited from over 30 million
7 copies of *Nevermind*.

8 101. Nirvana's most successful song from *Nevermind*, *Smells Like Teen*
9 *Spirit*, became one of the best-selling singles of all time with over 8 million copies
10 sold worldwide.

11 102. The now iconic *Nevermind* album cover image of Spencer has become
12 one of the most-recognized album covers of all time.

13 103. Spencer's image created massive commercial success for Nirvana,
14 L.L.C. for which Spencer never received any compensation.

15 104. Neither Spencer nor his legal guardians ever signed a release
16 authorizing the use of any images of Spencer or of his likeness, and certainly not of
17 commercial child pornography depicting him.

18 105. The Defendants benefited exponentially from *Nevermind* and its
19 cover, both in increased popularity and notoriety, as well as through financial gain.

1 106. Nirvana’s *Nevermind* album cover constitutes commercial child
2 pornography within the meaning of 18 U.S.C. 2256(8).

3 107. 18 U.S.C. 2256(8) defines “child pornography” as:

4 any visual depiction, including any photograph, film,
5 video, picture, or computer or computer-generated image
6 or picture, whether made or produced by electronic,
7 mechanical, or other means, of sexually explicit conduct,
8 where—

9
10 (A) the production of such visual depiction involves
11 the use of a minor engaging in sexually explicit
12 conduct;

13
14 (B) such visual depiction is a digital image, computer
15 image, or computer-generated image that is, or is
16 indistinguishable from, that of a minor engaging in
17 sexually explicit conduct; or

18
19 (C) such visual depiction has been created, adapted, or
20 modified to appear that an identifiable minor is
21 engaging in sexually explicit conduct.
22

23 108. The album *Nevermind* depicts a lascivious exhibition of Spencer’s
24 penis and genital area.

25 109. Spencer should not experience “a lifetime of knowing that a
26 permanent record has been made of his or her abasement.” *People v. Kongs*, 37
27 Cal. Rptr. 2d 327, 334 (1994), as modified (Jan. 18, 1995) (*emphasis added*).

28 110. The *Dost* factors control whether an image is sexually explicit or
29 deemed an exhibition of a child’s genitals, pubic, or rectal area. These factors
30 include:

- 1) whether the focal point is on the child's genitalia or pubic area;
- 2) whether the setting is sexually suggestive, i.e., in a place or pose generally associated with sexual activity;
- 3) whether the child is in an unnatural pose, or in inappropriate attire, considering the age of the child;
- 4) whether the child is fully or partially clothed, or nude;
- 5) whether the child's conduct suggests sexual coyness or a willingness to engage in sexual activity;
- 6) whether the conduct is intended or designed to elicit a sexual response in the viewer.

Nevertheless, “[any] visual depiction need not involve all of these factors to be a ‘lascivious exhibition of the genitals or pubic area.’” After taking into account the age of the minor depicted, an analysis of the overall content of the visual depiction is necessary to determine whether the image constitutes child pornography. *United States v. Dost*, 636 F. Supp. 828, 832 (S.D. Cal. 1986), aff’d sub nom. *United States v. Wiegand*, 812 F.2d 1239 (9th Cir. 1987), and aff’d, 813 F.2d 1231 (9th Cir. 1987) (emphasis added).

111. California state law provides that child pornography “may [even] include an exhibition of the partially clad genitals.” See *People v. Spurlock*, 8 Cal. Rptr. 3d 372, 377 (2003).

1 112. Spencer has been and will continue to suffer personal injury by the
2 distribution and possession of child pornography depicting him by persons
3 including the Defendants. The permanent harm he has proximately suffered
4 includes but is not limited to extreme and permanent emotional distress with
5 physical manifestations, interference with his normal development and educational
6 progress, lifelong loss of income earning capacity, loss of past and future wages,
7 past and future expenses for medical and psychological treatment, loss of
8 enjoyment of life, and other losses to be described and proven at trial of this matter.

9 **FIRST CLAIM FOR RELIEF**

10 **18 U.S.C. 2255(a)**

11 113. Plaintiff repeats and re-alleges all prior and subsequent paragraphs as
12 fully incorporated herein.

13 114. 18 U.S.C. 2255, entitled “Civil Remedy for Personal Injuries,”
14 provides that any person who is a victim of a violation of 18
15 U.S.C. 2252A(a)(5)(B), 2252A(a)(1), 2252A(a)(2)(a); 2252A(a)(2)(b);
16 2252A(a)(3)(a)2252A(a)(3)(b), or 2252A(a)(6), and who suffers personal injury as
17 a result of such violation shall recover the actual damages such person sustains or
18 liquidated damages in the amount of \$150,000 per victim, and reasonable
19 attorney’s fees.

20 115. The Defendants violated the federal child pornography statute found
21 at 18 U.S.C. 2252A(a)(5)(B).

1 116. 18 U.S.C. 2252A(a)(5)(B) provides that it is a federal crime if any

2 actor:

3 knowingly possesses, or knowingly accesses with intent to
4 view, any [...] material that contains an image of child
5 pornography that has been mailed, or shipped or
6 transported using any means or facility of interstate or
7 foreign commerce [...] or that was produced using
8 materials [...] affecting interstate or foreign commerce by
9 any means, including by computer.

10 117. The Plaintiff suffered personal injury as a result of each of the
11 Defendant's violation of 18 U.S.C. 2252A(a)(5)(B).

12 118. The Defendants violated the federal child pornography statute found
13 at 18 U.S.C. 2252A(a)(1).

14 119. 18 U.S.C. 2252A(a)(1) provides that it is a federal crime if any
15 defendant:

16 knowingly mails, or transports or ships using any means
17 or facility of interstate or foreign commerce or in or
18 affecting interstate or foreign commerce by any means,
19 including by computer, any child pornography;
20

21 120. The Plaintiff suffered personal injury as a result of each of the
22 Defendants' violation of 18 U.S.C. 2252A(a)(1).

23 121. The Defendants violated the federal child pornography statute found
24 at 18 U.S.C. 2252A(a)(2)(a).

25 122. 18 U.S.C. 2252A(a)(2)(a) provides that it is a federal crime if any
26 defendant:

1 Knowingly receives or distributes [...] any child
2 pornography using any means or facility of interstate or
3 foreign commerce or that has been mailed, or has been
4 shipped or transported in or affecting interstate or foreign
5 commerce by any means, including by computer;
6

7 123. The Plaintiff suffered personal injury as a result of each of the
8 Defendant's violation of 18 U.S.C. 2252A(a)(2)(a).

9 124. The Defendants violated the federal child pornography statute found
10 at 18 U.S.C. 2252A(a)(2)(b).

11 125. 18 U.S.C. 2252A(a)(2)(b) provides that it is a federal crime if any
12 defendant:

13 Knowingly receives or distributes [...] any material that
14 contains child pornography using any means or facility of
15 interstate or foreign commerce or that has been mailed,
16 or has been shipped or transported in or affecting
17 interstate or foreign commerce by any means, including
18 by computer;
19

20 126. The Plaintiff suffered personal injury as a result of each of the
21 Defendant's violation of 18 U.S.C. 2252A(a)(2)(b).

22 127. The Defendants violated the federal child pornography statute found
23 at 18 U.S.C. 2252A(a)(3)(a).

24 128. 18 U.S.C. 2252A (a)(3)(a) provides that it is a federal crime if any
25 defendant:

26 Knowingly [...] reproduces any child pornography for
27 distribution through the mails, or using any means or
28 facility of interstate or foreign commerce or in or

1 affecting interstate or foreign commerce by any means,
2 including by computer;

3
4 129. The Plaintiff suffered personal injury as a result of each of the
5 Defendant's violation of 18 U.S.C. 2252A(a)(3)(a).

6 130. The Defendants violated the federal child pornography statute found
7 at 18 U.S.C. 2252A(a)(3)(b).

8 131. 18 U.S.C. 2252A(a)(3)(b) provides that it is a federal crime if any
9 defendant knowingly:

10 advertises, promotes, presents, distributes, or solicits
11 through the mails, or using any means or facility of
12 interstate or foreign commerce or in or affecting
13 interstate or foreign commerce by any means, including
14 by computer, any material or purported material in a
15 manner that reflects the belief, or that is intended to cause
16 another to believe, that the material or purported material
17 is, or contains—

18
19 (i) an obscene visual depiction of a minor engaging in
20 sexually explicit conduct;

21
22 (ii) a visual depiction of an actual minor engaging in
23 sexually explicit conduct;

24
25 132. The Plaintiff suffered personal injury as a result of each of the
26 Defendant's violation of 18 U.S.C. 2252A(a)(3)(b).

27 133. The Defendants violated the federal child pornography statute found
28 at 18 U.S.C. 2252A(a)(6).

1 134. 18 U.S.C. 2252A(a)(6) provides that it is a federal crime if any

2 defendant:

3 knowingly distributes, offers, sends, or provides to a
4 minor any visual depiction, including any photograph,
5 film, video, picture, or computer generated image or
6 picture, whether made or produced by electronic,
7 mechanical, or other means, where such visual depiction
8 is, or appears to be, of a minor engaging in sexually
9 explicit conduct

10

11 135. The Plaintiff suffered personal injury as a result of each of the

12 Defendant's violation of 18 U.S.C. 2252A(a)(6).

13 136. Plaintiff intends to prove actual damages as a result of each of the

14 Defendant's conduct.

15 137. At minimum, Plaintiff seeks liquidated damages in the amount of

16 \$150,000 against each Defendant, as well as the cost of the action, including

17 reasonable attorney's fees and other litigation costs reasonably incurred,

18 prejudgment and post-judgment interest, and such other relief as the Court deems

19 appropriate.

20

SECOND CLAIM FOR RELIEF

21

18 U.S.C. 1595

22 138. Plaintiff realleges and incorporates by reference all prior and

23 subsequent paragraphs as fully incorporated herein.

24 139. Defendants knowingly use the instrumentalities and channels of

25 interstate and foreign commerce to facilitate violations of 18 U.S.C. 1591(a)(1) as

1 predicate violations of 1595(a), occurring within the territorial jurisdiction of the
2 United States.

3 140. Defendants' conduct was in or affected interstate and/or foreign
4 commerce.

5 141. Defendants knowingly benefit from participation in what it knows or
6 should know is a sex trafficking venture in violation of 18 U.S.C. 1591(a)(2) and
7 thus, 1595(a).

8 142. Defendants knowingly benefit from and receive value for participation
9 in a venture in which Defendants know Spencer was forced to engage in
10 commercial sexual acts while under the age of 18 years old.

11 143. In an interstate and international commercial effort, Defendants
12 knowingly recruit, entice, harbor, obtain, advertise, maintain, patronize, and solicit
13 Spencer's child sex abuse material and, to this day, reproduce images of
14 commercial sex acts that Spencer was forced to engage in while he was under the
15 age of 18 years old.

16 144. Defendants' employees and agents have actual knowledge that they
17 are facilitating and participating in a scheme to profit from a minor child's
18 commercial sex act.

19 145. Defendants knowingly benefited financially from the sex-trafficking
20 venture and Spencer's exploitation.

1 146. Defendants knowingly assist, support, and facilitate the venture in
2 which Spencer was forced to engage in a commercial sex act while he was under
3 the age of 18 years old.

4 147. Defendants engage in a pattern of behavior of knowingly recruiting,
5 enticing, harboring, obtaining, advertising, maintaining, patronizing, and soliciting
6 a minor to create images of commercial sex acts while under the age of 18 years
7 old.

8 148. Each of the Defendant's conduct caused, and continues to cause,
9 Spencer serious harm including, without limitation, physical, psychological,
10 financial, and reputational harm, that is sufficiently serious, under all the
11 surrounding circumstances, to compel a reasonable person of the same background
12 and in the same circumstances to perform or to continue performing commercial
13 sexual activity, in order to avoid incurring that harm.

14 149. Each of the Defendant's conduct caused, and will continue to cause,
15 Spencer Elden serious harm including, without limitation, physical, psychological,
16 financial, and reputational harm.

17 **THIRD CLAIM FOR RELIEF**
18 **NEGLIGENCE**

19 150. Plaintiff realleges and incorporates by reference all prior and
20 subsequent paragraphs as if fully incorporated herein.

1 151. Plaintiff incorporates all negligence claims, including but not limited
2 to, gross negligence, negligence per se, and negligent infliction of emotional
3 distress in his claim for negligence.

4 152. The possession and distribution of child pornography is illegal under
5 both federal law and California state law.¹⁴ Additionally, child pornography is
6 illegal in every state in the United States as well as across the world.

7 153. Each of the Defendants had a duty to protect Spencer. Each of the
8 Defendants had actual knowledge that Spencer was a minor and that child
9 pornography depicting him was being illegally distributed.

10 154. Each of the Defendants breached their duty and yet they each continue
11 to reproduce and disseminate the unlawful child pornography depicting Spencer.

12 155. The distribution of child pornography depicting Spencer was
13 commercially monetized by each of the Defendants and each of the Defendants
14 received and continue to receive financial benefit from its worldwide distribution.

15 156. The broad distribution of Spencer's child pornography has caused him
16 severe harm, including physical, emotional, reputational, and financial harm.

¹⁴ *See generally* 18 U.S.C. 2252A and Cal. Penal Code 311.1.

1 **FOURTH CLAIM FOR RELIEF**
2 **DISTRIBUTION OF PRIVATE SEXUALLY EXPLICIT MATERIALS**
3 **CAL. CIV. CODE 1708.85**

4 157. Plaintiff realleges and incorporates by reference all prior and
5 subsequent paragraphs as if fully incorporated herein.

6 158. By refusing to remove or redact the photographic image depicting
7 Spencer even after Spencer notified Defendants that he was a minor, each of the
8 Defendants knowingly and intentionally continued distributing commercial child
9 pornography depicting Spencer.

10 159. Spencer did not consent to any distribution of his sexually explicit
11 images.

12 160. Defendants knew that Spencer had a reasonable expectation that the
13 sexually explicit images depicting him would remain private.

14 161. The images exposed Spencer's intimate body part and lasciviously
15 displayed Spencer's genitals from the time he was an infant to the present day.

16 162. Spencer was harmed by each of the Defendant's knowing and
17 intentional distribution of the sexually explicit images depicting him while he was
18 a minor and each of the Defendant's conduct was a substantial factor in causing
19 harm to Spencer.

1 **FIFTH CLAIM FOR RELIEF**
2 **INTRUSION INTO PRIVATE AFFAIRS**

3 163. Plaintiff realleges and incorporates by reference all prior and
4 subsequent paragraphs as if fully incorporated herein.

5 164. Defendants knew that Spencer had a reasonable expectation that the
6 images depicting him would remain private.

7 165. Defendants intentionally intruded into Spencer's reasonable
8 expectation of privacy by continuing to distribute commercial child pornography
9 depicting him even after Spencer notified Defendants that he was a minor and the
10 material had been distributed without his consent.

11 166. Defendants' intentional intrusion into Spencer's reasonable
12 expectation of privacy would be highly offensive to a reasonable person.

13 **SIXTH CLAIM FOR RELIEF**
14 **INVASION OF PRIVACY UNDER THE CALIFORNIA CONSTITUTION**
15 **ARTICLE I, SECTION I**

16 167. Plaintiff realleges and incorporates by reference all prior and
17 subsequent paragraphs as if fully incorporated herein.

18 168. Spencer had and continues to have a legally protected right to privacy
19 under California law.

20 169. Article I, Section I of the California Constitution states: "All people
21 are by nature free and independent and have inalienable rights. Among these are

1 enjoying and defending life and liberty, acquiring, possessing, and protecting
2 property, and pursuing and obtaining safety, happiness, and privacy.”

3 170. Defendants knew that Spencer had a reasonable expectation that
4 commercial child pornography depicting him would remain private.

5 171. Defendants intentionally intruded into Spencer’s reasonable
6 expectation of privacy by continuing to distribute the commercial child
7 pornography depicting him even after Spencer notified them that he was a minor
8 and the material had been distributed illegally and without his consent.

9 172. Defendant’s intentional intrusion into Spencer’s reasonable
10 expectation of privacy would be highly offensive to a reasonable person and was a
11 violation of his right to privacy as set forth in Article I, Section I of the California
12 Constitution.

13 **RELIEF REQUESTED**

14 WHEREFORE, the Plaintiff respectfully requests that this Court enter a
15 judgment in his favor against the Defendants as follows:

16 173. That the Court grant preliminary and permanent injunctive relief to
17 prohibit Defendants from continuing to engage in the unlawful acts and practices
18 described herein;

19 174. That the Court grant such other preliminary and equitable relief as the
20 it determines to be appropriate pursuant to 18 U.S.C. 2255(a);

1 175. That the Court award Plaintiff compensatory, consequential, general,
2 and nominal damages in an amount to be determined at trial;

3 176. That the Court require restitution and disgorgement of all profits and
4 unjust enrichment obtained as a result of Defendants' unlawful conduct;

5 177. That the Court award Plaintiff actual damages pursuant to 18 U.S.C.
6 2255(a);

7 178. In the alternative to actual damages, Plaintiff requests liquidated
8 damages in the amount of \$150,000 from each of the Defendants pursuant to
9 18 U.S.C. 2255(a);

10 179. That the Court award punitive damages in an amount sufficient to
11 punish each of the Defendants and to deter others from like conduct pursuant to
12 18 U.S.C. 2255(a) and the common law;

13 180. That the Court award reasonable attorney's fees pursuant to 18 U.S.C.
14 2255(a);

15 181. That the Court award pre-judgment and post-judgment interest;

16 182. That the Court award any relief within the Court's jurisdiction
17 appropriate to the proof, whether or not demanded;

18 183. That the Court grant such other and further relief as the Court deems
19 just and proper; and

1 184. That the Court retain jurisdiction of this matter to ensure all forms of
2 relief it deems appropriate.

3 **JURY DEMAND**

4 185. Plaintiff demands a trial by jury on all claims so triable.

5 Dated: August 24, 2021
6 New York, New York

7 MARSH LAW FIRM, PLLC

8 /s/
9 Robert Y. Lewis (CA Bar No. 153948)
10 RobertLewis@marsh.law
11 31 Hudson Yards, 11th Floor
12 New York, New York 10001
13 Phone: 212-372-3030
14 Fax: 833-210-3336
15 *Attorney for Plaintiff*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of LOS ANGELES

Subscribed and sworn to (or affirmed) before me on

this 18 day of AUGUST, 2021, by
Date Month Year

(1) SPENCER ELDEN

(and (2) _____),
Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature _____
Signature of Notary Public



Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: VERIFICATION

Document Date: AUGUST 18, 2021 Number of Pages: ONE

Signer(s) Other Than Named Above: NO OTHER SIGNER

COUNTY OF Los Angeles

I Spencer Elden am the plaintiff in the above referenced action. I have read the foregoing and know its contents to be true to the best of my knowledge, except as to those matters stated as being alleged upon information and belief. I declare under the penalty of perjury that the foregoing is true.

Spencer Elden

Sworn before me on

Aug 18, 2021

On the 18 day of AUGUST in the year 2021, before me, the undersigned appeared personally known to me or proved to be on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed in his capacity and that by his signature on the instrument, executed the instrument.

GHAZI JAMSHED

Notary Public

*Please see attached Jurat-Form
for Notary seal & signature*