

Marissa Pittman

CAUSE NO. DC-16-15336TIM AND CLAIRE GAUTREAUX,
Plaintiffs,

v.

GRAPEVINE IMPORTS, LLC d/b/a
TEXAS TOYOTA OF GRAPVINE,
TOYOTA MOTOR NORTH AMERICA,
INC., and MATT THOMAS.

Defendants.

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IN THE DISTRICT COURT

____TH JUDICIAL DISTRICT

DALLAS COUNTY , TEXAS

PLAINTIFFS' ORIGINAL PETITION AND REQUEST FOR DISCLOSURES

Plaintiffs Tim and Claire Gautreaux file this, their Original Petition against Defendant Grapevine Imports, LLC d/b/a Texas Toyota of Grapevine ("Grapevine Toyota"), Toyota Motor North America, Inc. ("Toyota North America") and Matt Thomas ("Thomas"), and respectfully show the Court as follows:

I. DISCOVERY CONTROL PLAN

1. Discovery shall be conducted under Level 3 of TEX. R. CIV. P. Rule 190.
2. **NOTICE OF USE OF PRODUCED DOCUMENTS.** Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Grapevine Toyota, Toyota North America, and Thomas are hereby notified that any and all documents and tangible things produced or delivered to the parties in this matter will be used by Plaintiffs in all pre-trial, trial, and post-trial matters regarding this litigation.

II. PARTIES

3. Plaintiffs Tim and Claire Gautreaux ("the Gautreauxs") may be contacted by and through their attorney Jose M. Portela, THE BECKHAM GROUP, P.C., 3400 Carlisle, Ste. 550, Dallas, Texas, 75204. The last three numbers of Tim Gautreaux's Social Security Number are **672, and

the last three numbers of Claire Gautreaux's Social Security Number are **474.

4. Defendant Grapevine Imports, LLC d/b/a Texas Toyota of Grapevine ("Grapevine Toyota") is a limited liability corporation organized and existing under the laws of Delaware, with its principal place of business in Arizona, which is conducting business in the State of Texas. Grapevine Toyota may be served by and through its registered agent, CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201.

5. Defendant Toyota Motor North America, Inc. ("Toyota North America") is a corporation organized and existing under the laws of Delaware, with its principal place of business in California, which is conducting business in the State of Texas. Toyota North America may be served by and through its registered agent, CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201.

6. Defendant Matt Thomas is a resident of Dallas, Texas and may be served at his home at 908 Suffolk Ct. Southlake, Texas 76092.

III. VENUE AND JURISDICTION, AND DAMAGES SOUGHT

7. This Court has jurisdiction over this matter as the damages sought herein are within the jurisdictional limits of this Court.

8. This Court has jurisdiction over Grapevine Toyota because Grapevine Toyota committed the torts described herein in whole or in part in this state.

9. This Court has jurisdiction over Toyota North America because Toyota North America committed the torts described herein in whole or in part in this state.

10. Venue is proper in Dallas County, Texas, pursuant to Section 15.002(a), 15.005 of the TEXAS CIVIL PRACTICES AND REMEDIES CODE because Thomas' residence is located in Dallas County, Texas.

11. The Gautreauxs seek monetary relief over \$1,000,000.00 against Grapevine Toyota, Toyota North America, and Thomas, including damages of any kind, penalties, costs, expenses, prejudgment interest, and attorneys' fees and demand judgment for all other relief to which the Gautreauxs should be deemed entitled.

IV. INTRODUCTION AND FACTS

12. The law must protect all persons from having matters which they may properly prefer to keep private being made public against their will. Samuel D. Warren & Louis D. Brandeis, *THE RIGHT TO PRIVACY*, 4 HARV. L. REV. 193, 214 (1890). It is a principle as old as the common law itself that private citizens should be protected from being dragged into undesirable and unwanted publicity. *See id.*

13. Plaintiffs Tim and Claire Gautreaux were invaded in the most personal way by Defendant Grapevine Toyota and Thomas when the Gautreauxs were engaging in what seemed to be the most innocent of activities—buying a car. They had no idea that their privacy was about to be violated and their hard-earned reputations put in jeopardy by the shockingly disturbing actions of Grapevine Toyota and its employees.

14. Tim Gautreaux is a worship pastor at a well-established multi-branch local church. On January 27, 2015, he and his wife Claire were excited to look at and potentially purchase a new car from Grapevine Toyota. They arrived at the dealership at approximately 4:15 p.m.

15. Jerrod Hudson, Grapevine Toyota's Internet Sales Professional, was the first to meet with the Gautreauxs. When the discussion turned to financing, Tim advised Hudson of an application Tim had downloaded on his cellular phone for preapproved financing through Capital One Financial Corporation. Hudson asked to view the application, and Tim unsecured his phone and accessed it. Hudson then asked Tim to give him the phone, telling Tim that Hudson had to

take it to his manager. Tim entrusted the phone to Hudson and complied with Hudson's request.

16. Hudson returned after a few minutes with Tim's phone and directed the Gautreauxs to meet with Milton Cordero, Grapevine Toyota's Finance Manager. Cordero requested a photograph of Tim's pay stub and asked Tim about the preapproval application on his phone. When Tim opened his phone to show Cordero the application, a photograph of his wife, Claire, in a compromising stage of undress appeared on the screen. Upon seeing this private year-and-a-half old photograph, Tim began to grow greatly concerned about the personal and professional ramifications of the dissemination of this personal information.

17. While the Gautreauxs were still waiting in Cordero's office, their worst fears were confirmed. Tim was able to access an application on his phone that tracks and saves deleted e-mails. Within a few minutes of giving Hudson his phone, an e-mail of a screen shot of the preapproval financing application was sent to the business e-mail address of Matt Thomas, one of Grapevine Toyota's New Car Sales Directors as well as what appears to be one of Thomas' personal email addresses. The next two e-mails sent two different compromising photographs of Claire to the e-mail address "mrandmissterious.com." Further investigation has revealed this e-mail address is believed to be associated with a swingers' website and a couple who live in Garland, Texas.

18. Upon information and belief, the Gautreauxs' private photographs and information were intentionally accessed by employees of Grapevine Toyota and distributed to members of this swingers' website. One can only imagine how many more people have now had access to those photographs since they were stolen from the Gautreauxs.

19. Panicked and outraged, Tim confronted David Weems, another of Grapevine Toyota's New Car Sales Directors about what had transpired in his dealership. Weems promised

he would investigate the situation and that anyone responsible would be let go.

20. After being at Grapevine Toyota's dealership for almost six hours, until 10 p.m., the Gautreauxs were not informed that anyone was being held responsible for the gross invasion of their privacy.

21. After their conversations about financing and receipt of Tim's pay stub, Grapevine Toyota was well-aware of Tim's position as a pastor. The subversive invasion of Tim's private information and dissemination of compromising photographs of his wife were most certainly done for malicious reasons and could at any point in time harm Tim's reputation and provide a vehicle for future harassment and embarrassment to Tim and Claire.

22. Through its unconscionable course of conduct, Grapevine Toyota may bring shame and ridicule upon Tim's character in the community he serves and has desecrated the image of his wife. These highly offensive and disturbing acts committed against a devout family of faith were intentional and the potential harm will be a source of concern for the remainder of Tim and Claire's lives.

23. Grapevine Toyota's unjustified actions have caused the Gautreauxs to suffer severe humiliation, embarrassment, frustration, and mental anguish. Furthermore, Tim's reputation and standing among the community may be irreparably tarnished. Because Tim's career depends in large part on his reputation, this experience will haunt the Gautreauxs forever, and may deprive Tim of his life's work.

24. Upon information and belief, this is not Thomas' first time of being involved with improper conduct involving a female while he was employed by Grapevine Toyota. Further, upon information and belief, Grapevine Toyota was aware of Thomas' past improprieties at his workplace and even with this knowledge continued to employ him.

25. Upon information and belief, Toyota North America oversees or has the right to direct certain aspects of Grapevine Toyota's operations, and therefore Toyota North America is vicariously liable for the actions of Grapevine Toyota.

26. On July 28, 2015, the Gautreauxs attorneys sent a 3 page letter to Toyota of North America advising them of these improper acts by Grapevine Toyota and Thomas and asking for assistance with this matter. Toyota of North America has not even even bothered to respond.

27. Accordingly, the Gautreauxs now bring suit against Grapevine Toyota, Toyota North America, and Thomas.

V. CAUSE OF ACTION—NEGLIGENT HIRING, SUPERVISION, TRAINING AND RETENTION

28. The Gautreauxs incorporate all foregoing paragraphs as if fully stated herein.

29. Grapevine Toyota owed the Gautreauxs a duty to use ordinary care in hiring, supervising, training, and retaining its employees.

30. By failing to exercise ordinary care in hiring, supervising, training, and retaining its employees in connection with their commission of the torts described herein, Grapevine Toyota breached its duties. Grapevine Toyota's breaches include, but are not limited to, (1) failing to properly train, instruct, supervise, and oversee the sensitive work of their employees to prevent their accessing and disseminating or otherwise making improper use of the Gautreauxs' personal information; (2) failing to take reasonable steps to train, supervise, and oversee their employees' work, despite the likely temptations on the part of their employees once given access to materials such as those involved in this matter; and (3) failing to ensure that once their employees were in possession of an individual's private information that such information was secured and used properly. An injury to its customers, such as the Gautreauxs, was the actual and foreseeable result of Grapevine Toyota's hiring, supervising, training, or retaining of its employees, which Grapevine

Toyota knew or should have known.

31. Grapevine Toyota's breaches were the proximate cause of the Gautreauxs' injuries. In addition to severe humiliation, embarrassment, and frustration, Grapevine Toyota's unjustifiable actions have caused the Gautreauxs' mental anguish, reputational damages, and loss of earning capacity.

VI. CAUSE OF ACTION—INTRUSION UPON SECLUSION

32. The Gautreauxs incorporate all foregoing paragraphs as if fully stated herein.

33. Under the doctrine of respondeat superior, Grapevine Toyota is vicariously liable for the actions of its employees, who were at all relevant times acting within the scope of their employment.

34. By accessing and distributing photographs of Claire Gautreaux in which the Gautreauxs had a reasonable expectation of privacy, Grapevine Toyota and Thomas have intentionally intruded on the Gautreauxs' private affairs.

35. Grapevine Toyota's and Thomas' intrusion would be highly offensive to a reasonable person. The specific private photographs that were accessed and distributed by Grapevine Toyota and Thomas depicted Claire in a compromising position, and the photographs were sent to members of a swingers' website and most likely others who participate in illicit sexual activities. This intrusion was severely offensive, humiliating, and unjustified, particularly considering the Gautreauxs' standing in the community, which was known to Grapevine Toyota and Thomas.

36. Grapevine Toyota's and Thomas' intrusion caused injury to the Gautreauxs. In addition to severe humiliation, embarrassment, and frustration, Grapevine Toyota's and Thomas' unjustifiable actions have caused the Gautreauxs' mental anguish, reputational damages, and loss

of earning capacity. Furthermore, because Grapevine Toyota's and Thomas' acts were committed knowingly, willfully, with actual knowledge, or with actual malice, the Gautreauxs are entitled to an award of exemplary damages as provided by Chapter 41 of the Texas Civil Practice and Remedies Code.

VII. CAUSE OF ACTION—VIOLATION OF TEXAS DECEPTIVE TRADE PRACTICES ACT

37. The Gautreauxs incorporate all foregoing paragraphs as if fully stated herein.

38. Under the doctrine of respondeat superior, Grapevine Toyota is vicariously liable for the actions of its employees, who were at all relevant times acting within the scope of their employment.

39. The Gautreauxs are consumers under the Texas Deceptive Trade Practices Act ("DTPA").

40. Toyota of Grapevine can be sued under the DTPA.

41. In connection with the Gautreauxs' attempt to purchase a new car, Toyota of Grapevine engaged in an unconscionable course of action.

42. By luring Tim's phone from him under the guise of needing financing information, when the real intention was to search for private, compromising photographs of his wife and distribute those for illicit sexual purposes, Grapevine Toyota took advantage of the Gautreauxs to a grossly unfair degree. These acts are glaringly flagrant considering the Gautreauxs' standing in the community, which was known to Grapevine Toyota.

43. Grapevine Toyota's unconscionable acts were the producing cause of the Gautreauxs' economic and mental anguish damages.

44. Furthermore, Grapevine Toyota acted with knowledge of the unfairness of its actions and with the intent to have the Gautreauxs act in reliance on or in detrimental ignorance of

the unfairness. Accordingly, the Gautreauxs are entitled to recover up to three times their economic and mental anguish damages from Grapevine Toyota, in addition to their attorneys' fees.

VIII. CAUSE OF ACTION—BREACH OF CONTRACT

45. The Gautreauxs incorporate all foregoing paragraphs as if fully stated herein.

46. Grapevine Toyota breached the expressed and implied assurances and contractual obligations for privacy and non-disclosure of the Gautreauxs' private and confidential information as set forth in the Grapevine Toyota's privacy policies.

47. Upon information and belief, the important privacy aspect of the Privacy Policy was known and anticipated by Grapevine Toyota to be connected to matters of mental solicitude and personal security and Grapevine Toyota was well aware that it would be entrusted with potential buyer's private information and that Grapevine Toyota committed to protecting that information, as can be seen from the privacy policy which Grapevine Toyota has on its website. As a result of Grapevine Toyota's breaches, the Gautreauxs suffered financial injury, severe mental anguish, embarrassment, and humiliation. The Gautreauxs seek damages in all forms, including actual damages of any kind, special damages, and consequential damages.

48. In addition, Grapevine Toyota's breaches have caused the Gautreauxs to incur attorneys' fees, costs, and expenses in bringing this action, which they are entitled to recover pursuant to Texas Civil Practice & Remedies Code Section 38.001, *et seq.*

49. The Gautreauxs fully performed, tendered performance, or were excused from performing all obligations under the contract, and all conditions precedent to their recovery have been performed.

IX. CAUSE OF ACTION—NEGLIGENCE

50. The Gautreauxs incorporate all foregoing paragraphs as if fully stated herein.

51. Grapevine Toyota was negligent in causing or allowing the access and dissemination of the Gautreauxs' personal information as set forth above.

52. Grapevine Toyota's breaches were the proximate cause of the Gautreauxs' injuries. In addition to severe humiliation, embarrassment, and frustration, Grapevine Toyota's unjustifiable actions have caused the Gautreauxs' mental anguish, reputational damages, and loss of earning capacity.

X. CAUSE OF ACTION—PUBLIC DISCLOSURE OF PRIVATE FACTS

53. The Gautreauxs incorporate all foregoing paragraphs as if fully stated herein.

54. Under the doctrine of respondeat superior, Grapevine Toyota is vicariously liable for the actions of its employees, who were at all relevant times acting within the scope of their employment.

55. By accessing and distributing photographs of Claire Gautreaux in which the Gautreauxs had a reasonable expectation of privacy, Grapevine Toyota and Thomas have publicized information about the Gautreauxs' private life.

56. This publicity would be highly offensive to reasonable people such as the Gautreauxs, and the matter publicized was not of legitimate public concern.

57. This intrusion was severely offensive, humiliating, and unjustified, particularly considering the Gautreauxs' standing in the community, which was known to Grapevine Toyota and Thomas. Grapevine Toyota's and Thomas' intrusion caused injury to the Gautreauxs. In addition to severe humiliation, embarrassment, and frustration, Grapevine Toyota's and Thomas' unjustifiable actions have caused the Gautreauxs' mental anguish, reputational damages, and loss of earning capacity. Furthermore, because Grapevine Toyota's and Thomas' acts were committed knowingly, willfully, with actual knowledge, or with actual malice, the Gautreauxs are entitled to

an award of exemplary damages as provided by Chapter 41 of the Texas Civil Practice and Remedies Code.

XI. VICARIOUS LIABILITY

58. Upon information and belief, Toyota North America oversees or has the right to direct certain aspects of Grapevine Toyota's operations, and therefore Toyota North America is vicariously liable for the actions of Grapevine Toyota. Toyota North America may also be directly liable for these claims.

XII. EXEMPLARY DAMAGES

59. Grapevine Toyota's, Toyota North America's, and Thomas' wrongful actions in connection with its intrusion upon the Gautreauxs' seclusion were committed knowingly, willfully, with actual knowledge, or with actual malice. Accordingly, the Gautreauxs are entitled to an award of exemplary damages as provided by Chapter 41 of the Texas Civil Practice and Remedies Code.

XIII. ATTORNEYS' FEES

60. The Gautreauxs were required to hire attorneys to pursue their claims. The Gautreauxs are entitled to recover their damages, costs, interest, and attorneys' fees as damages and pursuant to Texas Business & Commerce Code § 17.50 *et seq.* and Texas Civil Practice & Remedies Code § 38.001.

XIV. JURY DEMAND

61. The Gautreauxs hereby request a trial by jury of all issues of fact in this case and herewith tender the jury fee.

XV. REQUEST FOR DISCLOSURES

62. Pursuant to Texas Rule of Civil Procedure 194, Grapevine Toyota, Toyota North America, and Thomas are requested to disclose, within fifty (50) days of the service of this request,

the information and material described in Rule 194.2.

63. Plaintiffs give notice that an application for admission pro hac vice for the admission of Gloria Allred and Nathan Goldberg will be filed as soon as this case is assigned to a District Court and case number.

XVI. RELIEF REQUESTED

WHEREFORE, premises considered, Plaintiffs Tim and Claire Gautreaux pray for the following relief and judgment against Defendants:

- (i) Judgment against Defendants for actual damages in an amount within the jurisdictional limits of this Court;
- (ii) Exemplary damages;
- (iii) Attorneys' fees;
- (iv) Pre-judgment interest and post-judgment interest accruing on said sums at the highest rate allowed by law;
- (v) All costs of court incurred herein; and
- (vi) Such other and further relief, at law or in equity, to which Plaintiffs may show themselves to be justly entitled.

DATED: December 1, 2016

Respectfully submitted,

/s/ Jose M. Portela

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- Application for Pro Hac Vice Pending

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- Application for Pro Hac Vice Pending

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