EXHIBIT 4

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May 27, 2022

VIA EMAIL: Sierra.Taylor@staff.azbar.org

Ms. Sierra M. Taylor
Staff Bar Counsel; State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, AZ 85016-6266

Re: File No. 21-2455; Complainant: Andrew Ivchenko

Ms. Taylor,

In response to your e-mail dated May 24, 2022, I am providing you with additional information in light of attorney David S. Gingras ("Mr. Gingras") requesting a hearing after the Attorney Discipline Probable Cause Committee unanimously ruled that probable cause existed that he violated the following Rules of the Supreme Court of Arizona: Rule 42, ER 4.2, 4.4, and 8.4(a).

I also feel compelled to respond to some of the outrageous statements made by Mr. Gingras in his letter to the Bar dated November 22, 2021. The Committee evidently saw through Mr. Gingras' spiteful, self-serving missive before making its recommendation. At the time, I did not believe it necessary to provide additional information other than that contained in my complaint.

First and foremost, all cases involving my clients and Mr. Gingras' clients have settled, under the terms of a confidential settlement agreement dated December 10, 2021. This settlement included litigation against Mr. Gingras' clients (the "Grants") in Florida (*Doe v. Grant*; Seminole County (Florida) Case No. 2021-CV-960 (filed 4/9/2021).

In his response, Mr. Gingras concedes that the past cases between the parties is a "separate issue of whether [he has] done something improper." (Resp. at 2.) Rather than leaving it at that, Mr. Gingras then launches a veritable fusillade of rambling ad hominin attacks against me and my wife, Renee Ivchenko. These tactics are typical of Mr. Gingras – instead of focusing on the issue of his wrongdoing, he cites endless irrelevant facts and law in an effort to deflect attention from himself and "kill the messenger." Mr. Gingras apparently thinks this absolves him of any responsibility.

Distilled to its essence, Mr. Gingras wants the Committee to believe that all of the clients that litigated against the Grants (other than my wife) were make-believe, as part of some grand conspiracy orchestrated by me! Indeed, Mr. Gingras stated that I was "either suing on behalf of people who do not exist, or on behalf of people who may exist, but whom [I do] not represent." (Resp. at 4.) This argument is so preposterous that it must be addressed in some detail.

Mr. Gingras conveniently fails to disclose that the first case filed against the Grants by my wife in conjunction with additional clients did not include me as a party or as an attorney.[1] The plaintiffs were represented by three attorneys at the Dickinson Wright law firm, namely, David N. Ferrucci, David G. Bray, and Paxton D. Endres. (*See* Exhibit 1.) In addition, there were 20 additional plaintiffs (who were formally my clients as per written fee agreements) who filed as anonymous Plaintiffs (John and Jane Does). I was not an attorney of record in the case as that could pose a conflict of interest, being that my wife was one of the plaintiffs.

There is a reason why Mr. Gingras did not disclose these facts – they alone (along with the additional reasons stated herein) completely refute his allegations regarding supposed "phantom" clients. Indeed, to remain consistent, Mr. Gingras would have to convince the Committee that Dickinson Wright, one of the most prominent law firms in Phoenix, did not do any due diligence concerning the identity of the anonymous plaintiffs. Even Mr. Gingras recognizes the fallacy of such an argument, which is why he conveniently ignores that first case.

Mr. Gingras also glosses over what these cases were all about. Some background will shed light on why the plaintiffs so badly needed to file on an anonymous basis. The Grants were notorious mugshot website operators who scraped booking photos and arrest records from law enforcement agencies throughout the country. At their height, they had collected the booking photos and arrest records of *20 million* people (by their own admission) in what was arguably the largest mugshot website operation in the country, that caused an enormous amount of damage to people's reputations. (*See* Exhibit 1, ¶¶ 1-13, 45-51.)

My wife and I were the first litigants in the country brave enough to go against these mugshot website operators, which started a series of lawsuits involving numerous plaintiffs, two other law firms in Arizona, as well as other

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[1] *Ivchenko v. Grant*; MCSC Case No. CV2019-015355 (filed 12/17/2019). Although this case initially included only my wife and I as plaintiffs, the complaint was substantially amended on February 27, 2020, dropping me as a plaintiff and adding 20 anonymous plaintiffs. (*See* Exhibit 1.)

plaintiffs in Florida and Pennsylvania. The litigation involving the Grants (who thankfully are no longer online, due to a settlement agreement that must remain confidential by its terms) was, frankly, brutal. This should come as no surprise, as mugshot website operators are generally not friendly people. Indeed, these cases are an example of the thankless task awaiting anyone who attempts to assert their rights against an online cyberstalker in the internet age.

Mr. Gingras made matters even worse by utilizing "scorched earth tactics" against his opponents, including opposing counsel, the likes of which I have not seen in 33 years of practice. (*See* Exhibit 2, Plaintiff's Request for Judicial Notice, Exhibit 1, Affidavit of Andrew Ivchenko, filed in the Circuit Court of the Eighteenth Judicial Circuit, Seminole County, Florida, Case No. 2021-CA-000960). Knowing that his clients are unsympathetic, Mr. Gingras routinely (as he does here) tries to kill the messenger instead. Mr. Gingras is well-known for such tactics, having filed frivolous lawsuits against attorneys and parties that have brought suit against his clients, mostly online operators who cause the public immense harm. *See, e.g., Xcentric Ventures, LLC v. Borodkin*, 798 F.3d 1201 (9th Cir. 2015).

Not having learned his lesson after wasting years of the Courts' time and resources in relentlessly and unsuccessfully attacking opposing counsel and the parties in *Xcentric Ventures*, Mr. Gingras brought suit against my wife and I in federal court (Arizona District Court case no. 21-CV-00108). We in turn brought suit against Mr. Gingras and the Grants in state court for their horrific abuse of process and targeted cyber harassment (Maricopa County Superior Court case no. CV2021-093562). Although both of these cases were later dismissed through settlement, we dismissed Mr. Gingras without prejudice.

Mr. Gingras wants the Bar to believe he is the good guy here. This is simply not the case. Mr. Gingras was obsessed with causing any identified plaintiff and their attorney as much harm and embarrassment as possible, with the goal of intimidating them to quit the fight. I and several others litigated against Mr. Gingras and the Grants for over two years, which resulted in a crushing defeat for them.[2] They simply failed to realize that when you hurt 20 million people, some of them will assert their rights and not back down.

During the course of this litigation, Mr. Gingras was more than just a zealous advocate – he actively aided and abetted his clients' efforts to intimidate

[2] In his response, Mr. Gingras argues that he won some battles in these cases. That is not the point – he lost the war, was sanctioned by the Arizona bar, sued by my wife and I, and is now seeking to deflect blame.

opposing counsel and parties through additional online harassment and exposure. (*See* Exhibit 2 ¶¶ 20, 23.) Unfortunately for Mr. Gingras and the Grants, this tactic was a double-edged sword. Mr. Gingras claims that I "instigated" the litigation against his clients. This is simply not true, as the Rosenstein law firm and several hundred affected people *approached me* after reading about the litigation online. Mr. Gingras' incessant warnings about the "Streisand Effect" (a phenomenon that occurs when an attempt to hide, remove, or censor information has the unintended consequence of increasing awareness of that information, often via the internet) came back to haunt them. (*See* Exhibit 2 ¶ 25.)

Mr. Gingras is well-aware that I referred one of my clients to the Rosenstein firm, as my active case at that time (*Doe v. Grant*; MCSC Case No. CV2020-093006, filed 5/1/2020) was stuck in federal court due to pending motions including remand. This client was suffering much distress due to the activities of the Grants, and desired immediate relief. The Rosenstein firm filed suit on behalf of my client, as well as several others. Note that the Rosenstein firm is a criminal defense firm, and almost *all* of their clients are victims of mugshot website operators.

The Rosenstein firm and their clients also suffered at the hands of Mr. Gingras and the Grants. (*See* Exhibit 3, affidavit of Attorney Steven Scharboneau, ¶¶ 20, 23.) Mr. Gingras states that I "refused (in violation of the Rules of Civil Procedure and controlling Arizona Supreme Court precedent) to disclose any information about the identity of the plaintiff(s)." (Resp. at 4.) This statement is false, and not an accurate statement of law. Each law firm that filed suit against the Grants did so by naming the plaintiffs as Jane or John Doe. To do otherwise would entail *certain* additional online retaliation directed against those people as a retaliatory measure.

Each law firm then immediately filed a motion to proceed anonymously after filing their complaints. This is normal procedure, and not a violation of any rule or law. (*See* Exhibit 4, Motion to Proceed Under Pseudonym, Case No. CV2021-090059.) After considering the conduct of Mr. Gingras and the Grants, the Court granted my client's motion. (*See* Exhibit 5). Nothing in this order precluded Mr. Gingras from requesting the identity of a party, as the Court was simply trying to limit further online harassment by Mr. Gingras or the defendants. Moreover, Mr. Gingras could always have asked the court to do an in-camera review of any fee agreements, but never did so.

Mr. Gingras yet again contradicts his bizarre "phantom clients" theory by trying to have it both ways. The Rosenstein firm inadvertently included too much information about my client Jane Doe in their complaint in *Doe v. Grant*, MCSC

Case No. CV2020-055202 (filed 9/24/2020). This case was removed to federal court by the Grants. (Arizona District Court Case 20-cv-02045-SPL, filed 10/23/20.) Mr. Gingras and the Grants then ascertained the client's name (Sandra Faye Emery), and without *any* court approval or even filing a motion to amend the case caption, Mr. Gingras "outed' the client by inserting her name (with hyperlinks) in the case caption in subsequent pleadings. (*See* Exhibit 6.) This ensured that Mrs. Emery's arrest records and the case would appear online in any Goggle search of her name through various federal court reporting websites *for eternity*. Although this case was subsequently remanded and settled, the damage was done. (*See* Exhibit 3 ¶ 8.)

For good measure, Mr. Gingras obtained the police video of my wife's arrest and gave it to the Grants, who then set up separate websites in my name and my wife's name, and then posted her mugshot and arrest records on those sites as well as on the home page of their mugshot website. (*See* Exhibit 2 ¶¶ 13-14.) At the same time, the Grants also posted similar information relating to Sandra Fae Emery and attorney Steven Scharboneau. (*See* Exhibit 2 ¶¶ 22-25; Exhibit 3.)

I entered into a written fee agreement with Mrs. Emery on February 24, 2020, and she was part of MCSC Case No. CV2019-015355 until such time as she filed her individual action through the Rosenstein firm. This again contradicts Mr. Gingras' assertion of "phantom" clients.

I have provided these lurid details to show exactly why the clients sought anonymity in these cases. In addition, I request that the Bar also investigate any ethical violations that may have been committed by Mr. Gingras in causing an opposing party unnecessary burden and embarrassment, as suffered by any identified parties and their attorneys. (See ER 4.4. Respect for Rights of Others.)

As a last resort, Mr. Gingras suggests that as of October 25, 2022, I had no clients. This is untrue. At that point, there were two pending cases against the Grants in Arizona with me as lead counsel. This included MCSC Case No. CV2021-090059, which was on appeal, and MCSC Case No. CV2021-090710. The later was a class action complaint filed by me and co-counsel on July 2, 2021. (*See* Exhibit 7.)

Although the class had not been certified at the time of settlement, the case was brought on behalf of the "John Doe" class representative and other members of a class consisting of several hundred thousand persons previously arrested in Arizona and victimized by the Grants. That included all clients I had active fee agreements with – at that point there were simply so many that a class action was the most appropriate course of action.

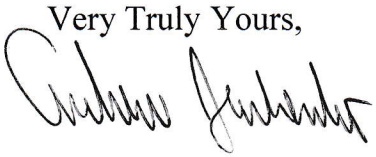
Of course, a leopard never changes its spots, so Mr. Gingras will invariably argue that the class representative is make believe, too. Thus, I have attached redacted e-mail communications with this client. (*See* Exhibit 8). I fully expect Mr. Gingras to stay on point and plead that these emails are forged. I ask that the Bar simply ignore such lame arguments.

Mr. Gingras is a bitter man who has suffered professional humiliation by pursuing an unethical and irrational course of action in a desperate, last ditch attempt to save his clients' mugshot operation. In the end, all of Mr. Gingras' threats, menacing behavior, and scorched earth tactics merely resulted in the shuttering of his client's business. For his efforts, Mr. Gingras was publically sanctioned for egregiously crossing the line in an effort to harm me professionally. Now, he seeks to be absolved of any consequences. The Bar should reject this effort.

I also urge the Bar to consider this lawyer's record and checkered past (some of which is public record, but likely includes other matters of which I am not privy), and consider whether a mere slap on the wrist is an appropriate penalty for a lawyer who has behaved in such a despicable manner as described herein.

Please contact me if you require any further information or to discuss this matter or answer questions you may have.

Very Truly Yours,



Andrew Ivchenko, Esq.

EXHIBIT 1

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Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

JANE DOE I; JANE DOE II; JANE DOE III; JANE DOE IV; JANE DOE V; JOHN DOE I; JOHN DOE II; JOHN DOE III; JOHN DOE IV; JOHN DOE V; JOHN DOE VI; JOHN DOE VII; JOHN DOE VIII; JOHN DOE IX; JOHN DOE X; JOHN DOE XI; JANE DOE VI; JANE DOE VII; JOHN DOE XII; JANE DOE VIII; and RENEE IVCHENKO, a married woman, Plaintiffs, vs. KYLE DAVID GRANT and JANE DOE GRANT, husband and wife; TRAVIS PAUL GRANT and MARIEL LIZETTE GRANT, husband and wife; JOHN and JANE DOES I-X; BLACK CORPORATIONS I-X; and WHITE COMPANIES I-X, Defendants.	Case No.: CV2019-015355 **AMENDED COMPLAINT** (Jury Trial Demanded) (Assigned to Honorable Teresa Sanders)

Plaintiffs Jane Doe I, Jane Doe II, Jane Doe III, Jane Doe IV, Jane Doe V, John Doe I, John Doe II, John Doe III, John Doe IV, John Doe V, John Doe VI, John Doe VII, John Doe VIII, John Doe IX, John Doe X, John Doe XI, Jane Doe VI, Jane Doe VII, John Doe XII, Jane Doe VII, and Renee Ivchenko, a married woman (collectively "Plaintiffs"), through their undersigned counsel, for their Amended Complaint against Defendants, allege the following:

INTRODUCTION

1. Defendants are First Amendment opportunists that exploit arrest information and misappropriate images in booking photos to create misleading advertisements designed to generate substantial advertising revenue and to extort payment from the victims whose images have been misappropriated.

2. Defendants do not inform the public; instead, Defendants exploit booking photos and arrest information for purely commercial purposes. These "[b]ooking photos—snapped in the vulnerable and embarrassing moments immediately after an individual is accused, taken into custody, and deprived of most liberties—fit squarely within this realm of embarrassing and humiliating information. More than just vivid symbols of criminal accusation, booking photos convey guilt to the viewer." *Detroit Free Press Inc. v. United States Dep't of Justice*, 829 F.3d 478, 482 (6th Cir. 2016) (citations and quotations omitted). Defendants' business model is to exploit this embarrassing and humiliating information that falsely conveys guilt for their own commercial gain.

3. The online dissemination of arrest information and images in booking photos creates substantial barriers for those attempting to reintegrate into society from

finding employment, housing, and starting a new life. Abuse of these records by profiteers such as the Defendants cuts against efforts for criminal justice reform and rehabilitation of those who have made mistakes in their pasts. Moreover, in many cases arrestee's are never charged, are adjudicated not guilty, or their charges are dismissed for various reasons, including by completing diversion programs. Mugshot companies have wide sweeping negative effects on not only those directly impacted but on the community as a whole.

4. In response to the proliferation of mugshot website operators, such as Defendants, several states have passed statutes relating to the exploitation of mugshots, most recently Arizona. On August 27, 2019, HB2191 became effective law as Arizona Revised Statute §§ 44-7901, 7902; Mugshot website operators; prohibited acts; exceptions (the "Arizona Mugshot Statute"). The new law defines mugshot website companies as "mugshot website operators" and prohibits their operation for commercial purposes, which the law defines to include "any purpose in which the [mugshot website operator] can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record." A.R.S. § 39-121.03(D); A.R.S. § 44-7901(2). The Arizona Mugshot Statute also prescribes hefty *minimal* damages that mugshot website companies will have to pay to those affected if they do not comply with the law.

5. This is an individual action for violation of the Arizona Mugshot Statute, unlawful appropriation/right of publicity, invasion of privacy based on appropriation, and intentional infliction of emotional distress under applicable decisional law in Arizona.

6. This is a civil action seeking damages, declaratory, and injunctive relief for the violation of the right of publicity under the common laws of the State of Arizona and to recover damages pursuant to the Arizona Mugshot Statute. Plaintiffs seek redress

for injuries caused by, and an injunction enjoining, the unlawful conduct of Defendants, Kyle David Grant, his brother Travis Paul Grant, and Travis Paul Grant's wife, Mariel Lizette Grant, all doing business in conjunction with their websites, including rapsheetz.com and bailbondsearch.com (the "Websites").

7. Defendants' conduct that is the subject of this civil action involves ongoing online activity directed against Plaintiffs. Defendants own the Websites, including rapsheetz.com, on which they use the arrest information and booking photos of arrestees for their own purely commercial purposes. Defendants use software to "scrape" arrest information, including booking photos, from the Maricopa County Sheriff's Office's website, and the websites of other law enforcement agencies who post booking photos online, for all, or substantially all, arrestees, albeit for a limited duration of time, typically three days. Defendants then use the arrest photos to create original content in the form of advertisements that serve three purposes: 1) to attract third party advertisers to the website; 2) generate pay-per-click advertising revenue; and 3) extort payment of fees for removal of the arrest information from the victims who identities and likenesses have been misappropriated.

8. "A disclosed booking photo casts a long, damaging shadow over the depicted individual." *Detroit Free Press Inc. v. United States Dep't of Justice*, 829 F.*3d 478, 482* (6th Cir. 2016). For this reason, law enforcement agencies and the State of Arizona do not intend for booking photos and arrest information to be used in this way or to be available online to the public indefinitely. The Maricopa County Sherriff's Office, for example, only posts arrest photos for three days, after which they are taken down. The Arizona Mugshot Act makes crystal clear that the public policy of Arizona is that arrest information and photos published for a limited time by Arizona law enforcement agencies is not to be "scraped" and then disseminated indefinitely for

Defendants' purely commercial purposes. Yet, that is precisely how Defendants' illegal scheme operates.

9. To further their illegal scheme and maximize its commercial effect, Defendants use analytics and search optimization tools to ensure that each booking photo is among the first search results found when an arrestee's name is entered into a search engine such as *Google, Bing* or *Yahoo*. Such conduct contributes substantially to to the illegality of Defendants' use of the arrest information and booking photos.

10. Contrary to Defendants' false representations, rapsheetz.com and bailbondsearch.com are not a public safety service or media outlets. If they were, Defendants would not select what information and which booking photos remain on the Websites based on extorted payments, which occurred prior to the enactment of the Florida mugshot statute on or about July 18, 2018 (FL Stat § 901.43, Dissemination of Arrest Booking Photographs) (the "Florida mugshot statute"). Indeed, after being served with the initial complaint in this lawsuit, in a tacit admission that they have never operated as a *bona fide* news organization Defendants began posting so-called "news" reports on the Rapsheetz.com website. Again, Defendants hide behind the false pretense that they are a media organization, post these mugshots and create advertisements out of them solely in order to profit by generating advertising revenue through Google Ads and, at least up until July 18, 2018, extorted payments, and upon information and belief, since that time. Companies pay for Google Ads so that people will notice their business whenever they are searching Google. These companies only have to pay a website owner whenever someone clicks on the ad. This is known as cost-per-click (CPC) or pay-per-click (PPC) advertising. Defendants generate substantial revenue through the misleading manner in which they use these booking photos as advertisements to induce users of their Websites to click on the banner ads.

11. Also contrary to Defendants' false representations, upon information and belief, absent a substantial extorted payment, Defendants refuse to remove someone's mugshot from the Websites even if the arrestee has been found innocent of any crime, or have otherwise had their charges dropped, not filed, expunged, or dismissed as part of a diversion program, as in Plaintiff Renee Ivchenko's case. Prospective employers (or anyone else) conducting a web search find, in many cases, misinformation indicating that people are still charged, incarcerated, or on parole years even after release or an adjudication of not guilty. Defendants intentionally and maliciously set up the Websites to give the false impression people are incarcerated or have been adjudged guilty of a crime. The end result for many arrestees is continuous emotional distress, job loss, broken families, and homelessness. The end result for Defendants is substantial profits.

12. Defendants are notorious operators of mugshot Websites, and are known in the industry as being extremely vindictive. Several online sites have been established by aggrieved parties to expose the nefarious and illegal activities of Defendants, including https://rapsheetsorgkyledavidgrant.wordpress.com and http://classactionagainstmugshotwebsites.com/rapsheets-org-kyle-david-grant-travis-paul-grant.

13. This action seeks to put an end to Defendants' harassment of countless individuals in Arizona and other states. Defendants will continue to cause Plaintiffs harm until Defendants are enjoined from intentionally and maliciously violating Plaintiffs' rights.

JURISDICTION AND PARTIES

14. Plaintiff Jane Doe I is a resident of Maricopa County, Arizona. During the relevant time period, defendants have disseminated Plaintiff Jane Doe I's arrest information and booking photo on the Websites for purely commercial purposes. As a

result, Plaintiff Jane Doe I's image has been commercially misappropriated by Defendants, causing damage, and Plaintiff Jane Doe I has incurred damages under the Arizona Mugshot Statute, as further described herein. Plaintiff Jane Doe I did not provide the Defendants with prior consent for the posting of any information about her, including, but not limited to, her arrest information and arrest photo. Plaintiff Jane Doe I has experienced both emotional and financial harm, including, but not limited to, injury to her business and property as a result of the commercial dissemination of her arrest information and arrest photo by the Defendants.

15. Plaintiff Jane Doe II is a resident of Maricopa County, Arizona. During the relevant time period, defendants have disseminated Plaintiff Jane Doe II's arrest information and booking photo on the Websites for purely commercial purposes. As a result, Plaintiff Jane Doe II's image has been commercially misappropriated by Defendants, causing damage, and Plaintiff Jane Doe II has incurred damages under the Arizona Mugshot Statute, as further described herein. Plaintiff Jane Doe II did not provide the Defendants with prior consent for the posting of any information about her, including, but not limited to, her arrest information and arrest photo. Plaintiff Jane Doe II has experienced both emotional and financial harm, including, but not limited to, injury to her business and property as a result of the commercial dissemination of her arrest information and arrest photo by the Defendants.

16. Plaintiff Jane Doe III is a resident of Maricopa County, Arizona. During the relevant time period, defendants have disseminated Plaintiff Jane Doe III's arrest information and booking photo on the Websites for purely commercial purposes. As a result, Plaintiff Jane Doe III's image has been commercially misappropriated by Defendants, causing damage, and Plaintiff Jane Doe III has incurred damages under the Arizona Mugshot Statute, as further described herein. Plaintiff Jane Doe III did not

provide the Defendants with prior consent for the posting of any information about her, including, but not limited to, her arrest information and arrest photo. Plaintiff Jane Doe III has experienced both emotional and financial harm, including, but not limited to, injury to her business and property as a result of the commercial dissemination of her arrest information and arrest photo by the Defendants.

17. Plaintiff Jane Doe IV is a resident of Maricopa County, Arizona. During the relevant time period, defendants have disseminated Plaintiff Jane Doe IV's arrest information and booking photo on the Websites for purely commercial purposes. As a result, Plaintiff Jane Doe IV's image has been commercially misappropriated by Defendants, causing damage, and Plaintiff Jane Doe IV has incurred damages under the Arizona Mugshot Statute, as further described herein. Plaintiff Jane Doe IV did not provide the Defendants with prior consent for the posting of any information about her, including, but not limited to, her arrest information and arrest photo. Plaintiff Jane Doe IV has experienced both emotional and financial harm, including, but not limited to, injury to her business and property as a result of the commercial dissemination of her arrest information and arrest photo by the Defendants.

18. Plaintiff Jane Doe V is a resident of Maricopa County, Arizona. During the relevant time period, defendants have disseminated Plaintiff Jane Doe V's arrest information and booking photo on the Websites for purely commercial purposes. As a result, Plaintiff Jane Doe V's image has been commercially misappropriated by Defendants, causing damage, and Plaintiff Jane Doe V has incurred damages under the Arizona Mugshot Statute, as further described herein. Plaintiff Jane Doe V did not provide the Defendants with prior consent for the posting of any information about her, including, but not limited to, her arrest information and arrest photo. Plaintiff Jane Doe V has experienced both emotional and financial harm, including, but not limited to,

injury to her business and property as a result of the commercial dissemination of her arrest information and arrest photo by the Defendants.

19. Plaintiff John Doe I is a resident of Maricopa County, Arizona. During the relevant time period, defendants have disseminated Plaintiff John Doe I's arrest information and booking photo on the Websites for purely commercial purposes. As a result, Plaintiff John Doe I's image has been commercially misappropriated by Defendants, causing damage, and Plaintiff John Doe I has incurred damages under the Arizona Mugshot Statute, as further described herein. Plaintiff John Doe I did not provide the Defendants with prior consent for the posting of any information about him, including, but not limited to, his arrest information and arrest photo. Plaintiff John Doe I has experienced both emotional and financial harm, including, but not limited to, injury to his business and property as a result of the commercial dissemination of his arrest information and arrest photo by the Defendants.

20. Plaintiff John Doe II is a resident of Maricopa County, Arizona. During the relevant time period, defendants have disseminated Plaintiff John Doe II's arrest information and booking photo on the Websites for purely commercial purposes. As a result, Plaintiff John Doe II's image has been commercially misappropriated by Defendants, causing damage, and Plaintiff John Doe II has incurred damages under the Arizona Mugshot Statute, as further described herein. Plaintiff John Doe II did not provide the Defendants with prior consent for the posting of any information about him, including, but not limited to, his arrest information and arrest photo. Plaintiff John Doe II has experienced both emotional and financial harm, including, but not limited to, injury to his business and property as a result of the commercial dissemination of his arrest information and arrest photo by the Defendants.

21. Plaintiff John Doe III is a resident of Pinal County, Arizona. During the relevant time period, defendants have disseminated Plaintiff John Doe III's arrest information and booking photo on the Websites for purely commercial purposes. As a result, Plaintiff John Doe III's image has been commercially misappropriated by Defendants, causing damage, and Plaintiff John Doe III has incurred damages under the Arizona Mugshot Statute, as further described herein. Plaintiff John Doe III did not provide the Defendants with prior consent for the posting of any information about him, including, but not limited to, his arrest information and arrest photo. Plaintiff John Doe III has experienced both emotional and financial harm, including, but not limited to, injury to his business and property as a result of the commercial dissemination of his arrest information and arrest photo by the Defendants.

22. Plaintiff John Doe IV is a resident of Denton County, Texas. During the relevant time period, defendants have disseminated Plaintiff John Doe IV's arrest information and booking photo on the Websites for purely commercial purposes. As a result, Plaintiff John Doe IV's image has been commercially misappropriated by Defendants, causing damage, and Plaintiff John Doe IV has incurred damages under the Arizona Mugshot Statute, as further described herein. Plaintiff John Doe IV did not provide the Defendants with prior consent for the posting of any information about him, including, but not limited to, his arrest information and arrest photo. Plaintiff John Doe IV has experienced both emotional and financial harm, including, but not limited to, injury to his business and property as a result of the commercial dissemination of his arrest information and arrest photo by the Defendants.

23. Plaintiff John Doe V is a resident of Brazoria County, Texas. During the relevant time period, defendants have disseminated Plaintiff John Doe V's arrest information and booking photo on the Websites for purely commercial purposes. As a

result, Plaintiff John Doe V's image has been commercially misappropriated by Defendants, causing damage, and Plaintiff John Doe V has incurred damages under the Arizona Mugshot Statute, as further described herein. Plaintiff John Doe V did not provide the Defendants with prior consent for the posting of any information about him, including, but not limited to, his arrest information and arrest photo. Plaintiff John Doe V has experienced both emotional and financial harm, including, but not limited to, injury to his business and property as a result of the commercial dissemination of his arrest information and arrest photo by the Defendants.

24. Plaintiff John Doe VI is a resident of Denton County, Texas. During the relevant time period, defendants have disseminated Plaintiff John Doe VI's arrest information and booking photo on the Websites for purely commercial purposes. As a result, Plaintiff John Doe VI's image has been commercially misappropriated by Defendants, causing damage, and Plaintiff John Doe VI has incurred damages under the Arizona Mugshot Statute, as further described herein. Plaintiff John Doe VI did not provide the Defendants with prior consent for the posting of any information about him, including, but not limited to, his arrest information and arrest photo. Plaintiff John Doe VI has experienced both emotional and financial harm, including, but not limited to, injury to his business and property as a result of the commercial dissemination of his arrest information and arrest photo by the Defendants.

25. Plaintiff John Doe VII is a resident of Kerr County, Texas. During the relevant time period, defendants have disseminated Plaintiff John Doe VII's arrest information and booking photo on the Websites for purely commercial purposes. As a result, Plaintiff John Doe VII's image has been commercially misappropriated by Defendants, causing damage, and Plaintiff John Doe VII has incurred damages under the Arizona Mugshot Statute, as further described herein. Plaintiff John Doe VII did not

provide the Defendants with prior consent for the posting of any information about him, including, but not limited to, his arrest information and arrest photo. Plaintiff John Doe VII has experienced both emotional and financial harm, including, but not limited to, injury to his business and property as a result of the commercial dissemination of his arrest information and arrest photo by the Defendants.

26. Plaintiff John Doe VIII is a resident of Harris County, Texas. During the relevant time period, defendants have disseminated Plaintiff John Doe VIII's arrest information and booking photo on the Websites for purely commercial purposes. As a result, Plaintiff John Doe VIII's image has been commercially misappropriated by Defendants, causing damage, and Plaintiff John Doe VIII has incurred damages under the Arizona Mugshot Statute, as further described herein. Plaintiff John Doe VIII did not provide the Defendants with prior consent for the posting of any information about him, including, but not limited to, her arrest information and arrest photo. Plaintiff John Doe VIII has experienced both emotional and financial harm, including, but not limited to, injury to his business and property as a result of the commercial dissemination of his arrest information and arrest photo by the Defendants.

27. Plaintiff John Doe IX is a resident of Bexar County, Texas. During the relevant time period, defendants have disseminated Plaintiff John Doe IX's arrest information and booking photo on the Websites for purely commercial purposes. As a result, Plaintiff John Doe IX's image has been commercially misappropriated by Defendants, causing damage, and Plaintiff John Doe IX has incurred damages under the Arizona Mugshot Statute, as further described herein. Plaintiff John Doe IX did not provide the Defendants with prior consent for the posting of any information about him, including, but not limited to, her arrest information and arrest photo. Plaintiff John Doe IX has experienced both emotional and financial harm, including, but not limited to,

injury to his business and property as a result of the commercial dissemination of his arrest information and arrest photo by the Defendants.

28. Plaintiff John Doe X is a resident of Hays County, Texas. During the relevant time period, defendants have disseminated Plaintiff John Doe X's arrest information and booking photo on the Websites for purely commercial purposes. As a result, Plaintiff John Doe X's image has been commercially misappropriated by Defendants, causing damage, and Plaintiff John Doe X has incurred damages under the Arizona Mugshot Statute, as further described herein. Plaintiff John Doe X did not provide the Defendants with prior consent for the posting of any information about him, including, but not limited to, his arrest information and arrest photo. Plaintiff John Doe X has experienced both emotional and financial harm, including, but not limited to, injury to his business and property as a result of the commercial dissemination of his arrest information and arrest photo by the Defendants.

29. Plaintiff John Doe XI is a resident of Travis County, Texas. During the relevant time period, defendants have disseminated Plaintiff John Doe XI's arrest information and booking photo on the Websites for purely commercial purposes. As a result, Plaintiff John Doe XI's image has been commercially misappropriated by Defendants, causing damage, and Plaintiff John Doe XI has incurred damages under the Arizona Mugshot Statute, as further described herein. Plaintiff John Doe XI did not provide the Defendants with prior consent for the posting of any information about him, including, but not limited to, his arrest information and arrest photo. Plaintiff John Doe XI has experienced both emotional and financial harm, including, but not limited to, injury to his business and property as a result of the commercial dissemination of his arrest information and arrest photo by the Defendants.

30. Plaintiff Jane Doe VI is a resident of Collin County, Texas. During the relevant time period, defendants have disseminated Plaintiff Jane Doe VI's arrest information and booking photo on the Websites for purely commercial purposes. As a result, Plaintiff Jane Doe VI 's image has been commercially misappropriated by Defendants, causing damage, and Plaintiff Jane Doe VI has incurred damages under the Arizona Mugshot Statute, as further described herein. Plaintiff Jane Doe VI did not provide the Defendants with prior consent for the posting of any information about her, including, but not limited to, her arrest information and arrest photo. Plaintiff Jane Doe VI has experienced both emotional and financial harm, including, but not limited to, injury to her business and property as a result of the commercial dissemination of her arrest information and arrest photo by the Defendants.

31. Plaintiff Jane Doe VII is a resident of Harris County, Texas. During the relevant time period, defendants have disseminated Plaintiff Jane Doe VII's arrest information and booking photo on the Websites for purely commercial purposes. As a result, Plaintiff Jane Doe VII's image has been commercially misappropriated by Defendants, causing damage, and Plaintiff Jane Doe VII has incurred damages under the Arizona Mugshot Statute, as further described herein. Plaintiff Jane Doe VII did not provide the Defendants with prior consent for the posting of any information about her, including, but not limited to, her arrest information and arrest photo. Plaintiff Jane Doe VII has experienced both emotional and financial harm, including, but not limited to, injury to her business and property as a result of the commercial dissemination of her arrest information and arrest photo by the Defendants.

32. Plaintiff John Doe XII is a resident of Los Angeles County, California. During the relevant time period, defendants have disseminated Plaintiff John Doe XII's arrest information and booking photo on the Websites for purely commercial purposes.

As a result, Plaintiff John Doe XII 's image has been commercially misappropriated by Defendants, causing damage, and Plaintiff John Doe XII has incurred damages under the Arizona Mugshot Statute, as further described herein. Plaintiff John Doe XII did not provide the Defendants with prior consent for the posting of any information about him, including, but not limited to, his arrest information and arrest photo. Plaintiff John Doe XII has experienced both emotional and financial harm, including, but not limited to, injury to his business and property as a result of the commercial dissemination of his arrest information and arrest photo by the Defendants.

33. Plaintiff Jane Doe VIII is a resident of Suffolk County, New York. During the relevant time period, defendants have disseminated Plaintiff Jane Doe VIII's arrest information and booking photo on the Websites for purely commercial purposes. As a result, Plaintiff Jane Doe VIII's image has been commercially misappropriated by Defendants, causing damage, and Plaintiff Jane Doe VIII has incurred damages under the Arizona Mugshot Statute, as further described herein. Plaintiff Jane Doe VIII did not provide the Defendants with prior consent for the posting of any information about her, including, but not limited to, her arrest information and arrest photo. Plaintiff Jane Doe VIII has experienced both emotional and financial harm, including, but not limited to, injury to her business and property as a result of the commercial dissemination of her arrest information and arrest photo by the Defendants.

34. Plaintiff Renee Ivchenko is a resident of Maricopa County. Plaintiff Renee Ivchenko was arrested in Maricopa County on April 21, 2018, and her charges were subsequently dismissed by prosecution motion on September 21, 2018. Based on information and belief, Plaintiff Renee Ivchenko's arrest information and booking photo was posted on the Websites within days of her arrest, although not discovered by her until late October 2018. Defendants repeatedly refused to remove this information until

such time as she filed her first lawsuit in Maricopa County against Defendants on May 9, 2019 (subsequently voluntarily dismissed by Plaintiff). Plaintiff Renee Ivchenko has experienced both emotional and financial harm, including, but not limited to, injury to her business and property as a result of the publication of her name and photograph by the Defendants.

35. Defendants Kyle David Grant, Travis Paul Grant, and Mariel Lizette Grant, are residents of the state of Florida. Defendants are the owners and operators of at least the following Websites:

- Rapsheets.org;
- Rapsheetz.com;
- Bailbondcity.com; and
- bailbondsearch.com.

36. Defendants are being sued in their individual capacities. This Court has jurisdiction over Defendants under Arizona's long-arm rule and applicable decisional law, which allows for assertion of personal jurisdiction over a non-resident consistent with federal constitutional due process. Ariz. R. Civ. P. 4.2(a).

37. Under the provisions of the A.R.S. 44-7902(A), Defendants, as mugshot website operators that publish a subject individual's criminal justice record for a commercial purpose on a publicly accessible website, are deemed to be transacting business in this state.

38. Plaintiffs are informed and believe, and based on that information and belief allege, that at all times mentioned in this complaint, Defendants were the agents and employees of their codefendants and in doing the things alleged in this complaint were acting within the course and scope of such agency and employment.

39. At all material times, Defendants (i) committed a tortious act within this state, and (ii) are engaged in substantial and not isolated activity within this state. Sufficient minimum contacts exist between Defendants and the state of Arizona to satisfy the due process requirements of the United States Constitution. These include directly targeting their Websites to the state, knowingly interacting with residents of the forum state via their Websites, or through sufficient other related contacts.

40. Defendants solicit customers in the state of Arizona. Upon information and belief, Defendants have many paying customers who reside in the state of Arizona who each use Defendants' respective services in the state of Arizona. Upon information and belief, Defendants conduct continuous and systematic business in the state of Arizona.

41. Defendants JOHN and JANE DOES I-X; BLACK CORPORATIONS I-X; and WHITE COMPANIES I-X, are persons, partnerships, corporations or unincorporated associates subject to suit in a common name whose names are unknown to Plaintiffs and who are wholly or partially responsible for the acts complained of, including those who have participated in managing, organizing, marketing, facilitating, and profiting from the operations of the Websites , and therefore, designated by fictitious names pursuant to Rule 10(d), Arizona Rule of Civil Procedure. Plaintiffs will ask leave of the Court to substitute the true names of the said parties prior to the entry of judgment herein.

42. Maricopa County is a proper venue, pursuant to A.R.S. §12-401(1). The acts and conduct of Defendants occurred in Maricopa County. Defendants' Websites are available to people in Maricopa County.

GENERAL ALLEGATIONS

43. Plaintiffs are individuals and are now, and at all times mentioned in this complaint were, residents of Maricopa County, Arizona; Pinal County, Arizona; Denton County, Texas; Brazoria County, Texas; Kerr County, Texas; Harris County, Texas; Bexar County, Texas; Hays County, Texas; Travis County, Texas; Collin County, Texas; Los Angeles County, California; and Suffolk County, New York.

44. Defendants generate substantial revenue from the misleading use of the original content Defendants create from the booking photos.

45. Defendants gather and collect arrest photos and create original content out of that material in the form of advertisements ("arrest photo advertisements").

46. The arrest photo advertisements are strategically placed on the Websites for maximum commercial exploitation. Specifically, Defendants place the arrest photo advertisements directly above, and/or directly alongside banner ads that advertise services for, *inter alia*, public records information, thus making it appear (falsely) that by clicking on the banner ad the user would be directed to "Arrest Details" located in the rapsheetz.com database.

47. The following screenshot capture of a page on rapsheetz.com exemplifies the misleading manner in which Defendants use the arrest photo advertisements to entice the public into clicking on third party banner ads, thus generating substantial pay-per-click advertising for Defendants:

48. Because, as in the above example, the third party banner ads are typically for services such as public arrest records databases and because the third-party banner ad is located directly beneath, alongside, and embedded within the arrest photo advertisements, the user mistakenly clicks on the banner ad falsely believing that by doing so they will be directed to the "arrest details" in the rapsheetz.com database, but are instead directed to the third party database. Defendants purposefully and intentionally create the arrest photo advertisements in this manner to increase user clicks on third party ads, thus earning substantial pay-per-click advertising revenue.

49. Thus, the arrest photos advertisements serve at least two commercial purposes: 1) to solicit and attract third party advertisers to the Website; and 2) entice

any user of the website to mistakenly click the third party banner ad so as to generate pay-per-click advertising revenue for Defendants.

50. Defendants have also used the arrest photo advertisements and the stigma of criminal guilt they falsely imply, to extort payment of fees from the victims who images have been misappropriated. Prior to the Florida Legislature's passage of the Florida Mugshots Act, Defendants openly and publically solicited and accepted fees for removal of the arrest photos and information. The Florida Mugshots Act became effective on or about July 18, 2018. Although rapsheetz.com states that Defendants no longer solicit or collect fees for removal, and therefore their conduct is not regulated by the Act, discussion by the online community about Defendants' business practices suggest that Defendants continue to solicit and accept fees for removal, but now do so surreptitiously by waiting to be contacted for removal (through its "free" removal process) and then solicit and accept payment for removal in violation of Florida law.

51. The arrest information and booking photos that Defendants use to create the arrest photo advertisements was never intended by law enforcement to be used in this manner or posted by Defendants. The booking photos Defendants use to create the arrest photo advertisements are not tendered by law enforcement agencies to Defendants. It is the public policy of the State of Arizona, as made crystal clear by the Arizona Mugshot Act, that the arrest information and arrest photos briefly disseminated by Arizona's law enforcement and other agencies not be used in the manner that Defendants use them.

52. Plaintiffs had an arrest photo taken.

53. Defendants, without permission, consent or knowledge of Plaintiffs, reproduced, publicly displayed, and distributed, and created original advertising content

out of their arrest photos. Defendants also, without permission, consent or knowledge of Plaintiffs, reproduced, publicly displayed, and distributed Plaintiffs' arrest information.

54. Defendants' respective Websites, along with Plaintiffs' images, were indexed by Yahoo.com and Google.com, and the images appear under Google Images when an internet search for Plaintiffs name is conducted.

55. Defendants' use of Plaintiffs' images and arrest information is for a purely commercial purpose.

56. Defendants operate one or more Websites that are used to display Plaintiffs' images as part of a commercial enterprise.

57. The display by Defendants of Plaintiffs' images on their Websites, are intended, among other things, to subject Plaintiffs to hatred, contempt, or ridicule, and to damage their personal and business reputations, or to impair their credit.

58. Each Defendant, acting on their own or in conjunction with one or more of the other Defendants, derives revenue from the Websites through Google Ads and other means.

59. Unless Defendants are enjoined from further commercial use and publication of Plaintiffs' images and names and other arrest information, Plaintiffs will suffer further irreparable injury.

CAUSES OF ACTION

60. The Plaintiffs incorporate by reference the allegations of each paragraph above into this claim as though fully set forth herein.

61. Plaintiffs are entitled to recover damages from Defendants jointly and from each of them based on the theories of liability hereinafter enumerated in Counts I through V, and under such other theories of liability as may be appropriate based upon the facts as alleged herein or as revealed during discovery.

COUNT I
VIOLATION OF THE ARIZONA MUGSHOT ACT (A.R.S. 44-7901/7902)
On behalf of Plaintiffs Jane Doe I-VIII and John Does I-XII
Against All Defendants

62. Plaintiffs Jane Does I-VIII and John Does I-XII incorporate by reference the allegations of each paragraph above into this claim as though fully set forth herein.

63. The people of the State of Arizona, by and through their popularly elected legislature, enacted a statute entitled "Mugshot website operators; prohibited acts; exceptions," codified at Arizona Revised Statute §§ 44-7901, 7902 (the "Arizona Mugshot Statute"). That statute was in force and effective at all times herein relevant.

64. A.R.S. 44-7902 states as follows:

> Mugshot website operators; prohibited acts; exceptions
>
> A. A mugshot website operator that publishes a subject individual's criminal justice record for a commercial purpose on a publicly accessible website is deemed to be transacting business in this state.
>
> B. A mugshot website operator may not use criminal justice records or the names, addresses, telephone numbers and other information contained in criminal justice records for the purpose of soliciting business for pecuniary gain, including requiring the payment of a fee or other valuable consideration in exchange for removing or revising criminal justice records that have been published on a website or other publication.
>
> C. A subject individual whose criminal justice record is published in violation of subsection B of this section and who suffers a pecuniary loss or who is otherwise adversely affected as a result of a violation of subsection B of this section has a cause of action against the person responsible for the violation and may recover damages in addition to the

damages prescribed in subsection D of this section in any court of competent jurisdiction.

D. A person that violates subsection B of this section is liable for damages for each separate violation in an amount of at least:

1. $100 per day during the first thirty days of the violation.
2. $200 per day during the subsequent thirty days of the violation.
3. $500 per day for each day thereafter.

E. This article does not apply to any act performed for the purpose of disseminating news to the public, including the gathering, publishing or broadcasting information to the public for a news-related purpose, or to any act performed by a publisher, owner, agent, employee or retailer of a newspaper, radio station, radio network, television station, television broadcast network, cable television network or other online news outlet associated with any news organization in connection with the dissemination of news to the public, including the gathering, publishing or broadcasting information to the public for a news-related purpose.

F. This article does not apply to activities by a licensed attorney, private investigator or registered process server that are associated with purposes relating to a current or anticipated criminal or civil proceeding. This section does not affect the conduct of trials or the discovery process in any proceeding as otherwise provided by law or court rule.

65. A.R.S. 44-7901 states as follows:

<u>44-7901. Definitions</u>

In this article, unless the context otherwise requires:

1. "Booking photograph" means a photograph of a subject individual that is taken pursuant to an arrest or other involvement in the criminal justice system.

2. "Commercial purpose" has the same meaning prescribed in section 39-121.03.

3. "Criminal justice record" includes a booking photograph and the name, address and description of and the charges filed against a subject individual.

4. "Mugshot website operator" means a person that publishes a criminal justice record on a publicly available internet website for a commercial purpose.

5. "Person" means a natural person, partnership, association, joint venture, corporation, limited liability company, nonprofit organization or trust or any similar entity or organized group of persons.

6. "Subject individual" means an individual who has been arrested.

66. A.R.S. 39-121.03(D) states as follows:

For the purposes of this section, "commercial purpose" means the use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from public records for the purpose of solicitation or the sale of names and addresses to another for the purpose of solicitation or for *any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record* (emphasis added). Commercial

purpose does not mean the use of a public record as evidence or as research for evidence in an action in any judicial or quasi-judicial body.

67. Defendants posted Plaintiffs Jane Does I-VIII and John Does I-XII arrest photo and criminal record information to rapsheetz.com and/or bailbondsearch.com as set forth herein.

68. Plaintiffs Jane Does I-VIII and John Does I-XII arrest photo and criminal record information to rapsheetz.com and/or bailbondsearch.com for a commercial purpose, as defined in A.R.S. 39-121.03(D).

69. Defendants violated the Arizona Mugshot Statute by posting Plaintiffs Jane Does I-VIII and John Does I-XII criminal record information and mugshot to rapsheetz.com and/or bailbondsearch.com for commercial purposes, namely, by soliciting and generating advertising revenue through Google Ads, and by other acts and/or omissions as specified in this Amended Complaint.

70. Pursuant to the Arizona Mugshot Statute, "A person that violates subsection B of this section is liable for damages for each separate violation in an amount of *at least*: 1. $100 per day during the first thirty days of the violation. 2. $200 per day during the subsequent thirty days of the violation. 3. $500 per day for each day thereafter." A.R.S. 44-7902(D) (emphasis added).

71. Defendants' violation of the Arizona Mugshot Statute proximately caused damage to Plaintiffs Jane Does I-VIII and John Does I-XII in an amount to be determined at trial.

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COUNT II
INVASION OF PRIVACY BASED ON APPROPRIATION
On behalf of All Plaintiffs
Against All Defendants

72. Plaintiffs incorporate by reference the allegations of each paragraph above into this claim as though fully set forth herein.

73. Plaintiffs have a privacy interest in the exclusive use of their names and likenesses.

74. Defendants' appropriation (and use as an advertisement) of the Plaintiffs' booking photos was done for Defendants own commercial purposes and benefit.

75. Defendants' appropriation of Plaintiff's images constituted an invasion of privacy as prescribed by *Restatements (Second) of Torts* § 652C.

76. Defendant's misappropriation of Plaintiffs' images proximately caused damage to Plaintiffs in an amount to be determined at trial.

COUNT III
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
On behalf of All Plaintiffs
Against All Defendants

77. Plaintiffs incorporate by reference the allegations of each paragraph above into this claim as though fully set forth herein.

78. Defendants, by and through publishing and using Plaintiffs' booking photos as advertisements, behaved intentionally and/or recklessly.

79. Defendants, by and through publishing and using Plaintiffs' booking photos as advertisements, intended to cause emotional distress upon Plaintiffs.

80. Publishing and using Plaintiffs' booking photos as advertisements and to extort payment for removal, was so outrageous in character, and so extreme in degree, as

to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

81. Plaintiffs have suffered and continue to suffer severe emotional distress and emotional injury due to Defendants' actions.

82. Defendants' actions were the direct and proximate cause of such severe emotional distress and emotional injury to Plaintiffs.

83. Plaintiffs suffered and continue to suffer mental anguish as a result of Defendants publishing and using Plaintiffs' booking photos as advertisements and to extort payment for removal, and said mental anguish is of a nature that no reasonable person could be expected to endure.

84. As a result, Defendants are liable to Plaintiffs for actual, presumed and punitive damages in an amount to be determined at trial.

COUNT IV
UNLAWFUL APPROPRIATION/RIGHT OF PUBLICITY
On behalf of All Plaintiffs
Against All Defendants

85. Plaintiffs incorporate by reference the allegations of each paragraph above into this claim as though fully set forth herein.

86. Arizona courts "recognize[] the right of publicity, both as a tort claim and an unfair competition claim." *Lemon v. Harlem Globetrotters Int'l, Inc.*, 437 F. Supp. 2d 1089, 1100 (D. Ariz. 2006) (citing *Restatement (Second) of Torts* § 652C).

87. Defendants used the name and likeness of Plaintiffs without their consent or permission to Defendants' commercial advantage.

88. Defendants' wrongful use included, *inter alia*, use of Plaintiffs' images as advertisements.

89. As a result of Defendants' use of Plaintiffs' names, Plaintiffs have suffered harm including harm to reputation, emotional distress, and additional harms.

COUNT V
PUNITIVE DAMAGES
On behalf of All Plaintiffs
Against all Defendants

90. Plaintiffs incorporate by reference the allegations of each paragraph above into this claim as though fully set forth herein.

91. Defendants' aforementioned conduct was conscious, deliberate, intentional, and/or reckless in nature.

92. Defendants' aforementioned conduct was undertaken in a state of mind which evidences hatred, ill will, or a spirit of revenge. Defendants' evil hand was guided by an evil mind.

93. Defendants' aforementioned conduct evidences a conscious disregard for the rights of Plaintiffs and has caused, and continues to cause, them substantial harm.

94. As a result, Plaintiffs are entitled to punitive damages and attorneys' fees.

WHEREFORE, Plaintiffs request that the Court enter judgment in their favor and against Defendants and each of them as follows:

1. For damages in an amount that Plaintiffs will prove;
2. For punitive damages to be consistent with proof in this action;
3. Appropriate preliminary and/or permanent injunctive relief;
4. For Plaintiffs' reasonable costs and attorneys' fees incurred herein;
5. For such other and further relief as the Court deems just.

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DATED this 27th day of February, 2020.

Respectfully submitted,

DICKINSON WRIGHT PLLC

By: /s/ David N. Ferrucci
David N. Ferrucci
David G. Bray
Paxton D. Endres
Attorneys for Plaintiffs

ORIGINAL of the foregoing efiled with the Superior Court and a **COPY** thereof mailed this 27th day of February, 2020 to:

David S. Gingras, Esq.
GINGRAS LAW OFFICE, PLLC
4802 E. Ray Road, #23-271
Phoenix, Arizona 85044
Attorneys for Defendants

By: /s/ Christine Klepacki

EXHIBIT 2

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

JOHN DOE,
Plaintiff,
vs.

CASE NO.: **2021-CA-000960**

GAINESVILLE CONSOLE DOCTOR LLC, TRAVIS PAUL GRANT, KYLE DAVID GRANT, JOHN and JANE DOES I-X; and XYZ COMPANIES I-X,
Defendants.
_____/

AFFIDAVIT IN SUPPORT OF RESPONSE TO MOTION FOR MORE DEFINITE STATEMENT AND PLAINTIFF'S MOTION TO WAIVE APPEARANCE AT FUTURE PROCEEDINGS AND TO PROCEED UNDER PSEUDONYM

I, Andrew Ivchenko, hereby state and declare as follows:

1. My name is Andrew Ivchenko. I am a United States citizen, a resident of the State of Arizona, am over the age of 18 years, and if called to testify in court or other proceeding I could and would give the following testimony which is based upon my own personal knowledge.

2. I am a lawyer based in Phoenix, Arizona. I have been admitted to practice law in the State of Arizona since 2002, and the State of Ohio since 1989.

3. This declaration is made in support of Plaintiff John Doe's Motion to Proceed Under Pseudonym in Seminole County, Florida case no. 2021-CA-000690, *Doe v. Grant et. al*. ("the Florida case").

4. I have come to have personal knowledge of the retaliatory past conduct of the Defendants (the "Florida Defendants") and one of their attorneys in the Florida case, David Gingras ("Mr. Gingras").

Retaliatory Conduct Against Renee Ivchenko

5. I am married to Renee Ivchenko, whom I represented in connection with the removal of her booking photos and arrest information from various mugshot websites after her arrest in April 2018. I was able to remove almost all of her booking photos and arrest information from these predatory sites.

6. After asserting her legal rights against several mugshot website operators, Renee Ivchenko's booking photo and arrest information was posted on a Twitter site on February 19, 2019, operated by an unknown individual with a fake account name (the "Twitter site"), and on a second mugshot website until such time as the site was taken down for unknown reasons a few months later.

7. After repeated requests, the Florida Defendants, including Travis Paul Grant, refused to remove Renee Ivchenko's information from their mugshot websites (the "Websites"). I filed suit against Travis Paul Grant, Kyle David Grant, and Mariel Lizette Grant (the "Grants") on behalf of Renee Ivchenko in Maricopa County, Arizona on May 9, 2019 (Superior Court Case No. CV2019-090493).

8. On or about May 18, 2019, I conducted an internet search of Renee Ivchenko's name, and her booking photo and arrest information no longer appeared on the Grants' Websites. Renee Ivchenko voluntarily dismissed her lawsuit under F.R.C.P. 41(a)(1)(A)(i) on May 31, 2019 after the case was removed to federal court.

9. Additional defamatory statements were made on the Twitter site on September 15, 2019 and September 18, 2019, this time directed against both Renee Ivchenko and me. Based on information and belief, I concluded that the Grants or someone associated with them made these postings. As a result, Renee Ivchenko and I filed suit against the Grants in Maricopa County on December 17, 2019 for defamation and additional causes of action related to the posting of her booking photo and arrest information on the Twitter site in question (Superior Court Case No. CV2019-015355). We were represented in this case by Dickinson Wright PLLC, of Phoenix, Arizona. An amended complaint dropped me as a plaintiff, and added numerous additional John Doe and Jane Doe plaintiffs asserting claims against the Grants under Arizona's new mugshot statute, A.R.S. 44-7902.

10. Case No. CV2019-015355 was removed to Federal court by the Grants and eventually dismissed by the plaintiffs, so that they could join a concurrent State court action in which I was lead counsel. In response, the Grants tried to obtain attorney's fees from Renee Ivchenko, the only named Plaintiff in that case. This motion was denied. *See* Doc 15, Arizona District Court Case No. CV-20-00674 PHX-MTL. In addition, the Grants filed two unnecessary motions (described in Paragraphs 11-12) in that case that targeted Renee Ivchenko by including her booking photo and detailed arrest information, including court documents involving her

arrest, into the motions. This, by all appearances, was done by the Grants and their attorney, Mr. Gingras, simply to ensure that her arrest information and booking photos were made part of the public court record for perpetuity.

11. Despite robust communication between the parties in this action, without ever mentioning or requesting payment pursuant to Rule 41 in connection with the case referenced in Paragraph 8, *supra*, the Grants unnecessarily filed an aggressive, multi-page motion on February 7, 2020 that sought recovery of approximately $400 in costs in connection with the previously dismissed action. Had the Grants asked, we would have agreed to pay the requested $400 rather than waste the parties' and the court's resources on that trivial matter. The only purpose that motion served was as a vehicle to intimidate and smear Renee Ivchenko and to create yet another public record containing Renee Ivchenko's arrest information and booking photo.

12. On February 21, 2020, the plaintiffs' attorney, David N. Ferrucci, indicated to Mr. Gingras in writing that Plaintiffs were planning on amending their complaint within the 21-day time-period provided by the rules, which would include dropping a defamation claim. Nonetheless, the Grants filed a summary judgment motion the following day, making aggressive arguments in connection with that defamation claim, and taking that opportunity to once again insert Renee Ivchenko's booking photo and detailed arrest information, including court documents that had no bearing on the case, into the motion. The transparent purpose for doing this was to cause her further embarrassment, knowing full-well that various online reporting services would publish the case and thereby keep her booking photos and arrest information memorialized in perpetuity in yet another online publication.

13. In his affidavit in support of the Grants' motion for attorney's fees, referenced in Paragraph 10, *supra*, Mr. Gingras stated that "Defendants incurred costs in the amount of $36.00 paid to the City of Scottsdale for the purpose of obtaining evidence (police reports and body camera video) which directly relates to the defense of Mrs. Ivchenko's claims." (*See* Arizona District Court Case No. CV-20-00674, Doc 15-1, ¶ 17). This request was made even though Renee Ivchenko dropped her defamation claims in the original Complaint by filing an Amended Complaint on February 27, 2020, and there was no remaining cause of action that would plausibly have required the Grants' attorney to obtain this information to defend his clients.

14. The Grants' cyberstalking of Renee Ivchenko continued when they misappropriated her name by establishing the website www.reneeivchenko.com, on which they posted her mugshot. I sent the hosting company (Godaddy) a subpoena to find out who had set up this website, and the response showed that it was Defendant Travis Grant, who set up the site on July 4, 2020. *See* Exhibit 1. It is likely that the Grants were the ones who also obtained a website in my name, www.andrewivchenko.com, on August 17, 2020. The site in my name is devoid of content, but the bottom of the site includes the notation "This will be fun." It is my position that the Grants, as well as Mr. Gingras, are criminally and civilly liable for cyberstalking both me and my wife. For instance, under Florida law a court could find that the creation of the website, www.reneeivchenko.com, with the republishing of the mugshot of Mrs. Ivchenko, constitutes Cyberstalking by Impersonation - To engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person; causing substantial emotional distress to that person and serving no legitimate purpose. *See* Section 784.048(1)(d), Fla. Stat. The websites created serves no legitimate purpose. The Grants intentionally used the identity of a litigant and an attorney in an effort to further embarrass and/or harass which I interpret as a strategy to seek to apply pressure to not litigate legitimate contested claims.

Retaliatory Conduct Against Other Arizona Plaintiffs

15. I have represented numerous clients in Arizona over the past year against the Grants. I currently represent clients in two State court actions against them, including an appeal that is being supported by the Arizona Attorney General, as well as a class action involving all Arizona residents adversely affected by the activities of the Grants. The primary cause of action being contested in these cases involves Arizona Revised Statute §§ 44-7901, 7902; Mugshot website operators; prohibited acts; exceptions, as well as other causes of action under Arizona common law. The new law defines mugshot website companies as "mugshot website operators" and prohibits their operation for commercial purposes, which the law defines to include "any purpose in which the [mugshot website operator] can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record." A.R.S. § 39-121.03(D); A.R.S. § 44-7901(2). The Arizona Mugshot Statute also prescribes hefty minimal damages that mugshot website operators will have to pay to those affected if they do not comply with the law.

The Grants have ignored this law, and continue scraping and posting mugshots of arrestees in Arizona, which are only posted by law enforcement for three days.

16. Many of my clients have had a negative interaction with the legal system, compounded by the actions of mugshot website operators who in the internet age make it almost impossible for them to move on from a difficult time in their lives. These clients fear they will be subjected to further online humiliation and damage to their reputations at the hands of mugshot website operators like the Grants should they pursue their rights in court. Most of my clients previously interacted with the Grants in an effort to have their booking photos and arrest information removed from the Websites. In each instance the Grants refused to remove their booking photos and arrest information from the Websites.

17. From my experiences in dealing with mugshot website operators, they are vindictive people who hold grudges and often monitor the online activity of targeted individuals for further harassment in order to make an example of them. For example, an individual named Zim Rogers, who was the lead class action plaintiff against a mugshot website operator in *Rogers v. Justmugshots*, 2015 Cal. App. Unpub. LEXIS 7177 (Cal. App. 2d Dist. Oct. 7, 2015), had success in court against a mugshot website operator at both the trial and appellate level. However, this did not insulate him from further oppression by this malicious and vindictive community of mugshot website operators, as his booking photos and arrest information was later posted on Twitter, as well as on a second revenge site, by anonymous, unknown parties. Renee Ivchenko's booking photos and arrest information appeared on these same revenge sites. The Twitter site in question only included this information relating to Zim Rogers and Renee Ivchenko, and the only Arizona residents on the second site were these same individuals.

18. Mr. Gingras has used threats and intimidation as a tactic to get my clients to drop their claims against the Grants. He has repeatedly and aggressively threatened me with Rule 11 sanctions, motions for attorney's fees, and civil lawsuits. Mr. Gingras filed a bar complaint against me, which was dismissed by the Arizona Bar on May 28, 2020. This complaint was filed a few weeks after I filed suit against the Grants on behalf of twenty affected plaintiffs. Mr. Gingras and the Grants also proceeded to file suit against me and my wife in the Arizona District Court in January 2021, alleging myriad causes of action including malicious prosecution. This lawsuit was filed only three days after I filed an additional lawsuit against the Grants. It is my opinion that the Grants' case is groundless and will be dismissed on the pleadings, and was filed

simply to exert pressure against me in my ongoing State court actions. I have never seen such hostile behavior from opposing counsel in 32 years of practice, nor was I ever the subject of a bar compliant.

19. Mr. Gingras is known in Arizona for filing frivolous lawsuits against attorneys and parties that have brought suit against his clients, mostly predatory internet operators like the Grants who cause the public immense harm. The best known of these cases involved Xcentric Ventures LLC (which operates the notorious Rip-off Report). *See Xcentric Ventures, LLC v. Borodkin*, 798 F.3d 1201 (9th Cir. 2015). This groundless lawsuit was dismissed by the Court, and yet still appealed by the plaintiffs, to no avail. Mr. Gingras has continued with these tactics against me and my wife, this time on behalf of the Grants, notorious mugshot website operators who in their pleadings in Arizona have admitted that there are "twenty million" people with mugshots on their Websites. Mr. Gingras has repeatedly used the law as a weapon in Arizona to create a chilling effect designed to dissuade others from asserting their legal rights against the Grants and other predators like them.

20. I have observed that once the Grants and Mr. Gingras have identified a party, they will see to it that this person's name, booking photo, arrest records, criminal justice files, police video, etc., will all be inserted in the pleadings as well as in the case caption, which then allows the case to get reported by various online reporting services, as well as posting the information on the front page of the Grants' Websites. Mr. Gingras aids and abets his clients in this manner, by obtaining these records and posting copies of the pleadings and emails from opposing counsel on his Twitter site, at https://twitter.com/davidsgingras?lang=en. *See* Exhibit 2.

21. On November 20, 2020, I sent Mr. Gingras an e-mail and informed him that I would be coordinating my efforts in the litigation against the Grants with the Rosenstein Law Group, located in Scottsdale, Arizona, and that my clients would be filing individual actions against the Grants. Mr. Gingras responded "Nevertheless, I will remind you that filing groundless lawsuits without probable cause and with malice is both unethical and unlawful, and doing so will expose you and anyone else involved to significant personal liability."

22. Two of my former clients were represented by the Rosenstein Law Group in lawsuits filed in Arizona against the Grants (Maricopa County Case Nos. CV2020-055202, filed September 24, 2020, and CV2020-055722, filed November 6, 2020).

23. The Grants and Mr. Gingras rely heavily on using "doxing" as an intimidation strategy. Doxing concerns publishing private or identifying information about a particular individual on the internet, typically with malicious intent. The most recent example of this involves an anonymous plaintiff and former client of mine in one of the cases filed against the Grants by the Rosenstein Law Firm. Despite efforts to conceal the client's identity in this matter, the Grants assumed who the Jane Doe plaintiff was. In retaliation, the Grants included her mugshot and criminal justice information on the front page of their Website. *See* Paragraph 24, *infra*. To further enhance the doxing effect, Mr. Gingras also included hyperlinks to the individual who he simply *assumed* (emphasis added) was the plaintiff and then added her mugshot and criminal justice information in his pleadings and inserted her name in the case caption despite her filing under the name "Jane Doe." *See* Plaintiff's Motion, Exhibit 3, Affidavit of Steve Scharboneau. This was all done without the Court's permission. Several online reporting services picked up the case and a Google search of the client's name then included the case, along with her booking photo and arrest records memorialized for eternity.

24. On or about October 12, 2020, the client referenced in Paragraph 23, *supra*, had her booking photo and arrest information placed on the front page of the Grants' commercial mugshot website at www.publicpolicerecord.com. The front page included the booking photo and other derogatory commentary pertaining to one of the attorneys in the Rosenstein Law Group, who was part of their litigation team. *See* Plaintiff's Motion, Exhibit 3, Affidavit of Steve Scharboneau. The front page also included the addition of Renee Ivchenko's booking photo, detailed documentation pertaining to her participation in a diversion program, and the actual police video from her arrest, the latter two of which had been obtained by Mr. Gingras. See Paragraph 13, *supra*. These were the only three people that appeared on the www.publicpolicerecord.com front page at that time. It is clear to me from the timeline of events and communications with the parties involved that the reposting of the criminal justice information by the Grants was meant to harass and intimidate me, the other parties and their attorneys and family members, and was retaliatory in nature.

25. On December 5, 2020, I sent Mr. Gingras an e-mail objecting to the targeting of the three individuals referenced in Paragraph 24, *supra*, on the Grants' Websites. On December 6, 2020, Mr. Gingras acknowledged that his clients had published this information, further stating, "I've said this before and I'll say it again – litigation is like war. That's just a fact....

Suing can often cause far more harm to the plaintiff than whatever events they are suing over. Just ask Barbra Streisand. I could draw other comparison [sic], but probably the most accurate one is this: asking the [Grants] not to make public comments about the case (and the participants) is kind of like a rapist telling their victim not to scream during the assault."

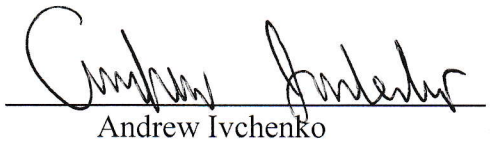
26. The Grants immediately removed Renee Ivchenko's booking photo and arrest information from the Websites after I first filed suit against them in Arizona on May 9, 2019. See Paragraph 7, *supra*. I subsequently voluntarily dismissed that lawsuit. See Paragraph 8, *supra*. Upon information and belief, the Grants reposted Renee Ivchenko's arrest information on the www.publicpolicerecord.com front page, coupled with the addition of the court documents and arrest video, only after I informed the Grants' attorney, Mr. Gingras, that I would be filing individual actions on behalf of plaintiffs. *See* Paragraph 21, *supra*.

27. After considering this predatory behavior on the part of the Grants and Mr. Gingras, an Arizona Superior Court judge granted my client John Doe's Motion to Proceed Anonymously. *See* Exhibit 3. Now as Defendants in the Florida case, the Grants may well continue their retaliatory tactics of publicly disparaging litigants and their attorneys. I believe it is important for this Court to know how the Grants and their attorney, Mr. Gingras, have conducted themselves in previous litigation. Mr. Gingras, himself, is more than just a zealous advocate for his clients - he has repeatedly crossed an ethical line and become his clients' alter ego. I have every reason to believe that these "scorched earth" tactics and doxing, as described herein and demonstrated by the Grants and Mr. Gingras, will be directed against the John Doe Plaintiff in the instant Florida case if given the opportunity. Indeed, it is likely to be even worse.

28. Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

DATED this 6th day of July, 2021.

Respectfully submitted,



Andrew Ivchenko

EXHIBIT 3

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Attorney for Plaintiff

ARIZONA SUPERIOR COURT

MARICOPA COUNTY

JOHN DOE, Plaintiff, vs. TRAVIS PAUL GRANT et al., Defendants.	Case No. CV2020-055722 **DECLARATION OF STEVEN SCHARBONEAU IN SUPPORT OF PLAINTIFF'S MOTION TO PROCEED UNDER PSEUDONYM** HON. JAMES SMITH

1. My name is Steven Scharboneau and I am an Arizona attorney, along with other attorneys from the Rosenstein Law Group, PLLC, representing the Plaintiff in the above-captioned case, and make these statements based on my own personal knowledge.

2. Prior to my involvement in litigation with Defendants, they had published my criminal justice information from an arrest that had occurred in 2004. After sending the Defendants letters requesting that they remove my criminal justice information in mid-2019, they eventually complied with these requests—removing all information resulting from my 2004 arrest.

3. Upon learning of my involvement in drafting, lobbying and eventually shepherding what is now Arizona Revised Statutes §§ 44-7901, 7902 into law, and following our firm's initial conversation with the attorney for Defendants (David

Gingras), on October 2, 2020 notifying him that we represent the clients who had initiated a lawsuit against Defendants in a separate matter from this one, Defendant's retaliated against me by posting my mugshot on the front page of their commercial mugshot website, www.publicpolicerecod.com, and published a harassing, damaging and defamatory story about my family and I.

4. Following a hyperbolic and misleading narration of events which took place on the date of my arrest when I was seventeen years-old, Defendants go on to include several other sections, misrepresenting my family and I to the public. For example, one such section includes the following:

> Stephen Scharboneau came from a broken home. His parents divorced when he was just a toddler. Stephen Scharboneau father was a raging alcoholic and used to beat him. The apple didn't fall from the tree as Stephen was also drinking to intoxication and using marijuana. At the time of his arrest, he could only read at a 6th grade level. His mother was never in his life. He did try to live with her during his teens but it never "worked out"

5. Upon information and belief, Defendants posted the aforementioned information the day after our discussion with their attorney, Mr. Gingras.

6. It is clear from the timeline of events and communications with the parties involved that the reposting of my criminal justice information by Defendants was meant to harass and intimidate me and was retaliatory in nature.

7. Mr. Gingras acknowledged that his clients had published this information and when confronted about it, Mr. Gingras responded in an email to Craig Rosenstein, attorney for Plaintiff, that while he does not condone this behavior, "it kind of makes sense that my clients have responded this way against Steven." Mr. Gingras further stated in his email to Mr. Rosenstein regarding the publication of the aforementioned

information that: "a civil suit is very much like a declaration of war, and if you declare war on someone, you shouldn't expect a warm and fuzzy response."

8. Our firm represents one other client against Defendants, a case which is in The United States Federal Court, District of Arizona. *See* Case 2:20-cv-02045-SPL. Despite efforts to conceal the client's identity in this matter, Defendants along with Mr. Gingras assumed who the Jane Doe Plaintiff was. In retaliation, Defendants included her mugshot and criminal justice information on the front page of their website, www.publicpolicerecords.com. Furthermore, Mr. Gingras has included hyperlinks to the individual who he assumed is the Plaintiff's mugshot and criminal justice information in his pleadings and used her name in captions despite her filing under Jane Doe.

9. I am aware of one other attorney who has engaged in civil litigation with Defendants and Defendants have engaged in similar harassing and intimidating conduct with his wife, who was also engaged in litigation with Defendants.

10. I declare under penalty of perjury that the foregoing is true and correct.

DATED this 16 day of December, 2020.

Respectfully submitted,

By: _____
Steven Scharboneau
Attorney for Plaintiff

EXHIBIT 4

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IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

JOHN DOE, Plaintiff, vs. TRAVIS PAUL GRANT, et al., Defendants.	Case No. CV2021-090059 **PLAINTIFF'S MOTION TO WAIVE APPEARANCE AT FUTURE PROCEEDINGS AND TO PROCEED UNDER PSEUDONYM** (Assigned to Hon. Tracey Westerhausen)

Plaintiff submits this motion and hereupon requests that the Court waive his appearance in all further proceedings as practicable and grant permission to proceed under the pseudonym John Doe for the following reasons.

I. INTRODUCTION

This case is a continuation of a previous case filed by Plaintiff in this Court. *See* Exhibit 3, ¶¶ 2-3. In this lawsuit, Plaintiff contends that Defendants' continuous and ongoing violations of his rights under Arizona statutory and common law have caused and continue to cause him injury. *See* Complaint. As more fully explained below, Plaintiff seeks to remain anonymous and to proceed under pseudonym because of the sensitive nature of the issues involved and to ensure that Defendants do not engage in additional online predation designed to further harm his reputation and emotional well-

being. Further, disclosure of Plaintiff's identity in connection with this case would unnecessarily prejudice Plaintiff's case and prevent Plaintiff, and others in his situation, from asserting and vindicating their rights under Arizona law.

This Motion is supported by the following Memorandum of Points and Authorities; the Complaint filed in this case; Plaintiff's Request for Judicial Notice, attached hereto as Exhibit 1; Declaration of Steven Scharboneau, attached hereto as Exhibit 2; Declaration of Andrew Ivchenko, attached hereto as Exhibit 3; and Proposed Form of Order is attached hereto as Exhibit 4; all of which are incorporated herein.

MEMORANDUM OF POINTS AND AUTHORITIES

II. FACTUAL BACKGROUND

Defendants are notorious mugshot website operators who operate several websites that post mugshots and criminal records, including that of the Plaintiff. These include www.rapsheetz.com, www.bailbondshq.com, and www.publicpolicerecord.com (the "Websites"). The Websites exploit the "embarrassing and humiliating information" contained in booking photos and other arrest information and do so for purely commercial purposes. (*See* Complaint, ¶ 2). As the Sixth Circuit recently held: "**A disclosed booking photo casts a long, damaging shadow over the depicted individual**." *Detroit Free Press Inc. v. United States Dep't of Justice*, 829 F.3d 478, 482 (6th Cir. 2016) (emphasis added). As the Sixth Circuit further explained:

> Booking photos—snapped in the vulnerable and embarrassing moments immediately after an individual is accused, taken into custody, and deprived of most liberties—fit squarely within this realm of embarrassing and humiliating information. More than just vivid symbols of criminal accusation, booking photos convey guilt to the viewer.

Id. at 482. (citations and quotations omitted). Defendants' business model is to "scrape" arrest information and booking photos that law enforcement agencies make available to

the public (for a brief period of time),[1] and then post this embarrassing and humiliating information on their Websites for their own commercial gain. *See* Complaint, ¶ 2.

In response to the reprehensible business model of mugshot website operators, such as Defendants, the Arizona State Legislature enacted a "Mugshots Act" that became effective on August 27, 2019 and is codified at A.R.S. §§ 44-7901, *et. seq.* (the "Arizona Mugshot Act"). The Arizona Mugshot Act prohibits "mugshot website operators" from posting arrest information and booking photos for commercial purposes, which the Act broadly defines to include "any purpose in which the [mugshot website operator] can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record." A.R.S. § 39-121.03(D); A.R.S. § 44-7901(2). There is no question that Defendants' commercial exploitation of arrest information and booking photos falls squarely within the conduct proscribed by Arizona's Mugshot Act.

State legislatures, such as Arizona's, recognize that the commercial exploitation of arrest information and booking photos by mugshot website operators such as Defendants causes daily, continuing and ongoing harm to the individual depicted, creates substantial barriers for those attempting to reintegrate into society from finding employment, housing, and starting a new life, and militates against efforts at criminal justice reform and rehabilitation. *See* Complaint, ¶ 3. As such, in addition to any pecuniary loss caused by a violation, the Arizona Mugshot Act mandates substantial, increasing damages for each separate violation in an amount of **at least** $100 per day during the first thirty days of the violation; $200 per day during the subsequent thirty

[1] Because of the harm caused by the commercial exploitation of arrest information by unscrupulous mugshot website operators, such as Defendants, law enforcement agencies and the State of Arizona do not intend for booking photos and arrest information to be "scraped" and then used for a commercial purpose. Complaint, ¶ 7.

days of the violation; and $500 per day for each day thereafter. A.R.S. § 44-7902 (emphasis added).

Although by this action Plaintiff seeks a vindication of his rights under the Arizona Mugshot Act (and the Arizona common law), Plaintiff is reasonably concerned that he will face further online harassment from Defendants or the owners of similar websites who have a mutual interest in dissuading other victims from pursuing their legal rights against them under Arizona and other states' laws. Indeed, Defendants have engaged in the exact behavior which Plaintiff rightfully fears on numerous occasions (*See* Exhibits 2 and 3). As such, there is a very real threat that if Plaintiff's true identity is disclosed as result of participation in this lawsuit, Defendants and/or other mugshots website operators will retaliate against him. To make matters worse, predatory mugshot website operators such as Defendants hold grudges and often monitor the online activity of targeted individuals for further harassment in order to make an example of them. *See* Exhibit 3 ¶ 5. The result is often an endless nightmare that Plaintiff, who is already adversely affected by Defendants' unlawful activity, wishes to avoid.

Since Defendants have continuously exploited an innumerable amount of individual's criminal justice information since the beginning of the Arizona Mugshot Act's effective date, potential Arizona plaintiffs are entitled to substantial amounts of monetary damages. Moreover, because the Defendants operate at least two separate mugshot websites, the total damages could double. Considering these potentially staggering damage amounts, and the fact that other plaintiffs will be filing lawsuits against them (*Id.*, ¶¶ 3-4), this lawsuit poses an existential threat to Defendants' nefarious business practices. Faced with such a threat, Defendants, and perhaps other mugshot website operators, will most certainly retaliate in an attempt to both punish Plaintiff for asserting his rights, and to create a chilling effect to dissuade other potential

plaintiffs from joining the litigation. Defendants (and other threatened mugshot website operators) will have the motive, the means, and the opportunity to inflict additional, substantial harm to the Plaintiff's reputation, all in contravention of the spirit and purpose of Arizona's Mugshot Act. Indeed, having no plausible defense under Arizona law, Defendants have already proven beyond any shadow of a doubt that "scortched earth" tactics are their *modus operendi*. *See* Exhibits 2 and 3.

In short, Defendants' aggressive response toward plaintiffs, attorneys and attorneys' families who engage in litigation against them justifies the concerns of Plaintiff. As a result, Plaintiff respectfully requests the Court waive his presence during further proceedings and permit him to proceed under pseudonym. Plaintiff further respectfully requests that his name and identity be revealed only if and when necessary, pursuant to a good faith basis, on an "attorneys' eyes only" basis, and that his identity be prohibited from being revealed to Defendants and third parties, or be revealed in any court documents.

III. THE PLAINTIFF'S MOTION SHOULD BE GRANTED

Although there appears to be no reported Arizona cases that directly address the circumstances under which a plaintiff may proceed pseudonymously, there are lessons that can be drawn from the facts and circumstances of several cases. In *Doe v. Arpaio*, 150 P.3d 1258 (Ariz. Ct. App. 2007), for example, the plaintiff Doe was a prison inmate who brought a constitutional challenge against the prison for its refusal to allow her to leave jail to procure a first-trimester abortion. The Court of Appeals addressed the issue in a single sentence: "The trial court allowed plaintiff Jane Doe to proceed pseudonymously. We continue that usage." *Id*. at 1259 n.1.

The Ninth Circuit has held that "a party may preserve his or her anonymity in judicial proceedings in special circumstances when the party's need for anonymity

outweighs prejudice to the opposing party and the public's interest in knowing the party's identity." *Does I thru XIII v. Advanced Textile Corp*., 214 F.3d 1058, 1068-69 (9th Cir. 2000) ("conclude[ing] that the district court abused its discretion in denying plaintiffs permission to proceed anonymously"). More specifically, a plaintiff may proceed under a pseudonym when, as here, "identification creates a risk of retaliatory physical or mental harm[.]" *Id*. Indeed, "[w]here it is necessary … to protect a person from harassment, injury, ridicule or personal embarrassment, courts have permitted the use of pseudonyms." *United States v. Doe*, 655 F.2d 920, 922 (9th Cir. 1980).

In *Advanced Textile Corp*, the Ninth Circuit established five factors for courts to consider in determining whether to allow a party to proceed under a fictitious name, all of which weigh in favor of allowing Plaintiff to proceed anonymously. These five factors include: (i) severity of the threatened harm; (ii) reasonableness of anonymous parties' fears; (iii) anonymous parties' vulnerability to such retaliation; (iv) prejudice to opposing party; and (v) public interest. *Does I thru XIII*, 214 F.3d at 1068. In *Doe*, "No factors weigh[ed] against concealing plaintiffs' identities." *Id*. at 1069.

The first factor clearly weighs in favor of permitting anonymity. Plaintiff fears that disclosure of his identity would cause Defendants (or other mugshot website operators) to retaliate against him by engaging in additional online activities designed to further harm his reputation and emotional well-being. *See* Exhibit 3 ¶¶ 5, 7, 10-12. Both courts and legislatures recognize the severity of this threatened harm. *See e.g., Detroit Free Press Inc.*, 829 F.3d at 482 (recognizing that exploiting a person's booking photo or arrest information "casts a long, damaging shadow over the depicted individual"); Arizona Revised Statute §§ 44-7901, 7902; Mugshot website operators; prohibited acts; exceptions (the "Arizona Mugshot Statute").

Plaintiff fears that disclosure of his identity would cause Defendants (or others) to retaliate against him is more than reasonable, and therefore, the second factor also weighs in favor of granting anonymity. *See* Exhibit 3 ¶¶ 5, 7, 10-12. Defendants in their response will likely continue their tired mantra that they are the victims of a vendetta led by Plaintiff's counsel, whose spouse, Renee Ivchenko, previously has litigated against them (represented once by Plaintiff's counsel, and a second time by another law firm). The Court should ignore these frivolous arguments that are little more than transparent attempts to deflect attention away from Defendants' illegal activities and the issues in this case. Significantly, the experiences of all identified plaintiffs and their attorneys over the course of the past year at the hands of Defendants provide ground-truth that more than substantiates Plaintiff's concerns. *See* Exhibits 2, 3. The examples outlined in the attached affidavits confirm that Plaintiff's fear of retaliation by Defendants (or other mugshot website operators) is more than reasonable. *Id.*

Plaintiff is concerned about the risk of further severe online retaliation and permanent damage to his reputation, and the severe emotional distress that comes with it, for challenging the activities of the Defendants, either from them or other mugshot website operators whose operations in Arizona are now threatened. These individuals prey on vulnerable members of society, and share a common interest in preventing this litigation from escalating to include additional plaintiffs and possibly defendants. The targeted and severe online harassment experienced by others who have litigated against them, as well as the overt public attacks on attorneys and their families who represent clients who wish to assert their rights against them, it is clear that this threat of severe retaliation is not only likely, but inevitable. *Id.*

Next, the third factor also weighs in favor of permitting anonymity because, again, exploiting a person's arrest information (even once) on the internet or otherwise

"casts a long, damaging shadow over the depicted individual." *Detroit Free Press Inc.*, 829 F.3d at 482. Put another way, Plaintiff is extremely vulnerable in this case because it takes only one internet or social media post by Defendants (or someone else) exploiting their arrest information to cause enormous, continuing and ongoing damages to them, including, *inter alia*, permanently "hampering the depicted individual's professional and personal prospects." *Id*. "[M]odern technology only heightens the consequences of disclosure—in today's society the computer can accumulate and store information that would otherwise have surely been forgotten." *Id*.

The fourth factor also weighs in favor of permitting anonymity because anonymity does not affect the ability of Defendants from challenging any of the causes of action outlined in the Complaint. There is no prejudice to Defendants, who publish millions of arrest records and booking photos on the Websites. Plaintiff is not, at this time, claiming individualized pecuniary loss and therefore his minimum statutorily mandated damage amount under the Arizona Mugshot Statute can be determined simply through disclosure of the date of his arrest. As such, other than specific information such as the date when Defendants scraped someone's arrest data from the law enforcement websites, the actual identity of that individual is irrelevant, at least at this point in the litigation. Anonymity simply does not affect the ability of Defendants from challenging any of the causes of action outlined in the Complaint.

Defendants do not need to know Plaintiff's identity in order to establish that Defendants did not violate the Arizona Mugshot Statute. The new law defines mugshot website companies as "mugshot website operators" and prohibits their operation for commercial purposes, which the law defines to include "any purpose in which the [mugshot website operator] can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record." A.R.S. § 39-121.03(D); A.R.S. § 44-

7901(2). Plaintiff's claims in this case are not based on any specific method of commercializing his arrest photo. They are based on the use of the arrest information and the photo to solicit advertising on the Websites, which, is illegal under Arizona law.

Finally, the fifth factor also weighs in favor of permitting anonymity because it is the public policy of Arizona that the identities of arrestees only be disclosed to the public on a limited basis, only by law enforcement agencies or bona fide news agencies and only for a brief period of time. See Complaint, ¶¶ 5, 7. Although members of the public can review, copy, and publish arrest information for lawful purposes, Arizona public policy, as mandated and confirmed by the Arizona Mugshot Statute, plainly prohibits people, like Defendants who operate a mugshot website, from exploiting these records for commercial purposes.

The need to protect Plaintiff from retaliation also greatly outweighs the public's interest in knowing the party's identity. The proceedings in this case will still be open to the public. Moreover, the public has no interest in knowing the identity of the Plaintiff. Indeed, it is the public policy of Arizona that the identities of arrestees only be disclosed to the public on a limited basis, only by law enforcement agencies or bona fide news agencies, and only for a brief period of time. *See* Complaint, ¶ 7. In short:

> [B]ased on the extreme nature of the retaliation threatened against plaintiffs coupled with their highly vulnerable status, that plaintiffs reasonably fear severe retaliation, and that this fear outweighs the interests in favor of open judicial proceedings.

Does I thru XIII, 214 F.3d at 1069 (9th Cir. 2000).

There has been an increase across jurisdictions of plaintiff pseudonyms to protect privacy interests in the Internet age. See *Starbucks Corp. v. Superior Court*, 86 Cal. Rptr. 3d 482 (Cal. Ct. App. 2008). In that case, the Court noted that "[t]he judicial use of 'Doe plaintiffs' to protect legitimate privacy rights has gained wide currency,

particularly given the rapidity and ubiquity of disclosures over the World Wide Web." Defendants represent the underbelly of the Internet, and have weaponized it to tarnish the reputations of one of the most vulnerable populations in society—the millions of Americans who have been arrested, even though many have been found innocent of any crime, or have otherwise had their charges dropped, not filed, expunged, or dismissed.

Plaintiff anonymity in this case is consistent with the landmark ruling in the Sixth Circuit's *Detroit Free Press* case, which held that "individuals have a non-trivial privacy interest in preventing disclosure of their booking photos." *Detroit Free Press Inc.*, 829 F.3d at 485. The Sixth Circuit explained:

> In 1996, when we decided Free Press I, booking photos appeared on television or in the newspaper and then, for all practical purposes, disappeared. Today, an idle internet search reveals the same booking photo that once would have required a trip to the local library's microfiche collection. In fact, mug-shot websites collect and display booking photos from decades-old arrests[.]

Id. at 482. In so holding, the Sixth Circuit overruled its decades-old earlier decision on the issue, acknowledging that the internet and social media have worked unpredictable changes in the way photographs are stored and shared. *Id*. at 486. Photographs no longer have a shelf life, and they can be instantaneously disseminated for malevolent purposes. *Id*.

No arbiter of fact could be prejudiced in favor of Plaintiff because it knows him only by the name of Doe. *Doe v. Ayers*, 789 F.3d 944, 946 (9th Cir. 2015). Critical in the *Doe* court's analysis was "the precise prejudice at [this particular] stage of the proceedings to the opposing party." *Id.* (quoting *Does I thru XIII*, 214 F.3d at 1068). As here, the *Doe* case was in the early stage of the proceedings, so there was no jury to prejudice, or party to impeach. *Id*. At some point, Plaintiff may need to disclose his identity in order to obtain injunctive relief from the court, which would require him to

disclose to Defendants which records to remove from the Websites. However, at that point Defendants can be directed through court order to destroy the personal data in their possession, and not to use that information for any other purpose, or to disclose it to any third parties. Moreover, anonymity will prevent third parties from disparaging the Plaintiff, thereby creating a chilling effect discouraging other potential claimants from bringing an action under the Arizona Mugshot Act against other mugshot website operators such as Defendants who exploit booking photos and arrest information for purely commercial purposes. The Arizona legislature's objective in passing the Arizona Mugshot Act was to put an end to the reprehensible activities of mugshot website operators, and providing Plaintiff the opportunity to proceed under pseudonym is consistent with the legislative intent.

The Arizona Mugshot Act encompasses Defendants' exact conduct. In fact, the Legislature and various stakeholders actually discussed the exact types of websites at issue here during the committee hearings on the proposed legislation.[2] Websites such as those operated by Defendants were repeatedly mentioned as prime examples of the types of activity the Legislature sought to enjoin when it drafted this legislation. The House Public Safety Committee unanimously passed this legislation. *Id*. During the hearing, the state representatives minced no words when describing mugshot website operators such as Defendants. State Representative Campbell emphasized that the legislation was directed against such "sleaze ball operators" (*Id*. at 19:00), and Committee Chairman Payne declared that "[nobody] should be hampered by something like this." (*Id*. at 19:34). Chairman Payne further described these activities as "cruel, pure cruel." (*Id*.).

[2] See AZ HB2191 - criminal justice records; prohibited uses: Hearing Before the House Public Safety Comm., Fifty-fourth Legislature 1st Regular. (2019, February 13). Available at http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=22019.

Plaintiff is not simply making a generalized showing of susceptibility to online abuse, but rather an individualized finding based on harassment and attacks experienced by Plaintiff's counsel and by others who have brought litigation against these same individuals. (*See* Exhibits 2, 3). Indeed, Defendants have a proven track record of overtly attacking individuals and the families of individuals who dare to assert their rights against them. Plaintiff reasonably fears severe retaliation, and this fear outweighs the interest in favor of open judicial proceedings. No factors weigh against concealing the Plaintiff's identity. Defendants suffer no prejudice by being precluded from knowing the identity of the Doe Plaintiff on a need to know, "attorneys' eyes only" basis, after demonstrating a good faith basis.

Simply put, sufficient "special circumstances" exist to permit Plaintiff to proceed with this lawsuit under a pseudonym. *Does I thru XIII*, 214 F.3d at 1068.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that his motion to proceed under pseudonym be granted. Plaintiff respectfully requests that the Court further order that Defendants may discover the true identity of Plaintiff either: 1) by stipulation of the parties; or 2) by demonstrating to the Court a reasonable good faith basis for the disclosure. Plaintiff respectfully requests that the Court further order that if disclosure of Plaintiff's true identity is permitted, either by stipulation or by an Order of the Court, such disclosure will be made on an "attorneys' eyes only" basis. For the Court's convenience, a Proposed Form of Order is attached hereto as Exhibit 4.

DATED this 22nd day of January, 2021.

ANDREW IVCHENKO, PLLC

By: */s/ Andrew Ivchenko*
Andrew Ivchenko, Esq.
Attorney for Plaintiff

ORIGINAL e-filed through www.azturbocourt.com
on January 22, 2020.

EXHIBIT 5

Clerk of the Superior Court
*** Electronically Filed ***
03/30/2021 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-090059 03/22/2021

HONORABLE TRACEY WESTERHAUSEN

CLERK OF THE COURT
C. Avena
Deputy

JOHN DOE ANDREW IVCHENKO

v.

TRAVIS PAUL GRANT, et al. DAVID S GINGRAS

KYLE DAVID GRANT
100 MYRTLE ST # 304
LONGWOOD FL 32750
JUDGE WESTERHAUSEN

MINUTE ENTRY

Courtroom 207 (SEA)

10:32 a.m. This is the time set for Oral Argument (via Court Connect/TEAMS) on pending motions. Plaintiff John Doe is represented by counsel Andrew Ivchenko. Defendant Travis Paul Grant and Mariel Lizette Grant are represented by counsel David S. Gingras. Defendant Travis Paul Grant is present by video.

A record of the proceedings is made digitally in lieu of a court reporter.

Oral argument is presented to the Court on the personal jurisdiction issue.

Based on the argument presented and for the reasons stated on the record,

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-090059 03/22/2021

IT IS ORDERED granting Plaintiff's motion in part. The identity of the Plaintiff may be revealed to the defense including to the Defendants themselves but the Defendants and their counsel are precluded from making any reference to the identity of the Plaintiff in public without further permission of the Court. Discovery is also to remain nonpublic and neither one of the parties are to release information that is exchanged in discovery without further order of the Court.

IT IS FURTHER ORDERED taking under advisement the personal jurisdiction issue.

The Court informs the parties that Judge Hopkins will be taking over this calendar in June.

11:17 a.m. Matter concludes.

EXHIBIT 6

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Attorneys for Defendants
Travis Paul Grant, Mariel Lizette Grant and
Kyle David Grant

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Jane Doe, Plaintiff, vs. Travis Paul Grant, et al., Defendants.	Case No. 20-CV-02045-PHX-SPL **ANSWER AND COUNTERCLAIM**
Travis Paul Grant, Mariel Lizette Grant and Kyle David Grant, Counterclaimants, vs. Jane Doe a/k/a Sandra Faye Emery, Counterdefendant.	

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For their Answer to the Complaint filed in this matter, Defendants KYLE DAVID GRANT, TRAVIS PAUL GRANT and MARIEL LIZETTE GRANT ("Defendants") plead as follows:

Pursuant to Fed. R. Civ. P. 8(b)(3), Defendants generally deny all allegations of the Complaint except for the following points which are expressly admitted:

1. Admit Travis Grant and Mariel Grant are married.
2. Admit Travis Grant owns the websites identified in ¶ 2 of the Complaint.

3. Admit Kyle Grant works for Travis Grant in various capacities.

4. Admit the websites identified in ¶ 2 of the Complaint contain booking photos, names, and criminal records provided by various law enforcement agencies including the Maricopa County Sheriff's Office.

5. Admit the websites identified in ¶ 34 of the Complaint display Google AdSense advertisements, the contents of which are created by Google AdSense customers, not Defendants.

6. Admit A.R.S. §§ 44–7901 and 7902 became effective on August 27, 2019.

7. Admit Plaintiff was arrested at some point in time and that Plaintiff's photo, name, and arrest details were published on the Internet by the arresting agency.

8. Admit Plaintiff's photo, name, and arrest details was copied and republished on at least one website owned by Travis Grant.

FIRST AFFIRMATIVE DEFENSE
(Failure to State Claim)

The Complaint and each cause of action set forth therein fails to state any claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE
(First Amendment)

Plaintiff's claims are barred by the First Amendment, including but not limited to the extent any of the allegedly defamatory statements were true, substantially true, or expressions of opinion, or were made without the appropriate degree of fault, or were based on fully disclosed facts or were based on any other protection provided by the First Amendment.

THIRD AFFIRMATIVE DEFENSE
(Arizona Constitution)

Plaintiff's tort claims are barred by Article 2, Section 6 of the Constitution of the State of Arizona.

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FOURTH AFFIRMATIVE DEFENSE
(Communications Decency Act Immunity)

Without acknowledging that such is an affirmative defense as opposed to an affirmative element of Plaintiff's case, to the extent Plaintiff's claims treat Defendants as the publishers/speakers of online content which Defendants did not create or develop, such claims are barred by the Communications Decency Act, 47 U.S.C. § 230(c)(1).

FIFTH AFFIRMATIVE DEFENSE
(Uniform Single Publication Act)

All claims set forth in the Complaint are barred to the extent that the Single Publication Act allows only one cause of action per publication. A.R.S. § 12-651.

SIXTH AFFIRMATIVE DEFENSE
(Fair Report/Public Records Privileges)

All claims set forth in the Complaint are barred to the extent they fairly and accurately reflect and/or abridge information contained in public records. *Green Acres Trust v. London*, 141 Ariz. 609, 688 P.2d 617 (1984).

SEVENTH AFFIRMATIVE DEFENSE
(Statute of Limitations)

All claims set forth in the Complaint are barred pursuant to A.R.S. § 12-541 to the extent they accrued more than one year prior to the commencement of this action.

EIGHTH AFFIRMATIVE DEFENSE
(Choice of Law)

Certain claims in the Complaint fail to state a claim under Arizona law because Arizona law does not apply under a choice of law analysis.

NINTH AFFIRMATIVE DEFENSE
(Preservation of and Right to Raise Defenses)

Defendants expressly preserve any and all other defenses which they may have and reserve the right to raise additional defenses as the same may be subsequently revealed through discovery.

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TENTH AFFIRMATIVE DEFENSE
(Lack of Personal Jurisdiction)

For the reasons stated in the Motion to Dismiss for Lack of Personal Jurisdiction filed in this matter on October 30, 2020 (ECF Doc. #5), which is expressly incorporated herein by reference, Defendants object o the basis that they are not subject to personal jurisdiction in the State of Arizona.

Further, Defendants expressly preserve, and do not waive, their objection to personal jurisdiction pursuant to Fed. R. Civ. P. 12(h)(1).

WHEREFORE, Defendants prays for judgment as to the Complaint as follows:

a. That Plaintiff take nothing by her Complaint;

b. That the Complaint be dismissed with prejudice;

c. That Defendants be awarded costs of suit incurred herein;

d. That Defendants be awarded their reasonable attorney's fees incurred in the defense of this matter pursuant to Ariz. R. Civ. P. 11(c)(1) and/or A.R.S. § 12-349;

e. For such other and further relief as the Court deems just and proper.

COUNTERCLAIM

1. Counterclaimants Travis Paul Grant, Mariel Lizette Grant and Kyle David Grant are all residents of the State of Florida.

2. Counterdefendant Jane Doe, a/k/a Sandra Faye Emery is a resident of Arizona.

3. An actual dispute exists between Counterclaimants and Counterdefendant regarding their respective rights and legal duties.

JURISDICTION AND VENUE

4. The Declaratory Judgment Act, 28 U.S.C. § 2201, provides that a district court "may declare the rights and other legal relations of any interested party."

5. By this Counterclaim, Counterclaimants seek a declaratory judgment pursuant to 28 U.S.C. § 2201 *et seq*., the Federal Declaratory Judgment Act, and Rule 57

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of the Federal Rules of Civil Procedure. Specifically, Counterclaimants seek a judgment from this Court declaring that they have not violated Counterdefendant's rights under the laws of the State of Arizona, and that Counterdefendant is not entitled to any relief against Counterclaimants under any theory recognized by Arizona law.

6. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because the parties are completely diverse and the amount in controversy exceeds $75,000.

7. This Court has supplemental jurisdiction over this counterclaim pursuant to 28 U.S.C. § 1367 because the counterclaim asserted herein is so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

8. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this District.

FACTUAL BACKGROUND

9. On September 24, 2020, Counterdefendant filed an action against Counterclaimants in the Maricopa County Superior Court, Case No. CV2020–055202 the allegations of which are specifically incorporated herein by reference.

10. In her suit, Counterdefendant alleges Counterclaimants engaged in various violations of Arizona law including, but not limited to, A.R.S. § 44–7902(B) (the "Mugshot Act").

11. A.R.S. § 44–7902(B) became effective in August 2019.

12. In her Complaint, Counterdefendant alleges that she was arrested in Arizona on October 20, 2018, and that following her arrest, her mugshot and arrest details was published on the Internet by the arresting agency, the Maricopa County Sheriff's Office (MCSO).

13. After her mugshot was created and published by MCSO, Counterdefendant alleges that information was copied and republished by Counterclaimants on the websites identified in ¶ 2 of the Complaint.

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14. Counterclaimants did not create or develop the mugshots, name, and/or arrest details of Counterdefendant.

15. After the mugshot, name, and/or arrest details of Counterdefendant were initially published on the Internet by the arresting agency, Counterclaimants (using automated software) copied and republished that information on various other websites.

16. At no point in time did Counterclaimants materially change any part of Counterdefendant's mugshot, name, and/or arrest details; that information was republished *verbatim* without any substantive changes, modifications, or deletions.

17. At no point in time did Counterclaimants solicit payment of a fee or other valuable consideration in exchange for removing or revising criminal justice records relating to Counterdefendant published on a website or other publication.

18. Counterclaimants have not, and do not, use criminal justice records "for the purpose of soliciting business for pecuniary gain" within the meaning of A.R.S. § 44–7902(B).

19. The term "for the purpose of soliciting business for pecuniary gain" used in A.R.S. § 44–7902(B) means to use a mugshot or other criminal justice record *within a commercial advertisement*, or in some manner that directly advertises a product or service offered by the website operator.

20. Counterclaimants do not offer any product or service on their websites.

COUNT ONE—DECLARATORY JUDGMENT

21. An actual dispute exists between Counterclaimants and Counterdefendant regarding their respective rights and legal duties.

22. In her Complaint, Counterdefendant alleges that Counterclaimants published her mugshot and related criminal records in violation of A.R.S. § 44–7902(B) and Arizona common law.

23. As a matter of law, Counterclaimants have not violated and are not violating Counterdefendant's rights under A.R.S. § 44–7902(B) or any other legal theory recognized by Arizona law.

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24. Counterclaimants are both "providers" and "users" of an "interactive computer service" within the meaning of 47 U.S.C. § 230(c)(1) (the "Communications Decency Act" or "CDA").

25. The websites identified in ¶ 2 of the Complaint filed by Counterdefendant are "interactive computer service(s)" within the meaning of 47 U.S.C. § 230(c)(1).

26. The mugshot and arrest information relating to Counterdefendant which gave rise to her Complaint was "provided by another information content provider" within the meaning of 47 U.S.C. § 230(c)(1).

27. Specifically, the mugshots and arrest information relating to Counterdefendant which gave rise to her Complaint was created by the arresting agency MCSO and such information was published on the Internet or some other publicly-accessible website by the arresting agency, not by Counterclaimants.

28. The claims asserted by Counterdefendant in this matter seek to treat Counterclaimants as the "publisher or speaker" of information (mugshots and arrest information) which was provided by another information content provider (the arresting agency).

29. Based on these facts, all claims asserted by Counterdefendant against Counterclaimants are barred by 47 U.S.C. § 230(c)(1) under the facts alleged in the Complaint.

30. As a matter of law, information relating to crimes and arrests is a matter of public interest and concern.

31. In *Snyder v. Phelps*, 131 S.Ct. 1207 (2011), the United States Supreme Court held that state law tort claims cannot be based on the publication of non-defamatory information relating to a matter of public interest or concern.

32. In *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975) the United States Supreme Court held that when information is contained in public records created by the government, the publication of that information is protected by the First Amendment because "There is no liability when the defendant merely gives further publicity to

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information about the plaintiff which is already public. Thus there is no liability for giving publicity to facts about the plaintiff's life which are matters of public record … ." 420 U.S. at 494.

33. All of the information relating to Counterdefendant (meaning her mugshot, name, and arrest information) republished by Counterclaimants was, and is, a matter of public record.

34. For all of these reasons, Counterclaimants are not liable for republishing any of the information relating to Counterdefendant's arrest.

35. The republication of existing online information is expressly within the scope of 47 U.S.C. § 230(c)(1) under the facts of this case.

36. The republication of Counterdefendant's name, mugshot, and/or arrest details is protected by the First Amendment.

WHEREFORE, Counterclaimants pray for declaratory judgment against Counterdefendant as follows:

A. For a final judgment declaring the parties' respective legal rights and duties as described above;

B. For judgment awarding taxable costs pursuant to 28 U.S.C. § 1920;

C. Any such other relief deemed appropriate by the Court.

DATED: November 13, 2020.

GINGRAS LAW OFFICE, PLLC

David S. Gingras, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2020 I transmitted the attached document to the Clerk's Office for ECF filing, and for electronic service on all counsel of record in this matter:

Craig Jacob Rosenstein, Esq.
ROSENSTEIN LAW GROUP, PLLC
8010 East McDowell Road, Suite 111
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Attorney for Plaintiff

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EXHIBIT 7

Clerk of the Superior Court
*** Electronically Filed ***
M. De La Cruz, Deputy
7/2/2021 10:15:19 AM
Filing ID 13082531

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Attorneys for Plaintiff John Doe, individually and on behalf of all others similarly situated

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

JOHN DOE, on behalf of himself and all others similarly situated, Plaintiff, vs. TRAVIS PAUL GRANT; KYLE DAVID GRANT; JOHN and JANE DOES I-X; BLACK CORPORATIONS I-X; and WHITE COMPANIES I-X, Defendants.	Case No. CV2021-090710 **AMENDED COMPLAINT, INCLUDING CLASS ACTION CLAIMS UNDER CIV. R. 23,** Jury Trial Demanded (Assigned to Hon. Stephen Hopkins)

<u>CLASS ACTION COMPLAINT</u>

NOW COMES the Plaintiff, JOHN DOE (hereinafter Plaintiff or "John Doe"), on behalf of himself and all others similarly situated, by and through undersigned counsel, hereby respectfully complains and alleges against Defendants, TRAVIS PAUL GRANT,

an individual; KYLE DAVID GRANT, an individual; JOHN and JANE DOES I-X; BLACK CORPORATIONS I-X; and WHITE COMPANIES I-X, as follows:

INTRODUCTION

1. Defendants are First Amendment opportunists that exploit arrest information and misappropriate images in booking photos to create misleading advertisements designed to generate substantial advertising revenue from the victims whose images have been misappropriated.

2. Defendants do not inform the public; instead, Defendants exploit booking photos and arrest information for purely commercial purposes. As the Sixth Circuit observed, these "[b]ooking photos—snapped in the vulnerable and embarrassing moments immediately after an individual is accused, taken into custody, and deprived of most liberties—fit squarely within this realm of embarrassing and humiliating information. More than just vivid symbols of criminal accusation, booking photos convey guilt to the viewer." *Detroit Free Press Inc. v. United States Dep't of Justice*, 829 F.3d 478, 482 (6th Cir. 2016). Defendants' business model is to exploit this embarrassing and humiliating information that falsely conveys guilt for their own commercial gain. Once these images are online, they live on in perpetuity. They serve as the digital scarlet letter of our times, permanently affecting the reputation of those who have paid their debt to society.

3. Defendants have intentionally, knowingly, and without regard to the obvious effects, caused mass suffering of untold millions of individuals from all walks of life. Defendants continue to disregard and systematically violate the law and the

rights of others through their website activities. These irresponsible and illegal actions cause significant reputational harm to their victims, which directly inhibits the "rehabilitation and reintegration initiatives" of states which have aimed at reforming offenders and deterring future criminal behavior. Defendants destroy entire families, and directly contribute to the homelessness and poverty of veterans and others. The victims of this endless assault find they cannot obtain employment after their misappropriated arrest information and mugshots are placed in a false light for everyone to see. As a result of this wanton disregard for people's lives and their privacy rights, Defendants are even contributing to the heart-wrenching number of daily United States Military Veteran suicides. See Thomas Howard Suitt, II, *High Suicide Rates among United States Service Members and Veterans of the Post 9/11 Wars*, Watson Institute, June 21, 2021. Unchallenged, Defendants will continue in their systematic pattern of illegal profiteering with impunity. Challenged, they will proffer baseless defenses to their practices.

4. The online dissemination of arrest information and images in booking photos creates substantial barriers for those attempting to reintegrate into society from finding employment, housing, and starting a new life. "[N]early one out of every three American adults"—77.7 million people—has been arrested and, thus, could be impacted. See Gary Fields & John R. Emshwiller, *America Busted: As Arrest Records Mount, Consequences Last a Lifetime*, WALL ST. J., Aug. 19, 2014, at A1. Abuse of these records by profiteers such as Defendants cuts against efforts for criminal justice reform and rehabilitation of those who have made mistakes in their pasts. Moreover, in many cases arrestees are never charged, are adjudicated not guilty, or their charges are

dismissed for various reasons, including through diversion programs. Mugshot companies have wide-sweeping negative effects on not only those directly impacted but on the community as a whole.

5. In response to the proliferation of mugshot website operators, such as Defendants, numerous states have passed statutes relating to the exploitation of mugshots, most recently Arizona. On August 27, 2019, HB2191 became effective law as Arizona Revised Statute §§ 44-7901, 7902; Mugshot website operators; prohibited acts; exceptions (the "Arizona Mugshot Act"). The new law defines mugshot website companies as "mugshot website operators" and prohibits their operation for commercial purposes, which the law defines to include "any purpose in which the [mugshot website operator] can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record." A.R.S. § 39-121.03(D); A.R.S. § 44-7901(2). The Arizona Mugshot Act also prescribes hefty *minimal* damages that mugshot website companies will have to pay to those affected if they do not comply with the law.

6. Defendants' conduct that is the subject of this civil action involves ongoing online activity directed against Plaintiff. Defendants own and operate mugshot websites including www.publicpolicerecord.com and www.bailbondshq.com (the "Websites"), on which they use the arrest information and booking photos of millions of arrestees throughout the United States for their own purely commercial purposes. Defendants use software to "scrape" arrest information, including booking photos, from the Maricopa County Sheriff's Office's website, and the websites of other law enforcement agencies in Arizona who post booking photos online, for all, or

substantially all, arrestees, albeit for a limited duration of time, typically for only a few days. Defendants then use the arrest information from the victims whose identities and likenesses have been misappropriated to create original content in the form of advertisements that serve two purposes: 1) to attract third party advertisers to the Websites; and 2) generate pay-per-click advertising revenue.

7. This is a class action under 16 A.R.S. Rules of Civil Procedure, Rule 23, seeking damages, declaratory, and injunctive relief for violations of the Arizona Mugshot Act, as well as unlawful appropriation, right of publicity, false light, and unjust enrichment, under applicable decisional law in Arizona. Plaintiff seeks redress for injuries caused by, and an injunction enjoining, the unlawful conduct of Defendants, all doing business in conjunction with the Websites.

8. Plaintiff is bringing this action on behalf of himself and other members of a class ("Class") consisting of several hundred thousand persons previously arrested in Arizona (individually, "Class Member" or collectively, "Class Members"). Joinder of all members of the Class is impracticable. There are questions of law or fact common to the Class. The claims of the representative party are typical of the claims of the Class and Plaintiff will fairly and adequately protect the interests of the entire Class.

9. "A disclosed booking photo casts a long, damaging shadow over the depicted individual." *Detroit Free Press Inc. v. United States Dep't of Justice*, 829 F.3d 478, 482 (6th Cir. 2016). For this reason, law enforcement agencies and the State of Arizona do not intend for booking photos and arrest information to be used in this way or to be available online to the public indefinitely. The Maricopa County Sherriff's

Office, for example, only posts arrest photos for three days, after which they are taken down. However, this is enough time for Defendants to "scrape" or capture the images and data using "spiders" and "bot" programs.

10. To further their illegal scheme and maximize its commercial effect, Defendants use analytics and search optimization tools to ensure that each booking photo is among the first search results found when an arrestee's name is entered into a search engine such as Google, Bing or Yahoo. Such conduct contributes substantially to the illegality of Defendants' use of the arrest information and booking photos.

11. Contrary to Defendants' false representations, the Websites are not a public safety service or media outlets. If they were, Defendants would not select what information and which booking photos remain on the Websites based on extorted payments, which occurred prior to the enactment of the Florida mugshot statute on or about July 18, 2018 (FL Stat § 901.43, Dissemination of Arrest Booking Photographs) (the "Florida mugshot statute"). Defendants hide behind the false pretense that they are a media organization, post these mugshots and create advertisements out of them solely in order to profit by generating advertising revenue through Google Ads and, at least up until the Florida mugshot statute was passed, extorted payments. Companies pay for Google Ads so that people will notice their business whenever they are searching Google. These companies only have to pay a website owner whenever someone clicks on the ad. This is known as cost-per-click (CPC) or pay-per-click (PPC) advertising. Defendants generate substantial revenue through the misleading manner in which they

use these booking photos as advertisements to induce users of their Websites to click on the banner ads.

12. Also contrary to Defendants' false representations, Defendants refuse to remove someone's mugshot from the Websites even if the arrestee has been found innocent of any crime, or has otherwise had their charges dropped, not filed, expunged, or dismissed as part of a diversion program. Prospective employers (or anyone else) conducting a web search find, in many cases, misinformation indicating that people are still charged, incarcerated, or on parole years after release or an adjudication of not guilty. Defendants intentionally and maliciously set up the Websites to give the false impression people are incarcerated or have been adjudged guilty of a crime. The end result for many arrestees is continuous emotional distress, job loss, broken families, and homelessness. The end result for Defendants is substantial profits.

13. Defendants are notorious operators of mugshot websites, on which millions of arrestees appear. Several online sites have been established by aggrieved parties to expose the nefarious and illegal activities of Defendants, including https://rapsheetsorgkyledavidgrant.wordpress.com.

14. This action seeks to put an end to Defendants' harassment of Plaintiff. Defendants will continue to cause Plaintiff harm until Defendants are enjoined from intentionally and maliciously violating Plaintiff's rights.

JURISDICTION AND PARTIES

15. This is an action for damages in excess of $50,000.00, exclusive of interest, attorney's fees and costs.

16. Plaintiff is an individual residing in Maricopa County, Arizona.

17. Defendants, TRAVIS PAUL GRANT and KYLE DAVID GRANT, are individuals residing in Seminole County, Florida. The individual Defendants own and operate the following mugshot websites: www.publicpolicerecord.com and www.bailbondshq.com.

18. Defendants are being sued in their individual capacities. This Court has jurisdiction over Defendants under Arizona's long-arm rule and applicable decisional law, which allows for assertion of personal jurisdiction over a non-resident consistent with federal constitutional due process. Ariz. R. Civ. P. 4.2(a).

19. Under the provisions of the A.R.S. 44-7902(A), Defendants, as mugshot website operators that publish a subject individual's criminal justice record for a commercial purpose on a publicly accessible website, are deemed to be transacting business in this state.

20. Plaintiff is informed and believes, and based on that information and belief allege, that at all times mentioned in this complaint, Defendants were the agents and employees of their codefendants and in doing the things alleged in this complaint were acting within the course and scope of such agency and employment.

21. At all material times, Defendants (i) committed a tortious act within this state, and (ii) are engaged in substantial and not isolated activity within this state. Sufficient minimum contacts exist between Defendants and the state of Arizona to satisfy the due process requirements of the United States Constitution. These include directly targeting their Websites to the state, knowingly interacting with and causing

harm to the residents of the forum state via their Websites, or through sufficient other related contacts.

22. Defendants solicit customers in the state of Arizona. Upon information and belief, Defendants have many paying customers who reside in the state of Arizona who each use Defendants' respective services in the state of Arizona. Upon information and belief, Defendants conduct continuous and systematic business in the state of Arizona.

23. The Class consists of all persons arrested in the State of Arizona and whose arrest records, mugshots, likeness, or other personal identifying information was compiled and displayed on the Websites by Defendants between July 1, 2020 and the date of trial in this action. This claim is brought on behalf of the Plaintiff.

24. Excluded from the Class are all Defendants, their heirs, successors, and assigns, and all employees and agents of all Defendants. Excluded also are the Court and the Court's immediate family.

25. The membership of the Class potentially numbers in the hundreds of thousands.

26. On information and belief, Defendants have posted records and photographs for not less than and 20 million people nationwide. There were over 200,000 total arrests reported in Arizona in 2019 alone, and many of these people's booking photos and arrest records have been scraped by Defendants and posted on the Websites since their inception.

27. Defendants have acted in the same or substantially similar manner as to most or all Class Members.

28. Defendants have engaged in the same conduct described in this action as to all, or substantially all, persons and arrestees whose mugshots and arrest records appear on the Websites.

29. There are questions and issues common to the class, which predominate over any individual issues. Those include, without limitation, the following:

(a) Whether Defendants post the likeness and/or personal identifying information of arrestees to the Websites for commercial gain;

(b) Defendants' practices and policies for removal and/or correction of incorrect or inaccurate information from the Websites;

(c) Whether Defendants charge for the removal of mugshots and/or arrest records from the Websites;

(d) Whether Defendants' conduct as described herein constitutes a violation of the Arizona Mugshot Act;

(e) Whether Defendants' conduct as described herein constitutes an invasion of privacy as prescribed by Restatements (Second) of Torts § 652C;

(f) Whether Defendants' conduct as described herein constitutes an unlawful misappropriation and false light;

(g) Whether Defendants' conduct as described herein constitutes a violation of Plaintiff's right of publicity;

(h) Whether Defendants committed misappropriation and profited from their misappropriation at Plaintiff's expense.

30. These questions of law and fact predominate over all questions and issues affecting only individual Class Members.

31. A class action is superior to all other methods for resolving this controversy.

32. The Plaintiff will fairly and adequately protect the interests of the class.

33. The Plaintiff's counsel are experienced litigators, and have been engaged in litigation matters involving these issues, and a class action is the most appropriate means for the fair and efficient adjudication of the claims herein.

34. Defendants used the same forms and policies as to all Class Members.

35. Plaintiff has no unique defenses or interests adverse to those of the class.

36. The identities of all members of the class can be easily determined from the records and subject matter websites of each Defendant herein.

37. Plaintiff reserves the right to amend the class definitions and allegations based on facts learned in discovery.

38. Defendants JOHN and JANE DOES I-X; BLACK CORPORATIONS I-X; and WHITE COMPANIES I-X, are persons, partnerships, corporations or unincorporated associates subject to suit in a common name whose names are unknown to Plaintiff and who are wholly or partially responsible for the acts complained of, including those who have participated in managing, organizing, marketing, facilitating, and profiting from the operations of the Websites, and therefore, designated by fictitious names pursuant to Rule 10(d), Arizona Rule of Civil Procedure. Plaintiff will ask leave

of the Court to substitute the true names of the said parties prior to the entry of judgment herein.

39. Maricopa County is a proper venue, pursuant to A.R.S. §12-401(1). The acts and conduct of Defendants occurred in Maricopa County. Defendants' Websites are available to people in Maricopa County.

CLASS ACTION ALLEGATIONS

40. Plaintiff brings this action individually and on behalf of the Class Members.

41. Plaintiff was arrested in Maricopa County and subsequently incarcerated in the Arizona Department of Corrections, Rehabilitation & Reentry (the "DOC") in 2013.

42. Following his incarceration, the DOC photographed Plaintiff. The DOC made the photograph (the "Mugshot") publicly available on a government website.

43. Defendant's Websites are privately-owned, publicly-available websites that post mugshots and other criminal justice information about various people without their consent, who have been arrested or incarcerated. The Websites generate income and Defendants utilize the Websites for commercial purposes and pecuniary gain.

44. Since in or around July 2020, Defendants, without Plaintiff's permission, consent or authorization, published Plaintiff's criminal justice records (the "Records") and Mugshot on the Websites for purely commercial purposes. As a result, Plaintiff's image has been commercially misappropriated by Defendants, causing damage, and Plaintiff has incurred damages under the Arizona Mugshot Act, as further described herein. Plaintiff did not provide the Defendants with prior consent for the posting of any

information about him, including, but not limited to, his arrest information and arrest photo.

45. Despite Plaintiff's demand that Defendants remove this information, Defendants refuse to do so.

46. The public nature of the Websites and public availability of Plaintiff's Mugshot and Records has and continues to cause both emotional and financial harm to Plaintiff, including, but not limited to, unwanted publicity and ramifications for Plaintiff's employment.

47. Defendants generate substantial revenue from the misleading use of the original content Defendants create from the booking photos.

48. Defendants gather and collect arrest photos and create original content out of that material in the form of advertisements ("arrest photo advertisements").

49. The arrest photo advertisements are strategically placed on the Websites for maximum commercial exploitation. Specifically, Defendants place the arrest photo advertisements directly above, and/or directly alongside banner ads that advertise services for, inter alia, public records information, thus making it appear (falsely) that by clicking on the banner ad the user would be directed to "Arrest Details" located in the Websites' database.

50. The misleading manner in which Defendants use the arrest photo advertisements to entice the public into clicking on third party banner ads generates substantial pay-per-click advertising for Defendants.

51. Because the third party banner ads are typically for services such as public arrest records databases and because the third-party banner ad is located directly beneath, alongside, and embedded within the arrest photo advertisements, the user mistakenly clicks on the banner ad falsely believing that by doing so they will be directed to the "arrest details" in the Websites' database, but are instead directed to the third party database. Defendants purposefully and intentionally create the arrest photo advertisements in this manner to increase user clicks on third party ads, thus earning substantial pay-per-click advertising revenue.

52. Thus, the arrest photos advertisements serve at least two commercial purposes: 1) to attract third party advertisers to the Website; and 2) entice any user of the Website to mistakenly click the third party banner ad so as to generate pay-per-click advertising revenue for Defendants.

53. The arrest information and booking photos that Defendants use to create the arrest photo advertisements was never intended by law enforcement to be used in this manner or posted by Defendants. The booking photos Defendants use to create the arrest photo advertisements are not provided or tendered by law enforcement agencies to Defendants. It is the public policy of the State of Arizona, as made crystal clear by the Arizona Mugshot Act, that the arrest information and arrest photos briefly disseminated by Arizona's law enforcement and other agencies not be used in the manner that Defendants use them.

54. Plaintiff had an arrest photo taken.

55. Defendants, without permission, consent or knowledge of Plaintiff, reproduced, publicly displayed, distributed, and created original advertising content out of the arrest photo. Defendants also, without permission, consent or knowledge of Plaintiff, reproduced, publicly displayed, and distributed Plaintiff's arrest information.

56. Defendants' respective Websites, along with Plaintiff's image, were indexed by Yahoo.com and Google.com, and the images appear under Google Images when an internet search for Plaintiff's name is conducted.

57. Defendants' use of Plaintiff's image and arrest information is for a purely commercial purpose.

58. Defendants operate one or more Websites that are used to display Plaintiff's image as part of a commercial enterprise.

59. The display by Defendants of Plaintiff's image on their Websites, are intended, among other things, to subject Plaintiff to hatred, contempt, or ridicule, and to damage his personal and business reputation, or to impair his credit.

60. Each Defendant, acting on their own or in conjunction with one or more of the other Defendants, derives revenue from the Websites through Google Ads and other means.

61. Unless Defendants are enjoined from further commercial use and publication of Plaintiff's image and names and other arrest information, Plaintiff will suffer further irreparable injury.

COUNT ONE
VIOLATION OF THE ARIZONA MUGSHOT ACT
(ARIZ. REV. STAT. § 44-7901/7902)
(On Behalf of Plaintiff and the Class)

62. Plaintiff realleges Paragraphs 1 through 61, above.

63. The people of the State of Arizona, by and through their popularly elected legislature, enacted a statute entitled "Mugshot website operators; prohibited acts; exceptions," codified at Arizona Revised Statute §§ 44-7901, 7902 (the "Arizona Mugshot Act"). That statute was in force and effective at all times herein relevant.

64. A.R.S. 44-7902 states as follows:

> Mugshot website operators; prohibited acts; exceptions
>
> A. A mugshot website operator that publishes a subject individual's criminal justice record for a commercial purpose on a publicly accessible website is deemed to be transacting business in this state.
>
> B. A mugshot website operator may not use criminal justice records or the names, addresses, telephone numbers and other information contained in criminal justice records for the purpose of soliciting business for pecuniary gain, including requiring the payment of a fee or other valuable consideration in exchange for removing or revising criminal justice records that have been published on a website or other publication.
>
> C. A subject individual whose criminal justice record is published in violation of subsection B of this section and who suffers a pecuniary loss or who is otherwise adversely affected as a result of a violation of

subsection B of this section has a cause of action against the person responsible for the violation and may recover damages in addition to the damages prescribed in subsection D of this section in any court of competent jurisdiction.

D. A person that violates subsection B of this section is liable for damages for each separate violation in an amount of at least:

1. $100 per day during the first thirty days of the violation.
2. $200 per day during the subsequent thirty days of the violation.
3. $500 per day for each day thereafter.

E. This article does not apply to any act performed for the purpose of disseminating news to the public, including the gathering, publishing or broadcasting information to the public for a news-related purpose, or to any act performed by a publisher, owner, agent, employee or retailer of a newspaper, radio station, radio network, television station, television broadcast network, cable television network or other online news outlet associated with any news organization in connection with the dissemination of news to the public, including the gathering, publishing or broadcasting information to the public for a news-related purpose.

F. This article does not apply to activities by a licensed attorney, private investigator or registered process server that are associated with purposes relating to a current or anticipated criminal or civil proceeding. This

section does not affect the conduct of trials or the discovery process in any proceeding as otherwise provided by law or court rule.

65. A.R.S. 44-7901 states as follows:

44-7901. Definitions

In this article, unless the context otherwise requires:

1. "Booking photograph" means a photograph of a subject individual that is taken pursuant to an arrest or other involvement in the criminal justice system.

2. "Commercial purpose" has the same meaning prescribed in section 39-121.03.

3. "Criminal justice record" includes a booking photograph and the name, address and description of and the charges filed against a subject individual.

4. "Mugshot website operator" means a person that publishes a criminal justice record on a publicly available internet website for a commercial purpose.

5. "Person" means a natural person, partnership, association, joint venture, corporation, limited liability company, nonprofit organization or trust or any similar entity or organized group of persons.

6. "Subject individual" means an individual who has been arrested.

66. A.R.S. 39-121.03(D) states as follows:

> For the purposes of this section, "commercial purpose" means the use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from public records for the purpose of solicitation or the sale of names and addresses to another for the purpose of solicitation or for *any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record* (emphasis added). Commercial purpose does not mean the use of a public record as evidence or as research for evidence in an action in any judicial or quasi-judicial body.

67. Defendants posted Plaintiff's mugshot and criminal record information to publicpolicerecord.com and/or bailbondshq.com as set forth herein.

68. Defendants posted Plaintiff's mugshot and criminal record information to publicpolicerecord.com and/or bailbondshq.com for a commercial purpose, as defined in A.R.S. 39-121.03(D).

69. Defendants violated the Arizona Mugshot Act by posting Plaintiff's criminal record information and mugshot to publicpolicerecord.com and/or bailbondshq.com for commercial purposes, namely, by soliciting and generating advertising revenue through Google Ads, and by other acts and/or omissions as specified in this Complaint.

70. Pursuant to the Arizona Mugshot Act, "A person that violates subsection B of this section is liable for damages for each separate violation in an amount of *at least*:

1. $100 per day during the first thirty days of the violation. 2. $200 per day during the subsequent thirty days of the violation. 3. $500 per day for each day thereafter." A.R.S. 44-7902(D) (emphasis added).

71. As a consequence and proximate result of Defendants violations of the Arizona Mugshot Act, Plaintiff and the Class Members were injured and sustained damages in an amount to be proven at trial.

COUNT TWO
INVASION OF PRIVACY BASED ON APPROPRIATION
(On Behalf of Plaintiff and the Class)

72. Plaintiff realleges Paragraphs 1 through 71, above.

73. Plaintiff has a privacy interest in the exclusive use of his name and likeness.

74. Defendants' appropriation (and use as an advertisement) of Plaintiff's booking photo was done for Defendants' own commercial purposes and benefit.

75. Defendants' appropriation of Plaintiff's image constituted an invasion of privacy as prescribed by *Restatements (Second) of Torts* § 652C.

76. Defendants' misappropriation of Plaintiff's image proximately caused damage to Plaintiff.

77. As a consequence and proximate result of Defendants misappropriation, Plaintiff and the Class Members were injured and sustained damages in an amount to be proven at trial.

COUNT THREE
UNLAWFUL APPROPRIATION/RIGHT OF PUBLICITY
(On Behalf of Plaintiff and the Class)

78. Plaintiff realleges Paragraphs 1 through 77, above.

79. Arizona courts "recognize[] the right of publicity, both as a tort claim and an unfair competition claim." *Lemon v. Harlem Globetrotters Int'l, Inc.*, 437 F. Supp. 2d 1089, 1100 (D. Ariz. 2006) (citing *Restatement (Second) of Torts* § 652C).

80. Defendants used the name and likeness of Plaintiff without his consent or permission to Defendants' commercial advantage.

81. Defendants' wrongful use included, *inter alia*, use of Plaintiff's image as an advertisement.

82. As a result of Defendants' use of Plaintiff's name, Plaintiff has suffered harm including harm to reputation, emotional distress, and additional harms.

83. As a consequence and proximate result of Defendants unlawful appropriation, Plaintiff and the Class Members were injured and sustained damages in an amount to be proven at trial.

COUNT FOUR
FALSE LIGHT
(On Behalf of Plaintiff and the Class)

84. Plaintiff realleges Paragraphs 1 through 83, above.

85. Defendants gave publicity to a matter in an easily accessible public forum concerning Plaintiff that places him in a false light. Specifically, by posting Plaintiff's Mugshot and Records, the Defendants' Websites imply that Plaintiff did something wrong and is guilty of a crime.

86. Plaintiff did not consent, authorize, or agree that Defendants could post this information about him.

87. The false light in which Plaintiff was placed would be highly offensive to a reasonable person.

88. Defendants knowingly or recklessly disregarded the false light in which Plaintiff is placed due to the publication of his Mugshot and Records on the Websites.

89. As a result, Plaintiff has suffered irreparable harm and seeks to have the Court issue an Order to remove his Mugshot and Records from Defendants' Websites.

90. As a consequence and proximate result of Defendants' actions involving false light, Plaintiff and the Class Members were injured and sustained damages in an amount to be proven at trial.

COUNT FIVE
UNJUST ENRICHMENT
(On Behalf of Plaintiff and the Class)

91. Plaintiff realleges Paragraphs 1 through 90, above.

92. By publishing Plaintiff's name and likeness without consent with a commercial or advertising purpose, Defendants committed misappropriation.

93. Defendants have profited from their misappropriation at Plaintiff's expense.

94. Defendants have knowledge of the benefits that Plaintiff has conferred on them, which they have accepted.

95. Under these circumstances, *i.e.*, (1) an enrichment, (2) an impoverishment, (3) a connection between the enrichment and impoverishment, (4) the absence of

justification for the enrichment and impoverishment, and (5) the absence of a remedy provided by law, it would be inequitable for Defendants to enjoy the benefits of their misappropriation without compensating Plaintiff, whose rights they have violated.

96. As a consequence and proximate result of Defendants' unjust enrichment, Plaintiff and the Class Members were injured and sustained damages in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on his own behalf and on behalf of the Class, respectfully requests that this Court:

(A) Certify this action as a class under Rule 23 Ariz. R. Civ. P.;

(B) Appoint Plaintiff as Class Representative;

(C) Appoint the undersigned as Class Counsel;

(D) Award Plaintiff and the Class damages pursuant to the Arizona Mugshot Act;

(E) Award Plaintiff and the Class punitive damages;

(F) Award Plaintiff and the Class pre-judgment and post-judgment interest;

(G) Award Plaintiff and the Class their reasonable attorneys' fees; and

(H) Award Plaintiff and the Class such further relief as is appropriate in the interests of justice.

JURY DEMAND

Plaintiff respectfully demands a trial by jury of all matters so triable.

DOCUMENT PRESERVATION DEMAND

Plaintiff hereby demands that Defendants take affirmative steps to preserve all recordings, data, documents, and all other tangible things that relate to Plaintiff and the putative class and the events described herein. These materials are likely very relevant to the litigation of this claim. If Defendants are aware of any third party that has possession, custody, or control of any such materials, Plaintiff demands that Defendants request that such third party also take steps to preserve the materials. This demand shall not narrow the scope of any independent document preservation duties of the Defendants.

DATED: June 30, 2021.

Respectfully submitted,

John Doe, individually and on
behalf of all others similarly situated,
(collectively "Their").

/s/ Andrew Ivchenko
Andrew Ivchenko, Esq.
One of Their attorneys

Steven C. Ames, Esq. (to be admitted
pro hac vice)
P.O. Box 193
Moline, IL 61266
Phone: (309) 714-1770
sca@mchsi.com
One of Their attorneys

EXHIBIT 8

From: Andrew Ivchenko <aivchenkopllc@gmail.com>
To: [redacted]gmail.com>
Sent: 6/15/2021 12:29 PM
Subject: Re: Mugshot litigation

[redacted],

As a follow-up to our conversation, I will be sending you an agreement so that we can proceed with the class action complaint against the Grant websites (publicpolicerecord.com). I should have something over to you by tomorrow.

Andrew Ivchenko, Esq.
4960 S. Gilbert Rd., Suite 1-226
Chandler, AZ 85249
Phone: (480) 250-4514
Email: aivchenkopllc@gmail.com

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From: Andrew Ivchenko <aivchenkopllc@gmail.com>
To: [redacted]@gmail.com>
Sent: 6/23/2021 10:38 AM
Attachments: Retention agreement - signed.pdf (application/pdf, 2 MB)
Subject: Re: Mugshot litigation

[redacted],

Thank you, I see you combined them. I have signed the agreement and sent you a copy for your files. I'll get the complaint filed next week, and send you a copy. I hope to get you and everyone else in Arizona relief from these predatory sites!

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Phone: (480) 250-4514
Email: aivchenkopllc@gmail.com

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