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

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Renee Ivchenko and Andrew
Ivchenko, wife and husband, Jane
Does 1–8 and John Does 1–12,

Plaintiffs,

v.

Kyle David Grant; Travis Paul Grant;
Mariel Lizette Grant; d/b/a
Rapsheets.org and Bailbondcity.com;
John Does and Jane Does I–X; Black
Corporations I–X; and White
Companies I–X,

Defendants.

Case No. _____

NOTICE OF REMOVAL

Defendants Kyle David Grant, Travis Paul Grant and Mariel Lizette Grant (“Defendants”) give notice that this action is hereby removed from the Maricopa County Superior Court to the United States District Court for the District of Arizona pursuant to 28 U.S.C. §§ 1441 and 1446.

Pursuant to District Court Local Rule LRCiv 3.6(a), undersigned counsel certifies that a copy of this Notice has been filed with the Clerk of the Maricopa County Superior Court in the original state court proceeding, Case No. CV2019-015355.

1 As indicated in the attached pleadings, this case is primarily an action brought
2 under Arizona's newly-enacted "Mugshots Website Operators" statute, A.R.S. §§ 44–
3 7901–02, which became effective on August 27, 2019. In short, this law restricts the use
4 of mugshots as follows:

5 A mugshot website operator may not use criminal justice records or the
6 names, addresses, telephone numbers and other information contained in
7 criminal justice records for the purpose of soliciting business for pecuniary
8 gain, including requiring the payment of a fee or other valuable consideration
9 in exchange for removing or revising criminal justice records that have been
published on a website or other publication.

10 A.R.S. § 44–7902(B) (emphasis added).

11 Each separate violation of this restriction carries statutory penalties of \$100 per
12 day for the first thirty days, \$200 per day during the subsequent thirty days, and \$500 per
13 day for each day thereafter. *See* A.R.S. § 44–7902(D).

14 The parties here include twenty anonymous plaintiffs currently designated only as
15 John and Jane Does. These anonymous plaintiffs accuse defendants of operating several
16 websites which published their mugshots and/or other criminal records in violation of
17 A.R.S. § 44–7902(B).

18 In addition to the twenty anonymous plaintiffs, there are two other parties –
19 Plaintiffs Renee and Andrew Ivchenko. In short, Mrs. Ivchenko asserts that she was
20 arrested in Scottsdale, Arizona in April 2018, and after her mugshot was posted on the
21 Internet by the Maricopa County Sheriff's Department, the photo was copied and
22 republished by Defendants on at least one or more of their websites.

23 However, because Mrs. Ivchenko's mugshot was *removed* from Defendants'
24 website(s) prior to August 27, 2019 (the effective date of Arizona's Mugshot law), she
25 does not assert any claim under A.R.S. § 44–7902(B) nor does she seek statutory
26 damages under A.R.S. § 44–7902(D). Instead, Mrs. Ivchenko alleges the re-publication
27 of her mugshot caused her emotional distress and qualified as an unlawful
28 misappropriation of her name/likeness under Arizona common law.

Although not relevant to the question of removal, in the state court proceedings, Mr. Ivchenko asserted defamation and other claims against Defendants arising from statements anonymously posted on Twitter by someone using the name “Jennifer Becker”. After Defendants moved for summary judgment, Mr. Ivchenko attempted to abandon/dismiss all his claims, but did so without leave of Court as required by Ariz. R. Civ. P. 41(a)(2). As such, although Mr. Ivchenko is no longer (currently) asserting any claims in the current operative Complaint, he remains a nominal plaintiff until such time as a final judgment is entered as to him at the conclusion of the case, if not earlier.¹

1. Removal Is Timely Pursuant to 28 U.S.C. § 1446(b)

The original Complaint in this matter, attached hereto as Exhibit A, was filed in the Maricopa County Superior Court on December 17, 2019. The original Complaint included only state-law claims but did not clearly reflect that the amount in controversy, exclusive of interest and costs, exceeded \$75,000.00. As such, the original Complaint did not appear to be removable within the meaning of 28 U.S.C. § 1446(b)(3).

Plaintiffs filed a First Amended Complaint on February 27, 2020, a copy of which is attached hereto as Exhibit H. As before, the Amended Complaint contains only state-law claims for relief, but once again, the Amended Complaint did not seek any specific amount of damages and contained no other basis from which to determine the specific amount in dispute. As such, the Amended Complaint did not appear to be removable on its face within the meaning of 28 U.S.C. § 1446(b)(3).

Defendants first ascertained that this case was removable on March 9, 2020. On that date, Defendants received (via email from Plaintiffs’ counsel) a copy of Plaintiffs’ Initial Disclosures submitted pursuant to Ariz. R. Civ. P. 26.1, a copy of which is attached hereto as Exhibit O. In their initial disclosures, Plaintiffs asserted (for the first time) that each individual anonymous Plaintiff was entitled to statutory damages of

¹ This issue is not currently before this Court, but in order to ensure that all claims between the parties are fully adjudicated, Defendants will move the Court for a Rule 54(b) final judgment as to Mr. Ivchenko if necessary.

\$71,500 *each*, and that the anonymous Plaintiffs were entitled to twice this amount based on the fact that Defendants operate two or more websites.

There are twenty Doe Plaintiffs in this case, each of which have their booking photos and arrest information posted on Defendants' website(s). As such, and because Defendants have continuously exploited the Doe Plaintiffs arrest information and booking photos since the beginning of the Act's effective date, the Doe Plaintiffs are each entitled to at least \$71,500 in statutorily mandated damages. Stated differently, as a group, the Doe Plaintiffs are entitled to at least \$1,430,000 in statutorily mandated damages. Moreover, because the Defendants operate at least two separate mugshot websites and almost all of the Doe Plaintiffs appear on both, the total minimum statutorily mandated damages are likely at least twice this amount. The minimal amount of damages Plaintiffs are entitled to pursuant to A.R.S. 44-7902 has not been fully quantified and is the subject of ongoing discovery, and Plaintiffs reserve the right to update and amend this disclosure statement.

Exhibit O at 14 (emphasis added).

Based on these disclosures, it appears at least one anonymous Plaintiff is seeking damages in excess of \$75,000.00. Accordingly, this case became removable on March 9, 2020 and thus removal is timely pursuant to 28 U.S.C. § 1446(b)(3). *See Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 885 (9th Cir. 2010) ("Section 1446(b) identifies two thirty-day periods for removing a case. The first thirty-day removal period is triggered if the case stated by the initial pleading is removable on its face. The second thirty-day removal period is triggered *if the initial pleading does not indicate that the case is removable*, and the defendant receives a copy of an amended pleading, motion, order or other paper from which removability may first be ascertained.") (emphasis added) (internal quotations omitted) (quoting *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005)).

2. The District Court Has Diversity Jurisdiction

The District Court possesses diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1). According to the First Amended Complaint the Plaintiffs are citizens of the following jurisdictions:

Plaintiff	Citizenship	FAC ¶
Jane Doe 1	Arizona	14
Jane Doe 2	Arizona	15
Jane Doe 3	Arizona	16
Jane Doe 4	Arizona	17
Jane Doe 5	Arizona	18
John Doe 1	Arizona	19
John Doe 2	Arizona	20
John Doe 3	Arizona	21
John Doe 4	Texas	22
John Doe 5	Texas	23
John Doe 6	Texas	24
John Doe 7	Texas	25
John Doe 8	Texas	26
John Doe 9	Texas	27
John Doe 10	Texas	28
John Doe 11	Texas	29
Jane Doe 6	Texas	30
Jane Doe 7	Texas	31
John Doe 12	California	32
Jane Doe 13	New York	33
Renee/Andrew Ivchenko	Arizona	34

According to FAC ¶ 35, all Defendants are citizens of the State of Florida. Thus, complete diversity exists between all Plaintiffs and all Defendants.

3. All Served Defendants Consent to Removal

All three named Defendants consent to and join in removal of this action. Consent and joinder by the unknown John/Jane Doe Defendants is not required. *See Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980) (explaining, “the unknown defendants sued as ‘Does’ need not be joined in a removal petition.”) (citing *Ronson Art*

Metal Works, Inc. v. Hilton Lite Corp., 111 F.Supp. 691 (N.D.Cal. 1953); *Grigg v. Southern Pacific Co.*, 246 F.2d 613, 619–20 (9th Cir. 1957)).

4. State Court Pleadings/State Court Record

Copies of all pleadings filed in the state court are attached hereto. Pursuant to Arizona District Court Local Rule LRCiv 3.6(b), undersigned counsel verifies under penalty of perjury that the records attached hereto as are true and complete copies of all pleadings and other documents filed in the state court proceeding.

Exhibit	Title	Date Filed
A	Complaint	12/17/2019
B	Demand for Jury Trial	12/17/2019
C	Certificate of Compulsory Arbitration	12/17/2019
D	Defendants' Answer	2/7/2020
E	Defendants' Motion for Award of Costs On Previously Dismissed Action	2/7/2020
F	Declaration of David S. Gingras In Support of Motion for Award of Costs On Previously Dismissed Action	2/7/2020
G	Defendants' Motion for Summary Judgment	2/21/2020
H	Amended Complaint	2/27/2020
I	Plaintiffs' Motion to Proceed Under Pseudonym	3/6/2020
J	Declaration of Andrew Ivchenko in Support of Plaintiffs' Motion to Proceed Under Pseudonym	3/6/2020
K	Stipulated Motion to Extend Time	3/18/2020
L	Order Extending Time	3/23/2020
M	Defendants' Response to Plaintiffs' Motion to Proceed Under Pseudonym	3/26/2020
N	Defendants' Answer to Amended Complaint	3/26/2020
O	Plaintiffs' Initial Rule 26.1 Disclosures	Rec'd 3/9/2020
P	Plaintiffs' Response to Defendants' Motion for Summary Judgment	4/1/2020
Q	Exhibits to Plaintiffs' Response to Defendants' Motion for Summary Judgment	4/1/2020
R	Statement of Controverting Facts In Support Of Plaintiffs	4/1/2020
S	Request for Judicial Notice in Support of Plaintiff's Response to Defendants' Motion for Summary Judgment	4/1/2020

1 DATED: April 3, 2020.

2 GINGRAS LAW OFFICE, PLLC

3 

4 David S. Gingras, Esq.

5 Attorney for Defendants

6 Kyle David Grant; Travis Paul Grant and

7 Mariel Lizette Grant

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document on April 3, 2020 via the Court's ECF system, thereby causing a true copy of said document to be served electronically upon each other party registered through ECF. In addition, copies of the foregoing were emailed to:

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