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Defendant In Pro Se

SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

RENEE IVCHENKO and ANDREW IVCHENKO, wife and husband, Plaintiffs, v. DAVID S. GINGRAS, et al., Defendants.	Case No. CV2021-093562 **MOTION TO STAY** (Assigned To Hon. Peter Thompson)

Defendant David S. Gingras hereby moves this Court for an order staying this matter pending the disposition of certain matters in an earlier-filed related case which is currently proceeding in the U.S. District Court for the District of Arizona, styled *Travis Grant, et al. v. Andrew Ivchenko, et at.*, Case No. 21-CV-108 filed January 21, 2021 (the "Federal Litigation"). As explained below, the Federal Litigation involves identical parties and identical claims arising from the same events.

Accordingly, the claims asserted by the Plaintiffs in this later-filed state-court proceeding (who are both defendants in the Federal Litigation) are compulsory counterclaims under Ariz. R. Civ. P. 13(a) and Fed. R. Civ. P. 13(a). Under the compulsory counterclaim rule, these claims *must* (and may only) be asserted in the Federal Litigation, once that case reaches the pleading stage. For that reason, and based on the rule set forth in *Tonnemacher v. Touche Ross & Co.*, 186 Ariz. 125, 920 P.2d 5 (App. 1996), this Court should stay this matter until the federal court has resolved the pending litigation.

I. INTRODUCTION

As explained further below, the Plaintiffs in this case—Andrew and Renee Ivchenko—are vexatious litigants. The instant dispute began three and a half years ago in April 2018 when Mrs. Ivchenko called the police in Scottsdale to report that her husband, Andrew, had assaulted her. According to pleadings filed by the Ivchenkos in other matters, Mrs. Ivchenko is a "severe" alcoholic with a long history of alcohol-related problems, including multiple contacts with law enforcement.

After Scottsdale police arrived at the Ivchenko residence, they quickly determined Mrs. Ivchenko's allegations against Mr. Ivchenko were false. Apparently, Mrs. Ivchenko made a false 911 call because she was angry that Mr. Ivchenko had poured her vodka down the sink after discovering her drinking.

Initially, rather than arresting Mrs. Ivchenko for making a false report, the police simply asked Mr. Ivchenko to leave for the night, which he agreed to do. While Mr. Ivchenko was packing a bag, Mrs. Ivchenko began arguing with police officers, demanding to speak to her husband (Mr. Ivchenko is an attorney). Due to her highly intoxicated and agitated state, the police refused to allow Mrs. Ivchenko to speak to her husband.

Angered further by this, Mrs. Ivchenko eventually struck one of the police officers in the chest. As a result, Mrs. Ivchenko was arrested and charged with various crimes, including a felony count of aggravated assault on a police officer. Her criminal case was *State v. Renee Ivchenko*, Maricopa County Superior Court Case No. CR2018–119949.

To resolve the charges, Mrs. Ivchenko signed a written statement admitting guilt, and she made a written avowal to the Court admitting the factual elements of the crime of aggravated assault.[1] In return for her admissions, Mrs. Ivchenko was allowed to participate in the Court's Felony Pretrial Intervention Program. Following the successful completion of that program, the criminal charges against Mrs. Ivchenko were dismissed.

[1] *See DEFENDANTS CONSENT TO PARTICIPATE IN DEFERRED PROSECUTION PROGRAM AND ACKNOWLEDGEMENT*, filed in CR2018–119949 on 5/15/2018.

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As routinely happens with all felony arrests in Maricopa County, when Mrs. Ivchenko was booked into county jail in April 2018, her mugshot and arrest information was posted on the Internet by the Maricopa County Sheriff's Office (MCSO). Afterwards, Mrs. Ivchenko's mugshot was copied and republished on numerous other websites, including one site owned by Defendant Travis Grant. As it happens, Mr. Grant owns and operates numerous websites that capture, archive and display public records including mugshots and related arrest information. As of August 2021, these websites contain more than 20 million records from 45 different U.S. states.

After seeing his wife's mugshot on the Internet, Mr. Ivchenko flew into an uncontrolled rage, unleashing an avalanche of litigation, primarily (but not solely) targeting Travis Grant, his wife Mariel Grant, and Travis's brother, Kyle (collectively, the "Grant Family"). To date, Mr. Ivchenko has commenced and/or instigated nearly a dozen lawsuits, including eight such cases against the Grant Family here in Arizona, as reflected in the chart below (the present matter is Case #8 on this chart):

	Case Number	Party / Business Name
1	CV2019-015355	Grant, Travis - DOB: N/A
2	CV2019-090493	Grant, Travis - DOB: N/A
3	CV2020-055202	Grant, Travis - DOB: N/A
4	CV2020-055722	Grant, Travis - DOB: N/A
5	CV2020-093006	Grant, Travis - DOB: N/A
6	CV2021-090059	Grant, Travis - DOB: N/A
7	CV2021-090710	Grant, Travis - DOB: N/A
8	CV2021-093562	Grant, Travis - DOB: N/A

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In addition to repeatedly suing the Grant Family, Mr. and Mrs. Ivchenko have also brought unsuccessful litigation against other targets including the Scottsdale Police[2] and an alcohol treatment facility where Mrs. Ivchenko received care for her drinking problem.[3] Mr. Ivchenko has also threatened to sue Travis Grant's *father*, and others.

What is particularly disturbing is not merely the *number* of cases filed by Mr. and Mrs. Ivchenko, but the *manner* in which those cases have been litigated. In short, rather than seeking resolution of the merits, Mr. and Mrs. Ivchenko have done exactly the opposite—they begin by filing a new case, litigate the matter aggressively, and then they *voluntarily dismiss* the case just prior to losing on the merits. Shortly thereafter, Mr. Ivchenko will re-file a new, substantially identical case, and the process will repeat again, and again, and again, and again. This is the literal definition of a vexatious litigant.

a. Summary of Prior Litigation

To help the Court understand the background, it is helpful to summarize the extensive history of prior litigation between the parties.

- **CASE 1.** In May 2019, Mrs. Ivchenko (represented by her husband) sued Travis Grant and his family in *Ivchenko v. Grant*, Maricopa Superior Court Case No. CV2019–090493 ("Case 1"), seeking damages of at least $1 million. In that action, Mrs. Ivchenko sued the Grant Family for defamation, invasion of privacy, intentional infliction of emotional distress, and related claims, all arising from the publication of Mrs. Ivchenko's mugshot on one of Travis's websites. After the Grant Family retained counsel (the undersigned), the case was removed to federal court. A few days later, Mr. Ivchenko voluntarily dismissed the first suit.

- **CASE 2.** Seven months later, in December 2019, Mr. and Mrs. Ivchenko (this time as co-plaintiffs) retained counsel and filed a new lawsuit against the Grant Family in *Ivchenko v. Grant*, MCSC Case No. CV2019–015355 ("Case 2"). This second suit is the underlying action which gives rise to this matter. The claims in Case 2 were substantially identical to those in Case 1, with one exception – Mr. Ivchenko was added as a party-plaintiff, asserting claims accusing the Grant Family of defaming him by posting statements on Twitter suggesting that Mr. Ivchenko committed "fraud on the U.S. Copyright Office" by submitting a copyright registration application in which Mrs. Ivchenko claimed (falsely) to own the copyright in her own mugshot.

[2] *See Renee Ivchenko v. City of Scottsdale*, Ariz. Dist. Court Case No. 19-CV-5834.
[3] *See Renee Ivchenko v. The River Source Treatment Center*, Case No. CV2018–092390.

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After Case 2 was filed, unlike Case 1, Mr. and Mrs. Ivchenko refused to dismiss the action. As a result, the Grant Family appeared through undersigned counsel, filed an Answer, and immediately moved for summary judgment.

Six days later, Mr. and Mrs. Ivchenko filed an Amended Complaint which added twenty new anonymous plaintiffs identified only as John Does and Jane Does. These new parties also asserted new claims not present in the original Complaint, alleging violations of Arizona's new "Mugshot Act", A.R.S. § 44–7902. Less than three months later, Mrs. Ivchenko and her 20 new co-plaintiffs moved to voluntarily dismiss Case 2. Because this was the *second* voluntary dismissal by Mrs. Ivchenko, the District Court ordered her claims dismissed with prejudice, over her objection.

- **CASE 3.** In May 2020 (just before the dismissal of Case 2), Mr. Ivchenko filed a *third* lawsuit – *Doe v. Grant*, MCSC Case No. CV2020–093006. The claims in Case 3 were substantially identical to those in the Amended Complaint in Case 2, with two exceptions: First, Mrs. Ivchenko was no longer a party (because her claims were all dismissed with prejudice in Case 2). Second, among the 20 anonymous plaintiffs, Mr. Ivchenko added three new plaintiffs who claimed to reside in Florida (the Grant Family are all residents of Florida). This made it appear Mr. Ivchenko had fraudulently joined non-diverse parties in an effort to stop the Grants from removing the case to federal court (as they had properly done with both Case 1 and Case 2).

  Because fraudulent joinder does not defeat diversity jurisdiction, the Grant Family removed Case 3 to federal court and then moved for jurisdictional discovery seeking information about the three non-diverse (Florida resident) plaintiffs. Over Mr. Ivchenko's objection, the District Court granted the Grant Family's request for jurisdictional discovery. Just one day later, Mr. Ivchenko voluntarily dismissed Case 3 rather than allowing discovery which would reveal his effort to defraud the court. But Mr. Ivchenko still do not stop.

- **CASE 4.** Shortly after voluntarily dismissing Case 3 in November 2020, Mr. Ivchenko filed Case 4 in January 2021; *Doe v. Grant*, MCSC Case No. CV2021–090059.

  Unlike the prior three actions, Case 4 was not voluntarily dismissed by Mr. Ivchenko. Rather, Case 4 dismissed on the merits after Judge Westerhausen found all claims in the case were barred by federal law, specifically the Communications Decency Act, 47 U.S.C. § 230.[4] This same argument, among others, was previously raised in the summary judgment motion in Case 2 (which was never ruled upon because Mrs. Ivchenko voluntarily dismissed the case prior to a ruling)

[4] *See* minute entry order filed 4/1/2021 in CV2021–090059.

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- **CASE 5.** On February 12, 2021, prior to losing Case 4 on the merits, Mr. Ivchenko filed a fifth action against the Grant Family, *Doe v. Grant*, MCSC Case No. CV2021–090710. As before, the claims in Case 5 were substantially identical to those in all four prior cases, including the claims which were dismissed on the merits in Case 4.

  However, after Judge Westerhausen's dismissal of Case 4 (which occurred on April 1, 2021), rather than dismissing Case 5, on July 2, 2021 Mr. Ivchenko filed an Amended Complaint in Case 5 to purportedly assert class action claims on behalf of every person who has ever been arrested in Arizona. To date, Mr. Ivchenko has not served the Complaint in Case 5, but he has repeatedly sought (and received) extensions of time to complete service.

Against this exceptional backdrop of vexatious conduct, it should come as no surprise that after the third successive dismissal, the Grant Family finally had enough. As a result, on January 21, 2021, the Grant Family sued Mr. and Mrs. Ivchenko in the U.S. District Court in *Travis Grant, et al. v. Andrew Ivchenko*, *et al*, Case 21-CV-108. As indicated in the current operative pleading (the First Amended Complaint, attached hereto as Exhibit A; excluding exhibits), the Grant Family are suing Mr. and Mrs. Ivchenko for malicious prosecution and abuse of process arising from their conduct in Cases 1, 2 and 3. In addition, the Grant Family is also seeking declaratory relief, noting that the Ivchenkos have repeatedly threatened to continue suing over the publication of Mrs. Ivchenko's mugshot and related body-cam footage from her arrest, even though such claims have already been dismissed with prejudice. Accordingly, the Amended Complaint in the federal case seeks declaratory relief as follows:

> 257. Plaintiffs are entitled to a declaration finding that their publication of public records relating to Renee Ivchenko, including but not limited to, bodycam footage, police reports, and other public records, is protected speech under the First Amendment and is not unlawful under any legal theory recognized in the State of Arizona.

Exhibit A at 33, ¶ 257.

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Rather than addressing the merits, Mr. and Mrs. Ivchenko responded to the Federal Litigation with a Motion to Strike, Motion For More Definite Statement, and a Motion for Jurisdictional Discovery. Those motions were all denied, as moot, after the initial Complaint was amended. Thereafter, the Ivchenkos renewed their Motion to Strike and Motion for More Definite Statement, both of which have been fully briefed and are currently awaiting decision. Those two motions have been pending since March 31, 2021.

Regardless of whether the two pending motions are granted or denied, it is virtually certain the Federal Litigation will continue forward, and when it does, Mr. and Mrs. Ivchenko will eventually respond with a Rule 12(b)(6) Motion to Dismiss. Obviously, the Grant Family with oppose any such motion, and if the Motion to Dismiss is denied, Mr. and Mrs. Ivchenko will be required to file a responsive pleading. At that time, Rule 13(a) will require that they assert any compulsory counterclaims they may have, and if they fail to do so, those claims will be permanently barred.

b. Summary of Current Litigation

As evident from both the Amended Complaint filed in the Federal Litigation and the Complaint filed in this case, both actions involve substantially the same parties (the only difference being the undersigned is not a party to the Federal Litigation), and the same claims arising from the same events. In short, in the Federal Litigation, the Grant Family is suing Mr. and Mrs. Ivchenko for malicious prosecution, among other things, claiming the three prior lawsuits filed by Mr. Ivchenko were brought without probable cause, with malice, and for improper reasons.

Specifically, the Grant Family alleges that in addition to using litigation primarily as a tool for harassment, Mr. and Mrs. Ivchenko also sought to use the three prior lawsuits as a form of extortion to obtain a collateral benefit; i.e., to force Travis to give Mr. Ivchenko 2,400 "removal credits" that would allow Mr. Ivchenko to remove mugshots and other records from Travis's websites on behalf of third parties. Assuming these removal credits could be sold for $1,000 each, the Grant Family alleges the value of Mr. Ivchenko's extortion attempt was $2.4 million.

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For their part, in this new state proceeding, Mr. and Mrs. Ivchenko are primarily focused on undersigned counsel and his conduct in connection with Case 2. In short, Mr. and Mrs. Ivchenko accuse the undersigned of making false statements in the summary judgment motion filed in Case 2. Specifically, the Ivchenkos claim the undersigned "intentionally decided to make false factual allegations in the Motion for Summary Judgment to falsely make it appear that one or more of Plaintiff Renee Ivchenko's claims did not state timely claims for relief." Compl. ¶ 77.

The merits of this claim, and all other claims in the Complaint, are beyond the scope of the instant motion. However, the suggestion that the summary judgment motion contained any "false statements" has no basis in fact. Rather, this argument is based on a mischaracterization of both the Complaint in Case 2, as well as the summary judgment motion filed in response to that Complaint. After reviewing both pleadings, it will be clear the summary judgment motion contains nothing remotely improper or false, and that all of the Ivchenkos claims have no merit for other reasons.

II. DISCUSSION

a. The Claims Here Are Compulsory Counterclaims

The above discussion leads to a simple question—given that there is already pending litigation in federal court between the Grant Family and Mr. and Mrs. Ivchenko arising from the exact same events, should Mr. and Mrs. Ivchenko be allowed to proceed with a second, later-filed state court action asserting claims which would clearly be compulsory counterclaims under Rule 13? The answer to that question is NO.

This much is clear: "Rule 13(a) requires the pleader to assert any counterclaims arising from the same transaction and occurrence against an opposing party. Economy and efficiency are the overriding purposes of Rule 13(a), forcing parties to bring all the claims logically related to the main claim or else be barred from ever doing so in the future." *Mirchandani v. BMO Harris Bank, N.A.*, 235 Ariz. 68, 71, 326 P.3d 335, 338 (App. 2014) (emphasis added) (citing *Occidental Chem. Co. v. Connor*, 124 Ariz. 341, 344-45, 604 P.2d 605, 608-09 (1979)).

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This rule, known as the "compulsory counterclaim rule" was created for exactly the situation presented here—when a vexatious litigant like Mr. Ivchenko needlessly files a *second* action arising from the same events rather than simply bringing counterclaims in the first pending action. The compulsory counterclaim rule, as set forth in Rule 13(a), prohibits this wasteful result:

> The requirement that counterclaims arising out of the same transaction or occurrence as the opposing party's claim "shall" be stated in the pleadings was designed to prevent multiplicity of actions and to achieve resolution in a single lawsuit of all disputes arising out of common matters. The Rule was particularly directed against one who failed to assert a counterclaim in one action and then instituted a second action in which that counterclaim became the basis of the complaint.

S. Constr. Co. v. United States ex rel. Pickard, 371 U.S. 57, 60, 83 S. Ct. 108, 110 (1962) (emphasis added).

This is precisely the situation here. The claims Mr. and Mrs. Ivchenko are asserting in this state proceeding clearly arise from exactly the same events at issue in the Grant Family's claims in the earlier-filed federal case. Thus, Mr. and Mrs. Ivchenko's claims in this case are compulsory counterclaims to the claims of the Grant Family in the Federal Litigation. As a result, Rule 13(a) prohibits the Ivchenkos from commencing a new suit arising from the same events; any such claims must be asserted as counterclaims in the pending federal action.

b. Standard For A Stay

Although the Arizona Rules of Civil Procedure do not expressly provide for stays of litigation, it has been repeatedly recognized "trial courts have inherent authority to enter orders that facilitate the orderly and efficient execution of their jurisdiction." *Bergeron ex rel Perez v. O'Neil,* 205 Ariz. 640, 649, 74 P.3d 952, 961 (App. 2003) (citing *Owen v. City Court*, 123 Ariz. 267, 268, 599 P.2d 223, 224 (1979); *Fenton v. Howard*, 118 Ariz. 119, 121, 575 P.2d 318, 320 (1978)). Federal courts recognize the same rule. *See Landis v. North America Co*., 299 U.S. 248, 254 (1936) ("[T]he power to stay

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proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants."); *Mediterranean Enters. Inc. v. Ssangyong Corp*., 708 F.2d 1458, 1465 (9th Cir. 1983) (agreeing, a court "may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case.")

Applying that rule, the Arizona Court of Appeals has determined a stay of litigation should be entered by a state court when a pre-existing federal case is pending between the same parties involving the same issues. That was precisely the holding in a helpful and closely analogous case, *Tonnemacher v. Touche Ross & Co.*, 186 Ariz. 125, 920 P.2d 5 (App. 1996).

Tonnemacher involved substantially if not exactly the same situation present here – a federal action was filed in 1989 in the U.S. District Court in Arizona, and while that matter was pending, a related state court action was filed in 1993 in the Maricopa County Superior Court involving the same parties and similar claims arising from the same events. Initially, the defendant in the state court proceeding moved to dismiss, arguing the federal court action automatically "abated" the state court proceeding. The state court agreed, and it dismissed the state proceeding without prejudice. *See Tonnemacher*, 186 Ariz. at 127.

The Arizona Court of Appeals *reversed*, finding the pendency of an earlier-filed federal case did not *automatically* require dismissal of the state court action. Instead, the Court of Appeals explained the better course of action was to stay the later-filed case pending the resolution of the earlier-filed one:

> Because of the risks of injustice posed by dismissal, and because the countervailing concerns are satisfied by issuing a stay, the superior court should not dismiss an action based on a prior action pending in the federal court and instead should issue a stay order if the circumstances warrant.

Tonnemacher, 186 Ariz. at 130 (emphasis added).

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In terms of the "circumstances" that warrant a stay, the Court of Appeals set forth a list of factors to consider which include:

1.) avoiding increased costs;

2.) preventing harassment by repeated suits involving the same subject matter;

3.) avoiding extra cost and burden to judicial resources;

4.) avoiding piecemeal litigation,

5.) avoiding unusually difficult questions of federal law that bear upon important policy issues, and

6.) avoiding conflicting judgments by state and federal courts.

Id. (citing *Landis v. North American Co*., 299 U.S. 248, 254, 81 L. Ed. 153, 57 S. Ct. 163 (1936); *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817, 47 L. Ed. 2d 483, 96 S. Ct. 1236 (1976)); *see also Apache Produce Imps., Ltd. Liab. Co. v. Malena Produce, Inc*., 247 Ariz. 160, 164, 447 P.3d 341, 345 (App. 2019) (affirming and adopting the *Tonnemacher* factors for purposes of granting a stay).

c. This Action Should Be Stayed

Reviewing the six factors identified in *Tonnemacher*, it is clear every one of these factors supports a stay of this proceeding. First, there is no question that allowing two parallel lawsuits between the same parties arising from the same events would needlessly increase costs (Factor #1), would needlessly permit Mr. and Mrs. Ivchenko to continue their campaign of harassment by unnecessarily duplicative litigation (Factor #2), would result in extra costs and burden to judicial resources (Factor #3), would result in piecemeal litigation (Factor #4), and could possibly result in directly conflicting judgments from the state and federal courts (Factor #6). Those points, standing alone, are more than enough to warrant a stay of this matter.

However, a few additional comments are worth mentioning regarding Factor #5; i.e., whether a stay of this state court proceeding would help avoid "unusually difficult questions of federal law that bear upon important policy issues." The answer to that question is also yes, but for reasons that require some additional explanation.

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As noted above, Mr. and Mrs. Ivchenko's claims in this case arise from and relate to events that occurred during "Case 2". That point is demonstrated by Paragraphs 49–82 of the Complaint in this matter which extensively references "Case 2" and accuses the Grant Family and the undersigned of various improper acts related to Case 2 (these specific acts are outlined in ¶ 151 of the Complaint). The Ivchenkos further allege that this misconduct qualified as "abuse of process" which was "designed to drain Plaintiffs' financial resources and also to intimidate them to drop the lawsuit, knowing that the entire action [Case 2] had merit." Compl. ¶ 148 (emphasis added).

The issue of whether "the entire action [Case 2] had merit" implicates complicated questions of federal law which this court has no subject matter jurisdiction to decide. Specifically, in Case 2, one of the central allegations was that the Grant Family defamed Mr. Ivchenko by posting statements on Twitter suggesting Mr. Ivchenko had committed "fraud" on the U.S. Copyright Office. That statement (which was *not*, in fact, posted by the Grant Family) alluded to the fact that after Mrs. Ivchenko's mugshot was created and published online by MCSO, Mr. Ivchenko submitted an application to the U.S. Copyright Office in which he made an affirmative representation that Mrs. Ivchenko was the "author" of her mugshot and thus owned the exclusive copyright in that work.

To be clear—the allegation that Mr. Ivchenko committed "fraud" on the Copyright Office appears to be entirely true. In other pleadings, Mr. Ivchenko has admitted that he did submit an application to the U.S. Copyright Office on behalf of Mrs. Ivchenko claiming copyright ownership in the mugshot created by MCSO. Because the Copyright Office does not independently investigate or verify claims of ownership, a registration certificate was subsequently issued in Mrs. Ivchenko's name. Immediately thereafter, Mr. Ivchenko sent out several DMCA (Digital Millennium Copyright Act) "takedown" notices to website operators including Twitter and Google, demanding that they remove Mrs. Ivchenko's mugshot based on her alleged status as the copyright owner.

In their malicious prosecution action against Mr. and Mrs. Ivchenko, the Grant Family alleges that Mr. Ivchenko's defamation claims in Case 2 were groundless

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because: A.) the Grant Family did not post any statements about Mr. Ivchenko on Twitter, and B.) even if they had, those statements were completely true. Obviously, if the statement accusing Mr. Ivchenko of "fraud" on the Copyright Office was true, then it could not support a cause of action for defamation.

In the Complaint filed in this matter, Mr. Ivchenko continues to argue that every claim in Case 2 had merit, including his defamation claim based on the "copyright fraud" issue. The Grant Family (in their federal malicious prosecution action) take exactly the opposite position; they allege Mr. Ivchenko did commit fraud on the Copyright Office because he applied for a certificate of registration that he knew contained materially false statements of fact (i.e., that Mrs. Ivchenko was the "author" of her own mugshot).

The resolution of this disputed point involves complicated questions of federal law arising under the U.S. Copyright Act, 17 U.S.C. § 101, *et seq*. Specifically, the question of whether Renee Ivchenko owned the copyright in her mugshot requires an analysis of 17 U.S.C. § 201 (setting forth the standards for determining copyright ownership). Because that question arises under the U.S. Copyright Act, a state court lacks subject matter jurisdiction to resolve it; "No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights." 28 U.S.C. § 1338(a) (emphasis added).

The question of whether "all claims" in Case 2 had merit (as Mr. Ivchenko now argues) is a critical issue in determining the existence of probable cause, which, in turn, is a necessary element of malicious prosecution. Similarly, Mr. Ivchenko's abuse of process claim also depends on his allegation that "the *entire* action had merit." Compl. ¶ 148.

For that reason, although the *Tonnemacher* Court did not suggest that a stay should be granted only when *all six* factors weigh in favor of that result, here all six factors strongly support a stay of this state court proceeding. This is true because, as explained above, determining whether or not Case 2 had merit will require the application and analysis of complicated questions of federal law which this court lacks jurisdiction to determine. Thus, the Fifth *Tonnemacher* factor also favors a stay.

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Finally, it is worth noting that an order staying this proceeding will have absolutely no adverse effect on the Ivchenkos' right to pursue their claims. Obviously, Mr. Ivchenko will argue (as he does in virtually every pleading) that the malicious prosecution action against him is groundless, and that he expects the case to be dismissed on the pleadings. If he is correct, then as soon as the federal litigation is dismissed, he may ask this Court to lift the stay and allow this action to proceed.

On the other hand, if Mr. Ivchenko is wrong, and if the federal litigation proceeds forward, there is simply nothing unfair about requiring Mr. Ivchenko to bring his claims as compulsory counterclaims in the federal case. Again, the federal litigation was filed more than six months before this case, and several key aspects of Case 2 require application of federal laws including the Copyright Act and a separate part of the Digital Millennium Copyright Act, 17 U.S.C. § 512. Those are uniquely federal issues that a federal court is well-equipped to address. Accordingly, this dispute should be allowed to proceed to its conclusion in federal court.

III. CONCLUSION

For the reasons stated above and pursuant to the rule set forth in *Tonnemacher v. Touche Ross & Co.*, 186 Ariz. 125, 920 P.2d 5 (App. 1996), this Court should order these proceedings stayed pending the outcome of the Federal Litigation described above.

DATED: August 20, 2021.

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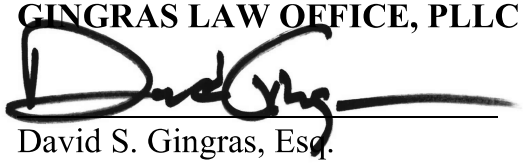

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Exhibit A

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Travis Grant and Mariel Grant, Husband and Wife; and Kyle Grant, Plaintiffs, v. Andrew Ivchenko and Renee Ivchenko, Husband and Wife, Defendants.	Case No. 21-CV-00108-JJT **VERIFIED FIRST AMENDED COMPLAINT**

For their Verified First Amended Complaint, Plaintiffs Travis Grant, Mariel Grant, and Kyle Grant, allege the following:

1. The court system is a powerful tool for resolving disputes in an organized and hopefully somewhat civilized manner. But like any powerful tool, the court system is subject to abuse.

2. This case arises from, and seeks compensation for, an *extreme* example of such abuse.

PARTIES

3. Plaintiffs Travis Grant ("Travis") and Mariel Grant ("Mariel") are a married couple. At all times relevant to this matter, Travis and Mariel resided in, and were citizens of, the State of Florida.

4. Kyle Grant ("Kyle") is Travis's brother. At all times relevant to this matter, Kyle resided in, and was a citizen of, the State of Florida.

5. Defendants Andrew Ivchenko ("Mr. Ivchenko") and Renee Ivchenko ("Mrs. Ivchenko") are a married couple who reside in Scottsdale, Arizona and/or Carlsbad, California.

6. As explained further herein, during all times relevant to this matter Mr. and Mrs. Ivchenko were each acting for the benefit of their marital community within the meaning of A.R.S. § 25–215(D).

JURISDICTION/VENUE

7. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds $75,000 and the parties are citizens of different states.

8. This Court also has original subject matter jurisdiction pursuant to 28 U.S.C. § 1338(a) because this action includes claims arising under an Act of Congress relating to copyrights, specifically 17 U.S.C. § 512(f).

9. This Court has supplemental jurisdiction over all other claims pursuant to 28 U.S.C. § 1367.

10. The transactions and occurrences involved in this matter took place in Maricopa County and all Defendants reside in Maricopa County; therefore, venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1).

FACTUAL BACKGROUND

SUMMARY OF TRAVIS'S WEBSITES

11. During the times relevant to this action, and presently, Travis has owned and operated several websites including www.RapsSheetz.com, www.Rapsheets.org, www.BailBondSearch.com, www.BailBonsdsHQ.com and www.PublicPoliceRecord.com. For the purposes of this matter, these sites are collectively referred to as "Travis's websites".

12. In general, Travis's websites are involved in "content aggregation". As

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used herein, "content aggregation" means that Travis's websites gather, index, and display or "republish" existing online information created by third party sources.

13. In general, the information republished on Travis's websites was first published on other publicly accessible websites operated by third parties.

14. The information aggregated and republished by Travis's websites includes previously published arrest records and mugshots from state and local law enforcement.

15. In general, the arrest records and mugshots aggregated by Travis's websites were initially created and published on the Internet by various law enforcement agencies across the United States including the Maricopa County Sheriff's Office ("MCSO").

16. Currently, the database of records displayed on Travis's websites contains tens of millions of entries from 45 different U.S. states; the only states not represented in the index are Alaska, Delaware, Hawaii, Massachusetts and Vermont.

17. Travis's websites do not publish, and have never republished, mugshots or arrest records created by federal law enforcement agencies such as the FBI or United States Marshall's Service.

18. After arrest records and mugshots are first published on the Internet by the arresting agency, Travis's websites use automated software to gather or "aggregate" the records which are then republished *verbatim* on one or more of Travis's websites.

19. Kyle works for Travis.

20. Kyle does not have, and has never had, any ownership interest in Travis's websites.

21. Among other things, Kyle's job duties include administrative tasks such as reviewing and researching removal requests submitted by individuals appearing on one or more of Travis's sites.

22. As a matter of policy and subject to his own final editorial discretion, Travis does not ordinarily remove records upon request.

23. Although he is not legally obligated to do so, as a matter of policy, Travis regularly considers requests to remove or update content for various reasons.

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24. As a matter of policy, Travis has always been willing to consider requests to update pages appearing on his websites if the requesting party submits information showing the records in question have been sealed, expunged, or dismissed. Travis may also consider updating and/or removing records for any other reason he deems proper.

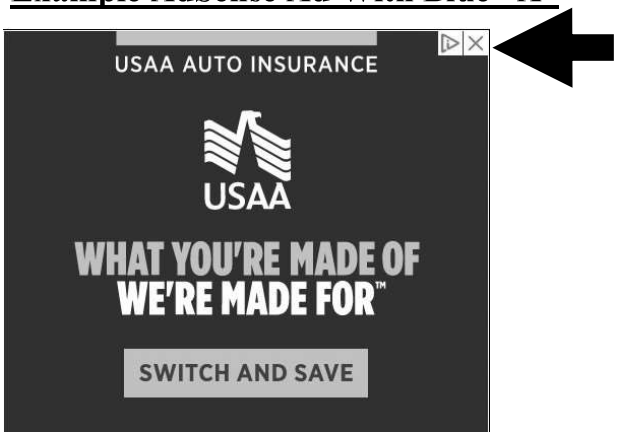
25. As a matter of policy, Travis has also routinely agreed to remove records from his website, even when he was under no legal or other obligation to do so.

26. Travis's websites earn money from Google's AdSense program ("AdSense"). As participants in the AdSense program, Travis's websites display advertisements from the program ("AdSense ads").

27. The contents of each AdSense ad appearing on Travis's websites are created solely by Google's AdSense customers, not by Plaintiffs.

28. Every AdSense ad appearing on Travis's websites contains a blue triangle and/or a blue "x" in the upper right-hand corner, similar to the example shown below:

Example AdSense Ad With Blue "X"



29. The blue "X" and/or blue triangle (or both) shown in the example above appear in all Google AdSense ads.

30. Beyond simply allowing *any* AdSense ads to appear, Plaintiffs cannot and do not control which specific AdSense ads appear on any of Travis's websites.

31. The decision regarding which (if any) AdSense ads to display on Travis's websites is made solely by Google, not by Plaintiffs.

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32. Plaintiffs have never displayed the name, address, telephone number, mugshot, or any other information contained in a criminal justice record in any advertisement for a product or service appearing on any of Travis's websites.

33. Since August 27, 2019, Plaintiffs have not used a name, address, telephone number, mugshot, or any other information contained in a criminal justice record to solicit business for pecuniary gain within the meaning of A.R.S. § 44–7902(B).

RENEE IVCHENKO'S ARREST

34. According to her husband, Defendant Renee Ivchenko is a severe alcoholic.

35. Due to problems related to her alcoholism, Mrs. Ivchenko has had numerous contacts with law enforcement including the City of Scottsdale Police.

36. On April 21, 2018, Mrs. Ivchenko called Scottsdale Police and told them she had just been assaulted by her husband, Andrew.

37. Mrs. Ivchenko's allegation of assault was completely false.

38. Mrs. Ivchenko falsely accused Mr. Ivchenko of assault because she was angry that Mr. Ivchenko had taken away alcohol from her and poured it down the drain.

39. On or about April 21, 2018, Mr. Ivchenko told Scottsdale Police that Mrs. Ivchenko fabricated the story about being assaulted because she was angry that he had poured a bottle of her vodka down the sink, or words to that effect.

40. Based on Mrs. Ivchenko's allegation of domestic violence, Scottsdale Police went to the Ivchenko residence to investigate.

41. After the police arrived at his residence, Mr. Ivchenko told the police that he did not assault Mrs. Ivchenko.

42. Upon further investigation, which included speaking to both Mr. and Mrs. Ivchenko and inspecting Mrs. Ivchenko for any injuries, the police were unable to find any evidence showing that Mr. Ivchenko assaulted Mrs. Ivchenko.

43. Under A.R.S. § 13–2907.01, it is a crime for any person to knowingly make to a law enforcement agency of either this state or a political subdivision of this state a false, fraudulent or unfounded report or statement or to knowingly misrepresent a fact for

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the purpose of interfering with the orderly operation of a law enforcement agency or misleading a peace officer.

44. When Mrs. Ivchenko falsely told Scottsdale Police that Mr. Ivchenko assaulted her on April 21, 2018, she committed a crime.

45. Based on his personal involvement in the events, Mr. Ivchenko knew that Mrs. Ivchenko committed a crime on April 21, 2018.

46. While talking with police officers, Mrs. Ivchenko became combative, argumentative, and refused to follow instructions from the officers.

47. Attached hereto as Exhibit A[1] is a true and correct redacted copy of Scottsdale Police Report #18–08959 relating to the arrest of Renee Ivchenko on April 21, 2018. In this report, one of the police officers provided the following narrative description of the events which he witnessed at the Ivchenko residence:

> We informed Andrew that Renee and he needed to stay separated for the night until she could sober up. While Andrew was packing, I stoodby with Renee in the kitchen. I gave several verbal commands for Renee to remain seated in a separate room. Renee initially ignored my verbal commands to take a seat and insisted on speaking with Andrew, which I did not allow. Renee eventually went to the living room to lay on the couch for a few seconds before getting back up and trying to walk past me to speak with Andrew. I informed Renee several times that she was not going to speak Andrew in person anymore that night due to her intoxication and behavior. Renee insisted on continuing to disobey my commands and became very agitated with FTO Ryan, Ofc. Dearing, and myself. Renee began yelling aggressively, swinging her arms, and pointing at the other officer and me while I told her to calm down. Renee then pushed me in the chest with open palms, causing herself to fall backwards against the living room couch. I then grabbed Renee`s right arm, FTO Ryan grabbed Renee`s left arm, and we placed both of her arms behind her back into handcuff position.

48. The events described in Scottsdale Police Report #18–08959 were captured on video by bodycams worn by officers present at the scene.

49. The events described in the police report are substantially consistent with what is shown in the bodycam footage.

50. Scottsdale Police arrested Renee Ivchenko on April 21, 2018.

51. At the time of her arrest on April 21, 2018, Scottsdale Police alleged probable cause existed to charge Mrs. Ivchenko with three criminal offenses: 1.)

[1] For purposes of simplicity, exhibits referenced in this Amended Complaint are *not* attached hereto. All references to "exhibits" contained herein refer to, and incorporate by reference, the exhibits identified in, and attached to, Plaintiffs' original Complaint filed at ECF Doc. #1 in this matter.

aggravated assault on a police officer, a felony, 2.) disorderly conduct-touched to injure, a misdemeanor, and 3.) disorderly conduct-fighting, a misdemeanor.

52. After her arrest in Scottsdale on April 21, 2018, Mrs. Ivchenko was transferred to the custody of the Maricopa County Sheriff's Office (MCSO) who, in turn, took Mrs. Ivchenko's booking photo or "mugshot".

53. Shortly thereafter (within a day or two), MCSO published Mrs. Ivchenko's mugshot and other details regarding her arrest on its website located at https://www.mcso.org/Mugshot/.

54. At the time MCSO published Mrs. Ivchenko's mugshot on the Internet, it did not place any technical or legal restrictions on the republication of that information.

55. On or around April 21–23, 2018, MCSO published all of the following information about Mrs. Ivchenko on its publicly accessible website:

T452814 RENEE RACHELLE IVCHENKO

Booking Number: T452814
Booking Date: 04/21/2018
Sex: FEMALE
Height: 5'07
Weight: 125
Eye Color: HAZEL
Hair Color: BLONDE OR STRAWBERRY
D.O.B: 2/17/1972

(1) Count of ASSAULT-TOUCHED TO INJURE
(1) Count of DISORDERLY CONDUCT-FIGHTING

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56. Within three days of the time MCSO first published this information on its website, the same information was aggregated and republished verbatim on one or more of Travis's websites.

57. The mugshot and arrest information relating to Mrs. Ivchenko was republished on Travis's websites without any substantive changes to the information.

58. From the time of Mrs. Ivchenko's arrest continuously to the present day, Mrs. Ivchenko's mugshot, arrest details, and other information relating to her arrest (including the Scottsdale Police report, bodycam footage, and direct Complaint) are all matters of public record and are accessible to any member of the public upon request.

59. Under Arizona law, including but not limited to A.R.S. § 39–121, public records in the custody of any public agency or officer are open to public inspection.

60. On April 24, 2018, Mrs. Ivchenko was charged by direct complaint with one felony count of aggravated assault in Maricopa County Superior Court Case No. CR2018-119949.

61. On May 11, 2018, Mrs. Ivchenko agreed to participate in a deferred prosecution program to resolve the criminal charge against her.

62. As part of her participation in the deferred prosecution program, Mrs. Ivchenko made a written representation to the Court avowing that she was, in fact, guilty of the crime she was charged with – felony aggravated assault. A true and correct copy of the Complaint and Mrs. Ivchenko's admission of guilt are attached hereto as Exhibit B.

As part of my consent to participate in the Felony Pretrial Intervention Program, I acknowledge that I am guilty of the offenses charged in the complaint. I acknowledge that this admission and the statements in this document may be used against me if I fail to successfully complete the program and my case proceeds to trial. I understand that I have the right to remain silent and I make the following statements voluntarily after consultation with my attorney.

On **April 21, 2018** (Date of Offense) in **Scottsdale, Arizona - Maricopa County** (Location and Jurisdiction)

On April 21, 2018, I, Renee Ivchenko, knowingly touched Brandon Treglown in the chest area with the intent to provoke him. Brandon Treglown is a a Scottsdale Police Officer and at the time of this incident he was in full uniform and I knew he was a police officer acting in his official capacity.

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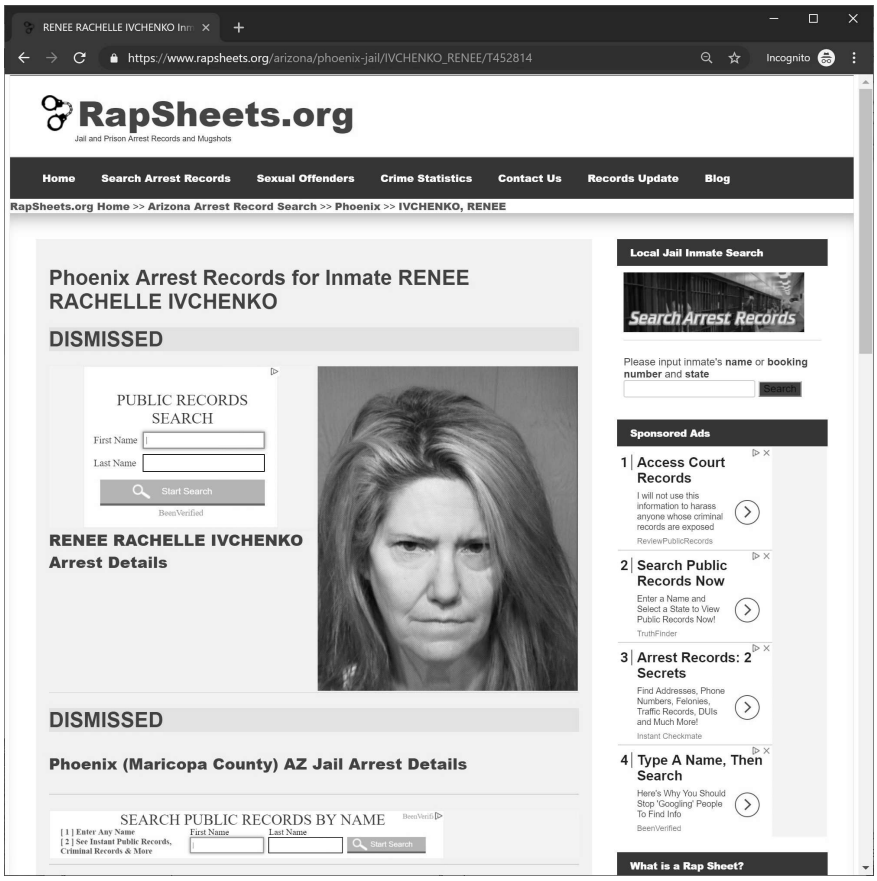
63. By no later than May 15, 2018, Mr. Ivchenko knew Renee had been charged with a crime in CR2018-119949, and he knew she agreed to participate in a deferred prosecution program to resolve the criminal charge against her.

64. By no later than May 15, 2018, Mr. Ivchenko knew Renee had signed a document containing a statement: "I acknowledge that I am guilty of the offenses charged in the complaint", meaning the direct Complaint filed in CR2018-119949.

65. Upon discovering that Mrs. Ivchenko's mugshot had been republished on one or more of Travis's websites, in October 2018 Mr. and/or Mrs. Ivchenko used an online form to submit a request that Mrs. Ivchenko's mugshot be removed on the grounds that the criminal case against her had been "dismissed".

66. Upon receiving this request, the page featuring Mrs. Ivchenko's mugshot was updated to prominently include the word "DISMISSED" in all capital letters in a yellow box as shown below.



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67. Other than adding the word "DISMISSED" to the page in October 2018 in response to a request submitted by either Mr. and/or Mrs. Ivchenko, Defendants made no other changes of any kind to the page after that date.

THE COPYRIGHT APPLICATION

68. On or about March 23, 2019, Mr. Ivchenko submitted an application to the United States Copyright Office for an "Untitled" visual work.

69. The "work" that was the subject of this application was either solely, or it included in part or in whole, the mugshot of Mrs. Ivchenko created by MCSO at the time of Mrs. Ivchenko's arrest on April 21, 2018.

70. In this application, Mr. Ivchenko stated the "work" in question was authored by Renee Rachelle Ivchenko.

71. Based on Mr. Ivchenko's representation in the application, the Copyright Office registered the "work" and assigned it Registration Number VA0002154452.

72. Details of the issued copyright registration obtained by Mr. Ivchenko are available at copyright.gov and are shown below:

Type of Work: Visual Material
Registration Number / Date: VA0002154452 / 2019-03-23
Application Title: Untitled.
Title: Untitled.
Description: Electronic file (eService)
Copyright Claimant: Renee Rachelle Ivchenko. Address: 4960 S Gilbert Rd Ste 1-226, CHANDLER, AZ, 85249, United States.
Date of Creation: 2018
Date of Publication: 2018-03-10
Nation of First Publication: United States
Authorship on Application: Renee Rachelle Ivchenko; Domicile: United States; Citizenship: United States. Authorship: photograph.
Names: Ivchenko, Renee Rachelle

73. 17 U.S.C. § 201(a) provides: "Copyright in a work protected under this title vests initially in the author or authors of the work."

74. As a matter of law, the "author" of a copyrighted work is either the person who originally created the work (e.g., the photographer who took the photo), or the employer or other hiring party who commissioned the creation of the work as a work for hire within the meaning of 17 U.S.C. § 201(b).

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75. As a matter of law, Renee Ivchenko was not the "author" of the work registered as VA0002154452.

76. At the time Mr. Ivchenko submitted the copyright application relating to Mrs. Ivchenko's mugshot to the United States Copyright Office in March 2019, he knew or reasonably should have known that Mrs. Ivchenko was not the "author" of the work for which registration was sought.

77. Since receiving the Certificate of Registration for VA0002154452, Mr. Ivchenko and/or Mrs. Ivchenko have sent at least five (5) takedown demands to Twitter and Google purportedly under the provisions of the Digital Millennium Copyright Act; the "DMCA", 17 U.S.C. § 512.

78. Copies of the DMCA takedown demands sent by Mr. Ivchenko are archived by Lumendatabase.org, and a summary of these demands is shown below:

DMCA Takedown Notice (Tweet)
Date Received: June 13, 2020 *Andrew Ivchenko PLLC → Twitter*
Reported to Lumen: June 15, 2020
Andrew **Ivchenko** PLLC
COPYRIGHT

DMCA Takedown Notice (Tweet)
Date Received: April 03, 2020 *Andrew Ivchenko PLLC → Twitter*
Reported to Lumen: April 28, 2020
Andrew **Ivchenko** PLLC
COPYRIGHT

Court Order Complaint to Google
Date Received: December 24, 2018 *ANDREW IVCHENKO → Google LLC*
Reported to Lumen: December 26, 2018
ANDREW **IVCHENKO**
https://www.jailbase.com/[REDACTED]
COURT ORDERS

DMCA (Copyright) Complaint to Google
Date Received: October 12, 2019 *RENEE IVCHENKO → Google LLC*
Reported to Lumen: October 12, 2019
RENEE **IVCHENKO**
DMCA NOTICES, COPYRIGHT

DMCA (Copyright) Complaint to Google
Date Received: July 20, 2019 *RENEE IVCHENKO → Google LLC*
Reported to Lumen: July 20, 2019
RENEE **IVCHENKO**
https://www.linkedin.com/[REDACTED]
DMCA NOTICES, COPYRIGHT

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79. Each of the DMCA takedown demands shown above relate to Mrs. Ivchenko's mugshot taken at the time of her arrest on April 21, 2018.

80. Each of the DMCA takedown demands shown above contained an affirmative representation that Mrs. Ivchenko owned the copyright to her mugshot.

81. Each of the DMCA takedown demands shown above was signed by Mr. and/or Mrs. Ivchenko under penalty of perjury.

82. Mrs. Ivchenko does not now, nor has she ever, lawfully owned the copyright or any other exclusive rights to her mugshot.

83. Mrs. Ivchenko's mugshot was created by an employee of the Maricopa County Sheriff's Office acting within the scope of his/her employment.

84. Pursuant to 17 U.S.C. § 201(b), the copyright in Mrs. Ivchenko's mugshot is owned by Maricopa County, Arizona.

85. At no time did Maricopa County execute a signed written agreement transferring copyright ownership of Mrs. Ivchenko's mugshot to her, or to anyone else.

86. At no time did Mrs. Ivchenko have a written work for hire agreement with the MCSO employee who took her mugshot.

87. Mr. and Mrs. Ivchenko have, on multiple occasions, made knowingly false statements to third parties for the purpose of attempting to remove Mrs. Ivchenko's mugshot from the Internet.

88. A person who performed a reasonable investigation into the facts and circumstances surrounding the Certificate of Registration for VA0002154452 obtained by Mr. Ivchenko would know the Certificate of Registration was obtained by fraud; specifically Mr. Ivchenko falsely represented to the U.S. Copyright Office that Mrs. Ivchenko was the "author" of her mugshot when, in fact, he knew she was not.

89. Knowingly making a false statement of material fact to the U.S. Copyright Office is a federal crime in violation of 17 U.S.C. § 506(e).

90. Knowingly making a false sworn statement on a DMCA notice is a federal crime in violation of 18 U.S.C. § 1621.

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LITIGATION BEGINS—CASE 1

91. On May 9, 2019, Mr. Ivchenko filed a Complaint against Plaintiffs in Maricopa County Superior Court Case No. CV2019-090493 ("Case 1"). A true and correct copy of the Complaint from that matter is attached hereto as Exhibit C.

92. Among other things, the Complaint in Case 1 alleged that Kyle David Grant, Travis Paul Grant, and Mariel Lizette Grant violated Mrs. Ivchenko's rights by republishing her name, mugshot, and arrest information on the Internet.

93. Among other things, the Complaint in Case 1 alleged that Defendants (Plaintiffs here) defamed Mrs. Ivchenko by "publish[ing] Plaintiff's image on various Websites" and by implying *falsely* that Mrs. Ivchenko was guilty of a crime.

94. At the time Mr. Ivchenko filed Case 1, he knew that Mrs. Ivchenko did, in fact, commit one or more criminal acts on April 21, 2018 and/or on other dates.

95. At the time Mr. Ivchenko filed Case 1, he knew that Mrs. Ivchenko had previously signed a written statement admitting that she was guilty of felony aggravated assault on a police officer.

96. At the time Mr. Ivchenko filed Case 1, he knew that a statement implying that Mrs. Ivchenko was guilty of criminal conduct was not false.

97. The Complaint in Case 1 alleged that Mrs. Ivchenko suffered damages in excess of $1 million from the events alleged in the Complaint.

98. At the time Mr. Ivchenko filed Case 1, he knew that Mrs. Ivchenko had not suffered any damages whatsoever as a result of the events alleged in the Complaint.

99. Shortly after Travis was served with the Complaint in Case 1 in May 2019, he retained counsel to defend the matter.

100. On May 28, 2019, Travis's counsel sent an email to Mr. Ivchenko, a copy of which is attached hereto as Exhibit D.

101. Among other things, the May 28, 2019 email to Mr. Ivchenko explained that Case 1 was groundless because to the extent Travis published any statement alleging or implying that Mrs. Ivchenko was guilty of a crime, that implication was entirely true.

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102. Among other things, the May 28, 2019 email to Mr. Ivchenko explained that Case 1 was groundless because it was based on the republication of existing online content which Arizona courts have previously determined to be protected by the Communications Decency Act, 47 U.S.C. § 230(c)(1).

103. Although not specifically referenced in the May 28, 2019 email, one or more claims in Case 1 (including, but not limited to, the cause of action for defamation) were untimely as a matter of law pursuant to A.R.S. § 12–541 because they were based on information published more than one year prior to the filing of Case 1.

104. Although not specifically referenced in the May 28, 2019 email, one or more claims in Case 1 (including, but not limited to, the cause of action for defamation) were groundless because they were based on statements published on a "bogus Twitter account" which were not statements made or published by Plaintiffs.

105. On May 31, 2019, after the case was removed to federal court, Mr. Ivchenko dismissed Case 1 without prejudice by filing a Notice of Voluntary Dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i).

106. After Case 1 was dismissed, Plaintiffs removed Mrs. Ivchenko's mugshot and arrest information from all of Travis's websites until at least September 2020.

LITIGATION CONTINUES—CASE 2

107. On December 17, 2019, Mr. and Mrs. Ivchenko, now represented by counsel (David Ferrucci, Esq.; "Mr. Ferrucci"), filed a Complaint in Maricopa County Superior Court Case No. CV2019-153355 ("Case 2"). A true and correct copy of the Complaint filed in Case 2 is attached hereto as Exhibit E.

108. Among other things, the Complaint in Case 2 alleged in ¶ 4 that Plaintiffs "extort payment of fees for removal of the arrest information from the victims who [sic] identities and likenesses have been misappropriated." This allegation was made by Defendants without probable cause and with malice. The allegation lacked probable cause because Defendants knew the statement was false and knew that no reasonable basis existed to believe that the statement was true.

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109. Among other things, the Complaint in Case 2 alleged that Plaintiffs defamed Mrs. Ivchenko by publishing statements on Travis's websites accusing Mrs. Ivchenko of committing a crime or implying that she had committed a crime. This allegation was made by Defendants without probable cause and with malice. The allegation lacked probable cause because Defendants knew that any statement implying Mrs. Ivchenko committed a crime was true.

110. Among other things, the Complaint in Case 2 alleged that Plaintiffs defamed Mr. Ivchenko by publishing statements on Twitter falsely accusing him of engaging in a "fraud" on the U.S. Copyright Office. This allegation was made by Defendants without probable cause and with malice. The allegation lacked probable cause because Defendants knew the statement accusing Mr. Ivchenko of engaging in "fraud" was true. The allegation further lacked probable cause because Mr. and Mrs. Ivchenko knew that Plaintiffs did not publish any such statement and knew that no reasonable basis existed to believe that Plaintiffs had published any such statement.

111. At the time the Complaint in Case 2 was filed, Mr. and Mrs. Ivchenko knew, or should reasonably have known, that any statement published by Plaintiffs accusing Mrs. Ivchenko of committing a crime or implying that she had committed a crime was true.

112. At the time the Complaint in Case 2 was filed, Mr. and Mrs. Ivchenko knew, or should reasonably have known, that any statement published by Plaintiffs implying that Mr. Ivchenko had committed "fraud" on the U.S. Copyright Office was true.

113. At the time the Complaint in Case 2 was filed, Mr. and Mrs. Ivchenko knew, or should reasonably have known, that Plaintiffs had not published any false statements about Mr. or Mrs. Ivchenko on Twitter.

114. At the time the Complaint in Case 2 was filed, Mr. and Mrs. Ivchenko knew that Plaintiffs had not asked for money or anything else of value for the removal of Mrs. Ivchenko's mugshot and/or arrest information from any of Travis's websites.

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115. At the time the Complaint in Case 2 was filed, Mr. and Mrs. Ivchenko knew, or should reasonably have known, that Mrs. Ivchenko's mugshot had previously been removed from all of Travis's websites without any request for, or payment of, money or anything else of value.

116. Each and every claim asserted in the Complaint in Case 2 lacked probable cause, either factually, legally, or both.

117. Each and every claim asserted in the Complaint in Case 2 was asserted solely for malicious purposes and not for the purpose of resolving any legitimate dispute.

118. One or more claims in Case 2 (including, but not limited to, the cause of action for defamation) were untimely as a matter of law pursuant to A.R.S. § 12–541 because they were based on statements published more than one year prior to the filing of Case 2.

119. Prior to the filing of Case 2, Mr. Ivchenko knew the statute of limitations for defamation claims in Arizona was one year pursuant to A.R.S. § 12–541.

120. Mr. and Mrs. Ivchenko intentionally decided to include false factual allegations in the Complaint in Case 2 to ensure that Plaintiffs could not quickly resolve the matter by moving to dismiss the Complaint pursuant to Rule 12(b)(6).

121. Specifically, Mr. and Mrs. Ivchenko knew that any claims based on the publication of Mrs. Ivchenko's mugshot would be untimely as a matter of law because that information was published on Travis's websites beginning in April 2018; more than one year before the Complaint in Case 2 was filed on December 17, 2019.

122. In an effort to make it appear (falsely) that the Complaint in Case 2 stated timely claims for relief, Mr. and Mrs. Ivchenko falsely accused Plaintiffs of posting defamatory statements about Mr. and Mrs. Ivchenko on Twitter within one year prior to the filing of the Complaint in Case 2.

123. The decision to include claims based on the statements published on Twitter was done solely to make it appear the Complaint's defamation claims were not time-barred even though such claims were, in fact, untimely as a matter of law.

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124. At the time Case 2 was filed, Mr. and Mrs. Ivchenko knew there was no probable cause to support the allegation that Plaintiffs had posted defamatory statements about Mr. and Mrs. Ivchenko on Twitter within the one year period prior to the filing of the Complaint in Case 2. This allegation was made by Defendants without probable cause, with knowledge that it was false, and with malice.

125. In a series of emails beginning on January 10, 2020, Defendants were informed that one or more of the claims in Case 2 were groundless for numerous reasons.

126. Attached hereto as Exhibit F is a true and correct copy of an email sent to Mr. Ferrucci on January 10, 2020. This email explained that, among other things, one or more claims in Case 2 were groundless because they were untimely and because they were based on statements which were literally and substantially true (i.e., the alleged statement implying that Mrs. Ivchenko had engaged in criminal conduct).

127. Mr. Ferrucci read the January 10th email shortly after it was sent and shared it with Mr. and/or Mrs. Ivchenko shortly thereafter.

128. A reasonable lawyer knows that after the applicable statute of limitations for a claim has expired, that claim cannot be pursued in court.

129. The statute of limitations in Arizona for injuries done to the character or reputation of another by libel or slander is one year pursuant to A.R.S. § 12–541.

130. The one year limitation period of A.R.S. § 12–541 begins to run on the date the defamatory information is first published, not when it is discovered. *See Larue v. Brown*, 235 Ariz. 440, 443 (App. 2014) ("Arizona provides that the statute of limitations for a defamation action begins to run upon publication of the defamatory statement.")

131. Among other things, the Complaint in Case 2 asserted claims for defamation and false light invasion of privacy based on statements published more than one year prior to the commencement of the action.

132. At the time Case 2 was filed, Mr. and Mrs. Ivchenko knew such claims were asserted without probable cause and with malice.

133. Despite numerous demands from Plaintiffs to dismiss all claims in Case 2

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which were not supported by probable cause, Mr. and Mrs. Ivchenko initially refused to dismiss any claims from the case and indicated that all claims were tenable and well-grounded in fact.

134. Based on that refusal, on February 7, 2020, Plaintiffs filed an Answer in Case 2 and on February 21, 2020, they filed a Motion for Summary Judgment.

LITIGATION CONTINUES—CASE 2(b)

135. Six days later on February 27, 2020, while the Motion for Summary Judgment remained pending, Mr. and Mrs. Ivchenko filed an Amended Complaint in Case 2, a true and correct copy of which is attached hereto as Exhibit G ("Case 2(b)").

136. The Amended Complaint in Case 2(b) substantially changed the nature of the proceeding. Among other things, the Amended Complaint in Case 2(b) added a total of 20 new anonymous "John Doe" and "Jane Doe" Plaintiffs each asserting new claims not present in the original Complaint.

137. The Federal Rules of Civil Procedure require all litigants to use their real names. Specifically, Fed. R. Civ. P. 17(a)(1) requires, among other things: "An action must be prosecuted in the name of the real party in interest." Other court rules include the same mandate. *See*, *e.g.*, Fed. R. Civ. P. 10(a) ("The title of the complaint must name all the parties … .")

138. Prior to amending the Complaint in Case 2(b) to add anonymous parties to the proceeding, Defendants did not request nor receive leave of Court to proceed via pseudonym.

139. Defendants' inclusion of anonymous parties in the Complaint in Case 2(b) without leave of court violated the Federal Rules of Civil Procedure. This violation was intentional and malicious in that Defendants believed the use of anonymous parties would make it easier for them to needlessly prolong the litigation and to needlessly increase the cost of the litigation by forcing Plaintiffs to challenge this improper conduct in various motions before Defendants simply abandoned the case.

140. Defendants' actions in willfully disregarding and violating court rules for

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the purpose of increasing the financial harm suffered by Plaintiffs was malicious and not proper in the regular course of the proceedings.

141. On May 19, 2020, Mr. and Mrs. Ivchenko (acting through counsel) filed a Motion to Dismiss Case 2(b) pursuant to Fed. R. Civ. P. 41(a)(2). This motion asked the Court to dismiss the claims of all parties, including both Mrs. Ivchenko and the 20 anonymous plaintiffs, without prejudice.

142. In response, Plaintiffs indicated that they did not object to the 20 anonymous plaintiffs' request for dismissal without prejudice, but they objected to the request as it related to Mrs. Ivchenko. As to Mrs. Ivchenko, Plaintiffs noted that she had filed and dismissed one prior action asserting the same claims based on the same facts, and that any dismissal of Case 2(b) should be with prejudice as to Mrs. Ivchenko.

143. On June 26, 2020, the District Court issued an order in which it dismissed all of Mrs. Ivchenko's claims in Case 2(b) with prejudice. This order of dismissal represents a final, on the merits, adjudication of Mrs. Ivchenko's claims.

144. Case 2(b) was resolved in favor of Plaintiffs as it relates to Mr. and Mrs. Ivchenko's claims.

LITIGATION CONTINUES—CASE 3

145. On May 1, 2020, Mr. Ivchenko filed a new action against Plaintiffs in Maricopa County Superior Court Case No. CV2020-093006 ("Case 3"). A true and correct copy of the Complaint in Case 3 is attached hereto as Exhibit H.

146. Similarly to Case 2(b), the Complaint in Case 3 included claims on behalf of 20 anonymous Plaintiffs identified as "John Doe" and "Jane Does".

147. Prior to filing Case 3, Mr. Ivchenko neither requested nor received leave of Court to permit the plaintiffs to proceed via pseudonym.

148. Mr. Ivchenko's inclusion of anonymous parties in the Complaint in Case 3 violated the Arizona Rules of Civil Procedure. This violation was intentional and malicious in that Mr. Ivchenko believed the use of anonymous parties would make it easier for him to needlessly prolong the litigation and to needlessly increase the cost of

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the litigation by forcing Plaintiffs to challenge this improper conduct in various motions.

149. Mr. Ivchenko's actions in willfully disregarding and violating court rules for the purpose of increasing the financial harm suffered by Plaintiffs was not proper in the regular course of the proceedings.

150. The Complaint in Case 3 included three parties, identified as John Does 8, 9 & 10, who were allegedly residents of the State of Florida.

151. The Complaint in Case 3 asserted claims on behalf of John Does 8, 9 & 10 for violations of A.R.S. § 44–7902(B), unlawful appropriation under Arizona common law, and invasion of privacy/false light under Arizona common law.

152. The Complaint in Case 3 specifically omitted any reference to the location where John Does 8, 9 & 10 were arrested. The decision to omit such reference was made by Mr. Ivchenko.

153. John Does 8, 9 & 10 were arrested in Florida, not Arizona.

154. Before Case 3 was filed, Mr. Ivchenko knew, or reasonably should have known, John Does 8, 9 & 10 were arrested in Florida, not Arizona.

155. Following their arrests in Florida, the names and mugshots of John Does 8, 9 & 10 were published on the Internet by the arresting law enforcement agencies in Florida. After this information was published on the Internet, it was aggregated and republished on one or more of Travis's websites without any substantive changes or additions.

156. No part of the claims of John Does 8, 9 & 10 arose in Arizona, nor were their claims based on conduct which occurred in Arizona. Mr. Ivchenko knew, or reasonably should have known, this before Case 3 was filed.

157. Under the facts of Case 3, no reasonable lawyer would have believed that Arizona substantive law applied to John Does 8, 9 & 10.

158. As a matter of law, Arizona law does not apply to a person who is arrested in another state, and whose mugshot or other arrest information is published on the Internet by a person located in another state.

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159. Because the Complaint in Case 3 did not appear to contain any facts showing that Arizona law applied to John Does 8, 9 & 10, on May 12, 2020, Plaintiffs filed a Motion to Dismiss which alternatively requested an order requiring John Does 8, 9 & 10 to provide a more definite statement explaining why Arizona law applied to them.

160. Even though he knew there was no reasonable basis for arguing that Arizona law applied to them, Mr. Ivchenko made a tactical decision to include John Does 8, 9 & 10 as parties in Case 3 for the sole purpose of attempting to avoid federal diversity jurisdiction over the case. Mr. Ivchenko made this decision because he believed that Plaintiffs were more likely to prevail in federal court as than in state court.

161. Mr. Ivchenko intentionally and wrongfully joined John Does 8, 9 & 10 as parties in an attempt to defraud the federal Court into believing that it did not have diversity jurisdiction over Case 3.

162. Notwithstanding Mr. Ivchenko's fraudulent conduct, Case 3 was removed to the United States District Court on June 9, 2020.

163. At the time the case was removed, the federal court properly had diversity jurisdiction over the matter.

164. Despite knowing there was no reasonable factual or legal basis to challenge federal jurisdiction, on July 9, 2020, Mr. Ivchenko filed a Motion to Remand Case 3. The motion was filed in bad faith and with knowledge that it was groundless.

165. While Mr. Ivchenko's Motion to Remand was pending, Plaintiffs filed a motion seeking jurisdictional discovery. Specifically, Plaintiffs asked the Court to allow discovery into the location(s) where John Does 8, 9 & 10 were arrested.

166. On November 12, 2020, the U.S. District Court issued an order in Case 3 granting Plaintiffs' request for jurisdictional discovery.

167. Immediately following the Court's order, on November 12, 2020, Plaintiffs' counsel sent an email to Mr. Ivchenko asking him for his position regarding the best way to proceed with jurisdictional discovery.

168. Mr. Ivchenko responded via email later that same day. A true and correct

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copy of Mr. Ivchenko's email response is attached hereto as Exhibit I.

169. In his November 12th email, rather than permitting the case to proceed in federal court, Mr. Ivchenko threatened to dismiss Case 3 and to file more individual lawsuits against Plaintiffs in state court.

170. In his November 12th email, Mr. Ivchenko further threatened to bring legal action against Plaintiffs (and against Plaintiff's counsel) simply because Plaintiffs published truthful, factual public records regarding Mrs. Ivchenko on Travis's websites (including bodycam footage taken at the time of Mrs. Ivchenko's arrest).

171. The next day, on November 13, 2020, Mr. Ivchenko followed through on his threat by filing a Notice of Voluntary Dismissal of Case 3.

172. Mr. Ivchenko dismissed Case 3 because he believed that based on the Court's order allowing jurisdictional discovery, it was likely remand would be denied and that as a result, the District Court would consider the merits of the case.

173. Mr. Ivchenko believed that if the federal Court considered the merits of the case, the case would be dismissed and/or otherwise resolved in favor of Plaintiffs.

174. Mr. Ivchenko voluntarily dismissed Case 3 solely for the purpose of preventing the Court from considering the merits of the case and for the purpose of avoiding a loss on the merits.

175. Voluntarily dismissing a meritless action solely to *prevent* the court from considering and ruling on the merits of the dispute is not proper in the regular course of the proceedings.

176. At least one or more of the plaintiffs in Case 3 were also plaintiffs in Case 2(b). As such, pursuant to Fed. R. Civ. P. 41(a)(1)(B), the dismissal of Case 3 operated as an adjudication on the merits in favor of Plaintiffs.

177. Since dismissing Case 3, Mr. Ivchenko has continued to file additional lawsuits against Plaintiffs based on their aggregation and republication of arrest records.

178. Mr. Ivchenko has engaged in a pattern of filing, dismissing, and refiling successive identical lawsuits for the purpose of harassment.

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FIRST CAUSE OF ACTION
(Malicious Prosecution — Case 2)
(Against All Defendants)

179. Arizona recognizes the tort of "malicious prosecution" which is also sometimes referred to as a "wrongful use of civil proceedings".

180. The elements of the tort are set forth in the REVISED ARIZONA JURY INSTRUCTIONS (CIVIL), 6TH, INTENTIONAL TORTS 19—Malicious Prosecution.

181. By commencing Case 2, Mr. and Mrs. Ivchenko, initiated or took active part in the prosecution of a civil proceeding against Plaintiffs.

182. As it relates to the claims initially brought by Mrs. Ivchenko, Case 2 was terminated in favor of Plaintiffs on June 26, 2020 when the case was dismissed with prejudice.

183. As it relates to the claims initially brought by Mr. Ivchenko in Case 2, the action was terminated in favor of Plaintiffs on June 26, 2020 when the case was dismissed with prejudice.

184. In both commencing and continuing to pursue Case 2, Mr. and Mrs. Ivchenko acted without probable cause.

185. Specifically, at the time Case 2 was commenced, Mr. and Mrs. Ivchenko knew one or more claims lacked probable cause for the following reasons:

a. The applicable statute of limitations expired before the action was filed;
b. The claims were based on the publication of information that was factually true;
c. The claims were based on the publication of information involving matters of public interest/concern (specifically, the arrest and criminal charges filed against Renee Ivchenko, and the resolution of same);
d. The claims were based on speech previously determined by the United States Supreme Court to be entitled to First Amendment protection;
e. The claims were based on the aggregation and republication of existing

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online content which is protected under federal law, specifically by the Communications Decency Act, 47 U.S.C. § 230(c)(1);

f. The claims were based on the publication of privileged information including matters of public record and information that was a fair and accurate summary of information contained in public records;

g. The claims were based on factual allegations which Mr. and Mrs. Ivchenko knew to be completely false at the time the allegations were made—*to wit*: the allegation that Plaintiffs extorted, or attempted to extort, the payment of money or anything else of value from Mrs. Ivchenko for the purpose of removing her mugshot and/or arrest information from Travis's websites;

h. The claims were based on factual allegations which Mr. and Mrs. Ivchenko knew to be completely false at the time they were made—*to wit*: that Plaintiffs published defamatory statements on Twitter about Mr. and/or Mrs. Ivchenko.

186. Defendants commenced and continued to prosecute Case 2 with malice.

187. Among other things, Defendants' malice may be properly inferred from the complete lack of probable cause both at the time Case 2 was filed, and during its continuation. *See Daniels v. Robbins*, 182 Cal. App. 4th 204, 226, 105 Cal. Rptr. 3d 683, 700 (Cal.App. 4th Dist. 2010) (holding in a malicious prosecution action, "malice can be inferred when a party continues to prosecute an action after becoming aware that the action lacks probable cause.")

188. Defendants did not commence or continue to prosecute Case 2 for any legitimate reason or to resolve any legitimate claims.

189. Instead, Defendants intended to use the lawsuit as a form of harassment and to hopefully cause so much financial harm to Plaintiffs that Plaintiffs would either be unable to continue defending the action or they would be forced to resolve the case in a manner that would allow Defendants to effectively seize control of Travis's websites.

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190. Defendants further used Case 2 as form of economic extortion wherein they hoped to force Plaintiffs to settle the groundless claims by agreeing to give Defendants "removal credits" which would have allowed them to obtain the removal of pages from Travis's website upon demand.

191. In turn, Defendants planned to profit by selling these "removal credits" by charging money to third parties appearing on Travis's websites who wanted to remove their mugshots from those sites.

192. Prior to commencing Case 2, Mr. Ivchenko's counsel, David Ferrucci, previously represented an individual named SAHAR SARID ("Mr. Sarid") and an entity called Mugshots.com, LLC, among others, in a lawsuit filed in the United States District Court for the Northern District of Illinois entitled *Peter Gabiola v. Sahar Sarid*, *et al*., Case No. 16-cv-02076 (the "Gabiola litigation").

193. Mr. Sarid was the founder and operator of a website called Mugshots.com.

194. Similarly to Travis's websites, Mugshots.com aggregated mugshots and arrest records from various sources.

195. Among other things, the plaintiff in the Gabiola litigation alleged that Mr. Sarid used Mugshots.com to extort money by demanding payments to remove mugshots.

196. This allegation was true – for at least some period of time, Mr. Sarid (either directly or indirectly) charged and/or accepted fees to remove mugshots from Mugshots.com.

197. Based on his prior experience representing Mr. Sarid and Mugshots.com, LLC, Mr. Ferrucci knew that charging money to remove mugshots from such a website could be extremely profitable.

198. Based on his prior experience representing Mr. Sarid and Mugshots.com, LLC, Mr. Ferrucci knew that aggregating and publishing mugshots *without* demanding or accepting money to remove them was not unlawful.

199. Based on his prior experience representing Mr. Sarid and Mugshots.com, LLC, Mr. Ferrucci knew that aggregating and publishing mugshots *without* demanding or

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accepting money to remove them was protected speech under the First Amendment.

200. In 2018, Sahar Sarid was arrested and indicted in the State of California. Among other things, Mr. Sarid charged with multiple counts of criminal extortion relating to his operation of Mugshots.com and his demand for money to remove mugshots from that site.

201. Following his arrest in California, Mr. Sarid no longer charged money to remove mugshots from Mugshots.com.

202. Following his arrest in California, Mr. Sarid ended his relationship with Mr. Ferrucci.

203. Mr. Ivchenko knew about the relationship between Mr. Ferrucci and Mr. Sarid prior to the commencement of Case 2.

204. Prior to commencing Case 2, Mr. Ivchenko knew that Mr. Sarid had earned a substantial amount of money from charging fees to remove mugshots from his website.

205. Based on that knowledge, Mr. Ivchenko decided to file Case 2 against Plaintiffs for the purpose of attempting to force Plaintiffs to grant Defendants "removal credits" which could be sold to third parties for money, similar to the practices used by Mr. Sarid prior to his arrest.

206. Defendants, and each of them, believed that if Plaintiffs would agree to give them the ability to remove content upon demand, the sale of "removal credits" relating to Travis's websites could be potentially worth millions of dollars.

207. Prior to the commencement of this action, Mr. Ivchenko demanded that Plaintiffs provide him with 2,400 "removal credits" which he could use to obtain the removal of 2,400 mugshots from Travis's websites. Assuming each credit could be sold for $1,000 each, the value of this demand was at least $2,400,000.00.

208. The filing of groundless litigation for the purposes of economic extortion is not a proper or legitimate use of the court system.

209. The intentional continuation of groundless litigation for the purposes of economic extortion is not a proper or legitimate use of the court system.

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210. The conduct of Defendants in commencing and continuing Case 2 without probable cause and with malice was a cause of injury, damage, loss or harm to Plaintiffs. Such harm includes all attorney's fees and costs incurred in the defense of Case 2, emotional distress, and damage to Plaintiffs' reputation.

211. Defendants, and each of them, through the commencement and continuation of Case 2, intended to cause injury to Plaintiffs and did, in fact, cause substantial injury to Plaintiffs in an amount to be proven at trial.

212. Defendants' wrongful conduct was motivated by spite, ill will, and a desire to unlawfully profit from their actions.

213. Defendants, and each of them, through the commencement and continuation of Case 2, consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to others.

214. Plaintiffs are entitled to an award of punitive damages against each Defendant in an amount sufficient to punish their unlawful conduct and to deter others from acting in a similar manner.

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SECOND CAUSE OF ACTION
(Abuse of Process—Case 2)
(Against All Defendants)

215. Plaintiffs repeat and reallege the allegations of ¶¶ 164–212.

216. Arizona recognizes the tort of Abuse of Process.

217. The elements of the tort are set forth in the REVISED ARIZONA JURY INSTRUCTIONS (CIVIL), 6TH, INTENTIONAL TORTS 18.1—Abuse of Process.

218. Defendants, and each of them, willfully used Case 2 against Plaintiffs in the manner set forth above.

219. Defendants, and each of them, used Case 2 in a wrongful manner that was not proper in the normal course of the proceedings.

220. Specifically, Defendants, and each of them, commenced and continued

Case 2 knowing that the entire action was groundless.

221. Furthermore, Defendants, and each of them, sought to use Case 2 as a form of harassment and to exert economic pressure to induce Plaintiffs into a settlement in which Defendants would receive "removal credits" which Defendants had no legal right to obtain.

222. Defendants engaged in an abuse of process by seeking to delay and avoid a disposition on the merits of Case 2 for as long as possible and for the improper purpose of making the case as expensive as possible, thereby increasing the odds that Plaintiffs would be unable to bear the cost of defense. By doing so, Defendants hoped to force Plaintiffs to settle in a manner which allowed Defendants to unlawfully profit from their actions by selling "removal credits" relating to Travis's websites.

223. Defendants engaged in abuse of process by, among other things:

a. Including factual allegations in the Complaint which they knew to be false;

b. Asserting claims they knew were untimely;

c. Asserting claims they knew were legally groundless;

d. Refusing to dismiss claims they knew to be groundless;

e. Amending the Complaint to add new claims from new anonymous parties in violation of the Rules of Civil Procedure and for the sole purpose of needlessly expanding the litigation and making it more costly to resolve;

f. Amending the Complaint to improperly add new claims from new anonymous parties which did not arise out of the same transaction, occurrence, or series of transactions or occurrences as the claims of the other parties for the sole purpose of needless expanding the litigation and making it more expensive to resolve;

g. Amending the Complaint while dispositive motions were pending despite previously refusing to withdraw or modify any claims in the

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case;

h. Dismissing the action while dispositive motions were pending in order to prevent the court from considering the merits of the case;

i. Dismissing the action while dispositive motions were pending in order to avoid a loss on the merits.

224. In this manner, Defendants unlawfully engaged in an abuse of process by using Case 2 primarily for an improper purpose or ulterior motive.

225. Defendants' wrongful use of the court's process in Case 2 caused injury, damage, loss or harm to Plaintiffs in an amount to be proven at trial.

226. Defendants' wrongful conduct was motivated by spite, ill will, and a desire to unlawfully profit from their actions.

227. Defendants, and each of them, through the commencement and continuation of Case 2, consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to others.

228. Plaintiffs are entitled to an award of punitive damages against each Defendant in an amount sufficient to punish their unlawful conduct and to deter others from acting in a similar manner.

THIRD CAUSE OF ACTION
(Malicious Prosecution—Case 3)
(Against Andrew Ivchenko)

229. Plaintiffs repeat and reallege the allegations of ¶¶ 164–212.

230. Mr. Ivchenko filed Case 3 on May 1, 2020.

231. Case 3 was resolved in favor of Plaintiffs on November 13, 2020 when Mr. Ivchenko voluntarily dismissed the case pursuant to Fed. R. Civ. P. 41(a). This dismissal was on the merits as to at least one or more of the plaintiffs in Case 3 who were also plaintiffs in Case 2(b).

232. Furthermore, the voluntarily dismissal of Case 3 reflects a favorable

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termination because Mr. Ivchenko's decision to dismiss that action was based solely on his desire to avoid a loss on the merits.

233. Mr. Ivchenko initiated and continued Case 3 without probable cause and with malice as alleged in ¶¶ 164–212.

234. Mr. Ivchenko's conduct in commencing and continuing Case 3 without probable cause and with malice was a cause of injury, damage, loss or harm to Plaintiffs. Such harm includes all attorney's fees and costs incurred in the defense of Case 3, emotional distress, and damage to Plaintiffs' reputation.

235. Mr. Ivchenko, through the commencement and continuation of Case 3, intended to cause injury to Plaintiffs and did, in fact, cause substantial injury to Plaintiffs in an amount to be proven at trial.

236. Mr. Ivchenko's wrongful conduct was motivated by spite, ill will, and a desire to unlawfully profit from their actions.

237. Mr. Ivchenko, through the commencement and continuation of Case 3, consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to others.

238. Plaintiffs are entitled to an award of punitive damages against Mr. Ivchenko in an amount sufficient to punish their unlawful conduct and to deter others from acting in a similar manner.

FOURTH CAUSE OF ACTION
(Abuse of Process—Case 3)
(Against Andrew Ivchenko)

239. Plaintiffs repeat and reallege the allegations of ¶¶ 164–212.

240. Mr. Ivchenko used Case 3 in a wrongful manner that was not proper in the course of the proceedings.

241. In addition to the wrongful conduct alleged above, Mr. Ivchenko specifically engaged in an abuse of process as to Case 3 by filing that action knowing it was groundless for the purpose of continuing his unlawful attempt to use the litigation to

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exert financial pressure on Plaintiffs in the hopes of obtaining "removal credits" which Mr. Ivchenko planned to sell to third parties at a profit.

242. In short, by engaging in the serial *filing-dismissal-refiling-dismissal-refiling* of substantially identical groundless cases, including Case 3, Mr. Ivchenko engaged in an abuse of process by using groundless litigation primarily to harass Plaintiffs, and to inflict financial pressure and damage in the hopes that Plaintiffs would agree to settle the action by giving Mr. Ivchenko "removal credits" potentially worth millions of dollars.

243. Mr. Ivchenko engaged in an abuse of process by including anonymous parties in the Complaint in Case 3 in direct violation of the Rules of Civil Procedure. This violation was intentional and malicious in that Mr. Ivchenko believed the use of anonymous parties would make it easier for him to needlessly prolong the litigation, to avoid a disposition on the merits, and to needlessly increase the cost of the litigation by forcing Plaintiffs to challenge this improper conduct in various motions.

244. Mr. Ivchenko's actions in willfully disregarding and violating court rules for the purpose of increasing the financial harm suffered by Plaintiffs was not proper in the regular course of the proceedings.

245. Mr. Ivchenko's abuse of process committed in Case 3 was a cause of injury, damage, loss or harm to Plaintiffs. Such harm includes all attorney's fees and costs incurred in the defense of Case 3, emotional distress, and damage to Plaintiffs' reputation.

246. Mr. Ivchenko, through the commencement and continuation of Case 3, intended to cause injury to Plaintiffs and did, in fact, cause substantial injury to Plaintiffs in an amount to be proven at trial.

247. Mr. Ivchenko's wrongful conduct was motivated by spite, ill will, and a desire to unlawfully profit from their actions.

248. Mr. Ivchenko, through the commencement and continuation of Case 3, consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to others.

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249. Plaintiffs are entitled to an award of punitive damages against Mr. Ivchenko in an amount sufficient to punish their unlawful conduct and to deter others from acting in a similar manner.

FIFTH CAUSE OF ACTION
(Declaratory Relief)
(Against Andrew and Renee Ivchenko)

250. A current dispute exists between Plaintiffs and Defendants Andrew and Renee Ivchenko regarding their respective legal rights and duties.

251. As noted herein, Mr. Ivchenko has repeatedly alleged that Travis's websites are engaged in unlawful conduct based on the following common facts:

a. Travis's websites aggregate mugshots and other criminal records from existing online sources;

b. Travis's websites display mugshots and other criminal records aggregated from existing online sources;

c. Travis's websites earn money by displaying Google AdSense ads on pages which also contain mugshots and criminal records.

252. Among other things, Mr. Ivchenko has alleged the common facts set forth in ¶ 249 above violate Arizona statutory and common law including, but not limited to, the Arizona Mugshot Operator's Act, A.R.S. § 44–7902(B).

253. Mr. Ivchenko has further alleged that the common facts set forth in ¶ 249 violate the common law rights of any person whose mugshot or criminal records appear on Travis's websites under the theories of misappropriation of name/likeness and/or false light.

254. Mr. Ivchenko has further alleged that the common facts set forth in ¶ 249 are not subject to the immunity provisions of the Communications Decency Act, 47 U.S.C. § 230(c)(1).

255. Mr. Ivchenko has further alleged that the republication of arrest records is not protected by either the First Amendment to the U.S. Constitution, or the Arizona Constitution.

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256. Despite being asked to do so, Mr. Ivchenko has refused to provide any legal authority supporting his positions.

257. Mr. Ivchenko has threatened to continue filing more lawsuits against Plaintiffs unless they agree to, among other things, give him "removal credits" allowing him to obtain the removal of pages from Travis's websites.

258. Pursuant to 28 U.S.C. § 2201(a), A.R.S. § 12–1831, and Fed. R. Civ. P. 57, Plaintiffs are entitled to declaratory relief as follows:

a. Plaintiffs are entitled to declaratory judgment finding that the manner of operation of Travis's websites, including the aggregation and display of content copied from existing online websites, is fully protected under the Communications Decency Act, 47 U.S.C. § 230(c).

b. Plaintiffs are entitled to declaratory judgment finding that the Arizona Mugshot Operator's Act, A.R.S. § 44–7902(B) does not apply to the operation of Travis's websites or to Plaintiffs to the extent the site simply aggregates and republishes mugshots and arrest records which have been previously published on the Internet by third parties;

c. Plaintiffs are entitled to declaratory judgment finding that the manner of operation of Travis's websites, including the aggregation and display of content copied from existing online websites, is protected by the First Amendment to the U.S. Constitution and Arizona law;

d. Plaintiffs are entitled to declaratory judgment finding the display of mugshots and criminal records in the manner employed by Travis's websites is not unlawful under any legal theory recognized in the State of Arizona.

259. Plaintiffs are entitled to a declaration finding that their publication of public records relating to Renee Ivchenko, including but not limited to, bodycam footage, police reports, and other public records, is protected speech under the First Amendment and is not unlawful under any legal theory recognized in the State of Arizona.

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SIXTH CAUSE OF ACTION
(Vexatious Litigant Designation)
(Against Andrew and Renee Ivchenko)

260. To the extent they have acted as *pro se* litigants, Defendants Andrew and Renee Ivchenko are vexatious litigants within the meaning of A.R.S. § 12–3201.

261. Even while represented by counsel, Defendants Andrew and Renee Ivchenko have engaged in seriously vexatious conduct which has resulted in a substantial waste of the Court's time and resources and which has caused substantial harm to Plaintiffs.

262. Specifically, as noted above, Andrew and Renee Ivchenko have engaged in the following vexatious conduct:

a. Repeated filing, dismissal, and refiling of groundless court actions solely or primarily for the purpose of harassment;

b. Unreasonably expanding or delaying court proceedings; and

c. Bringing court actions without substantial justification.

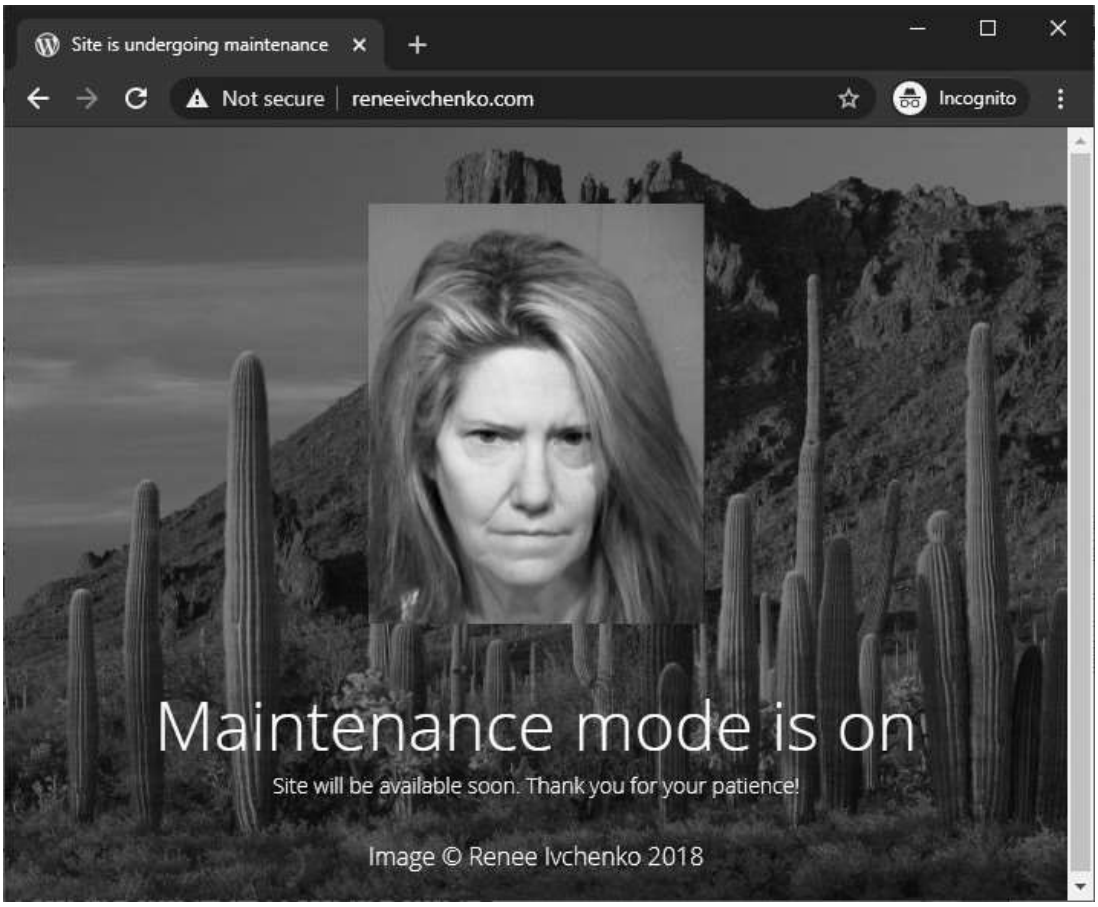
263. Pursuant to A.R.S. § 12–3201 and the inherent authority of the Court, Plaintiffs are entitled to an order declaring that Defendants Andrew and Renee Ivchenko are vexatious litigants and ordering that they may not file any new lawsuits against Plaintiffs in the State of Arizona or the United States District Court for the District of Arizona without prior written leave of Court.

SEVENTH CAUSE OF ACTION
(False DMCA Notice Liability; 17 U.S.C. § 512(f))
(Against Andrew Ivchenko)

264. Travis Grant owns and operates a website located at www.ReneeIvchenko.com.

265. From its creation until the present time, www.ReneeIvchenko.com has been in "maintenance mode". The site contains no content other than some generic text below

Mrs. Ivchenko's mugshot superimposed on a photo of desert scenery as shown below:



266. Travis has used, and intends to use, www.ReneeIvchenko.com solely for lawful, non-commercial purposes including publishing truthful criticism of Mrs. Ivchenko and her actions.

267. www.ReneeIvchenko.com is hosted by GoDaddy.

268. On March 21, 2021, Mr. Ivchenko sent a "takedown" notice pursuant to 17 U.S.C. § 512 to GoDaddy relating to www.ReneeIvchenko.com, the full text of which is shown below:

> --------ORIGINAL NOTE----------
> Subject:Subject: Re: Copyright Claim - [Incident ID: 44343643]
> From:aivchenkopllc@gmail.com
> Date: Fri, 12 Mar 2021 11:04:11 -0800
> To:copyrightclaims@godaddy.com
>
> Dear Sir,
> I am an attorney representing Renee Ivchenko. A website that your company hosts

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(according to hostingchecker.com information) is infringing on at least one copyright owned by my client.
Mrs. Ivchenko's registered copyright is attached. The image, to which she owns the exclusive copyright, was copied onto your servers without permission.
The unauthorized and infringing copy can be found at:
http://www.reneeivchenko.com/
Although not required under this notice, please note that the anonymous individual that set up this website did it in retaliation against Mrs. Ivchenko, who has filed suit against this individual
in Maricopa County (Case No. CV2020-093379) for violations of Arizona law involving defamatory statements made online. This case is pending.
This letter is official notification under Section 512(c) of the Digital Millennium Copyright Act ("DMCA"). My client seeks the removal of the aforementioned infringing material from your
servers. I request that you immediately notify the infringer of this notice and inform them of their duty to remove the infringing material immediately, and notify them to cease any further posting of infringing material to your server in the future.
Please also be advised that law requires you, as a service provider, to remove or disable access to the infringing materials upon receiving this notice. Under US law a service provider, such
as yourself, enjoys immunity from a copyright lawsuit provided that you act with deliberate speed to investigate and rectify ongoing copyright infringement. If service providers do not investigate and remove or disable the infringing material this immunity
is lost. Therefore, in order for you to remain immune from a copyright infringement action you will need to investigate and ultimately remove or otherwise disable the infringing material from your servers with all due speed should the direct infringer, your
client, not comply immediately.
I am providing this notice in good faith and with the reasonable belief that rights my client owns are being infringed. My client states that the information in this notification is accurate,
and under penalty of perjury, that she is the owner of an exclusive right that is allegedly infringed.
Should you wish to discuss this with me please contact me directly.
Thank you.
/s/ Andrew Ivchenko
Andrew Ivchenko, Esq.

4960 S. Gilbert Rd., Suite 1-226

Chandler, AZ 85249

Phone: (480) 250-4514

Email: aivchenkopllc@gmail.com
CONFIDENTIALITY NOTICE: This transmittal is a confidential communication or may otherwise be privileged. If you are not the intended recipient, you are hereby notified that you have received this transmittal in error and that any review, dissemination, distribution or copying of this transmittal is strictly prohibited. If you have received this communication in error, please notify this office, and immediately delete this message and all its attachments, if any.

269. In the email to GoDaddy sent on March 12, 2021, Mr. Ivchenko made knowingly false material representations of fact; specifically that Mrs. Ivchenko owns exclusive rights in her mugshot, and that www.ReneeIvchenko.com contains information

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that infringes on Mrs. Ivchenko's exclusive rights under the Copyright Act.

270. At the time he sent the takedown demand to GoDaddy, Mr. Ivchenko knew that Mrs. Ivchenko does not own, and has never owned, any valid exclusive rights to any content appearing on www.ReneeIvchenko.com.

271. Even if Mrs. Ivchenko owned the copyright to her mugshot (which she does not), the non-commercial use of her mugshot for purposes of criticism qualifies as fair use within the meaning of 17 U.S.C. § 107.

272. The intentional use of a DMCA notice for the purpose of suppressing fair use of copyrighted material is unlawful in violation of 17 U.S.C. § 512(f). *See Online Policy Group v. Diebold Inc*., 337 F.Supp.2d 1195 (N.D.Cal. 2004).

273. As alleged above, Andrew and Renee Ivchenko obtained a Certificate of Registration for work VA0002154452 by fraud.

274. Specifically, at the time the application for this work was submitted, Defendants falsely represented to the Register of Copyrights that Mrs. Ivchenko was the "author" of the work for which registration was sought. This representation was knowingly false at the time it was made.

275. In addition, the copyright application did not disclose that the work (Mrs. Ivchenko's mugshot) was originally created by an employee of the Maricopa County Sheriff's Office working within the scope of his/her employment. This material fact was intentionally omitted from the copyright application for the purposes of misleading the Register into believing the application was legitimate and proper.

276. If Defendants had disclosed the true facts to the Register of Copyrights, the application for registration for work VA0002154452 would have been refused.

277. 17 U.S.C. § 411(b)(2) provides as follows:

> In any case in which inaccurate information described under paragraph (1) is alleged, the court *shall request the Register of Copyrights* to advise the court whether the inaccurate information, if known, would have caused the Register of Copyrights to refuse registration. (emphasis added)

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278. Regardless of whether the Register of Copyrights chooses to cancel the Certificate of Registration issued for work VA0002154452, a registration certificate obtained by fraud is not valid.

279. Pursuant to 17 U.S.C. § 411(b)(2) Plaintiffs respectfully request that the Court make a formal request advising the Register of Copyrights that the application for registration for work VA0002154452 contained inaccurate information as described above and requesting that the Register advise the Court whether the inaccurate information, if known, would have caused the Register of Copyrights to refuse registration.

280. Plaintiffs are entitled to an order declaring that the Certificate of Registration relating to work VA0002154452 was obtained by fraud and is void.

281. Mr. Ivchenko's conduct caused harm to Travis by, among other things, causing Travis to incur attorney's fees responding to Mr. Ivchenko's fraudulent takedown demand.

282. Pursuant to 17 U.S.C. § 512(f), Mr. Ivchenko is liable to Travis for damages, costs and attorney's fees in an amount to be proven at trial.

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JURY DEMAND

Plaintiffs demand trial by jury as to all issues so triable.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

A. For damages for emotional distress and reputational harm, of no less than $250,000 per Plaintiff or $750,000 in total or according to proof at trial;

B. For compensatory damages including all costs and attorney's fees in an amount not less than $50,000 as incurred by Plaintiffs in the defense of the prior actions maliciously and wrongfully commenced and continued by Defendants;

C. For punitive damages of not less than $2 million according to proof at trial;

D. For a judgment declaring the rights and legal relations of the parties as set forth above;

E. For an order finding Andrew and Renee Ivchenko are vexatious litigants, and ordering that they may not file any new actions against Plaintiffs without prior leave of Court;

F. For an award of all attorney's fees and costs of suit incurred herein pursuant to 17 U.S.C. § 505 and 512(f);

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

DATED: March 17, 2021

GINGRAS LAW OFFICE, PLLC

David S. Gingras, Esq.
Attorney for Plaintiffs

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VERIFICATION

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United State of America that the foregoing is true and correct.

Executed on March 17, 2021.

/s/ Travis Grant
Travis Grant

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CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2021, 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:

Andrew Ivchenko, Esq.
LAW OFFICES OF ANDREW IVCHENKO
4960 S. Gilbert Road, #1-226
Chandler, AZ 85249
Attorney for Defendants

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