

Firm E-Mail: courtdocs@dickinsonwright.com

David N. Ferrucci (#027423)
dferrucci@dickinsonwright.com

David G. Bray (#014346)
dbray@dickinsonwright.com

Paxton D. Endres (#034796)
pendres@dickinsonwright.com

DICKINSON WRIGHT PLLC
1850 North Central Avenue, Suite 1400
Phoenix, Arizona 85004
Phone: (602) 285-5000
Facsimile: (844) 670-6009

Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

JANE DOE I; JANE DOE II; JANE DOE
III; JANE DOE IV; JANE DOE V; JOHN
DOE I; JOHN DOE II; JOHN DOE III;
JOHN DOE IV; JOHN DOE V; JOHN
DOE VI; JOHN DOE VII; JOHN DOE
VIII; JOHN DOE IX; JOHN DOE X;
JOHN DOE XI; JANE DOE VI; JANE
DOE VII; JOHN DOE XII; JANE DOE
VIII; and RENEE IVCHENKO, a married
woman,

Plaintiffs

vs.

KYLE DAVID GRANT and JANE DOE
GRANT, husband and wife; TRAVIS
PAUL GRANT and MARIEL LIZETTE
GRANT, husband and wife; JOHN and
JANE DOES I-X; BLACK
CORPORATIONS I-X; and WHITE
COMPANIES I-X,

Defendants.

Case No.: CV2019-015355

**PLAINTIFFS' MOTION TO
PROCEED UNDER PSEUDONYM AND
MEMORANDUM IN SUPPORT
THEREOF**

(Jury Trial Demanded)

1 **I. INTRODUCTION**

2 Plaintiffs submit this motion concurrently with the Amended Complaint in this
3 action and hereupon request leave to proceed under the pseudonyms Jane Doe I, Jane
4 Doe II, Jane Doe III, Jane Doe IV, Jane Doe V, John Doe I, John Doe II, John Doe III,
5 John Doe IV, John Doe V, John Doe VI, John Doe VII, John Doe VIII, John Doe IX,
6 John Doe X, John Doe XI, Jane Doe VI, Jane Doe VII, John Doe XII, and Jane Doe
7 VIII, (collectively “Plaintiffs” or the “Doe Plaintiffs”).

8 In this lawsuit, Plaintiffs contend that Defendants’ continuous and ongoing
9 violations of their rights under Arizona statutory and common law have caused and
10 continue to cause them injury. *See generally*, Amended Complaint. As more fully
11 explained below, the Doe Plaintiffs seek to remain anonymous and to proceed under
12 pseudonym because of the sensitive nature of the issues involved and to ensure that
13 Defendants do not engage in additional online activities designed to further harm their
14 reputations and emotional well-being. Further, disclosure of Plaintiffs’ identities in
15 connection with this case would unnecessarily prejudice Plaintiffs’ case and prevent
16 Plaintiffs, and others in their situation, from asserting and vindicating their rights under
17 Arizona law.

18
19 This Motion is supported by the following Memorandum of Points and
20 Authorities, the Amended Complaint filed in this case, and the Declaration of Andrew
21 Ivchenko, attached hereto as Exhibit 1, all of which are incorporated herein.

22
23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24 **II. FACTUAL BACKGROUND**

25 Defendants are notorious mugshot website operators. Defendants operate
26 websites that exploit the “embarrassing and humiliating information” contained in
27 booking photos and other arrest information and do so for purely commercial purposes.

1 Amended Complaint, ¶ 2. As the Sixth Circuit recently held: “**A disclosed booking**
2 **photo casts a long, damaging shadow over the depicted individual.**” *Detroit Free*
3 *Press Inc. v. United States Dep’t of Justice*, 829 F.3d 478, 482 (6th Cir. 2016) (emphasis
4 added). As the Sixth Circuit further explained:

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

9 *Id.* at 482 (citations and quotations omitted).

10 Defendants’ business model is to “scrape” arrest information and booking photos
11 that law enforcement agencies make available to the public (for a brief period of time),¹
12 and then post this embarrassing and humiliating information on their websites for their
13 own commercial gain. Amended Complaint, ¶ 2.

14 State legislatures, such as Arizona’s, recognize that the commercial exploitation
15 of arrest information and booking photos by mugshot website operators such as
16 Defendants causes enormous, continuing and ongoing damage to the individuals
17 depicted, creates substantial barriers for those attempting to reintegrate into society from
18 finding employment, housing, and starting a new life, and militates against efforts at
19 criminal justice reform and rehabilitation. Amended Complaint, ¶ 3.

20 In response to the reprehensible business model of mugshot website operators,
21 such as Defendants, the Arizona Legislature enacted a “Mugshots Act” that became
22 effective on August 27, 2019 and is codified at A.R.S. §§ 44-7901, *et. seq.* (the “Arizona
23

24
25
26 ¹ Because of the harm caused by the commercial exploitation of arrest information by
27 unscrupulous mugshot website operators, such as Defendants, law enforcement agencies
28 and the State of Arizona do not intend for booking photos and arrest information to be
“scraped” and then used for a commercial purpose. Amended Complaint, ¶ 8.

Mugshot Act”). Arizona’s Mugshot Act prohibits “mugshot website operators” from posting arrest information and booking photos for commercial purposes, which the Act broadly defines to include “any purpose in which the [mugshot website operator] can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record.” A.R.S. § 39-121.03(D); A.R.S. § 44-7901(2). There is no question that Defendants’ commercial exploitation of arrest information and booking photos falls squarely within the conduct proscribed by Arizona’s Mugshot Act.

In enacting the Arizona Mugshot Act, the Arizona Legislature recognized that the commercial exploitation of one’s arrest information and booking photo causes daily, ongoing and continuing damage. As such, in addition to any pecuniary loss caused by a violation, the Arizona Mugshot Act mandates substantial, increasing damages for each separate violation in an amount of **at least** \$100 per day during the first thirty days of the violation, \$200 per day during the subsequent thirty days of the violation, and \$500 per day for each day thereafter. A.R.S. § 44-7902.

There are twenty Doe Plaintiffs in this case, each of which have their booking photos and arrest information posted on Defendants’ website(s), specifically on rapsheetz.com and/or bailbondsearch.com (the “Websites”). See Amended Complaint, ¶¶ 14-33. And although by this action these Doe Plaintiffs seek a vindication of their rights under the Arizona Mugshot Act (and the Arizona common law), the Doe Plaintiffs are reasonably concerned that they will face further online harassment from the Defendants or the owners of similar websites who have a mutual interest in dissuading other victims from pursuing their legal rights against them under Arizona and other states’ laws. As such, there is a very real threat that if the Doe Plaintiffs’ identities are disclosed as a result of participation in this lawsuit, Defendants and/or other mugshots website operators will retaliate against them.

1 For instance, Plaintiff Renee Ivchenko was able to remove all of her booking
2 photos and arrest information from these predatory sites through great effort and
3 expense, and only after she filed her first lawsuit against Defendants last year. See
4 Exhibit 1, ¶ 2. But then, after simply asserting her legal rights, Renee Ivchenko's
5 booking photo and arrest information was posted on a Twitter site run by an unknown
6 individual with an apparently fake account name. *Id.*, ¶ 3.

7
8 To make matters worse, predatory mugshot website operators, such as the
9 Defendants, apparently hold grudges and often monitor the online activity of targeted
10 individuals for further harassment in order to make an example of them. *Id.*, ¶ 4. For
11 example, the above-mentioned Twitter site also targets an individual named Zim Rogers,
12 who was the lead class action plaintiff against a mugshots website operator in *Rogers v.*
13 *Justmugshots*, 2015 Cal. App. Unpub. LEXIS 7177 (Cal. App. 2d Dist. Oct. 7, 2015).
14 *Id.* Zim Rogers' success in court (at both the trial and appellate level) did not insulate
15 him from further oppression by this malicious and vindictive community of mugshot
16 website operators. *Id.* Moreover, only days after Plaintiff Renee Ivchenko filed a
17 lawsuit against the police whom she alleges falsely arrested her, her mugshot appeared
18 on a second Twitter site created by an anonymous individual, which intended only to
19 highlight that lawsuit and further embarrass her simply for asserting her constitutional
20 rights. *Id.*, ¶ 5.

21
22 Regrettably, many of these predatory sites are based offshore and are beyond
23 service of process, or use sophisticated technologies such as VPN encryption to mask
24 their true identities. *Id.*, ¶ 6. The result is often an endless nightmare that Plaintiffs, who
25 are already adversely affected by the Defendants' unlawful activity, wish to avoid.
26 Moreover, this is precisely the type of harm the Arizona legislature sought to remedy by
27 passing the Arizona Mugshot Act.

1 Again, the Arizona legislature recognized that the unlawful commercial
2 exploitation of arrest information and booking photos causes daily, continuing and
3 ongoing harm and accordingly mandates the recovery of specific minimal damages. See
4 A.R.S. § 44-7902(D) (“A person that violates subsection B of this section is liable for
5 damages for each separate violation in an amount of **at least:** [1] \$100 per day during
6 the first thirty days of the violation[;] [2] \$200 per day during the subsequent thirty days
7 of the violation[;] [and] [3] \$500 per day for each day thereafter.”) (emphasis added).
8 As such, and because Defendants have continuously exploited the Doe Plaintiffs arrest
9 information and booking photos since the beginning of the Act’s effective date, the Doe
10 Plaintiffs are each entitled to at least \$71,500 in statutorily mandated damages. Stated
11 differently, as a group, the Doe Plaintiffs are entitled to at least \$1,430,000 in statutorily
12 mandated damages. Moreover, because the Defendants operate at least two separate
13 mugshot websites and almost all of the Doe Plaintiffs appear on both, the total damages
14 could be at least twice this amount.
15

16 Considering these potentially staggering damage amounts, and the fact that other
17 plaintiffs are likely to join the action—Plaintiffs have been in contact with additional
18 potential plaintiffs—this lawsuit poses an existential threat to Defendants’ business
19 practices. Faced with such a threat, Defendants, and perhaps other mugshots website
20 operators, are likely to retaliate in an attempt to both punish the Doe Plaintiffs for
21 asserting their rights, and to create a chilling effect to dissuade other potential plaintiffs
22 from joining the litigation. The Defendants (and other threatened mugshots website
23 operators) will have the motive, the means, and the opportunity to inflict additional,
24 substantial harm to the Plaintiffs’ reputations, all in contravention of the spirit and
25 purpose of Arizona’s Mugshot Act.
26
27
28

1 This court should entertain no illusions about the character of the Defendants,
2 Travis Paul Grant, his wife, Mariel Lizette Grant, and his brother, Kyle David Grant.
3 The Defendants are notorious operators of mugshot websites, and are known in the
4 industry as being extremely callous and vindictive. Amended Complaint, ¶ 12. Indeed,
5 several online sites have been established by aggrieved parties to expose their activities.
6 *Id.*

7
8 Moreover, Defendants' vexatious conduct during the early stages of this litigation
9 further highlight the substantial risks faced by the Doe Plaintiffs. By way of example,
10 despite robust communication between the parties, without ever mentioning or
11 requesting payment pursuant to Rule 41 in connection with the voluntarily dismissed
12 lawsuit Plaintiff Renee Ivchenko filed against Defendants last year, Defendants
13 unnecessarily filed an aggressive, multi-page motion on February 7, 2020 that sought
14 recovery approximately \$400 in costs. *See* Exhibit 1, ¶ 7. Obviously, had Defendants
15 asked, Plaintiff would have agreed to pay the requested \$400 rather than waste the
16 parties' and the court's resources on that trivial matter. *Id.* However, and transparently,
17 that was not the point of the motion; instead, by all appearances, that motion was used as
18 a vehicle to intimidate and smear Plaintiff Ivchenko and her husband and to create yet
19 another public record containing Plaintiff Ivchenko's arrest information and booking
20 photo.

21
22 Indeed, even though it was unnecessary for purposes of the Rule 41 motion,
23 Defendants embedded Plaintiff Renee Ivchenko's booking photo into this motion in a
24 transparent effort to cause her further embarrassment, knowing full-well that various
25 online reporting services would likely publish the case and thereby keep her booking
26 photos and arrest information memorialized for eternity in yet another online
27 publication.

1 To make matters worse, on February 21, 2020 Plaintiffs indicated to Defendants
2 in writing that Plaintiffs were planning on amending their complaint within the 21-day
3 time-period provided by the rules. Exhibit 1, ¶ 8. See Ariz. R. Civ. P. 15(a)(1)(B); see
4 also *KS Healthline, LLC v. GN Healthcare Corp.*, No. CV-16-02807-PHX-ROS, 2016
5 WL 9343164, at *1 n. 1 (D. Ariz. Oct. 4, 2016) (“Rule 15(a)(1)(B) permits one
6 amendment as a matter of course within 21 days after service of an answer.”).²

7
8 As part of that amendment, Plaintiffs indicated that they were not going to
9 include the previously asserted defamation claim in the Amended Complaint. See
10 Exhibit 1, ¶ 8. Nonetheless, Defendants filed a summary judgment motion the following
11 day, making aggressive arguments in connection with that defamation claim, and took
12 that opportunity to once again insert Plaintiff Renee Ivchenko’s booking photo and
13 detailed arrest information, including court documents, into the motion. This gratuitous
14 and vexatious litigation conduct, clearly demonstrates the lengths Defendants will go to
15 smear and harass any litigant that dares to challenge them.

16 In short, Defendants’ aggressive response to this lawsuit, and the unnecessary
17 reproduction of Plaintiff Ivchenko’s arrest information and photo in almost every one of
18 their filings, by itself, more than justifies the concerns of the Doe Plaintiffs. As a result,
19 those plaintiffs (and on behalf of the additional potential plaintiffs that may join this
20 lawsuit) respectfully request to proceed under pseudonym. The Doe Plaintiffs further
21 respectfully request that their names and identities be revealed only if and when
22 necessary, pursuant to a good faith basis, on an attorneys-eyes only basis, and that their
23 identifies be prohibited from being revealed to Defendants and third parties.
24

25 ² “Since the Arizona Rules of Civil Procedure were adopted from the Federal Rules of
26 Civil Procedure, Arizona courts should give great weight to the interpretation given to
27 similar federal rules.” *Macpherson v. Taglione*, 158 Ariz. 309, 311, 762 P.2d 596, 598
28 (Ct. App. 1988).

III. THE DOE PLAINTIFFS' MOTION SHOULD BE GRANTED

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

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

The Doe Plaintiffs are concerned about the risk of further severe online retaliation and permanent damage to their reputations, and the severe emotional distress that comes with it, for challenging the activities of Defendants, either from them or other mugshot website operators. These individuals prey on vulnerable members of society, and share a common interest in preventing this case from escalating to include additional plaintiffs and possibly defendants. The targeted and severe online harassment experienced by the

1 aforementioned Zim Rogers, as well as Plaintiff Renee Ivchenko, and the conduct of
2 Defendants in this case demonstrate that this threat of severe retaliation is not only
3 likely, but inevitable.

4 “No factors weigh against concealing plaintiffs’ identities.” 214 F.3d at 1069.
5 There is no prejudice to the Defendants, who publish millions of arrest records and
6 booking photos on the Websites. The Doe Plaintiffs are not, at this time, claiming
7 individualized pecuniary loss and therefore their minimum statutorily mandated
8 damages amounts can be determined simply through disclosure of the dates their arrest
9 information appeared on the Websites. As such, other than specific information such as
10 the date when Defendants scraped someone’s arrest data from the law enforcement
11 websites, the actual identity of that individual is irrelevant, at least at this point in the
12 litigation. Anonymity simply does not affect the ability of Defendants from challenging
13 any of the causes of action outlined in the Amended Complaint.
14

15 The need to protect the Doe Plaintiffs from retaliation also greatly outweighs the
16 the public’s interest in knowing the party’s identity. The proceedings in this case will
17 still be open to the public. Moreover, the public has no interest in knowing the identities
18 of the Doe Plaintiffs. Indeed, it is the public policy of Arizona that the identities of
19 arrestees only be disclosed to the public on a limited basis, only by law enforcement
20 agencies or *bona fide* news agencies, and only for a brief period of time. See Amended
21 Complaint, ¶ 8. In short:

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

26 214 F.3d at 1069 (9th Cir. 2000).

1 There has been an increase across jurisdictions of plaintiff pseudonyms to protect
2 privacy interests in the Internet age. *See Starbucks Corp. v. Superior Court*, 86 Cal.
3 Rptr. 3d 482 (Cal. Ct. App. 2008). In that case, the Court noted that “[t]he judicial use
4 of ‘Doe plaintiffs’ to protect legitimate privacy rights has gained wide currency,
5 particularly given the rapidity and ubiquity of disclosures over the World Wide Web.”
6 The Defendants represent the underbelly of the Internet, and have weaponized it to
7 tarnish the reputations of one of the most vulnerable populations in society—the
8 millions of Americans who have been arrested, even though many have been found
9 innocent of any crime, or have otherwise had their charges dropped, not filed, expunged,
10 or dismissed.

11
12 Plaintiff anonymity in this case is consistent with the landmark ruling in the Sixth
13 Circuit’s *Detroit Free Press* case, which held that “individuals have a non-trivial privacy
14 interest in preventing disclosure of their booking photos.” 829 F.3d at 485. In so
15 holding, the Sixth Circuit overruled its decades-old earlier decision on the issue,
16 acknowledging that the internet and social media have worked unpredictable changes in
17 the way photographs and other information are stored and shared. *Id.* at 486.
18 Photographs no longer have a shelf life, and they can be instantaneously disseminated
19 for malevolent purposes. *Id.*

20 Potential plaintiffs to this and other lawsuits of its type are well aware of these
21 risks, and may simply refuse to assert their rights. The Arizona legislature’s objective in
22 passing the Arizona Mugshot Act was to put an end to the reprehensible activities of
23 mugshot website operators, and providing the Doe Plaintiffs the opportunity to proceed
24 under pseudonyms is consistent with the legislative intent.

25
26 Simply put, sufficient “special circumstances” exist to permit the Doe Plaintiffs to
27 proceed with this lawsuit under a pseudonym. *Does I thru XIII*, 214 F.3d at 1068.

1 **Conclusion**

2 For the foregoing reasons, Plaintiffs respectfully request that their motion to
3 proceed under pseudonym be granted. Plaintiffs respectfully request that the Court
4 further order that Defendants may discover the identities of the Doe Plaintiffs either: 1)
5 by stipulation of the parties; or 2) by demonstrating to the Court a reasonable good faith
6 basis for the disclosure. Plaintiffs respectfully request that the Court further order that if
7 disclosure of the identities of the Doe Plaintiffs, or any one of them on an individual
8 basis, is permitted, either by stipulation or by an Order of the Court, such disclosure will
9 be made on an attorneys-eyes only basis. For the Court's convenience, a Proposed Form
10 of Order is attached hereto as Exhibit 2.
11

12 **DATED** this 6th day of March, 2020.

13
14 Respectfully submitted,

15 The logo for Dickinson Wright PLLC, featuring the firm name in a serif font with a stylized orange and yellow graphic element between the words.

16
17 By: /s/ David N. Ferrucci

18 David N. Ferrucci

19 David G. Bray

20 Paxton D. Endres

21 ***Attorneys for Plaintiffs***
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2 **ORIGINAL** of the foregoing e-filed with
3 the Superior Court and a **COPY** thereof
4 mailed this 6th day of March, 2020 to:

5 David S. Gingras, Esq.
6 **GINGRAS LAW OFFICE, PLLC**
7 4802 E. Ray Road, #23-271
8 Phoenix, Arizona 85044
9 *Attorney for Defendants*

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/s/ Christine Klepacki