

David S. Gingras, #021097
Gingras Law Office, PLLC
4802 E. Ray Road, #23-271
Phoenix, AZ 85044
Tel.: (480) 264-1400
Fax: (480) 248-3196
David@GingrasLaw.com

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

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

John Doe I; John Doe II; John Doe III;
John Doe IV; John Doe V; John Doe VI;
John Doe; Jane Doe I; Jane Doe II; John
Doe VIII; John Doe IX; John Doe X;
John Doe XI; John Doe XII; John Doe
XIII; Jane Doe III; John Doe XIV; Jane
Doe IV; John Doe XV; and John Doe
XVI,

Plaintiffs,

vs.

Travis Paul Grant and Mariel Lizette
Grant, husband and wife; Kyle David
Grant and Jane Doe Grant, husband and
wife; John and Jane Does I-X; Black
Corporations I-X; and White Companies
I-X,

Defendants.

Case No. _____

NOTICE OF REMOVAL

(Maricopa County Superior Court Case No.
CV2020-093006)

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

1 Pursuant to District Court Local Rule LRCiv 3.6(a), undersigned counsel certifies
2 that a copy of this Notice has been filed with the Clerk of the Maricopa County Superior
3 Court in the original state court proceeding, Case No. CV2020-093006.

4 As indicated in the attached pleadings, this case is primarily an action brought
5 under Arizona's newly-enacted "Mugshots Website Operators" statute, A.R.S. §§ 44–
6 7901–02, which became effective on August 27, 2019. In short, this law restricts the use
7 of mugshots as follows:

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

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

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

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

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

22 The original Complaint in this matter, attached hereto as Exhibit A, was filed in the
23 Maricopa County Superior Court on May 1, 2020. Defendants first received notice of this
24 action when Plaintiffs' counsel, Andrew Ivchenko, emailed a copy of the pleadings to
25 undersigned counsel on May 5, 2020.

26 The original Complaint included only state-law claims but did not clearly reflect
27 that the amount in controversy, exclusive of interest and costs, exceeded \$75,000.00. In
28 addition, the original Complaint appeared to contain non-diverse Plaintiffs.

For example, according to Paragraph 34 of the Complaint, all Defendants are residents and citizens of the State of Florida. At least three anonymous Plaintiffs are also residents and citizens of Florida. *See, e.g.*, Complaint ¶¶ 23, 24 & 25 (Plaintiffs John Doe 8, 9 & 10 are residents of Pinellas County and Miami-Dade County, Florida).

Based on these facts, the original Complaint did not appear to be removable within the meaning of 28 U.S.C. § 1446(b)(3). This was true because the Complaint did not clearly reflect that the amount in controversy exceeded \$75,000 and because the parties did not appear to be completely diverse.

Following receipt of the original Complaint, two events occurred which made it clear that the Complaint was removable. First, on May 6, 2020, Plaintiffs filed a pleading entitled “Motion to Proceed Under Pseudonym And Memorandum in Support Thereof”, a copy of which is attached hereto as Exhibit B. On page 7 of this pleading, a portion of which is shown below, Plaintiffs clarified that they were seeking damages of “at least \$100,000” each, and that their actual damages “could be at least twice this amount”. This clarification showed the amount in controversy exceeds \$75,000.00.

4	the violation[;] [and] [3] \$500 per day for each day thereafter.”) (emphasis added). As
5	such, and because Defendants have continuously exploited all of the Doe Plaintiffs arrest
6	information and booking photos since the beginning of the Act’s effective date, the Doe
7	Plaintiffs are each entitled to at least \$100,000 in statutorily mandated damages,
8	increasing each day in the amount of \$500. Stated differently, as a group, the Doe
9	Plaintiffs are entitled to at least \$2,000,000 in statutorily mandated damages. Moreover,
10	because the Defendants operate at least two separate mugshot websites and almost all of
11	the Doe Plaintiffs appear on both, the total damages could be at least twice this amount.
12	

Second, on May 12, 2020, Defendants moved to dismiss the Complaint pursuant to Ariz. R. Civ. P. 12(b)(6), a copy of which is attached hereto as Exhibit C. The Motion to Dismiss argued, among other things, that the Complaint failed to state a claim for numerous reasons. In addition, the motion noted that some of the Plaintiffs appeared to be

1 non-residents of Arizona who did not claim to have any connection to Arizona; i.e., they
2 did not allege they were ever arrested in Arizona, or that their mugshots or arrest records
3 were created by or obtained from any Arizona-based law enforcement agency. Due to this
4 lack of detail, it appeared the non-Arizona resident Plaintiffs could not establish that
5 Arizona substantive law applied to them.

6 For example, paragraph 23 of the Complaint asserts the factual basis for claims
7 presented by John Doe #8. According to the Complaint, John Doe #8 is a resident of
8 Pinellas County, Florida. The Complaint further alleges “During the relevant time period,
9 defendants have disseminated Plaintiff John Doe #8’s arrest information and booking
10 photo on [Defendants’] Websites for purely commercial purposes.”

11 Beyond this, the Complaint contains no other allegation showing that John Doe #8
12 has any connection to the State of Arizona. The Complaint does not claim John Doe #8
13 was arrested in Arizona, nor does the Complaint allege that Defendants obtained John
14 Doe #8’s mugshot or arrest information from any Arizona-based law enforcement
15 agency. Thus, as it relates to John Doe #8, it appeared possible that this individual lives
16 outside of Arizona, he was arrested outside of Arizona, and Defendants obtained his
17 mugshot and arrest records from a non-Arizona law enforcement agency.

18 Based on those facts, it did not appear that John Doe #8 had any right to seek relief
19 under Arizona law. However, this point was not entirely clear because it was equally
20 *possible* that John Doe #8 lived in Florida, but that at some point he traveled to Arizona,
21 was arrested in Arizona, and had his mugshot taken and released by an Arizona law
22 enforcement agency; the Complaint simply did not make this issue clear. If those were
23 the true facts pertaining to John Doe #8, then it was possible he might have a plausible
24 claim for relief under Arizona law, despite not being a resident of Arizona.

25 Any ambiguity on this point was resolved on June 1, 2020 when Plaintiffs’ filed
26 their brief opposing Defendants’ Motion to Dismiss. In their response, a copy of which is
27 attached hereto as Exhibit G, the non-Arizona resident plaintiffs essentially admitted their
28 claims have no connection to Arizona. *See, e.g.*, Exhibit G at 14–15.

Based on that admission, Defendants determined this case was removable on June 1, 2020 and thus removal is timely pursuant to 28 U.S.C. § 1446(b)(3). *See Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 885 (9th Cir. 2010) (“Section 1446(b) identifies two thirty-day periods for removing a case. The first thirty-day removal period is triggered if the case stated by the initial pleading is removable on its face. The second thirty-day removal period is triggered *if the initial pleading does not indicate that the case is removable*, and the defendant receives a copy of an amended pleading, motion, order or other paper from which removability may first be ascertained.”) (emphasis added) (internal quotations omitted) (quoting *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005)).

2. The District Court Has Diversity Jurisdiction

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

Plaintiff	Citizenship	Compl. ¶
John Doe 1	Arizona	14
John Doe 2	Arizona	15
John Doe 3	Arizona	16
John Doe 4	Arizona	17
John Doe 5	Arizona	18
John Doe 6	Arizona	19
John Doe 7	Arizona	20
Jane Doe 1	Arizona	21
Jane Doe 2	Arizona	22
John Doe 8	Florida	23
John Doe 9	Florida	24
John Doe 10	Florida	25
John Doe 11	Texas	26
John Doe 12	Texas	27
John Doe 13	Texas	28
Jane Doe 3	Texas	29
John Doe 14	Illinois	30
Jane Doe 4	Illinois	31
John Doe 15	South Carolina	32
John Doe 16	Missouri	33

1 According to FAC ¶ 34, each Defendant resides in, and thus are citizens of, the
 2 State of Florida. Thus, at least initially on the face of the Complaint, the parties do not
 3 appear to be completely diverse. Defendants are all residents and citizens of Florida, and
 4 at least three Plaintiffs—John Does 8, 9 and 10, are also residents of Florida. Thus,
 5 complete diversity appears to be absent.

6 Despite this, the District Court has diversity jurisdiction because Plaintiffs John
 7 Does 8, 9 and 10 have been fraudulently joined in this action. A full and complete
 8 discussion of this issue is beyond the scope of this Notice of Removal and Defendants
 9 will present a more thorough discussion of the facts and law when and if Plaintiffs seek
 10 remand.

11 However, as a matter of law, the citizenship of a fraudulently joined party-plaintiff
 12 does not defeat diversity jurisdiction; “The citizenship of a party-plaintiff may also be
 13 disregarded for purposes of determining whether diversity jurisdiction exists if the
 14 removing party can show that the nondiverse plaintiff was fraudulently joined.” *Foslip*
 15 *Pharmaceuticals, Inc. v. Metabolife Intern., Inc.*, 92 F.Supp.2d 891, 903 (N.D.Iowa
 16 2000) (emphasis added) (quoting *Oliva v. Chrysler Corp.*, 978 F.Supp. 685, 689
 17 (S.D.Tex.1997) (compiling extensive authority)).

18 As explained succinctly by *Wright & Miller*:

19 According to the numerous decided cases on the subject, a party will be
 20 considered fraudulently joined—and removal will be permitted—when the
 21 plaintiff plainly has not stated or cannot state a claim for relief against that
 22 non-diverse individual or entity under the applicable substantive law

23 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3723.1
 24 Removal Based on Diversity of Citizenship and Alienage Jurisdiction—Fraudulent
 25 Joinder (2020 supp.) (emphasis added) (citing extensive authority including *Salkin v.*
 26 *United Services Auto. Ass'n*, 767 F. Supp. 2d 1062 (C.D. Cal. 2011) (denying remand
 27 based on fraudulent joinder of non-diverse plaintiffs); *Smith v. Community Lending, Inc.*,
 28 773 F. Supp. 2d 941 (D. Nev. 2011) (same)).

1 Again, a full and complete discussion of the factual and legal arguments supporting
2 Defendants' position is beyond the scope of this notice. However, Defendants allege, and
3 will prove by a preponderance of the evidence if necessary, that Plaintiffs John Does 8, 9
4 and 10 have been fraudulently joined in this action because they cannot establish any
5 legitimate claim for relief under Arizona substantive law. As such, their presence in this
6 matter can and should be ignored and does not destroy diversity.

7 This is so because Arizona law cannot and does not apply to activity which occurs
8 wholly outside the borders of Arizona and which affects only non-residents of Arizona.
9 Were any other rule to apply, the State of Arizona could establish civil/criminal legal
10 standards for residents living in other states based on conduct occurring only outside of
11 Arizona. Such extra-territorial legislative reach is not permitted under the commerce
12 clause of the U.S. constitution. *See, e.g., BMW of North America v. Gore*, 517 U.S. 559,
13 571, 116 S.Ct. 1589, 1597 (1996) (observing, “[n]o State can legislate except with
14 reference to its own jurisdiction Each State is independent of all of the others in this
15 particular.”); *Healy v. Beer Inst.*, 491 U.S. 324, 336 (1989) (“a statute that directly
16 controls commerce occurring wholly outside the boundaries of a State exceeds the
17 inherent limits of the enacting State’s authority and is invalid.”)

18 Applying this rule shows the non-Arizona resident plaintiffs cannot invoke Arizona
19 substantive law to punish events which occurred entirely outside this state. In other
20 words, if a plaintiff lives outside of Arizona (say, in Florida), and they are arrested in
21 Florida, and their mugshot is published on a website located in Florida by defendants
22 who reside in Florida, then under a choice of law analysis and applying the controlling
23 constitutional rules, Florida substantive law would apply and Arizona’s Mugshot Act
24 would not. A plaintiff who resides in another state cannot export Arizona’s substantive
25 law simply because they prefer Arizona law to the laws of their home state. Yet that is
26 exactly what the non-Arizona resident Plaintiffs are seeking to do in this case.

27 For these reasons, the presence of John Does 8, 9 and 10 does not destroy diversity,
28 and removal of this action is therefore proper.

3. All Served Defendants Consent to Removal

All three named Defendants consent to and join in removal of this action. Consent and joinder by the unknown John/Jane Doe Defendants is not required. *See Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980) (explaining, “the unknown defendants sued as ‘Does’ need not be joined in a removal petition.”) (citing *Ronson Art Metal Works, Inc. v. Hilton Lite Corp.*, 111 F.Supp. 691 (N.D.Cal. 1953); *Grigg v. Southern Pacific Co.*, 246 F.2d 613, 619–20 (9th Cir. 1957)).

4. State Court Pleadings/State Court Record

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

Exhibit	Title	Date Filed
A	Complaint/Coversheet/Etc.	5/1/2020
B	Plaintiffs’ Motion to Proceed Under Pseudonym	5/6/2020
C	Defendants’ Motion to Dismiss	5/12/2020
D	Notice of Change of Judge	5/12/2020
E	Minute Entry Order	5/20/2020
F	Defendants’ Response to Plaintiffs’ Motion to Proceed Under Pseudonym	5/29/2020
G	Plaintiffs’ Response to Defendants’ Motion to Dismiss	6/1/2020
H	Reply in Support of Defendants’ Motion to Dismiss ¹	6/8/2020
I	Reply in Support of Defendants’ Motion to Dismiss	6/9/2020

¹ This pleading was rejected by the Maricopa County Clerk of Court on June 9, 2020 due to an apparent formatting problem with the case caption. This issue was immediately corrected and the pleading was re-filed the same day.

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) Plaintiffs' Motion to Proceed via Pseudonym (Exhibit B);
) Defendants' Motion to Dismiss (Exhibit C)

DATED: June 9, 2020.

9

CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2020, I transmitted the attached document to the Clerk's Office for filing, and emailed a copy of the foregoing to:

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

