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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

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

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

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

1. Admit Travis Grant and Mariel Grant are married.

2. Admit Travis Grant owns the websites identified in ¶ 2 of the Complaint.

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

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

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

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

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

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

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FIRST AFFIRMATIVE DEFENSE
(Failure to State Claim)

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

SECOND AFFIRMATIVE DEFENSE
(First Amendment)

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

THIRD AFFIRMATIVE DEFENSE
(Arizona Constitution)

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

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FOURTH AFFIRMATIVE DEFENSE
(Communications Decency Act Immunity)

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

FIFTH AFFIRMATIVE DEFENSE
(Uniform Single Publication Act)

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

SIXTH AFFIRMATIVE DEFENSE
(Fair Report/Public Records Privileges)

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

SEVENTH AFFIRMATIVE DEFENSE
(Statute of Limitations)

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

EIGHTH AFFIRMATIVE DEFENSE
(Choice of Law)

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

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

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

TENTH AFFIRMATIVE DEFENSE
(Lack of Personal Jurisdiction)

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

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

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

a. That Plaintiff take nothing by her Complaint;

b. That the Complaint be dismissed with prejudice;

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

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

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

COUNTERCLAIM

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

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

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

JURISDICTION AND VENUE

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

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

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

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

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

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

FACTUAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

COUNT ONE—DECLARATORY JUDGMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED: November 13, 2020.

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CERTIFICATE OF SERVICE

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

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