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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

Attorney for Defendants
Travis Paul Grant and Mariel Lizette Grant

SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

Jane Doe, Plaintiff, vs. Travis Paul Grant, *et al*., Defendants.	Case No. CV2021-090059 **MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION** (Assigned to Hon. Tracy Westerhausen)

GINGRAS LAW OFFICE, PLLC
4802 E. RAY ROAD, #23-271
PHOENIX, AZ 85044

Pursuant to Ariz. R. Civ. P. 12(b)(2), Defendants Travis Paul Grant and Mariel Lizette Grant ("Defendants")[1] respectfully move for an order dismissing Plaintiff's Complaint on the basis that Defendants are not subject to personal jurisdiction in Arizona.

I. INTRODUCTION

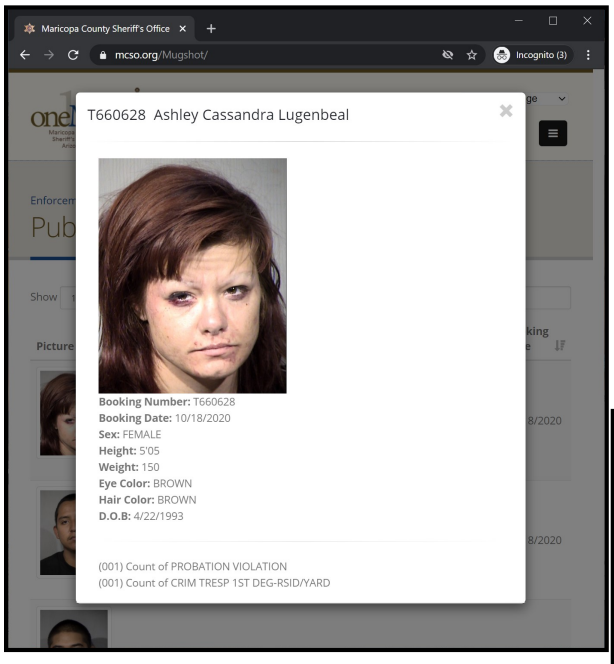
The facts of this case are simple. The Complaint alleges Defendants Travis and Mariel Grant, a married couple living in Florida, operate several websites which archive and republish criminal records including booking photos, commonly referred to as "mugshots". *See* Compl. ¶ 5. None of these websites, with geographically-neutral names like www.RapSheets.org, www.BailBondSearch.com and www.PublicPoliceRecord.com, are specifically focused on Arizona. Rather, the sites contain tens of millions of public records from 45 different U.S. states; the only states *not* represented in the index are Alaska, Delaware, Hawaii, Massachusetts and Vermont.

[1] Defendant Kyle Grant has not been served and is thus not appearing at this time.

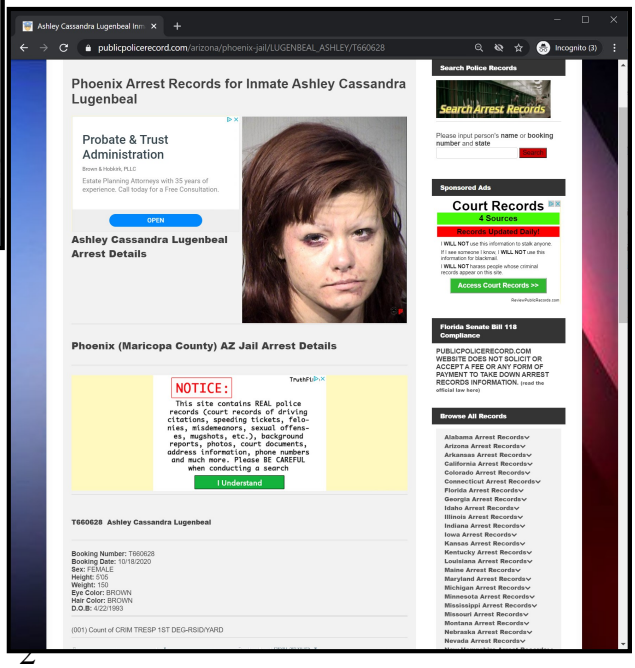
In terms of how they function and how information is gathered, the websites are all basically the same. First, an individual is arrested and their mugshot and arrest details are published on the Internet by the arresting agency. Using Maricopa County as an example, the Sheriff's Office publishes this information on its website at: https://www.mcso.org/Mugshot/. *See* Affidavit of Travis Grant ("Grant Aff.") ¶¶ 7–8.

After the information is released by the arresting agency, the websites use software to automatically copy the mugshot and associated details. This arrest information is then republished on Defendants' site *verbatim* in a standardized format. The only difference is that pages on Defendants' websites contain third party advertisements from Google's "AdSense" program (more on that later).

Typical MCSO Mugshot Page



Typical Page On Defendants' Site



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PHOENIX, AZ 85044

At present, Defendants'[2] database contains more than 20 million arrest records. Travis Grant Aff. ¶ 9. All of this information was obtained from public Internet websites operated by law enforcement agencies across the country including some in Arizona.

According to his Complaint, Plaintiff John Doe alleges he was arrested in March 2018 by the Maricopa County Sheriff's Office. *See* Compl. ¶ 25. As per MCSO's usual practice, Plaintiff's mugshot and arrest details were published by MCSO on its website shortly thereafter. *See* Compl. ¶ 26. After this information was released by MCSO, Plaintiff alleges his mugshot and arrest information was copied and republished on Defendants' website "since in or around March 2018". Compl. ¶ 28. Notably, Plaintiff does *not* allege Defendants changed/altered this arrest information in any material way; he simply complains that Defendants *republished* the same information first published online by MCSO.

Based on these facts, Plaintiff brings three claims for relief: 1.) a statutory claim under Arizona's new "Mugshot Act", A.R.S. §§ 44–7901 & 7902; 2.) a claim for misappropriation of name/likeness under Arizona common law; and 3.) a claim of false light under Arizona common law. Plaintiff also seeks a preliminary and permanent injunction requiring Defendants to remove his mugshot and arrest records.

Regarding personal jurisdiction, Plaintiff's Complaint *generally* suggests, without any further explanation, that each Defendant is subject to personal jurisdiction in Arizona "under Arizona's long-arm rule and applicable decisional law." Compl. ¶ 15. Furthermore, the Complaint *specifically* alleges personal jurisdiction is proper under the Mugshot Act's "nexus" provision, A.R.S. § 44–7902(A), which provides as follows: "A mugshot website operator that publishes a subject individual's criminal justice record for a commercial purpose on a publicly accessible website is deemed to be transacting business in this state." (emphasis added)

[2] As explained in the affidavits submitted herewith, each of the websites in question is owned and operated solely by Travis Grant. Accordingly, it is not accurate to say that "Defendants" own/operate these sites. However, the term "Defendants" is used here solely for simplicity's sake, and because the Complaint uses that term.

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4802 E. RAY ROAD, #23-271
PHOENIX, AZ 85044

As explained below, personal jurisdiction is lacking here for multiple independent reasons:

1.) As explained in the affidavits submitted herewith, Mariel Grant has no role in publishing mugshots, including, but not limited to, Plaintiff's specific mugshot. As such, Mariel Grant does not qualify as a "mugshot website operator" as defined by the Mugshot Act. *See* A.R.S. § 44–7901(4) (defining "mugshot website operator" as "a person that publishes a criminal justice record on a publicly available internet website for a commercial purpose."). Because Mariel Grant is not a "mugshot website operator", the Mugshot Act's nexus clause (and, indeed, all other substantive provisions of the Act) simply do not apply to her.

2.) Because Mariel Grant was not involved in publishing Plaintiff's mugshot and arrest details online, she has not engaged in conduct sufficient to subject her to personal jurisdiction in Arizona. Thus, personal jurisdiction does *not* exist under Arizona's long-arm statute (Ariz. R. Civ. P. 4.2(a)) or any "applicable decisional law". On the contrary, because Plaintiff has no evidence, and no factual basis, to accuse Mariel Grant of any wrongdoing, he cannot meet his burden of establishing personal jurisdiction over her in Arizona.

3.) As to Travis Grant (who admits owning/operating the websites in question) the Mugshot Act's nexus clause, A.R.S. § 44–7902(A), is blatantly unconstitutional both on its face and as applied to the facts of this case. This is so because it attempts to expand Arizona's personal jurisdiction *farther* than permitted by federal law and based on standards *lower* than those required by federal law; the Supremacy Clause does not permit this;

4.) Even assuming the Mugshot Act's long arm clause was not otherwise invalid and unconstitutional, A.R.S. § 44–7902(A) does not support personal jurisdiction here because that part of the Mugshot Act directly conflicts with, and is preempted by, a different federal law, specifically the Communications Decency Act, 47 U.S.C. § 230(c)(1);

5.) Because personal jurisdiction cannot be established under the Mugshot Act, and applying existing U.S. Supreme Court precedent, Defendants are not subject to personal jurisdiction in Arizona.

For those reasons, and bearing in mind the Plaintiff bears the burden of proving personal jurisdiction over *each Defendant individually*, the Complaint should be dismissed for lack of personal jurisdiction.

GINGRAS LAW OFFICE, PLLC
4802 E. RAY ROAD, #23-271
PHOENIX, AZ 85044

II. DISCUSSION

It is hornbook law that a state must have personal jurisdiction over the defendant before a binding judgment may be entered against him. We all know that.

Equally fundamental is the concept that personal jurisdiction is *never* established *collectively*, but rather *individually*. Thus, because Plaintiff has sued three individual Defendants (Travis Grant, Mariel Grant, and Kyle Grant), Plaintiff must show *each individual Defendant* is properly subject to personal jurisdiction here; "[t]he requirements of International Shoe ... must be met as to each defendant over whom a state court exercises jurisdiction." *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773, 1783 (2017) (emphasis added) (quoting *Rush v. Savchuk*, 444 U.S. 320, 332 (1980)). This requirement is not satisfied simply because a group of Defendants knows each other, or are related by blood/marriage, or works together in some other capacity; "Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the "random, fortuitous, or attenuated" contacts he makes by interacting with other persons affiliated with the State." *Walden v. Fiore*, 571 U.S. 277, 286 (2014) (emphasis added).

As for the necessary showing, it is generally accepted personal jurisdiction will exist if the defendant is "transacting business" in the forum. *See*, *e.g.*, *Boschetto v. Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008) ("To have purposefully availed itself of the privilege of doing business in the forum, a defendant must have 'performed some type of affirmative conduct which allows or promotes the transaction of business within the forum state.'")

In an effort to both exploit and satisfy that rule, the Mugshot Act, A.R.S. § 44–7902(A), contains a "nexus clause" which creates a legal fiction—i.e., that any person who publishes mugshots on the internet for a commercial purpose *is deemed to be transacting business in Arizona*, even if they are not actually doing any business here. This clause was clearly intended to create a basis to automatically exercise jurisdiction over all foreign website operators, regardless of whether they are *actually* transacting

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4802 E. RAY ROAD, #23-271
PHOENIX, AZ 85044

business in Arizona, and regardless of whether the defendant *actually* has any minimum contacts with the State of Arizona.

As explained below, the Mugshot Act's "nexus" provision is unconstitutional on its face, and as applied, for the simplest of reasons—because the minimum contacts required to satisfy the federal Due Process Clause *must actually exist*, and they must exist according to the factual and legal standards established by decades of U.S. Supreme Court precedent. These contacts and the constitutional "nexus" they engender are not a joke, to be disregarded at the slightest whim, nor can they be artificially fabricated through statutory hocus pocus.

Here, the Mugshot Act's "nexus" clause attempts to use a fictional legal presumption to create a *far lower* standard for personal jurisdiction than permitted by federal law.[3] In doing so, this new state law thumbs its nose at the United States Constitution in a manner that renders the law facially unconstitutional. As such, A.R.S. § 44–7902(A) is invalid and provides no basis for personal jurisdiction in this case.

a. Mariel Grant Is Not Subject to Personal Jurisdiction In Arizona

Taking the easiest issue first, the Court must dismiss the Complaint as to Mariel Grant because she is not subject to personal jurisdiction in Arizona. Notably (and obviously), the Complaint makes no attempt to distinguish between Travis Grant (who admits to owning/operating the websites in question), his wife Mariel (who has no role whatsoever in running the websites), and Travis's brother Kyle (who is simply a "customer service rep" working for Travis). The Complaint improperly seeks to treat all three individual Defendants as if they were a single unified entity.

This is improper as a matter of law. Before any individual defendant can be haled into a state, the Plaintiff must show there is a proper factual and legal basis to exercise personal jurisdiction over that person. As it relates to Mariel Grant, there is no factual or

[3] Indeed, the constitutional infirmity of A.R.S. § 44–7902(A) is underscored by the fact that Arizona's existing long-arm law *already* extends Arizona's personal jurisdiction to the farthest extent *permitted* by federal law. *See* Ariz. R. Civ. P. 4.2. As such, it was neither necessary, nor constitutional, to extend Arizona's personal jurisdiction farther.

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4802 E. RAY ROAD, #23-271
PHOENIX, AZ 85044

legal basis to exercise such jurisdiction. This is so because as explained in the affidavits of both Travis and Mariel submitted herewith, Mariel has no role whatsoever in operating any of the websites in question.

Because Mariel does not "publish[] a criminal justice record on a publicly available internet website for a commercial purpose", she does not meet the definition of a "mugshot website operator" under A.R.S. § 44–7901(4). Thus, even assuming the law was not otherwise unconstitutional, Plaintiff cannot use the Mugshot Act's "nexus clause" as a basis for exercising personal jurisdiction over Mariel.

Thus, to obtain personal jurisdiction over Mariel, Plaintiff must show that there is *some other basis* using the traditional and well-settled standards. But Plaintiff cannot make such a showing, because even if Mariel Grant posted something unlawful about Plaintiff on the Internet (which she did NOT), that is insufficient, standing alone, to subject her to personal jurisdiction here. *See, e.g.*, *Xcentric Ventures, LLC* v. Bird, 683 F.Supp.2d 1068, 1075 (D.Ariz.2010) (posting allegedly defamatory information on website regarding Arizona resident is insufficient to create personal jurisdiction over Washington resident defendant in Arizona); *see also Smith & Wesson Corp. v. The Wuster*, 243 Ariz. 355, 360, ¶ 20, 407 P.3d 548, 553 (App. 2017) (personal jurisdiction over non-resident defendant was improper when defendant "[had] no contacts with Arizona other than maintaining a home page that [was] accessible to Arizonans, and everyone else, over the Internet") (quoting *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 415 (9th Cir. 1997)); *see also Forever Living Products U.S. Inc. v. Geyman*, 471 F. Supp. 2d 980, 984 (D.Ariz. 2006) (explaining, "The Ninth Circuit has well developed case law regarding personal jurisdiction based on contacts through the internet. This circuit has concluded that something more than mere advertisement or solicitation on the internet is necessary to indicate that a Defendant purposely, albeit electronically, directed his activity in a substantial way to the forum state[]" and concluding: "Allegedly tortious conduct on a passive website will not vest jurisdiction in a forum merely because the Defendant knows that the alleged victim of the alleged wrong resides in that forum.")

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4802 E. RAY ROAD, #23-271
PHOENIX, AZ 85044

Here, the facts are undisputed – other than being married to Travis Grant, Mariel Grant has nothing to do with this case. Mrs. Grant does not "transact" business in Arizona, nor has she engaged in any unlawful conduct targeted at this state. For those reasons, Plaintiff cannot meet his burden of establishing personal jurisdiction over Mariel, and his claims against her must be dismissed.

i. A Non-Resident Spouse Is Not Liable For Spousal Torts

Let's be honest for a second—what happened here is simple. At some point, Plaintiff's counsel determined (correctly) that the websites in question were owned by Travis Grant. Based on that fact, Plaintiff sued not only Travis Grant, but also his wife, Mariel, and even his brother, Kyle, even though neither Mariel nor Kyle had any involvement in the alleged wrongdoing. In fact, blinded by vindictive rage, Plaintiff's counsel has even threatened to sue Travis's *parents*. Presumably, his dog is next.

All other issues aside, there is no dispute that in many civil actions in Arizona, both spouses are routinely named as defendants, even when only one spouse is accused of actual wrongdoing. But that does not mean Mariel is subject to personal jurisdiction here, nor does it mean it was proper for Plaintiff to sue Mariel in this case.

The issue arises because Arizona is a community property state. Since Arizona recognizes the legal fiction of a "marital community", if a plaintiff wants to recover from community assets, the plaintiff is required by Arizona law to name both spouses in order to "bind the community". *See* A.R.S. § 25–215(D) (in order to recover a community debt, "the spouses shall be sued jointly…") (emphasis added). That is true even if one spouse had no role in any unlawful conduct; it is sufficient to name both spouses solely to satisfy the requirements of A.R.S. § 25–215(D) (this also gives the innocent spouse an opportunity to show the alleged debt is not a community obligation).

But A.R.S. § 25–215 does not apply here because Travis and Mariel do not live in Arizona. Rather, they live in Florida, and they have lived in Florida during all times relevant to this case. Why does this matter? It matters because unlike Arizona, Florida is not a community property state. Thus, in Florida, no "marital community" exists.

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PHOENIX, AZ 85044

Because there is no Grant marital community, there is no basis to join Mariel Grant as a party under A.R.S. § 25–215(D). Rather, in order for Plaintiff to sue Mrs. Grant here, he must have a valid Rule 11 factual/legal basis to accuse Mrs. Grant of directly being involved in some wrongdoing (and he must show that her actions are sufficient to subject her to personal jurisdiction here). No such basis exists here.

In short, the mere fact that Mariel is married to Travis Grant does not supply a basis for suit. This is so because under Arizona law, a married person is not jointly liable for the intentional torts of their spouse. The law on this point is crystal clear: "we hold that the wife is not personally liable for the torts of her husband." *Ruth v. Rhodes*, 66 Ariz. 129, 138 (Ariz. 1947) (emphasis added) (citing extensive authority).

In sum, even if Travis Grant had engaged in unlawful conduct (which he has not), that would not permit Plaintiff to jointly sue Mariel Grant simply based on her marriage to Travis. Thus, even assuming Travis was subject to personal jurisdiction here, that is insufficient, as a matter of law, to permit the exercise of personal jurisdiction over Mariel Grant.

ii. Mere Ownership/Management Of An LLC Is Insufficient

Based on prior communications with Plaintiff's counsel, it is likely Plaintiff will argue personal jurisdiction over Mariel Grant is proper because (although the Complaint includes no such allegations) at least one of the websites in question is purportedly operated by a non-party Florida-based limited liability company called Gainesville Console Doctor, LLC, and Mariel Grant's name appears listed as the manager of that LLC on certain corporate records. Assuming this argument is raised, it may be summarily rejected.

On this issue, both Florida and Arizona law are the same – members/managers of an LLC are *not liable* for wrongful acts committed either by the company itself, or by other members. *See* A.R.S. § 29–3304 (providing, "A member or manager [of an LLC] is not personally liable, directly or indirectly … for a debt, obligation or other liability of the company or for the acts or omissions of any other member, manager, agent or

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4802 E. RAY ROAD, #23-271
PHOENIX, AZ 85044

employee of the company, solely by reason of being or acting as a member or manager … .") (emphasis added). The same is true in Florida which has exactly the same rule. *See* F.S. § 608.4227(1).

Thus, even assuming Plaintiff alleges Gainesville Console Doctor, LLC (which is not a party to the case) is the true owner of the websites in question, and even assuming Gainesville Console Doctor, LLC was somehow engaged in wrongful conduct sufficient to establish personal jurisdiction over that company in Arizona, this would still be insufficient, as a matter of law, to subject *Mariel Grant* to jurisdiction here. *See*, *e.g.*, *Calder v. Jones*, 465 U.S. 783, 790 (1984) (holding personal jurisdiction must be established as to each defendant separately and individually, and explaining, "Petitioners are correct that their contacts with California are not to be judged according to their employer's activities there.")

In sum, even if Gainesville Console Doctor, LLC was subject to personal jurisdiction in Arizona, and even if Mariel Grant was or is a manager/member of that LLC, that fact is both irrelevant and insufficient as a matter of law to support personal jurisdiction over Mariel in Arizona.

b. A.R.S. § 44–7902(A) Is Unconstitutional

Turning to the allegations against Travis, and as noted above, Plaintiff asserts two different jurisdictional theories. First, Plaintiff claims that by owning and operating a website located in Florida that publishes arrest records from 45 different states, Travis is automatically subject to personal jurisdiction in Arizona under A.R.S. § 44–7902(A). Second, separate and apart from that issue, Plaintiff alleges Travis is subject to personal jurisdiction under Arizona's long-arm law, Ariz. R. Civ. P. 4.2. Both of these arguments fail as a matter of law.

It is well-settled "Arizona's long arm statute [Ariz. R. Civ. P. 4.2] 'provides for personal jurisdiction **co-extensive** with the **limits** of federal due process.'" *Xcentric Ventures, LLC v. Bird*, 683 F. Supp. 2d 1068, 1070 (D. Ariz. 2010) (emphasis added); *see also* Ariz. R. Civ. P. 4.2(a) (providing, "An Arizona state court may exercise personal

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4802 E. RAY ROAD, #23-271
PHOENIX, AZ 85044

jurisdiction over a person … to the maximum extent permitted by … the United States Constitution.") (emphasis added).

Thus, in most cases, mapping the precise jurisdictional scope of *Arizona law* is not necessary. That is so because whatever those limits may be, Arizona's reach extends only as far as *federal due process* permits, and no further. *See Amini v. Bezsheiko*, 2020 WL 1911212, at *2 (D.Ariz. 2020) (holding because Arizona's personal jurisdiction extends only as far as federal law allows, "analyzing personal jurisdiction under Arizona law and federal due process is the same.") (citing *A. Uberti & C. v. Leonardo*, 181 Ariz. 565, 569, 892 P.2d 1354, 1358 (Ariz. 1995) (en banc)).

But what if Arizona decided "the same" was no longer good enough? What if Arizona wanted to go further and expand its personal jurisdiction *beyond the limits of federal due process*? For instance, imagine a new law which declared: "All residents of every state are subject to personal jurisdiction in Arizona." Would that sweeping long-arm law be effective and enforceable to hail non-residents into Arizona?

Of course not. No state has the power to abrogate federal law, nor may any state disregard the limitations of federal law; that is precisely why such limits exist. In the context of personal jurisdiction, the Supreme Court has made this exceptionally clear: "The Due Process Clause of the Fourteenth Amendment **limits the power of a state** court to render a valid personal judgment against a nonresident defendant." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) (emphasis added); *see also Hanson v. Denckla*, 357 U.S. 235, 250 (1958) ("a State is forbidden to enter a judgment attempting to bind a person over whom it has no jurisdiction … .")

Here, the absurd hypothetical statute giving Arizona nationwide (indeed, *worldwide*) jurisdiction over all websites is not hypothetical and nor is it a joke; it is real. That is exactly what the legislature attempted to do when it passed A.R.S. § 44–7902(A).

The language of A.R.S. § 44–7902(A) is self-explanatory; it purports to create a legal fiction, *to wit*: any person who publishes a mugshot on a website for a "commercial purpose" is "deemed" to be *transacting business in Arizona* and thus subject to personal

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PHOENIX, AZ 85044

jurisdiction in Arizona. This is true regardless of where the defendant resides. This is true regardless of where the plaintiff resides. This is true regardless of where the mugshot was taken, and it is true regardless of where any unlawful conduct occurs or where the harm from such conduct is felt. Minimum contacts? No longer necessary.

Under the plain language of A.R.S. § 44–7902(A), it is not even necessary that the defendant publish any photos of any person living in Arizona or arrested in Arizona; all that is necessary is for the defendant to publish a mugshot of *anyone* taken *anywhere* at *anytime*. If the defendant earns a single penny (or even attempts, unsuccessfully, to do so) the defendant is "deemed" to be transacting business in Arizona, and thus is subject to personal jurisdiction here. Federal due process limits? Go jump in a lake…

In light of its striking overbreadth and its stunning lack of respect for the federal due process requirements imposed by decades of controlling Supreme Court precedent, it is clear A.R.S. § 44–7902(A) is invalid and unconstitutional. This is so because as a matter of both common sense and as a matter of law due to the operation of the Supremacy Clause, the State of Arizona cannot, by rule, statute, magic spells, or otherwise, expand the reach of its personal jurisdiction *beyond* the strict limits imposed by any superior law such as the U.S. Constitution. Should Arizona attempt to do so, the conflicting state law must fail under well-settled Supremacy Clause principles.

Because A.R.S. § 44–7902(A) is a brand-new law, it raises a question of first impression, but the governing principles involved in the analysis are hardly new. For example, *Kadota v. Hosogai*, 125 Ariz. 131, 608 P.2d 68 (Ariz.App. 1980) involved a virtually identical issue in an analogous context.

Kadota involved a lawsuit filed in Arizona against a resident of Japan who allegedly caused a traffic accident which killed the plaintiff's husband. The plaintiff sought to obtain personal jurisdiction over the defendant by completing service in Japan in a manner expressly authorized by the Arizona Rules of Civil Procedure and by Arizona statutory law. However, the method of service used by the plaintiff directly conflicted with the limits imposed by a higher law—an international treaty (the Hague Convention).

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4802 E. RAY ROAD, #23-271
PHOENIX, AZ 85044

Thus, the question was whether Arizona could exercise personal jurisdiction in a manner that violated another *superior* law. The defendant argued Arizona lacked personal jurisdiction over him because the methods of service used violated the Hague Convention, even though these methods were allowed by Arizona law. The trial court rejected this argument, but the Court of Appeals reversed. In doing so, the Court of Appeals explained:

> [The Supremacy Clause] has always been interpreted to mean that a treaty entered into by the United States shall be superior to and prevail over any conflicting laws of the individual states. Therefore, the State of Arizona cannot attempt to exercise jurisdiction under a rule promulgated by its courts if that rule would violate an international treaty.

Kadota, 125 Ariz. at 134, 608 P.2d at 71 (emphasis added) (citing *Ware v. Hylton*, 3 Dall. 199, 1 L.Ed. 568 (1796); *United States v. Pink*, 315 U.S. 203, 62 S.Ct. 552, 86 L.Ed. 796 (1942); *Hauenstein v. Lynham*, 100 U.S. 483, 25 L.Ed. 628 (1879)).

Other Arizona courts, including the Arizona Supreme Court, have recognized the same standard in other personal jurisdiction disputes under analogous circumstances. *See*, *e.g.*, *Cardona v. Kreamer*, 225 Ariz. 143, 147 (Ariz. 2010) (en banc) (agreeing "By virtue of the Supremacy Clause … the [Hague] Convention pre-empts inconsistent methods of service prescribed by state law.") (quoting *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 699 (1988)). Although these cases dealt with the *method* of service used to obtain personal jurisdiction rather than the substantive reach of the state's long arm statute, the analysis is identical; "When there is a conflict between a validly-enacted federal law and a state law, the federal law prevails." *Mortenson v. Mortenson*, 409 N.W.2d 20, 22 (Minn. Ct. App. 1987) (finding Minnesota's state long-arm statute preempted by "more restrictive" limits of federal law); *Dinsmore v. Martin Blumenthal Associates, Inc*., 314 So.2d 561, 567 (Fla. 1975) ("A [state] long-arm statute is unconstitutional unless it … requires a showing of minimal contacts sufficient to meet [federal] due process requirements.")

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Again, while no Arizona case has yet interpreted A.R.S. § 44–7902(A), that law's "nexus" provision is functionally similar, if not identical, to the Delaware statute struck down by the U.S. Supreme Court in *Shaffer v. Heitner*, 433 U.S. 186 (1977).

In *Shaffer*, Delaware state law effectively imposed personal jurisdiction on any person who owned stock in a Delaware corporation, even if the defendant had no other contacts with Delaware. Put differently, the State of Delaware attempted to decree the existence of a "nexus" between itself and non-residents based solely on their ownership of stock in a company which happened to be formed under Delaware law.

"*Not so fast there, Delaware!*" the Supreme Court firmly admonished. After reviewing the controlling federal due process standards, the Supreme Court easily found the Delaware law unconstitutional, because it attempted to create personal jurisdiction based on a *lower standard* than required by the federal Due Process Clause. In conclusion, the Court explained the axiomatic rule: "The Due Process Clause 'does not contemplate that a state may make binding a judgment . . . against an individual or corporate defendant with which the state has no contacts, ties, or relations.'" *Shaffer*, 433 U.S. at 216 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

The rule and logic of *Shaffer* apply fully to this case. No matter how benevolent its reason or purpose, the State of Arizona cannot magically fabricate or falsify the existence of minimum contacts through statutory subterfuge, as it attempted to do with the Mugshot Act's nexus clause. The law simply does not work this way, nor should it. A defendant's forum-related contacts *must actually exist* according to standards set by controlling U.S. Supreme Court precedent. The absence of such contacts is a fatal constitutional gap which precludes the exercise of personal jurisdiction, and that gap cannot be circumvented with cheap legal fictions like the one created by A.R.S. § 44–7902(A). *See Rush v. Savchuk*, 444 U.S. 320, 332 (1980) (rejecting use of "legal fictions" to establish personal jurisdiction over a defendant in the absence of actual minimum contacts, and finding such practice is "plainly unconstitutional … ."); *see also J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 900 (2011) ("the Court has made plain that legal fictions …

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PHOENIX, AZ 85044

should be discarded, for they conceal the actual bases on which jurisdiction rests.") (Ginsburg, J., dissenting) (quoting *Shaffer*, 326 U.S. at 316).

For these reasons, A.R.S. § 44–7902(A) is plainly unconstitutional and it cannot be used to established personal jurisdiction over any of the Defendants here.

c. The Nexus Clause Is Preempted By Federal Law, 47 U.S.C. § 230(c)

Even if A.R.S. § 44–7902(A) was not otherwise unconstitutional, it would still not support personal jurisdiction here. This is so because under the facts of this case, the Mugshot Act's nexus provision is preempted by a different federal law—the Communications Decency Act, 47 U.S.C. § 230 (the "CDA").

This conclusion is based on the interplay of two different parts of the Mugshot Act. The first part is A.R.S. § 44–7901(4) which defines the term "*mugshot website operator*" to mean "a person that [sic] publishes a criminal justice record on a publicly available internet website for a commercial purpose." (emphasis added). The second part is A.R.S. § 44–7902(A) which extends personal jurisdiction to any "*mugshot website operator* that publishes a subject individual's criminal justice record for a commercial purpose on a publicly accessible website … ." (emphasis added).

These two aspects of the Mugshot Law are preempted by the CDA under the facts of this case. This is so because the CDA expressly preempts[4] any state law which treats a website operator or user as a "publisher" of information originating with a third party:

> No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

47 U.S.C. § 230(c)(1) (emphasis added).

[4] *See Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102, 1118 (9th Cir. 2007) (explaining, "The Communications Decency Act states that '[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider,' and expressly preempts any state law to the contrary.") (emphasis added) (citing 47 U.S.C. § 230(e)(2)).

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For the CDA to apply, three elements must be present; the defendant must be "(1) a provider or user of an interactive computer service (2) whom a plaintiff seeks to treat, under a state law cause of action, as a publisher or speaker (3) of information provided by another information content provider." *Dyroff v. Ultimate Software Group, Inc.*, 934 F.3d 1093, 1097 (9th Cir. 2019), cert. denied, 140 S. Ct. 2761 (2020).

Here, all three elements are present. First, Defendant Travis Grant admits to owning/operating several websites. *See* Grant Aff. ¶ 3. Thus, the first element is present; "Websites are the most common interactive computer services." *Dyroff*, 934 F.3d at 1097. *See also Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1162 n.6 (9th Cir. 2008).

Second, the Complaint seeks to treat each Defendant as "publishers". *See*, *e.g,* Compl. ¶ 28; "Since in or around March 2018, Defendants … published Plaintiff's criminal justice records … ." (emphasis added). The Complaint further alleges Defendants are "mugshot website operators" within the meaning of A.R.S. § 44–7901 which defines that term as "a person that publishes a criminal justice record on a publicly available internet website …." (emphasis added). The CDA's second element is met.

Third, the Complaint admits the "information" at issue (Plaintiff's mugshot and arrest records) was neither created nor developed by Defendants, nor did Defendants post this information on the Internet in the first place. It is undisputed this information was created by the Maricopa County Sheriff's Office and it was first published on the Internet by MCSO, not by Defendants. *See* Compl. ¶ 26. Thus, all three elements are met.

To be sure, after Plaintiff's mugshot and arrest information was published online by MCSO, this information was literally "*republished*" by Defendants. But that is exactly what the CDA *allows*; "Plaintiffs are free under section 230 to pursue the originator of a defamatory Internet publication. Any further expansion of liability must await congressional action." *Barrett v. Rosenthal*, 40 Cal. 4th 33, 62–63 (Cal. 2006) (also explaining, "The prospect of blanket immunity for those who intentionally redistribute defamatory statements on the Internet has disturbing implications. Nevertheless, by its

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PHOENIX, AZ 85044

terms section 230 exempts Internet intermediaries from defamation liability for republication.") (emphasis added).

Similarly, although the CDA prohibits monetary liability, Section 230's impact is not limited to damages. Rather, "[S]ection 230(c)(1) precludes courts from treating internet service providers as publishers *not just for the purposes of defamation law*, with its particular distinction between primary and secondary publishers, but in general." *Barnes v. Yahoo!, Inc.*, 570 F3.d 1096, 1104 (9th Cir. 2009) (emphasis added); *see also Global Royalties, Ltd. v. Xcentric Ventures, LLC*, 544 F.Supp.2d 929, 933 (D.Ariz. 2008) (website operator could not be treated as publisher or speaker of third party statement); *Hassell v. Bird*, 5 Cal.5th 522, 541 (Cal. 2018) (website operator not a publisher, even when no money damages are sought; "Even though plaintiffs did not name Yelp as a defendant, their action ultimately treats it as 'the publisher or speaker of ... information provided by another information content provider' … section 230 prohibits this … .")

Because the CDA forbids Plaintiff from treating Defendants as "publishers" of information that originally was posted on the Internet by MCSO, this means the "nexus" provision of A.R.S. § 44–7902(A) cannot apply here, even if that law was otherwise constitutional. In fact, another Court in Arizona has already determined the CDA fully applies to the republication of mugshots and criminal records, as long as those records are obtained from other "preexisting websites" (as occurred here). *See Doe v. Oesterblad*, 2015 WL 12940181, *2 (D.Ariz. 2015) (holding CDA applied to claims against defendant for republishing plaintiffs' "names, photographs, and criminal history" because that information was already published on the Internet by third parties). Other courts have reached exactly the same conclusion. *See*, *e.g.*, *O'Kroley v. Fastcase, Inc.*, 831 F.3d 352 (6th Cir. 2016) (CDA applied to Google's indexing and republication of information obtained from existing online criminal records).

In sum, although this may sound slightly absurd at first blush, the CDA's limits on who can be treated as a publisher means Travis Grant is not a "mugshot website operator", even though he owns and operates a website that happens to display mugshots.

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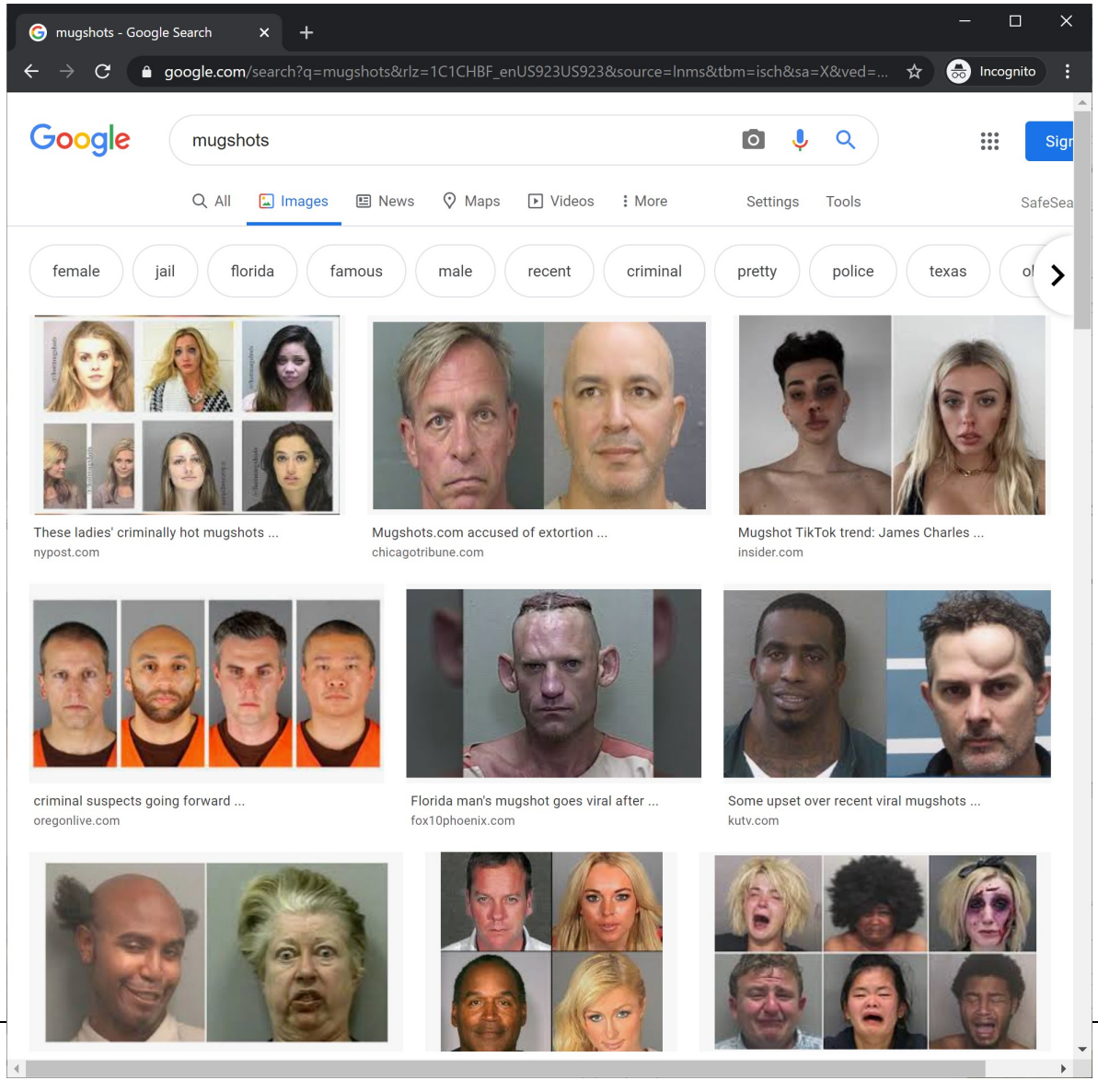
PHOENIX, AZ 85044

This admittedly paradoxical conclusion is required because the Complaint very clearly accuses Defendants of *republishing* a mugshot that was initially published online by a third party (MCSO). Because the information was originally published online by MCSO, the CDA does not permit Plaintiff to treat Defendants as "publishers" of Plaintiff's mugshot. Therefore, Defendants *are not* "mugshot website operators".

While that result may sound strange at first, stop and think about this question—would the Court consider *Google* a "mugshot website operator"? Probably not.

Yet, but-for the CDA, Google would certainly meet the definition of "mugshot website operator": Google "publishes" criminal justice records on a publicly available website for a commercial purpose. Indeed, it is probably accurate to say that no single website on Earth publishes more criminal justice records than Google.



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But no one would seriously argue Google is a "mugshot website operator". Nor could they; Courts have consistently agreed Google cannot be treated as the "publisher" of third party information it displays, even if that information includes criminal records and even if Google profits from this. *See e.g.*, *O'Kroley*, *supra*, 831 F.3d at 353–54.

d. Applying Traditional Personal Jurisdiction Rules, Travis Grant Is Not Subject To Personal Jurisdiction In Arizona

Because the Mugshot Act's "nexus" clause is both unconstitutional and also preempted by the CDA, that provision cannot support personal jurisdiction here. Thus, the Court must consider whether Arizona's long-arm rule can support jurisdiction over Travis. Clearly, the answer to that question is no.

First, as explained in the affidavits submitted herewith, Travis and Mariel reside in Florida. They own no property in Arizona, and they have no customers in Arizona.

Insofar as it relates to Travis's websites, the sites are free to use. Travis does not charge money to allow visitors to search for or view records, and he does not sell any products or services on the site. Rather, the site's sole source of income is from passively displaying advertising from Google, based in California.

Specifically, like countless other similar websites, Travis's sites contain "Google Ads". These are small advertisements created by third party advertisers. Travis's websites contain a small amount of code which displays these third party ads. In turn, the third party creator of each ad pays a fee to Google, and Google shares some of that revenue with Defendants based on the amount of views each ad receives. While their sites do contain advertising from Google, Travis does not target any of that advertising toward Arizona. Indeed, Travis has no control over *what ads* appear on his sites. That decision is made solely by Google.

As noted above, Travis's websites are not focused specifically on Arizona, as opposed to any other state. Rather, these sites contain tens of millions of arrest records automatically complied and gathered from 45 different states including, but not limited

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to, Arizona. In this way, the only real connection this case has to Arizona is the fact Plaintiff currently resides here.

As a matter of law, this is not sufficient to create personal jurisdiction for the reasons descried in the highly analogous case, *Dobrowolski v. Intelius, Inc.*, 2017 WL 3720170 (N.D.Ill. 2017). That case involved claims brought against a website owner, Intelius, which "provide[s] online reports on people, using information complied from public records and other sources." *Dobrowolski*, 2017 WL 3720170, *1. After finding Intelius used her name in commercial advertising without her consent, the plaintiff sued in her home state of Illinois, asserting violations of the Illinois Right of Publicity Act. *See id*. This is analogous to Plaintiff's claims in this case which include a claim for misappropriation of her name/likeness.

Intelius moved to dismiss for lack of personal jurisdiction. In response, the plaintiff pointed to the fact that Intelius admitted "the company has data on 'far more' than 5,000 Illinois residents …" in its database. *Id*. at *3. Despite the fact that Intelius gathered records relating to thousands of people in Illinois, the district court found personal jurisdiction did not exist in Illinois. This holding was based on a single key point—the *only* connection the case had with Illinois was the fact that plaintiff lived there:

> Dobrowolski does not allege that Intelius's ads have any specific geographic tie to Illinois, only that Intelius's ads geographically target her, an Illinois resident, whenever her name is searched. But "the mere fact that [defendant's] conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction."

Id. at *4 (emphasis added) (quoting *Walden v. Fiore*, 134 S.Ct. 1115, 1126 (2014)).

Arizona courts have applied the same standard; the mere fact that a Plaintiff lives in Arizona is not sufficient to create personal jurisdiction here. *See Xcentric Ventures, LLC v. Bird*, 683 F. Supp. 2d 1068, 1074 (D.Ariz. 2010) (adopting rule that an intentional internet-based tort with a known forum resident victim was insufficient to create personal jurisdiction when plaintiff's residence provides the sole connection to Arizona). This is

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4802 E. RAY ROAD, #23-271
PHOENIX, AZ 85044

so because as the Supreme Court has repeatedly explained, "the plaintiff cannot be the only link between the defendant and the forum." *Walden*, 571 U.S. at 285.

In short, simply displaying information about an Arizona resident on a website based in Florida is not sufficient to establish personal jurisdiction here; "When a defendant operates an 'essentially passive website' and has 'done nothing to encourage residents of the forum state to access its site,' those acts are insufficient to confer jurisdiction over an out-of-state defendant." *EZScreenPrint LLC v. SmallDog Prints LLC*, 2018 WL 3729745, *2 (D.Ariz. 2018); *see also Kruska v. Perverted Justice Found. Inc.*, 2009 WL 249432, *4 (D.Ariz. 2009) (explaining, "A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise [of] personal jurisdiction.")

Because there is no basis to find that Defendants engaged in minimum contacts with Arizona, the inquiry ends. As such, the Complaint should be dismissed for lack of personal jurisdiction.

III. CONCLUSION

For the reasons stated, Plaintiff's Complaint should be dismissed for lack of personal jurisdiction.

DATED: February 17, 2021

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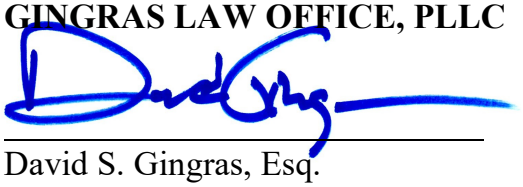

David S. Gingras, Esq.
Attorney for Defendants
Travis and Mariel Grant

GINGRAS LAW OFFICE, PLLC
4802 E. RAY ROAD, #23-271
PHOENIX, AZ 85044

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2021, I transmitted the attached document to the Clerk's Office for filing via ECF, and emailed a copy of the foregoing to:

Andrew Ivchenko, Esq.
Andrew Ivchenko, PLLC
4960 South Gilbert Road, #1-226
Chandler, AZ 85249
Attorney for Plaintiff

GINGRAS LAW OFFICE, PLLC
4802 E. RAY ROAD, #23-271
PHOENIX, AZ 85044

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

Attorney for Defendants
Travis Paul Grant and Mariel Lizette Grant

SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

Jane Doe, Plaintiff, vs. Travis Paul Grant, *et al*., Defendants.	Case No. CV2021-090059 **AFFIDAVIT OF TRAVIS GRANT IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION** (Assigned to Hon. Tracy Westerhausen)

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PHOENIX, AZ 85044

I, Travis Grant, hereby state and declare as follows:

1. My name is Travis Grant. I am a United States citizen, a resident of the State of Florida, am over the age of 18 years, and if called to testify in court or other proceeding I could and would give the following testimony which is based upon my own personal knowledge.

2. I am aware that I am currently a defendant in this matter. I have reviewed the Complaint filed in this case, and I have personal knowledge of the following facts.

3. I am currently the owner and operator of several websites including www.RapSheets.org, www.RapSheetz.com, www.BailBondSearch.com and www.PublicPoliceRecord.com (the "Sites"). The Sites contain a database comprised of tens of millions of public records from 45 different U.S. states

4. The only states *not* represented in the index are Alaska, Delaware, Hawaii, Massachusetts and Vermont. The Sites do not, however, contain information about *federal* criminal arrests or cases because that information is not regularly published on the Internet by federal law enforcement agencies.

5. I am aware from the pleadings in this case that Plaintiff John Doe claims he was arrested by the Maricopa County Sheriff's Office in March 2018 and that at or around the time of his arrest, his mugshot was taken by MCSO and published on MCSO's website.

6. I understand that Plaintiff further alleges that after his mugshot was published online by MCSO, that photo and related arrest information was republished on one or more of my websites.

7. The way my websites operate is very simple. First, an individual is arrested and their mugshot and arrest details are published on the Internet by the arresting agency. Using Maricopa County as an example, the Sheriff's Office publishes this information on its website at: https://www.mcso.org/Mugshot/.

8. After this information is published online by the arresting agency, my system uses software to automatically copy and compile the records into our database.

9. As of February 2021 that database contains in excess of 20 million records, and thousands of new records are automatically complied every day as they are released by the arresting agencies in each state we cover. Due to the volume of records involved, I do not personally review any of the individual records unless a specific need to do so arises

10. Pages appearing on the Sites contain advertisements from Google's AdSense program. I have used Google's AdSense program for many years, and I am personally familiar with how the program works and how it displays advertisements.

11. The Sites generally use a standard page template which displays Google AdSense ads in several different locations on each page. Three of these locations are shown circled in RED below, and more ads were also located lower down the page.

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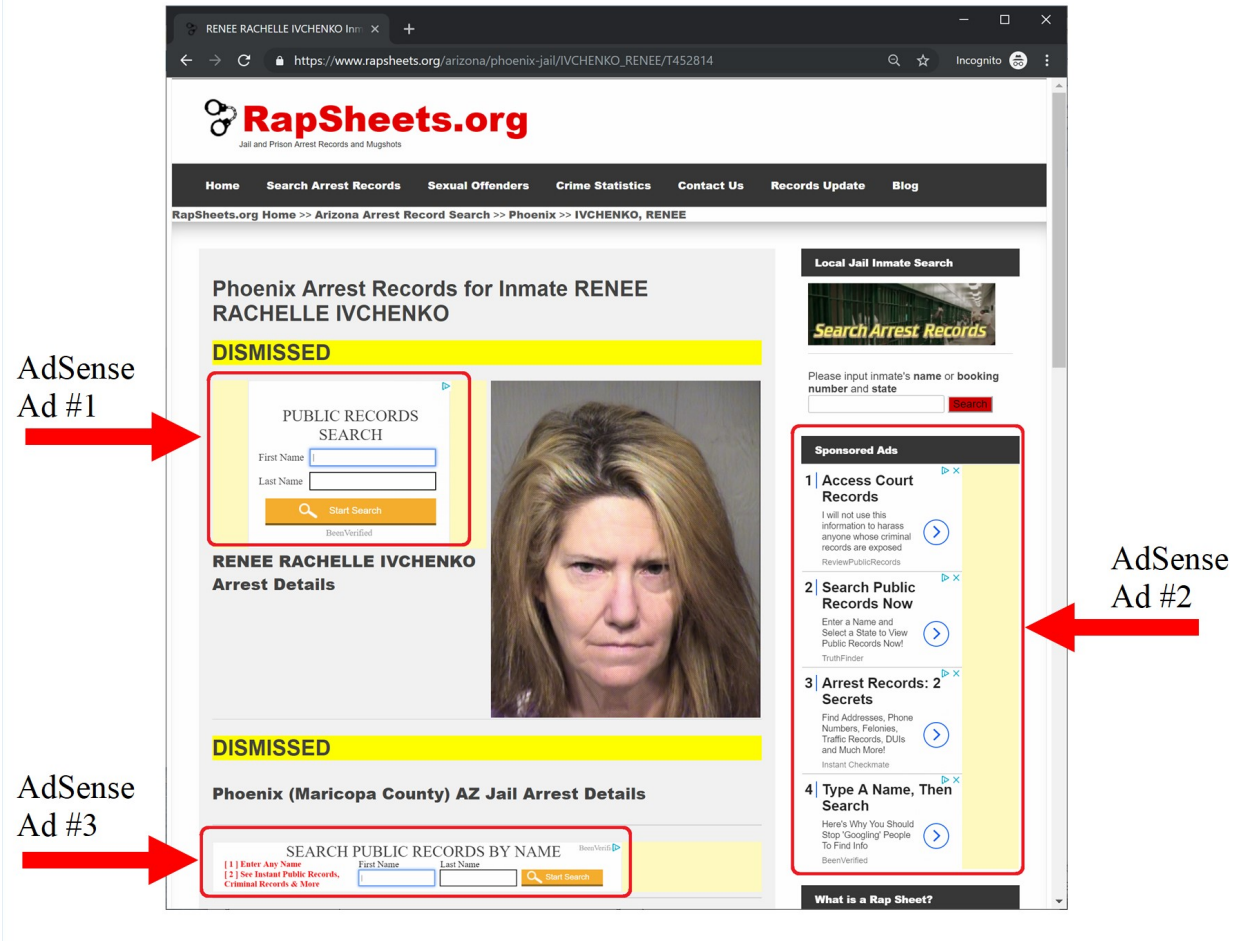
PHOENIX, AZ 85044



12. Google AdSense ads always contain a small blue triangle (example:) in the upper-right corner of the ad which is an industry-standard notification that indicates the advertising content displayed is from Google's AdSense program. These blue triangles are visible in the example above, and in every Google ad appearing on the Site.

13. The contents of each Google AdSense ad are created and controlled solely by Google and/or its advertising customers, not by me or anyone working for me.

14. Putting technical details aside, I think the simplest way to explain how Google AdSense ads work is like this—I am essentially renting "billboard space" on my websites to Google. Google chooses which ads to display on these billboards, and Google pays me to allow it to use that space. The amount of income I receive is based on the number of views each page, and each ad, receive.

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PHOENIX, AZ 85044

15. As the "landlord" (i.e., the website owner), I can control the location where these Google ads/billboards appear on the Sites, and technically I can choose to remove ads by opting-out of the AdSense program at any time, but all other aspects of the ads are controlled by Google, not by me. The actual contents of each ad are created by Google's advertising customers (subject to Google's Terms of Service), and the decision regarding which ads to show to which viewer is made by Google's algorithm. I have no role whatsoever in that process.

16. Google's algorithm for displaying ads is a closely-guarded trade secret, but my understanding is that Google chooses which ads to display based on a wide variety of personalized factors such as the location of the individual viewer and their personal search history. For example, if a person was recently running many Google searches for "new cars", they might see an ad from a new car dealer or manufacturer when they visit my Sites.

17. Because Google customizes (or has the ability to customize) ads to each individual viewer, it is entirely possible that different people visiting the same page may see different ads depending on various factors. I have no control of any kind over those factors or how Google chooses to display ads.

18. Google ads are the only form of paid ads that I used on the Sites from 2018 to the present.

19. I do not now, nor have I ever, specifically tailored my advertising towards the State of Arizona.

20. I do not own any property in Arizona, I do not sell any products/services in Arizona, and thus I do not have, nor have I ever had, any customers in Arizona, and beyond running my websites from Florida, I do not conduct any other business activities in Arizona. As far as I am aware, I do not earn any revenue from Arizona, but due to the way Google ads work, I cannot know this for certain.

21. It is entirely possible that an advertising customer in Arizona might pay Google to display a specific Arizona-related ad through Google's network, and it is

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4802 E. RAY ROAD, #23-271
PHOENIX, AZ 85044

possible that Google might choose to cause that ad to appear on my websites. If this occurred, it would happen without my knowledge and without my participation.

22. Google AdSense ads are the sole and exclusive source of revenue earned by the Sites.

23. Each mugshot page on the Sites contains a disclaimer which includes the following language:

> DISCLAIMER NOTICE: **RAPSHEETS.ORG WEBSITE DOES NOT SOLICIT OR ACCEPT A FEE OR ANY FORM OF PAYMENT TO TAKE DOWN ARREST RECORDS INFORMATION.** INFORMATION POSTED ON THIS WEB SITE IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY. IT IS SUBJECT TO CHANGE AND MAY BE UPDATED PERIODICALLY. WHILE EVERY EFFORT IS MADE TO ENSURE THAT THE POSTED INFORMATION IS ACCURATE, IT MAY CONTAIN FACTUAL OR OTHER ERRORS. INMATE INFORMATION CHANGES QUICKLY AND THE POSTED INFORMATION MAY NOT REFLECT THE CURRENT INFORMATION. ALL ARE PRESUMED INNOCENT UNTIL PROVEN GUILTY IN A COURT OF LAW. PUBLISHED MUGSHOTS AND/OR ARREST RECORDS ARE PREVIOUSLY PUBLISHED PUBLIC RECORDS OF: AN ARREST, A REGISTRATION, THE DEPRIVATION OF LIBERTY OR A DETENTION. THE MUGSHOTS AND/OR ARREST RECORDS PUBLISHED ON RAPSHEETS.ORG ARE IN NO WAY AN INDICATION OF GUILT AND THEY ARE NOT EVIDENCE THAT AN ACTUAL CRIME HAS BEEN COMMITTED. EVERY EFFORT IS MADE TO ENSURE THE ACCURACY OF INFORMATION POSTED ON THIS WEBSITE. HOWEVER, RAPSHEETS.ORG DOES NOT GUARANTEE THE ACCURACY OR TIMELINESS OF THE CONTENT OF THIS WEBSITE. IN ADDITION NAMES MAY BE SIMILAR OR IDENTICAL TO OTHER INDIVIDUALS. FOR LATEST CASE STATUS, CONTACT THE OFFICIAL LAW ENFORCEMENT AGENCY WHICH ORIGINALLY RELEASED THE INFORMATION. NO WARRANTY EXPRESSED OR IMPLIED IS MADE REGARDING THE ACCURACY, ADEQUACY, COMPLETENESS, LEGALITY, RELIABILITY, OR USEFULNESS OF ANY INFORMATION.

24. Prior to the commencement of this lawsuit, I did not know the Plaintiff and I had no idea that she was a resident of Arizona. Indeed, my only knowledge is that Plaintiff claims to currently reside in Arizona. I have no idea if he/she was actually living in Arizona at the time of her arrest as that information was not released by MCSO when it published Plaintiff's mugshot and arrest information online.

25. 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 February 17, 2021.

Travis Grant

GINGRAS LAW OFFICE, PLLC
4802 E. RAY ROAD, #23-271
PHOENIX, AZ 85044

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

Attorney for Defendants
Travis Paul Grant and Mariel Lizette Grant

SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

Jane Doe, Plaintiff, vs. Travis Paul Grant, *et al*., Defendants.	Case No. CV2021-090059 **AFFIDAVIT OF MARIEL GRANT IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION** (Assigned to Hon. Tracy Westerhausen)

I, Mariel Grant, hereby state and declare as follows:

1. My name is Mariel Grant. I am a United States citizen, a resident of the State of Florida, am over the age of 18 years, and if called to testify in court or other proceeding I could and would give the following testimony which is based upon my own personal knowledge.

2. I am aware that I am currently a defendant in this matter. I have reviewed the Complaint filed in this case, and I have personal knowledge of the following facts.

3. I am married to Travis Paul Grant who I understand is a co-defendant in this matter. I was married to Travis during all times relevant to this matter.

4. My husband owns and operates several websites that I understand are the subject of this lawsuit including rapsheetz.com, bailbondshq.com, and publicpolicerecord.com ("Travis's Websites")

5. I have no role whatever in operating any of Travis's Websites. I have never had any role in operating any of these websites since they were first created.

6. I am aware that my name appears listed as the "manager" of Gainesville Console Doctor, LLC, and that this company is listed in the Terms of Service as the owner/operator of one or more of Travis's Websites.

7. As far as I am aware, Gainesville Console Doctor, LLC is a company that my husband formed in Florida many years ago when he was in the business of repairing video game consoles such as Microsoft Xbox. While I understand my name may be listed as the manager of that company, I am not actively involved in any of the company's operations, whatever they may be, and as noted above, if Gainesville Console Doctor, LLC has any role in operating any of Travis's Websites, that is not something I have any involvement with.

8. I am currently 39 years old and I am a stay at home mother. My sole occupation is taking care of my two small children.

9. I am a 2006 graduate of Florida State University where I majored in Theatre.

10. From 1999 to 2001, I served in the United States Marine Corps. During my time in the military, I was stationed at Camp Pendleton, California. I was honorably discharged from the Marines on December 1, 2001.

11. I do not transact any business in Arizona, nor have I ever done so.

12. I do not own any property, real or personal, in Arizona, nor have I ever done so.

13. I have no bank accounts or other assets in Arizona.

14. I have never been to Arizona, except possibly during a layover on a flight to/from another destination.

15. Prior to the commencement of this lawsuit, I did not know the Plaintiff and I had no idea that he/she was a resident of Arizona. Indeed, my only knowledge is that Plaintiff claims to currently reside in Arizona. I have no idea if he/she was actually living

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4802 E. RAY ROAD, #23-271
PHOENIX, AZ 85044

in Arizona at the time of her arrest. To the best of my knowledge, that information was not released by MCSO when it published Plaintiff's mugshot and arrest information online.

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 February 17, 2021.

Mariel Grant

Mariel Lizette Grant

GINGRAS LAW OFFICE, PLLC
4802 E. RAY ROAD, #23-271
PHOENIX, AZ 85044