

1 Andrew Ivchenko (#021145)  
2 **ANDREW IVCHENKO, PLLC**  
3 4960 South Gilbert Road, #1-226  
4 Chandler, AZ 85249  
5 Phone: (480) 250-4514  
6 [Aivchenkopllc@gmail.com](mailto:Aivchenkopllc@gmail.com)  
7 Attorney for Plaintiff

8  
9 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

10  
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 JOHN DOE,

13 Plaintiff,

14 vs.

15 TRAVIS PAUL GRANT, et al.,

16 Defendants.

17 Case No. CV2021-090059

18  
19 **PLAINTIFF'S MOTION TO WAIVE  
APPEARANCE AT FUTURE  
PROCEEDINGS AND TO  
PROCEED UNDER PSEUDONYM**

20  
21 (Assigned to Hon. Tracey Westerhausen)

22 Plaintiff submits this motion and hereupon requests that the Court waive his  
23 appearance in all further proceedings as practicable and grant permission to proceed  
24 under the pseudonym John Doe for the following reasons.

25  
26 **I. INTRODUCTION**

27 This case is a continuation of a previous case filed by Plaintiff in this Court. *See*  
28 Exhibit 3, ¶¶ 2-3. In this lawsuit, Plaintiff contends that Defendants' continuous and  
29 ongoing violations of his rights under Arizona statutory and common law have caused  
30 and continue to cause him injury. *See* Complaint. As more fully explained below,  
31 Plaintiff seeks to remain anonymous and to proceed under pseudonym because of the  
32 sensitive nature of the issues involved and to ensure that Defendants do not engage in  
33 additional online predation designed to further harm his reputation and emotional well-  
34

1 being. Further, disclosure of Plaintiff's identity in connection with this case would  
2 unnecessarily prejudice Plaintiff's case and prevent Plaintiff, and others in his situation,  
3 from asserting and vindicating their rights under Arizona law.

4 This Motion is supported by the following Memorandum of Points and  
5 Authorities; the Complaint filed in this case; Plaintiff's Request for Judicial Notice,  
6 attached hereto as Exhibit 1; Declaration of Steven Scharboneau, attached hereto as  
7 Exhibit 2; Declaration of Andrew Ivchenko, attached hereto as Exhibit 3; and Proposed  
8 Form of Order is attached hereto as Exhibit 4; all of which are incorporated herein.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **II. FACTUAL BACKGROUND**

11 Defendants are notorious mugshot website operators who operate several  
12 websites that post mugshots and criminal records, including that of the Plaintiff. These  
13 include [www.rapsheetz.com](http://www.rapsheetz.com), [www.bailbondshq.com](http://www.bailbondshq.com), and [www.publicpolicerecord.com](http://www.publicpolicerecord.com)  
14 (the "Websites"). The Websites exploit the "embarrassing and humiliating information"  
15 contained in booking photos and other arrest information and do so for purely  
16 commercial purposes. (See Complaint, ¶ 2). As the Sixth Circuit recently held: "**A  
17 disclosed booking photo casts a long, damaging shadow over the depicted  
18 individual.**" *Detroit Free Press Inc. v. United States Dep't of Justice*, 829 F.3d 478, 482  
19 (6th Cir. 2016) (emphasis added). As the Sixth Circuit further explained:

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

24 *Id.* at 482. (citations and quotations omitted). Defendants' business model is to "scrape"  
25 arrest information and booking photos that law enforcement agencies make available to  
26

1 the public (for a brief period of time),<sup>1</sup> and then post this embarrassing and humiliating  
2 information on their Websites for their own commercial gain. *See Complaint, ¶ 2.*

3 In response to the reprehensible business model of mugshot website operators,  
4 such as Defendants, the Arizona State Legislature enacted a “Mugshots Act” that  
5 became effective on August 27, 2019 and is codified at A.R.S. §§ 44-7901, *et. seq.* (the  
6 “Arizona Mugshot Act”). The Arizona Mugshot Act prohibits “mugshot website  
7 operators” from posting arrest information and booking photos for commercial purposes,  
8 which the Act broadly defines to include “any purpose in which the [mugshot website  
9 operator] can reasonably anticipate the receipt of monetary gain from the direct or  
10 indirect use of the public record.” A.R.S. § 39-121.03(D); A.R.S. § 44-7901(2). There is  
11 no question that Defendants’ commercial exploitation of arrest information and booking  
12 photos falls squarely within the conduct proscribed by Arizona’s Mugshot Act.

13 State legislatures, such as Arizona’s, recognize that the commercial exploitation  
14 of arrest information and booking photos by mugshot website operators such as  
15 Defendants causes daily, continuing and ongoing harm to the individual depicted,  
16 creates substantial barriers for those attempting to reintegrate into society from finding  
17 employment, housing, and starting a new life, and militates against efforts at criminal  
18 justice reform and rehabilitation. *See Complaint, ¶ 3.* As such, in addition to any  
19 pecuniary loss caused by a violation, the Arizona Mugshot Act mandates substantial,  
20 increasing damages for each separate violation in an amount of **at least** \$100 per day  
21 during the first thirty days of the violation; \$200 per day during the subsequent thirty  
22

23

---

24 <sup>1</sup> Because of the harm caused by the commercial exploitation of arrest information by  
25 unscrupulous mugshot website operators, such as Defendants, law enforcement agencies  
26 and the State of Arizona do not intend for booking photos and arrest information to be  
“scraped” and then used for a commercial purpose. *Complaint, ¶ 7.*

1 days of the violation; and \$500 per day for each day thereafter. A.R.S. § 44-7902  
2 (emphasis added).

3 Although by this action Plaintiff seeks a vindication of his rights under the  
4 Arizona Mugshot Act (and the Arizona common law), Plaintiff is reasonably concerned  
5 that he will face further online harassment from Defendants or the owners of similar  
6 websites who have a mutual interest in dissuading other victims from pursuing their  
7 legal rights against them under Arizona and other states' laws. Indeed, Defendants have  
8 engaged in the exact behavior which Plaintiff rightfully fears on numerous occasions  
9 (See Exhibits 2 and 3). As such, there is a very real threat that if Plaintiff's true identity  
10 is disclosed as result of participation in this lawsuit, Defendants and/or other mugshots  
11 website operators will retaliate against him. To make matters worse, predatory mugshot  
12 website operators such as Defendants hold grudges and often monitor the online activity  
13 of targeted individuals for further harassment in order to make an example of them. *See*  
14 Exhibit 3 ¶ 5. The result is often an endless nightmare that Plaintiff, who is already  
15 adversely affected by Defendants' unlawful activity, wishes to avoid.

16 Since Defendants have continuously exploited an innumerable amount of  
17 individual's criminal justice information since the beginning of the Arizona Mugshot  
18 Act's effective date, potential Arizona plaintiffs are entitled to substantial amounts of  
19 monetary damages. Moreover, because the Defendants operate at least two separate  
20 mugshot websites, the total damages could double. Considering these potentially  
21 staggering damage amounts, and the fact that other plaintiffs will be filing lawsuits  
22 against them (*Id.*, ¶¶ 3-4), this lawsuit poses an existential threat to Defendants'  
23 nefarious business practices. Faced with such a threat, Defendants, and perhaps other  
24 mugshot website operators, will most certainly retaliate in an attempt to both punish  
25 Plaintiff for asserting his rights, and to create a chilling effect to dissuade other potential

1 plaintiffs from joining the litigation. Defendants (and other threatened mugshot website  
2 operators) will have the motive, the means, and the opportunity to inflict additional,  
3 substantial harm to the Plaintiff's reputation, all in contravention of the spirit and  
4 purpose of Arizona's Mugshot Act. Indeed, having no plausible defense under Arizona  
5 law, Defendants have already proven beyond any shadow of a doubt that "scorched  
6 earth" tactics are their *modus operandi*. *See Exhibits 2 and 3.*

7 In short, Defendants' aggressive response toward plaintiffs, attorneys and  
8 attorneys' families who engage in litigation against them justifies the concerns of  
9 Plaintiff. As a result, Plaintiff respectfully requests the Court waive his presence during  
10 further proceedings and permit him to proceed under pseudonym. Plaintiff further  
11 respectfully requests that his name and identity be revealed only if and when necessary,  
12 pursuant to a good faith basis, on an "attorneys' eyes only" basis, and that his identity be  
13 prohibited from being revealed to Defendants and third parties, or be revealed in any  
14 court documents.

15 **III. THE PLAINTIFF'S MOTION SHOULD BE GRANTED**

16 Although there appears to be no reported Arizona cases that directly address the  
17 circumstances under which a plaintiff may proceed pseudonymously, there are lessons  
18 that can be drawn from the facts and circumstances of several cases. In *Doe v. Arpaio*,  
19 150 P.3d 1258 (Ariz. Ct. App. 2007), for example, the plaintiff Doe was a prison inmate  
20 who brought a constitutional challenge against the prison for its refusal to allow her to  
21 leave jail to procure a first-trimester abortion. The Court of Appeals addressed the issue  
22 in a single sentence: "The trial court allowed plaintiff Jane Doe to proceed  
23 pseudonymously. We continue that usage." *Id.* at 1259 n.1.

24 The Ninth Circuit has held that "a party may preserve his or her anonymity in  
25 judicial proceedings in special circumstances when the party's need for anonymity

1 outweighs prejudice to the opposing party and the public's interest in knowing the  
2 party's identity." *Does I thru XIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068-69  
3 (9th Cir. 2000) ("conclude[ing] that the district court abused its discretion in denying  
4 plaintiffs permission to proceed anonymously"). More specifically, a plaintiff may  
5 proceed under a pseudonym when, as here, "identification creates a risk of retaliatory  
6 physical or mental harm[.]" *Id.* Indeed, "[w]here it is necessary ... to protect a person  
7 from harassment, injury, ridicule or personal embarrassment, courts have permitted the  
8 use of pseudonyms." *United States v. Doe*, 655 F.2d 920, 922 (9th Cir. 1980).

9 In *Advanced Textile Corp*, the Ninth Circuit established five factors for courts to  
10 consider in determining whether to allow a party to proceed under a fictitious name, all  
11 of which weigh in favor of allowing Plaintiff to proceed anonymously. These five  
12 factors include: (i) severity of the threatened harm; (ii) reasonableness of anonymous  
13 parties' fears; (iii) anonymous parties' vulnerability to such retaliation; (iv) prejudice to  
14 opposing party; and (v) public interest. *Does I thru XIII*, 214 F.3d at 1068. In *Doe*, "No  
15 factors weigh[ed] against concealing plaintiffs' identities." *Id.* at 1069.

16 The first factor clearly weighs in favor of permitting anonymity. Plaintiff fears  
17 that disclosure of his identity would cause Defendants (or other mugshot website  
18 operators) to retaliate against him by engaging in additional online activities designed to  
19 further harm his reputation and emotional well-being. *See Exhibit 3 ¶¶ 5, 7, 10-12*. Both  
20 courts and legislatures recognize the severity of this threatened harm. *See e.g., Detroit*  
21 *Free Press Inc.*, 829 F.3d at 482 (recognizing that exploiting a person's booking photo  
22 or arrest information "casts a long, damaging shadow over the depicted individual");  
23 Arizona Revised Statute §§ 44-7901, 7902; Mugshot website operators; prohibited acts;  
24 exceptions (the "Arizona Mugshot Statute").

1 Plaintiff fears that disclosure of his identity would cause Defendants (or others) to  
2 retaliate against him is more than reasonable, and therefore, the second factor also  
3 weighs in favor of granting anonymity. *See Exhibit 3 ¶¶ 5, 7, 10-12.* Defendants in their  
4 response will likely continue their tired mantra that they are the victims of a vendetta led  
5 by Plaintiff's counsel, whose spouse, Renee Ivchenko, previously has litigated against  
6 them (represented once by Plaintiff's counsel, and a second time by another law firm).  
7 The Court should ignore these frivolous arguments that are little more than transparent  
8 attempts to deflect attention away from Defendants' illegal activities and the issues in  
9 this case. Significantly, the experiences of all identified plaintiffs and their attorneys  
10 over the course of the past year at the hands of Defendants provide ground-truth that  
11 more than substantiates Plaintiff's concerns. *See Exhibits 2, 3.* The examples outlined in  
12 the attached affidavits confirm that Plaintiff's fear of retaliation by Defendants (or other  
13 mugshot website operators) is more than reasonable. *Id.*

14 Plaintiff is concerned about the risk of further severe online retaliation and  
15 permanent damage to his reputation, and the severe emotional distress that comes with  
16 it, for challenging the activities of the Defendants, either from them or other mugshot  
17 website operators whose operations in Arizona are now threatened. These individuals  
18 prey on vulnerable members of society, and share a common interest in preventing this  
19 litigation from escalating to include additional plaintiffs and possibly defendants. The  
20 targeted and severe online harassment experienced by others who have litigated against  
21 them, as well as the overt public attacks on attorneys and their families who represent  
22 clients who wish to assert their rights against them, it is clear that this threat of severe  
23 retaliation is not only likely, but inevitable. *Id.*

24 Next, the third factor also weighs in favor of permitting anonymity because,  
25 again, exploiting a person's arrest information (even once) on the internet or otherwise

1 "casts a long, damaging shadow over the depicted individual." *Detroit Free Press Inc.*,  
2 829 F.3d at 482. Put another way, Plaintiff is extremely vulnerable in this case because it  
3 takes only one internet or social media post by Defendants (or someone else) exploiting  
4 their arrest information to cause enormous, continuing and ongoing damages to them,  
5 including, *inter alia*, permanently "hampering the depicted individual's professional and  
6 personal prospects." *Id.* "[M]odern technology only heightens the consequences of  
7 disclosure—in today's society the computer can accumulate and store information that  
8 would otherwise have surely been forgotten." *Id.*

9 The fourth factor also weighs in favor of permitting anonymity because  
10 anonymity does not affect the ability of Defendants from challenging any of the causes  
11 of action outlined in the Complaint. There is no prejudice to Defendants, who publish  
12 millions of arrest records and booking photos on the Websites. Plaintiff is not, at this  
13 time, claiming individualized pecuniary loss and therefore his minimum statutorily  
14 mandated damage amount under the Arizona Mugshot Statute can be determined simply  
15 through disclosure of the date of his arrest. As such, other than specific information such  
16 as the date when Defendants scraped someone's arrest data from the law enforcement  
17 websites, the actual identity of that individual is irrelevant, at least at this point in the  
18 litigation. Anonymity simply does not affect the ability of Defendants from challenging  
19 any of the causes of action outlined in the Complaint.

20 Defendants do not need to know Plaintiff's identity in order to establish that  
21 Defendants did not violate the Arizona Mugshot Statute. The new law defines mugshot  
22 website companies as "mugshot website operators" and prohibits their operation for  
23 commercial purposes, which the law defines to include "any purpose in which the  
24 [mugshot website operator] can reasonably anticipate the receipt of monetary gain from  
25 the direct or indirect use of the public record." A.R.S. § 39-121.03(D); A.R.S. § 44-

1 7901(2). Plaintiff's claims in this case are not based on any specific method of  
2 commercializing his arrest photo. They are based on the use of the arrest information  
3 and the photo to solicit advertising on the Websites, which, is illegal under Arizona law.  
4

5 Finally, the fifth factor also weighs in favor of permitting anonymity because it is  
6 the public policy of Arizona that the identities of arrestees only be disclosed to the  
7 public on a limited basis, only by law enforcement agencies or bona fide news agencies  
8 and only for a brief period of time. See Complaint, ¶¶ 5, 7. Although members of the  
9 public can review, copy, and publish arrest information for lawful purposes, Arizona  
10 public policy, as mandated and confirmed by the Arizona Mugshot Statute, plainly  
11 prohibits people, like Defendants who operate a mugshot website, from exploiting these  
records for commercial purposes.  
12

13 The need to protect Plaintiff from retaliation also greatly outweighs the public's  
14 interest in knowing the party's identity. The proceedings in this case will still be open to  
the public. Moreover, the public has no interest in knowing the identity of the Plaintiff.  
15 Indeed, it is the public policy of Arizona that the identities of arrestees only be disclosed  
16 to the public on a limited basis, only by law enforcement agencies or bona fide news  
17 agencies, and only for a brief period of time. *See* Complaint, ¶ 7. In short:  
18

19 [B]ased on the extreme nature of the retaliation threatened against  
20 plaintiffs coupled with their highly vulnerable status, that plaintiffs  
reasonably fear severe retaliation, and that this fear outweighs the  
interests in favor of open judicial proceedings.  
21

22 *Does I thru XIII*, 214 F.3d at 1069 (9th Cir. 2000).

23 There has been an increase across jurisdictions of plaintiff pseudonyms to protect  
24 privacy interests in the Internet age. See *Starbucks Corp. v. Superior Court*, 86 Cal.  
25 Rptr. 3d 482 (Cal. Ct. App. 2008). In that case, the Court noted that “[t]he judicial use of  
26 ‘Doe plaintiffs’ to protect legitimate privacy rights has gained wide currency,

1 particularly given the rapidity and ubiquity of disclosures over the World Wide Web.”  
2 Defendants represent the underbelly of the Internet, and have weaponized it to tarnish  
3 the reputations of one of the most vulnerable populations in society—the millions of  
4 Americans who have been arrested, even though many have been found innocent of any  
5 crime, or have otherwise had their charges dropped, not filed, expunged, or dismissed.

6 Plaintiff anonymity in this case is consistent with the landmark ruling in the Sixth  
7 Circuit’s *Detroit Free Press* case, which held that “individuals have a non-trivial privacy  
8 interest in preventing disclosure of their booking photos.” *Detroit Free Press Inc.*, 829  
9 F.3d at 485. The Sixth Circuit explained:

10 In 1996, when we decided *Free Press I*, booking photos appeared on  
11 television or in the newspaper and then, for all practical purposes,  
12 disappeared. Today, an idle internet search reveals the same booking  
13 photo that once would have required a trip to the local library’s  
14 microfiche collection. In fact, mug-shot websites collect and display  
15 booking photos from decades-old arrests[.]

16 *Id.* at 482. In so holding, the Sixth Circuit overruled its decades-old earlier decision on  
17 the issue, acknowledging that the internet and social media have worked unpredictable  
18 changes in the way photographs are stored and shared. *Id.* at 486. Photographs no longer  
19 have a shelf life, and they can be instantaneously disseminated for malevolent purposes.

20 *Id.*

21 No arbiter of fact could be prejudiced in favor of Plaintiff because it knows him  
22 only by the name of Doe. *Doe v. Ayers*, 789 F.3d 944, 946 (9th Cir. 2015). Critical in the  
23 *Doe* court’s analysis was “the precise prejudice at [this particular] stage of the  
24 proceedings to the opposing party.” *Id.* (quoting *Does I thru XIII*, 214 F.3d at 1068). As  
25 here, the *Doe* case was in the early stage of the proceedings, so there was no jury to  
26 prejudice, or party to impeach. *Id.* At some point, Plaintiff may need to disclose his  
identity in order to obtain injunctive relief from the court, which would require him to

1 disclose to Defendants which records to remove from the Websites. However, at that  
2 point Defendants can be directed through court order to destroy the personal data in their  
3 possession, and not to use that information for any other purpose, or to disclose it to any  
4 third parties. Moreover, anonymity will prevent third parties from disparaging the  
5 Plaintiff, thereby creating a chilling effect discouraging other potential claimants from  
6 bringing an action under the Arizona Mugshot Act against other mugshot website  
7 operators such as Defendants who exploit booking photos and arrest information for  
8 purely commercial purposes. The Arizona legislature's objective in passing the Arizona  
9 Mugshot Act was to put an end to the reprehensible activities of mugshot website  
10 operators, and providing Plaintiff the opportunity to proceed under pseudonym is  
11 consistent with the legislative intent.

12 The Arizona Mugshot Act encompasses Defendants' exact conduct. In fact, the  
13 Legislature and various stakeholders actually discussed the exact types of websites at  
14 issue here during the committee hearings on the proposed legislation.<sup>2</sup> Websites such as  
15 those operated by Defendants were repeatedly mentioned as prime examples of the types  
16 of activity the Legislature sought to enjoin when it drafted this legislation. The House  
17 Public Safety Committee unanimously passed this legislation. *Id.* During the hearing, the  
18 state representatives minced no words when describing mugshot website operators such  
19 as Defendants. State Representative Campbell emphasized that the legislation was  
20 directed against such "sleaze ball operators" (*Id.* at 19:00), and Committee Chairman  
21 Payne declared that "[nobody] should be hampered by something like this." (*Id.* at  
22 19:34). Chairman Payne further described these activities as "cruel, pure cruel." (*Id.*).  
23

24 <sup>2</sup> See AZ HB2191 - criminal justice records; prohibited uses: Hearing Before the House Public Safety  
25 Comm., Fifty-fourth Legislature 1st Regular. (2019, February 13). Available at  
[http://azleg.granicus.com/MediaPlayer.php?view\\_id=13&clip\\_id=22019](http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=22019).

1 Plaintiff is not simply making a generalized showing of susceptibility to online  
2 abuse, but rather an individualized finding based on harassment and attacks experienced  
3 by Plaintiff's counsel and by others who have brought litigation against these same  
4 individuals. (See Exhibits 2, 3). Indeed, Defendants have a proven track record of  
5 overtly attacking individuals and the families of individuals who dare to assert their  
6 rights against them. Plaintiff reasonably fears severe retaliation, and this fear outweighs  
7 the interest in favor of open judicial proceedings. No factors weigh against concealing  
8 the Plaintiff's identity. Defendants suffer no prejudice by being precluded from knowing  
9 the identity of the Doe Plaintiff on a need to know, "attorneys' eyes only" basis, after  
10 demonstrating a good faith basis.

11 Simply put, sufficient "special circumstances" exist to permit Plaintiff to proceed  
12 with this lawsuit under a pseudonym. *Does I thru XIII*, 214 F.3d at 1068.

13 **CONCLUSION**

14 For the foregoing reasons, Plaintiff respectfully requests that his motion to proceed  
15 under pseudonym be granted. Plaintiff respectfully requests that the Court further order  
16 that Defendants may discover the true identity of Plaintiff either: 1) by stipulation of the  
17 parties; or 2) by demonstrating to the Court a reasonable good faith basis for the  
18 disclosure. Plaintiff respectfully requests that the Court further order that if disclosure of  
19 Plaintiff's true identity is permitted, either by stipulation or by an Order of the Court,  
20 such disclosure will be made on an "attorneys' eyes only" basis. For the Court's  
21 convenience, a Proposed Form of Order is attached hereto as Exhibit 4.

23 **DATED** this 22<sup>nd</sup> day of January, 2021.

## ANDREW IVCHENKO, PLLC

By: s/ Andrew Ivchenko  
Andrew Ivchenko, Esq.  
*Attorney for Plaintiff*

**ORIGINAL** e-filed through [www.azturbocourt.com](http://www.azturbocourt.com)  
on January 22, 2020.

# **EXHIBIT 1**

1 Andrew Ivchenko (#021145)  
2 **ANDREW IVCHENKO, PLLC**  
3 4960 South Gilbert Road, #1-226  
Chandler, AZ 85249  
4 Phone: (480) 250-4514  
[Aivchenkopllc@gmail.com](mailto:Aivchenkopllc@gmail.com)  
5 Attorney for Plaintiff

6 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

7 **IN AND FOR THE COUNTY OF MARICOPA**

8 JOHN DOE,

9 Case No. CV2021-090059

10 Plaintiff,

11 vs.

12 TRAVIS PAUL GRANT, et al.,

13 (Assigned to Hon. Tracey Westerhausen)

14 Defendants.

15 **PLAINTIFF'S REQUEST FOR**  
**JUDICIAL NOTICE**

16 Pursuant to Ariz. R. Evid. 201(c)(2), Plaintiff John Doe (Plaintiff) respectfully  
17 requests that the Court take judicial notice of the contents of the following websites and  
18 records of the Superior Court and the Arizona District Court:

- 19 • [www.publicpolicerecord.com](http://www.publicpolicerecord.com)
- 20 • [www.bailbondshq.com](http://www.bailbondshq.com)
- 21 • [www.rapsheetz.com](http://www.rapsheetz.com)
- 22 • <https://rapsheetsorgkyledavidgrant.wordpress.com>
- 23 • <https://www.mcso.org/>
- 24 • <https://www.mcso.org/i-want-to/mugshot-lookup>

1       • Declaration of Steven Scharboneau in Support of Plaintiff's Motion to  
2 Proceed Under Pseudonym, filed December 1, 2020 in Case No. CV2020-  
3 055722; attached hereto as Exhibit 2.  
4       • Affidavit of David S. Gingras in Support of Defendants' Response to  
5 Plaintiffs' Motion to Dismiss, filed May 22, 2020 in Case No. CV-20-  
6 00674 PHX-MTL, Doc 15-1.

8           Judicial notice of these documents is proper because “a court may properly take  
9 judicial notice of its own records.” *State v. Rhome*, 235 Ariz. 459, 461, 333 P.3d 786, 788  
10 (App. 2014). Furthermore, the Court should take judicial notice of the contents of each  
11 of the foregoing publically accessible internet websites, because the authenticity of each  
12 website has not been challenged and is capable of accurate and ready determination. See  
13 *Shtyrkova v. Gorbunov*, No. 2 CA-CV 2013-0163, 2014 WL 3732542, at \*3 (Ariz. Ct.  
14 App. July 28, 2014) (citing *Francarl Realty Corp. v. Town of E. Hampton*, 628 F. Supp.  
15 2d 329, 332 n. 3 (E.D.N.Y. 2009), aff'd in part, vacated in part on other grounds, 375 F.  
16 App'x 145 (2d Cir. 2010), and aff'd, 400 F. App'x 605 (2d Cir. 2010) (recognizing that  
17 judicial notice of website is permissible where authenticity is not challenged and is  
18 capable of accurate and ready determination); see also *Energy Automation Sys., Inc. v.*  
19 *Saxton*, 618 F. Supp. 2d 807, 810 (M.D. Tenn. 2009) (“A court may take judicial notice  
20 of the contents of an internet website”); *Wilson v. Playtika, Ltd.*, 349 F. Supp. 3d 1028,  
21 1042 (W.D. Wash. 2018) (Courts may take judicial notice of information derived from a  
22 publically accessible website); *Perkins v. LinkedIn Corp.*, 53 F. Supp. 3d 1190, 1204  
23 (N.D. Cal. 2014) (Courts may take judicial notice of “publically accessible websites”).<sup>1</sup>

---

26           <sup>1</sup> “The text of Ariz. R. Evid. 201(b) is identical to that of Fed.R.Evid. 201(b). ‘Where the  
27 language of an Arizona rule parallels that of a federal rule, federal court decisions  
28

**DATED** this 22<sup>nd</sup> day of January, 2021.

Respectfully submitted,

By: *s/ Andrew Ivchenko*  
Andrew Ivchenko, Esq.  
*Attorney for Plaintiff*

interpreting the federal rule are persuasive but not binding....'" *Shtyrkova v. Gorbunov*, No. 2 CA-CV 2013-0163, 2014 WL 3732542, at \*3 n. 5 (Ariz. Ct. App. July 28, 2014) (citing Ariz. R. Evid., prefatory cmt. to 2012 amend.).

# **EXHIBIT 2**

1 Craig J. Rosenstein, Esq. (024766)  
2 **ROSENSTEIN LAW GROUP, PLLC**  
3 8010 E McDowell Rd., Suite # 111  
4 Scottsdale, Arizona 85250  
5 Telephone: (480) 248-7666  
6 Facsimile: (480) 946-0681  
7 Attorney for Plaintiff

8

9 **ARIZONA SUPERIOR COURT**

10

11 **MARICOPA COUNTY**

12 JOHN DOE,

13 Case No. CV2020-055722

14 Plaintiff,

15 vs.

16 TRAVIS PAUL GRANT et al.,

17

18 **DECLARATION OF STEVEN  
SCHARBONEAU IN SUPPORT OF  
PLAINTIFF'S MOTION TO  
PROCEED UNDER PSEUDONYM**

19 Defendants.

20 HON. JAMES SMITH

21 1. My name is Steven Scharboneau and I am an Arizona attorney, along with  
22 other attorneys from the Rosenstein Law Group, PLLC, representing the Plaintiff in the  
23 above-captioned case, and make these statements based on my own personal knowledge.

24 2. Prior to my involvement in litigation with Defendants, they had published  
25 my criminal justice information from an arrest that had occurred in 2004. After sending  
26 the Defendants letters requesting that they remove my criminal justice information in  
27 mid-2019, they eventually complied with these requests—removing all information  
28 resulting from my 2004 arrest.

29 3. Upon learning of my involvement in drafting, lobbying and eventually  
30 shepherding what is now Arizona Revised Statutes §§ 44-7901, 7902 into law, and  
31 following our firm's initial conversation with the attorney for Defendants (David

1 Gingras), on October 2, 2020 notifying him that we represent the clients who had  
2 initiated a lawsuit against Defendants in a separate matter from this one, Defendant's  
3 retaliated against me by posting my mugshot on the front page of their commercial  
4 mugshot website, [www.publicpolicerecord.com](http://www.publicpolicerecord.com), and published a harassing, damaging and  
5 defamatory story about my family and I.

6 4. Following a hyperbolic and misleading narration of events which took  
7 place on the date of my arrest when I was seventeen years-old, Defendants go on to  
8 include several other sections, misrepresenting my family and I to the public. For  
9 example, one such section includes the following:

10 11 Stephen Scharboneau came from a broken home. His parents divorced  
12 when he was just a toddler. Stephen Scharboneau father was a raging  
13 alcoholic and used to beat him. The apple didn't fall from the tree as  
14 Stephen was also drinking to intoxication and using marijuana. At the time  
15 of his arrest, he could only read at a 6th grade level. His mother was never  
16 in his life. He did try to live with her during his teens but it never "worked  
17 out"

18 5. Upon information and belief, Defendants posted the aforementioned  
19 information the day after our discussion with their attorney, Mr. Gingras.

20 6. It is clear from the timeline of events and communications with the parties  
21 involved that the reposting of my criminal justice information by Defendants was meant  
22 to harass and intimidate me and was retaliatory in nature.

23 7. Mr. Gingras acknowledged that his clients had published this information  
24 and when confronted about it, Mr. Gingras responded in an email to Craig Rosenstein,  
25 attorney for Plaintiff, that while he does not condone this behavior, "it kind of makes  
26 sense that my clients have responded this way against Steven." Mr. Gingras further  
27 stated in his email to Mr. Rosenstein regarding the publication of the aforementioned  
28

information that: "a civil suit is very much like a declaration of war, and if you declare war on someone, you shouldn't expect a warm and fuzzy response."

8. Our firm represents one other client against Defendants, a case which is in The United States Federal Court, District of Arizona. See Case 2:20-cv-02045-SPL. Despite efforts to conceal the client's identity in this matter, Defendants along with Mr. Gingras assumed who the Jane Doe Plaintiff was. In retaliation, Defendants included her mugshot and criminal justice information on the front page of their website, [www.publicpolicerecords.com](http://www.publicpolicerecords.com). Furthermore, Mr. Gingras has included hyperlinks to the individual who he assumed is the Plaintiff's mugshot and criminal justice information in his pleadings and used her name in captions despite her filing under Jane Doe.

9. I am aware of one other attorney who has engaged in civil litigation with Defendants and Defendants have engaged in similar harassing and intimidating conduct with his wife, who was also engaged in litigation with Defendants.

10. I declare under penalty of perjury that the foregoing is true and correct.

**DATED** this 1<sup>96</sup> day of December, 2020.

Respectfully submitted,

By:

Steyen Scharboneau  
*Attorney for Plaintiff*

# **EXHIBIT 3**

1 Andrew Ivchenko (#021145)  
2 **ANDREW IVCHENKO, PLLC**  
3 4960 South Gilbert Road, #1-226  
4 Chandler, AZ 85249  
5 Phone: (480) 250-4514  
6 [Aivchenkopllc@gmail.com](mailto:Aivchenkopllc@gmail.com)

7 *Attorney for Plaintiffs*

8 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

9 **IN AND FOR THE COUNTY OF MARICOPA**

10 JOHN DOE,

11 Case No. CV2021-090059

12 Plaintiff,

13 vs.

14 TRAVIS PAUL GRANT, et al.,

15 Defendants.

16 **DECLARATION OF ANDREW  
17 IVCHENKO IN SUPPORT OF  
PLAINTIFF'S MOTION TO  
PROCEED UNDER PSEUDONYM**

18 (Assigned to Hon. Tracey Westerhausen)

19 1. My name is Andrew Ivchenko and I am an Arizona attorney representing  
20 the Plaintiff in the above-captioned case, and make these statements based on my own  
personal knowledge.

21 2. On May 1, 2020, I filed a lawsuit in this Court against Defendants on behalf  
22 of 20 anonymous plaintiffs, including Plaintiff John Doe in this case, alleging violations  
23 of Arizona Revised Statute §§ 44-7901, 7902; Mugshot website operators; prohibited  
24 acts; exceptions (the “Arizona Mugshot Statute”), as well as other causes of action under  
25 Arizona common law. This was Case No. CV2020-093006 (the “Previous Case”).

1       3. Defendants removed the Previous Case to Federal court on June 9, 2020  
2 (Case No. 20-CV-674-PHX-MTL). The plaintiffs filed a Motion to Remand to State  
3 Court on July 9, 2020. The Federal court made no rulings for over four months. On  
4 November 12, 2020, the Federal court granted Defendants' request to conduct additional  
5 discovery, and set a date for oral argument on Defendants' pending motion to dismiss,  
6 originally filed in state court, but did not rule on the plaintiffs' Motion to Remand to  
7 State Court. On November 13, 2020, the plaintiffs made a strategic decision to  
8 voluntarily dismiss their complaint in the Previous Case pursuant to F.R.C.P.  
9 41(a)(1)(A)(i), and proceed in this Court with individual actions. This is the first of such  
10 actions. The Plaintiff in this action was identified in the Previous Case as "John Doe #3."  
11

12      4. I represent numerous clients that wish to pursue their legal rights against  
13 mugshot website operators such as Defendants. Many of these clients have had a negative  
14 interaction with the legal system, compounded by the actions of mugshot website  
15 operators who in the Internet age make it almost impossible for them to move on from a  
16 difficult time in their lives. These clients fear they will be subjected to further online  
17 humiliation and damage to their reputations at the hands of mugshot website operators  
18 like Defendants should they pursue their rights in court. Most of my clients previously  
19 interacted with Defendants in an effort to have their booking photos and arrest  
20 information removed from Defendants' websites at [www.rapsheetz.com](http://www.rapsheetz.com),  
21 [www.publicpolicerecord.com](http://www.publicpolicerecord.com), and [www.bailbondshq.com](http://www.bailbondshq.com) (the "Websites"). In every  
22 instance Defendants refused to remove their booking photos and arrest information from  
23 the Websites.  
24

25      5. From my experiences in dealing with mugshot website operators (as  
26 defined by A.R.S. § 44-7901(4)), they are vindictive individuals who hold grudges and  
27 often monitor the online activity of targeted individuals for further harassment in order to  
28

1 make an example of them. For example, an individual named Zim Rogers, who was the  
2 lead class action plaintiff against a mugshot website operator in *Rogers v. Justmugshots*,  
3 2015 Cal. App. Unpub. LEXIS 7177 (Cal. App. 2d Dist. Oct. 7, 2015), had success in  
4 court against a mugshot website operator at both the trial and appellate level. However,  
5 this did not insulate him from further oppression by this malicious and vindictive  
6 community of mugshot website operators, as his booking photos and arrest information  
7 was later posted on Twitter, as well as on a second revenge site, by anonymous, unknown  
8 parties.  
9

10 6. Defendants' attorney, David Gingras, has used threats and intimidation as a  
11 tactic to get my clients to drop their claims against Defendants. He has repeatedly and  
12 aggressively threatened me with Rule 11 sanctions, motions for attorney's fees, and civil  
13 lawsuits. Mr. Gingras even filed a bar complaint against me, which was dismissed by the  
14 Arizona Bar on May 28, 2020. I have no reason to believe that these tactics, as demonstrated in  
15 other cases against Defendants, would not be directed against the Doe Plaintiff in the instant  
16 case if given the opportunity. *See Exhibit 2, ¶ 8.*

17 7. My spouse, Renee Ivchenko, and other anonymous plaintiffs previously  
18 litigated against Defendants in connection with the removal of their booking photos and  
19 arrest information from the Websites (Arizona District Court Case No. 20-CV-674-  
20 PHX-MTL). These parties were represented in that case by Dickinson Wright PLLC.  
21 That case was eventually dismissed by the plaintiffs, so that they could join the Previous  
22 Case referenced in Paragraph 2, *supra*. In response, Defendants unsuccessfully tried to  
23 obtain attorney's fees from Renee Ivchenko, the only named Plaintiff in that case. *See*  
24 Doc 15, Case No. CV-20-00674 PHX-MTL. In addition, Defendants filed two  
25 unnecessary motions in that case that targeted Renee Ivchenko (the only identified  
26 plaintiff in that case) by including her booking photo and detailed arrest information,  
27  
28

including court documents, into the motions. This was done by Defendants simply to ensure that her arrest information and booking photos were made part of the public court record.

8. In his Affidavit in support of Defendants' motion for attorneys fees, Mr. Gingras stated that "Defendants incurred costs in the amount of \$36.00 paid to the City of Scottsdale for the purpose of obtaining evidence (police reports and body camera video) which directly relates to the defense of Mrs. Ivchenko's claims." (Case No. CV-20-00674, Doc 15-1, ¶ 17). This request was made even though Renee Ivchenko dropped her defamation claims in the original Complaint by filing an Amended Complaint on February 27, 2020, and there was no remaining cause of action that would plausibly have required Defendants' attorney to obtain this information to defend his clients.

9. Two of my former clients are represented by The Rosenstein Law Group, PLLC in lawsuits filed in this Court against Defendants (Case Nos. CV2020-055202, filed September 24, 2020, and CV2020-055722, filed November 6, 2020).

10. On or about October 12, 2020, one of these clients had her booking photo and arrest information placed on the home page of Defendants' [www.publicpolicerecord.com](http://www.publicpolicerecord.com) (formerly [www.rapsheetz.com](http://www.rapsheetz.com)) website. The home page included the booking photo and other derogatory commentary pertaining to one of the attorneys in The Rosenstein Law Group, PLLC, who is part of their litigation team. *See Exhibit 2, ¶¶ 3-4.* The home page also included the addition of Renee Ivchenko's booking photo, detailed documentation pertaining to participation in a diversion program, and the actual police video from her arrest, the latter two of which had been acquired by Defendants' attorney. *See Paragraph 8, supra.* These were the only people that appeared on the [www.publicpolicerecord.com](http://www.publicpolicerecord.com) home page. It is clear from the timeline of events and communications with the parties involved that the reposting of the criminal justice

1 information by Defendants was meant to harass and intimidate me, the other parties and their  
2 attorneys and was retaliatory in nature.

3       11. On November 20, 2020, I sent Mr. Gingras an e-mail and informed him that I  
4 would be coordinating my efforts in the litigation against Defendants with the Rosenstein law  
5 firm, and that my clients would be filing individual actions against Defendants. Mr. Gingras  
6 responded “Nevertheless, I will remind you that filing groundless lawsuits without probable  
7 cause and with malice is both unethical and unlawful, and doing so will expose you and anyone  
8 else involved to significant personal liability.”

9       12. On December 5, 2020, I sent Mr. Gingras an e-mail objecting to the targeting of  
10 the three individuals referenced in Paragraph 10, *supra*, on Defendants’ Websites. On  
11 December 6, 2020, Mr. Gingras acknowledged that his clients had published this information,  
12 further stating, “I’ve said this before and I’ll say it again – litigation is like war. That’s just a  
13 fact.... Suing can often cause far more harm to the plaintiff than whatever events they are suing  
14 over. Just ask Barbra Streisand. I could draw other comparison [*sic*], but probably the most  
15 accurate one is this: asking the [Defendants] not to make public comments about the case (and  
16 the participants) is kind of like a rapist telling their victim not to scream during the assault.”

17       13. Defendants immediately removed Renee Ivchenko’s booking photo and  
18 arrest information from the Websites after I filed suit against them in this Court on May  
19 9, 2019 (Case No. CV2019-090493). I subsequently voluntarily dismissed that lawsuit.  
20 Upon information and belief, Defendants reposted her arrest information on the  
21 [www.publicpolicerecord.com](http://www.publicpolicerecord.com) home page, coupled with the addition of the court  
22 documents and arrest video, only after I informed Defendants’ attorney that I would be  
23 filing individual actions on behalf of the plaintiffs in the Previous Case. *See* Paragraph  
24 11, *supra*.

14. I declare under penalty of perjury under that the foregoing is true and correct.

**DATED** this 22<sup>nd</sup> day of January, 2021.

Respectfully submitted,

By: *s/ Andrew Ivchenko*  
Andrew Ivchenko, Esq.  
***Attorney for Plaintiff***

# **EXHIBIT 4**

1 Andrew Ivchenko (#021145)  
2 **ANDREW IVCHENKO, PLLC**  
3 4960 South Gilbert Road, #1-226  
Chandler, AZ 85249  
4 Phone: (480) 250-4514  
[Aivchenkopllc@gmail.com](mailto:Aivchenkopllc@gmail.com)  
5 Attorney for Plaintiff

6 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

7 **IN AND FOR THE COUNTY OF MARICOPA**

8 JOHN DOE,

Case No.: CV2021-090059

9 Plaintiff,

10 vs.  
11 **ORDER GRANTING  
PLAINTIFF'S MOTION TO  
PROCEED UNDER PSEUDONYM**

12 TRAVIS PAUL GRANT, et al.,

13 (Assigned to Hon. Tracey Westerhausen)

14 Defendants.

16 Pending before the Court is Plaintiff's Motion to Proceed Under Pseudonym.

17 Good cause appearing,

19 IT IS ORDERED THAT Plaintiff's Motion to Proceed Under Pseudonym is  
20 GRANTED. The Doe Plaintiff may continue to proceed under pseudonym.

21 IT IS FURTHER ORDERED that Defendants may discover the true identity of  
22 the Doe Plaintiff either: 1) by stipulation of the parties; or 2) by demonstrating to the  
23 Court a reasonable good faith basis for the disclosure.

24 IT IS FURTHER ORDERED that if disclosure of the true identity of the Doe  
25 Plaintiff is permitted, either by stipulation or by an Order of the Court, such disclosure  
26 will be made on an attorneys' eyes only basis.

1 SO ORDERED.  
2  
3 DONE IN OPEN COURT THIS DATE:\_\_\_\_\_

4  
5 \_\_\_\_\_  
6 The Honorable Tracey Westerhausen  
7 Maricopa County Superior Court  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28