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IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

JOHN DOE,

Plaintiff,

vs.

TRAVIS PAUL GRANT, et al.,

Defendants.

Case No. CV2021-090059

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

(Assigned to Hon. Tracey Westerhausen)

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

I. INTRODUCTION

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

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, www.bailbondshq.com, and www.publicpolice record.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
21 Booking photos—snapped in the vulnerable and embarrassing moments
22 immediately after an individual is accused, taken into custody, and deprived
23 of most liberties—fit squarely within this realm of embarrassing and
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),¹ 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
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23
24 ¹ 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
26

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
26

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").
25
26

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
25 Next, the third factor also weighs in favor of permitting anonymity because,
26 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-
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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 Finally, the fifth factor also weighs in favor of permitting anonymity because it is
5 the public policy of Arizona that the identities of arrestees only be disclosed to the
6 public on a limited basis, only by law enforcement agencies or bona fide news agencies
7 and only for a brief period of time. See Complaint, ¶¶ 5, 7. Although members of the
8 public can review, copy, and publish arrest information for lawful purposes, Arizona
9 public policy, as mandated and confirmed by the Arizona Mugshot Statute, plainly
10 prohibits people, like Defendants who operate a mugshot website, from exploiting these
11 records for commercial purposes.

12 The need to protect Plaintiff from retaliation also greatly outweighs the public's
13 interest in knowing the party's identity. The proceedings in this case will still be open to
14 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 [B]ased on the extreme nature of the retaliation threatened against
19 plaintiffs coupled with their highly vulnerable status, that plaintiffs
20 reasonably fear severe retaliation, and that this fear outweighs the
21 interests in favor of open judicial proceedings.

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
microfiche collection. In fact, mug-shot websites collect and display
booking photos from decades-old arrests[.]

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

19 No arbiter of fact could be prejudiced in favor of Plaintiff because it knows him
20 only by the name of Doe. *Doe v. Ayers*, 789 F.3d 944, 946 (9th Cir. 2015). Critical in the
21 *Doe* court’s analysis was “the precise prejudice at [this particular] stage of the
22 proceedings to the opposing party.” *Id.* (quoting *Does I thru XIII*, 214 F.3d at 1068). As
23 here, the *Doe* case was in the early stage of the proceedings, so there was no jury to
24 prejudice, or party to impeach. *Id.* At some point, Plaintiff may need to disclose his
25 identity in order to obtain injunctive relief from the court, which would require him to
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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.² 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.*)

24 ² 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.

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.

22
23 **DATED** this 22nd day of January, 2021.

1 ANDREW IVCHENKO, PLLC

2
3 By: /s/ Andrew Ivchenko
4 Andrew Ivchenko, Esq.
5 *Attorney for Plaintiff*

6 **ORIGINAL** e-filed through www.azturbocourt.com
7 on January 22, 2020.
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EXHIBIT 1

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IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

JOHN DOE,

Plaintiff,

vs.

TRAVIS PAUL GRANT, et al.,

Defendants.

Case No. CV2021-090059

**PLAINTIFF'S REQUEST FOR
JUDICIAL NOTICE**

(Assigned to Hon. Tracey Westerhausen)

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

- www.publicpolicerecord.com
- www.bailbondshq.com
- www.rapsheetz.com
- <https://rapsheetsorgkyledavidgrant.wordpress.com>
- <https://www.mcso.org/>
- <https://www.mcso.org/i-want-to/mugshot-lookup>

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

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

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

1 **DATED** this 22nd day of January, 2021.

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3 Respectfully submitted,

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5 By: /s/ Andrew Ivchenko
6 Andrew Ivchenko, Esq.
7 *Attorney for Plaintiff*
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26 interpreting the federal rule are persuasive but not binding....” *Shtyrkova v. Gorbunov*,
27 No. 2 CA-CV 2013-0163, 2014 WL 3732542, at *3 n. 5 (Ariz. Ct. App. July 28, 2014)
28 (citing Ariz. R. Evid., prefatory cmt. to 2012 amend.).

EXHIBIT 2

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ARIZONA SUPERIOR COURT

MARICOPA COUNTY

JOHN DOE,

Plaintiff,

vs.

TRAVIS PAUL GRANT et al.,

Defendants.

Case No. CV2020-055722

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

HON. JAMES SMITH

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

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

3. Upon learning of my involvement in drafting, lobbying and eventually shepherding what is now Arizona Revised Statutes §§ 44-7901, 7902 into law, and 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, 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:
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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
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1 information that: "a civil suit is very much like a declaration of war, and if you declare
2 war on someone, you shouldn't expect a warm and fuzzy response."

3 8. Our firm represents one other client against Defendants, a case which is in
4 The United States Federal Court, District of Arizona. *See* Case 2:20-cv-02045-SPL.
5 Despite efforts to conceal the client's identity in this matter, Defendants along with Mr.
6 Gingras assumed who the Jane Doe Plaintiff was. In retaliation, Defendants included her
7 mugshot and criminal justice information on the front page of their website,
8 www.publicpolicerecords.com. Furthermore, Mr. Gingras has included hyperlinks to the
9 individual who he assumed is the Plaintiff's mugshot and criminal justice information in
10 his pleadings and used her name in captions despite her filing under Jane Doe.
11

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

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

16
17 **DATED** this 1st day of December, 2020.

18 Respectfully submitted,

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21 By: 

22 Steven Scharboneau
23 Attorney for Plaintiff
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EXHIBIT 3

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Attorney for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

JOHN DOE,

Plaintiff,

vs.

TRAVIS PAUL GRANT, et al.,

Defendants.

Case No. CV2021-090059

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

(Assigned to Hon. Tracey Westerhausen)

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

2. On May 1, 2020, I filed a lawsuit in this Court against Defendants on behalf of 20 anonymous plaintiffs, including Plaintiff John Doe in this case, alleging violations of Arizona Revised Statute §§ 44-7901, 7902; Mugshot website operators; prohibited acts; exceptions (the "Arizona Mugshot Statute"), as well as other causes of action under 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."

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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,
21 www.publicpolice.com, and www.bailbondshq.com (the "Websites"). In every
22 instance Defendants refused to remove their booking photos and arrest information from
23 the Websites.
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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
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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.

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

4 8. In his Affidavit in support of Defendants' motion for attorneys fees, Mr. Gingras
5 stated that "Defendants incurred costs in the amount of \$36.00 paid to the City of Scottsdale for
6 the purpose of obtaining evidence (police reports and body camera video) which directly relates
7 to the defense of Mrs. Ivchenko's claims." (Case No. CV-20-00674, Doc 15-1, ¶ 17). This
8 request was made even though Renee Ivchenko dropped her defamation claims in the original
9 Complaint by filing an Amended Complaint on February 27, 2020, and there was no remaining
10 cause of action that would plausibly have required Defendants' attorney to obtain this
11 information to defend his clients.
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13 9. Two of my former clients are represented by The Rosenstein Law Group, PLLC
14 in lawsuits filed in this Court against Defendants (Case Nos. CV2020-055202, filed September
15 24, 2020, and CV2020-055722, filed November 6, 2020).

16 10. On or about October 12, 2020, one of these clients had her booking photo and
17 arrest information placed on the home page of Defendants' www.publicpolice-record.com
18 (formerly www.rapsheetz.com) website. The home page included the booking photo and other
19 derogatory commentary pertaining to one of the attorneys in The Rosenstein Law Group, PLLC,
20 who is part of their litigation team. See Exhibit 2, ¶¶ 3-4. The home page also included the
21 addition of Renee Ivchenko's booking photo, detailed documentation pertaining to participation
22 in a diversion program, and the actual police video from her arrest, the latter two of which had
23 been acquired by Defendants' attorney. See Paragraph 8, *supra*. These were the only people that
24 appeared on the www.publicpolice-record.com home page. It is clear from the timeline of events
25 and communications with the parties involved that the reposting of the criminal justice
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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.publicpolice record.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*.
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14. I declare under penalty of perjury under that the foregoing is true and correct.

DATED this 22nd day of January, 2021.

Respectfully submitted,

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

EXHIBIT 4

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Case No.: CV2021-090059

**ORDER GRANTING
PLAINTIFF'S MOTION TO
PROCEED UNDER PSEUDONYM**

(Assigned to Hon. Tracey Westerhausen)

Pending before the Court is Plaintiff's Motion to Proceed Under Pseudonym.
Good cause appearing,

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

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

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

1 SO ORDERED.

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3 DONE IN OPEN COURT THIS DATE: _____

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7 The Honorable Tracey Westerhausen
8 Maricopa County Superior Court
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