IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

JOHN DOE,
Plaintiff, CASE NO.: **2021-CA-000960**
vs.

GAINESVILLE CONSOLE DOCTOR LLC,
TRAVIS PAUL GRANT, JOHN and JANE DOES I-X;
and XYZ COMPANIES I-X,
Defendants
_____/

MOTION FOR MORE DEFINITE STATEMENT

COMES NOW, Defendant Gainesville Console Doctor, LLC ("GCD"), by and through undersigned counsel, and moves for an order pursuant to Fla. R. Civ. P. Rule 1.140(e) requiring Plaintiff John Doe ("Doe") to provide a more definite statement of his claims for the reasons explained herein.

I. INTRODUCTION

The facts of this case are both simple and yet bizarre. To briefly summarize the facts, Plaintiff John Doe claims that "in or around the first quarter of 2020", he was arrested by a "Law Enforcement Agency operating within the State of Iowa." Compl. ¶ 21. Next, Doe claims the unidentified arresting agency made his mugshot "publicly available on a government website". *Id* ¶ 21. Finally, Doe claims after his mugshot was published on the Internet by law enforcement, the photo was taken by Defendants who used the image to "create original content … in the form of advertisements … ." *Id.* ¶ 28.

Doe further elaborates (albeit in purely generic/conclusory terms) that "Defendants, without permission, consent or knowledge of Plaintiff, reproduced, publicly displayed, distributed, *and created original advertising content out of the arrest photo*." *Id*. ¶ 35 (emphasis added). Further, using only the most vague and ambiguous language, Doe claims Defendants have used, and are using, his name/image for the purpose of "directly promoting *their products* … ." *Id*. ¶ 46 (emphasis added), but Doe never identifies any of the "products" being promoted with his image.

Based on these simple allegations, Doe asserts common law and statutory claims for misappropriation of his name/likeness. Among other forms of relief, Doe seeks money damages and an injunction against further commercial use of his name/image.

But here is where the facts get really strange — Doe's Complaint never discloses his true identity, and Defendants[1] have absolutely no idea who Doe is, nor are Defendants aware of any advertisements using Doe's name/image as alleged in the Complaint. Perhaps in some other context, this would not present a serious issue as Defendants might be able to ascertain the Plaintiff's identity through other means.

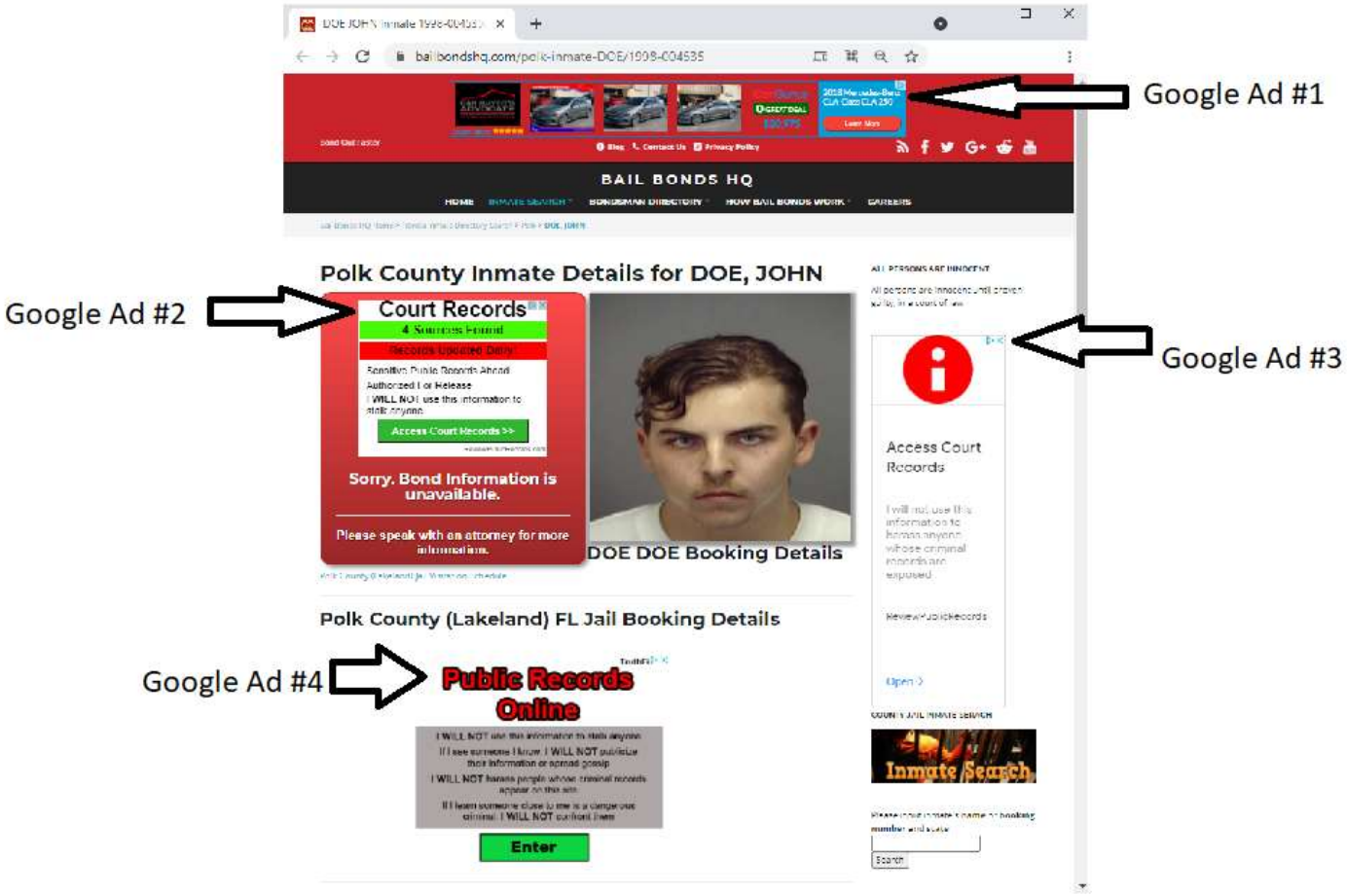
But in this case, the Complaint's complete lack of factual detail presents a serious and unacceptable problem for one key reason: Plaintiff claims Defendants own and operate a website called www.BailBondsHQ.com. At present, this site contains a database of more than *20 million* arrest records from 45 different U.S. states; the only states not represented in the index are Alaska, Delaware, Hawaii, Massachusetts and Vermont. Presumably, Plaintiff's arrest information appears in this index, but without knowing Plaintiff's true identity, it is impossible to either verify or refute that allegation.

Furthermore, although the Complaint specifically claims that Defendants are using Plaintiff's name/image for the purpose of "directly promoting their products", Defendants do not actually sell any products; their website simply passively displays millions of arrest records from across the country. The site earns no revenue from the sale of products/services.

But to be clear—like many similar sites, BailBondsHQ.com *does* contain small advertisements created and controlled by third parties via the "Google AdSense Program" (also known as "Google Ads"). Ads displayed as part of this program always contain a small blue triangle and/or a blue "X" (or both; as shown in the example below) in the upper right corner. These standardized flags clearly identify each ad as being part of Google's AdSense program.

[1] As of the date of this motion, only Gainesville Console Doctor, LLC has been served. Defendant Travis Grant ("Mr. Grant") has not been served, and is not appearing at this time. However, for purposes of simplicity, this motion generally uses the term "Defendants" to refer to both GCD and Mr. Grant, since the Complaint draws no distinction between the Defendants.

Below is an example of a typical page appearing on BailBondsHQ.com which happens to be for an individual identified as "John Doe" (who is presumably not the Plaintiff here). *See* https://www.bailbondshq.com/polk-inmate-DOE/1998-004535. The top portion of the page (shown immediately below) contains the individual's booking photo or "mugshot". This part of the page also contains four Google AdSense ads which are identifiable by the blue "X" and triangle (placed on the ad by Google, not by Defendants). The lower part of this same page (not shown below) contains additional information regarding Doe's date/location of arrest, his height/weight/date of birth, and information regarding the crimes he was charged with.



Given this page layout and assuming Plaintiff's image appears on a similar page, there are two possibilities here. First, the name/photo of the Plaintiff in this case *might* have been misappropriated by a third-party user of Google's AdSense program. In that case, Doe's name/image might appear in one of these third-party ads, and that likely *would* give rise to one or more claims on behalf of Doe against the third-party creator of the ad.

The second possibility is that Doe's name/image *does not appear in any advertising at all*. Instead, it is possible (and probably more likely), that Doe is simply complaining about the fact that his mugshot and arrest details appear in the public records indexed by BailBondsHQ.com. But again, due to the exceptionally vague and ambiguous nature of the Complaint it is currently impossible for Defendants (or this Court) to determine which of these two scenarios occurred.

As explained further *infra*, this distinction is critically important because the legal scope of the misappropriation tort (Plaintiff's primary claim) is exceedingly narrow. Put simply, if *Defendants* used Plaintiff's name/image within an advertisement for a commercial product or service *sold by Defendants*, that conduct would constitute actionable misappropriation. On the other hand, if Defendants are merely displaying accurate and truthful information obtained from public arrest records alongside unrelated third-party Google ads, that conduct is clearly *not* actionable under any of the theories presented in the Complaint.

For that reason, it is simply not possible for Defendants to respond to the Complaint without additional information. Specifically, Plaintiff must be required to provide at least two additional pieces of information currently absent from the Complaint:

1.) Plaintiff's true name; and

2.) Copies of the specific web page(s) in question showing the "commercial" and/or "advertising" use of Plaintiff's name/image as alleged in ¶ 51 of the Complaint (among other places in the Complaint).

II. DISCUSSION

As a starting point, and putting aside the specific context of this action, it is worth noting that Plaintiff's attempt to prosecute this action using a pseudonym "John Doe" violates multiple parts of the Florida Rules of Civil Procedure. Specifically, Rule 1.100(c)(1) requires: "(1) Every pleading must have a caption containing the name of all of the parties, the name of the court, the file number, and a designation identifying the party filing it …" and Rule 1.210(a) further requires: "Every action may be prosecuted in the name of the real party in interest … ." (emphasis added). These rules exist for good reason: because the Court system is funded by taxpayers, and the taxpaying public has a near-absolute right to know who is using its courts and for what purpose; "lawsuits are public

events and the public has a legitimate interest in knowing the facts involved in them. Among those facts is the identity of the parties." *Doe v. Deschamps*, 64 F.R.D. 652, 653 (D.Mont. 1974) (emphasis added); *see also United States v. Stoterau*, 524 F.3d 988, 1013 (9th Cir. 2008) ("Identifying the parties to the proceeding is an important dimension of publicness. The people have a right to know who is using their courts.") (emphasis added) (quoting *Doe v. Blue Cross & Blue Shield United of Wis*., 112 F.3d 869, 872 (7th Cir. 1997)).

Florida courts generally share this view; "This rule [requiring parties to use their real names in litigation] serves more than administrative convenience. It protects the public's legitimate interest in knowing all of the facts involved, including the identities of the parties." *Doe v. Univ. of Miami*, 2012 WL 12960871, at *1 (S.D. Fla. 2012) (quoting *Doe v. Frank*, 951 F.2d 320 (11th Cir. 1992)); *see also John Doe-1 Through John Doe-4 v. Museum of Sci. & History of Jacksonville, Inc*., 1994 WL 741009, at *1 (Fla. Cir. Ct. June 8, 1994) (agreeing, "all civil and criminal court proceedings are public events, records of court proceedings are public records, and there is a strong presumption in favor of public access to such matters.") (emphasis added) (citing *Sentinel Communications Co. v. Watson*, 615 So.2d 768, 770 (Fla. 5th DCA 1993)).

Based on these standards, when a plaintiff requests permission to proceed via pseudonym, relief is appropriate: "only in those exceptional cases involving matters of a highly sensitive and personal nature, real danger of physical harm, or where the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity … The necessary degree of stigma is high; risk of embarrassment is insufficient." *Doe*, 2012 WL 12960871, *1 (quoting *Frank*, 951 F.2d at 324). This standard *never* applies to information already found existing court records. As the Court explained in *Does 1–4*:

> While civil litigants may have a legitimate expectation of privacy in pretrial depositions and interrogatories which are not filed with the court (citations omitted), no such expectation exists in connection with civil proceedings and court files which historically have been open to the public." If the privacy interest were allowed unbounded scope, it would overcome the public nature of trials. Thus a system of public trials must insist that litigants abandon qualms about disclosure of private facts when they place them in contest in the court.

Doe, 2012 WL 12960871, *4 (citing *Forsberg v. Housing Authority*, 455 So.2d 373, 375 (Fla.1984) (there is no expectation of privacy in court files).

Here, Plaintiff has neither requested nor received leave of Court to proceed via pseudonym, so that question is not currently ripe for decision. However, given the specific nature of the claims presented—i.e., where Plaintiff claims that his name/image has already been published on the Internet by law enforcement in connection with his arrest, and that Defendants thereafter unlawfully misappropriated Plaintiff's name/image in commercial advertising—it is clear Plaintiff would have no grounds whatsoever to keep his identity secret (because, according to him, it has already been disclosed in matters of public record and is clearly an essential aspect of this case).

Indeed, and as the Court once again explained in *Doe 1–4*, a party who chooses to place a fact at issue in litigation (such as the party's *name*) cannot thereafter demand that this same information be barred from public view because such information is "inherent" to the case itself which the public has a right to know:

> Plaintiffs argue their identities are not inherent facts in the case and thus the trial should be closed to prevent revelation of the[ir] identity. However, plaintiffs also contend it will be impossible to try the case without revelation of their names. Their argument refutes itself. The identity of a party is inherent in the case, and that concern alone could not justify total closure. This argument is a proxy for the ineffective argument that the sensitive nature of inherent private facts should justify a private forum. Facts regarding abuse form the core of their case, and thus it "is an inherent part of these proceedings and cannot be utilized as a proper basis for closure." The decision to litigate this issue is tantamount to a decision to place the information before the public.

Doe, 2012 WL 12960871, *6 (emphasis added) (cleaned up).

Putting aside the separate question of whether a valid factual or legal basis might exist to allow Plaintiff to use a pseudonym here, given the specific allegations in this case, it is clearly impossible for Defendants to frame a response to the Complaint as it is currently written without knowing, at the very least, Plaintiff's true name and the specific manner in which that information was unlawfully misappropriated. This is so because, as noted above, the common law and statutory misappropriation claims asserted by Plaintiff are exceedingly narrow in scope and will apply only in certain highly specific situations. Thus,

the vague and ambiguous allegations of the Complaint make it impossible for Defendants (or this Court) to determine whether Plaintiff has alleged sufficient facts to state a viable cause of action.

That point is demonstrated by a pair of helpful cases—*Tyne v. Time Warner Entertainment Co., L.P.*, 901 So.2d 802 (Fla.2005) and *Anderson v. Best Buy Stores LP*, 2020 WL 5122781 (M.D.Fla. 2020). These two cases underscore how exceptionally narrow the misappropriation tort (and similar theories) are. They also show why additional facts and specificity are essential in order to determine whether the Plaintiff has successfully pleaded a viable claim under this theory.

Tyne involved misappropriation claims under F.S. § 540.08 (exactly like this case) brought by the family members of fishmen who died in a severe storm at sea, as depicted in a popular film starring George Clooney called *The Perfect Storm*. In sum, the family members accused the film's producers of using the names of their dead loved ones without their permission in a for-profit motion picture. The alleged this use constituted the tort of commercial misappropriation under Florida law.

The Florida Court of Appeals rejected this argument and the Florida Supreme Court affirmed. In doing so, the Supreme Court explained that misappropriation claims under F.S. § 540.08 only arise when the defendant uses the plaintiff's name/image to advertise a commercial product or service *sold by the defendant*:

> In our view, section 540.08, by prohibiting the use of one's name or likeness for trade, commercial or advertising purposes, is designed to prevent the unauthorized use of a name *to directly promote the product or service of the publisher.* Thus, the publication is harmful not simply because it is included in a publication that is sold for a profit, but rather because of the way it associates the individual's name or his personality with something else. Such is not the case here.

Tyne, 901 So.2d at 806 (emphasis in original) (quoting *Loft v. Fuller*, 408 So.2d 619 (Fla. 4th DCA 1981)).

To paraphrase, *Tyne* stands for the principle that a commercial misappropriation claim does not arise simply because the defendant uses the plaintiff's name/image for "pecuniary gain" or some other commercial reason. If it did, that would mean every for-

profit newspaper, website and media outlet would be unable to broadcast stories or information about another person without their consent, *PERIOD*. But that is not the law.

That conclusion is further demonstrated by the highly-analogous case of *Anderson v. Best Buy Stores LP*, 2020 WL 5122781 (M.D.Fla. 2020). *Anderson* involved a website article that used the plaintiff's mugshot in connection with a story about her arrest. Like here, the plaintiff in *Anderson* claimed the defendant did not have permission to use her mugshot in this manner, so she sued asserting claims for "commercial misappropriation of likeness, invasion of privacy, intentional infliction of emotional distress, and unjust enrichment". *Anderson*, 2020 WL 5122781, *1. These claims are essentially identical to the claims asserted by Plaintiff Doe in this matter.

Citing *Tyne*, and other similar authorities, the District Court found the plaintiff's claims failed to demonstrate actionable misappropriation because, among other things, it is simply not unlawful to use a person's mugshot for the purpose of broadcasting newsworthy information about that person (such as the fact of that person's arrest):

> On their face, the articles recount the events surrounding Plaintiff's arrest at the Best Buy store. Crimes and arrests are newsworthy matters, falling within the scope of legitimate public concern. Florida courts have confirmed that "where one becomes an actor in an occurrence of public interest, it is not an invasion of her right to privacy to publish her photograph with an account of such occurrence." "Just because the story and the photograph may be embarrassing or distressful to the plaintiff does not mean the newspaper cannot publish what is otherwise newsworthy."

Anderson, 2020 WL 5122781, *2 (emphasis added) (quoting *Cape Publications, Inc. v. Bridges*, 423 So.2d 426, 427 & n.2 (Fla. App. Ct. 1982) ("[w]ithin the scope of legitimate public concern are matters customarily regarded as 'news,'" which includes publications concerning crimes, arrests, police raids, suicides, marriages, divorces etc.")).

Here, insofar as Defendants are aware, every one of the tens of millions of mugshots and arrest records appearing on BailBondsHQ.com are entirely lawful for precisely the reasons explained in *Anderson*; the site simply gathers and archives existing online arrest records and mugshots which have already been released to the public by law enforcement. The fact that this information appears *near* unrelated third-party advertising is simply irrelevant because that is not the controlling legal test. Rather, *Tyne* and *Anderson* both stand for the rule that a misappropriation claim under F.S. § 540.08 will not arise unless

the defendant uses the plaintiff's name or image *within a commercial advertisement for a product or service* and the advertisement is offering a product or service *sold by the defendant*.

Here, because the Complaint never discloses the Plaintiff's real identity and never identifies the specific way in which his name/image was used, it is simply not possible to determine whether the Plaintiff has pleaded a valid claim sufficient to meet this test. Defendant strongly suspects that Plaintiff understands that he does *not* have a valid claim, which is why he has improperly withheld the exact information needed to make that determination. But without more information, it is impossible to make that determination.

Given that this case implicates the important First Amendment right to publish information about matters of public interest/concern, Defendants and the Court should not be required to speculate about the nature of Plaintiff's claim, nor is it possible to litigate this matter based on generic/hypothetical allegations.

To resolve that concern, the Court should remove any doubt on this issue by ordering Plaintiff, pursuant to Rule 1.140(e), to provide a more definite statement of his claims. This statement should include, at the very least, Plaintiff's full name, and a copy of any alleged commercial advertisements in which Plaintiff's name/image was used to advertise a product or service sold by Defendants. *See Cas. Indem. Exch. v. Small Fry, Inc*., 709 F. Supp. 1144, 1145 (S.D. Fla. 1989) (a more definite statement should be ordered where the Complaint is "so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading …"); *see also Patton v. Carlson*, 132 So. 2d 793, 796 (Fla. Dist. Ct. App. 1961) (same).

III. CONCLUSION

Defendant Gainsville Console Doctor, LLC respectfully requests that the Court grant relief for the reasons stated above.

DATED this 7th day of May, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was e-filed using the Clerk's ePortal system which will generate an electronic copy to all counsel of record this 7th day of May, 2021.

/s/David S. Gingras
David S. Gingras, Esquire