

2019 DEC 17 PM 5:03

FILED
BY B. BARRETT, DEP

PAID

#333P

PA#27563447

1 Firm E-Mail: courtdocs@dickinsonwright.com

2 David N. Ferrucci (#027423)
3 dferrucci@dickinsonwright.com

4 David G. Bray (#014346)
5 dbray@dickinsonwright.com

6 Paxton D. Endres (#034796)
7 pendres@dickinsonwright.com

8 **DICKINSON WRIGHT PLLC**

9 1850 North Central Avenue, Suite 1400
10 Phoenix, Arizona 85004

11 Phone: (602) 285-5000

12 Facsimile: (844) 670-6009

13 *Attorneys for Plaintiffs*

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

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

16 RENEE IVCHENKO and ANDREW
17 IVCHENKO, wife and husband,

18 Plaintiffs

19 vs.

20 KYLE DAVID GRANT and JANE DOE
21 GRANT, husband and wife; TRAVIS
22 PAUL GRANT and MARIEL LIZETTE
23 GRANT, husband and wife; BLACK
24 CORPORATIONS I-X; and WHITE
25 COMPANIES I-X,

26 Defendants.

Case No.: CV2019-015355

COMPLAINT

(Invasion of Privacy / Appropriation /
Defamation)

Jury Trial Demanded

27 Plaintiffs Renee Ivchenko and Andrew Ivchenko (hereinafter Plaintiffs or "Mrs.
28 Ivchenko" or "Mr. Ivchenko"), through their undersigned counsel, for their Complaint
against Defendants, allege the following:

INTRODUCTION

1. Defendants are First Amendment opportunists that exploit arrest information and misappropriate images in booking photos to create misleading advertisements designed to generate substantial advertising revenue and to extort payment from the victims whose images have been misappropriated.

2. Defendants do not inform the public; instead, Defendants exploit booking photos and arrest information for purely commercial purposes. These “[b]ooking photos—snapped in the vulnerable and embarrassing moments immediately after an individual is accused, taken into custody, and deprived 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.” *Detroit Free Press Inc. v. United States Dep’t of Justice*, 829 F.3d 478, 482 (6th Cir. 2016) (citations and quotations omitted). Defendants’ business model is to exploit this embarrassing and humiliating information that falsely conveys guilt for their own commercial gain.

3. This is an action for defamation, false light, civil conspiracy, and intentional infliction of emotional distress under applicable decisional law in Arizona. Plaintiffs seek redress for injuries caused by, and an injunction enjoining, the unlawful conduct of Defendants, Kyle David Grant, his brother Travis Paul Grant, and Travis Paul Grant’s wife, Mariel Lizette Grant, all doing business in conjunction with their websites Rapsheets.org, Bailbondcity.com, and Twitter.com/zim_rogers_fans. These Defendants have acted individually, collectively, and in concert with one another, and such actions have injured Plaintiffs. Defendants’ conduct that is the subject of this civil action involves ongoing online activity directed against Plaintiffs.

1 4. Defendants own several websites, including rapsheets.org, on which they
2 use booking photos of arrestees for their own commercial purposes (the “Websites”).
3 Defendants use software to “scrape” arrest information, including booking photos, from
4 the Maricopa County Sheriff’s Office’s website, and the websites of other law
5 enforcement agencies, for all, or substantially all, arrestees. Defendants then use the
6 arrest photos to create original content in the form of advertisements that serve three
7 purposes: 1) to attract third party advertisers to the website; 2) generate pay-per-click
8 advertising revenue; and 3) extort payment of fees for removal of the arrest information
9 from the victims who identities and likenesses have been misappropriated.
10

11 5. “A disclosed booking photo casts a long, damaging shadow over the
12 depicted individual.” *Detroit Free Press Inc. v. United States Dep’t of Justice*, 829 F.3d
13 478, 482 (6th Cir. 2016). Perhaps for this reason, law enforcement agencies do not
14 intend for booking photos and arrest information to be used in this way or to be available
15 online to the public indefinitely. The Maricopa County Sherriff’s Office, for example,
16 only posts arrest photos for three days, after which they are taken down. However, this
17 is enough time for Defendants to capture the images and data using spiders and bot
18 programs. To further this scheme and maximize its commercial effect, Defendants then
19 use analytics and search optimization to ensure that each booking photo is among the
20 first search results found when an arrestee’s name is entered into a search engine such as
21 *Google, Bing or Yahoo*.
22

23 6. Contrary to Defendants’ false representations, rapsheets.org and
24 bailbondcity.com and Defendants other websites are not public safety service or media
25 outlets. If they were, Defendants would not select what information and which booking
26 photos remain on the Websites based on extorted payments. Instead, Defendants hide
27 behind that false pretense, post these mugshots and create advertisements out of them
28

1 solely in order to profit by generating advertising revenue through Google Ads and
2 extorted payments. Companies pay for Google Ads so that people will notice their
3 business whenever they are searching Google. These companies only have to pay a
4 website owner whenever someone clicks on the ad. This is known as cost-per-click
5 (CPC) or pay-per-click (PPC) advertising. Defendants generate substantial revenue
6 through the misleading manner in which they use these booking photos as
7 advertisements to induce users of their Websites to click on the banner ads.

8
9 7. Also contrary to Defendants' false representations, upon information and
10 belief, absent a substantial extorted payment, Defendants refuse to remove someone's
11 mugshot from the Websites even if the arrestee has been found innocent of any crime, or
12 have otherwise had their charges dropped, not filed, expunged, or dismissed, as in
13 Plaintiff Renee Ivchenko's case. Prospective employers (or anyone else) conducting a
14 web search find, in many cases, intentional misinformation indicating that people are
15 still charged, incarcerated, or on parole years even after release or an adjudication of not
16 guilty. Defendants intentionally and maliciously set up the Websites to give the false
17 impression people are incarcerated or have been adjudged guilty of a crime. The end
18 result for many arrestees is job loss, broken families, and homelessness. The end result
19 for Defendants is substantial profits.

20
21 8. Defendants' scheme proceeds serially through Websites operated by or in
22 conjunction with one another. Individuals who attempt to apply legal pressure on
23 Defendants in an effort to have their mugshot removed from the Websites are retaliated
24 against and further harmed by Defendants by having their mugshots and other
25 derogatory and defamatory comments placed on Twitter that, based on information and
26 belief, is owned and operated by them. The Twitter site is located at
27
28

1 Twitter.com/zim_rogers_fans (the "Twitter Site"), and ostensibly is owned by someone
2 named "Jennifer Becker," which is an apparently fictitious name.

3 9. The Twitter site was used to intimidate Plaintiffs and damage their
4 reputations. Plaintiffs and a second Arizona resident are the only people displayed on
5 the Twitter site. The Twitter site was also used to retaliate against Plaintiffs, and act as a
6 deterrent against anyone contemplating legal action against Defendants. These actions
7 by Defendants constitute libel and false light, and also have caused Plaintiffs significant
8 emotional distress and other harm.

9
10 10. Plaintiff Renee Ivchenko's mugshot was placed on the Twitter Site
11 immediately after her attorney demanded the removal of her mugshot from Defendants'
12 main Websites located at Rapsheets.org and Bailbondcity.com. Plaintiff Andrew
13 Ivchenko is a licensed attorney in Arizona, and represented his wife, Plaintiff Renee
14 Ivchenko. The timeline of his communications with Defendants, using their e-mail
15 address as noted on the Websites, is as follows:

- 16 • 01-08-19: Plaintiff Renee Ivchenko discovered her mugshot posted
17 on Defendants' Websites.
- 18 • 01-9-19: Plaintiff Andrew Ivchenko sent Defendants an e-mail
19 through an address provided in the Websites requesting
20 confirmation of their street mailing address and the name of the
21 entity that operates the Websites, in order to send Defendants
22 registered mail to remove Plaintiff Renee Ivchenko's mugshot
23 under the provisions of Florida Statutes, Title XLVII, Chapter
24 901.43 (the "Florida mugshot statute").
25
26
27
28

- 1 • 01-10-19: Defendants responded by agreeing to communicate via e-
2 mail through their website's opt out page at
3 <https://www.rapsheets.org/opt-out>, stating, "use email like everyone
4 else this century."
- 5
- 6 • 01-15-19: Plaintiff Andrew Ivchenko emailed Defendants his first
7 demand letter, requesting removal of Plaintiff Renee Ivchenko's
8 mugshot from the Websites.
- 9
- 10 • 01-15-19: Defendants responded and refused to remove the
11 mugshot, again referring Plaintiffs to the opt out page, and stating,
12 "Use our records update page like everyone else its [sic] pretty
13 simple."
- 14
- 15 • 02-13-19: Plaintiff Andrew Ivchenko wrote Defendants a second
16 demand letter, requesting removal of Plaintiff Renee Ivchenko's
17 mugshot from the Websites.
- 18
- 19 • 02-18-19: Defendants again responded by referencing the opt out
20 page, and refused to remove Plaintiff Renee Ivchenko's mugshot.
- 21 • 02-19-19: One day after responding to Plaintiff Andrew Ivchenko,
22 Defendants caused Plaintiff Renee Ivchenko's mugshot to appear
23 on the Twitter site, along with derogatory commentary directed
24 against Plaintiffs.
- 25
- 26
- 27
- 28

- 1 • 03-18-19: Plaintiff Andrew Ivchenko sent Defendants a third
2 demand letter referencing the Twitter site, and requesting removal
3 of Plaintiff Renee Ivchenko's mugshot from the Websites and the
4 Twitter site.
- 5 • 03-20-19: Defendants responded by again merely referencing the
6 opt out page.
- 7 • 05-09-19: Plaintiff Renee Ivchenko filed a lawsuit against
8 Defendants in the Maricopa County Superior Court (Case No.
9 CV2019-090493). Defendants immediately removed Plaintiff
10 Renee Ivchenko's mugshot from the Websites once they were
11 served with the complaint, but they refused to remove the mugshot
12 and defamatory statements from the Twitter site.

13
14
15
16 11. Plaintiff Renee Ivchenko obtained a copyright of her image through the
17 US Copyright Office on March 23, 2019, and subsequently filed a DMCA Takedown
18 Notice with Twitter on September 13, 2019 in connection with her image on the Twitter
19 site. Twitter removed Plaintiff Renee Ivchenko's image from the Twitter site on that
20 day. On or about September 15, 2019, the purported owner of the site, "Jennifer
21 Becker," filed a DMCA counter-notice objecting to the removal of Plaintiff Renee
22 Ivchenko's image from the Twitter site. On that same day, additional defamatory
23 comments directed against Plaintiffs were placed on the Twitter site.

24
25 12. Starting on or about February 19, 2019, five tweets mentioning Plaintiffs,
26 including two mugshot images of Plaintiff Renee Ivchenko, were added to the Twitter
27 site. These tweets were designed to increase the online exposure of Plaintiff Renee
28

1 Ivchenko's mugshot. The Twitter site appears as the first two search results when
2 conducting a Google search of Renee Ivchenko's name. The tweets purposely include
3 variations of Plaintiff Andrew Ivchenko's name, so that the online exposure of the
4 Twitter site is increased when searching his name.

5 13. On or about September 15, 2019, four tweets mentioning Plaintiffs were
6 added to the Twitter site. These occurred one day after the owner of the site filed a
7 DMCA counter-notice objecting to the removal of Plaintiff Renee Ivchenko's image
8 from the Twitter site. On or about September 18, 2019, two additional tweets
9 mentioning Plaintiffs were added to the Twitter site. The tweets are unequivocally false
10 and defamatory, and accuse Plaintiffs of criminal activity, as follows:
11

- 12 • I AM ABSOLUTELY REPORTING RENEE IVCHENKO TO
13 THE US COPYRIGHT OFFICE!!! SHE HAS COMMITTED
14 FRAUD!!!
- 15 • if andy ivchenko has illegally claimed ownership over your work,
16 you can report him to the us government here
17 <https://www.copyright.gov/help/index.html>.
18
- 19 • asserting a copyright claim over work that does not belong to you is
20 a federal offence in the united states!! is andy ivchenko trying to get
21 his wife renee ivchenko tossed back in jail? trying to get himself
22 disbarred? what is wrong with this guy?
23
24

25 14. The manipulation of information by Defendants also present Plaintiffs in a
26 false light, in that it creates the false and damaging implication that Plaintiff Renee
27 Ivchenko is a convicted criminal, when in fact the charges referenced in the tweets have
28

1 been dismissed. The use of Plaintiff Renee Ivchenko's booking photo, coupled with the
2 derogatory information in the tweets, conveys to the public a perception of guilt. In
3 addition, the implication that Plaintiff Andrew Ivchenko, a licensed attorney, engaged in
4 fraud is inflammatory, false, and constitutes defamation *per se*.

5 15. The Twitter site was launched in March 2018 and on a single day - March
6 31, 2018 - it made several posts directed at Zim Rogers, posting his arrest information
7 and booking photos. Zim Rogers was the lead plaintiff in a class action lawsuit against
8 JustMugshots that was filed in California in 2014. See Rogers v. Justmugshots.Com,
9 Corp., No. B258863. Plaintiffs believe that Zim Rogers also attempted to get his
10 information removed from Defendants' Websites, and that the Twitter account was the
11 response. Thus, the Twitter site was established specifically to further circulate the
12 mugshots of only two individuals, both of whom pursued their rights in court. There are
13 no other tweets on the Twitter site. The only logical conclusion under the circumstances
14 is that Defendants own, operate or control the Twitter site either directly or indirectly
15 through a related third party yet to be named in this lawsuit.

17 16. Defendants are notorious operators of mugshot Websites, and are known
18 in the industry as being extremely vindictive. Several online sites have been established
19 by aggrieved parties to expose the nefarious and possibly illegal activities of Defendants,
20 including <https://rapsheetsorgkyledavidgrant.wordpress.com> and
21 [http://classactionagainstmugshotwebsites.com/rapsheets-org-kyle-david-grant-travis-](http://classactionagainstmugshotwebsites.com/rapsheets-org-kyle-david-grant-travis-paul-grant)
22 [paul-grant.](http://classactionagainstmugshotwebsites.com/rapsheets-org-kyle-david-grant-travis-paul-grant)

24 17. This action seeks to put an end to Defendants' harassment of Plaintiffs.
25 Defendants will continue to cause Plaintiffs harm until they are enjoined from their
26 intentional and malicious violation of their rights.

JURISDICTION AND PARTIES

18. Plaintiff Renee Ivchenko and Plaintiff Andrew Ivchenko are residents of Maricopa County, Arizona.

19. Defendants Kyle David Grant, Travis Paul Grant, and Mariel Lizette Grant, are residents of the state of Florida. Defendants are the owners and operators of at least the following Websites:

- Rapsheets.org;
- Rapsheetz.com;
- Bailbondcity.com;
- bailbondsearch.com; and, upon information and belief,
- Twitter.com/zim_rogers_fans.

20. Defendants are being sued in their individual capacities. This Court has jurisdiction over Defendants under Arizona's long-arm rule and applicable decisional law, which allows for assertion of personal jurisdiction over a non-resident consistent with federal constitutional due process. Ariz. R. Civ. P. 4.2(a).

21. Plaintiffs are informed and believe, and based on that information and belief allege, that at all times mentioned in this complaint, Defendants were the agents and employees of their codefendants and in doing the things alleged in this complaint were acting within the course and scope of such agency and employment.

22. At all material times, Defendants (i) committed a tortious act within this state, and (ii) are engaged in substantial and not isolated activity within this state. Sufficient minimum contacts exist between Defendants and the state of Arizona to satisfy the due process requirements of the United States Constitution. These include

1 directly targeting their Websites to the state, knowingly interacting with residents of the
2 forum state via their Websites, or through sufficient other related contacts.

3 23. Jurisdiction is proper in this Court because Plaintiffs reside in and have
4 suffered injury in Arizona as a result of Defendants' tortious act of publishing
5 defamatory statements about Plaintiffs on the Internet. In addition, jurisdiction is proper
6 because the defamatory statements were published to millions of people in the United
7 States including persons in the state of Arizona.

8 24. Defendants solicit customers in the state of Arizona. Upon information
9 and belief, Defendants have many paying customers who reside in the state of Arizona
10 who each use Defendants' respective services in the state of Arizona. Upon information
11 and belief, Defendants conduct continuous and systematic business in the state of
12 Arizona.

13 25. Defendants JOHN and JANE DOES I-X; BLACK CORPORATIONS I-
14 X; and WHITE COMPANIES I-X, are persons, partnerships, corporations or
15 unincorporated associates subject to suit in a common name whose names are unknown
16 to Plaintiffs and who are wholly or partially responsible for the acts complained of,
17 including those who have participated in managing, organizing, marketing, facilitating,
18 and profiting from the operations of the Websites and the Twitter site owned and
19 controlled by Defendants, and therefore, designated by fictitious names pursuant to Rule
20 10(d), Arizona Rule of Civil Procedure. Plaintiffs will ask leave of the Court to
21 substitute the true names of the said parties prior to the entry of judgment herein.

22 26. Maricopa County is a proper venue, pursuant to A.R.S. §12-401(1). The
23 acts and conduct of Defendants occurred in Maricopa County. Defendants' Websites
24 and the Twitter site are available to people in Maricopa County.
25
26
27
28

GENERAL ALLEGATIONS

27. Plaintiffs are individuals and are now, and at all times mentioned in this complaint were, residents of Maricopa County, Arizona.

28. Plaintiff Andrew Ivchenko has been a licensed attorney for thirty years, and has been licensed in Arizona since 2002. Plaintiff has during all this time enjoyed a good reputation, both generally and in his occupation.

29. Defendants generate substantial revenue from the misleading use of the original content Defendants create from the booking photos.

30. Defendants gather and collect arrest photos and create original content out of that material in the form of advertisements ("arrest photo advertisements").

31. The arrest photo advertisements are strategically placed on the Website for maximum commercial exploitation. Specifically, Defendants place the arrest photo advertisements directly above, and/or directly alongside banner ads that advertise services for public records information, thus making it appear (falsely) that by clicking on the banner ad the user would be directed to "Arrest Details" located in the rapsheets.com database.

32. The following screenshot capture of a page on rapsheets.com exemplifies the misleading manner in which Defendants use the arrest photo advertisements to entice the public into clicking on third party banner ads, thus generating substantial pay-per-click advertising for Defendants:

Phoenix Arrest Records for Inmate Scotty Hugh Cooper

Access Court Records

ReviewPublicRecords

I will not use this information to harass
anyone whose criminal records are exposed

OPEN

Scotty Hugh Cooper Arrest Details



33. Because, as in the above example, the third party banner ads are typically for services such as public arrest records databases and because the third-party banner ad is located directly beneath, alongside, and embedded within the arrest photo advertisements, the user mistakenly clicks on the banner ad falsely believing that by doing so they will be directed to the "arrest details" in the rapsheets.com database, but are instead directed to the third party database. Defendants purposefully and intentionally create the arrest photo advertisements in this manner to increase user clicks on third party ads, thus earning substantial pay-per-click advertising revenue.

34. Thus, the arrest photos advertisements serve at least two commercial purposes: 1) to attract third party advertisers to the Website; and 2) entice any user of

1 the website to mistakenly click the third party banner ad so as to generate pay-per-click
2 advertising revenue for Defendants.

3 35. Contrary to Defendants' false representations on rapsheets.com,
4 Defendants also use the arrest photo advertisements and the stigma of criminal guilt they
5 falsely imply, to extort payment of fees from the victims whose images have been
6 misappropriated. Prior to the Florida Legislature's passage of the Florida Mugshots Act,
7 Defendants openly and publically solicited and accepted fees for removal of the arrest
8 photos and information. The Florida Mugshots Act became effective on or about July
9 18, 2018. Although Rapsheets.com states that Defendants no longer solicit or collect
10 fees for removal, and therefore their conduct is not regulated by the Act, upon
11 information and belief Defendants continue to solicit and accept fees for removal, but
12 now do so surreptitiously by waiting to be contacted for removal (through its "free"
13 removal process) and then solicit and accept payment for removal in violation of Florida
14 law. Also contrary to their representations, Defendants do not comply with the Florida
15 Mugshots Act, which requires removal upon request, regardless of the conviction or
16 non-conviction status of the arrestee or whether any charge has been expunged or
17 dismissed; under the Act, if an arrestee requests that the information be taken down,
18 Defendants have ten days to do so. Period. Plaintiff Renee Ivchenko attempted on two
19 separate occasions to have her information removed pursuant to the Act, and Defendants
20 repeatedly refused to do so.
21

22 36. The arrest information and booking photos that Defendants use to create
23 the arrest photo advertisements was never intended by law enforcement to be used in
24 this manner or posted by Defendants. The booking photos Defendants use to create the
25 arrest photo advertisements are not tendered by law enforcement agencies to Defendants.
26
27
28

1 37. Plaintiff Renee Ivchenko had a booking photo taken in the state of
2 Arizona.

3 38. With respect to Plaintiff Renee Ivchenko, Defendants, without permission,
4 consent or knowledge of Plaintiff Renee Ivchenko, reproduced, publicly displayed,
5 distributed, and created original advertising content out of her booking photo.

6 39. Defendants' respective Websites, along with Plaintiff Renee Ivchenko's
7 image, were indexed by Yahoo.com and Google.com, and the image appears under
8 Google Images when an internet search for Plaintiff Renee Ivchenko's name is
9 conducted.

10 40. Defendants' use of Plaintiff Renee Ivchenko's image is for a purely
11 commercial purpose.

12 41. Defendants operate one or more Websites that are used to display Plaintiff
13 Renee Ivchenko's image as part of a commercial enterprise.

14 42. The display by Defendants of Plaintiff Renee Ivchenko's image on their
15 Websites, including defamatory information directed against Plaintiffs in the Twitter
16 site, are intended, among other things, to subject Plaintiffs to hatred, contempt, or
17 ridicule, and to damage their personal and business reputations, or to impair their credit.

18 43. Each Defendant, acting on their own or in conjunction with one or more of
19 the other Defendants, derives revenue from the Websites through Google Ads and other
20 means.

21 44. Each Defendant, acting on their own or in conjunction with one or more of
22 the other Defendants, utilize the Twitter site to intimidate and defame Plaintiffs.

23 45. Unless Defendants are enjoined from further commercial use and
24 publication of Plaintiffs' image and name, Plaintiffs will suffer further irreparable injury.

25 ///
26
27
28

1 **CAUSES OF ACTION**

2 46. The Plaintiffs incorporate by reference the allegations of each paragraph
3 above into this claim as though fully set forth herein.

4 47. Plaintiffs are entitled to recover damages from Defendants jointly and
5 from each of them based on the theories of liability hereinafter enumerated in Counts I
6 through VII, and under such other theories of liability as may be appropriate based upon
7 the facts as alleged herein or as revealed during discovery.

8 **COUNT I**
9 **DEFAMATION**

10 48. Plaintiffs incorporate by reference the allegations of each paragraph above
11 into this claim as though fully set forth herein.

12 49. Defendants made the defamatory statements set forth in the online postings
13 described above that were false and brought Plaintiffs into disrepute, contempt, and
14 ridicule. Defendants' defamatory statements attacked Plaintiffs' integrity, virtue, and
15 reputation and accused Plaintiffs of criminal activity, including fraud.

16 50. Defendants made false and defamatory statements about Plaintiffs,
17 knowing the statements were false and defamatory, in reckless disregard of the truth of
18 the statements, or negligently failing to ascertain the truth of the matters stated.

19 51. As a direct and proximate result of the statements set forth in the online
20 postings described above, Plaintiffs have been damaged and will continue to suffer
21 damage. Plaintiffs have suffered irreparable harm to their businesses and their
22 reputations.

23 ///

24 ///

25 ///

COUNT II
FALSE LIGHT INVASION OF PRIVACY

52. Plaintiffs incorporate by reference the allegations of each paragraph above into this claim as though fully set forth herein.

53. “[I]ndividuals have a privacy interest in preventing disclosure of their booking photos[.]” *Detroit Free Press Inc. v. United States Dep't of Justice*, 829 F.3d 478, 485 (6th Cir. 2016).

54. Defendants’ publication and use of Plaintiff Renee Ivchenko’s booking photo as an advertisement and publication of Plaintiff’s arrest information placed Plaintiff Renee Ivchenko before the public in a false light, falsely portrayed her as a convicted criminal, and was done for the purpose of extortion by shaming the Plaintiff into offering to pay a fee to remove the information.

55. The false and/or misleading portrayal of Plaintiff Renee Ivchenko as a criminal was highly offensive to the Plaintiff and would be highly offensive to a reasonable person.

56. Defendants publication (and use as an advertisement) of the Plaintiff’s booking photo and arrest information and portrayal of the Plaintiff as a criminal was done with reckless disregard for the fact that the Plaintiff had not been convicted of any crimes.

57. Defendants’ publication (and use as an advertisement) of the Plaintiff’s booking photo and arrest information created a false impression regarding the Plaintiff’s criminal history and character and damaged her reputation and caused severe emotional distress.

58. As a direct and proximate result of Defendants’ malicious acts, Plaintiff Renee Ivchenko has been harmed.

COUNT III
INVASION OF PRIVACY BASED ON APPROPRIATION

59. Plaintiffs incorporate by reference the allegations of each paragraph above into this claim as though fully set forth herein.

60. Plaintiff Renee Ivchenko has a privacy interest in the exclusive use of her name and likeness.

61. Defendants' appropriation (and use as an advertisement) of the Plaintiff's booking photo was done for Defendants own commercial purposes and benefit.

62. Defendants' appropriation of Plaintiff's image constituted an invasion of privacy as prescribed by *Restatements (Second) of Torts* § 652C.

63. Defendant's misappropriation of Plaintiff's image proximately caused damage to Plaintiff in an amount to be determined at trial.

COUNT IV
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

64. Plaintiffs incorporate by reference the allegations of each paragraph above into this claim as though fully set forth herein.

65. Defendants, by and through the making of the false, defamatory, and libelous statements described above, and by publishing and using Plaintiff Renee Ivchenko's booking photo as an advertisement and to extort payment for removal, behaved intentionally and/or recklessly.

66. Defendants, by and through the making of such false, defamatory, and libelous statements, and by publishing and using Plaintiff Renee Ivchenko's booking photo as an advertisement and to extort payment for removal, intended to cause emotional distress upon Plaintiffs.

1 67. The making of the false, defamatory, and libelous statements as described
2 above by Defendants, and by publishing and using Plaintiff Renee Ivchenko's booking
3 photo as an advertisement and to extort payment for removal, was so outrageous in
4 character, and so extreme in degree, as to go beyond all possible bounds of decency, and
5 to be regarded as atrocious, and utterly intolerable in a civilized community.

6 68. Plaintiffs have suffered and continue to suffer severe emotional distress
7 and emotional injury due to Defendants' actions.

8 69. Defendants' actions were the direct and proximate cause of such severe
9 emotional distress and emotional injury to Plaintiffs.

10 70. Plaintiffs suffered and continue to suffer mental anguish as a result of
11 being defamed and libeled by Defendants, and as a result of Defendants publishing and
12 using Plaintiff Renee Ivchenko's booking photo as an advertisement and to extort
13 payment for removal, and said mental anguish is of a nature that no reasonable person
14 could be expected to endure.

15 71. As a result, Defendants are liable to Plaintiffs for actual, presumed and
16 punitive damages in an amount to be determined at trial.

17
18 **COUNT V**
19 **UNLAWFUL APPROPRIATION/RIGHT OF PUBLICITY**

20 72. Plaintiffs incorporate by reference the allegations of each paragraph above
21 into this claim as though fully set forth herein.

22 73. Arizona courts "recognize[] the right of publicity, both as a tort claim and
23 an unfair competition claim." *Lemon v. Harlem Globetrotters Int'l, Inc.*, 437 F. Supp. 2d
24 1089, 1100 (D. Ariz. 2006) (citing *Restatement (Second) of Torts* § 652C).

25 74. Defendants used the name and likeness of Plaintiff Renee Ivchenko
26 without Plaintiff's consent or permission to Defendants' commercial advantage.
27
28

1 75. Defendants' wrongful use included, *inter alia*, use of Plaintiff's image as
2 an advertisement and to extort Plaintiff to pay a fee for removal.

3 76. As a result of Defendants' use of Plaintiff Renee Ivchenko's name, the
4 Plaintiff has suffered harm including harm to reputation, emotional distress, and
5 additional harms.

6
7 **COUNT VI**
 CIVIL CONSPIRACY

8 77. Plaintiffs incorporate by reference the allegations of each paragraph above
9 into this claim as though fully set forth herein.

10 78. Defendants, individually and each of them together have conspired with
11 each other to injure Plaintiffs.

12 79. Defendants are guilty of civil conspiracy designed and implemented to
13 injure Plaintiffs and to cause irreparable harm to Plaintiffs and their businesses and
14 trade.

15
16 80. As a direct and proximate cause of the civil conspiracy committed by
17 Defendants, Plaintiffs have been damaged.

18 **COUNT VII**
19 **PUNITIVE DAMAGES**

20 81. Plaintiffs incorporate by reference the allegations of each paragraph
21 above into this claim as though fully set forth herein.

22 82. Defendants' aforementioned conduct was conscious, deliberate,
23 intentional, and/or reckless in nature.

24 83. Defendants' aforementioned conduct was undertaken in a state of mind
25 which evidences hatred, ill will, or a spirit of revenge. Defendants' evil hand was
26 guided by an evil mind.
27
28

84. Defendants' aforementioned conduct evidences a conscious disregard for the rights of Plaintiffs and has caused, and continues to cause, them substantial harm.

85. As a result, Plaintiffs are entitled to punitive damages and attorneys' fees.

WHEREFORE, Plaintiffs request that the Court enter judgment in their favor and against Defendants and each of them as follows:

1. For general and special damages in an amount that Plaintiff will prove;
2. For punitive damages to be consistent with proof in this action;
3. Appropriate preliminary and/or permanent injunctive relief;
4. For Plaintiffs' reasonable costs and attorneys' fees incurred herein;
5. For such other and further relief as the Court deems just.

DATED this 17th day of December, 2019.

Respectfully submitted,

DICKINSON WRIGHT LLC

By:

David N. Ferrucci

David G. Bray

Paxton D. Endres

Attorneys for Plaintiffs