

Craig J. Rosenstein, Esq. (024766)
ROSENSTEIN LAW GROUP, PLLC
8010 E. McDowell Rd., Suite #111
Scottsdale, Arizona 85257
Telephone: (480) 248-7666
Facsimile: (480) 946-0681
Attorney for Plaintiff

ARIZONA SUPERIOR COURT
MARICOPA COUNTY

JOHN DOE,
Plaintiff,

vs.

TRAVIS PAUL GRANT *et al.*,
Defendants.

Case No.: CV2020-055722

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

HON. JAMES SMITH

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

I. INTRODUCTION

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 and Motion for Preliminary Injunction). 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

1 Defendants do not engage in additional online activities designed to further harm his
2 reputation and emotional well-being. Further, disclosure of Plaintiff's identity in
3 connection with this case would unnecessarily prejudice Plaintiff's case and prevent
4 Plaintiffs, and others in their situation, from asserting and vindicating their rights under
5 Arizona law.

6 This Motion is supported by the following Memorandum of Points and
7 Authorities, the Complaint and Motion for Preliminary Injunction filed in this case, the
8 Declaration of Steven Scharboneau, attached hereto as Exhibit 1.

9
10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **II. FACTUAL BACKGROUND**

12 Defendants are notorious mugshot website operators. Defendants operate websites
13 that exploit the "embarrassing and humiliating information" contained in booking photos
14 and other arrest information and do so for purely commercial purposes. As the Sixth
15 Circuit recently held: "**A disclosed booking photo casts a long, damaging shadow over**
16 **the depicted individual.**" *Detroit Free Press Inc. v. United States Dep't of Justice*, 829
17 F.3d 478, 482 (6th Cir. 2016) (emphasis added). As the Sixth Circuit further explained:

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

22 *Id.* at 482. (citations and quotations omitted). Defendants' business model is to "scrape"
23 arrest information and booking photos that law enforcement agencies make available to
24
25
26
27
28

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.

3 State legislatures, such as Arizona's, recognize that the commercial exploitation of
4 arrest information and booking photos by mugshot website operators such as Defendants
5 causes enormous, continuing and ongoing damage to the individual depicted, creates
6 substantial barriers for those attempting to reintegrate into society from finding
7 employment, housing, and starting a new life, and militates against efforts at criminal
8 justice reform and rehabilitation. It is also widely accepted that the wrongly accused must
9 not be punished for nothing more than being wrongly accused.
10

11 In response to the reprehensible business model of mugshot website operators,
12 such as Defendants, the Arizona Legislature enacted a "Mugshots Act" that became
13 effective on August 27, 2019 and is codified at A.R.S. §§ 44-7901, *et. seq.* (the "Arizona
14 Mugshot Act"). Arizona's Mugshot Act prohibits "mugshot website operators" from
15 posting arrest information and booking photos for commercial purposes, which the Act
16 broadly defines to include "any purpose in which the [mugshot website operator] can
17 reasonably anticipate the receipt of monetary gain from the direct or indirect use of the
18 public record." A.R.S. § 39-121.03(D); A.R.S. § 44-7901(2). There is no question that
19 Defendants' commercial exploitation of arrest information and booking photos falls
20 squarely within the conduct proscribed by Arizona's Mugshot Act.
21

22 In enacting the Arizona Mugshot Act, the Arizona Legislature recognized that the
23 commercial exploitation of one's arrest information and booking photo causes daily,
24 ongoing and continuing damage. Beyond any prescribed monetary relief which a plaintiff
25

26 ¹ Because of the harm caused by the commercial exploitation of arrest information by
27 unscrupulous mugshot website operators, such as Defendants, law enforcement agencies and the
28 State of Arizona do not intend for booking photos and arrest information to be "scraped" and
then used for a commercial purpose.

1 may be entitled to under the Arizona Mugshot Act, the law expressly prohibits such
2 conduct, thereby providing plaintiffs with an injunctive remedy. A.R.S. § 44-7902.

3 Although by this action the Plaintiff seeks a vindication of his rights under the
4 Arizona Mugshot Act (and the Arizona common law), the Plaintiff is reasonably
5 concerned that he will face further online harassment from the Defendants or the owners
6 of similar websites who have a mutual interest in dissuading other victims from pursuing
7 their legal rights against them under Arizona and other states' laws. Defendants have
8 engaged in the exact behavior which Plaintiff rightfully fears several times (*See Exhibit*
9 *1*). As such, there is a very real threat that if Plaintiff's true identity is disclosed as a
10 result of participation in this lawsuit, Defendants and/or other mugshots website operators
11 will retaliate against him. To make matters worse, predatory mugshot website operators,
12 such as the Defendants, apparently hold grudges and often monitor the online activity of
13 targeted individuals for further harassment in order to make an example of them.

15 Regrettably, many of these predatory sites are based offshore and are beyond
16 service of process or use sophisticated technologies such as VPN encryption to mask
17 their true identities. The result is often an endless nightmare that Plaintiff, who is already
18 adversely affected by the Defendants' unlawful activity, wishes to avoid. Moreover, this
19 is precisely the type of harm the Arizona legislature sought to remedy by passing the
20 Arizona Mugshot Act.

21 Again, the Arizona legislature recognized that the unlawful commercial
22 exploitation of arrest information and booking photos causes daily, continuing and
23 ongoing harm and accordingly mandates the recovery of specific minimal damages. *See*
24 A.R.S. § 44-7902(D) ("A person that violates subsection B of this section is liable for
25 damages for each separate violation in an amount of at least: [1] \$100 per day during the
26 first thirty days of the violation[;] [2] \$200 per day during the subsequent thirty days of
27
28

1 the violation[;] [and] [3] \$500 per day for each day thereafter.”) As such, and because
2 Defendants have continuously exploited an innumerable amount of individual’s criminal
3 justice information since the beginning of the Act’s effective date, potential Arizona
4 plaintiffs are entitled to substantial amounts of monetary damages. Moreover, because
5 the Defendants operate at least two separate mugshot websites, the total damages could
6 double.

7
8 Considering these potentially staggering damage amounts, and that fact that other
9 plaintiffs could join this action, this lawsuit poses an existential threat to Defendants’
10 business practices. Faced with such a threat, Defendants, and perhaps other mugshot
11 website operators, are likely to retaliate in an attempt to both punish Plaintiff for asserting
12 his rights, and to create a chilling effect to dissuade other potential plaintiffs from joining
13 the litigation. Defendants (and other threatened mugshots website operators) will have the
14 motive, the means, and the opportunity to inflict additional, substantial harm to the
15 Plaintiff’s reputations, all in contravention of the spirit and purpose of Arizona’s
16 Mugshot Act.

17 In short, Defendants’ aggressive response toward plaintiffs, attorneys and
18 attorneys’ families who engage in litigation against them justifies the concerns of the
19 Plaintiff. As a result, Plaintiff respectfully requests the Court waive his presence during
20 further proceedings and permit him to proceed under pseudonym. Plaintiff further
21 respectfully request that his name and identity be revealed only if and when necessary,
22 pursuant to a good faith basis, on an attorneys’-eyes only basis, and that their identities
23 be prohibited from being revealed to Defendants and third parties.
24
25
26
27
28

III. THE PLAINTIFF'S MOTION SHOULD BE GRANTED.

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

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

Plaintiff is concerned about the risk of further severe online retaliation and permanent damage to his reputation, and the severe emotional distress that comes with it, for challenging the activities of the Defendants, either from them or other mugshot website operators. These individuals prey on vulnerable members of society, and share a common interest in preventing this case from escalating to include additional plaintiffs and possibly defendants. The targeted and severe online harassment experienced by

1 others who have litigated against them, as well as the overt public attacks on attorneys
2 and their families who represent clients who wish to assert their rights against them, it is
3 clear that this threat of severe retaliation is not only likely, but inevitable.

4 "No factors weigh against concealing plaintiffs' identities." 214 F.3d at 1069.
5 There is no prejudice to the Defendants, who publish millions of arrest records and
6 booking photos on the Websites. Plaintiffs is not, at this time, claiming individualized
7 pecuniary loss and therefore his minimum statutorily mandated damages amounts can be
8 determined simply through disclosure of the dates their arrest information appeared on
9 the Websites. As such, other than specific information such as the date when the
10 Defendants scraped someone's arrest data from the law enforcement websites, the actual
11 identity of that individual is irrelevant, at least at this point in the litigation. Anonymity
12 simply does not affect the ability of the Defendants from challenging any of the causes of
13 action outlined in the Complaint, nor the Motion for Preliminary Injunction.

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

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

26 214 F.3d at 1069 (9th Cir. 2000).

27 There has been an increase across jurisdictions of plaintiff pseudonyms to protect
28 privacy interests in the Internet age. See *Starbucks Corp. v. Superior Court*, 86 Cal. Rptr.

1 3d 482 (Cal. Ct. App. 2008). In that case, the Court noted that “[t]he judicial use of ‘Doe
2 plaintiffs’ to protect legitimate privacy rights has gained wide currency, particularly
3 given the rapidity and ubiquity of disclosures over the World Wide Web.” Defendants
4 represent the underbelly of the Internet, and have weaponized it to tarnish the reputations
5 of one of the most vulnerable populations in society—the millions of Americans who
6 have been arrested, even though many have been found innocent of any crime, or have
7 otherwise had their charges dropped, not filed, expunged, or dismissed.

8
9 Plaintiff’s anonymity in this case is consistent with the landmark ruling in the
10 Sixth Circuit’s *Detroit Free Press* case, which held that “individuals have a non-trivial
11 privacy interest in preventing disclosure of their booking photos.” 829 F.3d at 485. In so
12 holding, Sixth Circuit overruled its decades-old earlier decision on the issue,
13 acknowledging that the internet and social media have worked unpredictable changes in
14 the way photographs are stored and shared. *Id.* at 486. Photographs no longer have a
15 shelf life, and they can be instantaneously disseminated for malevolent purposes. *Id.*

16 No arbiter of fact could be prejudiced in favor of the Plaintiff because it knows
17 them only by the name of Doe. *Doe v. Ayers*, 789 F.3d 944, 946 (9th Cir. 2015). At
18 some point, Plaintiff may need to disclose his identity in order to obtain injunctive relief
19 from the court, which would require them to disclose to the Defendants which records to
20 remove from the Websites. However, at that point the Defendants can be directed
21 through court order to destroy the personal data in their possession, and not to use that
22 information for any other purpose, or to disclose it to any third parties. Moreover,
23 anonymity will prevent third parties from disparaging the Plaintiff, thereby creating a
24 chilling effect discouraging other potential claimants from joining the current litigation,
25 or from bringing an action under the Arizona Mugshot Act against other mugshot website
26 operators who exploit booking photos and arrest information for commercial purposes.
27
28

1 The Arizona legislature's objective in passing the Arizona Mugshot Act was to put an
2 end to the reprehensible activities of mugshot website operators and providing the
3 Plaintiff with the opportunity to proceed under pseudonyms is consistent with the
4 legislative intent.

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

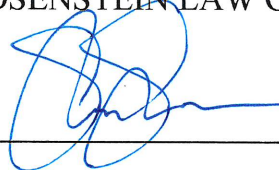
14
15 Simply put, sufficient "special circumstances" exist to permit Plaintiff to proceed
16 with this lawsuit under a pseudonym. *Does I thru XIII*, 214 F.3d at 1068.

17 **IV. CONCLUSION**

18 For the foregoing reasons, Plaintiff respectfully request that this Motion be
19 granted. Plaintiff respectfully request that the Court further order that Defendants may
20 discover the true identities of Plaintiff either: 1) by stipulation of the parties; or 2) by
21 demonstrating to the Court a reasonable and limited good faith basis for the disclosure
22 with restrictions. Plaintiff respectfully requests that the Court further order that if
23 disclosure of the true identities of Plaintiff, or any one of them on an individual basis, is
24 permitted, either by stipulation or by an Order of the Court, such disclosure will be made
25 on an attorneys-eyes only basis. For the Court's convenience, a Proposed Form of Order
26 has been filed with this Motion.
27
28

1
2
3 DATED this 1st day of December, 2020.

4 ROSENSTEIN LAW GROUP, P.L.L.C.

5
6  _____

7 By: Craig J. Rosenstein, Esq.
8 Attorney for Plaintiff
9
10

11 ORIGINAL of the foregoing e-filed with
12 the Superior Court and a COPY thereof
13 emailed this 1st day of December, 2020 to:

14 David S. Gingras, Esq.
15 GINGRAS LAW OFFICE, PLLC
16 4802 E. Ray Road, #23-271
17 Phoenix, Arizona 85044
18 Attorney for Defendants

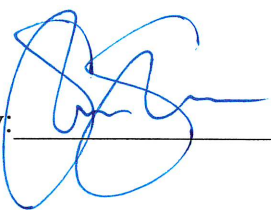
19
20 By:  _____
21
22
23
24
25
26
27
28

Exhibit 1

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

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.publicpolicerecod.com, and published a harassing, damaging and
5 defamatory story about my family and I.

6 4. Following a hyperbolic and misleading narration of events which took
7 place on the date of my arrest when I was seventeen years-old, Defendants go on to
8 include several other sections, misrepresenting my family and I to the public. For
9 example, one such section includes the following:
10

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

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

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

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

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."

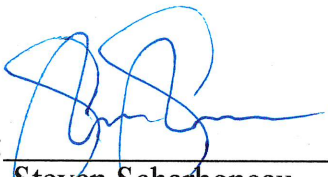
3 8. Our firm represents one other client against Defendants, a case which is in
4 The United States Federal Court, District of Arizona. *See* Case 2:20-cv-02045-SPL.
5 Despite efforts to conceal the client's identity in this matter, Defendants along with Mr.
6 Gingras assumed who the Jane Doe Plaintiff was. In retaliation, Defendants included her
7 mugshot and criminal justice information on the front page of their website,
8 www.publicpolice records.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 DATED this 1st day of December, 2020.

17
18 Respectfully submitted,

19
20
21 By: 
22 Steven Scharboneau
23 Attorney for Plaintiff
24
25
26
27
28