IN THE CIRCUIT COURT FOR THE STATE OF OREGON

IN THE COUNTY OF JOSEPHINE

CASEY MARIE HOUTSINGER, an individual, Plaintiff, v. US SUPPORT LLC, a Nevada limited liability company, and JASON WATSON, an individual; Defendants.	Case No. 24CV49697 **DEFENDANTS US SUPPORT LLC AND JASON WATSON'S ANTI-SLAPP SPECIAL MOTION TO STRIKE COMPLAINT UNDER ORS 31.150 AND MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION** O.R.C.P. Rule 21A(1)(b), 21A(1)(h) and O.R.S. 31.150, O.R.S. 31.152 Oral Argument Requested: 1 Hour

Defendants US Support LLC ("US Support") and Jason Watson (collectively, "Defendants") file this Anti-SLAPP Special Motion to Strike Plaintiff Casey Marie Houtsinger's Complaint and Motion to Dismiss for Lack of Personal Jurisdiction. Defendants seek to dismiss Plaintiff's Complaint on the merits under Oregon's Anti-SLAPP law, ORS 31.150 and 31.152, and O.R.C.P. 21A(1)(h). Defendants alternatively seek dismissal for lack of personal jurisdiction, and thus rely on O.R.C.P. 21A(1)(b).

Information requested by UTCR 5.010 and 5.050:

1. Oral argument is requested.
2. Court Reporting Services are not requested.
3. It is estimated that 60 minutes will be sufficient for oral argument.

Pursuant to UTCR 5.010, counsel for Defendants sent a draft of this motion to Plaintiff's counsel on April 2, 2025. Plaintiff's counsel stated that he did not have time to review the motion and conduct a meet and confer conference before Defendants' deadline to respond to the Complaint.

This Motion is based upon the attached memorandum of points and authorities and attached exhibits, the papers and pleadings on file in this action, and any oral argument permitted by this Court.

MEMORANDUM OF POINTS AND AUTHORITIES

1.0 INTRODUCTION

It seems odd that this case exists. Plaintiff, while homeless in Grants Pass during "an unfortunate and stressful time in her life," was arrested for drunk driving. The Oregon Department of Corrections published her booking photo, which Defendants then republished on their website. Defendants charged a fee for removal of booking photos and, within days of her booking photo being taken, Plaintiff initiated the process of removing the photo from Defendants' website. For unknown reasons, she did not complete this process. Instead, she went on a *completely unnecessary* years-long campaign to have the photo removed, including by seeking assistance from government officials, legal aid organizations, and retaining counsel. All of this to accomplish what she could have done in a few minutes for, compared to the cost of this litigation, a pittance.

The Court should dismiss this case under Oregon's Anti-SLAPP law, ORS 31.150 and 31.152, and award Defendants their costs and reasonable attorneys' fees. Plaintiff's sole claim for relief is premised on conduct in furtherance of the right to free speech in connection with an issue of public interest, namely reposting Plaintiff's criminal booking photo taken from government sources, and she cannot show a probability of prevailing on this claim. In the alternative, the Court should dismiss this case for lack of personal jurisdiction, as Defendants have no meaningful connection to this state and all the parties live in Nevada.

2.0 FACTUAL BACKGROUND

Plaintiff was arrested for a DUI on May 12, 2020, in Josephine County, Oregon. Complaint at ¶ 7. Her arrest report indicates that she was "homeless in Grants Pass" at this time. Complaint *Exhibit 6*. Shortly thereafter, Defendants published her mugshot and booking information on the website <arre.st>. *Id.* at ¶ 16; Declaration of Jason Watson ("Watson Dec."),

attached as **Exhibit 1**, at ¶¶ 4-5.[1] The photo on <arre.st> was taken from the Oregon Department of Corrections website. *Id.* at ¶ 5.

On December 9, 2020, Plaintiff began a DUI diversion program which she completed on May 26, 2021. Complaint at ¶¶ 8-10 and *Exhibits 6-8*. Due to completion of the program, her DUI charges were dismissed on January 6, 2022. Complaint at ¶ 11 and *Exhibit 9*.

On January 26, 2021, while still completing her DUI diversion program, Plaintiff sent an email to Defendants requesting that they remove her booking photo. Complaint at ¶ 19. Her request consisted of nothing more than the text "I am requesting to opt out and remove my mug shot." Complaint *Exhibit 12*. It did not provide any details regarding her arrest, such as when or where it occurred, and did not identify the website on which it was posted. ORS 133.875 was not in effect at this time, and it would have taken time and resources to locate the booking photo based on the limited information Plaintiff provided. Watson Dec. at ¶ 15. Nor did Plaintiff provide such details until her counsel, Tucker Rossetto, sent a letter on November 27, 2023. Complaint *Exhibit 14*. Even in this letter, Attorney Rossetto did not provide any documentation demonstrating that Plaintiff's DUI charges had been dropped. *Id.* Neither Plaintiff, nor anyone on her behalf, sent any communication requesting removal of Plaintiff's booking photo aside from the January 26 email and November 27 letter. Watson Dec. at ¶¶ 15-16.

Until November 22, 2022, the <arre.st> website permitted users to purchase a "license key," by which the user would be given permission to delete any booking photo from the site. Watson Dec. at ¶¶ 7 & 14. As of January 1, 2022, when ORS 133.875 went into effect, the site charged $49.80 for a license key regarding Oregon arrest records. *Id.* at ¶ 10. What Plaintiff does not mention in her Complaint is that she, or someone on her behalf, tried to initiate the process of

[1] This is the only website of Defendants on which the mugshot was posted. Plaintiff alleges it was also posted on the website <guessthecharge.net> (Complaint at ¶ 5), but this is false, as that site only posts West Virginia arrest records. Watson Dec. at ¶ 6. Even if it were, this would be of no significance, as Plaintiff does not allege that <guessthecharge.net> is a "publish-for-pay" website subject to ORS 133.875.

purchasing a license key regarding her booking photo on May 14, 2020, using the <arre.st> website's automated telephone system, but for unknown reasons did not complete this process. *Id.* at ¶ 12. At the time she initially attempted to purchase a license key, Defendants charged effectively $199. *Id.* at ¶¶ 8 & 12.

As a matter of the site's normal business practice, it continued to offer steeper and steeper discounts over time, with Plaintiff being offered a discounted price of $49.80 as of October 1, 2021. *Id.* at ¶ 9. Defendants' normal business practices included sending emails to people who initiated the license key purchase system when such discounts were offered, meaning Plaintiff should have been notified of this discounted price. *Id.* At any time from May 2020 to November 2022, Plaintiff could have paid the fee (whether $199 or $49.80, or any other discounted price) to remove her booking photo without even requesting that Defendants do anything, but she chose not to. By the time Attorney Rossetto sent his letter in November 2023, the ability to purchase a license key for the <arre.st> website had been disabled for over a year. *Id.* at ¶¶ 14 & 16.

3.0 LEGAL STANDARD

3.1. Anti-SLAPP

Oregon's Anti-SLAPP law allows a defendant to "make a special motion to strike against a claim in a civil action [for] . . . [a]ny . . . document presented, in a place open to the public or a public forum in connection with an issue of public interest; or [a]ny other conduct in furtherance of the exercise of the . . . constitutional right of free speech in connection with a public issue or an issue of public interest." O.R.S. 31.150(1), (2)(c), and (2)(d). Such a motion must be filed within 60 days of service of the complaint, or at a later date at the court's discretion. O.R.S. 31.152(1). The filing of the motion immediately stays all discovery. O.R.S. 31.152(2). If it is granted, the moving party is entitled to costs and reasonable attorneys' fees. O.R.S. 31.152(3).

The statute sets forth a two-prong framework. First, the moving party must make a prima facie showing that the claims at issue arise out of protected conduct. Then, the burden shifts to the non-moving party "to establish that there is a probability that the plaintiff will prevail on the claim by presenting substantial evidence to support a prima facie case." O.R.S. 31.150(3). An

Anti-SLAPP motion is treated as a motion to dismiss under ORCP 21A (O.R.S. 31.150(1)), though in addition to the pleadings, the court may consider "supporting and opposing affidavits stating the facts upon which the liability or defense is based." O.R.S. 31.150(4). The court may not, however, weigh competing evidence to determine whether the non-moving party has met its burden at prong two; the focus is on whether the moving party's evidence defeats the non-moving party's evidentiary showing as a matter of law. *Young v. Davis*, 259 Or. App. 497, 509-10 (2013).

The Oregon Legislature has specified that this procedure is intended "to provide a defendant with the right to not proceed to trial in cases in which the plaintiff does not meet the burden specified in ORS 31.150" and the statute is "to be liberally construed in favor of the exercise of the rights of expression..." O.R.S. 31.152(4). Oregon's law is modeled after California's, Cal. Code Civ. Proc. § 425.16, and so Oregon courts often look to California Anti-SLAPP case law to interpret this state's law. *Mullen v. Meredith Corp.*, 271 Or. App. 698, 705 n.2 (2015); *Davis*, 259 Or. App. at 509; *DeHart v. Tofte*, 326 Or. App. 720, 742 (2023).

3.2. Personal Jurisdiction

In ruling on a motion to dismiss for lack of personal jurisdiction under ORS 21A(1)(b), a court may consider both the allegations in the complaint and matters outside the pleadings. *Cerner Middle E Ltd. v. Belbadi Enters. LLC*, 305 Or. App. 413, 420 (2020). In responding to such a motion, the plaintiff has the burden to make a *prima facie* showing that personal jurisdiction is appropriate, meaning they must present "facts that, if true, are sufficient to allow a factfinder to make the necessary findings supporting jurisdiction." *Id.* at 420-21. Whether the plaintiff has made this *prima facie* showing is a legal question. *Id.* at 421.

4.0 ANTI-SLAPP ARGUMENT

4.1. The Court Should Find the Anti-SLAPP Motion is Timely

An Anti-SLAPP motion must be filed within 60 days of service of the Complaint, unless the court extends this time in its discretion. O.R.S. 31.152(1). This 60-day time limit exists due to the Oregon Legislature's intent that the statute "'provide an inexpensive and quick process' to

determine if claims that might infringe free speech are frivolous." *C.I.C.S. Empl. Servs. v. Newsport Newspapers, Inc.*, 291 Or. App. 316, 320 (2018) (quoting *Page v. Parsons*, 249 Or. App. 445, 461 (2012)).

Defendants' counsel accepted service on behalf of Jason Watson on February 20, 2025. There is thus no question that this Motion is timely as to him. However, Defendant US Support was served on October 21, 2024, meaning this Motion is filed more than 60 days after service on it. Defendants first attempted to negotiate a resolution of Plaintiff's suit. Once that failed, they retained the law firm of Randazza Legal Group, PLLC ("RLG") on January 29, 2025. RLG does not have attorneys licensed in Oregon, however, and Oregon counsel was not retained until February 19, 2025. Declaration of Alex J. Shepard ("Shepard Dec."), attached as **Exhibit 2**, at ¶ 5.

This Court should exercise its discretion to allow this Motion as to US Support, as Defendants have only recently retained counsel and doing so would be in keeping with the purpose of the Anti-SLAPP law. There has been no meaningful litigation activity since US Support was served. Plaintiff did not file a notice of intent to take default against US Support until January 16, 2025, and disclaimed her intent to seek default against that Defendant even before counsel for Defendants reached out to Plaintiff's counsel. *See* Motion for Alternate Service on Jason Watson, filed January 27, 2025.[2] No discovery has taken place (Shepard Dec. at ¶ 7), and the only orders issued by this Court have been on motions requesting additional time for Defendants to respond to the Complaint. This case is still in its infancy, and it would be contrary to the purpose of Oregon's Anti-SLAPP law for this Court not to consider this Motion as to US Support.

4.2. Defendants Satisfy Their Prong One Burden

[2] Plaintiff withdrew this motion on February 27, 2025, in light of Defendants' counsel accepting service on behalf of Defendant Watson.

Whether a defendant's alleged conduct is wrongful is not part of the prong one inquiry. *Mullen v. Meredith Corp.*, 271 Or. App. 698, 705 (2015). Nor is the necessity of the alleged conduct to the defendant's exercise of their freedom of speech rights; it is enough that the conduct is "in furtherance of" such exercise. *Id.* at 706. Conduct is in furtherance of the right to free speech if it is merely communicative and broadly falls within the ambit of the First Amendment. *Tofte*, 326 Or. App. At 742. There is no legitimate dispute that posting public arrest records is conduct in furtherance of free speech rights, meaning this inquiry is limited to whether this conduct was in connection with an issue of public interest and in a public forum.

4.2.1. Defendants' Speech Was in Connection with an Issue of Public Interest

The term "issue of public interest" has the "common-sense meaning" of "an issue that is of interest to the public." *Tofte*, 326 Or. App. At 742. To determine whether this requirement is satisfied, courts focus on the content, form, and context of the relevant conduct. *Mouktabis v. Clackamas Cnty.*, 327 Or. App. 763, 773 (2023). A plaintiff need not be a public figure for speech about them to be in connection with an issue of public interest. *Mullen v. Meredith Corp.*, 271 Or. App. 698, 706-07 (2015) (finding that news reporting about a shooting carried out by a non-public figure was on an issue of public interest); *Neumann v. Liles*, 358 Or. 706, 721 (2016) (finding that statements about plaintiff's wedding venue business were of public concern because they "were posted on a publicly accessible website, and the content of his review related to matters of general interest to the public, particularly those members of the public who are in the market for a wedding venue").

Arrest records are without question matters of "legitimate concern to the public." *Cox Broad Co. v. Cohn*, 420 U.S. 469, 492 (1975); *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29, 45 (1971) (plurality) (finding that "police arrest of a person . . . clearly constitutes an issue of public or general interest"), *abrogated on other grounds by* 418 U.S. 323 (1974). Multiple courts have found that an "arrest and its surrounding circumstances [convey] truthful information on matters of public concern protected by the First Amendment." *Best v. Berard*, 776 F. Supp. 2d 752, 758

(N.D. Ill. 2011); *Obsidian Fin. Group, LLC v. Cox*, 740 F.3d 1284 (9th Cir. 2014) (holding that allegation of fraud was a matter of public concern); *Adventure Outdoors, Inc. v. Bloomberg*, 552 F.3d 1290, 1298 (11th Cir. 2008) (holding that accusations of "alleged violations of federal gun laws" constituted speech on "a matter of public concern"); *Boule v. Hutton*, 328 F.3d 84, 91 (2d Cir. 20032) (holding that allegations of "fraud in the art market" involved "a matter of public concern"); Restatement (Second) of Torts, § 652D cmt. f ("Those who commit crime or are accused of it . . . may make every possible effort to avoid [publicity], but they are nevertheless persons of public interest, concerning whom the public is entitled to be informed").

Reposting booking photos obtained from local law enforcement is unquestionably conduct in connection with an issue of public interest. It concerns a substantial portion of the general public by, for example, notifying the public that someone may be a criminal suspect, helping prevent wrongful arrests, assisting the public in policing law enforcement activities, and informing the public of unlawful conduct committed by individuals who may be considered for employment in positions of particular trust or responsibility. This is particularly so where, as Plaintiff alleges here, the law enforcement agency that posted a photo later removes it. Complaint at ¶ 15.

This last example is relevant here, as Plaintiff "has had a long career as an educator" throughout the U.S. and abroad, where she has worked as various forms of teacher, tutor, coach, and supervisor, typically with minors. Complaint at ¶ 1 and *Exhibit 1*. While Plaintiff was still completing her DUI diversion program, and immediately afterward, she was actively working in the teaching field; her resume shows that she was working as an APE Coach starting in July 2021 and a substitute teacher starting in January 2022. Complaint *Exhibit 1*. In 2023, she moved to Las Vegas for the purpose of obtaining advanced degrees for special education. Complaint at ¶ 12. She thus intends to work closely with not only children, but special needs children. Any educational institution considering hiring her or parent whose child might be in her care would thus be keenly interested to learn of her criminal history and how it reflects on her personal character and judgment. As far as the criminal justice system is concerned, she may have "paid

her debts to society" (Complaint at ¶ 12), but her record has not been expunged and the public is still entitled to know of her criminal history.

4.2.2. Defendants' Alleged Speech Was Published in a Place Open to the Public or a Public Forum

This requirement is only applicable to ORS 31.150(2)(c); the "catch-all" provision in subsection (d) has no public forum requirement. Websites accessible to the general public are public forums for purposes of the Anti-SLAPP law. *See Hupp v. Freedom Commn's, Inc.*, 221 Cal. App. 4th 398, 404 (2013). The <arre.st> website is accessible to the general public and, until Defendants voluntarily removed Plaintiff's booking photo from it, any member of the public with internet access could view the photo. This requirement is thus satisfied, and Defendants have met their prong one burden.

4.3. Plaintiff Cannot Satisfy Her Prong Two Burden

Plaintiff alleges a single cause of action for violation of ORS 133.875. This statute creates liability for two forms of conduct, designated under subsections (1) and (2). Both of these govern only a "publish-for-pay publication," which is "a publication or website that requires the payment of a fee or other consideration in order to remove or delete a booking photo from the publication or website." ORS 133.875(3). The law went into effect on January 1, 2022.

Subsection (1) requires a publish-for-pay publication to remove and destroy a booking photo "of a person who submits a request for removal and destruction within 30 calendar days of the request." ORS 133.875(1)(A). However, the publication may condition removal of the photo on the payment of a fee of no more than $50. ORS 133.875(1)(b). The term "request for removal and destruction" of a booking photo is not defined, and there do not appear to be any cases interpreting this statute.

Subsection (2) is concerned with booking photos of individuals whose charges were dropped. This provision requires removal of a booking photo within 7 days of a "request for removal and destruction" if the requester provides documentation that their criminal charges were dropped. ORS 133.875(2)(a). Unlike subsection (1), the publish-for-pay publication cannot

condition removal of the photo on payment of a fee or any other consideration. ORS 133.875(2)(b).

4.3.1. Plaintiff Cannot Show a Violation of the Statute

Defendants did not violate either subsection of the statute. Subsection (2) is easy to dispense with. Plaintiff, whether herself or through counsel, *never* provided documentation showing that her DUI charges had been dismissed. Watson Dec. at ¶ 17; Complaint at *Exhibits 12 and 14*.[3] There is no obligation to remove a booking photo unless and until such documentation is provided, and so Defendants cannot have violated this provision.

Subsection (1) requires only marginally more discussion. Defendants were permitted to charge up to $50 for removal of a booking photo unless subsection (2) applied. As of January 1, 2022, Defendants charged $49.80 for removal of Oregon booking photos as a matter of course, which is below this threshold. While Defendants charged more when Plaintiff initially sought to purchase a license key, this amount never exceeded $199, and was discounted to $49.80 as of October 1, 2021. Watson Dec. at ¶¶ 8 & 9. Plaintiff was aware that this was the price to purchase a license key, which would allow for deletion of her (or any other) booking photo, as she initiated the process of purchasing such a key over a year before requesting removal of the photo via email, and she should have received emails regarding the discounted prices for purchase of a license key. Watson Dec. at ¶ 9. It would have been trivially easy for her to remove the photo herself with the purchase of a license key, as this was an automated process that did not require any input from or discretion of Defendants. *Id.* at ¶ 11. Whether because she ran into technical difficulties or simply did not want to pay this amount, Plaintiff never purchased this key.[4] Defendants conditioned removal of her photo on a payment of either under $200 (prior to ORS

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[3] Attorney Rossetto claimed in his November 2023 letter that Plaintiff's charges had been dismissed, but provided no supporting documentation establishing this.

[4] It is baffling that Plaintiff claims to have gone through a years-long odyssey to remove her booking photo from <arre.st>, including by allegedly speaking with legislators and the Oregon DOJ (Complaint at ¶ 22), when she could have solved this problem by clicking a few buttons and paying $50 nearly five years ago.

133.875 going into effect) or under $50 (when the law went into effect), which it was permitted to do under ORS 133.875(1)(b), and Plaintiff never paid this fee despite being aware of it. Defendants did not violate this statute.

Defendants additionally did not violate the statute under either subsection because they did not receive a sufficient "request for removal and destruction" until after <arre.st> had stopped being a publish-for-pay publication. The only request prior to November 2022, when Defendants disabled the license key purchase system for the <arre.st> site, was a single email from Plaintiff on January 26, 2021, requesting that her mugshot be removed but providing no details that would allow Defendants to act on her request. Watson Dec. at ¶ 15; Complaint *Exhibit 12*. The fatal problem for Plaintiff's claim is that she made this request before ORS 133.875 went into effect, meaning Defendants were under no obligation to remove her booking photo. But even if this request were somehow still pending nearly a year later when the law did go into effect, a "request for removal and destruction" under ORS 133.875 must surely consist of something more comprehensive than providing a name and a request that their mugshot be removed. At a bare minimum, such a request must include the date (at least approximately) and location of the arrest for a publish-for-pay publication to act on it. Watson Dec. at ¶ 15. The statute must allow for some screening or verification procedures, otherwise anyone could request removal of a booking photo for any reason, regardless of whether they were the affected party or a representative.

The later removal request in November 2023 was sufficient, as it provided such information, but by that time <arre.st> had disabled its license key purchase system and was no longer a publish-for-pay publication. *Id.* at ¶ 14. It was thus under no obligation to remove the booking photo and could not have violated ORS 133.875. Plaintiff's removal requests were both too early and too late, and inadequate besides. Plaintiff cannot show that Defendants violated ORS 133.875, and thus cannot show a probability of prevailing on her claim. The Court should grant this Motion.

4.3.2. Defendants Are Immune Under the CDA

Even if Plaintiff could make a *prima facie* evidentiary showing on her claim, this Motion must still be granted because Defendants are immune under Section 230 of the Communications Decency Act, 47 U.S.C. § 230 ("Section 230"). This law establishes that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). This creates absolute immunity so long as the defendant is a provider or user of such a service and did not materially contribute to the creation or development of the allegedly tortious content. 47 U.S.C. § 230(f)(3) defines "information content provider" as "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service." The immunity created by Section 230 preempts all contrary state laws. 47 U.S.C. § 230(e)(3).

"The majority of federal circuits have interpreted the CDA to establish broad 'federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service.'" *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006) (quoting *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)). The purpose of the act is "to promote the continued development of the Internet and other interactive computer services and to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services." *Woodhull Freedom Found. v. United States*, 72 F.4th 1286, 1293 (D.C. Cir. 2023). The statute provides immunity from liability for any claim that "inherently requires the court to treat the defendant as the 'publisher or speaker' of content provided by another." *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1102 (9th Cir. 2009).

The most common scenario where Section 230 immunity applies is when a user of a social media platform or online forum posts defamatory content, and the provider of the platform or forum is sued for it. Every court in the country is in accord that Section 230 immunity applies in that scenario, but the facts here are slightly different: the Oregon Corrections Department posted Plaintiff's booking photo on its website, and then Defendants republished that photo on

the <arre.st> website. That does not change the outcome, however, as courts throughout the country have found that republishing statements from third parties, even on a different platform or website, is protected under Section 230. "Congress has made a . . . policy choice by providing an immunity even where the interactive service provider has an active, even aggressive role in making available content prepared by others." *Blumenthal v. Drudge*, 992 F. supp. 44, 52 (D.D.C. 1998).

The seminal case explaining this is *Barrett v. Rosenthal*, 146 P.3d 510 (Cal. 2006). There, an individual posted a copy of an article she had received via email on two newsgroup websites and was sued for republishing defamatory information. *Id.* at 514. The court found that the term "users" included individuals using an interactive computer service, and thus the defendant's act of republication was protected under Section 230. *Id.* at 513.

Rosenthal spawned many cases affirming and expanding this reasoning. *See Coomer v. Donald J. Trump for President, Inc.*, 2024 COA 35, 2024 Colo. App. LEXIS 448, *97-99 (Apr. 11, 2024) (finding that retweeting allegedly defamatory statements published by a third party, and including in retweet a verbatim quote from allegedly defamatory statements, was protected under Section 230); *Banaian v. Bascom*, 281 A.3d 975, 980 (N.H. 2022) (finding that students who retweeted allegedly defamatory screenshot of webpage were immune under Section 230); *Holmok v. Burke*, 2022-Ohio-2135, 2022 Ohio App. LEXIS 2015, *8-9 (Oh. Ct. App. June 23, 2022) (finding that defendant who retweeted an allegedly defamatory tweet and added a hashtag was immune under Section 230).

Courts apply this reasoning even in cases where information was provided by a third party on one online platform and republished on a different platform. *See Comyack v. Giannella*, 2020 N.J. Super. LEXIS 49, *117-18 (N.J. Super. Ct. Apr. 21, 2020) (finding that Facebook users who made Facebook posts republishing allegedly defamatory statements published by third parties on social media websites Reddit and Instagram were immune under Section 230); *Marfione v. Kai U.S.A., Ltd.*, No. 17-70, 2018 U.S. Dist. LEXIS 51066, *16 (W.D. Pa. Mar. 27, 2018) (finding defendant whose Instagram account linked to allegedly defamatory article

published by third party was immune under Section 230); *Roca Labs, Inc. v. Consumer Op. Corp.*, 140 F. Supp. 3d 1311, 1320 (M.D. Fla. 2015) (finding consumer review website that published tweets quoting and linking to allegedly defamatory reviews published by third parties was immune under Section 230); *Vasquez v. Buhl*, 150 Conn. App. 117, 90 A.3d 331, 344 (2014) (finding newspaper that linked to allegedly defamatory article published by third party was immune under Section 230).

The court in *Nat'l Ass'n of the Deaf v. Harvard Univ.*, 377 F. Supp. 3d 49 (D. Mass. 2019), provided a clear explanation of the relationship between embedded content and Section 230:

> By definition, embedded content is content hosted on a third-party server [here, Twitter] that is hyperlinked in its existing form to content that is hosted on [*The Daily Caller's*] platform or website. To the extent such content is not content that was created or developed in whole or in part by [*The Daily Caller*, *The Daily Caller*] cannot be an information content provider as to embedded content . . . Where [*The Daily Caller*] or someone associated with [*The Daily Caller*] is embedding a third party's content that [*The Daily Caller*] or someone associated with [*The Daily Caller*] did not create or develop in whole or in part – in other words, is publishing a third party's content – [*The Daily Caller*] is entitled to CDA immunity ....

Id. at 69 (granting judgment on the pleadings on Section 230 grounds).

While Defendants' republishing of Plaintiff's booking photo was not, as a technical matter, embedding a tweet, there is no legal distinction between the two actions. Defendants did not create the booking photo; they took it from a third-party website. And their decision not to remove the photo was a traditional editorial function that has routinely been found to be protected by Section 230. Plaintiff does not claim that Defendants engaged in any wrongful conduct other than not removing the photo, and so the cases firmly establish Defendants cannot be liable.

Courts dealing with mugshot websites have found that Section 230 immunizes the hosting of and decision not to remove booking photos. *See Doe v. Oesterblad*, 2015 U.S. Dist. LEXIS 199298, *7-8 (D. Ariz. June 9, 2015) (dismissing claims on Section 230 grounds that

were based on defendant copying and republishing information from "preexisting non-profit and government websites"); *Doe v. Grant*, 2021 Ariz. Super. LEXIS 1327, *6-7 (Maricopa Sup. Ct. Mar. 31, 2021) (finding that Section 230 preempted Arizona mugshot law and granting motion to dismiss); *Shuler v. Duke*, 2018 U.S. Dist. LEXIS 90409, *22-25 (N.D. Ala. May 31, 2018), *aff'd* 792 Fed. Appx. 697 (11th Cir. 2019) (finding Section 230 barred defamation claim despite allegation that plaintiff's arrest had no basis in law or fact); *Kruska v. Perverted Justice Found., Inc.*, 2008 U.S. Dist. LEXIS 109347, *7-9 (D. Ariz. July 8, 2008) (finding claims based on statements imputing criminal conduct were barred by Section 230 as to defendant which only hosted content created by other sources).

The fact that Defendants, at one point, charged for a license key that would allow removal of booking photos does not affect this immunity. "[T]he fact that a website elicits online content for profit is immaterial; the only relevant inquiry is whether the interactive service provider 'creates' or 'develops' that content." *M.A. ex rel. P.K. v. Vill. Voice Media Holdings, LLC*, 809 F. Supp. 2d 1041, 1050 (E.D. Mo. 2011); *Fed. Agency of News LLC v. Facebook, Inc.*, 432 F. Supp. 3d 1107, 1119 (N.D. Cal. 2020) (stating that "there is no 'for profit exception to § 230's broad grant of immunity'").

Due to Section 230 immunity, Plaintiff cannot show a probability of prevailing on her claim. This immunity is applicable on the face of the Complaint; the Court need not review extrinsic evidence to determine that dismissal is appropriate under O.R.C.P. 21A(1)(h).

4.3.3. The Statute is Unconstitutional

Assuming, *arguendo*, that Defendants violated Oregon's mugshot law and Section 230 does not apply, Plaintiff's claim still fails because the Oregon law is an unconstitutional infringement on the First Amendment. As discussed above, the law inhibits the ability to post, and to continue posting, publicly available criminal records of significant interest to the general public. Such conduct is protected under the First Amendment, and the law discriminates based on the content of speech; it targets booking photo websites specifically and is concerned solely with booking photos. Because it is content-based, the law is subject to strict scrutiny, meaning it

is unconstitutional unless it is narrowly tailored and advances a compelling state interest. *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 642 (1994).

It is firmly established that there is no governmental interest that can justify restraining or punishing the dissemination of publicly available criminal records. "[A]ny state interest in protecting for rehabilitative purposes the long-term anonymity of former convicts [is not] 'of the highest order[.]'" *Gates v. Discovery Commc'ns, Inc.*, 101 P.3d 552, 560 (Cal. 2004) (collecting cases); *Smith v. Daily Mail Publ'g. Co.*, 443 U.S. 97, 104 (1979) (holding that state's interest in protecting the anonymity of juvenile defendants did not justify punishing newspapers for truthfully reporting those names); *Fla. Star v. B.J.F.*, 491 U.S. 524, 525 (1989) (holding that state's interest in protecting privacy of rape victim insufficient to overcome First Amendment protection for the dissemination of "lawfully obtained truthful information" concerning a matter of public concern); *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 841 (1978) (state's interest in protecting the reputation of its judges and in maintaining the institutional integrity of its courts not sufficient to justify punishing speech involving confidential proceedings of judicial review commission); *Okla. Publ'g. Co. v. Dist. Court In & For Okla. Cnty.*, 430 U.S. 308, 311 (1977) (holding publisher could not be held liable for publishing lawfully obtained "name and picture of the juvenile [that] were publicly revealed in connection with the prosecution of the crime"); *Bartnicki v. Vopper*, 532 U.S. 514, 527 (2001) (stating that "state action to punish the publication of truthful information seldom can satisfy constitutional standards").

ORS 133.875 cannot be constitutionally applied to penalize or restrain the publication of criminal records. As the Supreme Court has made crystal clear, "once the truthful information [is] publicly revealed or in the public domain the court [can]not constitutionally restrain its dissemination." *B.J.F.*, 491 U.S. at 535 (internal citations and quotation marks omitted).

5.0 PERSONAL JURISDICTION ARGUMENT

In the alternative, Defendants request dismissal of Plaintiff's Complaint for lack of personal jurisdiction. To maintain a claim in an Oregon court, a plaintiff needs to establish that the court has personal jurisdiction over the defendants. In this case, Plaintiff cannot show that

Defendants are subject to personal jurisdiction here. The case should be dismissed pursuant to ORCP 21A(1)(b).

Personal jurisdiction in Oregon is "examined as either a question of general personal jurisdiction or specific personal jurisdiction." *Wallace v. Holden*, 297 Or. App. 824, 828-829, (2019). General personal jurisdiction exists when a defendant's connection to the state is so "continuous and systematic as to render them essentially at home" in Oregon. *Id.*, quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). General jurisdiction is "all-purpose jurisdiction," meaning the defendant can be sued in Oregon for any claim that has accrued against him. *See id.*

On the other hand, specific personal jurisdiction "depends on an affiliation between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Id.* In contrast to general jurisdiction, specific personal jurisdiction "is confined to an adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Id.*

Plaintiff's Complaint makes no allegations suggesting that Defendants are subject to general personal jurisdiction in the State of Oregon. *See* Complaint at ¶¶ 2-5. They are not "essentially at home" in Oregon. Mr. Watson is not an Oregon resident. US Support is not incorporated in Oregon, and its principal place of business is not in Oregon. The Complaint correctly surmises that, like Plaintiff, Defendants reside in the State of Nevada. *See id.* Thus, this Court can only maintain personal jurisdiction over Defendants if Plaintiff can demonstrate that they are subject to specific personal jurisdiction in Oregon. They are not. The claims Plaintiff asserted do not subject Defendants to the specific personal jurisdiction of this Court, and this case should be dismissed.

Courts in Oregon will only subject a defendant to specific personal jurisdiction if it falls within the boundaries of Oregon's long-arm statute, contained in ORCP 4B through ORCP 4L. Plaintiff neglected to allege the specific provision of the long-arm statute that allegedly subjects Defendants to the jurisdiction of this Court. However, only one event alleged in the Complaint

occurred in Oregon, Plaintiff's 2020 arrest "for driving under the influence of intoxicants" on May 12, 2020, and the subsequent disposition of that arrest. *See* Complaint at ¶¶ 7-11. Therefore, the only provision of the long-arm statute that may fit is its catch-all provision, which provides for specific jurisdiction "in any action where prosecution of the action is not inconsistent with the Constitution of this state or the Constitution of the United States." ORCP 4L. Because Oregon's constitution does not have a due process clause, when determining whether jurisdiction exists, its state courts are guided solely by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *See Wallace*, 207 Or. App. at 834.

Judicial decisions regarding the Fourteenth Amendment have long held that due process is satisfied when "minimum contacts" exist between the nonresident defendant and the forum state such that maintaining the suit in the state would not "offend traditional notions of fair play and substantial justice." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286-291-92 (1980). There are three requirements that govern whether specific personal jurisdiction exists: (1) whether the defendant has purposefully availed itself of the privilege of conducting activity in Oregon; (2) whether the litigation arises out of, or relates to, the defendant's activities in Oregon; and (3) whether the exercise of jurisdiction comports with fair play and substantial justice. *See Cox v. HP Inc.*, 368 Or. 477, 485-86 (2021). A court can only take personal jurisdiction over the defendants if all three elements are satisfied. *See id.*

5.1. Purposeful Availment

To meet the first prong, the plaintiff must demonstrate that the defendant has either "purposefully availed" itself of the privilege of conducting activities in Oregon or "purposefully directed" its activities at Oregon. *M.C. v. Quest Glob., Inc.*, 328 Or. App. 378, 383 (2023). The requirement exists to prevent foreign defendants from being haled into Oregon's courts for random, fortuitous, or attenuated contacts with the state. *See id.*, citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). The act subjecting the defendant to specific personal jurisdiction must create a *substantial connection* with Oregon that was created by the *defendant*

himself. See M.C., 328 Or. App. at 384. Mere injury to a forum resident is not a sufficient connection to the forum. *See id.*, citing *Walden v. Fiore*, 571 U.S. 277, 290 (2014).

Here, the extent of Defendants' connection to Oregon is that they posted a publicly available photo of Plaintiff that was taken in Oregon on their website. Defendants can hardly be said to have created that connection to Oregon. After all, it was either an error in judgment by Plaintiff or by Oregon law enforcement that caused that photograph to be published on a public law enforcement website in the first place.

Defendants' contacts with Oregon were also insubstantial. They did not physically enter the State of Oregon at any point. To the extent that Plaintiff was injured at all, which Defendants strongly dispute and Plaintiff does not actually allege, that injury did not occur in Oregon. After all, Plaintiff was no longer living in Oregon when she commenced sending emails to Defendants demanding that they take her photo down; she was, according to her resume, working in Wisconsin. Complaint *Exhibit 1*. While those emails contained no information regarding where she was located at the time of the arrest or at the time of the takedown demand, based upon the dates of the emails and her resume, which are all attached as exhibits to the Complaint, she was either in Wisconsin or Nevada when they were sent. Defendants do not have the required minimum contacts to drag them into a remote jurisdiction for this dispute.

5.2. Arising Out of or Related to Defendants' Activities

The plaintiff must also demonstrate that the litigation arises out of or relates to the defendant's contacts with Oregon. *See M.C.*, 328 Or. App. at 384,, citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). While the contacts do not need to be the "but for" cause of the litigation, they must show that the defendant has "systematically served the state's markets [such] that the reach of its actions did in some way relate to the claims." *Cox v. HP Inc.*, 317 Or. App. 27, 33 (2022). Litigation in the state must be reasonably foreseeable, which is an objective determination. *See Cox*, 368 Or. at 487.

It was not reasonably foreseeable that Defendants would be haled into an Oregon court based upon the allegations in the Complaint. As noted, when Plaintiff began sending emails

demanding that the photo be removed from Defendants' website, she was already residing in Wisconsin or Nevada. Moreover, those emails never stated that she had been an Oregon resident or that her booking photo was taken in Oregon. Given that Defendants could not have reasonably foreseen that their actions would subject them to a lawsuit in this state, this state does not have personal jurisdiction over them.

5.3. Fair Play and Substantial Justice

Finally, the assertion of jurisdiction in Oregon must comport with fair play and substantial justice. *See Cox*, 368 Or. at 485-86. This is a fact-specific inquiry that requires balancing seven factors: (1) the extent of the defendants' purposeful interjection; (2) the burden on the defendants in defending in the forum; (3) the extent of conflict with the sovereignty of the defendants' state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum. *See Munson v. Valley Energy Inv. Fund, U.S., L.P.*, 264 Or. App. 679, 700 (2014), quoting *Harris Rutsky & Co. Ins. Servs. V. Bell & Clements Ltd.*, 328 F.3d 1122, 1132 (9th Cir. 2003). The factors are to be balanced, and no single factor is dispositive. *See id.*

Here, all seven factors weigh strongly in favor of dismissing this case for lack of personal jurisdiction. Most importantly, all of the parties to this lawsuit reside in Nevada, and did so well before the Complaint was filed. *See* Complaint at ¶¶ 1-3. The burden on Defendants of being forced to defend themselves in Oregon would be much greater than defending themselves in their home state. They are physically in Nevada. All of their evidence is located in Nevada. Their attorneys are in Nevada, requiring them to retain local counsel in Oregon. Defending themselves in a remote jurisdiction will be far more expensive than defending themselves at home in Nevada.

Plaintiff herself is at home in the Silver State. Given that Plaintiff is also located in Nevada, obtaining relief there will clearly be more convenient and cost effective for Plaintiff as well. If she believes that Oregon law should apply, she can make that argument in Nevada, and

Nevada's courts are just as competent at reviewing and interpreting statutes as those in Oregon. In any case, there is no reason for her to drag this dispute hundreds of miles away when all of the parties reside in Las Vegas.

Defendants' interjection into Oregon was minor. While they posted Plaintiff's mugshot, which was taken in Oregon, she was not in Oregon when she began trying to get that mugshot taken down. In fact, her emails to Defendants, which are attached as exhibits to her Complaint, provide no identifying information about her at all. Defendants did not know that she was formerly an Oregon resident when she sent them takedown demands from Nevada and/or Wisconsin.

Finally, Nevada has a far greater interest in resolving this dispute than Oregon. **It is a dispute between Nevada residents.** Of course, this also makes Nevada a more efficient location to adjudicate this matter. While Plaintiff was arrested initially in Oregon, that is this state's only connection to this matter. Defendants were not involved in any way with that arrest and should not be forced to litigate in a remote jurisdiction when they live in the same metropolitan area as Plaintiff does. This case should be dismissed for lack of personal jurisdiction, and Plaintiff should be instructed to refile in her home state.

6.0 CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiff's Complaint in its entirety and award Defendants their costs and reasonable attorneys' fees, to be substantiated in a subsequent motion. In the alternative, the Court should dismiss this suit for lack of personal jurisdiction over Defendants.

Dated: April 4, 2025.

Respectfully Submitted,

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Case No. 24CV49697

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was electronically filed on this 4th day of April 2025 and served via the Circuit Court for the State of Oregon electronic filing system.

_____
ATTORNEY