

1 Jeffrey L. Mendelman (SBN 305629)
2 CASE LAW LTD.
3 580 California Street, 12th Floor
4 San Francisco, CA 94104
5 Phone: (833) 227-3583
6 Fax Number: (415) 520-5405
7 Email: admin@caselawltd.com

8 Attorney for Plaintiff JOHN DOE

9 Joshua Koltun, Attorney (SBN 173040)
10 1 Sansome St. Ste. 3500, No. 500
11 San Francisco, CA 94104
12 Phone: (415) 680-3410
13 Facsimile: (866) 462-5959
14 Email: joshua@koltunattorney.com

15 Attorney for Defendant ROE 1

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN DOE,

Plaintiff,

vs.

BORDERLAND BEAT, EL SIGLO DE
TORREON, NOVENTA GRADOS,
CODIGO ROJO NOTICIAS, INFOBAE, EL
MANANA, REPORTE NIVEL UNO,
OMNIA, VALOR TAMAULIPECO,
REFORMA, EL NORTE, NOTICIAS PV
NAYARIT, VANGUARDIA, and ROES 1-
50, inclusive,

Defendants.

) Case No.: 4:20-cv-06822-JD

) **JOINT RULE 26(f) REPORT**

) Date: TBD

) Time: TBD

) Hon. Judge James Donato

1 Plaintiff Doe and Defendant Roe 1 (“Roe”) hereby make the following joint report
2 under Federal Rule 26(f):

3 1. **Jurisdiction and Service:** Plaintiff asserts subject matter jurisdiction under
4 18 USC §2724 (the Drivers Privacy Protection Act, hereinafter “DPPA”) for the first cause
5 of action and 28 USC § 1331 over the remaining causes of action. In addition to pendent
6 jurisdiction, Plaintiff asserts diversity jurisdiction under 28 U.S.C. § 1332, however, such
7 was errantly omitted from the complaint. Plaintiff may move to amend to include such
8 should the need arise. Plaintiff has dismissed Google, Inc. as a defendant. Defendant Roe 1
9 has waived service and appeared. Plaintiff must serve additional defendants through the
10 Hague Convention, which he has been advised typically takes 4 to 6 months and due to the
11 Covid-19 pandemic may take longer, as waiver of service has not been successful. Plaintiff
12 also must serve an out of state defendant, as waiver of service has not been successful.
13 Plaintiff proposes to serve all defendants by September 5, 2021.

14 Defendant Roe 1 (“Roe”) does not dispute subject matter jurisdiction.

15 2. **Facts.** The following facts are not in dispute except where indicated:

16 Doe is an individual now residing in this judicial district. Borderland Beat, named as
17 a defendant, is a blog that reports on the activities of Mexican drug cartels. It does not have
18 any corporate entity. Persons who post articles on the blog do so anonymously using
19 pseudonyms. Defendant Roe 1 is a person that has some administrative rights concerning
20 the blog. The remaining named defendants are Spanish-language newspapers published
21 outside the United States.

22 In August 2019, Doe, acting *pro se* filed a document in a federal court (not this
23 Court), which document was placed in the public docket of that court. In April 2020, Doe
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1 was released from federal prison. In June 2020, the named defendants (other than
2 Borderland Beat), all published articles (including on the internet) concerning Doe, which
3 articles, among other things, included information that was contained in the document that
4 Doe had filed in court. Shortly thereafter, Borderland Beat published an article that
5 summarized, in English, the information in the Spanish-language newspapers. In addition,
6 the Borderland Beat article contained an image of Doe's driver's license, which was cut-
7 and-pasted from an article that defendant *El Norte* had published. The Borderland Beat
8 article attributed its information to the named Defendants. The article was posted by a
9 person using the pseudonym "MX," who also credited "TY 'lechef'" as an author.
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12 The image is of Doe's driver's license issued in 1990, which expired in 1994. There
13 is no contention that the address listed on that driver's license is his current address.
14

15 In July 2020, Doe's counsel (Mendelman) moved to represent Doe, and moved to
16 seal the document that Doe had filed in the public docket. In late July 2020, the court issued
17 an Order sealing the document, which order is itself under seal, as is Doe's request to seal.
18 Doe contends that he thereafter gave "actual or constructive notice" to the defendant
19 newspapers of the sealing of the document. Roe 1 has no knowledge of that, and it is not
20 contended that Mendelman gave such notice to Borderland Beat. Doe did not give
21 Borderland Beat such notice because, at the time, Borderland Beat had already removed
22 certain information in response to a complaint that Doe had made to the Borderland Beat's
23 internet service provider.
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26 3. Legal Issues.

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1 A. *Immunity under 47 USC 230* (“Section 230”). Roe contends that she is
2 immunized against liability under Section 230 because she is not the person who posted or
3 authored the article in question on Borderland Beat.
4

5 Doe contends that Section 230 does not protect Roe because the DPPA is a “specific”
6 statute and therefore is an exception to section 230.

7 B. *Legal Effect of Sealed Document.* Doe contends that, once a party has actual
8 or constructive knowledge that a document has been sealed by a court of competent
9 jurisdiction, that party may not publish information derived from that document, even if that
10 information was previously public.
11

12 Roe contends that, to the contrary, an order by a court sealing a document is merely
13 an instruction to the clerk not to make the document available to the public. It does not have
14 the effect of an injunction barring the publication of any information, and certainly does not
15 have that effect with respect to information that has already been released to the public.

16 Assuming arguendo that a court asserted such power, it would violate the First Amendment.
17

18 C. *Drivers’ Privacy Protection Act (“DPPA”).* Plaintiff contends that the
19 Drivers’ License is a “motor vehicle record” under the terms of the DPPA, and that each
20 publication thereof is a violation of the DPPA, and that he is entitled to punitive damages. It
21 is irrelevant to the punitive damages claims where El Norte or where MX/Borderland Beat
22 obtained the drivers license, or whether the information on the license is current.
23

24 Roe contends that (i) that a driver’s license is not a "motor vehicle record" under the
25 DPPA, (ii) a person cannot be liable for publishing information under the DPPA unless the
26 person knowingly obtained that information from the DMV, (iii) in any event, a person
27 cannot be liable under the DPPA for publishing an image of a 30 year-old drivers license,
28

1 and (iv) if the foregoing were sufficient to create liability under the DPPA, that
2 interpretation would violate the First Amendment.

3 C. **Negligence.** Doe alleges that the publication of the address on Doe's driver's
4 license constituted negligence and negligence *per se*, which Roe denies.
5

6 D. **Negligent/Intentional Infliction of Emotional Distress.** Doe alleges that
7 Roe's conduct constituted negligent or intentional infliction of emotional distress, which
8 Roe denies.
9

10 4. **Motions:** Doe filed an *ex parte* motion to proceed under pseudonym, which
11 was granted (DE 6). Roe anticipates filing a motion to vacate, modify, or clarify that order.
12 Roe anticipates filing motions for judgment on the pleadings or other early dispositive
13 motions.
14

15 5. **Amendment of Pleadings.** Doe has not named Roe (or any defendant
16 associated with Borderland Beat) in the fourth cause of action, but reserves the right to
17 amend the complaint to allege that Roe violated his right to privacy. The reason Doe did
18 not name Roe in the Fourth Cause of Action is that, at the time the Complaint was filed, the
19 article in question had been taken down. Roe wishes to republish that article in some form,
20 and reserves the right to bring a counterclaim for declaratory relief to determine her right to
21 publish certain information, if that issue is not otherwise resolved by the parties or the
22 Court.
23

24 6. **Evidence Preservation.** On January 14, 2021, the parties met and conferred
25 regarding reasonable and proportionate steps taken to preserve evidence relevant to the
26 issues reasonably evident in this action. The parties reviewed the Guidelines Relating to the
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28

1 Discovery of Electronically Stored Information (“ESI Guidelines”). Neither party
2 anticipates extensive or burdensome ESI in this matter.

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4 7. **Disclosures.** The parties have made their initial disclosures under Fed. R.
5 Civ. P. 26. The documents at issue are primarily copies of the articles published by the
6 various defendants. Doe claims damages in the form of attorney fees and litigation costs
7 under 18 USC 2724(b)(3) of \$20,000; punitive damages under 18 U.S.C. 2724(b)(2) of
8 \$100,000’ actual damages under 18 USC 2724(b)(1) of \$25,000 and pain and suffering,
9 emotional distress, fear, terror, anxiety, humiliation, a loss of sense of security, dignity,
10 pride, and invasion of privacy of \$100,000.

11
12 8. **Discovery.** Doe intends to seek discovery on the manner in which the driver’s
13 license article was published, and will need to depose “MX”, Roe 1 and “TY Lechef,” but is
14 open to stipulating that such individuals may keep their identities private and that such
15 depositions could be protected via a protective order.

16
17 In the event that Doe’s case is not dismissed on motion, Roe intends to seek
18 discovery on Doe’s claimed damages. In the event that Doe seeks discovery of Roe’s
19 identity or that of any of the persons associated with Borderland Beat, Roe anticipates
20 seeking to quash such discovery.

21
22 The parties do not anticipate extensive e-discovery and will meet and confer
23 regarding the format of retrieving any electronically stored information.

24
25 9. **Class Actions:** N.A.

26 10. **Related Cases:** N.A.

27 11. **Relief:** See Doe’s damages calculations (paragraph 7 above) and Roe’s
28 potential action for declaratory relief (paragraph 5 above).

1 12. **Settlement and ADR:** The parties have stipulated to mediation.

2 13. **Consent to Magistrate Judge For All Purposes:** All parties have not
3 consented.

4 14. **Other References:** No.

5 15. **Narrowing of Issues:** The parties have met and conferred in an effort to
6 narrow legal and factual issues, which efforts have led to the stipulated facts set forth in
7 paragraph 2 and the framing of the issues in paragraph 3 above. Roe anticipates presenting
8 by early motion an opportunity for this court to adjudicate the legal issues in this case.

9 16. **Expedited Trial Procedure:** The parties do not request this procedure.

10 17. **Scheduling:** The parties stipulate to the following dates:

11 Doe is requesting an extended schedule to serve given the foreign defendants and the
12 delays in service through the Hague Convention. Based on this representation, Roe 1 does
13 not oppose this schedule.

14	Deadline to Serve All Defendants/Amend Pleadings/Add Parties	September 9, 2021
15	Fact Discovery Cutoff	February 7, 2022
16	Expert Reports	March 7, 2022
17	Rebuttal Expert Reports	April 11, 2022
18	Expert Discovery Cutoff	May 12, 2022
19	Non-dispositive Motion Cutoff (last day for motion to be heard, subject to court's availability)	June 9, 2022
20	Dispositive Motion Cutoff (last day for motion to be heard, subject to court's availability)	August 11, 2022
21	Pretrial Materials Due	March 2, 2023
22	Final Pretrial Conference	March 16, 2023
23	Deposition and Discovery Designations Due	March 30, 2023
24	Trial	April 3, 2023

25 18. **Trial:** Jury trial has been demanded. Doe expects the trial to take four days.

26 Doe expects the trial to take two days.

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Dated: January 19, 2021

By: /s/ Jeffrey L. Mendelman
Jeffrey L. Mendelman