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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, STANLEY MOSK COURTHOUSE

JANE ROE, an individual, and JOHN DOE, an individual,

Plaintiffs,

v.

JENNA SMITH, an individual, and MOTHER SMITH, an individual, and DOES 1-10, inclusive

Defendants.

Case No. 24STCV08102

Hon. Frank M. Tavelman

Non-Party Movant First Amendment Coalition's Opposition to Plaintiffs' Motion to Proceed Under Pseudonyms

Date: January 3, 2025
Time: 9:00 am
Dept.: A
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Introduction

Plaintiffs are suing to silence the defendants, who have accused one of the plaintiffs of sexual assault. As with other civil cases, this defamation lawsuit must be litigated under the plaintiffs' real names. Indeed, courts across the country have recognizes that defamation plaintiffs, especially ones suing over accusation of sexual assault, may not litigate pseudonymously. And this case has no special features that would justify an exception to this rule.

I. Pseudonymity is highly disfavored, because it interferes with the public's constitutional right of access to court proceedings.

"Outside of cases where anonymity is expressly permitted by statute, litigating by pseudonym should occur 'only in the rarest of circumstances.'" (*Dept. of Fair Employment & Housing v. Superior Court of Santa Clara County* (2022) 82 Cal.App.5th 105, 111-12 (*DFEH*), quoting *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1226 (*KNBC-TV*).) This is because an "important constitutional right is implicated when a party is allowed to proceed anonymously: the right of public access to court proceedings. Among the guarantees of the First Amendment to the United States Constitution is that court proceedings are open and public." (*Id.* at p. 110.)

"[T]he [public's] right to access court proceedings necessarily includes the right to know the identity of the parties." (*Id.* at p. 111, citing *KNBC-TV*, *supra*, 20 Cal.4th at p. 1211.) This right to know the true names of litigants derives from "the critical importance of the public's right to access judicial proceedings." (*Ibid.*) "[T]he public has an interest, in *all* civil cases, in observing and assessing the performance of its public judicial system, and that interest strongly supports a general right of access in ordinary civil cases." (*KNBC-TV*, *supra*, at p. 1210.)

In this respect, California law coincides with federal law (see, e.g., *DFEH*, *supra*, 82 Cal.App.5th at p. 110 [citing federal precedent]), under which the strong presumption is that "[p]laintiffs' use of fictitious names runs afoul of the public's common law right of access to judicial proceedings." (*Does I thru XXIII v. Advanced Textile* (9th Cir. 2000) 214 F.3d 1058, 1067.) Courts may allow parties "to litigate under a pseudonym" only if "extraordinary circumstances support such a request." (*Doe v. Public Citizen* (4th Cir. 2014) 749 F.3d 246, 274 (*Public Citizen*).) "It is the exceptional case in which a plaintiff may

proceed under a fictitious name." (*Doe v. Frank* (11th Cir. 1992) 951 F.2d 320, 323.) "The normal presumption in litigation is that parties must use their real names." (*Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate* (9th Cir. 2010) 596 F.3d 1036, 1042.)

This presumption serves an important purpose: It preserves the benefits that flow from public supervision of the judiciary. "First, the right [of public access to the courts] protects the public's ability to oversee and monitor the workings of the Judicial Branch. . . . Second, [it] promotes the institutional integrity of the Judicial Branch." (*Public Citizen*, *supra*, 749 F.3d 246, 263, citation omitted.) Litigating under parties' real names "allows the citizenry to monitor the functioning of our courts, thereby [e]nsuring quality, honesty and respect for our legal system." (*Does 1-3 v. Mills* (1st Cir. 2022) 39 F.4th 20, 25.) For instance, the true identity of litigants is essential for the public to assess the parties' credibility; to evaluate whether they are frequent or vexatious litigants; to determine whether they have been involved in previous civil or criminal cases that might have arisen from the same or similar facts; and to identify potential sources of bias in the adjudicative process. (See, e.g., Eugene Volokh, *The Law of Pseudonymous Litigation* (2022) 73 Hastings L.J. 1353, 1370-71.)

By the same token, confidence in the judiciary "cannot long be maintained where important judicial decisions are made behind closed doors and then announced in conclusive terms to the public, with the record supporting the court's decision sealed from public view." (*Public Citizen*, *supra*, 749 F.3d at p. 263, citation omitted.) The logic of this broad principle extends to anonymous litigation and explains why "proceeding by pseudonym is a 'rare dispensation.'" (*Id*. at p. 273.) "Judges have a responsibility to avoid secrecy in court proceedings because secret court proceedings are anathema to a free society." (*Doe v. Roe* (D.Colo. July 17, 2023, No. 23-CV-01149-NYW-KLM) 2023 WL 4562543, at p. *2 [rejecting pseudonymity in a defamation case brought over allegations of sexual assault] (cleaned up).)

II. There is no exception to the right of access for defamation cases, including ones deriving from sexual assault claims

In particular, plaintiffs may not sue pseudonymously in defamation cases, including when they allege that the defendants had falsely accused them of sexual assault. A defamation plaintiff may not summon the power of the courts to "'clear his name' and wield a potential [judgment] against [defendant]

but hide under a shield of anonymity if unsuccessful." (*Doe v. Doe* (4th Cir. 2023) 85 F.4th 206, 215; *Doe v. Roe*, *supra*, 2023 WL 4562543, at p. *3.) "Plaintiff does not identify any case law where a plaintiff bringing claims of libel or defamation was allowed to proceed using pseudonyms against the purported victim of the sexual assault." (*DL v. JS* (W.D. Tex. Nov. 21, 2023, No. 1:23-CV-1122-RP) 2023 WL 8102409, at p. *2.) "The Court finds it highly persuasive that Plaintiff fails to and is unable to cite a single case in which a plaintiff, suing for defamation and alleging he was falsely accused of sexual assault, was allowed to proceed anonymously against the victim of the purported assault." (*Roe v. Does 1-11* (E.D.N.Y. Oct. 14, 2020, No. 20-CV-3788-MKB-SJB) 2020 WL 6152174, at p. *6.)

Indeed, in this particular defamation case, "the critical importance of the public's right to access judicial proceedings" is further heightened. (*DFEH*, *supra*, 82 Cal.App.5th at p. 111.) Besides seeking to impose over $5 million in damages on defendants (Compl. p. 18), plaintiffs seek an injunction that is extremely unusual, and possibly unconstitutional: Plaintiffs seek to prohibit defendants "from publishing *any* future statements about Plaintiffs," in any "written . . . or verbal" manifestation. (*Ibid.* [emphasis added]; see *Balboa Island Village Inn, Inc. v. Lemen* (2007) 40 Cal.4th 1141, 1162 [holding injunction against defamation must be limited to "prohibiting defendant from repeating statements about plaintiff that were determined at trial to be defamatory"].) Plaintiffs also seek that the Court require defendants to "issue apologies to Plaintiffs" (Compl. p. 18), a remedy that may constitute an unconstitutional speech compulsion and may exceed the Court's equitable powers. (*Kramer v. Thompson* (3d Cir. 1991) 947 F.2d 666, 680-82.)

Such remedies, if approved, would set a dangerous precedent for anyone who publicly raises allegations of sexual misconduct in the future—allegations that, if true, remain constitutionally protected and publicly valuable. When such broad and novel remedies are being considered, it is especially important that the public be able to monitor the judicial process, so as to "promote[] trust in the integrity of the court system, and . . . expose[] abuses of judicial power to public scrutiny" (*DFEH*, *supra*, at pp. 110-111).

Indeed, the public's need to supervise the judiciary—and thus the public's right of access—is particularly strong in defamation cases, where plaintiffs seek to impose liability for comments that, if truthful,

would be constitutionally protected and highly valuable to the public. This is especially true in defamation suits regarding allegations of sexual assault. If a court is to impose massive liability, a potentially over-broad gag order, and a forced apology on someone levying accusations of sexual assault, doing so under the cloak of secrecy would understandably yield public skepticism about the fairness of the proceedings. And indeed, such defamation lawsuits related to sexual assault allegations are routinely litigated under parties' true names. (See, e.g., *Dickinson v. Cosby* (2019) 37 Cal.App.5th 1138; *Olaes v. Nationwide Mut. Ins. Co.* (2006) 135 Cal.App.4th 1501; *Schwern v. Plunkett* (9th Cir. 2017) 845 F.3d 1241; *Blatt v. Pambakian* (C.D.Cal. 2020) 432 F.Supp.3d 1141, *affd. in part, revd. in part* (9th Cir. Sep. 24, 2021, No. 20-55084) 2021 WL 4352329.)

More broadly, many plaintiffs in many sorts of cases would like to be able to sue pseudonymously, in order to protect their reputations against the allegations that had been made against them. Even more defendants would want the same protection: "[A]ny doctor sued for medical malpractice, any lawyer sued for legal malpractice, or any individual sued for sexual molestation can assert that the plaintiff's allegations will cause harm to his reputation, embarrassment and stress among his family members, and damage to his business as a result of the litigation." (*Doe v. Doe* (Ill.Ct.App. 1996) 668 N.E.2d 1160, 1167.) Yet "it is difficult to see how defendant"—who, similar to plaintiffs here, sought pseudonymity to conceal what he claimed were false allegations of child molestation—"has set himself apart from any individual who may be named as a defendant in a civil suit for damages." (*Ibid.*) Allowing pseudonymity in this case, and therefore in other cases that involve comparably damaging accusations, would thus violate the principle that pseudonymity is allowed ". . . 'only in the rarest of circumstances.'" (*DFEH*, *supra*, 82 Cal.App.5th 105, 112, quoting *KNBC-TV*, *supra*, 20 Cal.4th 1178, 1226).)

If Plaintiffs' libel claim is valid, then in victory, Roe and Doe would demand a public apology from the Smiths, alerting the public to the true identities of all parties involved. (Compl. p. 16.) Yet in defeat, plaintiffs would deny the public access to their identities, information that would have been helpful to allow the public to assess the parties' credibility, any possible involvement by them in other litigation, and potential sources of judicial bias.

III. Plaintiffs' reputational concerns cannot justify pseudonymity.

Plaintiffs argue that they should be allowed to proceed pseudonymously because linking their name to their lawsuit would risk "reputational damages," "reputational injuries, economic damages, and the loss of educational and career opportunities," "their future academic and career prospects," and their "reputation." (Pls'. Mot. pp. 10, 12, 14, 15.) But "anonymity 'has not been permitted when only the plaintiff's economic or professional concerns are involved.'" (*United States ex rel. Little v. Triumph Gear Sys., Inc.* (10th Cir. 2017) 870 F.3d 1242, 1249, fn. 10, citation omitted.) "That a plaintiff may suffer embarrassment or economic harm is not enough" to warrant a pseudonym. (*Doe v. Megless* (3d Cir. 2011) 654 F.3d 404, 408.) "[W]e have refused to allow plaintiffs to proceed anonymously merely to avoid embarrassment," including when plaintiff's "asserted interest lies in protecting his reputation." (*Doe v. Trustees of Indiana University* (7th Cir. 2024) 101 F.4th 485, 491, internal quotation marks and citation omitted.)

This principle is equally applicable to defamation cases: "[A]llegations in defamation cases will very frequently involve statements that, if taken to be true, could embarrass plaintiffs or cause them reputation[al] harm. This does not come close to justifying anonymity." (*Doe v. Bogan* (D.D.C. 2021) 542 F.Supp.3d 19, 23; see also *Doe v. Doe*, *supra*, 85 F.4th at pp. 214, 217 [rejecting pseudonymity despite allegations that identifying the plaintiff would cause, among other things, damage to "reputation" and "career opportunities"]; *Doe v. Washington Post* (D.D.C. Feb. 26, 2019, No. 1:19-cv-00477-UNA) 2019 WL 2336597, at p. *3 [likewise]; *Roe v. Does 1-11*, *supra*, 2020 WL 6152174, at p. *2-3 [likewise]; *P.D. & Assocs. v. Richardson* (N.Y.Sup.Ct. 2019) 104 N.Y.S.3d 876, 880 [likewise].) And it is equally applicable to defamation cases involving allegations of sexual assault, where courts likewise reject pseudonymity. (*See supra* Part II.)

Plaintiffs cite *Doe v. MIT* for the First Circuit's statement that plaintiffs may use a pseudonym when they "reasonably fear" a "severe harm" that would follow from "coming out of the shadows." (Pls'. Mot. p. 10.) But the First Circuit expressly held that *reputational* harm does not generally suffice to justify pseudonymity:

> [C]ourts—in balancing the relevant interests—must not lose sight of the big picture. Litigation by pseudonym should occur only in "exceptional cases." Lawsuits in federal courts frequently invade customary notions of privacy and—in the bargain—threaten parties' reputations. The allegations

> are often serious (at least to the parties) and motivated adversaries do not lack for procedural weapons. Facing the court of public opinion under these conditions is sometimes stressful—but that is the nature of adversarial litigation.

((1st Cir. 2022) 46 F.4th 61, 70, citations omitted.) The unique circumstances of Title IX lawsuits may, as *Doe v. MIT* held, justify pseudonymity because "the confidentiality of a Title IX disciplinary proceeding may sometimes—but not always—furnish grounds for finding an exceptional case warranting pseudonymity" (*id.* at p. 74), when plaintiff sues under Title IX to challenge the results of that proceeding. (See Part VI below.) But ordinary concerns about harm to "parties' reputations" cannot justify pseudonymity.

Indeed, plaintiffs' argument would do what *Doe v. MIT* expressly rejected: It would transform thousands of ordinary plaintiffs, overnight, into "exceptional" ones—inverting the judicial system into an institution where "anonymity would be the order of the day . . . [and] Does and Roes would predominate," "invit[ing] cynicism and undermin[ing] public confidence in the courts' work." (*Doe v. MIT, supra*, 46 F.4th at pp. 69-70.)

Nor do *Doe v. Lincoln Unified School Dist.* (2010) 188 Cal.App.4th 758, or *Starbucks Corp. v. Superior Court* (2008) 168 Cal. App. 4th 1436 (*Starbucks*) (relied on by Pls.' Mot. p. 7-10), authorize a contrary approach: As the Court of Appeal held in *DFEH*, no earlier Court of Appeal case "articulated the standard that applies to determine whether a party may proceed anonymously absent specific statutory authorization" (*DFEH*, *supra*, 82 Cal.App.5th at p. 110)—it is *DFEH* that sets forth that standard, not *Lincoln Unified* or *Starbucks*. Indeed, the Court of Appeal in *Starbucks* expressly stated that "[w]e do not decide the appropriate standards or mechanisms for protective nondisclosure of identity in California, because the matter is not now before us." (*Starbucks*, *supra*, at p. 1452 fn. 7.)

IV. Plaintiffs are adults and cannot litigate pseudonymously simply because they are suing over things said when they were minors.

When Plaintiffs sued Defendants for libel, seeking broad restrictions on Defendants' future speech and potentially ruinous damages, Plaintiffs were adults. They were legally competent to make for themselves the decision whether to sue Defendants for their speech, and to weigh for themselves the downside of being publicly identified as plaintiffs in this case (a downside that flows from the precedents discussed in Parts I, II, and III). "[B]y submitting a dispute to resolution in court, litigants should anticipate the

proceedings will be adjudicated in public." (*DFEH*, *supra*, 82 Cal.App.5th at p. 111.) The special solicitude offered to minor plaintiffs, who lack the ability to make this calculation, thus does not apply here.

No precedents suggest that adults can sue pseudonymously for defamation simply because they were defamed when they were minors, or because "Defendant . . . was still a minor at the time that she made the defamatory remarks." (Pls'. Mot. p. 9.) And indeed the precedent cited in Part III.B of Plaintiffs' motion cuts against their argument: Plaintiffs argue that "California statutes allow minors to proceed under pseudonyms in particular circumstances, including where important privacy interests are implicated" and cite Code Civ. Proc. § 372.5 (Pls.' Mot. p. 9)—but Code Civ. Proc. § 372.5 provides for pseudonymity for guardians ad litem because that is often necessary to maintain the privacy of the minors involved in a family court case. (See, e.g., *DFEH*, *supra*, 82 Cal.App.5th, at p. 110 ["Code Civ. Proc., § 372.5 [allowing pseudonym for guardian ad litem litigating on behalf of a minor]"].) Nor are they suing over a sexual assault that happened to them when they were minors, something that some courts see as particularly calling for privacy. (See, e.g., *Doe v. St. John's Episcopal Parish Day School, Inc.* (M.D.Fla. 2014) 997 F.Supp.2d 1279, 1290.)

DL v. JS, supra, 2023 WL 8102409, also cuts against defendants' position. The relevant passage discussing the parties' age is:

> Plaintiff also raises the fact that he was a minor at the time of the alleged sexual misconduct. The Fifth Circuit has noted that "[t]he gravity of the danger posed by the threats of retaliation" must be "assessed in the light of the special vulnerability of [ ] child-plaintiffs." Plaintiff only cites case law where anonymity was allowed to plaintiffs who were still minors at the time of the suit and who were challenging governmental authority. These cases are inapplicable to Plaintiff, who has since turned 18, and who was an adult when the alleged libel occurred.

(*Id.* at p. *2, citations omitted.) Though the passage in *DL v. JS* notes that Plaintiff "was an adult when the alleged libel occurred," it is the age at the time of the *lawsuit*, not of the *libel*, that was apparently primarily significant to the court: The court relied on the policy of protecting "child-plaintiffs," and faulted Plaintiff for "only cit[ing] case law where anonymity was allowed to plaintiffs who were still *minors at the time of the suit.*" (*Ibid.* [emphasis added].)

Plaintiffs also cite, in a different section, *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, and note that there, "former Boy Scouts proceeded under pseudonyms in a case where the alleged sexual assault . . . occurred while they were minor teenagers." (Pls.' Mot. p. 8.) But that case involved sexual assault plaintiffs, who are often allowed to sue pseudonymously even when they are adults, not libel plaintiffs. (*Cf. DL v. JS*, *supra*, 2023 WL 8102409, at p. *2 (noting that "[p]laintiff is not a victim of sexual assault," and that "[p]laintiff does not identify any case law where a plaintiff bringing claims of libel or defamation was allowed to proceed using pseudonyms against the purported victim of the sexual assault").)

And, more importantly, *Doe v. City of Los Angeles* does not discuss pseudonymity at all. "'It is axiomatic that cases are not authority for propositions not considered.'" (*People v. Avila* (2006) 38 Cal.4th 491, 566, citation omitted.) "Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." (*Cooper Industries, Inc. v. Aviall Services, Inc.* (2004) 543 U.S. 157, 170 [125 S.Ct. 577, 160 L.Ed.2d 548], citation omitted.)

V. The narrow exception for situations where pseudonymity is necessary to prevent the injury litigated against does not apply here.

This is also not a case where "the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity," at least to such an extent that an exception is warranted. (*M.M. v. Zavaras* (10th Cir. 1998) 139 F.3d 798, 803, citation omitted.) Courts have occasionally granted anonymity in such situations—but not in defamation cases. This is likely in part because *virtually all* defamation cases amplify the plaintiff's injury at least to some degree when litigated publicly. Allowing pseudonymity to prevent such harm would reverse the clear presumption against pseudonymity, and make broad pseudonymity the standard.

Instead, this exception generally applies when "[p]reventing disclosure of [plaintiff's] identity is . . . the *basis* of [the] lawsuit." (*Raiser v. Church of Jesus Christ of Latter-Day Saints* (10th Cir. 2006) 182 F.App'x 810, 812, fn. 2 [emphasis added].) Such suits typically involve a cause of action in which litigants attempt to remove their names from public databases or registries. (See, e.g., *Doe v. Harris* (9th Cir. 2011)

640 F.3d 972, 973, fn. 1 [holding that, in a lawsuit challenging plaintiff's inclusion on sex offender registry, pseudonymity was justified because "drawing public attention to his status as a sex offender is precisely the consequence that he seeks to avoid by bringing this suit"]; *Doe v. Bonta* (S.D.Cal. Jan. 20, 2022, No. 22-CV-10-LAB (DEB)) 2022 WL 184652, at p. *2 [holding that, in a lawsuit alleging that a statute's disclosure requirements for firearms purchases and license records were unlawful, "[p]rotection of the Plaintiffs' identities is at the core of this case," and thus warranted pseudonymity].)

And indeed, courts reject this "injury litigated against" rationale in libel cases where "[p]reventing disclosure of [plaintiff's] identity is not the basis of [the] lawsuit," but plaintiff instead "seeks monetary compensation for a disclosure that has already occurred." (*Luo v. Wang* (10th Cir. 2023) 71 F.4th 1289, 1300 [libel case quoting and endorsing *Raiser*, *supra*, 182 F.App'x 810, 812, fn. 2].) The rationale has likewise been rejected for defamation suits that involve sexual assault accusations, where "[the] defamation has already occurred," and "the basis of [plaintiff's] suit is that he is *already* publicly identified with these allegations." (*Doe v. Valencia College* (M.D.Fla. Nov. 2, 2015, No. 6:15-cv-1800-Orl-40DAB) 2015 WL 13739325, at p. *3.)

Here, plaintiffs' complaint describes their concrete injuries as retrospective ones. (Compl. pp. 3, 11-15 [using past-tense verbs such as "tarnished," "tainted," "suffered," "banned," "defamed," and "missed out"].) To justify the existence of a *future* and ongoing harm from defendants, plaintiffs claim that defendants' "attacks have not stopped"—but, when they offer examples, can provide only a vaguely described harm. (*Id*. at pp. 12-13, ¶¶ 96-100.) Defendant Smith's continuing posts cited in the Complaint, for instance, appear not to mention Doe or Roe by name, if indeed, she is even mentioning them or the incident *at all*. (*Id.* at p. 13, ¶¶ 97, 99 [describing, for instance, posts that mention "'the thing' [that] happened" or the "'most honest song yet'"].)

Courts have also commonly noted that defamation plaintiffs' litigating under their real identity is an essential step to *clearing* their good name—which, after all, is a primary purpose of libel suits. Indeed, here plaintiffs seek an order that defendants "issue apologies." (Compl. p. 16.) "[T]o the extent that the [defendant's comments] publicly accused him of being a pedophile, litigating publicly will afford Doe the

opportunity to clear his name in the community." (*Doe v. Megless*, *supra*, 654 F.3d at p. 410.) If plaintiff prevails, he "will have proven the defamatory nature of Defendant's previous statements and will likely want to publicize his own name." (*Doe v. Roe*, *supra*, 2023 WL 4562543, at p. *3.) "Plaintiff cannot possibly 'clear his name' if he is unwilling to disclose it." (*Doe v. Valencia College*, *supra*, 2015 WL 13739325, at p. *3.) When a plaintiff "brings . . . suit" for "defamation" "to clear his name" through a "publicly state[d]" admission of error on the defendants' part, that "relief is inconsistent with proceeding anonymously." (*Ibid.*)

VI. The Title IX pseudonymity cases that plaintiffs cite are limited to cases challenging Title IX decisions.

Plaintiffs argue that "this lawsuit is 'bound up with a prior proceeding made confidential by law'" by citing *Doe v. MIT*, a Title IX case. (Pls.' Mot. p. 15.) But while *Doe v. MIT* generally endorsed pseudonymity in Title IX cases on that ground (46 F.4th at p. 74), it relied on the fact that such cases challenge "the underlying disciplinary proceeding, brought under Title IX," which "was conducted confidentially" pursuant to federal rules. (*Ibid.*) Because of this, the court held,

> In federal suits that amount to collateral attacks on Title IX proceedings, a full appreciation of the public's interest in transparency must factor in the choice by Congress and the Department to inhibit a school's disclosure of private information, such as the name of an accused student.

(*Id.* at p. 76.) But this, of course, is a defamation case against a former classmate and her mother, not a suit against a university for violating Title IX, or even for mishandling a Title IX investigation. It thus does not "amount to [a] collateral attack[] on [a] Title IX proceeding[]." (*Ibid*.) Rather, it is the same sort of defamation claim that the Fourth Circuit held cannot proceed pseudonymously:

> Appellant's central argument on appeal is that his case "center[s] around a confidential Title IX proceeding" so it is different than "the garden variety defamation case" and overcomes any public interest in disclosure of his identity. We disagree. . . . Title IX challenges have "considerations . . . [that] do not apply here." Specifically, in those cases, "those accused of sexual assault" were "su[ing] schools or universities pseudonymously when attacking the findings of a university Title IX investigation."
>
> "Unlike those cases, [Appellant] is not challenging his expulsion from [a university] or arguing that [a university] violated Title IX or due process during the sexual assault investigation." Instead, Appellant is suing only a private individual for defamation . . . . This case is no different than a garden variety defamation case, and it does not present the exceptional circumstances necessary for Appellant to proceed by pseudonym.

(*Doe v. Doe*, *supra*, 85 F.4th at p. 217 [citations omitted, paragraph break added].)

VII. Plaintiffs have offered no basis for fearing "physical harm" to themselves and their families.

Plaintiffs say they "fear . . . physical harm by Defendants" (Pls'. Mot. p. 11), and cite as support an angry outburst by one of the defendants. (*Ibid.*) But letting plaintiffs sue pseudonymously would not prevent such harm, since the defendants already know plaintiff's name.

That is why risk of physical harm can justify pseudonymity only when plaintiff is "a likely target of retaliation by people who would *learn her identity only from a judicial opinion or other court filing*." (*Doe v. City of Chicago* (7th Cir. 2004) 360 F.3d 667, 669 [emphasis added].) "While the Court does not presume that any retaliation has or would occur, the Court agrees that allowing Plaintiff to proceed anonymously would not prevent any feared retaliation by Defendant or its agents as Defendant already knows Plaintiff's identity." (*Doe v. Kansas State Univ.* (D. Kan. Jan. 11, 2021, No. 22:0-cv-02258-HLT-TJJ) 2021 WL 84170, at p. *3; see also *Doe v. College of E. Idaho* (D. Idaho June 22, 2023, No. 4:22-CV-00482-DCN) 2023 WL 4138674, at p. *2 ["But, if the identity of the plaintiff is known to the defendant, then such 'selective disclosure of his identity militates against plaintiff's request to use a pseudonym,' because if the opposing party already knows his identity, then the anonymity that comes with a pseudonym will not protect the plaintiff from any retaliatory threat."]; *Doe v. Gooding* (S.D.N.Y. Apr. 13, 2022, No. 20-CV-06569 (PAC)) 2022 WL 1104750, at p. *5 ["It is self-evident that the risk of retaliation from Defendant himself would not increase because Defendant 'already know[s]' Plaintiff's real name and identity"]; *Doe v. Oeser* (E.D. Pa. Jan. 11, 2023, No. 2:22-CV-04919-JDW) 2023 WL 1954695, at p. *2 ["Defendants already know [plaintiff's] identity, so requiring her to use her name to litigate this matter would not expose her to any greater risk of harm"].)

Conclusion

The Fourth Circuit's analysis in *Doe v. Doe*—which likewise involved a libel lawsuit brought over allegations of sexual assault—is on point here. Unlike in Title IX cases, plaintiffs both there and here are simply "suing . . . private individual[s] for defamation," so "[t]his case is no different than a garden variety defamation case, and it does not present the exceptional circumstances necessary for [plaintiffs] to proceed

by pseudonym." (*Doe v. Doe*, *supra*, 85 F.4th at p. 217.) The plaintiffs have not articulated interests that warrant the "extraordinary" step of pseudonymity.

They therefore have no right to conceal key facts (their identities) that would prevent the public from monitoring the functioning and fairness of their public courts—especially when they seek relief (a public apology) that would publicize their allegations against defendants if they win, yet keep private the allegations against themselves if they lose. If Plaintiffs want to enjoin Defendants' future speech, and punish their past speech, they have to accept what other defamation plaintiffs have to accept: Litigation is a public process. When "'a matter is brought before a court for resolution, it is no longer solely the parties' case, but also the public's case.'" (*Callahan v. United Network for Organ Sharing* (11th Cir. 2021) 17 F.4th 1356, 1365, citation omitted.) If Defendants' speech is to be muzzled by the legal system, the litigation that leads to such muzzling has to be fully public, so the public can have maximal confidence in the process.

Respectfully submitted,

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December 16, 2024

Proof of Service

State of California, County of Los Angeles

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Santa Clara, State of California. My business address is Hoover Institution, 434 Galvez Mall, Stanford University, Stanford CA 94305. On December 16, 2024, I served true copies of Non-Party Movant First Amendment Coalition's Opposition to Plaintiffs' Motion to Proceed Under Pseudonyms on the interested parties in this action by e-mail:

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Executed on December 16, 2024, Los Angeles, CA.

s/ Eugene Volokh
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