
In the
Court of Appeal
of the
State of California
SECOND APPELLATE DISTRICT
DIVISION TWO

B344378

JANE ROE and JOHN DOE,

Plaintiffs-Respondents,

v.

FIRST AMENDMENT COALITION,

Appellant.

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE FRANK TAVELMAN · NOS. 24BBCV00470 & 24STCV08102

BRIEF OF PLAINTIFFS-RESPONDENTS

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CERTIFICATE OF INTERESTED PARTIES OR PERSONS

Pursuant to California Rules of Court, Rule 8.208,
Plaintiffs/Respondents are not aware of any entity or person that
must be listed under California Rules of Court, Rule 8.208(e)(1)
or (e)(2).

Dated: July 30, 2025 Respectfully Submitted,

HATHAWAY PARKER INC.

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OPPOSITION BRIEF OF PLAINTIFFS/RESPONDENTS
JANE ROE AND JOHN DOE

I. INTRODUCTION

Plaintiffs Jane Roe and John Doe—two young individuals who are well on their way to promising, bright careers in a highly competitive industry—sued Defendants Jenna Smith and Mother Smith to rectify the harm Plaintiffs endured as a result of the Defendants’ personal vendetta against them. (AA 5; AA 8-16.) After continuously taking a back seat to Jane Roe and John Doe in a prestigious school club, Jenna Smith exacted her revenge plot against them and wrongly accused John Doe of sexual assault. (AA 7-14.) After a full investigation into Jenna Smith’s claims, the School found John Doe not responsible for the allegations. (AA 10-14.) Plaintiffs have suffered harm from the defamatory remarks by the Defendants and fear what Jenna Smith and Mother Smith may do to further harm them in the future.

Eugene Volokh (“Mr. Volokh”), on behalf of the First Amendment Coalition (“FAC” or “Non-Party FAC”), brings forth this appeal to unmask the identities of the Parties in a case that concerns the alleged sexual activity of minors. Non-Party FAC ignores the exceptional circumstances and overriding privacy interests that warrant pseudonymity in this matter. For the reasons contained herein, Plaintiffs respectfully request that this Court uphold the decision of the Superior Court and permit the Parties to remain under pseudonym protection.

II. STATEMENT OF CASE

A. The Select Club that Jane Roe, John Doe, and Jenna Smith Participated in at Their School, Hosted a Weekend Event

In the Spring of 2022, Jane Roe, John Doe, and Jenna Smith all participated as members of a selective club (the “Club”) at their shared high school (the “School”). (AA 7.) Jane Roe and John Doe—a romantic couple both then and now—were leaders in the Club in all aspects, both by leadership roles and performance, and were frequently showcased over others, including Jenna Smith. (AA 7-8.)

The Club hosted an event spanning April 8 through 9 of 2022 at the School, which the men’s and women’s groups engaged in jointly. (AA 7-9.) Plaintiffs have a specific, detailed recollection of their whereabouts and what occurred, as well as photographic and text message evidence that corroborate their accounts. (AA 7-8.) At approximately 12:01 am on April 9, 2022, after a long day of activities and an award presentation ceremony in the auditorium, the Club’s event finally concluded for the day. (AA 7.) John Doe remained there after the conclusion of the event to continue passing out awards and eventually came together with Jane Roe, where they took photographs together. (AA 7-8.) Jane Roe, John Doe, and their families, walked out of the main entrance (“Main Entrance”) of the School’s auditorium, into the parking lot, and ventured to their respective homes. (AA 7-8.) Both John Doe and Jane Roe remained at their homes, engaged in text message conversation with each other, and fell asleep. (AA 8.) John Doe, Jane Roe, and other members of the Club returned

to the School later on April 9, 2022, for a continuation of the event. (AA 8.) Jane Roe received first place recognition at the event and once again, received a showcase feature. (AA 8.) Although Jenna Smith competed, she fell short. (AA 8.)

B. During the 2022-2023 School Year, While Jane Roe’s Star Continued to Shine, Jenna Smith and Mother Smith Launched Their Defamatory Attack Against Both Jane Roe and John Doe

John Doe graduated from the School following the completion of the 2021-2022 academic year, while Jane Roe and Jenna Smith remained at the School for the following academic year. (AA 8.) Jane Roe unsurprisingly continued to excel in the Club, while Jenna Smith remained in the lower tier. (AA 8.)

Throughout the Spring of 2023, Jenna Smith broadcasted her false allegations of sexual assault against John Doe to her peer network, including on a trip for the Club that required travel. (AA 8-10.) On this same trip, and throughout the Spring 2023 term, Mother Smith also spread serious false allegations to other Club parents. (AA 9-10.) On the trip, Jenna Smith alleged that John Doe sexually assaulted her in a separate area of egress (the “Small Atrium”) sometime between April 8, 2022, at 11:59 p.m. and April 9, 2022, before 1:30 a.m. (AA 9-10.) These allegations are simply false because both Jane Roe and John Doe were in the front of the auditorium, where they took photos together, and then exited from the Main Entrance—a completely separate area from the Small Atrium. (AA 9.) Neither Jane Roe nor John Doe went to the Small Atrium area in the timeframe

identified by Jenna Smith, and neither of them engaged with Jenna Smith at all. (AA 9-10.)

C. Jenna Smith’s Complaint Against John Doe Resulted in Him Being Barred from Attending Prom, as Well as All School Events, and an Investigation Ensued

When Jane Roe attempted to buy tickets for her and John Doe to her senior prom in the Spring of 2023, the School refused to sell her a ticket for John Doe. (AA 10.) Upon inquiry as to why, Doe learned that, in April of 2023, a student launched an allegation of sexual misconduct against him; however, he did not learn the identity of his accuser until in or around May of 2023. (AA 10-11.) Jenna Smith’s allegations against John Doe that purportedly occurred on April 8 through 9 of 2022 included the following: (i) alleged sexual and physical assault by performing oral sex and engaging in penetrative sex without consent; and (ii) alleged sexual and physical assault of Jane Roe. (AA 10-11.)

The School’s responsible school district (the “District”) launched an investigation into Jenna Smith’s complaints against John Doe and imposed a stay away order (“Stay Away”) upon John Doe, banning him from all events and schools within the District. (AA 10-15.) John Doe fully participated in the investigation by offering evidence and appearing for interviews. (AA 10-15.)

D. Defendant Jenna Smith’s Unrelenting Attacks on Jane Roe and John Doe Continued

Jenna Smith, through the dissemination of her false allegations, succeeded in alienating Doe and his family from the

Club and School community. (AA 12-14.) Doe could not attend prom and Doe's mother could not host a dinner celebration at the end of the year for the Club, of which Doe's sibling was still a member. (AA 12.) Other students at the School shared that Jenna Smith continued spreading her false allegations of sexual misconduct about John Doe and Jane Roe. (AA 12-15.) The false allegations trickled out to other members of the Club, including Doe's own sibling and their peers. (AA 12-13.)

In or around May of 2023, Jane Roe learned that Jenna Smith not only alleged that John Doe sexually assaulted Jenna Smith, but also that the allegations included an alleged sexual assault of Roe herself by Doe. (AA 12-15.) More specifically, Jane Roe learned that Jenna Smith alleged that she "blacked out," heard Jane Roe scream "stop" and then was taken to a different room where Doe allegedly sexually assaulted her. (AA 13.) Although Roe became withdrawn at the School in the final moments of her senior year, she also participated in the investigation and provided clear testimony on her account of events that transpired. (AA 12-15.)

Jenna Smith did not give up, as she continued her attack on Jane Roe and John Doe by, upon information and belief, making harassing comments on their Instagram accounts. (AA 13.) This conveniently started directly after Jane Roe's interview during the investigation. (AA 13-14.) Nearly every single post on both of their Instagram accounts received at least one comment, which were explicit and violent in nature. (AA 13.) This caused Roe to fear for her safety at School, miss substantial time from

School, and complete her examinations in the School's administration office. (AA 13-14.)

E. Despite John Doe Being Found Not Responsible for the False Allegations Launched by Jenna Smith, Mother Smith and Jenna Smith Continued to Exact Their Revenge Against Both Him and Jane Roe

After a lengthy investigation, on August 14, 2023, the District found John Doe not responsible for the allegations that Jenna Smith launched against him and removed the Stay Away order. (AA 14-15.) In a separate letter to Jane Roe, the District acknowledged Jenna Smith's unyielding dissemination of the false statements by stating that it is "more likely than not that [Jenna Smith] *had shared with others her allegations against the former student* that involved [Roe]." (emphasis added.) (AA 15.)

Despite the finding of non-responsibility, the District imposed a second stay away (the "Second Stay Away") upon John Doe merely three days later due to the pressure applied by, and false statements made by Defendants Jenna Smith and Mother Smith. (AA 15-16.) As a result of the Second Stay Away, John Doe missed out on critical events in his younger sibling's life. (AA 15.)

F. Jenna Smith Continued to Defame and Portray both John Doe and Jane Roe in a False Light

Even though John Doe and Jane Roe had both departed the School prior to the commencement of the 2023 -2024 academic year, Jenna Smith continued to spread false allegations against

them and cause them harm. (AA 15-16.) By way of example and not limitation, Jenna Smith: cursed at Jane Roe in the Fall of 2023 in a near physical altercation instigated by Smith when Roe attended a School event, continued to spread to students and parents her false allegations pertaining to Doe and Roe, consistently posted to social media defamatory remarks about Doe and Roe, and repeatedly referenced “rape” and “PTSD” on social media. (AA 15-16.)

As a result of the actions of Defendant Jenna Smith, Plaintiffs Doe and Roe fear for their physical safety. Due to the defamatory and libelous remarks and actions of Jenna Smith and Mother Smith, Plaintiffs have suffered and will continue to suffer from emotional distress, anxiety, loss of appetite, damage to their reputations and general credibility, for which they seek to address and stop the perpetuation of harm in this action. (AA 15-16.)

G. The Court Permitted Plaintiffs and Defendants to Proceed Under Pseudonyms

Plaintiffs filed their complaint using pseudonyms. (AA 4-23.) After filing, Non-Party FAC moved to unmask the identities of the Parties, which Plaintiffs opposed. (AA 24-38; AA 46-61.) The Superior Court denied Non-Party FAC’s motion as Moot and requested that Plaintiffs file a motion to proceed under a pseudonym to the court. (AA 70-74.) Both Plaintiffs and Defendants moved to proceed under pseudonyms, which Non-Party FAC opposed. (AA 75-91; AA 93-103; AA 106-123.)

Upon consideration of the briefs filed and a hearing, the Superior Court granted the Plaintiffs’ and Defendants’ motions to proceed under pseudonyms because all Parties “demonstrated valid interest in proceeding anonymously[,]” that the “public interest in the identity of the parties” is “likely nominal at best[,]” and that the public interest “is overridden by the privacy interests of the parties.” (AA 143-151.) In its decision, the Superior Court found that “Plaintiffs’ interest in remaining anonymous relates to matters which are both highly sensitive and personal.” (AA 148.) The Superior Court further found that “[k]nowledge of the events which allegedly transpired between Plaintiffs and Defendants are confined to a relatively small number of people.” Although “Defendant is alleged to have publicized her allegations on social media, nothing before the Court indicates that these posts caused awareness of the issues beyond the parties’ friends/associates and school” and “nothing in the record...indicate[s] that this dispute has gained notoriety such that Plaintiffs do not maintain a reasonable expectation of privacy.” (AA 148-149.)

III. COUNTERSTATEMENT OF APPEALABILITY

A. Despite Appellant’s Contention, there is No Express Right to Appeal the Objection to Pseudonymity

Although the Court likened the question of whether a pseudonym should be used to that of sealing a court record, the Court did not expressly state that they are one and the same. (*Department of Fair Employment & Housing v. Superior Court* (2022) 82 Cal.App.5th 105, 111–12 (*DFEH*) (stating

“[m]uch *like* closing the courtroom or sealing a court record...” (emphasis supplied); *see also Doe v. Second Street Corp.*, (Cal.Super. Dec. 11, 2024) No. 23SMCV00653, 2024 WL 5373296, at *2.) As the Superior Court observed, “a motion to proceed anonymously and a motion to seal the record restrict the public’s access to the courts in *vastly* different degrees.” (AA 147, emphasis supplied.) These are important distinctions that Appellant Non-Party FAC has failed to acknowledge. It is not a bygone conclusion that the issue is immediately appealable because the court has not explicitly stated that use of a pseudonym *is* a sealed document. As the Superior Court found, and Appellant Non-Party FAC acknowledged, “no direct authority exists for” FAC’s “standing to opposing Plaintiffs’ motion.” (AA 146-47.)

Here, the Parties do not seek to seal the docket or restrict the public’s access to the filings of the case or legal issues at hand. (*supra* II(E).) Instead, exceptional circumstances warrant concealing only the identities and personally identifying information of the Parties.

Moreover, there is presently no document in the record to unseal that contains the names and true identities of the Plaintiffs or Defendants. As no such document exists, there is not a specific item or court paper that can be unsealed. And since there is no express right, standing to appeal cannot be inferred.

B. Appellant is a Not a Party to the Superior Court Civil Action

Mr. Volokh's motives in attempting to unmask the Parties in the underlying action, as well as through this appeal, appear to be for the purpose of indulging his personal self-interest and status. On September 19, 2024, Mr. Volokh, in his blog, sensationalized the Superior Court's dismissal of his motion as moot to unmask the parties and request for the Parties to make an application requesting pseudonymity. (Eugene Volokh, *California Litigants Must Ask for Pseudonymity, Rather Than Just Filing Under a Pseudonym*, REASON (Sept. 19, 2024), <https://reason.com/volokh/2024/09/19/california-litigants-must-ask-for-pseudonymity-rather-than-just-filing-under-a-pseudonym/>). Neither Mr. Volokh nor FAC are parties in the Superior Court action. FAC does not have a strong interest in this appeal because this is not a case where the public's right of access is particularly compelling. (*supra* II(E).) Plaintiffs are not government employees or officials; they are private present college-age students. (*See Co. Doe v. Pub. Citizen* (4th Cir. 2014) 749 F.3d 246, 274 (discussing public's heightened interest in litigation involving public officials and government bodies).)

IV. STANDARD OF REVIEW

The trial court's decision to allow Plaintiffs and Defendants to proceed under pseudonyms is reviewed under the abuse of discretion standard, and "any factual determinations made in connection with that decision will be upheld if they are supported by substantial evidence." (*Oiye v. Fox* (2012) 211

Cal.App.4th 1036, 1067; see *In re Marriage of Tamir* (2021) 72 Cal.App.5th 1068, 1079.)

V. ARGUMENT

A. California Courts Frequently Permit Plaintiffs to Proceed Pseudonymously Due to An Overriding Interest

California courts routinely permit parties to refrain from using their true identities despite the presumption against pseudonymity in a wide variety of cases. (*Doe v. Suarez* (Cal.Super. May 21, 2025) No. 24NNCV00276, 2025 WL 1752115, at *2 (noting the presumption of openness); *D. E. v. Regents of the University of California* (Cal.Super. May 28, 2024) No. 19STCV36319, 2024 WL 3553854, at *1 Although there is a “strong presumption against pseudonymity[,]” and as the Superior Court acknowledged, pseudonym use is permitted to protect legitimate privacy rights under California law. (AA 145.) (*D. E. v. Regents of the University of California*, 2024 WL 3553854, at *1; *Doe v. Superior Court* (2016) 3 Cal. App. 5th 915 (acknowledging the “strong presumption” against pseudonymity); *Doe v. Saenz* (2006) 140 Cal.App.4th 960; *Hooper v. Deukmejian* (1981) 122 Cal.App.3d 987; *Doe v. Bakersfield City School Dist.* (2006) 136 Cal.App.4th 556; *Jane Doe 8015 v. Superior Court* (2007) 148 Cal.App.4th 489; *Doe v. Lincoln Unified School Dist.* (2010) 187 Cal.App.4th 1286 (acknowledging the privacy

interest and permitting teacher to proceed anonymously in a civil action against a school district).)¹

Courts possess the requisite authority to exempt parties from using their true names on the public docket in certain circumstances to overcome the obligation that all party names must be stated in the complaint. (See, *Doe v. Lincoln Unified School Dist.* (2010) 188 Cal. App. 4th 758, 766 (noting that “there have been countless published state court decisions where one or more of the parties have used fictitious names”); *DFEH*, 82 Cal. App. 5th at 112 (stressing the “common practice in California courts of using pseudonyms to protect privacy”); *Sealed Plaintiff v. Sealed Defendant #1* (2d Cir. 2008) 537 F.3d 185, 190.)

¹ See also *Doe v. Massachusetts Inst. of Tech.* (1st Cir. Aug. 24, 2022) 46 F.4th 61, 63, 72-76 (“[W]e tackle a question of first impression in this circuit: when is it appropriate for a party to a civil suit in federal court to appear under a pseudonym? This important question pits the individual’s desire for privacy against the public’s need to access judicial proceedings[,]” resulting in the fashioning of four non-exhaustive paradigms when pseudonym use is appropriate: (i) the revelation of the identity of the party seeking pseudonym treatment would cause severe harm; (ii) innocent non-parties would be harmed by the identification of the party seeking anonymity; (iii) the lack of anonymity would have a chilling effect on similarly situated potential future litigants; and (iv) whether an underlying proceeding to the litigation received confidential treatment, notably with school disciplinary proceedings, as the “public has an abiding interest in ensuring that the values underpinning the confidentiality protections imposed by FERPA and Title IX are not subverted by collateral attacks in federal court.”).

It is established that an overriding interest justifies the use of pseudonyms. (*DFEH*, 82 Cal. App. 5th at 111-113 (clarifying that the overriding interest test should be applied in evaluating pseudonymity); *Does I thru XXIII v. Advanced Textile Corp.* (9th Cir. 2000) 214 F.3d 1058 (*Advanced Textile Corp.*) (permitting pseudonym use 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”); Cal. Rules of Court, Rules 2.550, *et. seq.* (outlining the overriding interest test with respect to sealing court documents).) An overriding interest exists when a party “will likely be prejudiced without use of a pseudonym, and that it is not feasible to protect the interest with less impact on the constitutional right of access.” (*DFEH*, 82 Cal.App.5th at 111.)

Advanced Textile Corp. provides convincing insight that aligns with California’s standards for protecting privacy in sensitive matters, allowing pseudonymity in three circumstances: “(1) when identification creates a risk of retaliatory physical or mental harm [citations]; (2) when anonymity is necessary ‘to preserve privacy in a matter of sensitive and highly personal nature,’ [citations]; and (3) when the anonymous party is ‘compelled to admit [his or her] intention to engage in illegal conduct, thereby risking criminal prosecution,’ [citations].” (*Advanced Textile Corp.*, 214 F.3d at 1068; *Heineke v. Santa Clara Univ.* (N.D. Cal. Dec. 5, 2017) No. 17-CV-05285-LHK, 2017 WL 6026248, at *5 (highlighting that the parties have been allowed “to use pseudonyms in the ‘unusual case’ when

nondisclosure of the party's identity 'is necessary ... to protect a person from harassment, injury, ridicule or personal embarrassment.'" (internal citations omitted).) The categories set forth by *Advanced Textile Corp.* are by no means exhaustive, as "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." *Id.* at 1068. Using pseudonyms "to protect legitimate privacy rights has gained wide currency, particularly given the rapidity and ubiquity of disclosures over the World Wide Web." (*Starbucks Corp. v. Superior Court* (2008) 168 Cal. App. 4th 1436, 1452.) As one court observed, "the ultimate test for deciding if a plaintiff should proceed anonymously is whether plaintiff 'has a substantial privacy right which outweighs the customary and constitutionally-embedded presumption of openness in judicial proceedings.'" (*Doe v. Virginia Polytechnic Inst. & State Univ.* (W.D. Va. Nov. 13, 2018) No. 7:18-CV-170, 2018 WL 5929647, at *2.)

In *Doe v. Lincoln Unified School Dist.* (2010) 188 Cal. App. 4th 758, the California Court of Appeal recognized that public disclosure of a plaintiff's identity could lead to undue harm and stigmatization, noting that the protection of an individual's privacy is paramount when stakes are as high as potential emotional distress and reputational damage. (*Lincoln Unified School Dist.*, 188 Cal. App. 4th at 767.) The court permitted a teacher to proceed under a pseudonym because of the highly

sensitive nature of the allegations related to her mental health and employment status. (*Id.*)

Despite Non-Party FAC's assertion, courts frequently permit parties to proceed pseudonymously to protect their privacy. (*See, e.g., Doe v. Madison Sch. Dist. No. 321* (9th Cir. 1998) 147 F.3d 832, 833 n.1, vacated on other grounds, 177 F.3d 789 (9th Cir. 1999) (en banc) (allowing plaintiff to file as "Jane Doe" when challenging a school's policy to allow students to inject prayers and religious songs into the graduation program because she "feared retaliation by the community"); *Doe v. Rostker* (N.D. Cal. 1981) 89 F.R.D. 158, 162 ("A plaintiff should be permitted to proceed anonymously in cases where a substantial privacy interest is involved.")) The practice of using pseudonyms is even permitted and acknowledged by the Supreme Court of the United States. (*See Advanced Textile Corp.*, 214 F.3d. at 1067 n.9 ("[t]he Supreme Court has implicitly endorsed the use of pseudonyms to protect plaintiffs' privacy."))

B. The Court Correctly Permitted Plaintiffs to Proceed Pseudonymously

1. An Overriding Privacy Interest Exists Because the Subject Matter is of a Highly Sensitive and Personal Nature

The highly sensitive and personal nature of the facts and specific details in Plaintiffs' claims establish an overriding privacy interest, permitting pseudonymity. Plaintiffs do not merely contend that they would be "embarrassed" or "humiliated" if they became unmasked. Instead, this matter concerns one of the most private things to a person, a matter of the utmost

intimacy—alleged sexual activity. Courts have permitted plaintiffs to utilized pseudonyms when the subject matter of the case “falls into what may be roughly called the area of human sexuality.” (*Roes 1-2 v. SFBSC Mgmt., LLC*, (N.D. Cal. 2015) 77 F. Supp. 3d 990, 994 (granting pseudonym status to exotic dancers); *see also United States v. Doe* (9th Cir.2007) 488 F.3d 1154, 1155 n. 1 (allowing defendant convicted of producing child pornography to use a pseudonym); *Doe v. Megless* (3rd Cir.2011) 654 F.3d 404, 408 (“Examples of areas where courts have allowed pseudonyms include ... abortion, ... transsexuality[,] ... and homosexuality.”) (quotation omitted); *John Doe 140 v. Archdiocese of Portland in Or.* (D.Or. 2008) 249 F.R.D. 358, 361 (plaintiff alleging that he was sexually abused as minor allowed to proceed anonymously); *Doe v. United Services Life Ins. Co.* (S.D.N.Y. 1988) 123 F.R.D. 437 (sexual orientation).) A paramount privacy interest of the students—and minor students at that—not to be publicly identified with sexual misconduct and sexual assault, or making untrue statements about sexual assault, warrants the use of pseudonyms in this case.

2. The Defamatory Content Concerns Alleged Sexual Acts of Minors

The case presents an extraordinary circumstance warranting pseudonymity: the alleged sexual activity of minors. Plaintiffs John Doe and Jane Roe, as well as Defendant Jenna Smith, were all minors when the alleged activity occurred. California statutes permit minors to proceed anonymously where important privacy interests are implicated. (*See, e.g., Code Civ. Proc., § 372.5* (allowing pseudonym use for guardian ad litem

proceeding on behalf of a minor); see also, *Doe v. City of Chicago* (7th Cir. 2004) 360 F.3d 667, 669 (in denying the right to proceed anonymously, court emphasized the fact that the plaintiff was “not a minor... or ... a likely target of retaliation by people who would learn her identity only from a judicial opinion or other court filing”).)

Not only did the alleged sexual misconduct purportedly occur when the Plaintiffs and Defendant Jenna Smith were minors, but upon information and belief, Defendant Jenna Smith was still a minor when she made the defamatory remarks, as she was only a junior in high school. Non-Party FAC wrongly attempts to liken the situation to that of *DL v. JS*, by stating that the Court should discount the age of the Parties when the defamatory statements occurred because Plaintiffs here were of the age of majority when they filed the lawsuit. (AOB 22-23; *DL v. JS* (W.D. Tex. Nov. 21, 2023) No. 1:23-CV-1122-RP, 2023 WL 8102409, at *2).) The instant matter is dissimilar because, as the Court observed, the plaintiff in *DL v. JS* “was an adult when the alleged libel occurred.” (*DL v. JS*, 2023 WL 8102409, at *2). Fascinatingly, Mr. Volokh, attorney for Non-Party FAC, in his own publications, recognized that:

Litigants usually have to indicate their full names, but ***minors, especially in California, are often allowed to litigate using initials or pseudonyms***—especially when there are allegations of sexual impropriety involved. Here, the plaintiff is acknowledging that there was a sexual relationship when the parties were, at most, 15 ... I am generally not a fan of

pseudonymous litigation, but *my tentative thought is that a case involving minors' sexual conduct (and possible misconduct) would have been a suitable case for that.*

Eugene Volokh, *Minor's Slander Lawsuit Against Another Minor, Prompted by Defendant's Allegations of Rape*, THE VOLOKH CONSPIRACY (Oct. 14, 2019)² (emphasis supplied)

Mr. Volokh does not distinguish between cases that have a cause of action for sexual assault versus defamation or related causes of action. Alternatively, he simply states cases “involving minors’ sexual conduct (and possible misconduct) would have been a suitable case” for pseudonym use, which is exactly what this litigation concerns.

3. Severe Harm Would Befall Jane Roe and John Doe if Their Identities are Disclosed

The revelation of Plaintiffs’ identities would result in significant, severe harm—the exact type they seek to avoid. (*Advanced Textile Corp.*, 214 F.3d at 1068 (highlighting that a pseudonym is appropriate “when identification creates a risk of retaliatory physical or mental harm”); *see also DFEH*, 82 Cal. App. 5th at 112, (establishing that an “overriding interest” justifies the use of pseudonyms, including safety interests); *Doe v. Mass. Inst. of Tech.* (1st Cir. Aug. 24, 2022) 46 F.4th 61, 70-72 (recognizing that a plaintiff’s use of a pseudonym is permissible

² <https://reason.com/volokh/2019/10/14/minors-slander-lawsuit-against-another-minor/>.

when they “reasonably fear(s) that coming out of the shadows will cause [them] severe harm.”.) Contrary to Non-Party FAC’s assertions and their misinterpretation of *Doe v. Mass. Inst. of Tech.*, Plaintiffs’ concerns are more than just mere reputational harm. (AOB 17; *Doe v. Mass. Inst. of Tech.*, 46 F.4th at 70.) Instances given by the First Circuit include but are not limited to: (i) disclosure of a history of sexual abuse; (ii) fear of an extraordinary retaliatory measure such as arrest, deportation, or imprisonment; (iii) recovering from a long-term disorder; and (iv) retaliation in the form of physical or mental harm. (*Id.* at 71-76, internal citations omitted.) Should Plaintiffs become unmasked, they will likely suffer from, among other things, retaliation, and severe mental and physical harm. The Superior Court acknowledged the harm that would befall Plaintiffs in their decision. (AA 148-149.)

John Doe’s status as a person who has been falsely accused of sexual misconduct puts him at risk of retaliatory physical, psychological, reputational, and mental harm should he be publicly identified in the underlying action. The same applies to Jane Roe, who would forever be branded as a person who remains in a relationship with a person who sexually assaulted her and another female student (Jenna Smith)—an assault that John Doe did *not* commit. To associate their names with this action would harm them for decades to come, forever forcing them to provide further information on the false and defamatory claims, which is exactly what they seek to avoid by this action.

Any simple internet search of their names would ultimately display results including this lawsuit, forever linking the false and horrifying details of the allegations with their true identities. (*Starbucks Corp. v. Superior Court*, 168 Cal. App. 4th at 1452 (recognizing the impact the internet can have on the dissemination of information); see also, *Doe v. Trustees of Dartmouth College* (D.N.H. May 2, 2018) No. 18-CV-040-LM, 2018 WL 2048385, at *5–6 (recognizing that this concern is “exacerbated in the Internet age, which can provide additional channels for harassment and will connect plaintiff’s name” with the allegations, whether successful or not in the underlying litigation); *Doe v. Trs. of Bos. Univ.* (D.Mass. Nov. 6, 2024, Civil Action No. 24-10619-FDS) 2024 WL 4700161, at *6 (“If Doe’s actual name were to be used in this case, a simple Internet search or background check would connect [plaintiff] with this dispute...immediately. But to connect [plaintiff]...without [plaintiff’s] name being used, one would need to already suspect that [plaintiff] was involved, seek out the record of this lawsuit, and then look to the personal details disclosed and connect the dots.”).)

Given the lack of control due to the very nature of the internet, it is impossible to control the content dispersed by any media outlet or person covering any given case. Courts must be willing to supply protective measures to prevent further damage to plaintiffs who seek to rectify harm caused by false allegations of sexual assault, as “public identification could defeat the very

purpose of the litigation.” (*Doe v. Trustees of Dartmouth College*, 2018 WL 2048385 at *5–6.)

If their true identities became known, even if Plaintiffs ultimately obtain a favorable verdict, any ultimate success in this matter would be negated by disclosure of their names. (AA 8-16.) The knowledge of the false statements are limited to the low number of people in the community that Plaintiffs and Defendants are members of. As the Superior Court observed, the false statements by the Defendants “are confined to a relatively small number of people.” (AA 148.)

Furthermore, John Doe and Jane Roe fear physical harm and further retaliation from Jenna Smith and Mother Smith, not only for themselves, but for their families. *DFEH* recognized “[r]etaliatory harm to family members—wherever they are located—is precisely the kind of interest that may justify allowing a party to litigate under a pseudonym.” (*DFEH*, *supra*, 82 Cal. App. 5th at 112.) Should the identities of Plaintiffs be revealed, the identities of Defendants would undoubtedly be revealed. (AA 15-16.) The fears of Roe and Doe are not unfounded. Jenna Smith has displayed a history of nearly physically threatening Jane Roe when Jenna Smith cursed at Jane Roe in the Fall of 2023. Even after this, Jenna Smith continues to spread to students and parents her false allegations pertaining to Doe and Roe, consistently posts to social media defamatory remarks about Doe and Roe, and repeatedly references “rape” and “PTSD” on social media. (AA 15-16.) If any of the true identities of the Parties are revealed, there is no

telling what retaliatory action Jenna Smith and Mother Smith may take against the Plaintiffs.

**4. The Defendants Are Not Prejudiced By
The Use of Pseudonyms Because They Are
Aware of the Identities of the Plaintiffs**

The Parties are all fully aware of each other's true identities. As such, Defendants will have an unencumbered opportunity to respond and defend themselves in the litigation. In fact, Defendants also made their own application to the Superior Court as to why they should be permitted to proceed pseudonymously. (AA 93-103.) As observed by the Superior Court, "the Defendants' privacy interest and Plaintiffs' privacy interest are two sides of the same coin." (AA 149.)

Other courts have established the lack of prejudice to defendants as a factor weighing in favor of pseudonymity. (*See Doe v. Colgate Univ.* (N.D.N.Y. Apr. 12, 2016) 2016 WL 1448829, at *3 ("The Court further finds that Defendants will not be prejudiced by allowing Plaintiff to proceed anonymously. . . Defendants are aware of Plaintiff's true identity and will have an uninhibited opportunity to litigate this matter regardless of whether Plaintiff's identity is disclosed publicly."); *Doe No. 2 v. Kolko* (E.D.N.Y. 2006) 242 F.R.D. 193, 198 ("[o]ther than the need to make redactions and take measures not to disclose plaintiff's identity, Defendants will not be hampered or inconvenienced merely by Plaintiff's anonymity in court papers.").)

**5. The Public Will Still Have Unfettered
Access to the Substance of the Litigation
and the Legal Claims**

The interest of the public will still be served by the Parties proceeding under pseudonyms. Neither Plaintiffs nor Defendants sought sealing full court documents or the entire case docket. (*See* AA 149, “the Court notes that this is not a motion to seal the record.”) Instead, the public will have full access to the purely legal nature of the claims. (*See NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1221 (highlighting that the “public’s right of access extends to documents filed in a civil proceeding”); *see relatedly* AA 149-150, “[m]otions to seal restrict public access in far greater ways than motions to proceed anonymously.”.) The use of pseudonyms by the Parties in this case is narrowly tailored because it only shields the true identities of high school students, or former high school students, while preserving the entire complaint, answer, and other pleadings that will be filed, as a matter of public record. (*See Doe v. Suarez*, 2025, WL 1752115, at *2 (highlighting that the sealing must be “narrowly tailored.”).)

There is weak public interest in learning the true identities of the Parties. Plaintiffs seek redress from the malicious and false allegations of sexual misconduct made by Jenna Smith and Mother Smith. Even if Plaintiffs are successful in this case, the allegations and accusations would still exist in the public realm. (*See Doe v. Purdue Univ.* (N.D. Ind. 2017) 321 F.R.D. 339, 342, citing *Doe v. Colgate Univ.*, 2016, WL 1448829, at *3 (“If Plaintiff’s identity is revealed, Plaintiff would suffer the very

harm to his reputation that he seeks to remedy by bringing this lawsuit...if Plaintiff is successful in proving that the charges of sexual misconduct against him were unfounded and that Defendants' procedures violated his due process rights, the revelation of Plaintiff's identity 'would further exacerbate the emotional and reputational injuries he alleges.'"); *Doe v. Trustees of Dartmouth College*, 2018 WL 2048385, at *6 ("Plaintiff has a reasonable fear that, whatever the outcome of the action, public identification will subject him to severe reputational harm and harassment, and will defeat the very purpose of this litigation.") As the Superior Court noted, "[t]he public often remembers the allegations not the outcome of such assertions of sexual assault." (AA 148.)

Additionally, there is nothing remarkable about knowing the status of the Parties that would heighten any public interest beyond the normal public interest in any judicial proceedings sufficient to outweigh Plaintiffs' important right to privacy. Courts have found that the "public interest in knowing the parties' identities is not threatened where...there is nothing about the Plaintiff's identity which makes it 'critical to the workings of justice' and the basic facts of the case will be on the public record." (*B.M. v. Wyndham Hotels & Resorts, Inc.* (N.D. Cal. July 30, 2020) No. 20-CV-00656-BLF, 2020 WL 4368214, at *10, internal quotations and citations omitted.)

The public does not have the same interest as it perhaps would against a government, institution, or government official because Plaintiffs are not public or government officials, and

instead, are private parties. (*See James v. Jacobson* (4th Cir. 1993) 6 F.3d 233, 238 (identifying a factor to consider for determining pseudonymity as whether a governmental entity is involved).)

Moreover, the public's knowledge will only be minimally restricted, as it will still know the content disseminated, nature of false allegations, and the legal claims at issue. At this early stage in the proceedings, the public's right of access will not be thwarted by the use of pseudonyms. There are no "credibility determinations" for the public to make at this early stage. (AOB 14.) The names of the Parties for the "public and the media" would only appeal to the prurient interest because the action concerns the alleged sexual activity of minors. (AOB 14.)

And finally, the overriding interest in protecting the students' true identities cannot be achieved by any less restrictive means. Pseudonymity restricts from the public record and public view the true names, without constraining public access to the pleadings and to the case records.

6. Unmasking the Plaintiffs Would Have a Chilling Effect on Future Litigants

Forcing Plaintiffs to reveal their true identities would have a potential chilling effect on other similarly situated plaintiffs, a result widely recognized by federal courts across the nation. The First Circuit explained that they must be wary of the deterring effect on those who seek redress through civil litigation because that is the avenue through which they can seek "peaceful resolution of disputes." (*Doe v. Mass. Inst. of Tech.*, 46 F.4th at

71.) Representative “typical” cases identified by the First Circuit included, for example, sexual activities, bodily autonomy, reproductive rights, and those in which “the injury litigated against would be incurred as a result of the disclosure of the [party’s] identity[.]” (*Id.* (internal quotations omitted).)

Plaintiffs brought forth this action to disassociate their names from the damaging and untrue allegations, which the District later found John Doe not responsible for. Plaintiffs and future plaintiffs alike would incur the injury litigated against—namely, the consequences that flow therefrom as a result of false allegations of sexual misconduct.

7. Jenna Smith’s Pseudonym in a Related Action Will be Rendered Moot Should Any Party’s Identity Be Revealed in the Instant Matter

Defendant Jenna Smith filed an action against the District (*Jane Doe v. Burbank Unified High School, et. al.*, LASC Case no. 24BBCV00470), which the Superior Court recognized as an action related to this matter. (Order, June 25, 2024.) Jenna Smith is proceeding under a pseudonym in her related matter and should any of the identities of the Parties be revealed in this case, her identity would be released in the related matter. Notwithstanding the foregoing, should the identities of Plaintiffs be released in this matter, their shared community could easily identify the true name of Defendant Jenna Smith.

8. The Parties Have Concealed Their Identities

The Parties have concealed their identities from the public realm outside of their small community leading up to and throughout this litigation. As such, the Parties here are distinct from the parties in *Luo v. Volokh*, where plaintiff herself publicly disclosed her identity through court filed documents. (*Luo v. Volokh* (2024) 102 Cal. App. 5th 1312, 1317.) Unlike the plaintiff in *Luo v. Volokh*, Plaintiffs Jane Roe and John Doe have gone to incredible lengths to protect their identities publicly beyond the community in which Jenna Smith and Mother Smith published the statements.

9. The Present Action is Entwined with a Confidential Proceeding

Here, the present action is “bound up with a prior proceeding made confidential by law.” (*Doe v. Mass. Inst. of Tech.*, 46 F.4th at 71.) Defendant Jenna Smith launched an investigation into the alleged sexual misconduct of John Doe concerning actions pertaining to both her (Jenna Smith) and Jane Roe after she made her defamatory statements. As previously noted, the District did not find John Doe responsible for the allegations. (AA 14-15.) Here, Plaintiffs, as well as Defendants, should be permitted to remain under pseudonym protection because the allegations are “bound up” with a confidential sexual misconduct process that later came about within the District. Even though the defamatory remarks were made outside of that process, the allegations are nonetheless related to the current proceeding. Permitting Doe and Roe to remain under

pseudonyms here would preserve the status quo, allowing the District's disciplinary process to remain confidential.

VI. CONCLUSION

For the overriding interests established and reasons set forth above, this Court should uphold the decision of the Superior Court, permitting the Parties to proceed pseudonymously and grant such other and further relief as this Court deems just and proper.

Dated: July 30, 2025 Respectfully Submitted,

HATHAWAY PARKER INC.

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CERTIFICATE OF WORD COUNT

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) of the California Rules of Court, the enclosed Opposition Brief is produced using 13-point or greater Century Schoolbook type font, including footnotes, and contains 6,685 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this Brief.

Dated: July 30, 2025 Respectfully Submitted,

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