IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

Case No. B344378

JANE ROE and JOHN DOE,
Plaintiffs / Respondents

v.

JENNA SMITH and MOTHER SMITH and DOES 1-10,
Defendants,
and
FIRST AMENDMENT COALITION,
Movant / Appellant

On Appeal from the Superior Court of Los Angeles County
Case No. 24STCV08102, Honorable Frank M. Tavelman, Judge

APPELLANT'S REPLY BRIEF

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I. Defamation cases—including ones related to sexual assault allegations—must generally be litigated under the plaintiffs' names.

Most defamation plaintiffs would like to litigate their cases under a pseudonym, for much the same reasons Plaintiffs offer: to avoid having more people learn of the defamatory statements, and to avoid "forever linking" the allegedly false allegations "with their true identities" (Brief of Plaintiffs-Respondents at p. 28).

Yet especially when the legal system is used to try to punish and enjoin speech, it is necessary for the public to be able to monitor the judicial process. Thus, in defamation cases even more than in other cases, the reasoning of *DFEH v. Superior Court* (2022) 82 Cal.App.5th 105, applies (paragraph break added):

> [A]nother 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.
>
> Public access to court proceedings is essential to a functioning democracy. It promotes trust in the integrity of the court system, and it exposes abuses of judicial power to public scrutiny. (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1221.) . . . And the right to access court proceedings necessarily includes the right to know the identity of the parties. (*Id.* at p. 1211 [public has a general right of access to civil proceedings; by submitting a dispute to resolution in court, litigants should anticipate the proceedings will be adjudicated in public].)

(*Id.* at p. 110-11 [citation omitted].) And this is equally true in defamation cases that involve ordinary individuals rather than public officials. As *KNBC-TV* noted, in discussing public access generally,

> In *Cowley v. Pulsifer* (1884) 137 Mass. 392, 394 [50 Am. Rep. 318], Justice Oliver Wendell Holmes wrote that public access to civil judicial proceedings was "of vast importance" because of "the security which publicity gives for the proper administration of justice. . . . It is desirable that the trial of [civil] causes should take place under the public eye, not because the controversies of one citizen with another are of public concern, but because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed."

(20 Cal.4th at 1198 n.14, brackets in original.)

Indeed, courts throughout the country have rejected defamation plaintiffs' attempts to proceed under pseudonyms—including in cases that, like this one, involve alleged false claims of sexual assault brought by private individuals. The Coalition cites many such cases in its Appellant's Opening Brief at pp. 16, 18-19: *Doe v. Doe* (4th Cir. 2023) 85 F.4th 206; *Doe v. Roe* (D.Colo., July 17, 2023, No. 23-CV-01149-NYW-KLM) 2023 WL 4562543; *Sebastian v. Doe* (S.D.N.Y., Mar. 19, 2025, No. 25-CV-0911 (JAV)) 2025 WL 856242; *DL v. JS* (W.D. Tex., Nov. 21, 2023, No. 1:23-CV-1122-RP) 2023 WL 8102409, *2; *Roe v. Does 1-11* (E.D.N.Y., Oct. 14, 2020, No. 20-CV-3788-MKB-SJB) 2020 WL 6152174, *6; *see also Doe v. Bogan* (D.D.C. 2021) 542 F.Supp.3d 19 (non-sexual-assault defamation

claim); *Doe v. Washington Post* (D.D.C., Feb. 26, 2019, No. 1:19-cv-00477-UNA) 2019 WL 2336597, *3 (likewise). Yet the Brief of Plaintiffs-Respondents does not discuss any of those cases, except, briefly, *DL v. JS*.

In particular, the Brief of Plaintiffs-Respondents does not discuss the on-point federal appellate case on the subject, the Fourth Circuit's *Doe v. Doe* decision. In *Doe v. Doe*, like in this case,

1. Appellant was suing for defamation (among other things) "after Appellee accused Appellant of sexual assault." (85 F.4th at p. 208.)
2. "Appellant argue[d] that his case 'is distinguishable from the garden-variety defamation case because it centers around false and defamatory statements made within the context of a Title IX disciplinary proceeding and [Appellee's] use of that proceeding to exact revenge against [Appellant].'" (*Id.* at p. 213; *cf.* Brief of Plaintiffs-Respondents at pp. 35-36 [arguing that the alleged defamation in this case was "'bound up' with a confidential sexual misconduct process that later came about within the District"]).
3. "Appellant point[ed] to various courts allowing plaintiffs to proceed by pseudonym when they are suing their universities to challenge Title IX proceedings in order to argue that he has a valid privacy interest." (85 F.4th at p. 213; *cf.* Brief of Plaintiffs-Respondents at pp. 21, 22, 26, 27, 28, 31, 33, 34

[citing cases in which plaintiffs were allowed to proceed pseudonymously when suing universities to challenge Title IX proceedings]).

4. Appellant argued that identifying him would cause, among other things, "reputational harm" and damage to "career opportunities." (85 F.4th at p. 214.)
5. Appellant also claimed that the facts created a special concern about privacy: "Appellant argued that the underlying facts in the case relate to allegations of sexual assault and, 'in light of the nature of this case, private and intimate details regarding the lives of John Doe and Jane Doe will be at issue.'" (*Id.* at p. 211.)
6. And appellant claimed that he could be subjected to "retaliation" and "mental harm." (*E.g., id.* at p. 214.)

Yet the Fourth Circuit concluded that 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." (*Id.* at p. 215.) That analysis fully applies here. Plaintiffs both in *Doe v. Doe* 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." (*Id.* at p. 217.)

There are no California precedents that deal with pseudonymity in defamation cases. But *Doe v. Doe* and the other federal defamation cases cited by Appellant's Opening Brief (at pp. 16, 18-19) apply fundamentally the same legal rules called for by *DFEH*.

DFEH did state that an earlier case, *Doe v. Lincoln Unified School Dist.* (2010) 188 Cal.App.4th 758, 766, "noted the common practice in California courts of using pseudonyms to protect privacy." (82 Cal.App.5th at p. 110.) But this Court immediately added that, as of the *DFEH* decision, "no California case ha[d] articulated the standard that applies to determine whether a party may proceed anonymously absent specific statutory authorization." (*Ibid.*) And then this Court went on to "determine[e] the appropriate standard" (*ibid.*), which was,

> Outside of cases where anonymity is expressly permitted by statute, litigating by pseudonym should occur "only in the rarest of circumstances."

(*Id.* at p. 111-12 [quoting *KNBC-TV*, 20 Cal.4th at p. 1221].) That closely tracks the "exceptional circumstances" standard applied by the Fourth Circuit in *Doe v. Doe* and by the other federal cases denying pseudonymity to defamation plaintiffs.

II. This analysis applies in defamation cases even when they raise concerns about privacy, mental harm, or professional retaliation

Plaintiffs arguing that their "concerns are more than just mere reputational harm" (Brief of Plaintiffs-Respondents at p. 27.) But, as *Doe v. Doe* and the other defamation cases cited in Part I (and

in Appellants' Opening Brief) make clear, defamation plaintiffs must identify themselves even in situations which involve sexual assault allegations. In all those cases, plaintiffs could argue—and often have argued—that identifying themselves would undermine their privacy and lead to mental harm and retaliation (see *supra* Part I; *Doe v. Doe*, 85 F.4th at pp. 211, 213, 214) and not just reputational harm.

But that has not been understood as an adequate reason to conceal the parties' identities, in the face of the public access concerns identified equally by *DFEH* and the federal cases. As this Court has said, "'when individuals employ the public powers of state courts to accomplish private ends, . . . they do so in full knowledge of the possibly disadvantageous circumstance that the documents and records filed . . . will be open to public inspection,' and that 'with public protection comes public knowledge' of otherwise private facts." (*In re Marriage of Burkle* (2006) 135 Cal.App.4th 1045, 1063, fn. 24 [quoting *Est. of Hearst* (1977) 67 Cal.App.3d 777, 783–84].)

III. This analysis does not change just because Plaintiffs were minors at the time of the alleged libel.

As noted in Appellant's Opening Brief (at pp. 21-23), Plaintiffs are adults and were adults at the time the lawsuit was filed. They were legally competent to weigh the downside of being publicly identified as plaintiffs in this case.

The authorities that Plaintiffs cite (Brief of Plaintiffs-Respondents at pp. 24-26) are thus inapposite, because they involve pseudonymity aimed at protecting minors, not former minors. *DFEH* expressly characterized Code Civ. Proc., § 372.5, relied on by Brief of Plaintiffs-Respondents at pp. 24-25, as "allowing pseudonym for guardian ad litem litigating on behalf of a minor." (82 Cal.App.5th at p. 110.) Likewise, *Doe v. City of Chicago* (7th Cir. 2004) 360 F.3d 667, 669, relied on by Brief of Plaintiffs-Respondents at p. 25, expressly stated that "The plaintiff is not a minor."

Plaintiffs claim it is "[f]ascinating[]" that counsel for movant has written that "minors, especially in California, are often allowed to litigate using initials or pseudonyms." (Brief of Plaintiffs-Respondents at pp. 25-26.) But that article by counsel dealt with a lawsuit by a plaintiff who was "currently [a] minor[]" at the time of the lawsuit.[1] The Complaint in that lawsuit, *Unszusz v. Hayes*, No. 19TRCV00822, ¶ 1 (Cal. Super. Ct. Los Angeles County filed Sept. 15, 2019), expressly described plaintiff as "a minor individual."

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[1] Eugene Volokh, *Minor's Slander Lawsuit Against Another Minor, Prompted by Defendant's Allegations of Rape*, Reason (Volokh Conspiracy) (Oct. 14, 2019), https://reason.com/volokh/2019/10/14/minors-slander-lawsuit-against-another-minor/.

IV. Concerns about physical harm can justify pseudonymity only when they stem from third parties who would learn plaintiffs' identities, not from defendants who already know plaintiffs' identities.

DFEH held that pseudonymity may sometimes be allowed to prevent physical attacks on plaintiffs or their families by third parties who will *learn of the plaintiffs' identities* from the litigation. (82 Cal.App.5th at pp. 108-109 ["[The Department] supported the motion [to allow plaintiff to proceed under a fictitious name] with evidence that in India violence is regularly perpetrated against people considered to be of lower caste status, and the employee has family members who live there and could be in danger if their caste affiliation became known."]).

But here Plaintiffs' concerns are about "physical harm and further retaliation from Jenna Smith and Mother Smith" (Brief of Plaintiffs-Respondents at p. 29), who *already know Plaintiffs' identities*. Requiring Plaintiffs to identify themselves will not inform defendants of anything they do not already know. In such situations, courts have routinely rejected the argument that pseudonymity is justified by a desire to avoid a risk of physical harm. *See, e.g., Doe v. Sutton* (E.D. Mo., Mar. 20, 2025, No. 4:23-CV-01312-SEP) 2025 WL 871656, *3 (quoting *Doe v. Shakur* (S.D.N.Y. 1996) 164 F.R.D. 359, 362):

> Plaintiff has not . . . explained how or why the use of her real name in court papers would lead to harm, since those who presumably would have any animosity toward her already know her true identity.

See also Doe v. Leonelli (S.D.N.Y., June 6, 2022, No. 22-CV-3732 (CM)) 2022 WL 2003635, *3 (cleaned up):

> Ms. Doe likewise does not explain how proceeding pseudonymously will protect her from that humiliation by the Defendants and their "network," where the Defendants already know who they are and have made no promises to keep that information confidential. While "the Court appreciates the potential harm from being subjected to intense public scrutiny," without more, the Court cannot find this risk alone weighs in favor of proceeding pseudonymously.

See also Hinckley v. All American Waste Services Incorporated (D. Ariz., July 15, 2025, No. CV-25-00927-PHX-SHD) 2025 WL 1940001, at p. *6, fn. 2 (cleaned up):

> Although Hinckley indicated in her Complaint that one of the now-dismissed individual defendants has violent tendencies, she also stated that the defendants "have prior knowledge of [her] identity" and that she is amenable to "allowing Defendants to receive her real identity under seal," so use of a pseudonym would not mitigate any risk of disclosure to the defendants. *See Mahboubi-Fardi*, 2024 WL 2206640, at *5 ("[I]t is undisputed that Defendants already know Plaintiff's name and identity. Therefore, allowing Plaintiff to proceed anonymously would not per se limit harassment, retaliation . . . or other misconduct. Further, should such misconduct occur, Plaintiff could seek appropriate, legal remedies.").

Plaintiffs theorize that (1) "[s]hould the identities of Plaintiffs be revealed, the identities of Defendants would undoubtedly be revealed," (2) this would presumably anger defendants, and (3) when that happens, "there is no telling what retaliatory action [Defendants] may take against the Plaintiffs." (Brief of Plaintiffs-Respondents at pp. 29-30.) But though Defendants sought pseudonymity

themselves, they did not oppose FAC's opposition to Plaintiffs' pseudonymity requests. (Appellants' Opening Brief at p. 7.) Indeed, they stated that, "It is understandable why the law in some instances states that the defamation Plaintiff, who is an adult at the time of filing this action, should be required to disclose his name." (AA 96.) They likewise cited favorably a precedent in which "the court determined that the defamation plaintiff in the case, the alleged sexual assaulter could not proceed via a pseudonym." (AA 99.) Defendants thus seem not particularly concerned that revelation of Plaintiffs' identities would lead to revelation of Defendants' identities, and seem unlikely to be angered into further retaliation by such a decision.

V. Decisions to allow plaintiffs to proceed pseudonymously are immediately appealable.

Movants' opening brief explains (at pp. 8-10) why decisions allowing pseudonymity, like sealing decisions, are immediately appealable. Indeed, sealing decisions are immediately appealable even when they involve sealing of just a few of the many documents in the file. *See, e.g.*, *Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1063-64 (holding that sealing order was collaterally appealable, even when it only dealt with a "declaration by defense counsel and exhibits attached to the declaration in opposition to the request for a preliminary injunction"). Pseudonymity decisions are in essence decisions to seal one especially significant fact—a party's name—

throughout all the documents in the file. And this Court's reasoning in *DFEH* makes clear that pseudonymity decisions are indeed closely related to sealing decisions. *See, e.g.*, *DFEH*, 82 Cal.App. 5th at pp. 111-12 (relying heavily on *KNBC-TV*, a sealing case); *id.* at p. 111 (citing the sealing rules, Cal. Rules of Court, rules 2.550, 2.551).

Moreover, *DFEH* made clear that, as with sealing decisions, pseudonymity decisions implicate the First Amendment right of access. And under the First Amendment right of access, "access should be immediate and contemporaneous," because "'each passing day may constitute a separate and cognizable infringement of the First Amendment.'" *Grove Fresh Distributors, Inc. v. Everfresh Juice Co.* (7th Cir. 1994) 24 F.3d 893, 897 (quoting *Nebraska Press Ass'n v. Stuart* (1975) 423 U.S. 1327, 1329 (Blackmun, J., in chambers)), *abrogated as to other matters by Bond v. Utreras* (7th Cir. 2009) 585 F.3d 1061, 1068. "[T]he presumption of access normally involves a right of *contemporaneous* access." (*In re Continental Illinois Sec. Litig.* (7th Cir. 1984) 732 F.2d 1302, 1310.)

"[T]he public interest in obtaining news is an interest in obtaining contemporaneous news." *Courthouse News Serv. v. Planet* (9th Cir. 2020) 947 F.3d 581, 594. "To delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression." *Lugosch v. Pyramid Co. of Onondaga* (2d Cir. 2006) 435 F.3d 110, 127 (cleaned up). Denials of motions to unseal are therefore "appealable under the collateral order

doctrine because deferral of a ruling on appellants' claims until a final judgment" "would effectively deny appellants much of the relief they seek, namely, *prompt* public disclosure." *Id.* at 118 (cleaned up). The same logic applies to grants of motions to allow pseudonymity.

CONCLUSION

For these reasons, this Court should conclude that, like other defamation cases—including ones in which plaintiff is suing over allegations of sexual assault—this case should be litigated under Plaintiffs' own names.

DATED: August 12, 2025

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to Rule 8.204(c)(1) of the California Rules of Court, the enclosed brief is produced using 13-point Century Schoolbook font including footnotes and contains 2,692 words, which is less than the total words permitted by the rules of court. I rely on the word count of Word for Office 365, the computer program used to prepare this brief.

DATED: August 12, 2025

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STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

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 434 Galvez Mall, Stanford, CA 94305. On August 12, 2025, I served true copies of the Appellant's Opening Brief on the interested parties by e-mail:

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