

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CASE NO. 1:19-cv-09610-PAE

JANE DOE 17,

Plaintiff,

v.

DARREN K. INDYKE AND
RICHARD D. KAHN, AS JOINT
PERSONAL REPRESENTATIVES OF
THE ESTATE OF JEFFREY E. EPSTEIN,
NINE EAST 71st STREET CORPORATION,
LAUREL, INC., FINANCIAL TRUST COMPANY,
INC., NES, LLC, MAPLE, INC., LSJE, LLC,
HBRK ASSOCIATES, INC., NAUTILUS, INC.,
CYPRESS, INC. and JEGE, INC.

Defendants.

MOTION TO PROCEED ANONYMOUSLY ON BEHALF OF JANE DOE 17
AND SUPPORTING MEMORANDUM OF LAW

Plaintiff, Jane Doe 17, herein files her Motion to Proceed Anonymously and Supporting Memorandum of Law and in support thereof states:

I. PLAINTIFF IS PERMITTED TO PROCEED ANONYMOUSLY IN THIS CIRCUIT.

This action involves Jeffrey Epstein’s sexual assault of Plaintiff (“Plaintiff”) in violation of the New York Law and/or the Trafficking Victims Protection Act under 18 U.S.C. §§ 1591 through 1595. Plaintiff submits this Memorandum of Law in support of Plaintiff’s Motion for Leave to Proceed Anonymously. Allowing Plaintiff to proceed anonymously will protect her highly sensitive personal information that will remain the focus of this litigation. There is no prejudice to Defendants in allowing Plaintiff to proceed anonymously, nor is there any significant public interest in the disclosure of the Plaintiff’s identity. In fact, the public interest in this case

weighs in favor of granting Plaintiff's request to proceed anonymously for her protection.

Federal Rule of Civil Procedure 10(a) requires a Complaint to "include the names of all the parties." However, the court has discretion to allow a plaintiff to proceed anonymously. *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 190 (2d. Cir. 2008). "[C]ourts have granted anonymity to protect against disclosure of a wide range of issues involving matters of the utmost intimacy, including sexual assault." *Doe. No. 2 v. Kolko*, 242 F.R.D. 193, 196 (EDNY 2006); *see also* 1991 McKinney's Sessions Laws of N.Y. at 2211-2212 ("sexual assault victims have unfortunately had to endure a terrible invasion of their physical privacy. They have a right to expect that this violation will not be compounded by a further invasion of their privacy").

"When determining whether a plaintiff may be allowed to maintain an action under a pseudonym, the plaintiff's interest in anonymity must be balanced against both the public interest in disclosure and any prejudice to the defendant." *Id.* at 189. The balancing of interests entails the consideration of ten non-exhaustive factors, though the court has discretion to consider "other factors relevant to the particular case under consideration." *Id.* at 189-190. The ten factors are:

(1) whether the litigation involves matters that are highly sensitive and of a personal nature; (2) whether identification poses a risk of retaliatory physical or mental harm to the party seeking to proceed anonymously or even more critically, to innocent non-parties; (3) whether identification presents other harms and the likely severity of those harms, including whether the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity; (4) whether the plaintiff is particularly vulnerable to the possible harms of disclosure, particularly in light of [her] age; (5) whether the suit is challenging the actions of the government or that of private parties; (6) whether the defendant is prejudiced by allowing the plaintiff to press [her] claims anonymously, whether the nature of that prejudice (if any) differs at any particular stage of the litigation, and whether any prejudice can be mitigated by the district court; (7) whether the plaintiff's identity has thus far been kept confidential; (8) whether the public's interest in the litigation is furthered by requiring the plaintiff to disclose his identity; (9) whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the

litigants' identities; and (10) whether there are any alternative mechanisms for protecting the confidentiality of the plaintiff.

Id. at 190 (internal citations and quotations omitted).

II. ALL TEN ANONYMITY FACTORS WEIGH IN FAVOR OF PERMITTING PLAINTIFF TO PROCEED ANONYMOUSLY.

In this case, all delineated *Sealed Plaintiff* factors support Plaintiff's application for anonymity, which should be granted for her protection. Plaintiff is a victim of multiple instances of sexual assault. The acts that were committed against Plaintiff are highly sensitive in nature and are particularly difficult for her to address in a public forum.

For those reasons, among many others (some of which, if revealed in a public filing might disclose Plaintiff's identity), identification of Plaintiff in this matter may pose a risk of retaliation. *See Sealed Plaintiff*, 537 F.3d at 190. In order to warrant anonymity, the possible retaliatory harm may be either physical or psychological in nature. *See Doe v. Del Rio*, 241 F.R.D. 154, 158 (S.D.N.Y. 2006) Epstein's vast wealth and far reaching connections make it clear that retaliation could be employed against individuals pursuing claims against the Estate of Jeffrey Epstein. In addition to exposing Plaintiff to physical or psychological harm, retaliation could also silence potential witnesses from coming forward.

The public exposure of Plaintiff's identity would certainly cause her to suffer additional or exacerbated emotional or psychological harm including shame, embarrassment, depression, anxiety, and the array of side effects that go along therewith. Should Plaintiff's real identity be revealed, her safety could also be at risk as the media and the press worldwide are currently laser focused on Jeffrey Epstein and his sexually exploitative escapades.

Despite the fact that Defendants are private parties and not Government entities, Defendants are not "ordinary" private parties because of Epstein's known wealth, power, and reputation. *See Kolko*, 242 F.R.D. at 195 (2006). Jeffrey Epstein has been a known sexual

predator with substantial financial influence for many years. For years before his death, Epstein had been investigated by various state prosecutors and the Federal Bureau of Investigation (FBI) for his sexual assaults on young girls.

Given Epstein’s notoriety, Plaintiff’s allegations of sexual abuse and the widespread concealment of the same “raise concerns affecting a larger association rather than the interest of an individual plaintiff.” *See id.* at 195. In this case, the “larger association” is society in general. Society has an interest in eradicating the predatory practices of powerful men against vulnerable, susceptible women—including the practice of luring young girls for sexual purposes. This case is therefore more “analogous to one involving a government defendant, where personal anonymity is more readily granted because of the existence of a public interest in the action.” *EW v. New York Blood Center*, 213 F.R.D. 108, 112 (EDNY 2003).

“The public right to scrutinize governmental functioning is not so completely impaired by a grant of anonymity to a party as it is by closure of the trial itself . . . Party anonymity does not obstruct the public’s view of the issues joined or the court’s performance in resolving them.” *See Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir. 1981). The public’s interest in this legal question is not furthered by requiring Plaintiff to disclose her identity. *See Sealed Plaintiff*, 537 F.3d at 190 (citing *Del Rio*, 241 F.R.D. at 154 (“whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigants’ identities”)); *see also Free Speech v. Reno*, Case No. 98 Civ. 2680 MBM, 1999 WL 47310 at *3 (SDNY Feb. 1, 1999) (“because the particular plaintiffs in this constitutional challenge are essentially interchangeable with similarly situated persons, there appears little public interest in which particular persons have actually sued...”). Because Plaintiff’s anonymity would not impair the public’s right to view or scrutinize this lawsuit, this factor weighs in favor of nondisclosure. Moreover, “the public generally has a strong interest in protecting the identities of

sexual assault victims so that other victims will not be deterred from reporting such crimes.” *Kolko*, 242 F.R.D. at 195.

Finally, [t]he Second Circuit directed district courts to evaluate “whether there are any alternative mechanisms for protecting the confidentiality of the plaintiff.” *Sealed Plaintiff*, 537 F.3d at 190 (citing *Roe v. Aware Woman Center for Choice, Inc.*, 253 F.3d 678, 687 (11th Cir. 2001)):

The only justification the defendants offer for stripping Roe of her privacy is the argument that they will not be able to adequately conduct discovery without knowing her true identity. However, that argument is eviscerated by Roe’s offer to disclose her name to the defendants for discovery purposes on condition that they do not disclose it to the general public. That is a reasonable way to reconcile the competing interests, and the district court can enter an appropriate protective order. The district court should have granted Roe’s motion to proceed anonymously.

Here, Plaintiff will cooperate with the court and the Defendants and reveal Plaintiff’s identity to Defendants for discovery purposes on the condition that Defendants do not disclose Plaintiff’s name to the general public.

Just recently, under circumstances virtually identical to that of Jane Doe 17, Judge Castel granted a Motion to Proceed Anonymously in the matter of *Katlyn Doe v. Darren K. Indyke, et al.*, Case No. 19-cv-7771-PKC finding the presence of at least 7 of the 10 Sealed Plaintiff factors which either supported or weighed strongly in favor of permitting the Plaintiff to proceed anonymously. The Court held that “the public right to know is substantially outweighed by the plaintiff’s legitimate need for anonymity and that prejudice to a defendant can be mitigated by orders of the Court.” A copy of Judge Castel’s Order of September 11, 2019 is annexed hereto as **Exhibit A**.

III. CONCLUSION

The balancing factors articulated by the Second Circuit weigh in favor of protecting

Plaintiff's identity by allowing her to proceed anonymously. For the foregoing reasons, Plaintiff respectfully requests that the Court grant her Motion for Leave to Proceed Anonymously.

Dated: November 8, 2019

By: /s/ Andrew S. Buzin

Andrew S. Buzin

BUZIN LAW, P.C.

111 Broadway, Suite 1204

New York, NY 10006

Tel: (646) 470-4878

Fax: (347) 736-9490

Email: abuzin@buzinlaw.com

Attorneys for Plaintiff, Jane Doe 17

By: /s/ David H. Brodie

David H. Brodie, Esq., FBN 0813168

Laura J. Starr, Esq., FBN 0491888

WEISMAN, BRODIE, STARR

& MARGOLIES, P.A.

1301 N. Federal Highway

Lake Worth, FL 33460

Telephone: (561) 588-9500

Facsimile: (561) 588-9500

Email: dbrodie@yourfloridacounsel.com

Email: lstarr@yourfloridacounsel.com

Attorneys for Plaintiff, Jane Doe 17

By: /s/ Alan Goldfarb

Alan Goldfarb, Esq., FBN 146924

David Appleby, Esq., FBN 500089

ALAN GOLDFARB, P.A.

100 S.E. 2nd Street

Miami Tower, 45th Floor

Miami, FL 33131

Ph: 305-371-3111

Fax: 305-577-8375

Email: agoldfarb@goldfarbpa.com

Email: dappleby@goldfarbpa.com

Attorneys for Plaintiff, Jane Doe 17

CERTIFICATE OF SERVICE

I HEREBY certify that on November 8, 2019, I electronically filed the foregoing with the

Court by using the CM/ECF system which will send a notice of electronic filing to all CM/ECF participants. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to any non-CM/ECF participants.

By: /s/ David H. Brodie
David H. Brodie, Esq., FBN 0813168
Laura J. Starr, Esq., FBN 0491888
WEISMAN, BRODIE, STARR
& MARGOLIES, P.A.
1301 N. Federal Highway
Lake Worth, FL 33460
Telephone: (561) 588-9500
Facsimile: (561) 588-9500
Email: dbrodie@yourfloridacounsel.com
Email: lstarr@yourfloridacounsel.com
Attorneys for Plaintiff, Jane Doe 17

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
KATLYN DOE,

Plaintiff,

19-cv-7771 (PKC)

-against-

ORDER

DARREN K. INDYKE, et al.,

Defendant.
-----X

CASTEL, U.S.D.J.

Plaintiff seeks leave to proceed in this action without disclosing her identity using instead a pseudonym. She alleges that Jeffrey Epstein, with the assistance of associates and entities, engaged in “manipulate[ion],” “control,” “sexual exploitation,” “sexual assault[],” “sexual abuse,” and “forced. . . intercourse” of or with plaintiff; she was seventeen when the course of conduct began. (Complaint ¶¶ 58-68.) At this juncture, no defendant has been served.

Rule 10(a), Fed. R. Civ. P., provides that “[t]he title of [a] complaint must name all the parties.” The Second Circuit has recognized that the use of a pseudonym is, however, appropriate in limited circumstances where the reasons for anonymity outweigh the public’s right of access to judicial proceedings and any prejudice to a defendant. Sealed Plaintiff v. Sealed Defendant, 537 F.3d 185, 189 (2d Cir. 2008). The Circuit’s opinion in Sealed Plaintiff lays out ten non-exhaustive factors to be considered in determining whether to allow a case to proceed on an anonymous basis. Id. at 190. The Court analyzes the Complaint in light of these factors.

- (1) whether the litigation involves matters that are highly sensitive and of a personal nature.

The Complaint alleges an on-going pattern of sexual assault and abuse beginning when plaintiff was seventeen years-old and asserts that she has and is continuing to suffer psychological injury as a result. (Complaint ¶¶ 52-65.) These are highly sensitive allegations of a personal nature.

- (2) whether identification of the plaintiff poses a risk of physical or mental retaliation to the plaintiff or to a third party.

No risk of retaliation is alleged. Jeffrey Epstein is dead and there is no credible evidence of a risk of retaliation from others. There is an allegation of threats of retaliation in the past if she did not comply with demands for sex acts that she would suffer financial, psychological, and reputational harm (*Id.* ¶ 84) but no facts are alleged that those threats are likely to continue after the death of Epstein.

- (3) whether identification of plaintiff poses the risk of other harms, their likely severity and whether they are of the type that the litigation seeks to redress.

The nature of the allegations make it logical to conclude at this early stage that disclosure of plaintiff's identity would cause further psychological harm to plaintiff which is the precise harm the litigation seeks, in part, to redress.

- (4) whether there are other factors that make the plaintiff particularly vulnerable to harm of disclosure, for example, because of her age.

By the Court's calculation, the plaintiff is 29 or 30. She is described in the complaint as having physical conditions that make her particularly vulnerable. (*Id.* ¶¶ 54-55.) She alleges that she has incurred and will continue to incur "medical and psychological expenses" as a result of the conduct alleged. (*Id.* ¶ 132.)

- (5) whether the action challenges the actions of government or government actors, or merely private parties.

The actions alleged are not the actions of a government actor or instrumentality but rather those of private parties.

- (6) the nature of any prejudice to a defendant from allowing the plaintiff to proceed anonymously and whether any prejudice can be mitigated by the court.

The Complaint alleges that the representatives of the estate of Epstein have liability for his actions. It also alleges that various non-natural persons are liable for acts and omissions causing plaintiff harm. In such circumstances it is critical that the accused defendants know the identity of the plaintiff in order to investigate and defend against the claim. The Court can mitigate the prejudice to defendants by requiring the disclosure of the actual name of the plaintiff in a document to be served on defendants and also filed under seal with the Court. Plaintiff does not object to disclosure "for discovery purposes on the condition that Defendants do not disclose Plaintiff's name to the general public." (P. Mem. 6; Doc 3-1.)

- (7) whether the plaintiff's identity has thus far been kept confidential.

Insofar as the Court is aware, the identity of the plaintiff is not widely known.

- (8) whether there is a legitimate public interest or benefit in requiring the plaintiff to disclose her identity.

There is public interest in the litigation because of the notoriety of Epstein and those with whom he associated, but disclosure of the identity of the plaintiff is not likely to be of a legitimate importance or benefit to the public.

- (9) Whether the issues in the action are predominately or purely legal nature suggesting that the public interest in the plaintiff's identity may be weak.

The issues in the case are not purely or predominately of a legal nature. This case turns principally on its facts.

- (10) whether there are any alternative mechanisms for protecting the confidentiality of the plaintiff.

It is the disclosure of her identity that would exacerbate any preexisting harm to plaintiff and hence there is not alternative mechanism for protecting her confidentiality.

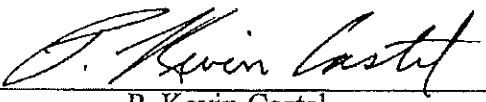
CONCLUSION

Factors 1 and 3 tilt strongly in favor of permitting plaintiff to proceed anonymously and are supported by factors 4, 6, 7, 8 and 10. Factors 2, 5, 9 are either neutral or

weakly support denying the motion. The Court concludes that, at this juncture, the public right to know is substantially outweighed by the plaintiff's legitimate need for anonymity and that prejudice to a defendant can be mitigated by orders of the Court. The Court reserves the right to modify this Order as the case progresses.

Plaintiff's motion (Doc 3) is GRANTED. Within seven days of the appearance of a defendant, plaintiff shall disclose her identity to the appearing defendant in a document to be submitted to the Court for sealing. No defendant may disclose the identity of plaintiff to any person other than counsel without further order of this Court.

SO ORDERED.


P. Kevin Castel
United States District Judge

Dated: New York, New York
September 11, 2019