

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JANE DOE,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 1:17-cv-03688
)	
HARPERCOLLINS PUBLISHERS LLC)	Honorable John Robert Blakey
and LAURA KIPNIS,)	
)	
Defendants)	

**PLAINTIFF’S MOTION TO PROCEED UNDER
A PSEUDONYM**

NOW COMES Plaintiff, Jane Doe, by and through her attorneys, SALVATORE PRESCOTT & PORTER, PLLC, and hereby moves this Honorable Court to enter an order allowing Plaintiff to proceed anonymously in this matter. Plaintiff relies on the facts and law cited in her accompanying brief in support of this motion.

Plaintiff JANE DOE is a Northwestern University (“NU”) graduate student whose privacy has been invaded through the publication and public disclosure of private facts and whose words and actions have been portrayed in a false light through Defendant LAURA KIPNIS’s writing and Defendant HARPERCOLLINS PUBLISHERS LLC’s publication of the book *Unwanted Advances: Sexual Paranoia Comes to Campus*.

In this book, Defendants disclosed a number of private and intimate facts about Plaintiff JANE DOE's life, including the fact that DOE filed a complaint of sexual assault against a professor in her department, who is identified in the book by name. (Ex. A, Complaint, ¶ 2.) Worse, in the book (and in many related articles and interviews published by a wide array of media outlets), DOE is portrayed as having fabricated the allegation of sexual assault. Although Defendants HARPERCOLLINS PUBLISHING LLC and LAURA KIPNIS claimed to seek to protect Plaintiff JANE DOE's identity by using a pseudonym, the pseudonym closely resembles Plaintiff's actual name, Plaintiff is physically described in the book, and it is obvious to many that KIPNIS was writing about DOE. DOE has been further identified by her real name as a subject of the book in blogs read by many within the small community of academic philosophy. Consequently, DOE already has suffered significant harm to her career in academia. (Ex. A, Complaint, ¶ 70-71.)

Plaintiff moves to proceed under pseudonym in this case in order to limit the harm already caused to Plaintiff by Defendants' reckless publishing of private and sensitive information about her. The litigation likely will involve the disclosure of stigmatizing sexual information, including details of a sexual assault, as well as confidential Title IX investigatory files. Additionally, Plaintiff remains a student at NU where Defendant KIPNIS is a professor and,

thus, Plaintiff is especially vulnerable to ongoing retaliation by peers and others in the academic community.

Plaintiff further relies on the argument set forth in her supporting brief.

Respectfully submitted,

By: s/ Jennifer B. Salvatore
SALVATORE PRESCOTT & PORTER

Dated: June 6, 2017

Jennifer B. Salvatore
105 E. Main Street
Northville, MI 48167
(248) 679-8711
salvatore@spplawyers.com

Julie B. Porter
1010 Davis Street
Evanston, IL 60201
(312) 283-5711
porter@spplawyers.com

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JANE DOE,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 1:17-cv-03688
)	
HARPERCOLLINS PUBLISHERS LLC)	Honorable John Robert Blakey
and LAURA KIPNIS,)	
)	
Defendants)	

**PLAINTIFF'S BRIEF IN SUPPORT OF MOTION TO PROCEED
UNDER A PSEUDONYM**

STATEMENT OF ISSUES PRESENTED

Whether the Court should permit Plaintiff to proceed pseudonymously where stigmatizing private and personal information, including information about sexual assault, is likely to be disclosed, and where Plaintiff, who remains a student at the university where Defendant KIPNIS is a professor, risks retaliation should her identity be disclosed.

Plaintiff says: Yes

CONTROLLING AUTHORITY

<u>Cases</u>	<u>Page#</u>
<i>Does I thru XXIII v. Adv. Textile Corp.</i> , 214 F.3d 1058, 1068 (9th Cir. 2000).....	2
<i>Doe v. Blue Cross & Blue Shield United of Wisc.</i> , 112 F.3d 869, 872 (7th Cir. 1997).....	3
<i>Doe v. City of Chicago</i> , 360 F.3d 667, 669 (7th Cir. 2004)	2, 4
<i>Doe v. Dabbagh</i> , No. 15-cv-10724 (E.D. Mich. 2015)	3
<i>Doe No. 2 v. Kolko</i> , 242 F.R.D. 193, 195 (E.D.N.Y. 2006)	3-4
<i>Doe v. Penzato</i> , 2011 WL 1833007 (N.D. Cal. 2011)	3-4
<i>Doe v. Smith</i> , 412 F. Supp. 2d 944, 947 (C.D. Ill. 2006)	5-6
<i>Doe v. Trp Acq. Inc.</i> , 2016 WL 3671505, at *2 (N.D. Ill. 2016).....	3, 5
<i>Gomez v. Buckeye Sugars</i> , 60 F.R.D. 106, 107 (N.D. Ohio 1973)	5
<i>Roe v. St. Louis Univ.</i> , 2009 WL 910738 (E.D. Mo. 2009)	4
 <u>Statutes</u>	
Fed. R. Civ. P. 10(a)	1

TABLE OF CONTENTS

	Page #
Statement of Issues Presented.....	i
Controlling Authorities.....	ii
Table of Contents.....	iii
Factual Allegations.....	1
Argument.....	1
Conclusion.....	6

FACTUAL BACKGROUND

Plaintiff JANE DOE is a graduate student at Northwestern University (“NU”) who was sexually harassed and sexually assaulted by a professor in her department. (Complaint, Ex. A.) After reluctantly coming forward and reporting the professor’s conduct at the urging of NU officials, which ultimately resulted in the professor’s resignation, Plaintiff has become the subject of Defendant LAURA KIPNIS’s recent book, published by Defendant HARPERCOLLINS PUBLISHERS LLC: *Unwanted Advances: Sexual Paranoia Comes to Campus*. (*Id.*) Through the publication and promotion of this book, Plaintiff’s privacy has been invaded through the public disclosure of private facts, including facts surrounding her allegations of sexual assault against an NU Professor. In addition, Defendants have recklessly published a number of false and defamatory statements about DOE, including the insinuation that her report of sexual assault was untrue. (*Id.*)

DOE now brings this action for public disclosure of private facts, false light invasion of privacy, intentional infliction of emotional distress and defamation and asks the Court to permit her to proceed with this litigation anonymously, at least prior to trial.

ARGUMENT

Federal Rule of Civil Procedure 10(a) requires a plaintiff to disclose his or her name in the complaint. Fed. R. Civ. P. 10(a). However, courts permit

plaintiffs to proceed pseudonymously under limited circumstances. The Seventh Circuit, in determining whether pseudonymous status is appropriate, has taken into account whether anonymity is necessary to preserve the privacy of a rape victim and whether identification of the party creates a risk of retaliation. See Doe v. City of Chicago, 360 F.3d 667, 669 (7th Cir. 2004)(declining to permit plaintiff to proceed pseudonymously where she provided no reason whatsoever for the necessity of anonymity), citing Does I thru XXIII v. Adv. Textile Corp., 214 F.3d 1058, 1068 (9th Cir. 2000) (enumerating specific factors taken into consideration by the various circuits in determining appropriateness of anonymity). Pseudonymous status is warranted in this case because the litigation will involve disclosure of stigmatizing sexual information, including details of a sexual assault. In addition, disclosure of Plaintiff's name will subject her to risk of retaliatory harm.

Plaintiff was sexually harassed and sexually assaulted by a professor and these matters were made a central subject in Defendant KIPNIS's recent book, in which KIPNIS wrote, and HARPERCOLLINS PUBLISHERS LLC, published, a series of false statements and allegations, which placed Plaintiff in a negative light. Many of the disclosures by Defendants relate to a confidential university Title IX proceeding at the university where DOE still is a student and Defendant KIPNIS is a professor. Details surrounding the

Plaintiff's sexual assault allegation, as well as information deriving from the Title IX investigation regarding those issues are likely to be disclosed directly through information presented in prosecution or defense of the claims presented.

Courts often permit sexual assault survivors to proceed pseudonymously, recognizing that such cases frequently involve the disclosure of highly personal and stigmatizing information. The Seventh Circuit, which generally disfavors the use of fictitious names, has expressly recognized that the use of a pseudonym is necessary to protect the victims of sexual assault. See Doe v. Blue Cross & Blue Shield United of Wisc., 112 F.3d 869, 872 (7th Cir. 1997) (“fictitious names are allowed when necessary to protect the privacy of ... rape victims, and other particularly vulnerable parties or witnesses”); Doe v. Trp Acq. Inc., 2016 WL 3671505, at *2 (N.D. Ill. 2016) (noting that “the underlying facts [of her sexual assault] could be shocking and very embarrassing to plaintiff”). See also Doe v. Dabbagh, No. 15-cv-10724, slip op. at 2 (E.D. Mich. 2015) (“[M]any courts allow rape victims to proceed under pseudonyms, at least until trial. The allegations often involve compelled sex acts that degrade and stigmatize the victim”); Doe v. Penzato, 2011 WL 1833007, at *1 (N.D. Cal. 2011) (granting motion to proceed anonymously to plaintiff making allegations of human trafficking and sexual assault); Doe No. 2 v. Kolko, 242 F.R.D. 193, 195 (E.D.N.Y. 2006) (granting pseudonymous status

in part because “the public generally has a strong interest in protecting the identity of sexual assault victims so that other victims will not be deterred from reporting such crimes”); Roe v. St. Louis Univ., 2009 WL 910738 (E.D. Mo. 2009) (granting anonymous status to rape victim). As a victim of sexual assault, Plaintiff likewise should be permitted to proceed under use of a pseudonym.

Disclosure of Plaintiff’s name also subjects her in this case to the risk of retaliatory harm. In the recently filed case of Doe v. Proskauer Rose LLP, Plaintiff law partner was permitted by the federal district court in the District of Columbia to proceed pseudonymously in a sex discrimination case in order to protect her professional reputation and career prospects against retaliatory actions by her current or any future employer. (See Ex. B, Motion and Order), Doe v. Proskauer Rose LLP, case number 1:17-cv-00901).

The Seventh Circuit likewise has permitted plaintiffs to proceed anonymously where there was risk of future retaliation. In Doe v. City of Chicago the Seventh Circuit held:

The presumption that parties' identities are public information, and the possible prejudice to the opposing party from concealment, can be rebutted by showing that the harm to the plaintiff...exceeds the likely harm from concealment...The danger of retaliation is often a compelling ground for allowing a party to litigate anonymously.

Doe v. City of Chicago, 360 F.3d at 669 (internal cite omitted). Similarly, this court recently permitted a plaintiff to proceed anonymously where there was

“the possibility of retaliation [at work] if her name is made public (assuming she returns to work following her leave of absence).” Doe v. Trp Acq. Inc., 2016 WL 3671505, at *2. See also Gomez v. Buckeye Sugars, 60 F.R.D. 106, 107 (N.D. Ohio 1973) (permitting FLSA plaintiffs to use pseudonyms to protect them from employer reprisals). Plaintiff, who is suing a high-profile professor at NU in this action, is still a graduate student and just beginning her academic career. Requiring her to proceed under her actual name would open her to retaliation at the hands of peers and faculty at NU, as well as at future venues of academic employment.

What is more, the widespread dissemination of this book by Defendant HARPERCOLLINS PUBLISHERS LLC, along with Defendant KIPNIS’s use of a thinly veiled substitute for Plaintiff’s name, makes it especially important that this court permit Plaintiff to proceed anonymously. In Doe v. Smith, another Illinois federal court considered precisely these factors, allowing Plaintiff to proceed under a pseudonym:

Given that the Seventh Circuit specifically noted that ‘perhaps anonymity still could be justified if the [sex] tape has been circulated more widely...and disclosure would allow strangers to identify the person in the recording and thus add to her humiliation,’ the Court will provide the Plaintiff with the opportunity of establishing that she should be allowed to proceed anonymously.

Doe v. Smith, 412 F. Supp. 2d 944, 947 (C.D. Ill. 2006) (internal cite omitted) (holding Plaintiff should be allowed to proceed as Jane Doe at least until

conclusion of discovery through which she could potentially demonstrate how widespread was circulation of sexual videotape allegedly made by Defendant without her consent). There, as here, requiring Plaintiff to proceed under her legal name would allow ever widening segments of the public to identify her, thereby adding to her humiliation and compounding the existing harm. In this case, widespread circulation of damaging information about Plaintiff has already occurred, and Plaintiff should be permitted to proceed as DOE at this stage of these proceedings to limit further damage to her reputation.

Defendants have no valid reason to object to Plaintiff's request in this regard. First, Defendants already know Plaintiff's true identity and their ability to defend this case is not affected by her proceeding anonymously. Second, to the extent that Plaintiff can limit the damage to her reputation by not further identifying herself in connection with Defendants' damaging and false statements about her, this is in Defendants' interest as well as they ultimately will be liable for the reputational harm to Plaintiff caused by their wrongful conduct.

CONCLUSION

For all of these reasons, Plaintiff asks the Court to permit her to protect her identity in this matter in the pre-trial phase of this case, thereby shielding her from further humiliation and retaliation. Upon entry of an order allowing Plaintiff to proceed anonymously, Plaintiff's counsel will work with Defense

Counsel to craft an appropriate protective order allowing the disclosure of Plaintiff's identity to defense counsel and appropriate party representatives for purposes of defense of this case, as well as an order preventing disclosure of Plaintiff's identity by the Defendants.

Respectfully submitted,

By: s/ Jennifer B. Salvatore
SALVATORE PRESCOTT & PORTER

Dated: June 6, 2017

Jennifer B. Salvatore
105 E. Main Street
Northville, MI 48167
(248) 679-8711
salvatore@spplawyers.com

Julie B. Porter
1010 Davis Street
Evanston, IL 60201
(312) 283-5711
porter@spplawyers.com

CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2017, I electronically filed the foregoing with the Clerk of the Court for the Northern District of Illinois by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Jennifer B. Salvatore