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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

MLM, an individual proceeding under a fictitious name; NAA, an individual proceeding under a fictitious name; TGB, an individual proceeding under a fictitious name; RB, an individual proceeding under a fictitious name; MST, an individual proceeding under a fictitious name; TL, an individual proceeding under a fictitious name; BPO, an individual proceeding under a fictitious name; NCQ, an individual proceeding under a fictitious name; and WBL, an individual proceeding under a pseudonym,

Plaintiffs,

v.

MOUNT BACHELOR EDUCATIONAL CENTER, INC., an Oregon corporation; ASPEN EDUCATION GROUP, INC., an inactive foreign corporation; CRC HEALTH OREGON, INC., an Oregon corporation; and CRC HEALTH GROUP, INC., a corporation not registered to do business in Oregon,

Defendants.

Case No. _____

MEMORANDUM IN SUPPORT OF
MOTION AND ORDER FOR
DESIGNATION OF KNOWN PARTIES
BY FICTITIOUS NAMES

Multnomah County Local Rule 2.035 provides that the Court, by order, may allow a party to proceed under a fictitious name. There appears to be no case law imposing any specific limits on the exercise of judicial discretion under this rule.

There is a long history in our nation of allowing plaintiffs to proceed in bringing a civil

1 law suit under a fictitious name.¹ In fact, allowing particular plaintiffs to proceed under a
2 fictitious name often serves the public good. For example, courts have allowed those with
3 mental illness to bring civil suits under fictitious names in the name of the public good:

4 [T]here is substantial public interest in ensuring that cases like the Plaintiff's are
5 adjudicated and the rights of mental illness sufferers are represented fairly and
6 without the risk of stigmatization. However, this goal can not be achieved if litigants
7 suffering from mental illness are chilled from ever reaching the courthouse steps for
8 fear of repercussions that would ensue if their condition was made public. Although
9 any litigant runs the risk of public embarrassment by bringing their case and
10 revealing sensitive facts in a public courtroom, the situation here is vastly different
11 because Plaintiff's bipolar condition is directly tied to the subject matter of the
12 litigation-his mental illness and the disability benefits he allegedly is entitled to as
13 a mental illness sufferer. . . . Plaintiff is faced with circumstances that society may
14 not yet understand or accept and his condition is directly tied to the issues before the
15 Court.

16 *Doe v. Hartford Life and Acc. Ins. Co.*, 237 FRD 545, 550 -551 (D NJ ,2006).

17 Precedent from other jurisdictions may also offer clarity in how the court should go about
18 determining whether to allow the Plaintiffs to proceed under fictitious names. “The Ninth
19 Circuit does allow the use of pseudonyms in unusual cases where concealing a party's identity is
20 necessary to protect that party from ‘harassment, injury, ridicule, or personal embarrassment.’”

21 *Doe v. Texaco, Inc.*, L 2850035, *3 -4 (ND Cal, 2006) (citing *United States v. Doe*, 655 F2d 920,
22 922 n. 1 (9 Cir 1981) and *Does I thru XXIII v. Advanced Textile*, 214 F.3d 1058, 1068 (9 Cir

23 ¹ “Courts have long recognized, however, that the circumstances of a case, particularly
24 where litigants may suffer extreme distress or danger from their participation in the lawsuit, may
25 require that plaintiffs proceed without revealing their true names. Courts have found that
26 plaintiffs could proceed anonymously because they feared that revealing their true identities
would lead to physical violence, deportation, arrest in their home countries and retaliation against
the plaintiffs' families for bringing suit. . . . People seeking access to abortions at a time when
they were generally illegal also received leave to proceed using pseudonyms. See *Roe v. Wade*,
410 US 113, 93 S Ct 705(1973). Courts have allowed those suffering from mental illness to use
pseudonyms. See, e.g., *Doe v. Colautti*, 592 F2d 704 (3d Cir 1979). Children bringing a
controversial challenge to a school-sponsored religious program were also granted anonymity in
the face of threatened harm for their views. *Doe v. Stegall*, 653 F.2d 180 (5th Cir1981).” *Lozano*
v. City of Hazleton 496 F Supp2d 477, 505 -507 (M.D. Pa., 2007).

1 2000)).

2 In one persuasive case, with similar facts, a plaintiff brought civil rights claims against
3 the Commissioner of the Pennsylvania State Police, as well as other state troopers and officers,
4 arising from incidents of sexual assault by a state trooper. *Doe v. Evans*, 202 FRD 173, 175 (ED
5 Pa., 2001). Plaintiff sought moved to proceed under a pseudonym. *Id.* In deciding the motion,
6 the District Court of Pennsylvania considered the following factors:

7 The factors which support the use of pseudonymous litigation are as follows: (1) the
8 extent to which the identity of the litigant has been kept confidential; (2) the bases
9 upon which disclosure is feared or sought to be avoided, and the substantiality of
10 these bases; (3) the magnitude of the public interest in maintaining the confidentiality
11 of the litigant's identity; (4) whether, because of the purely legal nature of the issues
presented or otherwise, there is an atypically weak public interest in knowing the
litigant's identities; (5) the undesirability of an outcome adverse to the pseudonymous
party and attributable to his refusal to pursue the case at the price of being publicly
identified; and (6) whether the party seeking to sue pseudonymously has illegitimate
ulterior motives.

12 On the other side of the scale, the factors which militate against the use of a
13 pseudonym are as follows: (1) the universal level of public interest in access to the
14 identities of litigants; (2) whether, because of the subject matter of this litigation, the
15 status of the litigant as a public figure, or otherwise, there is a particularly strong
16 interest in knowing the litigant's identities, beyond the public's interest which is
normally obtained; and (3) whether the opposition to pseudonym by counsel, the
public, or the press is illegitimately motivated.

17 *Doe v. Evans*, 202 FRD at 175, quoting *Doe v. Provident Life and Acc. Ins. Co.*, 176 FRD 464,
18 467 - 468 (ED Pa 1997).

19 Balancing these factors in the case of the sexually violated plaintiff, the court in *Evans*
20 concluded that plaintiff's use of a pseudonym was justified, largely based on the following
21 considerations: (1) plaintiff took steps to keep her identity confidential and that "some of [her]
22 own close family and friends are not aware of the circumstances giving rise to this lawsuit"; (2)
23 plaintiff's fear of increased embarrassment, humiliation, and emotional distress should her friends
24 and business associates learn of these events was well-founded;² (3) the public's interest in

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26 ² Consider also Jayne S. Ressler, *Privacy, Plaintiffs and Pseudonyms: The Anonymous
Doe Plaintiff in the Information Age*, 53 Kan. L. Rev 195 (2005) (suggesting that, in the age of

1 protecting the identities of sexual assault victims so that other victims would feel more
2 comfortable suing to vindicate their rights; (4) the public's interest in the *issues* the plaintiff's
3 complaint was raising, and the fact that protecting her identity "[would] not impede the public's
4 ability to follow the proceedings;" and (5) the court's finding that plaintiff had no "illegitimate
5 ulterior motive" for her request. Based on these factors, the court allowed the plaintiff to proceed
6 under a fictitious name, finding that "although the public has a strong interest in the subject
7 matter of the case, plaintiff's privacy interest, in this instance, outweighs the public's need to
8 know her identity. *Doe v. Evans*, 202 FRD at 175 -176.

9 Certainly in the case at hand, where Plaintiffs have been physically, psychologically, and
10 sexually abused by large institutions of trust, and where that abuse has profoundly impacted
11 much of Plaintiffs' lives since, the court can recognize Plaintiffs' privacy interest, similar to that
12 of the plaintiff in *Doe v. Evans*, above.³ Moreover, allowing Plaintiffs to proceed under fictitious
13 names advances the public good by ensuring that risks to Plaintiffs' health, safety, reputations
14 and families do not prevent them from bringing this important case. Finally, because Plaintiffs
15 have no ulterior motives in proceeding under fictitious names, Plaintiffs request that the court
16 grant their Motion and Order of Designation of Known Parties by Fictitious Names.\

17 DATED this _____ day of July, 2011.

18 O'DONNELL CLARK & CREW LLP

19
20 _____
21 Kristian Roggendorf, OSB No. 013990
22 *Of Attorneys for Plaintiff*

23 _____
24 Internet search engines and electronic access to court dockets, it may be in the public interest to
25 permit more pseudonymous litigation).

26 ³ In fact, the Eleventh Circuit Court of Appeals recently held that it was an abuse of
discretion for a trial court to deny a motion by sexual abuse victims to proceed under pseudonym.
See Exhibit A hereto.