

FILED BY FAX
ALAMEDA COUNTY

April 15, 2009

CLERK OF
THE SUPERIOR COURT
By Rosanne Case, Deputy

CASE NUMBER:
VG09439561

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7 Guardian Ad Litem, CHERYL C.;
8 CHERYL C. and MICHAEL C.
9 in their personal capacities.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF ALAMEDA**

12 In the Matter of:

13 _____)
14)
15 KELSEY C. through her Guardian Ad Litem,
16 CHERYL C.; CHERYL C. and MICHAEL C. in
17 their personal capacities,)
18)
19 Plaintiff,)
20)
21 vs)
22)
23 JOHN KUCHAC, JR; JOHN MURPHY, JACOB,
24 HOHL, JOHN KUCHAC, SR; CHRISTINE
25 KUCHAC,)
26)
27 Defendants.)
28 _____)

Case No.: VG 09-439561

**REQUEST AND POINTS AND
AUTHORITIES IN SUPPORT OF
REQUEST TO PERMIT
PSEUDONYMOUS FILING**

Judge: Lawrence J. Appel
Dpt. 16
Date: Ex Parte
Time:

-By Fax-

INTRODUCTION

25 Kelsey C asks that she be permitted to file under a Pseudonymous filing because there
26 will be no prejudice to the defendants and it will cause her psychological trauma to do
27 otherwise.

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15 KELSEY C. through her Guardian Ad Litem,
16 CHERYL C.; CHERYL C. and MICHAEL C. in
17 their personal capacities,)
18 Plaintiff,)

Case No.: VG 09-439561

18 vs)
19)
20 JOHN KUCHAC, JR; JOHN MURPHY, JACOB,
21 HOHL, JOHN KUCHAC, SR; CHRISTINE
22 KUCHAC,)
23 Defendants.)

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24 INTRODUCTION

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12 In the Matter of:

| | |
|---|----------------------------------|
| 13 _____) | Case No.: VG 09-439561 |
| 14) | |
| 15 KELSEY C. through her Guardian Ad Litem,) | REQUEST AND POINTS AND |
| 16 CHERYL C.; CHERYL C. and MICHAEL C. in) | AUTHORITIES IN SUPPORT OF |
| 17 their personal capacities,) | REQUEST TO PERMIT |
| 18) | PSEUDONYMOUS FILING |
| 19 Plaintiff,) | |
| 20) | Judge: Lawrence J. Appel |
| 21 vs) | Dpt. 16 |
| 22) | Date: Ex Parte |
| 23) | Time: |
| 24 JOHN KUCHAC, JR; JOHN MURPHY, JACOB,) | <i>-By Fax-</i> |
| 25 HOHL, JOHN KUCHAC, SR; CHRISTINE) | |
| 26 KUCHAC,) | |
| 27) | |
| 28 _____) | |
| Defendants.) | |

29 **INTRODUCTION**

30 Kelsey C asks that she be permitted to file under a Pseudonymous filing because there
31 will be no prejudice to the defendants and it will cause her psychological trauma to do
32 otherwise.

1 **FACTS**

2 Kelsey C was the victim of a gang sexual assault by classmates from her middle school.

3 After the assault, it became known to all of her friends and she has suffered serious
4 psychological trauma as a result. She was harassed by classmates and the perpetrators of the
5 crimes committed against her.
6

7 Kelsey C had to change her school and her church. She has ceased participating in
8 extracurricular activities such as 4-H sports and girl scouts. She is uncomfortable leaving her
9 home, does not like to go out in public with her parents and is having sleep disturbances.
10

11 **LAW AND ARGUMENT**

12 **1. Plaintiff Should Be Permitted to Proceed in this Case Using her Initials.**

13 This court should approve a pseudonymous filing because courts in this state
14 (including our Supreme Court) and many others have permitted plaintiffs in similar
15 circumstances to proceed using pseudonyms based on the sensitive nature of the claims at
16 issue. This request is supported by the accompanying "Declaration of Cheryl C.," the
17 Plaintiff's mother.
18

19 **2. Statutory and Case Law Permit Plaintiff to Proceed In This Litigation Using Her**
20 **Initials.**

21 Plaintiff is a victim of sexual assault who wishes to proceed in this civil action using her
22 initials. (Declaration of Cheryl C.) CCP Section 367 does not expressly prohibit designation
23 of a party by his or her initials or a pseudonym and the courts in this and many other
24 jurisdictions have permitted it when equity so requires.

25 California has a long history of protecting the privacy and safety of crime victims,
26 particularly victims of sexual assault. For example, California's public records laws
27 specifically include a provision permitting the prevention of the disclosure of criminal
28

1 investigatory information where the victim of a sex offense does not want an “unwarranted
2 invasion of personal privacy.” See Penal Code Section 293(a), Government Code Section
3 6254. Reports of sexual assault are confidential, specifically exempted from public records
4 disclosure requirements. See Penal Code Section 11165. As noted by a Massachusetts court
5 presented with a similar challenge, the legislative purpose behind such statutes:
6

7 “[It] is manifest — for many victims of sexual abuse, especially
8 child sexual abuse, public revelation of the abuse, if not sought by
9 them, victimizes them yet again. It stigmatizes them as victims of
10 such abuse, generates conversations that may re-open emotional
11 wounds that had only begun to heal, and causes others, even those
12 who mean well, to treat them differently. If the identit[ies] of these
13 victims are not protected by the courts, then their access to the
14 courts will be severely diminished, because they will not be able to
15 turn to the courts for relief from or compensation of their emotional
16 injuries without aggravating those same injuries.”

17 *Globe Newspapers v. Clerk, Suffolk*, 14 Mass.L.Rptr. 315, Civil
18 Action No. 01-5588-F, (Mass. Super. Feb. 4, 2002) (Gants, J.); see
19 also *Globe Newspapers v. Clerk, Middlesex Cty. Sup.*, 14
20 Mass.L.Rptr. 412, Civil Action No. 20015302C (Mass.Super.
21 March 5, 2002) (Lauriat, J.) (“Releasing [the victims’] names and
22 identifying information would discourage similarly victimized
23 individuals from seeking redress in the courts, and carries the
24 unacceptable risk that they will be re-victimized by the possible
25 stigma associated with the allegations that they were sexually
26 abused.”).

27 The State of California’s appellate courts have never formally addressed a challenge to a
28 plaintiff’s desire to proceed using a pseudonym. However, one appellate court has addressed
the issue in dicta while discussing CCP Section 367. In *Starbucks Corp. v. Superior Court*
(2008) 168 Cal. App. 4th 1436, footnote 7, the court said:

“We do not decide the appropriate standards or mechanisms for
protective nondisclosure of identity in California, because the
matter is not now before us. (See Code Civ. Proc., § 367 [actions
must be prosecuted in name of the real party in interest]; but see
Cherrigan v. City etc. of San Francisco (1968) 262 Cal.App.2d

1 643, 652-653, 69 Cal.Rptr. 42 [allowing woman to prosecute
2 wrongful death lawsuit in her former surname rather than her
3 current true surname to avoid inadmissible inferences that she had
4 remarried].)”

5 The judicial use of “Doe plaintiffs” to protect legitimate privacy
6 rights has gained wide currency, particularly given the rapidity and
7 ubiquity of disclosures over the World Wide Web. (See *Doe v. City*
8 *of Los Angeles* (2007) 42 Cal.4th 531, 67 Cal.Rptr.3d 330, 169 P.3d
9 559 [former Boy Scouts sued under pseudonym based on
10 allegations that city police officer sexually assaulted them while
11 they were teenagers]; *Johnson v. Superior Court* (2000) 80
12 Cal.App.4th 1050, 1072, 95 Cal.Rptr.2d 864 [parents entitled to
13 depose sperm donor with family history of kidney disease, but
14 donor's name protected from disclosure to outsiders through an
15 appropriate order “which maintains the confidentiality of John
16 Doe's identity”]) Doe designations may be appropriate even where
17 sealing orders are not. *H.B. Fuller Co. v. Doe* (2007) 151
18 Cal.App.4th 879, 60 Cal.Rptr.3d 501.)”

19 “Federal courts allow parties to use pseudonyms“in special
20 circumstances when the party's need for anonymity outweighs
21 prejudice to the opposing party and the public's interest in knowing
22 the party's identity.” *Does I thru XXIII v. Advanced Textile Corp.*
23 (9th Cir.2000) 214 F.3d 1058, 1068.)” Emphasis Added

24 *Starbucks Corporation v. Superior Court*, (2008) 168 Cal.App.4th
25 1436 *fn7*

26 The reference to the Supreme Court’s use of a pseudonym in *Doe v. City of Los Angeles*,
27 is not the only decision where in a sexual assault case the name of the Plaintiff was protected
28 by the use of a pseudonym. (See *Mark K. v. Roman Catholic Arch Bishop of Los Angeles*
(1998) 67 Cal. App. 4th 603)

California is not alone in protecting the identity of a Plaintiff in a case such as this. The
courts of numerous other state and federal jurisdictions have also done so, often applying a

1 balancing test¹.

2 Drawing from the precedents of other circuits, the Ninth Circuit in *Does I Thru XXIII*
3 identified five factors to guide a trial court's inquiry into the need for anonymity where the
4 party seeking anonymity is relying on a fear of retaliation:
5

6 "(1) the severity of the threatened harm; (2) the
7 reasonableness of the anonymous party's fears; (3)
8 the anonymous party's vulnerability to such
9 retaliation (4) whether disclosure of the party's
10 identity would best serve the public interest; and (5)
11 the precise prejudice at each stage of the proceedings
12 to the opposing party, and whether proceedings may
13 be structured so as to mitigate that prejudice." *Id.*
14 (internal citations omitted).

15 Plaintiff fears both personal and physical retaliation from the disclosure of her identity
16 and other consequences that could be significant. (Declaration of Cheryl C) The essence of
17 the five factors identified in *Does I Thru XXIII* can thus be applied to her desire to proceed
18 using her initials as follows:
19

20 First, the potential emotional harm from public disclosure is a factor in any case in
21 which a victim of sexual assault feels stigmatized by the abuse:
22

23 ¹E.g. *Doe v. Diocese Corp.*, 43 Conn.Sup. 152, 647 A.2d 1067 (Conn.Sup. 1994); see also
24 J. Steinman, *Public Trial, Pseudonymous Parties: When Should Litigants Be Permitted to Keep*
25 *Their Identities Confidential*, 37 Hastings L.J. 1 (1985) (collecting cases); C. Rice, *Meet John Doe:*
26 *It Is Time for Federal Civil Procedure To Recognize John Doe Parties*, 57 U. Pitt. L. Rev. 883
27 (1996) (same); J. Ressler, *Privacy, Plaintiffs, and Pseudonyms: The Anonymous Doe Plaintiff in the*
28 *Information Age*, 53 U. Kan. L. Rev. 195 (2004-2005) (same). So, too, has this circuit, drawing from
29 decisions in several other circuits in permitting plaintiffs to proceed using pseudonyms when a trial
30 court reasonably determines that the "need for anonymity" outweighs "the general presumption that
31 parties' identities are public information and the risk of unfairness to the opposing party." *Does I*
32 *Thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000). Although it is only in
33 the "unusual case" that a party may proceed pseudonymously, *id.* at 1067, such unusual cases include
34 those in which "identification creates a risk of retaliatory physical or mental harm" and those in
35 which "anonymity is necessary to preserve privacy in a matter of [a] sensitive and highly personal
36 nature. . ." *Id.* at 1068. Cases involving sexual assault are such cases.

1 “[T]he potential harm to plaintiff comes from the public revelation
2 of the abuse, [which] if not sought by them, victimizes them yet
3 again. It stigmatizes them as victims of such abuse, generates
4 conversations that may re-open emotional wounds that had only
5 begun to heal, and causes others, even those who mean well, to
6 treat them differently.”

7 *Globe Newspapers v. Clerk, Suffolk*, Civil Action No. 01-5588-F,
8 (Mass. Super. Feb. 4, 2002) (Gants, J.).

9 Most newspapers will not name the victims of sexual assault to avoid the harm that such
10 exposure might cause them and to protect their privacy.

11 Next, the reasonableness of fears of plaintiffs who were sexually assaulted and the
12 potential for further harm caused by their public identification is well-documented. The
13 California Supreme Court has recognized rape trauma syndrome in explaining the ill effects of
14 sexual assault. *People v. Bledsoe* (1984) 36 Cal 3rd 236; Also see *Evans v. Eckelman*, 216 Cal.
15 App. 3d 1609, 1616, 265 Cal. Rptr. 605, 609 (1990).

16 Plaintiff’s vulnerability to such further harm is apparent from the fact that she has
17 disclosed her assault to only a limited number of persons. (Declaration of Cheryl C) She has
18 experienced fear of going out in public. She has changed her school and church because of her
19 fear of seeing people who know about her assault.

20 The public interest in the disclosure of plaintiff’s identity does not outweigh her desire to
21 protect it. Here, as in *Does I Thru XXIII v. Advanced Textile Corp.*, disguising plaintiff’s
22 identity will not obstruct public scrutiny of the important issues in this case. 214 F.3d at 1072.
23 As observed by the Ninth Circuit, “the question of whether there is a constitutional right to
24 abortion is of immense public interest, but the public did not suffer by not knowing the
25 plaintiff’s true name in *Roe v. Wade*.” *Id.* at 1072, n. 15.

26 Furthermore, as many courts analyzing similar issues have observed, pseudonymous
27
28

1 litigation is justified in cases “involving matters of a highly sensitive and personal nature. . .”
2 *M.M. v. Zavaras*, 139 F.3d 798, 803 (10th Cir. 1998) (quoting *Doe v. Frank*, 951 F.2d 320,
3 324 (11th Cir. 1992)).² While it is proper for a court to weigh the public interest against a
4 plaintiff’s claimed right to privacy in deciding whether anonymity is appropriate, the public’s
5 interest is outweighed when privacy interests at stake for a plaintiff in civil litigation include
6 matters of sexuality, mental health, and other manifestations of the problems caused by sexual
7 assault, including substance abuse problems. See, e.g., *Anonymous v. Legal Services Corp. of*
8 *Puerto Rico*, 932 F.Supp. 49 (D. Puerto Rico 1996) (attorney with treatable mental illness
9 permitted to proceed anonymously in civil litigation due to strong privacy interests in doing
10 so) and cases cited in J. Ressler, *Privacy, Plaintiffs, and Pseudonyms: The Anonymous Doe*
11 *Plaintiff in the Information Age*, 53 U. Kan. L. Rev. at 246, n. 259.
12
13
14

15 ² As noted by the District of Alaska:

17 Courts . . . have increasingly recognized an exception to this
18 requirement [of proceeding in civil litigation using true names] in
19 limited “matters of a sensitive and highly personal nature.” *Doe v.*
20 *Deschamps*, 64 F.R.D. at 653; see also *Southern Methodist Univ.*
21 *Ass’n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707 (5th
22 Cir. 1979). Plaintiffs have been allowed to proceed anonymously in
23 matters involving abortion, birth control, welfare cases involving
24 illegitimate children, and homosexuality. Such situations share a
25 need to shelter the anonymous plaintiff from “social stigmatization,
26 real danger of physical harm, or where the injury litigated against
27 would occur as a result of the disclosure of the plaintiff’s identity.”
28 *Doe v. Hallock*, 119 F.R.D. 640, 644 (S.D. Miss. 1987).

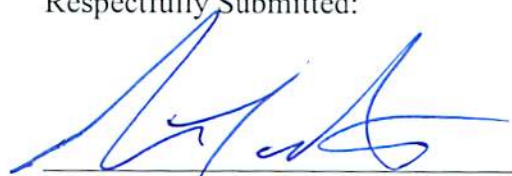
25 *Rowe v. Burton*, 884 F.Supp. 1372, 1385-86 (D.Alaska 1994) (citing via footnote *Roe v. Wade*, 410
26 U.S. 113 (1973); *Doe v. Deschamps*, 64 F.R.D. 652 (D.Mont. 1974); *Poe v. Ullman*, 367 U.S. 497
27 (1961); *Doe v. Carleson*, 356 F.Supp. 753 (N.D. Cal. 1973); *Webster v. Doe*, 486 U.S. 592 (1988);
28 *Doe v. United Serv. Life Ins. Co.*, 123 F.R.D. 437 (S.D.N.Y. 1988); and *Doe v. Chafee*, 355 F.Supp.
112 (N.D.Cal. 1973)).

1 Finally, there is no prejudice that would befall Defendants if plaintiff proceeds in this
2 litigation using initials rather than her name. Defendants know plaintiff's full name and
3 identifying information. Nothing prevents the defendants from conducting their investigation
4 and obtaining discovery using the plaintiff's full name.
5

6 Where, as here, there is a "strong social interest" in protecting plaintiff's identity, see
7 *Doe v. Rostker*, 89 F.R.D. 158, 162 (N.D. Cal. 1981), plaintiff should be permitted to proceed
8 in this case using her initials.

9 Dated: April 15, 2009

Respectfully Submitted:



Seth L. Goldstein, Esq.