

Unsealed 3/9/10
Sealed

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
10 - 80309
CASE NO.

JANE DOE No. 103,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

FILED by *EBS* D.C.

FEB 23 2010

STEVEN M. LARIMORE
CLERK U S DIST CT
S. D. of FLA. - MIAMI

**UNOPPOSED MOTION TO SEAL AND PROCEED ANONYMOUSLY
AND INCORPORATED MEMORANDUM OF LAW**

Plaintiff, Jane Doe No. 103, by and through her undersigned counsel and pursuant to Rule 5.4 S.D.Fla.L.R., moves this Court to enter an Order granting Plaintiff permission to file her identity under seal and to proceed in this action under the pseudonym "Jane Doe No. 103" and, as grounds, states as follows:

1. As outlined in detail in the Complaint, Jane Doe No. 103 was sexually abused by Defendant, Jeffrey Epstein, when she was under the age of 18.
2. As a result of Defendant's sexual abuse, Plaintiff has in the past suffered, and will in the future suffer, physical injury, pain and suffering, emotional distress, psychological and/or psychiatric trauma, mental anguish, humiliation, confusion, embarrassment, loss of educational opportunities, loss of self-esteem, loss of dignity, invasion of her privacy, and other damages associated with Defendant's manipulating and leading her into a perverse and unhealthy way of life for a minor.

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3. Disclosure of Plaintiff's name would cause her much additional embarrassment, humiliation, and psychological trauma.

4. The subject matter of the Complaint clearly contains highly sensitive and intimate information about Plaintiff.

5. Plaintiff was an identified victim by the State Attorney's Office, the Federal Bureau Investigation and the United States Attorney's Office in their criminal investigations against Defendant, Jeffrey Epstein.

6. During the related criminal investigations, and up and to this point in time, Plaintiff's identity has been sealed, as all parties recognize the highly sensitive subject matter of the charges and the need to protect the privacy interest of Plaintiff's identity.

7. In this civil action, Defendant, Jeffrey Epstein, already knows Plaintiff's identity and will be privy to the sealed document containing Plaintiff's name. Therefore, he knows the identity of Plaintiff and will not be prejudiced by public non-disclosure of Jane Doe No. 103's identity.

8. There is great need, in this case, to protect intimate information about Plaintiff, Jane Doe No. 103, and to protect her privacy interest.

Memorandum of Law

The general presumption against anonymous or pseudonymous pleadings, is commonly overcome in certain types of cases, and courts have discretion to permit such pleading in appropriate circumstances. “[P]rivity or confidentiality concerns are sometimes sufficiently critical that parties or witnesses should be allowed this rare dispensation.” *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993). As is ordinarily the case where trial courts have discretion, judicial guidelines exist for the

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exercise of such discretion in the form of factors that courts should consider in deciding whether to grant anonymity requests. They are not many, for the question happily is one that is seldom raised. Nevertheless, some guidelines can be gleaned from the relatively few cases—both at the trial and appellate levels—that have wrestled with the problem. Among them are the following that have relevance to this case: whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or to preserve privacy in a matter of sensitive and highly personal nature; whether identification poses a risk of retaliatory physical or mental harm to the requesting party or, even more critically, to innocent non-parties; the ages of the persons whose privacy interests are sought to be protected; and, relatedly, the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously. *See id.* (internal citations omitted).

In deciding whether to permit pseudonymous pleadings, courts must balance “the plaintiff’s right to privacy and security against the dual concerns of (1) public interest in identification of litigants and (2) harm to the defendant stemming from [suppression] of plaintiff’s name.” *Doe v. Smith*, 105 F. Supp. 2d 40, 44 (E.D.N.Y. 1999) (internal citation omitted). The ultimate test for permitting a plaintiff to proceed anonymously is whether the plaintiff has a substantial privacy right that outweighs the customary presumption of openness in judicial proceedings. *See Doe v. Stegall*, 653 F.2d 180, 185-86 (5th Cir., 1981). Courts typically accept pseudonym filing in cases where the nature of the pleading unveils highly sensitive information and detail about the plaintiff, such that the non-disclosure of the party’s name is necessary to protect her from harassment, injury, ridicule, or personal embarrassment. *See United States v. Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1981); *see*

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also Doe v. Smith, 429 F.3d 706 (7th Cir. 2005) (court required to consider whether the interests of justice required adult woman, who was videotaped having consensual sex with her boyfriend when she was a minor, to disclose her name as plaintiff in lawsuit against boyfriend alleging that boyfriend illegally distributed videotape); *Does I Thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1067-68 (9th Cir. 2000) (district court abused its discretion in denying permission to proceed anonymously to Chinese employees working in garment industry in Mariana Islands where employees were vulnerable to retaliation); *Stegall*, 653 F.2d at 185-86 (anonymity warranted to protect minor plaintiffs against risk of violence from revelation of unpopular personal beliefs); *Doe v. United Servs. Life Ins. Co.*, 123 F.R.D. 437 (S.D.N.Y. 1988) (anonymity allowed because of sensitive privacy and retaliation concerns in suit by homosexual against insurance company alleging discriminatory practices; no unfairness to defendant, who was aware of claimant's identity); *Candy H. v. Redemption Ranch*, 563 F. Supp. 505 (M.D. Ala. 1983) (anonymity allowed in suit by pregnant 19-year-old alleging fraudulent inducement to enter defendant's Home for Girls).

It is clear from the allegations of sexual abuse of a minor in the Complaint that the information is of a highly sensitive nature. Jane Doe No. 103's name remained anonymous in the related criminal cases, and Defendant's attorneys, the State Attorney's Office, as well as the United States government, redacted all documents containing her name. The present case is not one in which permitting Plaintiff's identity to be kept under seal and allowing her to proceed anonymously will disadvantage Defendant in any way. Defendant already knows Plaintiff's identity and will be privy to the sealed document containing Plaintiff's name. While the public normally has a right to the openness of judicial proceedings, the victim's privacy interest greatly outweighs the right to

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know the identity of a victim of child sex abuse. Other than the identity of Plaintiff, the aspects of this case will be available to the public. Evidently, the balance weighs overwhelmingly in favor sealing Plaintiff's identity and allowing Plaintiff to proceed anonymously.

This Court recently has allowed at least 15 other plaintiffs who were underage sex abuse victims of Defendant, Jeffrey Epstein, to proceed anonymously, including the following: *See C.M.A. v. Epstein et al.*, Case No. 9:08-cv-80811-KAM; *Jane Doe No. 1 v. Epstein*, Case No. 9:08-cv-80069-KAM (Dismissed); *Jane Doe No. 2 v. Epstein*, Case No. 9:08-cv-80119-KAM; *Jane Doe No. 3 v. Epstein*, Case No. 9:08-cv-80232; *Jane Doe No. 4 v. Epstein*, Case No. 9:08-cv-80380-KAM; *Jane Doe No. 5 v. Epstein*, Case No. 9:08-cv-80381-KAM; *Jane Doe No. 6 v. Epstein*, Case No. 9:08-cv-80994-KAM; *Jane Doe No. 7 v. Epstein*, Case No. 9:08-cv-80993-KAM; *Jane Doe v. Epstein*, Case No. 9:08-cv-80893-KAM; *Jane Doe v. Epstein et al.*, Case No. 9:08-cv-80804-KAM (Closed); *Jane Doe II v. Epstein*, Case No. 9:09-cv-80469-KAM; *Jane Doe No. 101 v. Epstein*, Case No. 9:09-cv-80591-KAM (Closed); *Jane Doe No. 102 v. Epstein*, Case No. 9:09-cv-80656-KAM (Closed); *Jane Doe No. 8 vs. Epstein*, Case No. 9:09-cv-80802-KAM; *L.M. vs Epstein*, Case No. 9:09-cv-81092-KAM. Accordingly, this Court should likewise permit Jane Doe No. 103 to proceed anonymously.

WHEREFORE, Plaintiff, Jane Doe No. 103, moves this Court to enter an Order granting this

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Motion, thus allowing her identity to be filed under seal and permitting her to proceed in this litigation under the Jane Doe No. 103 pseudonym.

Date: February 23, 2010

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1.A.3

On February 22nd and 23rd, 2010 undersigned counsel conferred with counsel for Defendant in a good faith effort to resolve the issues raised in this motion. Defendant's counsel Robert C.

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Critton, responded that Defendant does not oppose the relief sought at this time but is not waiving his right to challenge the anonymous filing at a later date.

Date: February 23, 2010.

Respectfully Submitted,

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