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Superior Court
of the District of Columbia

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Plaintiff, *-against-* PRESIDENT AND FELLOWS OF MIDDLEBURY COLLEGE, *et. al.*, Defendants.	**Case No. 2023-CAB-001645** **Judge Todd E. Edelman** **Next Event:** Initial Scheduling Conference **Next Court Date:** December 1, 2023

MOTION TO RECONSIDER ORDER DENYING PLAINTIFF'S MOTION TO PROCEED ANONYMOUSLY

Pursuant to D.C. Super. Ct. Civ. R. 54(b), the plaintiff in the above-captioned matter respectfully requests this Court reconsider its October 19, 2023, Order Denying the Plaintiff's Motion to Proceed Anonymously on the basis that it is inconsistent with an international treaty obligation and treats this case differently than cases of a similar nature.

On March 10, 2023, the plaintiff filed a Motion to Proceed Anonymously concurrently with her initial Complaint requesting this Court grant a privacy protection order permitting her to proceed using a pseudonym, Jane Doe, pursuant to Rule 5.2, D.C. Super. Ct. R. Civ. P. On October 19, 2023, this Court issued an Order Denying the Plaintiff's Motion to Proceed Anonymously. It further ordered all future filings in this case must state her true name.

Pursuant to Rule 54(b), "any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties, does not end the action as to any of the claims or parties, and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." D.C. Super. Ct. Civ. R. 54(b).[1] This Court may grant a Rule 54(b) motion "as justice requires." *Childers v. Slater*, 197 F.R.D. 185, 190 (D.D.C.2000). It may exercise "flexibility in applying Rule 54(b)." *Moore v. Hartman*, 332 F. Supp. 2d 252, 256 (D.D.C. 2004).

[1] This Court construes Rule 54 in light of the meaning of the federal rule because it is "substantially identical." *see Taylor v. Washington Hosp. Ctr.*, 407 A.2d 585, 590 (D.C.1979); *Washington Inv. Partn. v. Securities House*, 28 A.3d 566, 580 n.18 (D.C. 2011)

The United States signed and ratified the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* ("Protocol"), *supplementing the Convention against Transnational Organized Crime* ("UNTOC Convention").[2] Article 6 (1) of the Protocol states, "In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, *inter alia*, by making legal proceedings relating to such trafficking confidential." The UNTOC Convention and Protocol are binding in U.S. domestic law.[3]

University Defendants make note the pleadings allege an "international conspiracy" that involves "at least three participants." *See University Def. Mot*. at 1. The treaty obligations apply to "serious crime" that is "transnational in nature" and involves at least three participants." UNTOC Convention, Art. 3(1)(b). The plaintiff's causes of action pursuant to D.C. Code § 22-1832(a) (Count V) and D.C. Code § 22-1833 (Count VI) constitute allegations of "serious crime[s]" within the meaning of Article 3(1)(b) of the UNTOC Convention.

The Trafficking Victims Protection Reauthorization Act ("TVPRA") defines the federal laws as "serious offenses" for the purpose of witness protection. *See* 18 U.S. Code § 1594(g).[4] The TVPRA is the legislative model for the D.C. statute, including D.C. Code § 22-1832(a) (Count V) and D.C. Code § 22-1833 (Count VI).[5] Both offenses are encompassed by the definition of "dangerous crime" in D.C. Code § 23–1331 (3)(I).[6] Pursuant to D.C. Code § 22–

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[2] *United Nations General Assembly Resolution 55/25*, adopted 15 November 2000, Palermo, Italy; ratified by the United States on 3 November 2005.

[3] The same binding force in domestic law as the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.*

[4] 18 U.S. Code § 1594(g) ("Any violation of this chapter shall be considered an organized criminal activity or other serious offense for the purposes of application of chapter 224 (relating to witness protection)").

[5] Pursuant to D.C. Code § 22-1831 (12), a "victim of trafficking" includes a person subject to violations of Code § 22-1832(a) and 22-1833 or a person subject to an act or practice defined in the TVPRA, 22 U.S.C. §§ 7102. The TVPRA distinguishes between "trafficking in persons" and "severe trafficking in persons." 22 U.S. Code § 7102 (16) ("victim of a severe form of trafficking" means a person subject to an act or practice described in paragraph (9)) and 22 U.S. Code § 7102 (17) ("victim of trafficking" means a person subjected to an act or practice described in paragraph (9) or (10)). The D.C. Code definition adopts the latter.

[6] The D.C. statute does not define "serious crime."

1840 (a), the D.C. statutes states a civil action may be commenced by an individual who is a victim of an act or practice proscribed by D.C. Code § 22-1831, *et. seq.* The statutory language does not indicate the nature of the underlying violations are altered by a civil case.

Reading the D.C. Code, TVPRA, and Convention together, the language would indicate that this is an "appropriate case" to "protect the privacy and identity of [a] victim" "to the extent possible under its domestic law" within the meaning of the UNTOC Protocol Art. 6 (1) for the purposes of complying with the U.S. treaty obligation. Pursuant to Rule 5.2, this Court has the discretion pursuant to grant a privacy protection order permitting the plaintiff to proceed using a pseudonym and exercising its discretion would be consistent with the legislative intent.

SIMILAR CASES

The case law in the Order pertains to DCHRA cases, but none from the trafficking case law. The forced labor cases overwhelming favor anonymity.[7] Forced labor plaintiffs who work in the commercial sex industry are "routinely" permitted to sue under pseudonyms.[8] *S.C. v. Wyndham Hotels & Resorts, Inc.*, 1:23-cv-00871, at *2 (N.D. Ohio Sep. 27, 2023). Overlooking the forced labor in commercial sex acts case law is an assessment of the merits of her claims even before the legal sufficiency of her claims. Moreover, coercion by enumerated means for the purposes of Count V involves merits-based assessments. The Order presupposes disposal of her causes of action in Counts V, VI, and VII, and, thus, also VIII.

The sex trafficking corpus of case law is much more similar to the totality of circumstances in this case than even the most severe DCHRA cases. It happens in this case that University Defendants were unusually and shockingly open about their motives and incorporated their discrimination into their means of coercing the plaintiff, but many of the defendants in the

[7] Unlike federal law, D.C. law does not make the statutory distinction between coercion used to "cause the person to provide labor or services or to engage in a commercial sex act." D.C. Code § 22–1833 (1).
[8] *H.G. v. Inter-Continental Hotels Corp.*, 489 F. Supp. 3d 697, 713 (E.D. Mich. 2020) ("Courts in cases that involve victims of sex traffickers routinely allow plaintiffs, at least at the early stages of the litigation, to proceed under a pseudonym due to the sensitive and intimate nature of their allegations.")

forced labor cases do the same with the vulnerabilities of their own victims. It is a merits-based presumption that her experience differs emotionally or psychologically from the forced labor in commercial sex acts cases. This case is about violating bodily autonomy and the plaintiff believes she deserves the dignity afforded to the plaintiffs in those forced labor cases, even if their profession is more reputable than her own.

The civil defendants in those cases do not often oppose their victims to proceed with pseudonyms.[9] *Doe K.S. v. Brisam Clinton LLC*, 23-cv-4032 (LJL), at *2 (S.D.N.Y. May 17, 2023) (collecting cases). It is true that University Defendants do not hold themselves to the same standard of human decency as sex traffickers. But their victim's sense of violation and abuse is no less severe. The plaintiff stated at the time exactly how she felt – like she was gang-raped - because of what they did to her. It is a point she has consistently made to University Defendants, and no opportunity has passed without them trivializing or ridiculing her for the suffering. These are the same defendants forcing her to expose herself publicly once again. The reasoning behind granting anonymity to plaintiffs in forced labor cases is not modesty; it is the psychological trauma that it causes to the victim. None of the mental and emotional harms that University Defendants caused her and will continue to cause her are speculative to the plaintiff.

The plaintiff is not requesting to proceed with a pseudonym to disassociate her name from public disclosure of grievances to avoid embarrassment. The pleadings are thoroughly consistent with someone believing with absolute conviction that the perpetrators deserve to be in prison or in the ground for what they did to her. University Defendants do not dispute the factual allegations are substantively true or the volume of documented evidence to support it.

[9] *B.M. v. Wyndham Hotels & Resorts, Inc.*, 2020 WL 4368214, at *9 (N.D. Cal. July 30, 2020) (granting permission to proceed under a pseudonym for pretrial filings where plaintiff agreed to reveal her identity to defendants for the limited purpose of investigating her claims once the parties entered into a protective order, and defendants did not oppose the motion based upon finding that plaintiff's need for anonymity outweighed the risk of prejudice to defendants).

University Defendants do not dispute that at least two individuals deleted material evidence in this case. Their employer, by and through common counsel, stated that it was aware of its obligations to preserve evidence. A reasonable person would not delete evidence, much less two people employed by the same university, unless all three University Defendants are certain the plaintiff's claims against them will be dismissed.

Another University Defendant who deprived the plaintiff of her doctoral thesis started his doctoral program and bragged online how proud he is of what he did. Their continued belief that there is "nothing she can do" does not support a presumption of good faith about their motives for opposing her pseudonym. If the plaintiff's claims are as meritless and insubstantial as the individual defendants believe, there could not be a public interest to reveal the true identity of a "crazy" woman for alleging an "absurd" "international conspiracy" that they have yet to consider as anything other than a joke.

Moreover, University Defendants' interpretation of examples presented in their Opposition to the Plaintiff's Pseudonym self-servingly do not account for the factors that gave rise to those events. For example, the plaintiff's publication of material "read by thousands" as highlighted by University Defendants resulted from their own wrongdoing against her. It was the only option she was given to be unbanned by defendant Cruickshank, other than apologizing to or placating University Defendants. He banned her specifically so that his co-defendants would not retaliate against West Point if it did not continue to punish her for her opposition to them. The plaintiff did not want to publish it and communicated that fact both to West Point when the editor proposed it and in the document itself. It was not a voluntary act by the plaintiff choosing to air her grievances. University Defendants should not be able to use the consequences of their own coercion to their benefit in this case.

On July 27, 2023, Shiraz Maher filed his Motion to Dismiss. He published the only written article by the plaintiff on the subject. The defendant states, "he can only speculate as to

Doe's identity with the documentation provided." *Def. Mot*. at 11. This is his basis for dismissal pursuant to Rule 12(b)(4). Maher represents that he, the only person who published her written work, cannot ascertain her identity from the pleadings. His motion presented to this Court directly contradicts the presumption that a random person could identify the plaintiff from her article on his public website.

CONCLUSION

The public interest cannot be served if it requires this Court to jettison international obligations and make merits-based presumptions about her claims in Counts V, VI, and VII only to deny her something that benefits her abusers and would not prejudice them to grant her.

For the foregoing reasons, the plaintiff respectfully requests this Court reconsider its Order Denying the Plaintiff's Motion to Proceed Anonymously pursuant to Rule 54(b).

Respectfully submitted,

Dated: October 20, 2023

/s/

2631 Housley Rd #1035
Annapolis, MD 21401
doefilings@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th of October 2023, I served a true and correct copy of the foregoing electronically to:

Daniel Prywes
Jessica Franks Owens
MORRIS, MANNING & MARTIN
1401 Eye St. NW, Suite 600
WASHINGTON, D.C. 20005
dprywes@mmmlaw.com
jfranks@mmmlaw.com

Counsel for Defendants Jason Blazakis, Meili Criezis, Brian Hughes, Seamus Hughes, Matthew Kriner, Jonathan Lewis, Gina Ligon, Cynthia Miller-Idriss, Alex Newhouse, President and Fellows of Middlebury College, The George Washington University, and American University

Sarah Besnoff
Claire Saba Murphy
PAUL HASTINGS
2050 M St. NW
WASHINGTON, D.C. 20036
sarahbesnoff@paulhastings.com
clairesabamurphy@paulhastings.com

Counsel for Defendants Erin Saltman and Global Internet Forum to Counter Terrorism ("GIFCT")

D'Ontae Sylvertooth
OGLETREE, DEAKINS, NASH, SMOAK & STEWART
1909 K St. NW, Suite 1000
WASHINGTON, D.C. 20006
dontae.sylvertooth@ogletree.com

Counsel for Defendants Anthony Lemieux and Taylor & Francis Group

John Hays
EVERSHEDS SUTHERLAND (US) LLP
700 6th St. NW
WASHINGTON, D.C. 20001
johnhays@eversheds-sutherland.com

Counsel for Defendant Shiraz Maher

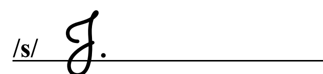
David C. Tobin
TOBIN O'CONNOR CONCINO P.C.
5335 Wisconsin Ave. NW, Suite 400
WASHINGTON, D.C. 20015
dctobin@tobinoconnor.com

Counsel for Defendant Paul Cruickshank

Cody Marden
MILLER & CHEVALIER CHARTERED
900 16th Street NW
WASHINGTON, DC 20006
cmarden@milchev.com

Counsel for Defendant Meghan Conroy

Dated: October 20, 2023

/s/ 

2631 Housley Rd #1035
Annapolis, MD 21401
doefilings@gmail.com