Superior Court of California

County of Los Angeles

North Central District

Department B

HAYLEY DYLAN f/k/a HAYLEY MENDELL, an individual,

Plaintiff,

v.

JOHN DOE, an individual; PRIVATE SCHOOL DOE, a California non-profit corporation; and DOES 33 through 10, inclusive.

Case No. 22BBCV01327

Hearing Date: August 2, 2024

[~~TENTATIVE~~] ORDER RE:

EX PARTE APPLICATION TO AMEND THE VERIFIED COMPLAINT TO SUBSTITUTE DEFENDANTS' REAL NAMES FOR THE FICTITIOUS DESIGNATIONS; AND ORDER TO SHOW CAUSE RE: WHY DEFENDANTS SHOULD NOT BE NAMED BY THEIR TRUE NAMES IN THE PLEADINGS

BACKGROUND

A. Allegations

Plaintiff Haylsey Dylan f/k/a Hayley Mendell ("Plaintiff") alleges that in the summer of 1987, she was 15 years old and was attending summer school at Defendant Private School Doe when she was sexually assaulted by an adult male, Defendant John Doe (alluded to as a "Former Professional Athlete"), in a locked janitor's closet in the high school gymnasium. Plaintiff alleges that the Los Angeles Lakers were filming an instructional basketball video in Private School Doe's gym and that students and faculty were allowed to meet and interact with the players during breaks in the filming. Plaintiff alleges that during one of the breaks, the production staff began ushering out the students, faculty, and parents to resume filming, but John Doe pointed toward her and said to the production staff, "*She* can stay." Plaintiff alleges

that Private School Doe faculty members and staff were present in the gym that day, saw John Doe single Plaintiff out to remain with him, left her unattended, and did not provide any safeguards. Plaintiff alleges that she took photographs with John Doe, he invited her to eat lunch with him, and he asked her for a school tour. Plaintiff alleges that during the tour, he took her to a janitor's closet and sexually assaulted her.

The complaint, filed December 30, 2022, alleges causes of action for: (1) sexual battery (Civil Code, § 1708.5); (2) sexual assault; (3) violation of Penal Code, § 647.6; (4) false imprisonment; (5) assault; (6) battery; (7) IIED; (8) NIED; and (9) negligence.

B. Cross-Complaint

On June 7, 2024, John Doe filed a cross-complaint against Private School Doe for: (1) indemnity; (2) equitable contribution; (3) negligence; (4) declaratory relief; and (5) proration of damages (Civil Code, § 1431 *et seq.*).

C. Motion on Calendar

On June 24, 2024, Plaintiff filed an ex parte application for permission to amend the verified complaint to substitute Defendants' real names for the fictitious designations.

On June 24, 2024, John Doe filed an opposition to the ex parte application.

On June 25, 2024, the Court held a hearing on the ex parte application and set the matter as a noticed motion for August 2, 2024. The Court also set an Order to Show Cause re: Why Defendants Should Not be Named by Their True Names in the Pleadings for August 2, 2024. The Court allowed Defendants to file a responsive pleading to the OSC 10 days before August 2, 2024.

On July 18, 2024, John Doe filed an opposition to the ex parte application.

On July 26, 2024, Plaintiff filed a reply brief.

LEGAL STANDARD

CCP § 340.1(a) states in relevant part:

(a) There is no time limit for the commencement of any of the following actions for recovery of damages suffered as a result of childhood sexual assault:

(1) An action against any person for committing an act of childhood sexual assault.

(2) An action for liability against any person or entity who owed a duty of care to the plaintiff, if a wrongful or negligent act by that person or entity was a legal cause of the childhood sexual assault that resulted in the injury to the plaintiff.

(3) An action for liability against any person or entity if an intentional act by that person or entity was a legal cause of the childhood sexual assault that resulted in the injury to the plaintiff.

...

(e) Every plaintiff 40 years of age or older at the time the action is filed shall file certificates of merit as specified in subdivision (f).

(f) Certificates of merit setting forth the facts that support the declaration shall be executed by the attorney for the plaintiff and by a licensed mental health practitioner selected by the plaintiff declaring, respectively, as follows: ...

(g) If certificates are required pursuant to subdivision (e), the attorney for the plaintiff shall execute a separate certificate of merit for each defendant named in the complaint.

(h) In any action subject to subdivision (e), a defendant shall not be served, and the duty to serve a defendant with process does not attach, until the court has reviewed the certificates of merit filed pursuant to subdivision (f) with respect to that defendant, and has found, in camera, based solely on those certificates of merit, that there is reasonable and meritorious cause for the filing of the action against that defendant. At that time, the duty to serve that defendant with process shall attach.

(i) A violation of this section may constitute unprofessional conduct and may be the grounds for discipline against the attorney.

...

(k) In any action subject to subdivision (e), a defendant shall be named by "Doe" designation in any pleadings or papers filed in the action until there has been a showing of corroborative fact as to the charging allegations against that defendant.

(*l*) At any time after the action is filed, the plaintiff may apply to the court for permission to amend the complaint to substitute the name of the defendant or defendants for the fictitious designation, as follows:

(1) The application shall be accompanied by a certificate of corroborative fact executed by the attorney for the plaintiff. The certificate shall declare that the attorney has discovered one or more facts corroborative of one or more of the charging allegations against a defendant or defendants, and shall set forth in clear and concise terms the nature and substance of the

corroborative fact. If the corroborative fact is evidenced by the statement of a witness or the contents of a document, the certificate shall declare that the attorney has personal knowledge of the statement of the witness or of the contents of the document, and the identity and location of the witness or document shall be included in the certificate. For purposes of this section, a fact is corroborative of an allegation if it confirms or supports the allegation. The opinion of any mental health practitioner concerning the plaintiff shall not constitute a corroborative fact for purposes of this section.

(2) If the application to name a defendant is made before that defendant's appearance in the action, neither the application nor the certificate of corroborative fact by the attorney shall be served on the defendant or defendants, nor on any other party or their counsel of record.

(3) If the application to name a defendant is made after that defendant's appearance in the action, the application shall be served on all parties and proof of service provided to the court, but the certificate of corroborative fact by the attorney shall not be served on any party or their counsel of record.

(m) The court *shall review the application and the certificate of corroborative fact in camera and, based solely on the certificate and any reasonable inferences to be drawn from the certificate, shall, if one or more facts corroborative of one or more of the charging allegations against a defendant has been shown, order that the complaint may be amended to substitute the name of the defendant or defendants.*

(n) *The court shall keep under seal and confidential from the public and all parties to the litigation, other than the plaintiff, any and all certificates of corroborative fact filed pursuant to subdivision (l).*

(*o*) *Upon the favorable conclusion of the litigation with respect to any defendant for whom a certificate of merit was filed or for whom a certificate of merit should have been filed pursuant to this section, the court may, upon the motion of a party or upon the court's own motion, verify compliance with this section* by requiring the attorney for the plaintiff who was required by subdivision (f) to execute the certificate to reveal the name, address, and telephone number of the person or persons consulted with pursuant to subdivision (f) that were relied upon by the attorney in preparation of the certificate of merit. The name, address, and telephone number shall be disclosed to the trial judge in camera and in the absence of the moving party. If the court finds there has been a failure to comply with this section, the court may order a party, a party's attorney, or both, to pay any reasonable expenses, including attorney's fees, incurred by the defendant for whom a certificate of merit should have been filed.

...

(CCP § 340.1 [italics added].)

DISCUSSION RE EX PARTE APPLICATION

Plaintiff moves for court orders to: (1) grant Plaintiff's request to lodge a copy of her Certificate of Corroborative Fact under seal pursuant to CCP § 340.1(n); (2) conduct an *in camera* review of the application and Plaintiff's Certificate of Corroborative Fact pursuant to CCP § 340.1(*l*) and (m); and (3) based on the *in camera* review, issue an order pursuant to CCP § 340.1(m) allowing Plaintiff to amend the verified complaint to substitute the real names of Defendants John Doe and Public School Doe for the fictitious designations.

John Doe's June 24, 2024 opposition argues only procedural grounds to deny the motion—namely, that Plaintiff has not shown irreparable harm or immediate danger to seek ex parte relief. In John Doe's July 18, 2024 3-page opposition, John Doe argues that Plaintiff's request is premature because there are no known facts to corroborate her allegations against John Doe at this time, he is a public figure such that irreparable harm to his character and reputation may ensue, and thus maintaining confidentiality until after discovery would be reasonable.

The Court notes that Private School Doe has been served but has not yet appeared in the action, paid first appearance fees, or filed an answer. However, based on the Notice and Acknowledgement of Receipt (filed October 5, 2023), the summons, complaint, and other documents were served on Private School Doe and James A. Harris for Private School Doe signed an Acknowledgement of Receipt on September 26, 2023. The application is not opposed by Private School Doe.

Plaintiff argues that the procedural requirements of section 340.1 have been met. Plaintiff commenced this lawsuit after her fortieth birthday (Compl., ¶4) and, thus, she has filed Certificates of Merits as to John Doe and Private School Doe on December 30, 2022. (See CCP § 340.1(e), (f)-(g), (k)-(*l*).) Plaintiff has served all parties and John Doe has answered the complaint on June 7, 2024.

The Court denies Plaintiff's ex parte application.

In cases such as this, documents such as Certificates of Merit and Certificates of Corroborative Facts are filed under seal without any ability of the defendants to review the documents—unless and until a favorable conclusion of the litigation with respect to any defendant for whom a Certificate of Merit was filed. Moreover, even then, the party being accused does not see the actual certificates of corroborative fact, but only a summary of some of the information in them. The procedure by which the application is brought, and these certificates are reviewed by the Court without any review or opportunity of the defendant to review the evidence against him before suffering prejudice in court is a patently an unconstitutional denial of due process to the Defendant, and violation of the separation of powers by which the judicial branch is to decide cases based on fundamental fairness and an ethical search for the truth.

The Court has previously shared some of its thoughts regarding the constitutionality of the procedure. (See Court's Order Allowing Service of Process dated January 30, 2023.) In connection with the Certificates of Merit, CCP § 340.1(h) states that the court shall conduct an *in camera* review of the documents to determine if there is reasonable and meritorious cause for filing the action against that defendant; only upon determination that there is merit, the plaintiff may serve the defendant with process. The Court's *in camera* review, and then subsequent sealing of these certificates of merit means that the defendant cannot see them, ever, unless there is a "favorable conclusion of the litigation" with respect to that defendant. (CCP § 340.1(p).) Nevertheless, the Court's factual determination that the case has merit is a case dispositive event: without it, the action cannot even be served. Thus, dispositive action has been taken against a defendant without notice or opportunity for hearing. It has been established for more than 50 years that this is fundamental denial of due process that extends to both civil and criminal proceeding, as the Supreme Court decided in *Sniadach v. Family Finance Corp. of Bay View*

(1969) 395 U.S. 337,[1] when it decided that there must be an opportunity for notice and hearing before a wage garnishment could take place. Three years later the Supreme Court was even more emphatic in stating the right to be notified and be heard in a civil case:

> For more than a century the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." *Baldwin* v. *Hale*, 1 Wall. 223, 233. See *Windsor* v. *McVeigh*, 93 U.S. 274; *Hovey* v. *Elliott*, 167 U.S. 409; *Grannis* v. *Ordean*, 234 U.S. 385. It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." *Armstrong* v. *Manzo*, 380 U.S. 545, 552.

(*Fuentes v. Shevin* (1972) 407 U.S. 67, 80.)

Nevertheless, Plaintiff was determined that the Court review her Certificates of Merit and decide the merits of her case. The Court wondered at one of the hearings as to why this pointless exercise was occurring since the Court assumed, for the purpose of the ex parte hearings, that the unconstitutional provisions could be separately considered, and allowed service of process. This was especially puzzling given that Plaintiff has eschewed anonymity herself, thus making herself open to a public trial. Counsel cited to section 340.1(i), which threatens discipline for disobedience to the strict rules of the statute: "A violation of this section may constitute unprofessional conduct and may be the grounds for discipline against the attorney." (CCP § 340.1(i).) One might ask: What violation of the attorney ethics is such an attorney to be charged with and disciplined for? Daring to challenge the unconstitutional nature of a legislative action?

---

[1] As the Supreme Court stated in that case:

> We have dealt over and over again with the question of what constitutes "the right to be heard" (*Schroeder* v. *New York*, 371 U.S. 208, 212) within the meaning of procedural due process. See *Mullane* v. *Central Hanover Trust Co.*, 339 U.S. 306, 314. In the latter case we said that the right to be heard "has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." 339 U.S., at 314.

(*Sniadach v. Family Fin. Corp.*, supra, 395 U.S. at 339-340.)

Advocating for fundamental fairness in court proceedings? These are not matters for discipline, but rather the essence of what it means to be a good lawyer: to challenge unfair procedures.

The Court system also has its own independence and ethical conduct to consider. For a court to be required to make binding, case-dispositive findings, in secret, in the absence of any admissible evidence, violates any conventional notion of separation of powers and defies the fundamentals of due process. Under Article 3, section 3 of the California Constitution, "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others…." The separation of powers doctrine protects the judiciary's core and essential functions: to resolve specific controversies between the parties and declare the law. (*Case v. Lazben Financial Co.* (2002) 99 Cal. App. 4th 172, 184-85.)

Here, the legislature is mandating that the Court make a factual and legal finding regarding a specific controversy, but in secret and without evidence. These certificates contain no admissible evidence on which a court could make a determination of merit. There is no judicial discretion to evaluate the evidence, if there were evidence, yet the Court must make such a factual determination in factual vacuum so sterile and secret that *the Court does not even know who the parties are.* Under such circumstances, the Legislature is dictating the result in a particular case, which it is not permitted to do.

Subsequent to the Court's January 30, 2023, opinion, Plaintiff sought an order from the Court of Appeal compelling the Court to follow the unconstitutional procedure set forth in CCP § 340.1(h). The Court of Appeal specifically ordered that these appellate proceedings should also proceed without notice to defendants. (See Court of Appeal's Order of August 16, 2023.) In response to the direct order of the Court of Appeal issued on August 23, 2023, this Court issued the orders demanded by the Court of Appeal. Although the Court of Appeal suggested that there was a "clear legal error," the Court of Appeal did not reveal what that error could be. Neither did

the Court of Appeal decide any of the Constitutional questions that this Court laid out in its January 30, 2023 opinion. While this Court obviously disagreed with the Court of Appeal's order, particularly with the ex parte procedure the Court of Appeal used to reach that result, the Court complied as ordered by that Court. In this Court's view, without obedience of subsidiary courts to the direct and specific orders of appellate courts, the court system cannot function.

The presentation of the Certificates of Corroborative Facts, by which the Plaintiff seeks to name the Defendants personally, presents a similar, but distinct question of law. As the Court of Appeal did not analyze any of the legal or constitutional questions at issue with the other section of the statute, the Court is once again required to do its own analysis with respect to a separate section of the statute. Moreover, the Court of Appeal's prior consideration of the case can have no res judicata effect, as the Court of Appeal chose to decide the matter without notice or hearing to the real party in interest.[2]

With respect to Certificates of Corroborative Facts, subsection (*l*) states that the court shall review the document *in camera* and "based solely on the certificate and any reasonable inferences to be drawn from the certificate, shall, if one or more facts corroborative of one or more of the charging allegations against a defendant has been shown, order that the complaint may be amended to substitute the name of the defendant or defendants." The statute contemplates that upon this procedure occurring, the *defendant*'s true name may be revealed. (Plaintiffs are allowed to maintain anonymity, thus obtaining an advantage in the litigation.) The standard, requiring only one "corroborative" fact, hardly seems to promote a genuine consideration of the evidence.

---

[2] See 7 B. Witkin, 6 California Procedure, Judgments § 397, p. 914 (6th ed. 2021):

> A final judgment is preclusive only if it was rendered on the merits. This requirement is derived from the fundamental policy of the doctrine, which gives stability to judgments after the parties have had a fair opportunity to litigate their claims and defenses.

Once again, the legislature is requiring that this Court consider evidence in secret and decide questions that will affect substantive rights of the parties without providing Defendants with notice, or hearing, or the opportunity to review the "evidence" against them. Like the prior procedure followed with respect to the service of process, the procedure is an unconstitutional denial of due process to the defendant. For example, in response to this application, Defendant Mr. Doe has stated: "There are no known facts that could corroborate Plaintiff's allegations against Mr. Doe at this time." (Doe Opposition dated July 18, 2024 at p.2.) Yet how can the Court even decide whether there is or is not a "known fact" unless the Court can hear from both sides of the proceeding? Without notice of what the alleged evidence might be, Defendants cannot challenge it. Likewise, the Court cannot, consistent with fundamental fairness, decide whether or not evidence exists or is sufficient.

The procedure under subsection (*l*) also violates the separation of powers by requiring secret proceedings. While the legislature has some leeway to dictate how Courts decide cases, there must be a limit, and when the legislature is ordering secret proceedings that are inherently abhorrent to fairness in a western country that values due process, that limit has been crossed. The Court declines to conduct any secret proceedings pursuant to the Certificates of Corroborative Facts and will not make any findings of fact in secret through an *in camera* hearing on sealed documents that Defendants are unable to review during the case. The Court will make no order requiring secrecy of anything. Secret hearings are abhorrent in the United States, and we regularly criticize other countries that hold secret hearings This Court sits in Burbank, not Moscow. Even those accused of sexual abuse are entitle to notice and hearing and to view the evidence against them.

The Court declines to grant the relief requested by Plaintiff based on Plaintiff's reliance in CCP § 340.1(*l*) and (m), as the Court finds the procedure delineated in these subsections to be unconstitutional.

DISCUSSION RE OSC RE: WHY DEFENDANTS SHOULD NOT BE NAMED BY THEIR TRUE NAMES IN THE PLEADINGS

On June 25, 2024, the Court set an "Order to Show Cause re: Why Defendants Should Not be Named by Their True Names in the Pleadings" to be held concurrently with the continued ex parte application hearing.

While the Court denies the ex parte application pursuant to CCP § 340.1 for an order to name Doe Defendants based on the grounds Plaintiff has argued in the application papers, the Court will have the parties be identified by their true names following the OSC. There has never been a basis, consistent with the constitutional right of the public to open proceedings, to conceal the names of the parties in this case.

There is a general constitutional right of access by the public to all court proceedings.

> We believe that the public has an interest, in *all* civil cases, in observing and assessing the performance of its public judicial system, and that interest strongly supports a general right of access in ordinary civil cases.

(*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1210.)

In general, "[t]he names of all parties to a civil action must be included in the complaint. (Code Civ. Proc., § 422.40.) That requirement extends to real parties in interest—anyone with a substantial interest in the subject matter of the action. (*Tracy Press, Inc. v. Superior Court* (2008) 164 Cal.App.4th 1290, 1296–1297, 80 Cal.Rptr.3d 464.)" (*Department of Fair Employment & Housing v. Superior Court of Santa Clara County* (2022) 82 Cal.App.5th 105, 109.)

To be consistent with the constitution, anonymity for parties must be demonstrated to be necessary to protect an important privacy interest. (*Id.* at 110.) The Court of Appeal stated in the *DFEH* case:

> [An] important constitutional right is implicated when a party is allowed to proceed anonymously: the right of public access to court proceedings. Among the

> guarantees of the First Amendment to the United States Constitution is that court proceedings are open and public. (*Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555, 580, 100 S.Ct. 2814, 65 L.Ed.2d 973.) Public access to court proceedings is essential to a functioning democracy. It promotes trust in the integrity of the court system, and it exposes abuses of judicial power to public scrutiny. (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1221, 86 Cal.Rptr.2d 778, 980 P.2d 337 (*KNBC*).) The right of public access applies not only to criminal cases, but also to civil proceedings like this one. (*Id.* at p. 1222, 86 Cal.Rptr.2d 778, 980 P.2d 337.) And the right to access court proceedings necessarily includes the right to know the identity of the parties. (*Id.* at p. 1211, 86 Cal.Rptr.2d 778, 980 P.2d 337 [public has a general right of access to civil proceedings; by submitting a dispute to resolution in court, litigants should anticipate the proceedings will be adjudicated in public].)

(*DFEH*, supra, 82 Cal.App.5th at 110–111 [emphasis added].) The Court further stated:

> Much like closing the courtroom or sealing a court record, allowing a party to litigate anonymously impacts the First Amendment public access right. Before a party to a civil action can be permitted to use a pseudonym, the trial court must conduct a hearing and apply the overriding interest test: A party's request for anonymity should be granted only if the court finds that an overriding interest will likely be prejudiced without use of a pseudonym, and that it is not feasible to protect the interest with less impact on the constitutional right of access.[] In deciding the issue the court must bear in mind the critical importance of the public's right to access judicial proceedings. Outside of cases where anonymity is expressly permitted by statute, litigating by pseudonym should occur "only in the rarest of circumstances. (*KNBC, supra*, 20 Cal.4th 1178, 1226, 86 Cal.Rptr.2d 778, 980 P.2d 337.)

(*DFEH*, supra, 82 Cal.App.5th at 111–112 [internal quotation marks and footnote omitted] [emphasis added].)

While this case involves a statutory conferral of anonymity, the legislature is not exempt from the Constitution. At a minimum, there must be a demonstrated need to restrict such access. This is plainly stated in the Constitution of the State of California:

> A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits

> the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(Cal. Const., Art. I, § 3(b)(2).) Here, there is no need to restrict the public's knowledge of accusations of child sexual abuse. There is no rational basis by which the legislature could possibly be justified in providing anonymity to persons accused of childhood sexual abuse, or persons making such accusations. There is no need to limit the public's access. Such anonymity can only perpetuate the secret nature of childhood sexual abuse, with the result that more abuse will occur. Even if there were a need for anonymity in specific cases, allowing anonymity of all plaintiffs and persons accused of childhood sexual abuse in civil courts is not a narrowly drawn limitation on the public's right to know.

A recent law article by Eugene Volokh discusses these concerns further:

> Public naming of litigants is one aspect of the broader "presumption, long supported by courts, that the public has a common-law right of access to judicial records." []"Public access to civil trials ... provides information leading to a better understanding of the operation of government as well as confidence in and respect for our judicial system." []In particular, the right to public access "protects the public's ability to oversee and monitor the workings of the Judicial Branch," []and "promotes the institutional integrity of the Judicial Branch." []""Public confidence [in the judiciary] cannot long be maintained where important judicial decisions are made behind closed doors and then announced in conclusive terms to the public, with the record supporting the court's decision sealed from public view.'"[]

(Eugene Volokh, *The Law of Pseudonymous Litigation*, 73 Hastings L.J. 1353, 1386 (2021-2022) [footnotes omitted].) In citing various Circuit Court cases, the article continues:

> "The public[]" has a "legitimate interest in knowing all of the facts involved, including the identities of the parties." []"The people have a right to know who is using their courts." []"Anonymous litigation runs contrary to the rights of the public to have open judicial proceedings and to know who is using court facilities and procedures funded by public taxes." [] "The Court is a public institution and the public has a right to look over our shoulders and see who is seeking relief in public court." []

(*Pseudonymous Litigation*, 73 Hastings L.J. at 1369-70 [footnotes omitted].) Professor Volokh further stated that pseudonymization can lead to possibly pseudonymizing the name of others

(such as a minor's parent and other parties) or even other cases; redactions and sealings of documents filed in the court and sealing of related cases; interference with reporting on cases; making it difficult to determine whether a party is a vexatious litigant or a judge is biased in favor of or against a litigant; and affecting a defendant's ability to test credibility and rebut a plaintiff's claims of damages. (*Id.* at 1370-1378, 1386.) In addition,

> Pseudonymity can also create a "risk of unfairness to the opposing party," []even when … the defendant knows the plaintiff's identity. … Fundamental fairness suggests that defendants are prejudiced when required to defend themselves publicly before a jury while plaintiffs make accusations from behind a cloak of anonymity.

(*Pseudonymous Litigation*, 73 Hastings L.J. at 1379-80 [footnotes omitted].) For example, plaintiffs' pseudonymity may make it hard for defendants to defend themselves in public and may create an imbalance in settlement negotiation positions as a named defendant would be more eager to settle than a pseudonymous plaintiff. (*Id.* at 1380-1382.)

As stated by the Court of Appeal in *Department of Fair Employment and Housing v. Superior Court of Santa Clara County* (2022) 82 Cal.App.5th 105:

> Much like closing the courtroom or sealing a court record, allowing a party to litigate anonymously impacts the First Amendment public access right. Before a party to a civil action can be permitted to use a pseudonym, the trial court must conduct a hearing and apply the overriding interest test: A party's request for anonymity should be granted only if the court finds that an overriding interest will likely be prejudiced without use of a pseudonym, and that it is not feasible to protect the interest with less impact on the constitutional right of access.[] In deciding the issue the court must bear in mind the critical importance of the public's right to access judicial proceedings. Outside of cases where anonymity is expressly permitted by statute, litigating by pseudonym should occur "only in the rarest of circumstances."

(*Department of Fair Employment and Housing*, supra, 82 Cal.App.5th at 111-112 [footnote omitted].) In the *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178 case, the California Supreme Court discussed that before closing substantive courtroom

proceedings and sealing documents, the trial court must hold a hearing and expressly find that: (i) there exists an overriding[] interest supporting closure and/or sealing; (ii) there is a substantial probability[] that the interest will be prejudiced absent closure and/or sealing; (iii) the proposed closure and/or sealing is narrowly tailored to serve the overriding interest; and (iv) there is no less restrictive means of achieving the overriding interest.[]" (*KNBC-TV*, supra, 20 Cal.4th at 1217-18 [footnotes omitted].)

Based on these factors, the Court cannot justify allowing defendants to proceed anonymously in this action. As summarized above, John Doe opposes the request to reveal his name on the basis that Plaintiff's request is premature because, he says, there are no known facts to corroborate her allegations against John Doe at this time. He also argues that he is a public figure such that irreparable harm to his character and reputation may ensure such that it would be reasonable to maintain his confidentiality until after discovery. However, John Doe has not provided any admissible evidence or other factual support for his claims. He has not explained or shown that the case is without merit, as he contends. John Doe has not explained how his status as a public figure affords him additional rights to maintain the confidentiality of his name or shield his identity. Celebrities must suffer the same embarrassment of accusation as regular people. Here, there is no overriding interest requiring that any party remain anonymous. Ms. Dylan has never sought such anonymity for herself—she is ready to subject herself to the embarrassment and stress of a public trial.

Moreover, there is an important public interest in knowing the names of anyone accused of childhood sexual assault as well as the names of the accuser so that those claims can be fairly evaluated and handled. The records of the Catholic Church and the Boy Scouts of America and other organizations that have cared for children show the tragic folly of attempting to suppress evidence of such accusations. Why should the Courts, which have imposed crippling judgments against these organizations, follow the same procedures they have condemned? When such

accusations occur, both the accuser and accused should be identified by their true names so that the accusations can be proven or disproven in an open and fair court proceeding.

Thus, the Court does not find that there is an overriding interest supporting anonymity in Defendants' true names or that there is a substantial probability that Defendants' interests will be prejudiced if their true names are revealed. Rather, the Court upholds the constitutional right of access by the public of all court proceedings, which includes knowing the name of all parties in an action. (*KNBC-TV*, supra, 20 Cal.4th at 1210; *Department of Fair Employment and Housing*, supra, 82 Cal.App.5th at 109-112.)

The Court set this OSC so that Defendants would have the opportunity to show why their true names should not be revealed. John Doe has not shown good cause or any overriding interest to maintain his anonymity in defending this case. Private School Doe has not filed any responsive brief to the OSC. As such, the presumption of the openness of the court shall prevail and the parties shall no longer appear in this case anonymously.

CONCLUSION AND ORDER

Plaintiff John Doe's ex parte application pursuant to CCP § 340.1 for an order to name Doe Defendants is denied.

With respect to the Order to Show Cause, the Court holds that Defendant John Doe and Private School Doe shall proceed with this case with their true names upon entry of this order. The Plaintiff may amend the Complaint to disclose their true names.

Plaintiff shall provide notice of this order.

DATED: August 2, 2024

JOHN KRALIK

John J. Kralik
Judge of the Superior Court