

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**Civil Division**

North Central District, Burbank Courthouse, Department A

**24STCV08102**

**JANE ROE, et al. vs JENNA SMITH, et al.**

September 13, 2024

9:00 AM

Judge: Honorable Frank M. Tavelman

Judicial Assistant: Lorna Garcia

Courtroom Assistant: Dennis Carroll

CSR: None

ERM: None

Deputy Sheriff: None

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**APPEARANCES:**

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

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**NATURE OF PROCEEDINGS:** Hearing on Motion for Order Unsealing True Names of Parties Under Rule 2.551(h)(2) Filed by Non-Party First Amendment Coalition

The above matter is called for hearing.

The Court reads and considers the moving papers and opposition.

The parties submit to the Court's tentative ruling.

The Court adopts its tentative ruling as order of the Court as follows:

The Court is not requesting oral argument on this matter. The Court is guided by California Rules of Court, Rule 3.1308(a)(1) whereby notice of intent to appear is requested. Unless the Court directs argument in the Tentative Ruling, no argument is requested and any party seeking argument should notify all other parties and the court by 4:00 p.m. on the court day before the hearing of the party's intention to appear and argue. The tentative ruling will become the ruling of the court if no argument is received.

Notice may be given either by email at [BurDeptA@LACourt.org](mailto:BurDeptA@LACourt.org) or by telephone at (818) 260-8412.

**ALLEGATIONS:**

This is an action for defamation brought by John Doe and Jane Roe (Plaintiffs) as against Jenna Smith and Mother Smith (Defendants). Each of these parties is currently proceeding in this action under pseudonyms.

The action stems from Defendants' alleged accusation that John Doe sexually assaulted Jenna Smith whilst they both attended high school. (Compl. ¶ 2.) Plaintiffs allege that they and Jenna

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Smith were members of a “secret club” at their high school. (Compl. ¶ 18.) Plaintiffs suggest that the impetus behind Defendants’ allegedly defamatory statements is her jealousy of Plaintiffs’ leadership status in that club. (Compl. ¶ 33.) Jenna Smith is alleged to have told five other students of the club that John Doe sexually assaulted her. (Compl. ¶¶ 35, 40, 62, 63.) Mother Smith is alleged to have made the same representations to other parents whose children participated in the club. (Compl. ¶ 39, 43.) Plaintiffs’ action seeks over five million dollars in damages and an injunction restraining further speech by Defendants. Plaintiffs also demand a public apology from Defendants. (Compl. ¶ 123.)

Before the Court is a motion by non-party First Amendment Coalition (First Amendment) to unseal the record and compel Plaintiffs to disclose their true names. First Amendment argues that Plaintiffs have not demonstrated an overriding privacy interest such that the constitutional right of public access to the courts is outweighed. Defendants support First Amendment’s motion and Plaintiffs oppose.

**ANALYSIS:**

**I. LEGAL STANDARD**

Under California Rules of Court (CRC) Rule 2.550(c), unless confidentiality is required by law, court records are presumed to be open. Subject to certain exceptions, a court record must not be filed under seal without a court order. (*Overstock.com, Inc. v. Goldman Sachs Group, Inc.* (2014) 231 Cal.App.4th 471, 486.) A party requesting that a record be filed under seal must file a motion or an application for an order sealing the record. (CRC Rule 2.551(b).) The motion or application must be accompanied by a memorandum and a declaration containing facts sufficient to justify the sealing. (*Id.*)

In order for records to be sealed, a trial court must hold a hearing and expressly find that:

- (1) there exists an overriding interest supporting closure and/or sealing;
- (2) there is a substantial probability that the interest will be prejudiced absent closure and/or sealing;
- (3) the proposed closure and/or sealing is narrowly tailored to serve the overriding interest; and
- (4) there is no less restrictive means of achieving the overriding interest.

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(Universal City Studios, Inc. v. Superior Court (2003) 110 Cal.App.4th 1273, 1279.)

Since court records are public records, the burden rests on the party seeking to deny public access to those records to establish compelling reasons why and to what extent these records should be made private. (Mary R. v. B. & R. Corp. (1983) 149 Cal.App.3d 308, 317.)

A party or member of the public may move, apply, or petition, or the court on its own motion may move, to unseal a record. (CRC Rule 2.551(h)(2).) Notice of any motion, application, or petition to unseal must be filed and served on all parties in the case. (Id.) The motion, application, or petition and any opposition, reply, and supporting documents must be filed in a public redacted version and a sealed complete version if necessary to comply with CRC Rule 2.551(c). (Id.)

In determining whether to unseal a record, the court must consider the matters addressed in CRC Rule 2.550(c)-(e). (CRC Rule 2.551(h)(4).) The order unsealing a record must state whether the record is unsealed entirely or in part. (CRC Rule 2.551(h)(5).) If the court's order unseals only part of the record or unseals the record only as to certain persons, the order must specify the particular records that are unsealed, the particular persons who may have access to the record, or both. (Id.) If, in addition to the records in the envelope, container, or secure electronic file, the court has previously ordered the sealing order, the register of actions, or any other court records relating to the case to be sealed, the unsealing order must state whether these additional records are unsealed. (Id.)

## II. MERITS

The Court finds that the instant motion to unseal is premature. The documents were not filed under seal, but rather Plaintiffs filed their Complaint anonymously. The Court notes that Plaintiffs have not adhered to the proper procedure for proceeding anonymously. Before a party can proceed anonymously, they must move the Court for permission to do so. This procedure is addressed in Department of Fair Employment and Housing v. Superior Court of Santa Clara County (2022) 82 Cal.App.5th 105 (hereinafter DFEH). There the Court observed the following:

Procedurally, because a hearing is required, a party who wants to proceed anonymously will file the initial complaint or petition conditionally under a pseudonym and then move for an order granting permission to proceed that way. If the request is granted, the initial pleading can remain. If pseudonym use is denied, the pleading must be amended to state the party's true name.

(DFEH supra, 82 Cal.App.5th at fn.1.)

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Here, no motion was made to proceed anonymously, and no hearing was ever conducted on Plaintiff's right to do so. This procedural posture is important because it places the burden on the party seeking to proceed anonymously to demonstrate an overriding interest. Plaintiff's failure to move for permission to proceed anonymously has essentially improperly shifted this burden to First Amendment and Defendants. Plaintiffs have never demonstrated to the Court that they can overcome the presumption of openness provided by CRC Rule 2.550(c).

Further, the procedural posture of this case makes proceeding with an unsealing order an uncertain prospect. As explained above, the Court has never ruled any information or documents in this matter to be sealed. CRC Rule 2.551(h)(5) requires an unsealing order to state which parts of the record are unsealed, a requirement that cannot be met if the record is not sealed to begin with. In short, the Court cannot unseal what has not been previously sealed.

These procedural concerns are compounded by the fact that both Plaintiffs and Defendants have been named under pseudonyms. Ordinarily, Plaintiff is required to demonstrate to the Court not only why the record should be private, but also the extent to which it should remain private. (See *Mary R.* supra 149 Cal.App.3d 308, 317.) Ruling on First Amendment's motion would result in a determination as to whether Plaintiffs could proceed anonymously without ever addressing Defendants' anonymity. It makes little sense to rule on one without consideration of the other. Had Plaintiff complied with the appropriate procedure, they would have been required to demonstrate the need for total anonymity of all parties.

Additionally, the relevant California authority relied upon by both parties also becomes substantially more difficult to apply when considering this procedural distinction. DFEH is undoubtedly the most relevant case in the determination of Plaintiffs' ability to proceed anonymously, as evidenced by the briefing of all parties to this motion. The Appellate Court decision in DFEH relied upon the factual showings of necessity by the party seeking to remain anonymous. (See DFEH supra, at 112 ["A party seeking anonymity has the burden to show that geographically distant family members are at risk. The trial court's task is to consider the evidence produced on that point and assign it the appropriate weight.].) While Plaintiffs present argument as to necessity in their opposition, this does not equate to the demonstration of fact that would occur at a hearing required under CRC Rule 2.551(b). Further, CRC Rule 2.551(b) requires that a party seeking to proceed anonymously to submit both a memorandum and a declaration containing facts sufficient to justify the sealing. Here, Plaintiffs have presented no declaration to substantiate their claims of necessity. This leaves the Court without any facts to consider in considering the necessity of Plaintiffs' anonymity.

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Given the foregoing, the motion to unseal the record is DENIED without prejudice. The Court is not opining whether Plaintiffs are allowed to proceed anonymously, as that is not currently before the Court. Should Plaintiffs wish to proceed anonymously they must move for permission to do so in accordance with CRC Rule 2.551(b). Plaintiffs are to file such a motion within the next 60 days. Should Plaintiffs neglect to do so, the Court will consider an order requiring them to refile the Complaint with their true names.

The Court sets an OSC re: Proceeding Anonymously for November 15, 2024 at 10:30 a.m.

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**RULING:**

In the event the parties submit on this tentative ruling, or a party requests a signed order or the court in its discretion elects to sign a formal order, the following form will be either electronically signed or signed in hard copy and entered into the court's records.

**ORDER**

First Amendment Coalition's Motion to Unseal the Record came on regularly for hearing on September 13, 2024, with appearances/submissions as noted in the minute order for said hearing, and the court, being fully advised in the premises, did then and there rule as follows:

THE MOTION TO UNSEAL THE RECORD IS DENIED WITHOUT PREJUDICE.

THE COURT SETS AN OSC RE: PROCEEDING ANONYMOUSLY FOR NOVEMBER 15, 2024 AT 10:30 A.M.

UNLESS ALL PARTIES WAIVE NOTICE, PLAINTIFFS TO PROVIDE NOTICE.

Order to Show Cause Re: Proceeding Anonymously is scheduled for 11/15/2024 at 10:30 AM in Department A at Burbank Courthouse.