

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KATLYN DOE,

Plaintiff,

19-cv-7771 (PKC)

-against-

ORDER

DARREN K. INDYKE, et al.,

Defendant.
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CASTEL, U.S.D.J.

Plaintiff seeks leave to proceed in this action without disclosing her identity using instead a pseudonym. She alleges that Jeffrey Epstein, with the assistance of associates and entities, engaged in “manipulate[ion],” “control,” “sexual exploitation,” “sexual assault[],” “sexual abuse,” and “forced. . . intercourse” of or with plaintiff; she was seventeen when the course of conduct began. (Complaint ¶¶ 58-68.) At this juncture, no defendant has been served.

Rule 10(a), Fed. R. Civ. P., provides that “[t]he title of [a] complaint must name all the parties.” The Second Circuit has recognized that the use of a pseudonym is, however, appropriate in limited circumstances where the reasons for anonymity outweigh the public’s right of access to judicial proceedings and any prejudice to a defendant. Sealed Plaintiff v. Sealed Defendant, 537 F.3d 185, 189 (2d Cir. 2008). The Circuit’s opinion in Sealed Plaintiff lays out ten non-exhaustive factors to be considered in determining whether to allow a case to proceed on an anonymous basis. Id. at 190. The Court analyzes the Complaint in light of these factors.

- (1) whether the litigation involves matters that are highly sensitive and of a personal nature.

The Complaint alleges an on-going pattern of sexual assault and abuse beginning when plaintiff was seventeen years-old and asserts that she has and is continuing to suffer psychological injury as a result. (Complaint ¶¶ 52-65.) These are highly sensitive allegations of a personal nature.

- (2) whether identification of the plaintiff poses a risk of physical or mental retaliation to the plaintiff or to a third party.

No risk of retaliation is alleged. Jeffrey Epstein is dead and there is no credible evidence of a risk of retaliation from others. There is an allegation of threats of retaliation in the past if she did not comply with demands for sex acts that she would suffer financial, psychological, and reputational harm (*Id.* ¶ 84) but no facts are alleged that those threats are likely to continue after the death of Epstein.

- (3) whether identification of plaintiff poses the risk of other harms, their likely severity and whether they are of the type that the litigation seeks to redress.

The nature of the allegations make it logical to conclude at this early stage that disclosure of plaintiff's identity would cause further psychological harm to plaintiff which is the precise harm the litigation seeks, in part, to redress.

- (4) whether there are other factors that make the plaintiff particularly vulnerable to harm of disclosure, for example, because of her age.

By the Court's calculation, the plaintiff is 29 or 30. She is described in the complaint as having physical conditions that make her particularly vulnerable. (Id. ¶¶ 54-55.) She alleges that she has incurred and will continue to incur "medical and psychological expenses" as a result of the conduct alleged. (Id. ¶ 132.)

- (5) whether the action challenges the actions of government or government actors, or merely private parties.

The actions alleged are not the actions of a government actor or instrumentality but rather those of private parties.

- (6) the nature of any prejudice to a defendant from allowing the plaintiff to proceed anonymously and whether any prejudice can be mitigated by the court.

The Complaint alleges that the representatives of the estate of Epstein have liability for his actions. It also alleges that various non-natural persons are liable for acts and omissions causing plaintiff harm. In such circumstances it is critical that the accused defendants know the identity of the plaintiff in order to investigate and defend against the claim. The Court can mitigate the prejudice to defendants by requiring the disclosure of the actual name of the plaintiff in a document to be served on defendants and also filed under seal with the Court. Plaintiff does not object to disclosure "for discovery purposes on the condition that Defendants do not disclose Plaintiff's name to the general public." (P. Mem. 6; Doc 3-1.)

- (7) whether the plaintiff's identity has thus far been kept confidential.

Insofar as the Court is aware, the identity of the plaintiff is not widely known.

- (8) whether there is a legitimate public interest or benefit in requiring the plaintiff to disclose her identity.

There is public interest in the litigation because of the notoriety of Epstein and those with whom he associated, but disclosure of the identity of the plaintiff is not likely to be of a legitimate importance or benefit to the public.

- (9) Whether the issues in the action are predominately or purely legal nature suggesting that the public interest in the plaintiff's identity may be weak.

The issues in the case are not purely or predominately of a legal nature. This case turns principally on its facts.

- (10) whether there are any alternative mechanisms for protecting the confidentiality of the plaintiff.

It is the disclosure of her identity that would exacerbate any preexisting harm to plaintiff and hence there is not alternative mechanism for protecting her confidentiality.

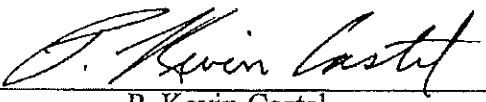
CONCLUSION

Factors 1 and 3 tilt strongly in favor of permitting plaintiff to proceed anonymously and are supported by factors 4, 6, 7, 8 and 10. Factors 2, 5, 9 are either neutral or

weakly support denying the motion. The Court concludes that, at this juncture, the public right to know is substantially outweighed by the plaintiff's legitimate need for anonymity and that prejudice to a defendant can be mitigated by orders of the Court. The Court reserves the right to modify this Order as the case progresses.

Plaintiff's motion (Doc 3) is GRANTED. Within seven days of the appearance of a defendant, plaintiff shall disclose her identity to the appearing defendant in a document to be submitted to the Court for sealing. No defendant may disclose the identity of plaintiff to any person other than counsel without further order of this Court.

SO ORDERED.


P. Kevin Castel
United States District Judge

Dated: New York, New York
September 11, 2019