

STATE OF MINNESOTA
COUNTY OF KANDIYOHI

DISTRICT COURT
EIGHTH JUDICIAL DISTRICT

Case Type: Personal Injury

John Doe 123 and John Doe 124,
Plaintiffs,

v.

Peter Clare Hoagland and Pete's
Communication Inc.

Defendants.

Court File No. 34-CV-15-762

**MEMORANDUM IN SUPPORT
OF PLAINTIFFS' MOTION TO
PROCEED USING A
PSEUDONYM**

INTRODUCTION

Plaintiffs request that the Court allow Plaintiffs to use the pseudonym names John Doe 123 and John Doe 124 in this case because this case involves damages relating to childhood sexual abuse by Defendant Hoagland. It has been the practice of Minnesota Courts for decades to allow plaintiffs who were sexually abused as children to pursue civil claims related to that abuse using a pseudonym. Consequently, Plaintiffs request that this Court allow them to pursue the current matter as John Doe 123 and John Doe 124

BACKGROUND FACTS

On December 23, 2015, Plaintiffs filed the Complaint in the current matter. (Complaint.) The Complaint contains claims for damages against the Defendant Hoagland for engaging in harmful sexual contact upon the minor Plaintiffs and claims for damages against Pete's Communications Inc. for negligence. *Id.*

On December 23, 2015, Plaintiffs filed with this Court, a Motion for an Order for Prejudgment Attachment and a memorandum in support. As support for the Prejudgment Attachment Motion, Plaintiffs sought to file the First Affidavit of John Doe 123 and the First Affidavit of John Doe 124. In order to file those affidavits, the Court must issue an order allowing Plaintiffs to proceed using these pseudonyms and an order allowing Plaintiffs to file the affidavits under seal.

Here, both Plaintiffs were sexually abused when they were children. Affidavit of John Doe 123 in Support of Motion to Use Pseudonym, ¶ 2; Affidavit of John Doe 124 in Support of Motion to Use Pseudonym, ¶ 2. Both Plaintiffs made reports to law enforcement and participated in the criminal prosecution of Defendant Peter Hoagland. JD 123 Aff., ¶ 3; JD 124., ¶ 3. Throughout the criminal prosecution, the identities of the Plaintiffs remained confidential. JD 123 Aff., ¶ 3; JD 124., ¶ 3.

Both Plaintiffs are concerned about the impact on themselves as well as the impact on close family members, if their identities are made public. JD 123 Aff., ¶¶ 4 - 6 ; JD 124., ¶¶ 4-6 . These concerns are reasonable and common for survivors of sexual abuse. Affidavit of David Clohessy.

Accordingly, Plaintiffs move this Court for permission to proceed using the pseudonyms John Doe 123 and John Doe 124.

LAW AND ARGUMENT

In Minnesota criminal cases, the identity of a victim of child abuse, neglect, or criminal sexual conduct is protected from public disclosure. Minn. Stat. § 13.82, Subd. 8, 9 and 17. Similarly, protecting the identity of a victim from public disclosure by allowing the victim to use a pseudonym in civil sexual abuse cases has been an accepted practice in Minnesota state courts

for decades. See *W.J.L. v. Bugge*, 573 N.W.2d 677 (Minn. 1998), *D.M.S. v. Barber*, 645 N.W.2d 383 (Minn. 2002), *Jane Doe 43C v. Diocese of New Ulm*, 787 N.W.2d 680 (Minn. Ct. App. 2010), *John Doe 1-22 v. Roman Catholic Bishop of Fall River*, 509 N.W.2d 598 (Minn. Ct. App. 1993), *John Doe 76C v. Archdiocese of St. Paul and Minneapolis*, 801 N.W.2d 203 (Minn. Ct. App. 2011), *Doe v. F.P.*, 667 N.W.2d 493 (Minn. Ct. App. 2003); see also Noaker, P., Using Pseudonyms in Sexual Abuse Cases, *Bench and Bar of Minnesota*, February 2012, p. 16.

Moreover, in federal court, there is an exception to the First Amendment public proceedings jurisprudence for sexual abuse cases. For example, in *Luckett v. Beaudet*, 21 F.Supp.2d 1029 (D.Minn. 1998), Judge James Rosenbaum acknowledged:

A trial is a public event. What transpires in the court room is public property. . .

There is a strong presumption against allowing parties to use a pseudonym. The reasons are obvious and compelling. There is a First Amendment interest in public proceedings, and identifying the parties to an action is an important part of making it truly public. When a party invokes the judicial powers of the United States, she invites public scrutiny of the dispute and the proceeding. The people have the right to know who is using their courts.

There are a small number of court-created exceptions in which parties are allowed anonymity. Case law identifies three factors which, if present, might support anonymity: (1) plaintiffs seeking anonymity were suing to challenge governmental activity; (2) **prosecution of the suit compelled plaintiffs to disclose information ‘of the utmost intimacy’**; and (3) plaintiffs were compelled to admit their intention to engage in illegal conduct, thereby risking criminal prosecution.

Luckett, 21 F.Supp.2d at 1029. (Emphasis added and internal citations omitted.) See also *Milavetz, Gallop & Milavetz P.A. v. United States*, 355 B.R. 758, 763 (D.Minn. 2006).

Other federal circuits have taken very strong positions in favor of allowing child sexual abuse victims to protect their identity from public disclosure. In *Plaintiff B v.*

Francis, 631 F.3d 1310, 1319 (11th Cir. 2011), the Eleventh Circuit Court of Appeals ruled that the District Court abused its discretion when refusing to allow a minor to proceed using a pseudonym in a civil case involving child pornography. In so holding, the court stated “[t]he district court failed to give due consideration to the concerns of the Plaintiffs raised about being forced to maintain the suits in their own names. Justice should not carry such a high price.” *Id.* at 1319.

Similarly, in *Doe v. Blue Cross & Blue Shield United of Wisconsin*, 112 F.3d 869, 872 (7th Cir. 1997) the Seventh Circuit Court of Appeals concluded that exceptional circumstances warranted allowing the use of fictitious names include protecting the privacy of children, rape victims, and other particularly vulnerable parties or witnesses. *See also Doe v. City of Chicago*, 360 F.3d 667, 669-70 (7th Cir. 2004) (Acknowledging use of fictitious pseudonym is appropriate where plaintiff is a minor, a rape or torture victim, or was subject to a sexual assault.); *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 190-91 (2nd Cir. 2008); *Doe v. Evans*, 202 F.R.D. 173, 175-76 (E.D. Pa. 2001); *Doe v. Kolko*, 242 F.R.D. 193, 198 (E.D.N.Y. 2006); *but see Doe v. Shakur*, 164 F.R.D. 359, 361 – 62 (S.D.N.Y. 1996) (Adult plaintiff who alleged that she was sexually assaulted by famous musician as an adult was not allowed to pursue claim anonymously.)

Clearly, Courts are trying to make it easier for victims of child sexual abuse to report that abuse to law enforcement and take civil action in order to get the help that they need to recover from injuries caused by child sexual abuse. One of the most significant steps in encouraging reports is allowing a survivor to use a pseudonym such as John Doe or Jane Doe when pursuing a civil sexual abuse claim. See Affidavit of David Clohessy.

Here, both Plaintiffs were sexually abused when they were children. JD 123 Aff., ¶ 2 ; JD 124 Aff., ¶ 2. Both Plaintiffs made reports to law enforcement and Defendant Hoagland was convicted of numerous counts of Criminal Sexual Conduct involving Plaintiffs and other children. (JD 123 Aff., ¶ 3 ; JD 124 Aff., ¶ 3.) Throughout the criminal proceedings, the identity of both Plaintiffs has remained confidential. (JD 123 Aff., ¶ 3; JD 124 Aff., ¶ 3.) Plaintiffs both express concerns about both themselves as well as a spouse, girlfriend, children and their mother, if their identities are made public. (JD 123 Aff., ¶¶ 4-6 ; JD 124 Aff., ¶ 4-6 .) These are common and reasonable concerns for sexual abuse survivors. Clohessy Affidavit.

The litigation of this lawsuit will involve intimate details about the sexual acts perpetrated by Defendant Hoagland upon the Plaintiffs and detailed expert testimony about the resulting psychological injuries. Under these circumstances, it is appropriate to allow the Plaintiffs to proceed using the pseudonyms John Doe 123 and John Doe 124. Accordingly, Plaintiffs request this Court to allow them to proceed using those pseudonyms.

Conclusion

In conclusion, given the very personal and sensitive nature of the wrongs in this matter and the fact that it would be mentally harmful to the Plaintiffs to be required to publicly identify their names, Plaintiffs request this Court to allow them to proceed in this case using the pseudonyms John Doe 123 and John Doe 124.

Date: February 19, 2016

NOAKER LAW FIRM LLC

A handwritten signature in black ink that reads "Patrick Noaker". The signature is written in a cursive style with a large initial "P".

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