

STATE OF INDIANA	)	IN THE ST. JOSEPH CIRCUIT COURT
	) SS:	
COUNTY OF ST. JOSEPH	)	CAUSE NO. 71C01-2110-CT-000398
JANE DOE 1, JANE DOE 2, and	)	
JANE DOE 3,	)	
	)	
Plaintiffs,	)	
-v-	)	
	)	
DIOCESE OF FORT WAYNE-	)	
SOUTH BEND, INC., SAINT JOSEPH	)	
HIGH SCHOOL, JOHN KENNEDY,	)	
DEBRA BROWN, and JUSTIN	)	
COCHRAN,	)	
	)	
Defendants.	)	

**DEFENDANTS DIOCESE OF FORT WAYNE-SOUTH BEND, INC., SAINT JOSEPH HIGH SCHOOL, JOHN KENNEDY AND DEBRA BROWN’S RESPONSE BRIEF IN OPPOSITION TO PLAINTIFFS’ MOTION TO PROCEED ANONYMOUSLY AS JANE DOES**

Come now Defendants Diocese of Fort Wayne-South Bend, Inc. (“Diocese”), Saint Joseph High School (“School”), John Kennedy and Debra Brown (collectively “Diocese Defendants”), by counsel, and submit this Response Brief in Opposition to the Plaintiff’s Motion to Proceed Anonymously as Jane Does. For the reasons stated herein, the Diocese Defendants respectfully submit that the Plaintiffs have failed to show adequate cause to qualify for the extraordinary outcome of being allowed to proceed in this litigation anonymously and, therefore, the Plaintiff’s Motion to Proceed Anonymously as Jane Does (“Plaintiffs’ Motion”) should be denied as a matter of law.

1. The Plaintiffs’ Theories of Recovery

The Plaintiffs’ theories of recovery against the Diocese Defendants sound in tort: Count I – Negligence; Count II – Negligent and/or Intentional Infliction of Emotional distress; Count III –

Defamation; Count IV – Title 1; (premised on the same alleged misconduct applicable to other Counts) and, Count V – Negligence *Per Se*. (Plaintiffs’ Complaint for Damages and Jury Trial Demand (“Complaint”) ¶¶ 132-166). The Complaint alleges damages for which the Plaintiffs seek recovery including but not limited to “severe physical, emotional, and psychological pain and suffering.” (*Id.* ¶ 30) The Complaint does not allege any constitutional claim, which is understandable since the Diocese Defendants are not alleged to be, and in fact are not, government entities or agents.

2. The Plaintiffs

The Complaint alleges that each of the Jane Does graduated from the School in 2018 (Jane Doe 3) or 2019 (Jane Does 1 and 2). (Complaint ¶¶ 8-10). The Plaintiffs’ Motion indicates that the Jane Does are now college students. (Plaintiffs’ Motion ¶ 4) None of the Plaintiffs allege in the Complaint to have been the victim of child sexual abuse. Jane Doe 3 alleges that she received a sexual SnapChat message and a naked picture of Defendant Justin Cochran (“Cochran”) via SnapChat from Cochran during her senior year at the School, so she blocked Cochran on SnapChat (Complaint ¶¶ 37-39). The Complaint contains no allegations of any further effort on Cochran’s part to contact Jane Doe 3. The Complaint contains no allegation that Jane Doe 3 reported Cochran’s alleged SnapChat communication with Jane Doe 3 to any of the Diocese Defendants.

The Complaint alleges that after Jane Does 1 and 2 graduated from the School, they felt it “was safe to report the disturbing information related to Cochran” to the Indiana Department of Child Services. (*Id.* ¶ 120) Despite the purported filing of that report, the Complaint is devoid of any allegation that any of the Diocese Defendants engaged in any harassment of or retaliation against any of the Jane Does as a result of the filing.

3. The Legal Standard for Proceeding Anonymously

The Diocese Defendants do not dispute the Plaintiffs' assertion that Indiana Courts have looked to federal case law when reviewing a party's request to proceed anonymously. See *Doe v. Town of Plainfield*, 860 N.E. 2d 124, 1206-07 (Ind. App. 2007) However, the legal standard for a party to proceed anonymously in a lawsuit is not so easily met as Plaintiffs' Motion makes it appear.

Indiana Trial Rules 10 and 17 were patterned after Federal Rules of Civil Procedure 10 and 17. (Id. at 1207-08) In pertinent part, Indiana Trial Rule ("TR") 10 requires that a complaint contain "the names of all parties", and TR 17 requires that "[e]very action shall be prosecuted in the name of the real party in interest". (Id.) As a result, "the use of fictitious names is disfavored, and the judge has an independent duty to determine whether exceptional circumstances justify such a departure from the normal method of proceeding in federal courts" even when the opposing party does not file an objection to a complaint filed anonymously. *Doe v. City of Chicago*, 360 F. 3d 667, 669-70 (7<sup>th</sup> Cir. 2004) citing *Doe v. Blue Cross and Blue Shield United of Wisconsin*, 112 F. 3d 869, 872 (7<sup>th</sup> Cir. 1997) "A trial court's ruling on a request to proceed anonymously is reviewed for an abuse of discretion". *Town of Plainfield*, 860 N.E. 2d at 1207 (citations omitted)

There is a list of factors, while not intended to be exclusive, "which should be considered to determine whether a plaintiffs' interest in privacy is so significant as to outweigh the strong presumption favoring public identification of litigants." (Id. at 1208 (internal citations omitted))

As stated by the appellate court in *Town of Plainfield*, 860 N.E. 2d at 1208:

These factors include: (1) whether the plaintiff is challenging governmental activity; (2) whether the plaintiff would be required to disclose information of the utmost intimacy; (3) whether the plaintiff would be compelled to admit his or her intention to engage in illegal conduct, thereby risking criminal prosecution; (4) whether the plaintiff would risk suffering injury if identified; (5) whether the

party defending against a suit brought under an anonym would be prejudiced; (6) whether the interests of children are at stake; (7) whether there are less drastic means of protecting legitimate interests of either the party seeking anonymity or the opposing party; (8) the extent to which the identity of the litigant has been kept confidential; and (9) the public interest in knowing the litigant's identities. See *Indiana Black Expo. Inc.*, 923 F. Supp. 137 at 140 (relying on *Doe v. Shakur*, 164 F.R.D. 359, 361 (S.D.N.Y. 1996)); *Doe v. Stegall*, 653 F.2d 180, 186 (5<sup>th</sup> Cir. 1981), reh'g denied; *James v. Jacobson*, 6 F.3d 233, 241 (4<sup>th</sup> Cir. 1993); *Doe v. Provident Life & Accident Ins. Co.*, 176 F.R.D. 464, 467-468 (E.D. PA. 1997).

Diocese Defendants offers the following assessment of each of those factors as applied to the Complaint and Plaintiffs' Motion.

**Factor 1 – Challenging governmental activity**

Factor 1 does not apply to this case since the Complaint contains no challenge to governmental activity.

**Factor 2 – Disclosure of intimate information**

Factor 2 also does not appear to apply since the Plaintiffs' allegations in the Complaint do not include any reference to the existence of undisclosed information of an intimate matter. To the contrary, the Complaint does include very specific allegations regarding purported acts of misconduct and their claimed harms.

**Factor 3 – Compelled admission of criminal conduct**

Factor 3 does not apply in this case.

**Factor 4 – Risk of injury if identified**

Factor 4 does not weigh in the Plaintiffs' favor since the Plaintiffs' Motion alleges no specific risk of injury to which the Plaintiffs would be exposed if identified. Plaintiffs claim only that disclosure of their identities "involves the risk of further emotional injury and embarrassment" and "may subject them to harm." (Plaintiffs' Motion ¶ 4) Such general averments do not pass the

test. In *Doe v. Cook Cty.*, 2021 U.S. Dist. LEXIS 104805, 2021 WL 2258313, \*13 (N. Dist. Ill.), a plaintiff who allegedly was the victim of sexual assault by a police officer failed to identify specific harms to support her request to remain anonymous, leaving the appellate court to find:

Doe's two-page motion does not discuss, much less demonstrate, the scope of harm Doe might suffer on account of harassment, ridicule, embarrassment, or some other adverse outcome should her identity be made public. The Court recognizes that victims of sexual assault often wish to keep their identities secret out of fear of embarrassment or social stigmatization. Those concerns alone, however, are insufficient to permit a plaintiff to proceed under a pseudonym. *Doe v. Princeton Univ.*, 2019 U.S. Dist. LEXIS 188076, 2019 WL 5587327, at \*4 (D.N.J. Oct 30, 2019).

#### **Factor 5 – Prejudice to Diocese Defendants**

Factor 5 is clearly at issue in this case and weighs heavily in favor of the Diocese Defendants. Simply trying to defend against the numerous, far-ranging allegations made against the Diocese Defendants, and Cochran, without the ability to identify the Jane Does to potential witnesses, assuming the Jane Does confirm their identities to the Diocese Defendants, would be near impossible and very burdensome. That prejudice to the Diocese Defendants is obvious.

Further, the nature of the allegations and the damages alleged to have been suffered by the Plaintiffs, such as mental, psychological and emotional harm, would necessarily raise both credibility issues and the needs to explore alleged damages. Those issues weighed heavily against allowing anonymity in *Doe v. Indiana Black Expo.*, 923 F. Supp 137 (S. Dist. Ind. 1996), as follows:

Most important for this court's analysis of plaintiff's request to proceed under a fictitious name is the nature of the specific claims he is making against the defendants. His claims directly accuse the defendants of several forms of serious and deliberate wrongdoing. He attacks the defendants' integrity and reputations. Basic fairness requires that were a plaintiff makes such accusations publicly, he should stand behind those accusations, and the defendants should be able to defend themselves publicly. [internal citations omitted] The

plaintiff has raised claims in which the parties' testimony is virtually certain to be at odds on material matters, so that their credibility will be directly at issue. The defendants in such a case have a powerful interest in being able to respond publicly to defend their reputations, not only in court but also in other situations where the claims in the lawsuit may be of interest to those with whom the defendants have business or other dealings. Part of that defense will ordinarily include direct challenges to the plaintiff's credibility, which may well be affected by the facts plaintiff prefers to keep secret here: his history of mental health problems and his history of substance abuse. Those may be sensitive subjects, but they are at the heart of plaintiff's credibility in making the serious accusations he has made here. He cannot use his privacy interests as a shelter from which he can safely hurl these accusations without subjecting himself to public scrutiny, even if that public scrutiny includes scorn and criticism. *Indiana Black Expo.*, 923 F. Supp. at 141-42).

Finally, the Plaintiffs' claims against the Diocese Defendants are private claims which the Plaintiffs chose to bring by way of the Complaint under the cloak of anonymity. Within their forty (40) page Complaint, the Plaintiffs make numerous allegations of serious wrongdoing and failings on the part of the Diocese Defendants which attack the reputations and integrity of the Diocese Defendants. The Complaint even identifies by name others not named as defendants who drew the Plaintiffs' ire. The Complaint has drawn significant media attention in the South Bend area, and beyond, to the detriment of the Diocese Defendants. See [Former South Bend St. Joseph volleyball players accuse school of ignoring sexual misconduct - BishopAccountability.org \(bishop-accountability.org\)](#); [Former St. Joseph High volleyball players sue coach, school officials \(southbendtribune.com\)](#); [New lawsuit filed against South Bend Catholic high school, SNAP stands with and applauds the victims - Survivors Network of those Abused by Priests \(snapnetwork.org\)](#); [Former volleyball players allege former coach committed sexual misconduct - BishopAccountability.org \(bishop-accountability.org\)](#); [Former South Bend St. Joseph HS volleyball coach accused of sexual misconduct \(msn.com\)](#); [St. Joe High School Accused of Covering Up Sex Scandal Involving Volleyball Coach](#)

In a similar situation, procedurally, in which a plaintiff initiated a private claim for employment discrimination and related claims anonymously while naming his former employer and many of its individual agents in the complaint, harm to the named defendant was considered obvious:

As courts have recognized, the mere filing of a civil lawsuit can have significant effects on a defendant. E.g., *Southern Methodist Univ. Ass'n*, 599 F. 2d at 713, accord, *Frank*, 951 F.2d at 323-24, *Shakur*, 164 F.R.D. at 361 n. 1. The public charges made in a civil lawsuit can cast a shadow over a defendant's reputation until the case is resolved. The effects can be felt with lenders or employers, both actual and prospective. With defendants like the Black Expo, the effects could extend to prospective donors and sponsors, and to other persons or institutions invited to associate themselves publicly with the organization. A civil lawsuit can also lead to adverse publicity and can require defendants to disclose publicly certain information that they might prefer to keep private. But only rarely can a defendant in a lawsuit remain anonymous, and certainly not where the plaintiff has chosen to file publicly a complaint naming the defendants but using a false name for himself. *Indiana Black Expo.*, 923 F. Supp at 141.

**Factor 6 – Interests of Children at Stake**

Factor 6 is not at issue since none of the Jane Does claim to be a minor.

**Factor 7 – Less drastic means of protecting legitimate interests**

Factor 7 is not at issue relative to the Diocese Defendants since the cat was out of the bag in terms of protecting any legitimate interests they may have had when the Complaint, with their identities disclosed, was filed and the media picked up the story. For the reasons stated herein, the Diocese Defendants contest that the Plaintiffs even have a legitimate interest for being allowed to proceed anonymously in this matter, so there is nothing legitimate to protect.

**Factor 8 – Extent to which identities have been kept confidential**

Factor 8 is subject to question since the Plaintiffs have not applied their names to the Complaint, or confirmed their identities to the Diocese Defendants. However, the Plaintiffs have

provided information about their graduation years (Complaint ¶¶8-10), their years playing on the School's volleyball teams (*Id.* ¶¶17-19), their volleyball team accomplishments/awards (*Id.* ¶¶ 21-23) and the nomination of Jane Doe 1 and Jane Doe 2 to a leadership conference (*Id.* ¶51). That information could be sufficient for one to ascertain their identities, especially if you are familiar with the School's volleyball team/program. For that reason, it does not appear that the identities of the Plaintiffs have been truly shielded.

### **Factor 9 – The public interest**

Factor 9 goes to the very heart of the purpose of the state and federal trial rules that establish the standard for disclosure of party identities, which weighs heavily in the Diocese Defendants' favor. "The ultimate test for permitting a plaintiff to proceed anonymously is whether the plaintiff has a substantial privacy right which outweighs the customary and constitutionally-embedded presumption of openness in judicial proceedings." *Doe v. Cook Cty*, 2021 U.S. Dist. LEXIS 104805, \*6, citing *Doe v. Frand*, 951 F.2d 320, 323 (11<sup>th</sup> Cir. 1992) (internal quotation omitted); *see Mitze v. Saul*, 968 F.3d 689, 692 (7<sup>th</sup> Cir. 2020); *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 189 (2d Cir. 2008); *Does 1 Thru XXIII v. Advanced Textile Corp.*, 214 F. 3d 1058, 1068 (9<sup>th</sup> Cir. 2000); *M.M. v. Zavaras*, 139 F. 3d 798, 803 (10<sup>th</sup> Cir. 1998); *Doe v. Stegall*, 653 F.2d 180, 186 (5<sup>th</sup> Cir. 1981). Judicial proceedings are supposed to be open to the public, available to be monitored, and concealing the public's access to information, including the names of the parties, impedes that public access. *City of Chicago*, 360 F.3d, at 669.

The Diocese Defendant's respectfully submit that applying the above factors to the Plaintiffs' Motion shows that the Plaintiffs' request to proceed anonymously should be denied. A review of the application of each of those factors to the present circumstance shows why that would be the appropriate outcome. The Plaintiffs' mere references to potential harm(s) that they claim

they might incur if their identities were disclosed do not constitute sufficient cause for them to be allowed to proceed in this matter anonymously.

**Conclusion**

For all the foregoing reasons, Diocese Defendants respectfully request that the Court deny Plaintiffs' Motion to Proceed Anonymously as Jane Does, require Plaintiffs to file an amended complaint which includes their identities within a designated number of days or face dismissal of this action with prejudice, and grant the Diocese Defendants all other relief available to them under the circumstances.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 14<sup>th</sup> day of December, 2021, a true and correct copy of the foregoing has been served upon all counsel of record via the Court's e-filing system.

/s/ Lyle Hardman  
Lyle R. Hardman