

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
CIVIL DIVISION

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John Doe 18,

Plaintiff,

Case No. 10-CV-0992  
Judge: Hon. C.N. Clevert, Jr.

vs.

Joseph Clazmer, and  
Downloaders 1 to 100,

**REPLY IN SUPPORT OF MOTION  
TO ALLOW PLAINTIFF TO PROCEED USING  
A PSEUDONYM**

Defendants.

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**INTRODUCTION**

This case involves allegations that Defendant illegally produced and distributed a sexually explicit photograph of the Plaintiff when Plaintiff was a child. Plaintiff requests that he be allowed to proceed in this matter using a pseudonym to prevent the public disclosure that he was a victim of child pornography. Defendant opposes Plaintiff's request claiming fairness and prejudice; however, Defendant does not explain why he cannot receive a fair trial or why he would be prejudiced. Seventh and Second Circuit precedent allow Plaintiff to protect his identity from public disclosure in the current matter. Therefore, Plaintiff's Motion to Allow Plaintiff to Proceed Using a Pseudonym should be granted.

**LAW AND ARGUMENT**

In his Response, Defendant provides no factual support for his claim that he will be prejudiced if Plaintiff were allowed to protect his identity. Instead, the Defendant simply claims that he wants to be able to defend himself against the allegations of this lawsuit and seek vindication in a transparent proceeding with the full knowledge of the public. Defendant, however, does not explain why he cannot achieve that end while still protecting the identity of

the victim of child pornography from public disclosure. How will Defendant be limited in defending himself? Defendant will know the identity of the Plaintiff. Defendant will still be able to answer the charges, conduct discovery and present his defense at the trial in this case. Defendant has not explained how allowing Plaintiff to protect his identity would negatively impact these areas.

Moreover, Defendant makes the statement that he will be prejudiced if Plaintiff were allowed to protect his identity from disclosure, but he does not explain how he will be prejudiced. Defendant does not explain how his investigation or discovery rights would be limited if Plaintiff is allowed to protect his identity. Defendant does not explain what defenses will be unavailable or limited by allowing Plaintiff to protect his identity. Defendant does not explain how he will be prejudiced at trial if Plaintiff is allowed to protect his identity.

In contrast, Plaintiff offers expert testimony by Dr. Susan Phipps-Yonas that Plaintiff will be injured further if he is required to reveal his identity. Affidavit of Susan Phipps-Yonas, Ph.D., L.P., ¶ 12. This is especially true in a case of child pornography where public disclosure of a very personal image of the Plaintiff engaged in sexually explicit conduct is a large part of the damage that has been perpetrated upon the Plaintiff. Phipps-Yonas Aff, ¶ 9-12. It appears that the only reason for the Defendant requesting that Plaintiff's identity be made public is to intimidate the Plaintiff, just like the Defendant intimidated the Plaintiff when the Plaintiff was a child. This is not a valid reason for not allowing the Plaintiff to proceed anonymously.

In addition, the Defendant does not provide the Court with sufficient legal support for his position either. Specifically, Defendant does not explain why the two Seventh Circuit Court of Appeals cases that allow a Plaintiff to proceed using a pseudonym in cases involving children and sex offenses should not be followed. See Doe v. Blue Cross & Blue Shield United of

Wisconsin, 112 F.3d 869, 872 (7<sup>th</sup> Cir. 1997 (Exceptional circumstances that warrant allowing the use of fictitious names include protecting the privacy of children, rape victims, and other particularly vulnerable parties or witnesses.); Doe v. City of Chicago, 360 F.3d 667, 669-70 (7<sup>th</sup> 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.) These cases clearly provide for the use of a pseudonym under the circumstances presented in this case involving child pornography.

Further, the Defendant does not apply the factors to be considered when balancing Plaintiff's interest in proceeding anonymously against the interests of defendants and the public found in Sealed Plaintiff v. Sealed Defendant, 537 F.3d 185, 190-91 (2<sup>nd</sup> Cir. 2008).

Specifically, the factors to be considered are:

- (1) whether the litigation involves matters that are highly sensitive and of a personal nature;
- (2) whether identification poses a risk of retaliatory physical or mental harm to the party seeking to proceed anonymously;
- (3) whether identification presents other harms and the likely severity of those harms;
- (4) whether the plaintiff is particularly vulnerable to the possible harms of disclosure;
- (5) whether the suit is challenging the actions of the government or that of private parties;
- (6) whether the defendant is prejudiced by allowing the plaintiff to press his claims anonymously, whether the nature of that prejudice (if any) differs at any particular stage of the litigation, and whether any prejudice can be mitigated by the district court;
- (7) whether the plaintiff's identity has thus far been kept confidential;
- (8) whether the public's interest in the litigation is furthered by requiring the plaintiff to disclose his identity;
- (9) whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigants' identities; and
- (10) whether there are any alternative mechanisms for protecting the confidentiality of the plaintiff.

Id.

When that analysis is performed, it clearly favors allowing the Plaintiff to protect his identity from public disclosure in this child pornography case. For example, this litigation involves a vulnerable plaintiff and matters that are highly sensitive and personal and it would pose a risk of mental harm if the Plaintiff was required to reveal his identity. *Id.* (Factors 1, 2, 3, 4); Affidavit of Susan Phipps-Yonas, Ph.D., L.P., ¶ 12. There is no prejudice to the Defendants if Plaintiff's name is not known to the public (Factor 6) and there is no compelling public interest that will be served by requiring the Plaintiff to disclose his identity (Factor 8). Plaintiff has kept his identity confidential in filing the current matter, in the Disclosure Statement (filed under seal), in the Wisconsin criminal prosecution and in the media. (Complaint; Plaintiff's Disclosure Statements; Patrick Noaker Aff., Ex. A, B, C, D.) Thus, the only evidence that is before this Court, universally supports allowing the Plaintiff to protect his identity from being publicly disclosed.

### CONCLUSION

Plaintiff has provided both factual and legal support for his request that he be allowed to proceed in this matter using a pseudonym to prevent the public disclosure that he was a victim of child pornography. Therefore, Plaintiff's Motion to Allow Plaintiff to Proceed Using a Pseudonym should be granted.

Respectfully Submitted,

Date: April 20, 2011.

s/Patrick W. Noaker  
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