

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

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JANE DOE,

Plaintiff,

Civ. Action No:

-against-

**UNION COLLEGE, THE BOARD OF TRUSTEES
OF UNION COLLEGE, MELISSA A. KELLEY,
Individually and as an agent for Union College,
TRISH WILLIAMS, individually and as an agent for
Union College, DARCY A. CZAJKA, individually
and as an agent for Union College**

Defendants.
-----X

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S *EX PARTE* MOTION TO PROCEED UNDER A
PSEUDONYM AND FOR A PROTECTIVE ORDER**

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**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF’S MOTION TO PROCEED UNDER A
PSEUDONYM AND FOR PROTECTIVE ORDER**

Plaintiff Jane Doe (“Plaintiff”), by her attorneys, Nesenoff & Miltenberg, LLP, hereby seeks authorization to file a Complaint in the above-captioned matter as a pseudonymous Plaintiff.

In light of the serious nature of the allegations contained in the Complaint, Plaintiff is justifiably concerned about the possibility of acts of reprisal that could further prevent Plaintiff from proceeding with her future endeavors, and inflict further harm, including the exact type from which Plaintiff seeks relief in this action.

Plaintiff’s identity, as described in the Complaint, should not be disclosed to the public due to the nature of the allegations in said Complaint. *See* Declaration of Andrew T. Miltenberg,

Esq. attached to Plaintiff's *Ex Parte* Motion to Proceed Under a Pseudonym and for a Protective Order.

Plaintiff is prepared to provide a statement of her true identity under seal, upon the Court's request.

STATEMENT OF FACTS

Plaintiff Arrives as a First Year Student at Union College

Plaintiff, a then-high achieving student at a private New York City high school, was offered admission to defendant Union College (hereinafter the "College" or "Defendant Union") for the Fall 2017 semester. Plaintiff accepted the College's offer of admission and, on or about August 31, 2017, moved into her dorm room as a freshman student.

Plaintiff immediately began to make herself at home at Defendant Union, making new friends with her fellow classmates and suitemate, and integrating herself in campus life as best as possible. Plaintiff was looking forward to her first college experience and was confident Defendant Union was the right place for her.

Plaintiff Agrees to Go to a Fraternity Party with Her New Friends

On or about September 3, 2017, her third day on the College's campus and before classes had even begun, Plaintiff returned in the afternoon to her dorm room from her pre-orientation leadership program. At such time, one of the other First Year students in Plaintiff's dorm, "Student A", and Plaintiff were invited to attend a fraternity party hosted by the mall-male fraternity Theta Delta Chi ("TD Chi") that evening. Unbeknownst to Plaintiff, TD Chi had a sordid reputation for hosting social events fostering sexually unsafe environment for female attendees, and had previously been cited for "aggressive" behavior towards fellow students. Plaintiff and Student A ultimately agreed to attend the party.

That evening, as Plaintiff dressed to attend the party, she was offered vodka by one of the other women in her dorm. Initially, Plaintiff hesitated accepting the drink because she had not had much prior experience with alcohol. Plaintiff ultimately decided to accept the drink and proceeded to drink one or two shots of straight vodka.

Thereafter, Plaintiff walked with her suitemate to the TD Chi house, which was located off-campus. This caused Plaintiff some concern because she had only recently arrived to the College and did not know her way around or back to campus on her own. Still, Plaintiff remained optimistic and looked forward to spending the night out with her new friends.

Upon arriving to the fraternity house, Plaintiff noticed that the party was very crowded and playing loud music. Plaintiff was shocked to learn that the *only* females allowed into the party were freshman girls. Plaintiff entered the party with her friends and, while there, continued to drink more alcohol.

Plaintiff Encounters, and is Stalked by, One of the College's Upperclassmen

After a brief time at the party, during which time Plaintiff consumed at least two full cups of beer, Plaintiff worked her way through the crowd towards the front door of the fraternity house to look for her friends. On her way, Plaintiff asked a man, "Assaulter Roe", where the bathroom was located so she could stop at the restroom before she left. Rather than simply provide directions to the bathroom, Assaulter Roe escorted Plaintiff to the bathroom and personally showed her where it was. Though she found this odd, Plaintiff politely thanked Assaulter Roe and entered the bathroom.

To Plaintiff's surprise, Assaulter Roe was waiting for her outside the bathroom when she exited. Initially, Plaintiff assumed Assaulter Roe had waiting in order to also use the facilities.

However, her assumptions were quickly proven wrong when Assaulter Roe began to follow Plaintiff through the fraternity house and make small talk with her.

Assaulter Roe Lures Plaintiff to His Bedroom Under False Pretenses

At some point in their conversation, Plaintiff asked Assaulter Roe if he smoked marijuana, to which Assaulter Roe replied affirmatively. Plaintiff stated she had also smoked marijuana in the past but it had been some time since she had last done so. Assaulter Roe then invited Plaintiff back to his apartment to smoke marijuana with him. Plaintiff felt very uneasy and immediately began looking for where her friends were. She sent texts to her friends to see where they were located in the fraternity house hoping to be able to rejoin them and get away from Assaulter Roe. Sadly, however, Plaintiff's friends responded that they had already left the party without her.

Realizing she was alone at the fraternity party, Plaintiff apprehensively agreed to go to Assaulter Roe's apartment to smoke; however, Plaintiff stated multiple times to Assaulter Roe that she had a boyfriend and that she did not want Assaulter Roe to get the wrong idea. Plaintiff unequivocally let Assaulter Roe know, several times, that she only wanted to smoke and do nothing else. Assaulter Roe, openly annoyed at how many times Plaintiff repeated that she had a boyfriend, told Plaintiff that "nothing was going to happen" and, after being told by Plaintiff that she did not feel sober, grabbed Plaintiff's hand and maneuvered them through the crowd to leave the party and go to his apartment.

Assaulter Roe Forcefully Rapes Plaintiff in His Apartment (the "Assault")

When Plaintiff and Assaulter Roe arrived at Assaulter Roe's apartment, they went to his room where Assaulter Roe retrieved the marijuana. They then proceeded out onto Assaulter

Roe's terrace. While on the terrace, Assaulter Roe packed the marijuana into the bowl of a pipe and offered it to Plaintiff; Plaintiff then smoked from the pipe.

Plaintiff immediately felt the effects of the marijuana - it hit her hard and very quickly, unlike anything she had ever known before. Plaintiff suspected that there was something very different about this marijuana because it made her feel ill, a side effect she had not previously experienced. After smoking on the terrace, Assaulter Roe led Plaintiff back to his bedroom, supposedly to just watch television.

Once in the room, Plaintiff, who was feeling extremely confused, dizzy and uncoordinated - upon information and belief due to the combined effects of the marijuana and alcohol she had consumed - laid down on Assaulter Roe's bed. She was sleepy and disassociated from what was going on around her.

Assaulter Roe then climbed onto the bed next to Plaintiff. Once on the bed, Assaulter Roe began to touch Plaintiff's breasts and put his hand down her pants. Plaintiff, who had already told Assaulter Roe multiple times at the party that she had a boyfriend and was not going to do anything except smoke with him, did not want Assaulter Roe to touch her and repeatedly told him "No" but Assaulter Roe would not stop. Plaintiff desperately wanted to push Assaulter Roe's hands away but she lacked the ability and coordination to do so due to the combined effects of the alcohol she had consumed and the marijuana she had smoked.

Plaintiff recalled that she "was in a dream state," almost as though she was having an out of body experience. Plaintiff became numb and felt as though she was "unconscious but conscious." After Plaintiff had told him "no", Assaulter Roe proceeded to take off his clothes and climb on top of Plaintiff. Helpless to stop what came next, Plaintiff laid there unable to move as Assaulter Roe proceeded to vaginally penetrate her with his penis.

Plaintiff was shocked and scared at what was happening to her, it was as though she was paralyzed - unable to move her limbs which felt heavy and limp - and helpless to stop Assaulter Roe from raping her. Plaintiff remained silent and stock still with her arms at her sides as Assaulter Roe continued to vaginally penetrate her and to have sexual intercourse with her without any indication, by words or actions, of Plaintiff's consent. In fact, quite the opposite, Plaintiff had repeatedly told Assaulter Roe, both prior to leaving the fraternity party and while Assaulter Roe had inappropriately touched her, that she had no intention or desire to engage in any sexual activity, of any nature, with him.

Plaintiff felt powerless to stop the Assault and could not respond to what was happening in any way. She was limp, void of feeling, confused, paranoid and scared; Plaintiff was alone and incapacitated in an apartment with a stranger as he forcibly raped her. Once finished with Plaintiff, Assaulter Roe told Plaintiff that she had to leave. When Plaintiff finally arrived back at her dormitory, she immediately took a shower and went to sleep.

Defendants Intentionally Ignore Plaintiff's First Report of Sexual Assault

The very next afternoon following the Assault, Plaintiff attended a Title IX First Year orientation session given by defendant Melissa Kelley ("Defendant Kelley"), the College's Title IX Coordinator. Following the orientation, Plaintiff met with Defendant Kelley one on one and reported to Defendant Kelley that she had been sexually assaulted the night prior and specifically identified Assaulter Roe as her rapist. Accordingly, Plaintiff placed Defendants on notice that she was a victim of sexual assault by one of Defendant Union's upperclassmen, and Defendants were aware of who exactly had perpetrated the rape against Plaintiff.

In response to Plaintiff's clear report of sexual assault, Defendant Kelley, who was and is a mandatory reporter and therefore obligated to report Plaintiff's allegations of rape to the proper

authorities and to investigate the merits of Plaintiff's report, did nothing more than advise Plaintiff to visit the College's wellness center. Defendant Kelley did nothing more to investigate Plaintiff's complaint of sexual assault, instead washing her hands of any responsibility to protect Plaintiff. As a result, Plaintiff lived in fear of her assaulter on campus for her first semester at the College, understanding that the very person at the College charged with protecting her in this situation, had absolutely no interest in doing so.

Plaintiff Files Another Report of Sexual Assault with the College

After months of debilitating anxiety and depression, Plaintiff decided that she could no longer continue her education at Defendant Union while living in fear of her rapist being on the same campus. Accordingly, on or about January 16, 2018, Plaintiff filed a formal Title IX complaint with the College against Assaulter Roe. At such time, Defendant Kelley, who had been aware of Plaintiff's rape for the prior four (4) months, spoke to Plaintiff about the process of filing a Title IX complaint and the potential avenues for relief available to Plaintiff. Thereafter, the College purported to commence an investigation into Plaintiff's Title IX complaint, issuing a No Contact Order on or about January 18, 2018 and collecting Plaintiff's written statement on or about January 29, 2018.

The College Performs and Perfunctory and Insufficient Investigation

Defendant Kelley assigned two investigators - Associate Director of Minerva Programs, Laura Munkes ("Investigator Munkes"), and Associate Director of Campus Safety, Thomas Constantine ("Investigator Constantine") - to investigate Plaintiff's Title IX complaint, who began by interviewing key witnesses. Curiously, although it was *her* complaint, Investigators Munkes and Constantine, upon information and belief, intentionally, chose not to interview Plaintiff first; Investigators Munkes and Constantine, without having interviewed the

complainant to learn the details of her complaint, determined to first interview the respondent, Assaulter Roe.

Indeed, on or about the morning of February 8, 2018, Investigators Munkes and Constantine met and interviewed Assaulter Roe, who appeared with his advisor. Investigators Munkes and Constantine did not meet with Plaintiff until the afternoon of February 8, 2018, after they had interviewed Assaulter Roe, and never circled back with Assaulter Roe to question him about the details of the Assault Plaintiff provided during her interview. Investigators Munkes and Constantine interviewed, among other individuals, two of Assaulter Roe's witnesses, his housemate and a friend who both identically recalled that on the night of September 3, 2017, more than five (5) months prior, they had seen Assaulter Roe walking with Plaintiff at "around 1:00 a.m.", corroborating Plaintiff's story of events on the night of the Assault. Investigators Munkes and Constantine also interviewed several witnesses provided by Plaintiff who gave information consistent with Plaintiff's story of events on the night of the Assault.

Investigators Munkes and Constantine Issue a Final Investigative Report

On or about February 23, 2018, Investigators Munkes and Constantine delivered their final investigative report (the "Report") to defendant Trish Williams ("Defendant Williams") for review. At the time, Defendant Williams was the College's Senior Associate Dean of Students and the Director of Student Conduct. In the Report, Investigators Munkes and Constantine intentionally misrepresented the nature and chronology of the investigation, upon information and belief, in an attempt to make it appear fairer towards Plaintiff.

Indeed, Investigators Munkes and Constantine, among other things, (i) presented the interviews in reverse order, suggesting that Plaintiff had been interviewed first and Assaulter Roe had responded to the complainant's allegations, (ii) disregarded contradictions and

inconsistencies in Assaulter Roe's statements, and (iii) improperly excluded relevant information and mischaracterized key testimony provided by Plaintiff regarding the Assault.

Defendant Williams, whose responsibility it was to review the Report for sufficiency and completeness, simply accepted the flawed and incomplete Report without hesitation. Defendant Williams also set up an opportunity for Plaintiff to review the Report however, Defendant Williams did not even get that right - Plaintiff was ultimately forced to review the Report without the ability to effectively and sufficiently consult her advisor. As a result, during the review, Plaintiff suffered a severe anxiety attack while reading the Report and had difficulty completing her review.

Defendants Force Plaintiff to Participate in a Procedurally Improper Evidentiary Conference

On or about April 24, 2018, Plaintiff attended a pre-decision conference (the "Complainant Conference") during which time she met with the Hearing Panel. Upon information and belief, the purpose of the pre-decision conferences was to review the evidence and allow the Hearing Panel to make an ultimate finding as to whether Assaulter Roe violated the College's 2017-2018 Sexual Misconduct Policy (the "Policy") when he sexually assaulted Plaintiff.

The Policy required that "[p]resent at the Pre-Decision Conference will be the Complainant and their advisor or the Respondent and their advisor as well as the Administrative Panel members, the Title IX Coordinator (in this case Defendant Kelley), and/or College counsel. College counsel may not be present during the Pre-Decision Conference, however, the Panel Chair reserves the right to consult at any time." Significantly, both College Counsel and Defendant Kelley were absent from the Complainant Conference. Indeed, the Hearing Panel

members consisted of only the Associate Dean of Students as a voting Chair, two faculty members, the Director of Residential Life, and a sophomore student.

The Complainant Conference began fifteen (15) minutes late because the student panelist was not timely in attendance. Moreover, when the student panelist finally arrived and joined the Complainant Conference, he had no hearing packet or documentation with him, and throughout the Complainant Conference displayed an apparent lack of interest in the day's proceedings.

Even more egregious, Defendants intentionally forced Plaintiff to proceed with the Complainant Conference without the necessary and mandatory investigative materials, in blatant violation of Plaintiff's rights under the College's Policy. When Plaintiff objected to not being given the requisite hearing packet, Defendants refused to provide Plaintiff with a copy of the materials, refused to adjourn the Complainant Conference to a date when the materials would be available to Plaintiff, and forced Plaintiff to proceed with the Complainant Conference at a significant disadvantage. Throughout their interrogation of Plaintiff, the panelists repeatedly referenced the Report and the evidence of the investigation, knowing that Plaintiff was without the ability to review the evidence they were referencing yet still expecting her to testify and respond to their multiple questions.

On or about April 25, 2018, the day following the Complainant Conference, Assaulter Roe met for a pre-decision conference before the same Hearing Panel (the "Respondent Conference"). At the Respondent Conference, Assaulter Roe was provided with the complete hearing packet of documents at the start of the conference. Assaulter Roe was even given an opportunity to provide more documentation and evidence which he took full advantage of.

Following Assaulter Roe's opening verbal rebuttal of the Report, the Chair moved to pose questions to Assaulter Roe which Plaintiff had previously submitted to the Hearing Panel.

The Chair, evidently uncomfortable with the number of questions submitted by Plaintiff, made sure to let Assaulter Roe know it was not Defendants who were asking the following questions, and went so far as to infer that the questions posed by Plaintiff were irrelevant. The Chair and other panel members apologetically, repeatedly and excessively, explained to Assaulter Roe that they had to ask Plaintiff's submitted questions only because they had been legally advised to do so.

Throughout the Respondent Conference, Assaulter Roe showed a breathtakingly poor understanding of the concepts of "consent" and "incapacitation", and, explained that, as it applied to his encounter with Plaintiff, consent was only the absence of a "no" when engaging in sexual activity. Assaulter Roe went on to continually contradict himself when it came time to describe the Assault itself and utterly failed to name a single witness who could corroborate his story of events, despite assuring the panel that such witnesses existed.

Finally, Defendants permitted Assaulter Roe to conclude the Respondent Conference by addressing the panel with an impact statement. Upon information and belief, an impact statement is only read and considered by most educational institutions during the sanctioning phase of adjudication, *after* a decision has been rendered determining responsibility. In Defendants' procedurally flawed process, however, Assaulter Roe was prematurely allowed to address the panel and persuade the panelists to conclude that he was not responsible for sexual assault.

The Hearing Panel Clears Assaulter Roe of Any Wrong-Doing

On or about May 15, 2018, Plaintiff received an email stating that the Hearing Panel had completed its "deliberations and write up" the previous day. Defendant Kelley scheduled a meeting for May 22, 2018 with Plaintiff and her advisor to inform them of Defendants' decision. Upon information and belief, Assaulter Roe had been informed of the determination one or more

days prior to the May 15th notice to Plaintiff, and not “at or near the same time” as required by the Policy.

Shockingly, Defendants found Assaulter Roe “not responsible” by a vote of 3-2. In support of its finding, the panel relied upon inaccurate sources which had previously been amended and corrected, and misquoted statements in the Report and conference transcripts – errors which had been corrected by Plaintiff in her responses to the Report and her hearing transcript, but which had obviously not been incorporated into those documents nor substantively considered by Defendants.

Plaintiff Appeals the Hearing Panel’s Determination

Following the Hearing Panel’s determination, Plaintiff repeatedly requested information from Defendant Kelley about the Title IX appeal process. Curiously, however, Defendant Kelley refused to respond to Plaintiff and Plaintiff was forced to navigate the appeal’s process on her own.

On or about May 31, 2018, Plaintiff submitted her appeal of the Hearing Panel’s decision finding Assaulter Roe “not responsible.” While her appeal was pending, Plaintiff made a formal request to be provided with Assaulter Roe’s response to her appeal but Defendant Kelley, without explanation, failed to timely send his response. Indeed, Defendant Kelley did not provide Plaintiff with a copy of Assaulter Roe’s response to Plaintiff’s appeal until June 6, 2018, after the appeal panel had already deliberated, foreclosing any possibility for Plaintiff to rebut Assaulter Roe’s response to her appeal. All Plaintiff could do at that point was sit and wait to receive notice of the outcome of her appeal.

On or about June 11, 2018, Plaintiff received a letter from defendant Darcy Czajka (“Defendant Czajka”) who was Union’s Chief of Staff. At that time, Plaintiff was notified that

Defendant Czajka had served as Chair of the Appeals Panel. Notably, Defendant Union chose its president's chief of staff, an individual whose role is to protect institutional interests, as chair of the appeals panel adjudicating Plaintiff's appeal - a clear violation of federal guidance.

It was immediately clear that Defendant Czajka had not bothered to properly review the materials underlying Plaintiff's appeal, nor had she even conducted a cursory review of the evidence in Plaintiff's Title IX matter. Defendant Czajka ultimately denied Plaintiff's appeal and upheld the Hearing Panel's finding for Assaulter Roe.

Defendants' Ongoing Violations of the 2013 Reauthorization of the Violence Against Women Act

Throughout the entire investigation and adjudication of Plaintiff's Title IX complaint, Defendants repeatedly violated not only their own policies and representations to Plaintiff as a student of Defendant Union, but also the 2013 Reauthorization of the Violence Against Women Act ("VAWA"). Defendant Union failed to meet the mandates outlined in VAWA when, among other things:

- a. Defendants' Title IX Coordinator appointed to the Hearing Panel a student member who had not been appropriately trained, or evaluated for proficiency after training had been provided;
- b. Defendants prohibited disclosure to Plaintiff of the members of the appeals panel, barring her from citing any conflicts of interest;
- c. Defendants appointed its Chief of Staff as Chair of the appeals panel, in a biased manner, as the chief of staff was not a neutral party but protector of Defendant Union's institutional interests;

- d. Defendant Union failed to provide simultaneous notice of the outcome to both parties, having informed Assaulter Roe of the decision one or more days prior to notifying Plaintiff;
- e. The proceeding, which began in January of 2018 and concluded in June of 2018, far exceeded a reasonably prompt timeframe;
- f. Plaintiff was not given timely and equal access to information used during the informal and formal disciplinary meetings, including but not limited to, the hearing packet of documents during the Complainant Conference; and
- g. Defendants chose not to provide Plaintiff with Assaulter Roe's corrections to his transcript and his response to Plaintiff's transcript.

It is clear through Defendants' actions that while Assaulter Roe was allowed free and open access to all necessary materials, the same opportunity was not similarly extended to Plaintiff. Quite the opposite, Plaintiff was openly denied access to the necessary materials leading to an inherently and inescapably unfair disciplinary process.

Plaintiff is Left in Turmoil

As a direct and proximate result of the above conduct, Plaintiff sustained tremendous damages, including, without limitation, extreme emotional distress and psychological harm, loss of educational and career opportunities, disruption of her academic career, reputational damages, economic injuries and other direct and consequential damages.

As a result of Defendants' actions, Plaintiff's emotional and psychological health has been ruined. As a direct and proximate result of Defendants' actions and the trauma Plaintiff experienced from the Assault, Plaintiff has been, and continues to be, professionally treated and

seeks redress from this Court to undo the wrongs occasioned by Defendants to her education, mental health, and future.

In light of these facts, Plaintiff should be permitted to protect her identity by filing the Complaint under a pseudonym. Plaintiff is prepared to address measures to protect the confidentiality of her identity should the Court require disclosure to the public at a later stage in the proceedings.

ARGUMENT

Federal courts permit parties to proceed anonymously when special circumstances arise. Generally, in determining whether to permit a party to proceed anonymously, a court “must balance the need for anonymity against the general presumption that parties’ identities are public information and the risk of unfairness to the opposing party.” *Does I Thru XXIII v. Advanced Textile Corp.*, 214 F. 3d 1058, 1068 (9th Cir. 2000). *See also, Grottano v. City of New York*, 2016 WL 2604803, at *1 (S.D.N.Y. Mar. 30, 2016) (*quoting Michael v. Blomberg L.P.*, 2015 WL 585592, at *3 (S.D.N.Y. Feb. 11, 2015) (“The central inquiry in determining whether a plaintiff may proceed pseudonymously is a balancing of a plaintiff’s interest in anonymity ... against both the public interest in disclosure and any prejudice to the defendant”))) (internal quotation marks omitted).

The Second Circuit has articulated the following non-exhaustive list of factors to consider when conducting this balancing test: (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 or even more critically, to innocent non-parties; (3) whether identification presents other harms and the likely severity of those harms, including whether the injury litigated against would be incurred as a result of the disclosure of the plaintiff’s identity; (4) whether the plaintiff is particularly vulnerable to the

possible harms of disclosure, particularly in light of his age; (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. *Doe v. Cuomo*, 2013 WL 1213174, at *5 (N.D.N.Y. 2013); *Grottano v. City of New York*, 2016 WL 2604803, at *1-2 (S.D.N.Y. Mar. 30, 2016).

As outlined below, a balancing of these factors leads to the inevitable conclusion that Plaintiff must be permitted to proceed anonymously in this litigation.

A. The litigation involves matters that are highly sensitive and of a personal nature.

Plaintiff should be permitted to proceed under a pseudonym given the highly sensitive and personal nature of this litigation and the facts and circumstances underlying Plaintiff's claims.

Plaintiff does not merely contend that the revelation of her name would result in embarrassment or public humiliation. Rather, Plaintiff notes the highly sensitive nature and privacy issues that could be involved with being identified as a victim of sexual assault.

In fact, courts around the country have permitted victims of sexual assault and plaintiffs alleging similar claims to proceed anonymously. *See e.g. Prasad v. Cornell Univ.*, 2016 WL 3212079 (N.D.N.Y. Feb. 24, 2016) (permitting identification of alleged victim of sexual assault

as “Jane Doe” during proceedings); *Grottano v. the City of New York*, 2016 WL 2604803 (S.D.N.Y. Mar. 30, 2016); *Doe No. 2 v. Kolko*, 242 F.R.D. 193 (E.D.N.Y. 2006); *Doe v. Penzato*, 2011 WL 1833007 (N.D.Ca. May 13, 2011); *Doe v. Evans*, 202 F.R.D. 173 (E.D.Pa. 2001); *Doe v. Western Am. Province of the Capuchin Franciscan Friars*, 2015 WL 8770017 (D. Or. Dec. 13, 2015) (allowing the plaintiff to proceed as “Jane Doe” in light of the “accepted practices of the federal courts of the United States, allowing those who have been victims of sexual assault and/or who fear reprisals from the particular litigation to commence cases under assumed names”); *Doe v. Cabrera*, 301 F.R.D. 1 (D.D.C. 2014) (allowing victim of sexual assault to proceed as a “Jane Doe” plaintiff); *Doe v. Blue Cross & Blue Shield United of Wis.*, 112 F.3d 869 (7th Cir. 1997) (indicating that the use of “fictitious names [is] allowed when necessary to protect the privacy of ... rape victims...”); *Roe v. St. Louis Univ.*, 2009 WL 910738 (E.D. Mo. Apr. 2, 2009) (allowing rape victim plaintiff to use a pseudonym because plaintiff’s privacy interest outweighed the public’s right to access judicial records); *E.E.O.C. v. Spoa, LLC.*, 2013 WL 5634337 (D. Md. Oct. 15, 2013) (finding that “sexual assault” is a “highly sensitive and personal matter”); *Doe v. City of Chicago*, 360 F.3d 667, 669 (7th Cir. 2004) (in denying the right to proceed anonymously, court emphasized the fact that the plaintiff was “not a minor, a **rape or torture victim**, a closeted homosexual, or ... a likely target of retaliation by people who would learn her identity only from a judicial opinion or other court filing”) (emphasis added).

Further, courts have recognized that allowing a plaintiff to proceed anonymously in similar situations is not merely a tactic to avoid inconsequential embarrassment or humiliation. Indeed, courts have recognized that the forcing of plaintiffs who have been victims of sexual assault to publicly identify themselves – as would happen should Plaintiff be forced to proceed under her given name - would result in not only further embarrassment, but could result in

further victimization and loss of dignity, resulting in more harm than good. *See Doe v. Cabrera*, 301 F.R.D. 1, at *5, n. 6 (D.D.C. 2014); *Doe v. Shakur*, 164 F.R.D. 359, 362 (S.D.N.Y.1996); *Rose v. Beaumont Indep. Sch. Dist.*, 240 F.R.D. 264, 267 (E.D.Tex. 2007).

Here, Plaintiff, who has gone to great lengths to protect her identity leading up to these proceedings, should be permitted to proceed anonymously due to the recognized highly sensitive and personal nature associated with being a victim of sexual assault.

B. Disclosure of Plaintiff's identity would result in significant harm to Plaintiff.

In addition, Plaintiff should be permitted to proceed anonymously in this matter as the revelation of her identify would result in significant harm to Plaintiff, the exact type which she seeks to remedy by the commencement of this lawsuit. *See Doe v. Colgate Univ.*, 2016 WL 1448829, at *3 (N.D.N.Y. Apr. 12, 2016).

Courts have repeatedly recognized that the disclosure of the names of victims of sexual assault makes such individuals susceptible to added ridicule, stigmatization, and further mental and emotional harm. *See e.g., Doe v. Cabrera*, 301 F.R.D. 1, at *5, n. 6 (D.D.C. 2014); *Doe v. Shakur*, 164 F.R.D. 359, 362 (S.D.N.Y.1996); *Rose v. Beaumont Indep. Sch. Dist.*, 240 F.R.D. 264, 267 (E.D.Tex. 2007); *E.E.O.C. v. Spoa, LLC.*, 2013 WL 5634337, at *3 (D. Md. Oct. 15, 2013) (finding that ordering the plaintiff to proceed under her own name “poses needless risk of mental harm” and further finding that “[i]t is not simply that Doe may face embarrassment from ... widespread disclosure ... but rather she may face psychological harm from having this sensitive experience made permanently available to anyone with Internet access”).

Here, Plaintiff seeks redress for, among other things, the tremendous emotional harm she has suffered as a result of the Assault perpetrated by Assaulter Roe. To force Plaintiff to reveal her identity would not merely fail to remedy the already present emotional wound she hopes to

heal, but would leave her vulnerable to further harm. In other words, forcing Plaintiff to reveal her identity would not further any aspect of the litigation but would “instead pose[] a risk that Plaintiff would be subject to unnecessary ridicule and attention.” *Doe v. Colgate Univ.*, 2016 WL 1448829, at *3.

Based on the foregoing, Plaintiff should be permitted to proceed anonymously, as requiring her to reveal her identity would result in significant harm to Plaintiff, including the exact damages she seeks to remedy in this matter; namely, physical, psychological, emotional and reputational damages, economic injuries and the loss of educational and career opportunities.

C. Defendants will not be prejudiced by allowing Plaintiff to proceed pseudonymously.

Further, Plaintiff should be permitted to proceed anonymously as Defendants will not be prejudiced in any way by proceeding against an anonymous party.

“Other than the need to make redactions and take measures not to disclose Plaintiff’s identity, Defendant[s] will not be hampered or inconvenienced merely by Plaintiff’s anonymity in court papers.” *Doe No. 2 v. Kolko*, 242 F.R.D. 193, 198 (E.D.N.Y. 2006). Significantly, Defendants are already aware of Plaintiff’s true identity. Thus, there is no doubt that Defendants will have an unobstructed opportunity to conduct discovery, present their defenses and litigate this matter, regardless of whether Plaintiff identifies herself or proceeds anonymously.

Accordingly, Plaintiff must be permitted to proceed anonymously in this action as revealing her name will cause significant prejudice and harm to Plaintiff, while proceeding anonymously will not hinder Defendants in any way.

D. There is a weak public interest in knowing Plaintiff’s identity.

Plaintiff should also be permitted to proceed in this action anonymously as the public does not have a strong interest in knowing her identity. Considering the purely legal nature of the

claims presented (i.e. Defendants violated Plaintiff common law, civil rights, and statutory rights by virtue of failing to timely, adequately, and objectively investigate Plaintiff's rape by a fellow student), there is a weak public interest in learning Plaintiff's identity as an individual. Rather, the reality is quite the opposite.

As the Second Circuit has recognized, "the public generally has a strong interest in **protecting** the identities of sexual assault victims so that other victims will not be deterred from reporting such crimes." *See Doe No. 2 v. Kolko*, 242 F.R.D. 193, 195-96 (E.D.N.Y. 2006) (emphasis added); *Doe v. Evans*, 202 F.R.D. 173 (E.D. Pa. 2001) (finding that "the public has an interest in protecting the identities of sexual assault victims so that other victims will feel more comfortable suing to vindicate their rights...").

While in the past courts strongly disfavored allowing plaintiffs to proceed anonymously except in extreme circumstances, the nature of the Internet today is such that any plaintiff's identity is readily accessible via a simple online search. Thus, courts must be willing to afford additional protective measures to avoid further damage to a plaintiff involved in a matter concerning such egregious violations as the present one. *See Doe v. Boulder Valley Sch. Dist. No. RE-2*, 2011 WL 3820781, at *3 (Aug. 30, 2011) ("[A]lthough the media frequently exercise discretion in not publishing the names of sexual assault victims, electronic case filing allows anyone with an internet connection to access public pleadings, which means that revealing plaintiffs' names could expose them to contact by persons seeking to exploit their perceived vulnerability").

Further, particularly in the current social and political climate, there is no doubt that "cases stemming from ... sexual abuse on college and university campuses have garnered significant media attention, posing the risk of further reputational harm to [] plaintiffs in these

cases ...” *Doe v. Colgate Univ.*, 2016 WL 1448829, at *2 (N.D.N.Y. Apr. 12, 2016); *see also Doe v. Brown*, 2016 WL 715794, at * 1 (D.R.I. Feb. 22, 2016) (“This case concerns an issue that has been the subject of increasing attention and controversy, particularly in academia, and which has garnered much recent media and scholarly commentary”).

Here, if Plaintiff were required to reveal her name, even if Plaintiff were to succeed on her claims against Defendants, the public’s access to her identity would leave her vulnerable to further exploitations and would result in further damage to her future educational and career endeavors, resulting in additional mental, emotional and psychological harm, the very harms which she seeks to remedy in this action. As such, “protecting the anonymity of sexual assault victims and those accused of committing sexual assault can be an important safeguard to ensure that the due process rights of all parties are protected.” *Doe v. Colgate Univ.*, 2016 WL 1448829, at *2 (N.D.N.Y. Apr. 12, 2016).

Finally, there is simply nothing about the status of the Plaintiff that would heighten any public interest beyond the normal public interest in any judicial proceedings sufficient to outweigh Plaintiff’s right to privacy. Moreover, the public’s knowledge will only be minimally restricted, as it will still know what is alleged to have occurred. Allowing Plaintiff to proceed anonymously will not significantly obstruct the public’s interest in this matter. To the contrary, forcing Plaintiff to reveal her identity could have a potential chilling effect on other similarly situated future plaintiffs, a result widely recognized by federal courts across the nation. *See e.g., Doe No. 2 v. Kolko*, 242 F.R.D. 193, 195-96 (E.D.N.Y. 2006); *Doe v. Cabrera*, 301 F.R.D. 1, at *6-8, n. 9 (D.D.C. 2014) (“[t]his Court agrees that *unnecessarily* compelling victims of alleged sexual assault to reveal their identities in a case could set forth precedent that has the unintended consequence of discouraging similarly situated victims in the future from reporting sexual assault

crimes”); *Doe v. Evans*, 202 F.R.D. 173, 176 (E.D.Pa. 2001)) (emphasis added) (finding that “the public has an interest in protecting the identities of sexual assault victims so that other victims will feel more comfortable suing to vindicate their rights...”).

Accordingly, there is not a strong public interest in knowing Plaintiff’s identity as an individual, as the issues presented to this Court concern a much greater population of potential plaintiffs.

Based on the foregoing, in consideration of the balancing of relevant factors, the Court should allow Plaintiff to employ a pseudonym in this matter. The interests of Defendants and/or the public will not be harmed at this early stage of the case if Plaintiff’s name is not revealed. Plaintiff and her attorneys are prepared to address measures to protect the confidentiality of her identity should the Court require disclosure to the public at a later stage in the proceedings.

CONCLUSION

For these reasons and such other reasons as may appear just to the Court, Plaintiff Jane Doe requests that her *Ex Parte* Motion to Proceed Under s Pseudonym and for s Protective Order be granted in its entirety.

**Dated: New York, New York
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