

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

CF 6 DOE,

Plaintiff,

**ATTORNEY AFFIRMATION**

v.

Index No.: 810544/2019

THE DIOCESE OF BUFFALO, N.Y.,  
MOST PRECIOUS BLOOD SCHOOL,  
MOST PRECIOUS BLOOD ROMAN  
CATHOLIC CHURCH SOCIETY OF ANGOLA,  
a/k/a MOST PRECIOUS BLOOD CATHOLIC  
CHURCH, a/k/a MOST PRECIOUS BLOOD  
PARISH, a/k/a MOST PRECIOUS BLOOD  
ROMAN CATHOLIC CHURCH,  
a/k/a MOST PRECIOUS BLOOD CHURCH,

Defendants.

STATE OF NEW YORK )  
COUNTY OF ERIE ) ss:

DANIEL J. CHIACCHIA, ESQ, being duly sworn, affirms that the following statements are true under the penalties of perjury:

1. I am an attorney duly licensed to practice law in the State of New York and am a partner in the law firm of Chiacchia & Fleming, LLP, attorneys for Plaintiff CF 6 DOE, in the above-entitled action and as such, am fully familiar with the facts and circumstances as well as the pleadings and proceedings in this matter.

2. I submit this Affirmation in support of Plaintiff's application for an Order directing Plaintiff to proceed under and be referred to in all papers by the pseudonym "CF 6 DOE".

3. Plaintiff is a man who was sexually abused as a minor by Father Fred G. Fingerle, now deceased.

4. Plaintiff intends to file a claim against THE DIOCESE OF BUFFALO, N.Y., MOST PRECIOUS BLOOD SCHOOL, MOST PRECIOUS BLOOD ROMAN CATHOLIC CHURCH SOCIETY OF ANGOLA, a/k/a MOST PRECIOUS BLOOD CATHOLIC CHURCH, a/k/a MOST PRECIOUS BLOOD PARISH, a/k/a MOST PRECIOUS BLOOD ROMAN CATHOLIC CHURCH, a/k/a MOST PRECIOUS BLOOD CHURCH under the Child Victims Act and is seeking leave to file anonymously.

5. Plaintiff currently seeks damages for physical and emotional injuries and injunctive relief.

6. Plaintiff seeks to prosecute his claims without publicly disclosing his identity as a victim of child sexual abuse because this matter is highly sensitive, he has already experienced significant pain, shock, shame, and embarrassment due to the mental impact of the child sexual abuse that they endured, and it poses risk of retaliatory harm to Plaintiff.

7. New York Courts recognize that individuals in a variety of contexts, such as those involving sexual assault, sexual harassment, and drug use, have a strong interest in keeping their identity out of publicly filed documents. In such cases, the individual's right to privacy must be balanced against the rights of the opposing party and of the public at large.

8. Civil Rights Law § 50-b provides a limited right of privacy which permits a Plaintiff's anonymity "where a substantial privacy interest is involved." *See Doe v. New York Univ.*, 6 Misc. 3d 866/880 (Sup. Ct. 2004). In *Doe*, the court articulated the clear policy of this State by indicating that:

*It has been noted that: "Upon approving the above legislation, on July 1, 1991, the New York Governor, Mario M. Cuomo, stated in his Governor's Memorandum, as follows: ...*  
*'[S]exual assault victims have unfortunately had to endure a terrible invasion of their*

*physical privacy. They have a right to expect that this violation will not be compounded by a further invasion of their privacy. All too often identifying the victim results in a public recounting of the details of the crime.’ “ ‘The release of such identifying information does not serve the interests of justice. Indeed, it does a gross disservice to both the victim and the public. Concerns pertaining to privacy sometimes result in a victim failing to report a sexual offense. In its final report, the Governor's Task Force on Rape and Sexual Assault documented that sexual offenses are vastly underreported. Undoubtedly, there is even less incentive for a victim to report the sexual assault if his or her identity may become public.’ “ ‘Media accounts of sexual offenses, including reports of the victim's identity, are not affected by the bill as the new right of action only attaches to violations of section 50-b which, by its terms, applies solely to public officials. While this bill is not designed to have an effect on the media, it will be an important safeguard for the privacy of sexual offense victims.’” (Deborah S. v Diorio, 154 Misc. 2d at 718-719) (emphasis added).*

9. Some factors the courts might consider when determining whether a plaintiff may maintain an action under a pseudonym are: “(1) whether litigation involves matters that are highly sensitive and of personal nature; (2) whether identification poses risk of retaliatory harm to party seeking to proceed anonymously or even more critically, to innocent non-parties; (3) whether identification presents other harms and likely severity of those harms; (4) whether plaintiff is particularly vulnerable to possible harms of disclosure; ... (6) whether defendant is prejudiced by allowing plaintiff to press claims anonymously; ...” See *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185 (2d. Cir. 2008).

10. Applying these factors, it is clear that Plaintiff should be permitted to proceed

under a pseudonym here. Plaintiff was the victim of sexual assault, which is highly sensitive and of a personal nature. Plaintiff is not seeking to avoid mere embarrassment, but rather to avoid social stigmatization.

11. It is well known that victims of sexual crimes are often not believed and have their reputations put into question, thus identification of Plaintiff poses a serious risk of retaliatory harm to him.

12. Additionally, Defendants will not be prejudiced because Plaintiff's identity will be known to them and their counsel, and thus they will be able to investigate and defend against their claims through the standard means of discovery.

13. It also bears noting that allowing Plaintiff to proceed under the pseudonym will not prejudice the public's interest in open judicial proceedings. Plaintiff has not requested that all court filings be sealed, nor that any measure be effected that would conceal from the public all of the facts underlying this lawsuit, other than his identity. As such, Plaintiff's request to proceed anonymously strikes the appropriate balance of preserving Plaintiff's privacy interests while allowing the public to know the nature of this complaint against Defendants.

14. In light of New York Courts' accepted practice of permitting individual victims of sexual offenses to proceed anonymously, and the clear policy of the State of New York to protect the confidentiality of that information, Plaintiff, through his attorneys, respectfully requests that he be allowed the use of a pseudonym in this matter.

15. Plaintiff further requests that this Court issue an Order temporarily restraining Defendants from disclosing Plaintiff's personal information or name to the public. Indeed, N.Y. Civ. Rights 50-b explicitly requires that victims of sexual assault have a right to not be personally identified. As such, denying Plaintiff's request here would violate such statute.

16. No previous application has been made for the relief requested herein.

**WHEREFORE**, for the foregoing reasons, it is respectfully requested that Plaintiff's Order to Show Case be granted in its entirety, together with such other and further relief as the Court deems just and proper.

Dated: November 12, 2019



Daniel J. Chiacchia, Esq.