

DISTRICT COURT, NINETEENTH JUDICIAL DISTRICT

Court Address: Weld County Courthouse
901 9th Ave.
Greeley, CO 80631

In re Search of Amalia's Translation and Tax Service;

and

Amalia Cerrillo,

Luis Noriega, on behalf of himself and as class representative,

John Doe, on behalf of himself and as class representative,

Frank Doe, on behalf of himself and as class representative,

Robert Doe, on behalf of himself and as class representative

Plaintiffs

v.

Kenneth R. Buck, in his official capacity as District Attorney
for the Nineteenth Judicial District;

John Cooke, in his official capacity as Weld County Sheriff

Defendants.

▲ COURT USE ONLY ▲

Case No. 09-CV-100

Div. 1

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**REPLY TO DEFENDANTS' REPSONSE TO
PLAINTIFFS' MOTION TO PROCEED UNDER PSEUDONYMS**

Plaintiffs John Doe, Frank Doe and Robert Doe (collectively, the "Doe Plaintiffs"), by and through their attorneys, reply to the DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO PROCEED UNDER PSEUDONYMS as follows:

INTRODUCTION

1. In their RESPONSE TO PLAINTIFFS' MOTION TO PROCEED UNDER PSEUDONYMS ("DEFS.' RESP."), Defendants make no supportable argument in opposition to Doe Plaintiffs' showing that the balance of interests weighs in favor of allowing anonymity.

2. As the Doe Plaintiffs' evidence demonstrates, members of the public have threatened and harassed their co-plaintiff as well as their counsel; numerous members of the public have expressed virulent anti-immigrant hostility in public comments to news articles; and they and their family members, including minor children, are at risk of serious harm if their identities are revealed.

3. In addition, since the filing of their motion, Plaintiffs have discovered Defendants' are using the illegally seized confidential information to contact putative class members' employers, and that Defendants were accompanied by an Immigration and Customs Enforcement agent during the search of Plaintiff Cerrillo's business. The Doe Plaintiffs credibly fear that Defendants will engage in retaliatory harassment and prosecution, and disclose their identities to federal immigration authorities, if their identities are revealed.

4. Under the above circumstances, the Doe Plaintiffs' need for protection of their identities far outweighs Defendants' generalized and unsupported allegations of prejudice.

5. In their DEFS.' RESP., the Defendants (a) mischaracterize Plaintiff's request for anonymity as an interest related solely to concealing their identities as "tax filers;" (b) illogically contend that Plaintiffs must be victims of past retaliation in order to be entitled to the protection of anonymity; (c) misconstrue the legal analysis regarding reputational injury in challenges to government activity versus private activity; (d) suggest that vague and unsubstantiated discovery concerns are sufficient to defeat the request for anonymity, and (e) falsely assert that the request for anonymity is "premature." Defendants' positions are not supported by legal authority.

ARGUMENT

A. Defendants mischaracterize Doe Plaintiffs' grounds for requesting anonymity.

6. In their response, the Defendants attempt to reframe Doe Plaintiffs' request for anonymity as based solely upon concealing from the public their status as "tax filers." *E.g.* DEFS.' RESP. 2. The Doe Plaintiffs have never made such a narrow argument.

7. To the contrary, the Doe Plaintiffs base their request for anonymity on the fact that they are "tax filers" who face a "significant and real threat of mental and physical retaliation against them and their families" if their identities are revealed. *See* MOTION TO PROCEED UNDER PSEUDONYMS ¶ 8 ("PLS.' MOT."). Furthermore, the request for anonymity is justified by the fact that Doe Plaintiffs' status as "tax filers" and participants in this litigation subjects them to retaliation by the Defendants. Doe Plaintiffs do not argue anonymity is justified by their status as tax filers *qua* tax filers, as Defendants mistakenly suggest.

B. The Doe Plaintiffs and their family members will be subject to mental and physical retaliation if their identities are revealed.

8. The Defendants erroneously suggest that a plaintiff cannot properly proceed under a pseudonym unless the plaintiff has actually been threatened or attacked. See DEFS.' RESP. 4 ("Nowhere do the DOE Plaintiffs assert that anyone carried out any purported threat, or that they were subjected to any actual threat on a personal basis").

9. The prerequisite concern for granting anonymity is the *potential* for retaliatory harassment or violence. *E.g. Doe v. Porter*, 370 F.3d 558, 560 (6th Cir. 2004); *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1071 (9th Cir. 1999); *Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981); *Lozano v. City of Hazelton*, 496 F. Supp. 2d 477, 507-15 (M.D. Pa. 2007); *Doe v. Barrow County*, 219 F.R.D. 189, 192-194 (N.D. Ga. 2003). Defendants cite no legal authority to support the strange proposition that a plaintiff must be victimized by past retaliatory harm to be afforded the protection of prospective anonymity. That Doe Plaintiffs' identities are currently hidden from the public and thus far they have been protected from retaliation is not a legitimate ground for opposing anonymity.

10. The Doe Plaintiffs have requested leave of Court to file affidavits in support of the instant MOTION as well as Plaintiffs' other pending motions. See PLS.' MOT. ¶ 16. Pending the Court's ruling on that request, Doe Plaintiffs tender proposed affidavits (attached as EXHIBITS A, B and C) to this REPLY which show that:

- a) Plaintiffs Frank Doe, Robert Doe, and John Doe each fear harassment or attack due to anti-immigrant hostility in Greeley and Weld County. *See*

AFFIDAVIT OF FRANK DOE ¶¶ 15-16; AFFIDAVIT OF ROBERT DOE ¶¶ 15-16;

AFFIDAVIT OF JOHN DOE ¶¶ 14-15.

b) Plaintiffs Frank Doe and Robert Doe each have family members who are not parties to this action whose identities, confidential information, and safety would be compromised if Doe Plaintiffs' identities were revealed.

c) Specifically, Frank Doe has a wife and minor children. AFFIDAVIT OF FRANK DOE ¶ 3. Plaintiff Cerrillo has assisted Frank Doe in filing joint federal and state tax returns with his wife indicating Individual Taxpayer Identification Numbers for himself, his wife, and his minor child. AFFIDAVIT OF FRANK DOE ¶ 5. Frank Doe is especially concerned that revealing his identity as a plaintiff in this suit would compromise the safety of his wife and children. AFFIDAVIT OF FRANK DOE ¶ 16.

d) Plaintiff Robert Doe has a wife and a minor child. AFFIDAVIT OF ROBERT DOE ¶ 3. Plaintiff Cerrillo has assisted Robert Doe in filing joint federal and state income tax returns with his wife indicating his wife's Individual Taxpayer Identification as well as Social Security Numbers for himself and his child. AFFIDAVIT OF ROBERT DOE ¶ 4-5. Robert Doe is especially concerned that revealing his identity as a plaintiff in this suit would compromise the safety of his wife and young child. AFFIDAVIT OF ROBERT DOE ¶ 16.

11. Not only are the Doe Plaintiffs themselves at risk of harm should their identities be revealed, but non-party spouses and minor children would be at risk as well. The courts have

recognized that potential harm to children and non-parties weighs strongly in favor of permitting anonymity. *See, e.g., James v. Jacobson*, 6 F.3d 233, 238-241 (4th Cir. 1993) (recognizing a “critical” part of the inquiry is “whether identification poses a risk of retaliatory physical or mental harm . . . to innocent non-parties” and that special concern for effects on non-party children weighs in favor of granting anonymity); *Porter*, 370 F.3d at 561 (noting children deserve “heightened protection” in anonymity analysis).

12. The Doe Plaintiffs’ fears that revelation of their identities would subject them to harm are well-founded. Both the Doe Plaintiffs’ co-plaintiff and their counsel have already been subject to harassment and threats. *See Barrow County*, 219 F.R.D. at 193-94 (“angry and inappropriate voice messages” left in judges’ voicemail boxes “relevant to show the tenor being displayed by some members of the public”).

13. For example, hostile and threatening voicemail messages have been left on Plaintiff Cerrillo’s answering machine. On November 15, 2008 at 7:00 pm, she received the following threat: “Watch your step lady!” On November 18, 2008 at 7:50 pm, the another voicemail was left for Plaintiff Cerrillo:

You’re a criminal. Go back to Mexico with your people. You stole money from my paychecks and millions of other Americans out there who work hard for their money. You had no right doing what you did. And I hope you go to prison. I hope they find you guilty even though they haven’t pressed charges on you. And I hope they shut your company down. And I hope like heck that they run your butt back over the border. I don’t care if you’re an American citizen or not, you need to go back where they’re coming from, and I hope you get arrested with them. You’re a low-life, law-breaking criminal. Leave Greeley!”

See AFFIDAVIT OF PLAINTIFF CERRILLO, attached as EXHIBIT D.

14. Similarly, the following email message was delivered to the ACLU on January 14, 2009:

Hey Retards! Now you have 2, Two, Dos grand juries to keep you up at night!!!! You people need to move away, somewhere very far away, like deep into Mexico....Kiss off, a-holes!!!!!! Illegal is Illegal, you freak losers! Keep up the great work, dilrods!!!!

Email to ACLU attached as EXHIBIT E.

15. The Doe Plaintiffs' fear of harm is amply supported by the news reports cited in their MOTION and by scores of public comments regarding the immigrant community in Weld County in general and this lawsuit in particular. *See Stegall*, 653 F.2d at 183 n.6 (citing publicly-reported comments as evidence of risk of retaliation); *Porter*, 370 F.3d at 560 (citing letter to editor as evidence of risk of retaliation); *OSRecovery, Inc. v. One Groupe Int'l, Inc.*, No. 02 Civ. 8993, 2003 WL 23313, at *2 (S.D.N.Y. Jan. 3, 2003) (concluding that need for anonymity was compelling where unknown members of the public had expressed hostility to plaintiffs and their counsel in internet postings). Such comments include the following examples¹:

- a) "Get those SOB's and put a tracking device in them like a dog and deport their lazy butts back to Mexico. If they come back in we will track them and throw them out again. We need our troops back home to patrol the border with shoot on site warnings posted clearly in Spanish."
- b) "Run every illegal alien (no, they are not immigrants) out of town! The Latins will cry foul. So what! The Lib Trib will complain. Who cares!"
- c) "Their rights: They have the right to be arrested, detained and sent home! They have no other rights until they are here legally!"

¹ All comments are reprinted exactly as posted, with no notation of existing errors (i.e. "[sic]"). The commenter's username (where available), article author, date of article, media source, and URL address for each comment is included in EXHIBIT F attached.

d) “Why the hell should I have to pay income tax and people who do not even belong in this Country in the first place get refunds that should go to us, the citizens who worked their butts off all these years . . . Throw em in jail and then deport them . . .”

e) “Would the last American to leave Greeley please remember to grab the American flag on their way out. You call yourselves American Citizens, you should be ashamed for allowing your town to be taken over by criminal illegal aliens.”

f) “this is not a foreign worker living in our country this is a illegal foreign invader getting organized crime help with his taxes!!!... this individual has no rights or privacy period.”

g) “Mexico is going down faster then we are and where do you think there coming America thanks to the pro illegal lovers ! The jobs illegals are doing right now can and will be ours to take back and you can bet when it comes to there family or our familys America will win ! There time is coming real soon !”

h) “What illegals have taken from me they cant give back ! I hate them all and will do what ever i can to get the illegals out back where they came from ! You and your illegal loving crap makes me sick ! Anybody that wants them here should go with them help them in there home not in mine ! I have lost wages to illegals i have lost jobs to illegals ! Tell me what have illegals taken from you !”

i) “Illegals are NOT granted ANY rights under the Constitution... the ONLY thing they are allowed is BASIC HUMAN rights! NO protection under the Constitution - those are reserved for LEGAL citizens and LEGAL immigrants!”

C. The Doe Plaintiffs are challenging government activity.

16. Defendants mount a meritless argument that naming Defendants individually, instead of naming their offices, raises reputational concerns akin to those of private parties. *See* DEFS.’ RESP. 5-6. This contention is unsupported by any legal authority and grossly misconstrues the thrust of this factor in the legal analysis.

17. Whether a defendant is named as a government officer or a government office is wholly irrelevant to the analysis—if the subject of the litigation is government activity, the

reputational concerns with regard to private defendants do not apply. *See S. Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707, 713 (5th Cir. 1979) (lawsuit by anonymous plaintiffs “challenging the constitutional, statutory or regulatory validity of government activity . . . involve no injury to the Government's reputation”) (emphasis added).

18. Defendants’ novel contention that their individual reputations² are somehow implicated by a suit that challenges government activity ignores the underlying rationale of this inquiry and is contrary to legal authority. Numerous courts have permitted plaintiffs to proceed anonymously where, as here, plaintiffs challenged the official actions of individual governmental defendants, rather than naming their offices or entities. *See, e.g., Porter*, 370 F.3d at 560 (affirming district court’s granting of motion to proceed under pseudonym against public school superintendent and county executive sued in their individual and official capacities, and noting that the suit is “challenging a government activity”); *Stegall*, 653 F.2d at 186 (granting anonymity in case against defendant public school principal, and noting that the Doe plaintiffs “clearly challenge governmental activity”); *Doe v. Harlan County School District*, 96 F.Supp.2d 667, 670-71 (E.D. Ky. 2000) (holding that anonymity of plaintiffs in suit against, *inter alia*,

² Defendant Buck contends that he is “dependent on his reputation as a means to obtain clients and continue in the practice of law.” *See* DEFS.’ RESP. 6. To the best of Plaintiffs’ knowledge, Defendant Buck does not rely on his reputation to “obtain clients” or “continue in the practice of law” as the District Attorney for the 19th Judicial District. In any case, the questions in this action involve only the constitutionality of government activity undertaken by Defendant Buck in his role as a government official.

public school superintendent, would not adversely affect the defendants where “plaintiffs are challenging governmental activity” and requesting only injunctive relief).³

D. In the event that any discovery issues arise, they can be adequately addressed.

19. Defendants make a vague and unsubstantiated argument that discovery issues weigh against anonymity. *See* DEFS.’ RESP. 6-7. Defendants fail to identify any concrete manner in which the Doe Plaintiffs’ anonymity would possibly prejudice their ability to respond to Plaintiffs’ requests for relief.⁴

20. In other cases, courts have easily balanced plaintiffs’ anonymity with defendants’ discovery concerns. *E.g. Porter*, 370 F.3d at 561 (rejecting argument that plaintiffs’ anonymity would hinder Defendants’ ability to prepare for trial); *Jacobson*, 6 F.3d at 235-236 (describing “procedure for preserving the plaintiffs’ anonymities during pretrial investigation and discovery”); *Provident Life*, 176 F.R.D. at 470-471 (detailing entry of protective order simultaneously preserving anonymity and permitting discovery).

21. If Defendants can show a need for discovery, procedures can be crafted to disclose necessary information to Defendants without revealing the Doe Plaintiffs’ identities and exposing them to harm. Defendants’ contention that anonymity will preclude “development of any facts beyond the allegations of the Complaint,” *see* DEFS.’ RESP. 7, is without merit.

³ In any event, Courts have nonetheless permitted plaintiffs to use pseudonyms even where plaintiffs are challenging purely private activity. *See, e.g., Doe v. Provident Life and Accident Insurance Company*, 176 F.R.D. 464 (E.D. Pa. 1997) (granting anonymity against private defendant); *Choice, Inc. v. Graham*, 226 F.R.D. 545, 548 (E.D. La. 2005) (same).

⁴ Indeed, it is possible that all the information the Defendants would seek regarding the Doe Plaintiffs’ standing and/or class representative status is already contained in the affidavits attached to this REPLY.

E. Plaintiff's MOTION is not "premature."

22. Defendants erroneously suggest that Plaintiffs' request to proceed anonymously is "premature" because the PLAINTIFFS' MOTION TO CERTIFY CLASS is currently pending before the court, and because "nothing about this matter explains why the DOE Plaintiffs should even be participants in this matter." *See* DEFS.' RESP. 8-9.

23. Contrary to Defendants' suggestions, Doe Plaintiffs' standing is not subsumed or obviated by the claims of Plaintiff Cerrillo.⁵ Given that the Doe Plaintiffs' seek to participate in litigation regarding important constitutional rights, the balance of interests weighs heavily in favor of permitting anonymity, and the absence of any current prejudice to Defendants, the Doe Plaintiffs' motion should be granted at this time.

24. Leave to proceed anonymously can always be revisited by the court if some actual prejudice could be demonstrated by the Defendants. *E.g. Advanced Textile Corporation*, 214 F.3d at 1072 (noting that "at some later point in the proceedings it may be necessary to reveal plaintiffs' identities to defendants," but finding no current prejudice); *Javier H. v. Maria Garcia-Botello*, 211 F.R.D. 194, 196 (W.D. NY 2002) (granting anonymity at outset of case but stating that "this Court is open to motions by Defendants revisiting this issue as this case proceeds").

⁵ Although the Doe Plaintiffs are independently entitled to bring claims for relief based upon their injuries, at this early stage in the litigation the Court may decide to rule on Plaintiffs' request for interim relief based upon Plaintiff Cerrillo's *jus tertii* standing to assert the rights of the Doe Plaintiffs and the putative class members.

F. Defendants' positions are not supported by legal authority.

25. Plaintiffs' motion cites numerous decisions allowing plaintiffs to proceed anonymously where, as here, there is a risk of harm if their identities are revealed. *See Porter*, 370 F.3d 558 (6th Cir. 2004); *Advanced Textile Corp.*, 214 F.3d 1058; *Stegall*, 653 F.2d 180; *Lozano*, 496 F.Supp.2d 477; *Choice, Inc.*, 226 F.R.D. 545; *Barrow County*, 219 F.R.D. 189; *Provident Life*, 176 F.R.D. 464. Defendants inexplicably ignore all these authorities in their response.

26. Instead, Defendants cite to a Tenth Circuit case and two Colorado Supreme Court cases. These cases are distinguishable from the present case, and with regard to the latter two, largely inapplicable.

27. In *M.M v. Zavaras*, 139 F.3d 798, 803 (10th Cir. 1998), the Tenth Circuit held the balance of interests weighed against a request for anonymity on facts where “the plaintiff’s identity is already known to the state agency and staff” from whom the plaintiff feared potential harassment and retaliation. In this case, the Doe Plaintiffs’ actual identity is unknown to those who would retaliate against them and their families, and thus anonymity provides real and necessary relief from potential retaliation, unlike the plaintiff in *M.M. v. Zavaras*.

28. In *Barker v. Dist.Ct. of County of Larimer*, 609 P.2d 628, 629 (Colo. 1980), the district attorney of Larimer County filed a nuisance abatement complaint against a building named as “426 Link Lane.” The court held that a building was not a “legal entity” that could be a party defendant. *Id.* at 631. In this case, there is no doubt that the Doe Plaintiffs are actual persons capable of participating in a legal action. Protecting the Doe Plaintiffs from retaliation

by allowing them to proceed anonymously does not transmogrify them into non-legal entities akin to the building named as a defendant in *Barker*.

29. In *Goodwin v. Dist. Ct. in and for the Sixteenth Judicial District*, 779 P.2d 837 (Colo. 1989), the court considered whether the district court had inappropriately prevented petitioners from arguing that a promissory note had not been properly assigned to parties claiming a legal interest in a deed of trust. Petitioners sought to argue that if the note was not properly assigned, those parties would have no claim to the deed and thus would not be “real parties in interest.” *Id.* at 842-843. In this case, unlike *Goodwin*, Doe Plaintiffs clearly have the “right to invoke the aid of the court in order to vindicate the legal interest in question,” *id.* at 843, independent of the question of whether or not they will be permitted to do so anonymously.

G. The Doe Plaintiffs fear retaliatory harassment and prosecution by Defendants.

30. Since the filing of their motion, Doe Plaintiffs have learned that the Defendants are using information illegally seized from Plaintiff Cerrillo to contact the employers of putative class members. Defendants’ officers have told employers that putative class members are in violation of the law, causing the employers to terminate employment. Furthermore, since the filing of the motion, Doe Plaintiffs have learned that a federal agent from Immigrations and Customs Enforcement was present during the search of Plaintiff Cerrillo’s business, a search made pursuant to Defendants’ authority to investigate alleged violations of state criminal laws.⁶

⁶ Plaintiffs intend to introduce testimony at hearing as evidence supporting the allegations in this paragraph.

31. Plaintiff Frank Doe and his wife, and Robert Doe's wife, all earned wages and filed taxes using an ITIN with Plaintiff Cerrillo, *see* AFFIDAVIT OF FRANK DOE ¶¶ 4-5; AFFIDAVIT OF ROBERT DOE ¶¶ 4-6. This puts them in the category of persons Defendants allege are “illegal aliens” and in violation state criminal laws, and against whom Defendants have directed their prosecutorial efforts.

32. The Doe Plaintiffs fear that if their identities are revealed, Defendants will use their illegally-seized confidential information to contact their employers and their spouses' employers, pursue criminal prosecution of the Doe Plaintiffs and their spouses, and disclose the Doe Plaintiffs' and their spouses' identities to federal immigration authorities. This risk of harm justifies allowing them to proceed anonymously. *See e.g., Lozano*, 496 F.Supp.2d at 511 (finding that plaintiffs' legitimate fear that their identities might be disclosed to federal immigration authorities weighed in favor of anonymity); *Advanced Textile Corp.*, 214 F.3d 1058 (granting request for anonymity where plaintiffs faced deportation, arrest, and imprisonment).

33. The Doe Plaintiffs' fear is justified by these recent revelations and also by Defendants' aggressive pursuit of persons they believe are in violation of federal immigration laws. News reports quote the Defendants expressing hostility toward persons like the Doe Plaintiffs and their spouses who report income to the federal government using an ITIN number, expressing disdain for the federal regime which requires persons like the Doe Plaintiffs and their spouses to report income using an ITIN, and expressing their belief that state law enforcement officials should seek to vigorously enforce federal immigration laws. For example Defendant Buck has stated: “. . . I have opinions about illegal immigration. For what it's worth, I think we

should close our borders . . . I have no authority over America's borders . . . however, I can take steps to see that criminals are punished and that those criminals who are here illegally are deported so they cannot commit additional crimes against our community”⁷; Defendant Buck has characterized Doe Plaintiffs' counsel as “taking the side of illegal immigrants over the side of U.S. citizens;”⁸ Defendant Cooke has expressed his disdain for the federal agencies and federal regime pursuant to which Doe Plaintiffs report their income using an ITIN: “Obviously, the federal government isn't doing their job, and it's falling to local agencies to do it . . . As a taxpayer, I have the right to know what this scam is costing – a scam perpetrated by the IRS and tax preparers.”⁹

CONCLUSION

This case is about the Doe Plaintiffs' fundamental constitutional rights, which “exist whatever their status under the nation's immigration laws.” *Lozano*, 496 F.Supp.2d at 514. As numerous courts have held, if forcing a plaintiff to reveal her identity would result in harm that would chill or thwart her from participating in such litigation, the protections of anonymity are

⁷ Kenneth R. Buck, *Editorial: Show Those Who Shouldn't Be Here the Door*, GREELEY TRIBUNE, Nov. 10, 2005 (<http://www.greeleytribune.com/article/20051110/READERS/111100091>)(last visited Feb. 25, 2009).

⁸ Sharon Dunn, *ACLU Sues Weld DA Ken Buck and Weld Sheriff John Cooke*, GREELEY TRIBUNE, Jan. 28, 2009 (<http://www.greeleytribune.com/article/20090128/NEWS/901279914>)(last visited Feb. 25, 2009).

⁹ Deedee Correll, *Tax Probe Targets Illegal Workers*, LOS ANGELES TIMES (Nov. 29, 2008) (<http://articles.latimes.com/2008/nov/29/nation/na-stolen-identity29>)(last visited Feb. 25, 2009).

necessary and appropriate. *See, e.g., Advanced Textile*, 214 F.3d at 1073 (“Permitting plaintiffs to use pseudonyms will serve the public’s interest in this lawsuit by enabling it to go forward”); *Lozano*, 496 F.Supp.2d at 512 (“Without the protection of anonymity, future such plaintiffs would likely decline to participate in the lawsuit, and the public’s interest in testing the constitutionality of such ordinances could remain unexplored”). Revealing the Doe Plaintiffs’ actual identities “poses a risk of retaliatory physical or mental harm to the requesting party [and] innocent non-parties,” *Heitler*, 26 P.3d at 541, a risk of harassment and prosecution by Defendants, *Id.*, and a risk that Defendants will disclose their identities to immigration authorities, *see Lozano*, 496 F.Supp.2d at 511. The balance of interests weighs heavily in favor of permitting anonymity and reaching the merits of the Doe Plaintiffs’ claims regarding their fundamental constitutional rights.

WHEREFORE, the Doe Plaintiffs respectfully request an Order of the Court granting their MOTION TO PROCEED UNDER PSEUDONYMS, including acceptance of the attached affidavits.

Respectfully submitted on February 25, 2009.

JACOBS CHASE FRICK KLEINKOPF & KELLEY, LLC

This document has been filed via Lexis/Nexis File & Serve in accordance with C.R.C.P. 121 and the original document and signature are maintained on file.

s/ Elizabeth L. Harris

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CERTIFICATE OF SERVICE

I certify that on February 25, 2009, a true and correct copy of the foregoing **REPLY TO DEFENDANTS' REPSONSE TO PLAINTIFFS' MOTION TO PROCEED UNDER PSEUDONYMS** was forwarded to the following via Lexis/Nexis File and Serve:

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