**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

JOHN DOE,

*Plaintiff*,

v.

CRYSTAL MORELAND,

*Defendant*.

Civil Action No. 18-800 (TJK)

**ORDER**

On March 9, 2018, Plaintiff John Doe filed this lawsuit in the Superior Court of the District of Columbia, alleging that he was fired from his position with the Humane Society Legislative Fund (HSLF) because Defendant Crystal Moreland, a higher-positioned employee of the affiliated Humane Society of the United States, falsely reported to HSLF's management that he had made her feel uncomfortable and intimidated by pursuing a romantic relationship with her. ECF No. 1-1. In that court, he sought, and obtained, permission to proceed under a pseudonym. ECF No. 1-2. He brings two causes of action, one for defamation and the other for false light invasion of privacy. ECF No. 1-1. On April 9, 2018, Moreland removed the case to this Court. ECF No. 1. Before the Court is her Motion to Preclude Plaintiff's Use of a Pseudonym. ECF No. 6. For the reasons explained below, the Court will grant her motion.

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Both the Federal Rules of Civil Procedure and this Court's Local Civil Rules "require that complaints state the names of parties; they make no provision for pseudonymous litigation." *Qualls v. Rumsfeld*, 228 F.R.D. 8, 10 (D.D.C. 2005); *see also* Fed. R. Civ. P. 10(a); LCvR 5.1(c)(1), 11.1. Requiring parties to disclose their identities furthers the pubic interest in knowledge about court proceedings in a variety of ways. *See Qualls*, 228 F.R.D. at 10.

"Pseudonymous litigation," on the other hand, "undermines the public's right of access to judicial proceedings." *Doe v. Pub. Citizen*, 749 F.3d 246, 273 (4th Cir. 2014).

Nonetheless, the D.C. Circuit has acknowledged the district court's discretion "to grant the 'rare dispensation' of anonymity" to parties under limited circumstances, provided the court has "inquire[d] into the circumstances of particular cases to determine whether the dispensation is warranted." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1464 (D.C. Cir. 1995) (per curiam) (quoting *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993)). Such limited circumstances may be present when, for example, "identification creates a risk of retaliatory physical or mental harm," "anonymity is necessary to preserve privacy in a matter of a sensitive and highly personal nature," or in circumstances under which the party seeking anonymity would be "compelled to admit criminal behavior." *Qualls*, 228 F.R.D. at 10–11 (internal citations and alterations omitted) (collecting cases). The Circuit has instructed that courts, in doing so, must "take into account the risk of unfairness to the opposing party, as well the customary and constitutionally-embedded presumption of openness in judicial proceedings." *Microsoft Corp.*, 56 F.3d at 1464 (citations and internal quotation marks omitted).

Subsequently, courts in this Circuit have typically weighed five factors, articulated in *National Ass'n of Waterfront Employers v. Chao*, 587 F. Supp. 2d 90, 99 (D.D.C. 2008), in deciding whether to permit a party to proceed anonymously: (1) whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of a sensitive and highly personal nature; (2) whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties; (3) the ages of the persons whose privacy interests are sought to be protected; (4) whether the action is against a governmental or private

party; and (5) the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously. "No single factor is necessarily determinative." *Doe v. Sessions*, No. 18-0004, 2018 WL 4637014, at *2 (D.D.C. Sept. 27, 2018). The litigant seeking to proceed under a pseudonym "bears the burden to demonstrate a legitimate basis for proceeding in that manner." *Qualls*, 228 F.R.D. at 13.

Weighing the above factors, the Court cannot find that Plaintiff has met his burden of showing that he is entitled to proceed pseudonymously.

Starting with the first factor, Plaintiff asserts that this suit involves matters of "a sensitive and highly personal nature." ECF No. 8 at 6. The allegations here, however, are not at all like those that courts in this jurisdiction have found to meet this standard. Plaintiff asserts that Moreland falsely accused him of, among other things, repeatedly asking her to lunch and dinner, offering her rides home, following her around the office, and asking about whether she had "slept with" another employee. ECF No. 1-1 ¶¶ 54, 55, 57, 63. In fact, Plaintiff alleges, it was *Moreland* who had an unrequited romantic interest in *him*. *Id.* ¶ 46. But "[s]exual harassment is not typically considered a matter so highly personal as to warrant proceeding by pseudonym." *Roe v. Bernabei & Wachtel PLLC*, 85 F. Supp. 3d 89, 96–97 (D.D.C. 2015). Indeed, Plaintiff has not alleged that Moreland falsely accused him of anything close to the sort of graphically detailed rape or sexual assault that courts in this Circuit have found to warrant proceeding pseudonymously. *See, e.g.*, *Doe v. Cabrera*, 307 F.R.D. 1, 3–4, 6 (D.D.C. 2014) (permitting plaintiff alleging rape to use a pseudonym); *Doe v. De Amigos, LLC*, No. 11-1755, 2012 WL 13047579, at *2–3 (D.D.C. Apr. 30, 2012) (permitting plaintiff alleging sexual assault to use a pseudonym). And furthermore, those courts allowing plaintiffs to proceed pseudonymously when the cases involved sexual assault did so because the plaintiff allegedly was the *victim* of

such conduct, not because the plaintiff alleges that he was falsely *accused* of such conduct. *See, e.g.*, *Cabrera*, 307 F.R.D. at 5. Certainly, neither party has directed the Court to any case in this Circuit in which a plaintiff asserting a defamation or false light claim has been permitted to pursue such a claim while using a pseudonym.[1]

Moving on to the second factor, there is simply no basis in the record for the Court to conclude that there is a genuine risk of "retaliatory physical or mental harm" to Plaintiff, such that use of a pseudonym would be appropriate. ECF No. 8 at 6. He suggests that he would be subject to "interrogation, criticism, or psychological trauma" if he is forced to proceed under his true name. *Id.* at 7. But his claim of psychological trauma is speculative at best, and his remaining concerns of "interrogation" or "criticism" are simply part of what may (or may not) come with filing a lawsuit. Plaintiff also asserts that Moreland can "literally destroy" him "through social media" and can influence high-level "decisionmakers" within the industry in which the two of them work. *Id.* at 6. But again, these claims are speculative, and because Moreland knows Plaintiff's identity, she could, in theory, retaliate against him for filing this lawsuit regardless of whether he is identified by name. Ultimately, if the Court were to credit the purported risks cited by Plaintiff—like the matters he alleges are of a "sensitive and personal nature"—doing so would open the door to parties proceeding pseudonymously in an incalculable number of lawsuits in which one party asserts sexual harassment claims against another. And that is incompatible with the D.C. Circuit's admonition that a party's use of a pseudonym must be a "rare dispensation" from the usual rule. *Microsoft Corp.*, 56 F.3d at 1464 (quoting *James*, 6 F.3d at 238). "The Court understands that bringing litigation can subject a plaintiff to scrutiny

[1] While Plaintiff repeatedly insists that this lawsuit is an effort to "clear his already tarnished name," ECF No. 8 at 2, the Court is hard-pressed to understand how he may do so while proceeding under a pseudonym.

and criticism and can affect the way [the] plaintiff is viewed by coworkers and friends, but fears of embarrassment or vague, unsubstantiated fears of retaliatory actions by higher-ups do not permit a plaintiff to proceed under a pseudonym." *Qualls*, 228 F.R.D. at 12.

The next two factors may be disposed with quickly: both parties are adults, and both are individuals, as opposed to the government. Plaintiff makes no plausible argument that either factor supports his bid to proceed through a pseudonym.

The final factor is the risk of unfairness to Moreland if Plaintiff were allowed to litigate this action against her pseudonymously. It is the only factor that arguably weighs in Plaintiff's favor. Courts have "generally [found] little to no risk of unfairness" in cases where, as here, the identity of the party seeking to proceed using a pseudonym is known to the other party, and there is therefore no obvious reason why discovery would be inhibited. *See Cabrera*, 307 F.R.D. at 8 (collecting cases). Moreland, for her part, does not identify a specific, non-speculative reason why she would be prejudiced, apart from the general unfairness of litigating the allegations at the center of this case—which involve the details of the personal lives of both parties—with only one of the parties known to the public. ECF No. 6 at 10.

In the end, the Court finds upon consideration of these factors, including the lack of any apparent risk of unfairness to Moreland, that this case does not present sufficient grounds to overcome "the customary and constitutionally-embedded presumption of openness in judicial proceedings." *Microsoft Corp.*, 56 F.3d at 1464 (citations and internal quotation marks omitted). Therefore, Moreland's motion will be granted.

* * *

Also pending before the Court are Moreland's Motion to Dismiss the Complaint, ECF No. 5, and Plaintiff's Motion for Leave to File an Amended Complaint, ECF No. 13. Although

the parties have not briefed the issue, and it appears that the D.C. Circuit has not addressed it, there is authority in other circuits suggesting that this Court does not have subject-matter jurisdiction to address the issues raised in those motions until Plaintiff is identified in the operative complaint. *See, e.g.*, *Citizens for a Strong Ohio v. Marsh*, 123 F. App'x 630, 637 (6th Cir. 2005)*; W.N.J. v. Yocom*, 257 F.3d 1171, 1172 (10th Cir. 2001). Therefore, at this point, the Court will simply require the Plaintiff to file the original, currently-operative complaint on the docket, this time pleading his true name and address in the caption.

* * *

For the foregoing reasons, it is hereby **ORDERED** that Defendant's Motion to Preclude Plaintiff's Use of a Pseudonym, ECF. No. 6, is **GRANTED**. Plaintiff shall, by March 8, 2019, file his original complaint on the docket, except that he shall now plead his true name and address in the caption, as required by Fed. R. Civ. P. 10(a), and LCvRs 5.1(c)(1) and 11.1.

**SO ORDERED.**

/s/ Timothy J. Kelly
TIMOTHY J. KELLY
United States District Judge

Date: February 21, 2019