IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

JOHN DOE #1, *et al.*,

Plaintiffs,

v.

SYRACUSE UNIVERSITY, *et al.*,

Civil Action No.
5:18-CV-0496 (FJS/DEP)

II. PROCEDURAL HISTORY

Plaintiffs commenced this action on April 24, 2018, asserting diversity of citizenship as a basis for the court's jurisdiction, and filed an amended complaint on July 9, 2018.[3] Dkt. Nos. 1, 26. In their amended complaint, plaintiffs have identified themselves only as John Doe #1 through John Doe #9.[4] Dkt. No. 26 at 4. In a motion filed the day after the action was commenced, plaintiffs sought a temporary restraining order and a preliminary injunction, as well as leave to proceed in the action anonymously, arguing the University would not be prejudiced by allowing them to proceed as Doe parties, and that their privacy interests "far outweigh any interest in access to court records." Dkt. No. 5-7 at 1-4. The application for injunctive relief was ultimately withdrawn and, consequently, the portion of plaintiffs' motion which requested leave to proceed as Doe plaintiffs was not acted upon by the court. *See* Dkt. Nos. 7, 8.

On June 18, 2018, defendants filed a motion requesting an order requiring plaintiffs to correct the caption of their amended complaint and to

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[3] Plaintiffs filed a third amended complaint in this action on August 30, 2018. Dkt. No. 60. Defendants have sought permission, pursuant to Northern District of New York

publicly identify themselves by name. Dkt. No. 19. In their motion, defendants argue that (1) plaintiffs' identities are already known or are easily ascertainable; (2) embarrassment from one's actions is not a sufficient reason to evade public identification in a lawsuit; and (3) the public has a right to judicial openness and to monitor who is accessing the courts. Dkt. No. 19-1 at 7-8. In response, plaintiffs have countered that (1) allowing them to proceed under pseudonyms will not prejudice defendants; (2) the case involves highly sensitive and personal information and issues; and (3) revealing plaintiffs' names will tie them to this event for the rest of their lives, put their safety at risk, and damage their future academic and employment opportunities.[5] Dkt. No. 25-6 at 1-2.

III. DISCUSSION

A. Legal Standard Governing Motions to Proceed Anonymously

The Federal Rules of Civil Procedure mandate that "[a]n action must be prosecuted in the name of the real party in interest." Fed. R. Civ. P. 17(a)(1). Rule 10(a) of the Federal Rules of Civil Procedure provides that "[t]he title of the complaint must name all the parties." Fed. R. Civ. P.

[5] I note that some of the plaintiffs in this action as well as certain other affected students have commenced a related proceeding in New York State Supreme Court, pursuant to Article 78 of the N.Y. Civil Practice Law and Rules. That proceeding is pending before Supreme Court Justice James P. McClusky, who sits in Jefferson County, New York. According to plaintiffs' counsel, Justice McClusky has entered an order permitting the petitioners in that action to proceed anonymously.

10(a). These rules are intended to further the fundamental right of public access to the courts. That right, sometimes referred to as a presumption of access, is rooted in our nation's history. *United States v. Amodeo*, 44 F.3d 141, 145 (2d Cir. 1995) ("*Amodeo I*"); *see also Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978). Access to federal courts allows the public to hold judges accountable for their decisions and preserves confidence in the administration of justice. *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995) ("*Amodeo II*").

Identifying parties to a lawsuit is an important aspect of the requirement of openness and presumption of access to the courts, for the simple reason that the public has a right to know who is utilizing the courts. *Sealed Plaintiff*

1984) ("[T]he First Amendment does secure to the public and to the press a right of access to civil proceedings."). Private civil suits advance the public's interest in enforcing legal and social norms. *Del Rio*, 241 F.R.D. at 159. When a lawsuit involves

> 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; (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 atypical weak public interest in knowing the litigants' identities; and (10) whether there are any alternative mechanisms for protecting the confidentiality of the plaintiff.

Id. (citations and internal quotation marks omitted). Although identifying the foregoing, non-exhaustive list of factors that can inform the decision of whether to permit a party to proceed anonymously, in *Sealed Plaintiff*, the Second Circuit did not espouse the wooden application of those considerations. *Id.* Indeed, Second Circuit observed that in the end, "when determining whether a plaintiff may be allowed to maintain an action under a pseudonym, the plaintiff's interest in anonymity must be balanced against both the public interest in disclosure and any prejudice to the defendant." *Id.* at 189; *see also Delta Airlines, Inc.*, 310 F.R.D. at 224.

B. Analysis

Conn. June 14, 2006) (granting defendants motion to reconsider allowing plaintiff to proceed anonymously because "plaintiff's claim concerns the *investigation* of the alleged sexual assault. It does not actually concern the details of the sexual assault but rather the police's response to hearing her report of the alleged assault.").

In this instance, defendants have labelled plaintiffs' conduct in the subject videos as racist, anti-Semitic, homophobic, sexist, and hostile to people with disabilities. Dkt. No. 26 at 16. Defendant Hradsky has also stated that the video depicted "sexual and relationship violence." Dkt. No. 5-2 at 9. Plaintiffs argue that these comments by defendants constitute a "modern day Scarlet Letter" and, therefore, the matter is of a highly sensitive and personal nature. Dkt. No. 25-16 at 14.

The subject matter of the "roast" in which plaintiffs participated, as well as defendants' comments, involve timely "hot-button" issues that are frequently discussed and debated in many different settings across the country. As evidence of this, there were campus protests at the University growing out of the incident at issue, the subject video garnered widespread local and national media attention, and there were reported threats against plaintiffs on social media in the aftermath of the release of the video. Dkt. No. 21-2 8, 9; Dkt. No. 25-3; Dkt. No. 25-4; Dkt. No. 25-5;

"roast,

themselves "poses a risk that [they] would be subject to unnecessary ridicule and attention." *Colgate*, 2016 WL 1448829, at *3.

3. Whether Plaintiffs will Suffer Additional Harms from Public Identification

Factor three of *Sealed Plaintiff* asks the court to consider other harms that public identification could

suffer as a result of this suit, such as the loss of jobs or the inability to obtain employment, is a risk common to parties in a majority of lawsuits and does not

4. Whether Plaintiffs are Particularly Vulnerable to the Possible Harms of Disclosure

The fourth relevant factor, which examines whether the plaintiffs are vulnerable to the potential harms of disclosure, generally relates to their ages. *Sealed Plaintiff*, 537 F.3d at 190; *Del Rio*, 241 F.R.D. at 158 ("[C]ourts have been readier to protect the privacy of infant plaintiffs than of adults, whether because the children are conceived as more vulnerable or because the child whose privacy is at stake has not chosen for himself or herself to pursue the litigation." (citations omitted)). In this case, plaintiffs are not minors who have

implicates a public interest and the government has less of a concern with protecting its reputation than a private individual."). Here, plaintiffs' suit challenges the actions of private parties. This factor therefore weighs in favor of public identification of plaintiffs. *See A.B. v. Hofstra Univ.*, No. 17-CV-5562, 2018 WL 1935986, at *3 (E.D.N.Y. Apr. 24, 2018) ("The fifth factor seems to weigh against [p]laintiff as this is a suit between private parties.").

6. Whether Defendants Would be Prejudiced by Allowing Plaintiffs to Proceed Anonymously

Addressing the sixth *Sealed Plaintiff* factor, *see Sealed Plaintiff*, 537 F.3d at 190, plaintiffs argue that defendants will not suffer any prejudice by allowing them to proceed anonymously, since defendants are already privy to their identities. Dkt. No. 25-16 at 7. Defendants respond that they will be prejudiced because allowing plaintiffs to proceed anonymously will impede defendants' ability to introduce personal evidence at trial and cross-examine plaintiffs to impeach their credibility. Dkt. No. 19-1 at 15. To evaluate this factor, the court must assess the fundamental fairness of allowing plaintiffs to proceed anonymously, the damage to defendants' reputation caused by maintaining plaintiffs' anonymity, and the difficulties associated with conducting discovery in an anonymous proceeding. *EW*, 213 F.R.D. at 112.

It is undisputed that defendants already know the true identities of plaintiffs. Dkt. No. 19-1 at 13. This would suggest that defendants would not be prejudiced by an anonymous proceeding because defendants know specifically who filed this lawsuit. *See Colgate*, 2016 WL 1448829, at *3 ("Defendants are aware of [p]laintiff's true identity and will have an uninhibited opportunity to litigate this matter regardless of whether [p]laintiff's identity is disclosed publicly."); *Kolko*, 242 F.R.D. at 198 ("Other than the need to make redactions and take measures not to disclose

25-6. Any additional reputational impact to defendants would be minimal compared to the harm plaintiffs have already suffered. *See EW*, 213 F.R.D. at 112 (holding that due to the substantial press regarding allegedly problematic blood screening procedures, "any additional prejudice to the defendant's reputation or ability to operate merely by the pursuit of the action under a pseudonym appears minimal."). Accordingly, I find that defendants would not suffer significant reputational harm if plaintiffs proceeded anonymously.

Defendants further argue that maintaining plaintiffs' anonymity could hamper their ability to impeach plaintiffs' credibility at trial. Dkt. No. 19-1 at 15. They also maintain that "concealing the name of a party could deprive a litigant and the court of the chance that a yet unknown witness would, upon learning that fact about the case, know to step forward with valuable information about the events or the credibility of witnesses." *Del Rio*, 241 F.R.D at 159. In this case, however, it is at best speculative to argue that any unknown witness would bring valuable information to defendants or to the court once they learn plaintiffs' names. Plaintiffs have already been identified as members or prospective members of the Theta Tau fraternity at Syracuse University who were involved in the "roast" that occurred on March 30, 2018. This information has been released through multiple news outlets and has been public since April 2018, giving any potential

and beyond" and because other University students have "doxed" them, plaintiffs' identities have not been kept confidential. Dkt. No. 19-1 at 13.

not published plaintiffs' names, even though some University students did release their names on social media, resulting in some significant level of presentation of confidentiality thus far, weighs in favor of plaintiffs maintaining their anonymity in this suit.

8. Whether the Public's Interest in the Litigation is Furthered by Requiring Plaintiffs to Disclose Their Identities and Whether There is an Atypical Weak Public Interest in the Litigation

Addressing *Sealed Plaintiff* factors eight and nine, *see Sealed Plaintiff*, 537 F.3d at 190, I note that there is a "general presumption that parties' identities are public information." *Hofstra*, 2018 WL 1935986 at *3; *accord*

Shakur, 164 F.R.D. at 361 (citing *Doe v. Deschamps*, 64 F.R.D. 652, 653 (D. Mont. 1974)). Here, there has been widespread public interest in this story because the "roast" videos have become part of a broader debate regarding university and fraternity culture, and plaintiffs' identities are linked to this national conversation because of their participation in the "roast." Therefore, I find that factor eight from *Sealed Plaintiff* weighs somewhat in favor of requiring plaintiffs to identify themselves.

The tenth and final *Sealed Plaintiff* factor requires analysis of alternative concerns of protecting the plaintiffs' identity. *Sealed Plaintiff*, 537 F.3d at 190. Defendants argue that any academic records or other confidential materials used in this lawsuit are already protected by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, or by other state and federal privacy laws, which serve as alternative mechanisms for protecting plaintiffs' confidentiality. Dkt. No. 19-1 at 15. Plaintiffs respond that FERPA relates only to their educational records, and is irrelevant to the question of whether plaintiffs must reveal their identities in this lawsuit. Dkt. No. 25-16 at 16.

It is true, as defendants argue, that FERPA and other privacy laws may potentially protect plaintiffs' confidentiality in connection with any applicable student records and documents submitted to the court in this suit. *See Anonymous v. Medco Health Sol. Inc.*, 588 F. App'x 34, 35 (2d Cir. 2014) ("[A]ny issues regarding the confidentiality of particular documents or the need for redaction will be handled as they arise."). Plaintiffs are also correct, however, that the confidentiality of records and documents is a separate issue from whether they should be required to reveal their identities to proceed with this litigation. There are no other mechanisms currently in place to protect plaintiffs' identities if they cannot proceed with this litigation anonymously. Accordingly, I find that this factor

weighs against requiring the plaintiffs to divulge their true identities in this lawsuit.

IV. SUMMARY AND RECOMMENDATION

While recognizing the strong public policy favoring public access to judicial documents and proceedings, I conclude that the overriding concerns associated with requiring plaintiffs to divulge their identities, as discussed above, weigh against granting defendants' motion to require plaintiffs to reveal their identities and therefore trump the public's presumptive right of access. Accordingly, I recommend that the court exercise its discretion by permitting plaintiffs to proceed as Doe plaintiffs in this action. It is therefore respectfully

RECOMMENDED that defendants' motion for an order compelling plaintiffs' to disclose their true identities, (Dkt. No. 19) be DENIED in all respects.

NOTICE: Pursuant to 28 U.S.C. § 636(b)(1), the parties may lodge written objections to the foregoing report. Such objections must be filed with the clerk of the court within FOURTEEN days of service of this report. FAILURE TO SO OBJECT TO THIS REPORT WILL PRECLUDE APPELLATE REVIEW. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72; *Roldan v. Racette*, 984 F.2d 85 (2d Cir. 1993).

It is hereby ORDERED that the clerk of the court serve a copy of this report and recommendation upon the parties in accordance with this court's local rules.

Dated: September 10, 2018
Syracuse, NY