IN THE UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT OF MISSOURI

RURAL COMMUNITY WORKERS ALLIANCE and JANE DOE; *Plaintiffs*, v. SMITHFIELD FOODS, INC. AND SMITHFIELD FRESH MEATS CORP., *Defendants*.	Case No. 5:20-cv-06063-DGK

PLAINTIFFS' REPLY SUGGESTIONS IN SUPPORT OF MOTION TO ALLOW PLAINTIFF JANE DOE TO PROCEED UNDER PSEUDONYM

To safeguard herself, her coworkers and the public, Jane Doe ("Plaintiff") sued her present employer for emergency relief. Having brought upon her employer the heavy scrutiny of the federal courts, Plaintiff must now go to work each day and face her superiors. She does so, having experienced hostile treatment for reporting minor problems in the past. Dkt. 35-1 ("Second Doe Decl.) ¶¶ 16-19. She does so, after noticing fellow workers who openly sued Smithfield now absent from the shop floor. *Id.* And she does so, having herself witnessed retaliation against a co-worker who asserted her legal rights. *Id.* Plaintiff works in an industry renowned for retaliation, documented in a report published by the federal government based on numerous interviews with workers (Dkt. 42 at 2 (describing Government Accountability Office report concluding that rampant fears of retaliation in meatpacking plants impede enforcement of workplace safety protections)). She reasonably fears severe harm should her identity be disclosed. Under all the circumstances of this case, she should be permitted to proceed anonymously. Defendants' rights and the relevant public interests can be adequately protected by

allowing Doe to be cross examined, as she has volunteered to do, pursuant to a protective order that protects her identity.

I. Compelling reasons justify anonymity in this case

In their opposition, Defendants claim that Doe "has no privacy right that warrants protection." (Dkt. 47 at 1) Defendants wrongly assert that a plaintiff can "only" be permitted to proceed anonymously under one of three circumstances: (1) where a case's subject matter is of a "highly sensitive and personal nature;" (2) where there exists "real danger of physical harm;" or (3) where the "injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity." (Dkt. 47 at 1 (citing *Doe v. Frank*, 951 F.2d 320, 323 (11th Cir. 1992); *Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir. 1981)). In reality, these finite categories do not confine the court's decision-making and, as the cases cited by the Defendants show, a court holds far wider discretion. Indeed, the court in *Doe v. Frank* went out of its way to explain that the categories treated as exclusive by Defendant are by no means so:

> The enumerated factors in *Stegall* were not intended as a "rigid, three-step test for the propriety of party anonymity." Nor was the presence of one factor meant to be dispositive. Instead, they were highlighted merely as factors deserving consideration. A judge, therefore, should carefully review *all* the circumstances of a given case and then decide whether the customary practice of disclosing the plaintiff's identity should yield to the plaintiff's privacy concerns.

951 F.2d 320 at 323 (internal citation omitted). *Doe v. Stegall,* also relied on by Defendants for their restrictive test, expressly refutes the position for which Defendants cite it:

> [W]e think it would be a mistake to distill a rigid, three-step test for the propriety of party anonymity from the fact-sensitive holding in Southern Methodist University Ass'n. The opinion never purports to establish the three common factors it isolates as prerequisites to bringing an anonymous suit.
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> We advance no hard and fast formula for ascertaining whether a party may sue anonymously. The decision requires a balancing of considerations calling for

> maintenance of a party's privacy against the customary and constitutionally-embedded presumption of openness in judicial proceedings.

Doe v. Stegall, 653 F.2d 180, 185 (5th Cir. 1981). It is fully within this Court's discretion to consider all of the circumstances of this case and to permit Plaintiff to proceed under a pseudonym.

Further, while no set of factors is totally determinative and while each case must be examined on its own merits, the *Megless* case, cited by the Defendants, provides one of the most comprehensive set of factors for a court to consider. *Doe v. Megless*, 654 F.3d 404, 409-410 (3d Cir. 2011). The court first considers those factors weighing in favor of anonymity:

> (1) the extent to which the identity of the litigant has been kept confidential;
> (2) the bases upon which disclosure is feared or sought to be avoided, and the substantiality of these bases;
> (3) the magnitude of the public interest in maintaining the confidentiality of the litigant's identity;
> (4) whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigant's identities;
> (5) the undesirability of an outcome adverse to the pseudonymous party and attributable to his refusal to pursue the case at the price of being publicly identified; and
> (6) whether the party seeking to sue pseudonymously has illegitimate ulterior motives.

Id. Here, the Plaintiff has maintained confidentiality (factor (1)), the Plaintiff has substantial reason to fear destructive retaliation (factor (2)), there is heavy public interest in having Jane Doe's presence in this case (explained further below) (factor (3)), the legal nature of the issues at hand predominate (turning almost entirely on whether undisputed plant conditions violate CDC guidelines and meet the injunctive relief standard) (factor (4)), there is broad public interest in abating a dangerous nuisance (factor (5)) and there is an absence of any suggestion of bad faith on the part of Plaintiff (factor (6)). All of these militate strongly in favor of allowing Plaintiff to proceed under a pseudonym.

The following factors weigh against anonymity:

> (1) the universal level of public interest in access to the identities of litigants;
> (2) whether, because of the subject matter of this litigation, the status of the litigant as a public figure, or otherwise, there is a particularly strong interest in knowing the litigant's identities, beyond the public's interest which is normally obtained; and
> (3) whether the opposition to pseudonym by counsel, the public, or the press is illegitimately motivated."

Id. Jane Doe is an ordinary, rank and file worker, not a public figure, and her claims are not special to her (factors (1) and (2)). Given Jane Doe's experience with retaliation in the plant and given the industry's endemic retaliation issues, the court should be concerned with the potential illegitimacy of Defendants' request for Doe's identity (factor (3)). When weighed in their totality, the circumstances of this case fully support the Plaintiff's request to proceed anonymously.

Defendants further state that Plaintiff's fear of retaliation may not serve as a basis for proceeding anonymously because it includes no threat of violence. (Dkt. 47 at 2) Again, Defendants rely on a case that wholly fails to support their position: *Doe v. Skyline Autos. Inc.*, 375 F. Supp. 3d 401 (S.D.N.Y. 2019). *Skyline Autos* includes the "retaliatory threat of violence" among a long list of other factors to be weighed and considered. *Id* at 406. The factor listed immediately after "retaliatory threat of violence" is "whether identification presents other harms and the likely severity of those harms." *Id.* Loss of one's livelihood and sole source of income certainly falls into that broad category.

Defendants minimize the threat of job loss as mere economic harm insufficient to warrant anonymity. (Dkt. 47 at 2) But at issue here is not the very tenuous possibility that being publicly named in a lawsuit will cause reputational harm that will lead to economic losses. *See, e.g., Doe v. Frank*, 951 F.2d 320, 323-24 (11th Cir. 1992); *see also, In re Ashley Madison*

Customer Data Sec. Breach Litig., MDL No. 2669, 5-6 (E.D. Mo. Apr. 6, 2016) (citing a string of cases where the financial harm threatened by reputational damage was insufficient to invoke anonymity). Here, the feared harm – job loss – would plunge the Plaintiff directly and tangibly into extreme, severe, and dire crisis. (Dkt 3-5) ¶ 20 This type of harm can and should be considered by courts. *Whistleblower 14106-10W v. Commissioner*, 137 T.C. 183, 198-199 (2011) (potential loss of tribal member's per capita payments justified anonymity); *United States ex rel. Doe v. Boston Scientific Corp*., No. 4:07-CV-2467, 2009 U.S. Dist. LEXIS 59390 at 7-8 (S.D. Tex. 2009) (threat to husband's job warranted anonymity).

II. Keeping Jane Doe's identity anonymous is in the public interest

Defendants go on to argue that the public's First Amendment right to know the identity of litigants defeats Plaintiff's request to proceed under a pseudonym. (Dkt. 47 at 4) But the "equation linking the public's right to attend trials and the public's right to know the identity of the parties is not perfectly symmetrical." *Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir. 1981). "Party anonymity does not obstruct the public's view of the issues joined or the court's performance in resolving them. The assurance of fairness preserved by public presence at a trial is not lost when one party's cause is pursued under a fictitious name." *Id.*

Nor is it the case that the public has an interest in knowing Plaintiff's identity. In fact, the opposite is true. This is a public nuisance case and the nuisance involves the threat of an invisible virus. Without Plaintiff's inside knowledge, knowledge she only feels safe sharing while protected from retaliation, the public would have far less information about the conditions that imperil public health. *See Doe v. Megless*, 654 F.3d at 409. (among the factors a court should consider is "the magnitude of the public interest in maintaining the confidentiality of the

litigant's identity" and "the undesirability of an outcome adverse to the pseudonymous party and attributable to his refusal to pursue the case at the price of being publicly identified").

Defendants take the untenable position that Plaintiff should be treated like a class representative because of the public interest in the case. (Dkt. 47 at 4-5 citing *In re Ashley Madison Customer Data Sec. Breach Litig.*, MDL No. 2669, 7 (E.D. Mo. Apr. 6, 2016)). The court in *Ashley Madison,* relied on by Defendants, disallowed named class representatives from proceeding anonymously because doing so would get in the way of assessing class representatives' adequacy and also because the class representatives – who sought monetary damages – held a fiduciary duty to the class. *Id.* By contrast, the Plaintiff has not asserted class claims, she is not required to prove adequacy, her case will not determine the individual rights of others, and she seeks no monetary damages for herself or anyone else. The wide public interest in the present case does nothing to convert its procedural posture into one never asserted.

III. Defendants will not be prejudiced

Though they argue that Plaintiff's case should be equated with a class action, Defendants also argue that the relief sought by the Plaintiff is so individualized, anonymity will prejudice them. (Dkt. 47 at 5) Defendants go on to cite testimony based on Plaintiff's personal knowledge. (*Id.*) While it is true that Plaintiff's knowledge is individual – as all testimony ultimately is – the nature of that testimony pertains not to experiences special to her, but to observations relating to plant-wide conditions. (Dkt. 3-5) Where a "threshold legal issue" does "not depend to any appreciable extent on petitioner's identity," the "public's interest in knowing petitioner's identity is relatively weak." *Whistleblower 14106-10W v. Commissioner*, 137 T.C. 183, 205 (2011). Nor will the nature of Plaintiff's allegations prejudice the Defendants, for the Defendants have superior access to plant conditions and can easily document and present them in ways that

workers cannot. Moreover, as Jane Doe's counsel represented during oral argument on April 30, 2020, Jane Doe will be made available for cross-examination via telephone in a manner that will continue to protect her identity. As such, no prejudice will be visited upon Defendants by Plaintiff's anonymity. Plaintiffs' motion to proceed under a pseudonym should be granted.

Respectfully Submitted,

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