IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

JANE DOE, Plaintiff, v. HARPERCOLLINS PUBLISHERS LLC and LAURA KIPNIS, Defendants.	)	No. 1:17-cv-03688 Hon. John Robert Blakey

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO PROCEED UNDER A PSEUDONYM AND MEMORANDUM OF LAW IN SUPPORT THEREOF

Defendants HarperCollins Publishers LLC and Laura Kipnis (collectively, "HarperCollins" or "Defendants"), by and through their undersigned attorneys, hereby submit their Opposition to Plaintiff's Motion to Proceed Under a Pseudonym and ask this Court to direct Plaintiff to correct the caption of this action to include her true name.

PRELIMINARY STATEMENT

This Court should deny Plaintiff's request to proceed pseudonymously. Litigating under a pseudonym is an extraordinary departure from the Federal Rules of Civil Procedure and is strongly disfavored by the Seventh Circuit because it runs counter to the fundamental openness and fairness of the federal courts. *Doe v. Blue Cross & Blue Shield United of Wisc.*, 112 F.3d 869, 872 (7th Cir. 1997). This is not one of the rare cases in which litigating under an assumed name is justified, because Plaintiff herself has already participated in public litigation in this Court about the very same subject matter under her own name. *See Ludlow v. Northwestern Univ.*, 125 F. Supp. 3d 783 (N.D. Ill. 2015) ("*Ludlow II*"); *Ludlow v. Northwestern Univ.*, 79 F. Supp. 3d 824 (N.D. Ill. 2015) ("*Ludlow I*"). As such, Plaintiff's identity as the accuser in the

Northwestern University case – and her claims to have been a victim sexual assault – have already been aired publicly in this very Court. Furthermore, shielding Plaintiff's identity would unfairly disadvantage Defendants because it would permit the Plaintiff to continue to speak publicly about this matter while muzzling the Defendants. Plaintiff's motion should be denied.

ARGUMENT

This Court should deny Plaintiff's request to proceed pseudonymously both because Plaintiff's name was disclosed in this Court about this subject matter and because she has presented no reason to depart from the well-established "principle that judicial proceedings, civil as well as criminal, are to be conducted in public." *Blue Cross*, 112 F.3d at 872.

Federal Rule of Civil Procedure Rule 10(a) mandate that each complaint's caption must name all the parties means the caption must contain the parties' true names, not pseudonyms. Fed. R. Civ. P. 10(a); *see also* Pl.'s Br. in Supp. of Mot. to Proceed Under a Pseudonym ("Brief") at 1, June 6, 2017, Dkt. 8. Rule 17 similarly prohibits anonymous litigation by requiring that every "action must be prosecuted in the name of the real party in interest." Fed. R. Civ. P. 17(a)(1); *see also Doe v. Indiana Black Expo, Inc.*, 923 F. Supp. 137, 139 (S.D. Ind. 1996) (requirements of Rules 10 and 17 "are not a matter of mere administrative convenience for court staff and counsel. They also protect the public's legitimate interest in knowing which disputes involving which parties are before the federal courts.").

The Seventh Circuit has repeatedly and emphatically held that the use of fictitious names by litigants is disfavored and may be allowed only in those rare cases in which the party seeking anonymity demonstrates the existence of "exceptional circumstances." *Doe v. Vill. of Deerfield*, 819 F.3d 372, 376-77 (7th Cir. 2016); *Doe v. Sheriff of DuPage Cnty.*, 128 F.3d 586, 587 (7th Cir. 1997). Although the decision is left to the court's discretion, a trial court "has an

independent duty to determine whether exceptional circumstances justify" allowing a party to proceed pseudonymously, even where no objection is raised. *Blue Cross*, 112 F.3d at 872. The court makes that determination by balancing the party's stated reasons for seeking anonymity "against the public's and parties' rights to the identities of parties and the potential prejudice to the opposing parties." *Vill. of Deerfield*, 819 F.3d at 377.

The bar is set quite high for a party to proceed pseudonymously. A mere desire to avoid embarrassment or shame is not enough. *See, e.g., Blue Cross*, 112 F.3d at 872 (potential embarrassment caused by public disclosure of plaintiff's obsessive-compulsive disorder insufficient to justify anonymity); *Doe v. Paris Union Sch. Dist. No. 95*, No. 05-2249, 2006 WL 44304, at *3 (C.D. Ill. Jan. 9, 2006) (denying anonymity to plaintiff sex offender in challenge to law barring him from attending school events with his children because plaintiff's fears of harm to his business and emotional harm to his children did not outweigh interests of public and defendants).

For this reason, sexual harassment cases, for example, are usually litigated using the parties' real names. *See Doe v. City of Chicago,* 360 F.3d 667, 669-70 (7th Cir. 2004) (generally, "sexual harassment cases are not brought anonymously" absent allegations of rape, torture or that the plaintiff is "a likely target of retaliation by people who would learn her identity only from a judicial opinion or other court filing"). By contrast, "fictitious names are allowed when necessary to protect the privacy of children, rape victims, and other particularly vulnerable parties," *Blue Cross*, 112 F.3d at 872, such as "closeted" gay or transgender people. *Doe v. United States*, No. 16-CV-0640-SMY-DGW, 2016 WL 3476313, at *1 (S.D. Ill. June 27, 2016) (allowing parents of transgender child to proceed pseudonymously because revealing their names would "expose Plaintiffs to the risk of retaliation by members of the public"). In this case,

Plaintiff has not made and cannot make a showing sufficient to overcome the presumption of openness of court proceedings.

First, Plaintiff's identity as the graduate student who filed a Title IX complaint against former Northwestern Professor Peter Ludlow has been a matter of public record in this Court for three years. Professor Ludlow's 2014 defamation lawsuit against Plaintiff and others identified Plaintiff as the graduate student involved, asserted that they had a consensual romantic relationship, and accused her of fabricating her allegation of nonconsensual sex. *See Ludlow II*, 125 F. Supp. 3d at 787; *Ludlow I*, 79 F. Supp. 3d at 830-31. Plaintiff litigated in that action under her true name and did not seek to shield her identity. Indeed, she filed seven pleadings under her own name. *See* Docket, *Ludlow v. Northwestern Univ.*, No. 1:14-cv-04614 (N.D. Ill. filed June 18, 2014), Dkt. Nos. 29, 30, 40, 50, 55, 56 & 66. And Judge Ellis issued two opinions published in the Federal Supplement that, between them, name Plaintiff no fewer than 80 times and discuss in some detail the Title IX proceeding underlying this action – up to and including Plaintiff's claim to have been a sexual assault victim. *See Ludlow II*, 125 F. Supp. 3d at 785-88; *Ludlow I*, 79 F. Supp. 3d at 828-31. Plaintiff concedes as much in her Complaint.[1] *See* Compl. ¶ 57 (admitting that some of the information in *Unwanted Advances* "had trickled out through Ludlow's lawsuit," without further identifying the suit or the information). In short, allowing Plaintiff to litigate anonymously is not "necessary to protect [her] privacy," *Blue Cross*, 112 F.3d

[1] Indeed, Plaintiff not only admits that her identity and her allegations against Professor Ludlow are part of the public record, but also affirmatively alleges that her identity has been widely disseminated online by others. Compl. ¶ 70 (contending that "many people – including prominent members of the academic philosophy community where Plaintiff hopes to soon work – have been . . . publicly identifying Plaintiff by name" on "social media and in various professional blogs").

at 872, because her identity as Professor Ludlow's accuser is not private.[2] Plaintiff cannot put this cat back in the bag.

For similar reasons, several courts have denied requests by alleged rape victims to litigate pseudonymously where those parties' identities already were publicly known.[3] For example, a court denied anonymity to a former University of Rhode Island student who sued the school over its response to her alleged rape, noting that the student admitted her identity was well known on campus and did not dispute that her name had been exposed in other litigation involving the incident. *Doe v. Univ. of Rhode Island*, No. CIV.A. 93-0560B, 1993 WL 667341, at *3 (D.R.I. Dec. 28, 1993). Similarly, before his elevation to the Second Circuit, Judge Denny Chin ruled that a woman whom late rapper Tupac Shakur was convicted of sexually assaulting could not proceed pseudonymously in a civil case against the performer, in part because her name already was known to the news media. *Doe v. Shakur*, 164 F.R.D. 359, 362 (S.D.N.Y. 1996). Here, Plaintiff cannot deny that her name already is a matter of public record, and expressly admits that the independent investigator hired by Northwestern University "found that she [the investigator] did not have enough evidence to determine whether or not a sexual assault had occurred." Compl. ¶ 49. In fact, in The Chronicle of Higher Education (attached hereto as Exhibit A, at 14), Plaintiff's identity was described as "spread widely online". As such, as in *Univ. of Rhode Island* and *Shakur*, Plaintiff is not entitled to anonymity.

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[2] Plaintiff's failure to address this dispositive fact in her motion is striking. When Plaintiff's counsel informed Defendants' counsel of her intention to file this motion, Defendants' counsel responded that Defendants intended to oppose the motion and attached to that correspondence copies of the published opinions in *Ludlow I* and *II*, as well as Plaintiff's memoranda in support of her motions to dismiss filed in that action.

[3] Moreover, the First Amendment prohibits the imposition of criminal or civil liability for publishing the name of a rape victim (or any other information) that is available in public government records. *Florida Star v. B.J.F.*, 491 U.S. 524, 541 (1989); *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 495 (1975).

Similarly, because her identity as Professor Ludlow's accuser is already a matter of public record in this Court, Plaintiff's purported fear of some unspecified "retaliatory harm," *see* Brief at 4-5, is unfounded. Plaintiff does not claim she suffered any retaliation because her name was made public in the *Ludlow* litigation. Indeed, Plaintiff does not provide the Court with any reason other than pure speculation to believe that she would be in any danger of suffering any negative consequences should her name be made public in this case as it was the *Ludlow* litigation.

Second, allowing Plaintiff to litigate pseudonymously would prejudice the Defendants. Plaintiff made the affirmative decision to initiate this lawsuit and use this Court as a platform to publicly accuse Defendants of serious misconduct. Unlike Defendants, in this case Plaintiff was not dragged into court against her will. As the Seventh Circuit observed, "if the complaint's allegations are false, then anonymity provides a shield behind which defamatory charges may be launched without shame or liability." *Doe v. Smith*, 429 F.3d 706, 710 (7th Cir. 2005); *see also Shakur*, 164 F.R.D. at 361 ("[P]laintiff has chosen to bring this lawsuit. She has made serious charges and put her credibility in issue. Fairness requires that she be prepared to stand behind her charges publicly."); *Indiana Black Expo*, 923 F. Supp. at 141-42 ("Basic fairness requires that where a plaintiff makes such accusations publicly, [s]he should stand behind those accusations, and the defendants should be able to defend themselves publicly."). Plaintiff chose to initiate this litigation; Defendants seek nothing more nor less than a level playing field.

Furthermore, rather than avoiding the limelight, Plaintiff has worked to draw widespread publicity for her lawsuit. Her attorneys have issued a press release about this litigation and have given extensive media interviews about it. Press Release, Salvatore Prescott & Porter, PLLC, Graduate Student Sues Northwestern Professor and HarperCollins for Defamation and Invasion

of Privacy (May 16, 2017), *available at:* http://dailynous.com/wp-content/uploads/2017/05/kipnis-lawsuit-press-release_doe-v.-harpercollins-et-al-05.16.17.pdf; *see also, e.g.*, Dawn Rhodes, *Northwestern student sues prof Laura Kipnis over 'Unwanted Advances' book*, CHICAGO TRIBUNE (May 17, 2017, 8:55 p.m.), http://www.chicagotribune.com/news/local/breaking/ct-northwestern-student-sues-professor-book-20170517-story.html; Allyson Chiu and Matthew Choi, *In Focus: Northwestern graduate student sues professor for invasion of privacy, defamation following book release*, THE DAILY NORTHWESTERN (May 22, 2017), https://dailynorthwestern.com/2017/05/22/campus/northwestern-graduate-student-sues-professor-for-invasion-of-privacy-defamation-following-book-release/. And the day after Plaintiff filed her motion, the *Chicago Reader* quoted one of Plaintiff's attorneys as saying Defendants' publication of *Unwanted Advances* was "just plain wrong." Deanna Isaacs, *Is Laura Kipnis's new book an act of retaliation?*, CHICAGO READER (June 6, 2017), https://m.chicagoreader.com/chicago/laura-kipnis-unwanted-advances-lawsuit-title-ix/Content?oid=26880636.[4]

In similar circumstances, other federal courts have held that it would be unfair to suppress the identities of plaintiffs who voluntarily sought publicity for their lawsuits. *See, e.g.*, *Doe v. N. Carolina Cent. Univ.*, No. 1:98CV01095, 1999 WL 1939248, at *4 (M.D.N.C. Apr. 15, 1999) (noting, in denying anonymity for university police officer who accused her supervisor of rape, that "Plaintiff's attorney has made several statements to the media regarding this case,

[4] The Court may take judicial notice of these published articles. *See, e.g., United States ex rel. John v. Hastert*, 82 F. Supp. 3d 750, 764 (N.D. Ill. 2015) (holding that the court could take judicial notice of Chicago Tribune articles to conclude that information in complaint had previously been publicly disclosed and was in the public realm); *United States ex rel. Bogina v. Medline Indus., Inc.*, No. 11 C 05373, 2015 WL 1396190, *3 n. 7 (N.D. Ill. Mar. 24, 2015) (taking judicial notice of publications in news media as "not subject to reasonable dispute" and "capable of accurate and ready determination through sources whose accuracy cannot be questioned").

specifically identifying [the supervisor] and leveling charges at NCCU."). The same conclusion applies here. And, indeed, on a practical level, allowing the Plaintiff to hide her identity while she litigates would leave Defendants with no ability to defend themselves publicly. It simply cannot be the case that this Court allows Plaintiff to publicly flog Defendants behind the shield of anonymity but prohibits Defendants from fully defending themselves in open court.

Third, holding Plaintiff to the requirement that she litigate under her real name serves the public interest in open court proceedings. Federal courts belong to the public, not the litigants, and therefore "[t]he public has an interest in knowing what the judicial system is doing, an interest frustrated when any part of litigation is conducted in secret." *Smith*, 429 F.3d at 710. The Seventh Circuit explained:

> When [litigants] call on the courts, they must accept the openness that goes with subsidized dispute resolution by public (and publicly accountable) officials. Judicial proceedings are public rather than private property . . . The political branches of government claim legitimacy by election, judges by reason. Any step that withdraws an element of the judicial process from public view makes the ensuing decision look more like fiat.

Union Oil Co. of Cal. v. Leavell, 220 F.3d 562, 567-68 (7th Cir. 2000) (internal citations omitted). Plaintiff has acknowledged the widespread public attention already given to her Title IX claims against Professors Ludlow and Kipnis and the publication of *Unwanted Advances*. *E.g.*, Compl. ¶¶ 1, 51, 53 69-71. In fact, Plaintiff's attorneys have aggressively joined in the discussion. Those interested in this very public controversy are entitled to complete information about this lawsuit. Put simply, "[t]he people have a right to know who is using their courts." *Blue Cross*, 112 F.3d at 872.

CONCLUSION

For all of the foregoing reasons, Defendants respectfully request that this Court deny Plaintiff's motion to proceed pseudonymously, and enter an order requiring Plaintiff to correct

the caption of this case to reflect her actual name and for such other relief as the Court deems appropriate.

Dated: June 9, 2017

Respectfully submitted:

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Counsel for Defendants HarperCollins Publishers LLC and Laura Kipnis

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of June 2017, a true and correct copy of the above and foregoing was sent via the Court's CM/ECF System to all counsel of record.

/s/ Lauren J. Caisman
Attorney for Defendants