

**SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: SECOND DEPARTMENT**

-----X  
DOE ARK3,

Plaintiff-Respondent,

-against-

DIOCESE OF ROCKVILLE CENTRE a/k/a THE  
ROMAN CATHOLIC DIOCESE OF ROCKVILLE  
CENTRE, NEW YORK,

Defendant,

-and-

ST. HUGH OF LINCOLN a/k/a ST. HIGH OF  
LINCOLN ROMAN CATHOLIC CHURCH a/k/a  
ST. HUGH'S,

Defendant-Appellant,

-and-

DOES 1-5 whose identities are unknown to Plaintiff,

Defendants.

-----X

**NOTICE OF MOTION BY CHILD USA FOR LEAVE TO FILE *AMICUS CURIAE*  
BRIEF IN SUPPORT OF PLAINTIFF**

PLEASE TAKE NOTICE, that upon the affirmation of Alice R. Nasar Esq., sworn to on June 22, 2020, and all exhibits attached thereto including a copy of the proposed brief of *amicus curiae*, the undersigned will move this Court at 45 Monroe Place, Brooklyn, New York, on 13<sup>th</sup> July, 2020 at 4pm, or as soon thereafter as is practicable, for an order granting leave to CHILD USA to file with this Court a brief of *amicus curiae* in support of Plaintiff, S.T., in the above-styled action.

Pursuant to CPLR 2214(b), answering papers shall be served on or before 7 days before the return date, and any reply shall be served on or before 1 day before the return date.

Dated: Philadelphia, Pennsylvania  
July 13, 2020

Respectfully submitted,



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Prose

*Counsel for Defendants*

**SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: SECOND DEPARTMENT**

-----X  
DOE ARK3,

Plaintiff-Respondent,

-against-

DIOCESE OF ROCKVILLE CENTRE a/k/a THE  
ROMAN CATHOLIC DIOCESE OF ROCKVILLE  
CENTRE, NEW YORK,

Defendant,

-and-

ST. HUGH OF LINCOLN a/k/a ST. HIGH OF  
LINCOLN ROMAN CATHOLIC CHURCH a/k/a  
ST. HUGH’S,

Defendant-Appellant,

-and-

DOES 1-5 whose identities are unknown to Plaintiff,

Defendants.

-----X  
**AFFIRMATION OF ALICE R. NASAR IN SUPPORT OF MOTION BY CHILD USA TO  
FILE *AMICUS CURIAE BRIEF***

Alice R. Nasar, an attorney admitted to practice before the courts of New York, affirms the following to be true under penalty of perjury:

1. I am a staff attorney with CHILD USA. I submit this affirmation in support of the motion for leave to file the attached brief as *amicus curiae* in support of Plaintiff, S.T.
2. This case raises an important issue of whether the Plaintiff may prosecute this action brought pursuant to the Child Victims Act using a “John Doe”/ “initials” designation in the caption in place of Plaintiff’s true name and other relief.

3. *Amicus curiae* CHILD USA is the leading non-profit think tank working to end child abuse and neglect in the United States. CHILD USA engages in high-level legal, social science, and medical research and analysis to derive the best public policies to end child abuse and neglect. Distinct from an organization engaged in the direct delivery of services, CHILD USA produces evidence-based solutions and information needed by policymakers, youth-serving organizations, media, and the public to increase child protection and the common good. CHILD USA works to protect children from abuse in various contexts including its child sex abuse statute of limitation reform initiative. CHILD USA's interests in this case are directly correlated with its mission to eliminate barriers to justice for child sex abuse victims who have been harmed by individuals and institutions.

4. CHILD USA seeks to participate as *amicus curiae* in this case because of the important public policy issues that are served by permitting child sex abuse victims to proceed under pseudonym and for bringing access to justice for child sex abuse survivors.

5. The proposed brief of *amicus curiae* is attached to this affirmation as **Exhibit A**. This brief<sup>1</sup> supplements the Plaintiff's brief in this case by elaborating on the individual privacy interests and public interests that are served by permitting victims of childhood sexual abuse to remain anonymous as they pursue their claims under the Child Victims Act, CPLR 214-G. First, *amicus curiae* describes why victims' privacy interests outweigh the presumption of openness of courts. Specifically, *amicus* describes how the involuntary loss of privacy via public disclosure of victims' identities diminishes their constitutional right to access courts and it does not serve the public interest. Second, *amicus curiae* describes the critical importance of pseudonyms for victims of childhood sexual abuse to prevent harm to the victims. Third, *amicus curiae* describes how the

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<sup>1</sup> Annexed hereto as **Exhibit B** is Plaintiff S.T.'s proposed Brief of Amicus Curiae CHILD USA in Support of Plaintiff.

availability of pseudonyms for adult survivors advances the public policy of encouraging disclosure of child sexual abuse and reflects the legislative intent behind the Child Victims Act to identify previously unknown child predators, and to shift the costs of abuse from victims to those who caused the abuse.

6. For these reasons, CHILD USA respectfully seeks the Court's permission to file the attached *amicus curiae* brief.

**Date: Philadelphia, Pennsylvania**  
**July 13, 2020**

Respectfully submitted,



---

Alice R. Nasar, Esq.  
*Counsel of Record*  
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# EXHIBIT A

File No. 924-7475 BRD:tm

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

-----X  
ARK21 DOE,

Plaintiff,

Index No.: 900017/2019

-against-

**NOTICE OF APPEAL**

DIOCESE OF ROCKVILLE CENTRE a/k/a THE  
ROMAN CATHOLIC DIOCESE OF ROCKVILLE  
CENTRE, NEW YORK; HOLY TRINITY DIOCESAN  
HIGH SCHOOL a/k/a HOLY TRINITY; and DOES 1-5  
whose identities are unknown to Plaintiff,

Defendants.

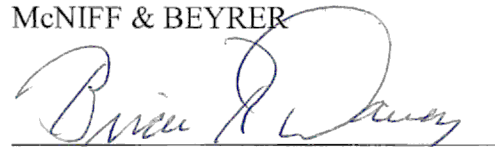
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PLEASE TAKE NOTICE, that the defendant, HOLY TRINITY DIOCESAN HIGH  
SCHOOL, hereby appeal to the Appellate Division for the Second Judicial Department, from the  
Order of the Steven M. Jaeger, Justice of the Supreme Court for the County Nassau dated  
February 4, 2020 and entered in the Office of the Nassau County Clerk on February 5, 2020.

Dated: Williston Park, New York  
February 21, 2020

Yours, etc.,

MULHOLLAND MINION DAVEY  
McNIFF & BEYRER



By: BRIAN R. DAVEY

*Attorneys for Defendant*

HOLY TRINITY DIOCESAN  
HIGH SCHOOL

374 Hillside Avenue

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To: JEFF ANDERSON & ASSOCIATES, P.C.  
*Attorneys for Plaintiff*  
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JONES DAY  
*Attorneys for Defendant*  
DIOCESE OF ROCKVILLE CENTRE  
250 Vesey Street  
New York, New York 10281  
(212) 326-3939

Supreme Court of the State of New York  
Appellate Division: Second Judicial Department

**Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil**

<b>Case Title:</b> Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.				<b>For Court of Original Instance</b>	
<b>SUPREME COURT OF THE STATE OF NEW YORK</b> <b>COUNTY OF NASSAU</b> <div style="text-align: right;">-----X</div>				Date Notice of Appeal Filed	
ARK21 DOE, Plaintiff, <div style="text-align: center;">- against -</div> DIOCESE OF ROCKVILLE CENTRE a/k/a THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, NEW YORK; HOLY TRINITY DIOCESAN HIGH SCHOOL a/k/a HOLY TRINITY; and DOES 1-5 whose identities are unknown to Plaintiff, Defendants.				<b>For Appellate Division</b>	
<b>Case Type</b>		<b>Filing Type</b>			
<input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration <input type="checkbox"/> Action Commenced under CPLR 214-g		<input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding			
<input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278		<input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Executive Law § 298 <input type="checkbox"/> CPLR 5704 Review			
<b>Nature of Suit:</b> Check up to three of the following categories which best reflect the nature of the case.					
<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input type="checkbox"/> Commercial	<input type="checkbox"/> Contracts		
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law	<input type="checkbox"/> Estate Matters		
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Prisoner Discipline & Parole		
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation	<input checked="" type="checkbox"/> Torts		

Informational Statement - Civil

Appeal			
Paper Appealed From (Check one only):		If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.	
<input type="checkbox"/> Amended Decree <input type="checkbox"/> Amended Judgement <input type="checkbox"/> Amended Order <input type="checkbox"/> Decision <input type="checkbox"/> Decree	<input type="checkbox"/> Determination <input type="checkbox"/> Finding <input type="checkbox"/> Interlocutory Decree <input type="checkbox"/> Interlocutory Judgment <input type="checkbox"/> Judgment	<input checked="" type="checkbox"/> Order <input type="checkbox"/> Order & Judgment <input type="checkbox"/> Partial Decree <input type="checkbox"/> Resettled Decree <input type="checkbox"/> Resettled Judgment	<input type="checkbox"/> Resettled Order <input type="checkbox"/> Ruling <input type="checkbox"/> Other (specify):
Court: Supreme Court <input type="checkbox"/>	County: Nassau <input type="checkbox"/>		
Dated: 02/04/2020	Entered: 02/05/20		
Judge (name in full): Steven M. Jaeger		Index No.: 900017/19	
Stage: <input checked="" type="checkbox"/> Interlocutory <input type="checkbox"/> Final <input type="checkbox"/> Post-Final		Trial: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury	
Prior Unperfected Appeal and Related Case Information			
Are any appeals arising in the same action or proceeding currently pending in the court? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span> If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.			
Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:			
Original Proceeding			
Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus			Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:			
Proceeding Transferred Pursuant to CPLR 7804(g)			
Court: Choose Court		County: Choose County	
Judge (name in full):		Order of Transfer Date:	
CPLR 5704 Review of Ex Parte Order:			
Court: Choose Court		County: Choose County	
Judge (name in full):		Dated:	
Description of Appeal, Proceeding or Application and Statement of Issues			
Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed. This appeal is from an Order of the Hon. Steven M. Jaeger dated February 4, 2020 which order granted the plaintiff's application to proceed anonymously.			

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

1. Whether the Court below erred in granting the plaintiff's application to proceed anonymously;
2. Whether the Court below erred in its decision which appellant argues restricts the appellant's right to conduct a full and open investigation of the plaintiff's claims; and
3. Any issues which arise upon review of the Record on Appeal.

### Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	ARK21 DOE	Plaintiff	<input type="checkbox"/> Respondent <input type="checkbox"/>
2	DIOCESE OF ROCKVILLE CENTRE	Defendant	<input type="checkbox"/> Respondent <input type="checkbox"/>
3	HOLY TRINITY DIOCESAN HIGH SCHOOL	Defendant	<input type="checkbox"/> Appellant <input type="checkbox"/>
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Informational Statement - Civil

## Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: JEFF ANDERSON & ASSOCIATES, P.A.

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Telephone No: 646-759-2551

E-mail Address: pat.stoneking@andersonadvocates.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 1

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Party or Parties Represented (set forth party number(s) from table above): 2

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Party or Parties Represented (set forth party number(s) from table above): 3

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU - PART CVA-R

\_\_\_\_\_X  
ARK21 DOE,

Plaintiff,

-against-

Index No.: 900017/2019  
County of: NASSAU  
Mot. Seq. No. 003  
Mot. Submitted 2/3/20

DIOCESE OF ROCKVILLE CENTRE a/k/a THE  
ROMAN CATHOLIC DIOCESE OF ROCKVILLE  
CENTRE, NEW YORK; HOLY TRINITY  
DIOCESAN HIGH SCHOOL a/k/a HOLY TRINITY;  
and DOES 1-5, whose identities are unknown  
to Plaintiff,

Defendant(s).  
\_\_\_\_\_X

Papers submitted:

Order to Show Cause dated January 14, 2020 X

Affirmation in Opposition X

On February 14, 2019, New York State enacted the Child Victims Act (L. 2019 c.11) ("CVA") which, inter alia, (1) extended the statute of limitations on criminal cases involving certain sex offenses against children under 18 (see CPL 30.10 [f]); (2) extended the time which civil actions based upon such criminal conduct may be brought until the child victim reaches 55 years old (see CPLR 208 [b]); and (3) opened a one-year window reviving civil actions for which the statute of limitations has already run (even in cases that were litigated and dismissed on limitations grounds), commencing August 14, 2019 (see CPLR 214-g).

Plaintiff submits this Order to Show Cause dated January 14, 2020 and supporting papers seeking leave to prosecute this action brought pursuant to the Child Victims Act using a "John Doe"/"initials" designation in the caption in place of Plaintiff's

true name and other relief. The Order to Show Cause is supported by an Affirmation of counsel, a redacted Affidavit of Plaintiff, and an affidavit of a non-treating psychologist.

Defendant HOLY TRINITY DIOCESAN HIGH SCHOOL has opposed the requested relief by an Affirmation of counsel. Defendant DIOCESE OF ROCKVILLE CENTRE consented to the requested relief pursuant to the Stipulation dated September 30, 2019 and "So-Ordered" on October 3, 2019.

Plaintiff has provided the Court with an affidavit in which he recounts he was sexually abused as a child. He alleges that having his name made public would create significant emotional distress and further harm to him.

Plaintiff also provides an affidavit from Dr. Susan Phipps-Yonas, a licensed psychologist in Arizona, who has testified in civil and criminal matters involving sexual abuse and childhood sexual abuse. She offered the opinion that publicly revealing the identity of victims of childhood sexual abuse "will likely exacerbate any preexisting psychiatric problems, and will likely foster new symptoms, thereby compromising their mental and physical health...."

Defendant HOLY TRINITY opposes the requested relief. Defendant bases its opposition on:

- (1) the contention it by being deprived of "sufficient notice" of Plaintiff's claim it will be prejudiced in its ability to defend itself, and
- (2) that Plaintiff has not identified a substantial privacy right to overcome the presumption of public access to judicial proceedings.

Defendant argues that even if Plaintiff were to disclose relevant personal information to Defendant in a confidential manner it does not eliminate the prejudice to Defendant in

investigating and defending the claim. Further, Defendant contends that revived CVA actions are clearly a matter of public concern and Plaintiff has failed to show that his need for privacy outweighs Defendant's interests and the interest of the public.

### Discussion and Ruling

The Court has previously noted with approval the following language from *Doe v. Roman Catholic Archdiocese of New York*, 64 Misc. 3d 1220(A) (Sup. Ct., Westchester Co. 2019):

"The determination of whether to allow a plaintiff to proceed anonymously requires the court to use its discretion in balancing plaintiff's privacy interest against the presumption in favor of open trials and against any prejudice to defendant" (Anonymous v Lerner, 124 AD3d 487, 487 [1st Dept 2015] [internal quotation marks and citations omitted]; see *Doe v Szul Jewelry, Inc.*, 2008 NY Slip Op 31382 [U] [Sup Ct, NY County 2008]. Claims of public humiliation and embarrassment are not sufficient grounds for allowing a plaintiff to proceed anonymously (Anonymous v Lerner, 124 AD3d at 487).

Further, a review of applicable New York caselaw recognizes that the factors to be considered in determining such a request are:

"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" (*James v. Jacobson*, *id.* at 238); whether the party seeking anonymity has an illegitimate ulterior motive; the extent to which the identity of the litigant has been kept confidential; whether identification poses a risk of mental or physical harm, harassment, ridicule or personal embarrassment; whether the case involves information of the utmost intimacy; whether the action is against a governmental entity; the magnitude of the public interest in maintaining confidentiality or knowing the party's identity; whether revealing the identity of the party will dissuade the party from bringing the lawsuit; whether the opposition to anonymity has an illegitimate basis; and whether the other side will be prejudiced by use of the pseudonym. *Doe I-XXIII v. Advanced Textile Corp.*, *supra* at 1068; *James v. Jacobson*, *id.*; *Doe v. Stegall*, *supra* at 185;



Doe v. The Archdiocese of Portland in Oregon, 249 F.R.D. 358, 2008 U.S. Dist. LEXIS 14575 (D.Or.); Doe v. St. Louis Co., 2008 U.S. Dist. LEXIS 2691 (E.D.Mo.); Doe v. Hartford Life Acc. & Ins. Co., supra at 549; EW v. N.Y. Blood Center, supra at 111; Doe v. Provident Life & Acc. Ins. Co., 176 F.R.D. 464, 467-8 (E.D.Pa. 1997). A particularly relevant factor is whether "the injury litigated against would occur as a result of the disclosure of the plaintiff's identity. Doe v. N.Y.U., supra.

*Doe v Szul Jewelry Inc.*, 2008 WL 2157893 at \*5-6 (Sup. Ct., NY Co. 2008); *Doe v New York Univ.*, 6 Misc3d 866 (Sup. Ct., NY Co. 2004); see also, *Sealed Plaintiff v Sealed Defendant*, 537 F.3d 185, 189-190 (2d Cir. 2008).

"The party seeking anonymity is required to provide evidence corroborating the allegations in support of the request." *Doe v The New York and Presbyterian Hosp.*, 2018 WL 1226046, at \*3 (Sup. Ct., NY Co. 2018) (citation omitted); see also, *Deer Consumer Products, Inc. v. Little*, 35 Misc. 3d 374, 390 (Sup. Ct. NY Co. 2012) and cases cited therein; *People v P.V.*, 64 Misc3d 344 at fn1 (Crim. Ct., Queens Co. 2019); *Doe v Smith*, 105 F. Supp.2d 40, 44 (EDNY 1999).

Claims of public humiliation and embarrassment are not sufficient grounds alone to allow a plaintiff to proceed anonymously (*Anonymous v Lerner*, 124 AD3d 487 [1st Dept 2015]), but the Court should consider other factors, including whether the plaintiff's situation is compelling, involves highly sensitive matters, including social stigmatization, or involves real danger of physical harm (*Doe v New York Univ.*, 6 Misc.3d 866, 879 [Sup Ct, NY Co. 2004]).

The Court believes that Plaintiff's reliance on Civil Rights Law §50-b in this civil proceeding is misplaced. First, §50-b requires confidentiality of all records of a public officer or employee that tend to identify the victim, including a court file. *Doe v Bellmore-*

*Merrick Cent. High School Dist.*, 1 Misc3d 697, 700 (Sup. Ct., Nassau Co. 2003).

Plaintiff herein does not request sealing or unavailability of the Court's records. Second, §50-b was enacted to protect the disclosure of the identity of a victim of sex crimes to ensure the victim's cooperation in criminal investigations or prosecutions. See, *Doe v Kidd*, 19 Misc3d 782, 786-87 (Sup. Ct., NY Co. 2008); *People v McDaniel*, 81 NY2d 10 (1993). §50-b should not be extended to apply beyond the express language of the statute and the intention of the Legislature. "The legislative history reveals that the 'victim of a sex offense' contemplated by the statute is one whose cooperation is necessary toward the prosecution of a sex crime." *Doe v. Kidd*, *supra* at 787.

However, while "[i]t is elementary that the primary function of a pleading is to apprise an adverse party of the pleader's claim" the same principle does not necessarily apply to a pleader's name. *Cole v. Mandell Food Stores, Inc.*, 93 NY2d 34, 40 (1999). Plaintiff has expressly voiced concern for his privacy and psychological health.

This case is not brought against a government entity, a factor this Court believes might otherwise militate in favor of the public's right to know. The case involves alleged acts that will no doubt center on information concerning Plaintiff of a sensitive and highly personal nature. The Court recognizes that it is plausible that Plaintiff, as the alleged child victim of sexual abuse, has suffered emotional distress.

A grant of anonymity in this case impacts far less on the public's right to open proceedings than does the actual closing of a courtroom or the sealing of records – issues that are presently not before this Court. In the Court's view, the public interest is ultimately served in this case by the case being determined on its merits, after the parties have had an opportunity to fully and properly litigate the issues presented.

Anonymity, at this juncture, will preserve the integrity of this objective. As Justice Silver noted in a CVA pending in New York County:

...the right of the public, and the press, to access judicial proceedings is not absolute or unfettered, and involves judicial discretion (Lerner, 124 AD3d at 487, *supra*). Moreover, access may still be respected in keeping with constitutional requirements while sensitive information is restricted in keeping with "the State's legitimate concern for the well-being" of an individual (*Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 606 [1982]).

*Doe v Rockefeller University*, No. 950172/2019, 2019 WL 6354255, at \*1–2 (N.Y. Sup. Ct. Nov. 22, 2019).

Balancing the interests of Plaintiff against that of Defendant and of the public requires consideration of numerous factors, including:

(1) whether the litigation involves matters that are "highly sensitive and [of a] personal nature," *Zavaras*, 139 F.3d at 803; see also *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir.1993); *Doe v. Frank*, 951 F.2d 320, 323 (11th Cir.1992); (2) "whether identification poses a risk of retaliatory physical or mental harm to the ... party [seeking to proceed anonymously] or even more critically, to innocent non-parties," *Jacobson*, 6 F.3d at 238; see also *Zavaras*, 139 F.3d at 803; *Doe v. Shakur*, 164 F.R.D. 359, 361 (S.D.N.Y.1996); (3) whether identification presents other harms and the likely severity of those harms, see *Advanced Textile Corp.*, 214 F.3d at 1068, including whether "the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity," *Zavaras*, 139 F.3d at 803; (4) whether the plaintiff is particularly vulnerable to the possible harms of disclosure, see *Advanced Textile Corp.*, 214 F.3d at 1068, particularly in light of his age, see *Jacobson*, 6 F.3d at 238; see also *Del Rio*, 241 F.R.D. at 157; (5) whether the suit is challenging the actions of the government or that of private parties, see *Jacobson*, 6 F.3d at 238; *Frank*, 951 F.2d at 323; (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, see *Advanced Textile Corp.*, 214 F.3d at 1068; (7) whether the plaintiff's identity has thus far been kept confidential, see *Del Rio*, 241 F.R.D. at 157; (8) whether the public's interest in the litigation is furthered by requiring the plaintiff to disclose his identity, see *Advanced Textile Corp.*, 214 F.3d at 1068; (9) "whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigants' identities," *Del Rio*, 241 F.R.D. at 157; and (10) whether there are any alternative mechanisms for protecting the confidentiality of the plaintiff. cf. *Aware Woman Ctr.*, 253 F.3d at 687.

*See Sealed Plaintiff v Sealed Defendant*, *supra* at 189-190; *see also, Doe v. New York University*, *supra* 6 Misc.3d at 866.

Defendant, by this and other Orders in this action and related actions, will become aware of Plaintiff's identity and may proceed with discovery using Plaintiff's true name without prejudice at this time. The Court believes the only purpose public revelation of Plaintiff's name could have would be to expose Plaintiff to the potential harms of public disclosure and perhaps deter him from litigating the matter. The public interest and the purpose of the CVA is to allow the case to be determined on its merits, after the parties have had an opportunity to fully and fairly litigate the issues.

Upon consideration of the factors set forth in the papers submitted, the Court grants the relief requested. Accordingly, it is, for the reasons stated above, hereby

ORDERED that Plaintiff's motion to proceed throughout this action under a pseudonym, rather than in plaintiff's legal name, is granted; and it is further

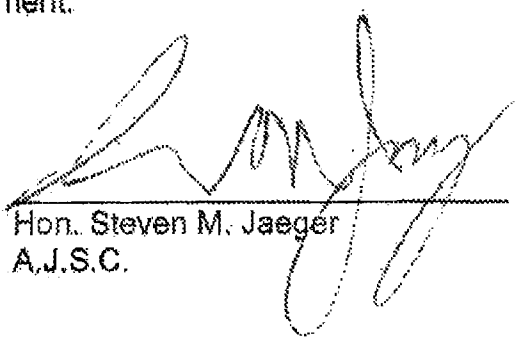
ORDERED that all papers filed in this action, and all judgments, orders, decisions, notices to the Court and any other document relating to the action refer to Plaintiff by the pseudonym "ARK21 DOE"; and it is further

ORDERED that the parties, their attorneys, and their agents refrain from publicly disclosing Plaintiff's true identity; and it is further

ORDERED that no later than ten (10) days after filing of this Order counsel for Plaintiff will provide counsel for the Defendant with the following personal identifying information (hereinafter, "Personal Identifying Information") for the Plaintiff in this action, unless already provided: all complete names (including aliases, and all other previously used names, if any), date of birth, social security number, complete names of all parents and/or guardians, current address, and address(es) at the time of the alleged incident(s) in the Complaint (if known).

Defendant shall not be restricted from using the Personal Identifying Information in this litigation in any manner not inconsistent with this Order, including, but not limited to, in connection with investigation and fact-finding, discovery, negotiations (including mediation and/or arbitration), and trial or settlement.

DATED: February 4, 2020  
Mineola, NY



Hon. Steven M. Jaeger  
A.J.S.C.

**ENTERED**

Feb 05 2020

NASSAU COUNTY  
COUNTY CLERK'S OFFICE

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)

: ss.:

COUNTY OF NASSAU)

THERESA McCAULEY, being duly sworn deposes and says:

That deponent is not a party to the action, is over the age of 18 years, and resides in Northport, NY.

That on the 21<sup>st</sup> day of February, 2020 deponent served a copy of an Notice of Appeal, Informational Statement and Order upon the following:

JEFF ANDERSON &amp; ASSOCIATES, P.C.

Attorneys for Plaintiff

55 West 39<sup>th</sup> Street, 11<sup>th</sup> Floor

New York, New York 10018

JONES DAY

Attorneys for Defendant

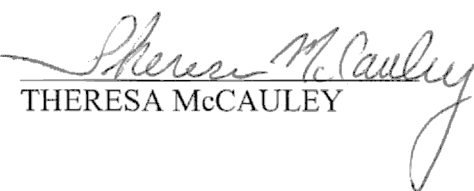
ROMAN CATHOLIC DIOCESE OF

ROCKVILLE CENTRE

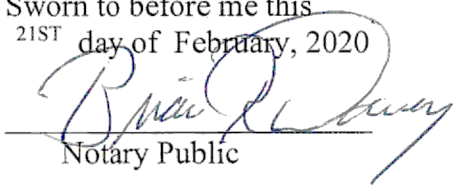
250 Vesey Street

New York, New York 10281

at the address designated by said attorney (s) for that purpose via depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

  
THERESA McCAULEY

Sworn to before me this  
21<sup>ST</sup> day of February, 2020

  
Notary Public

BRIAN R. DAVEY  
Notary Public, State of New York  
No. 02DA4943484  
Qualified in Suffolk County  
Commission Expires October 24, 20 22

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

-----X  
ARK21 DOE,

Plaintiff,

Index No.: 900017/2019

-against-

DIOCESE OF ROCKVILLE CENTRE a/k/a THE  
ROMAN CATHOLIC DIOCESE OF ROCKVILLE  
CENTRE, NEW YORK; HOLY TRINITY DIOCESAN  
HIGH SCHOOL a/k/a HOLY TRINITY; and DOES 1-5  
whose identities are unknown to Plaintiff,

Defendants.

-----X

=====  
**NOTICE OF APPEAL, INFORMATIONAL  
STATEMENT AND ORDER**  
=====

**MULHOLLAND MINION DAVEY McNIFF & BEYRER**

Attorneys & Counselors at Law

374 Hillside Avenue

Williston Park, New York 11596

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=====  
*To*

*Attorney for*  
=====

*Service of a copy of the within*

*is hereby admitted.*

*Dated,*  
-----

*Attorney for*  
=====

# **EXHIBIT B**



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**NEW YORK SUPREME COURT  
APPELLATE DIVISION – SECOND  
DEPARTMENT Docket No. 2020-02382**

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In the Matter of

ARK3 DOE,

*Plaintiff-Respondent,,*

-against-

DIOCESE OF ROCKVILLE CENTRE A/K/A THE ROMAN CATHOLIC DIOCESE OF  
ROCKVILLE CENTRE, NEW YORK,

*Defendant,*

-and-

ST. HUGH OF LINCOLN A/K/A ST. HIGH OF LINCOLN ROMAN CATHOLIC CHURCH  
A/K/A ST. HUGH’S,

*Defendant-Appellant,*

-and-

DOES 1-5 whose identities are unknown to Plaintiff,

*Defendants.*

---

**BRIEF OF *AMICUS CURIAE* CHILD USA IN SUPPORT OF PLAINTIFF**

---

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## STATEMENT OF INTEREST OF *AMICUS CURIAE*

*Amicus curiae*, CHILD USA, is the leading non-profit think tank working to end child abuse and neglect in the United States. CHILD USA engages in high-level legal, social science, and medical research and analysis to derive the best public policies to end child abuse and neglect. Distinct from an organization engaged in the direct delivery of services, CHILD USA develops evidence-based solutions and information needed by policymakers, youth-serving organizations, courts, media, and the public to increase child protection and the common good.

CHILD USA works to protect children from abuse in various contexts including its national child sex abuse statute of limitations reform initiative. CHILD USA's interests in this case are directly correlated with its mission to increase public safety and eliminate barriers to justice for child sex abuse victims who have been harmed by individuals and institutions.

## ARGUMENT

The Court should grant Plaintiff's request to proceed under pseudonym on her claims pursuant to the Child Victims Act, CPLR §214-g, because Plaintiff's privacy rights outweigh the presumption of openness of courts.

## POINT I

### **THIS COURT MAY VALIDLY EXERCISE ITS DISCRETION IN FINDING THAT VICTIM'S PRIVACY RIGHTS OUTWEIGH THE PRESUMPTION OF OPENNESS OF COURTS**

The right to privacy is a constitutionally protected right and encompasses a plaintiff's interest in non-disclosure of personal information. *See Roe v. Wade*, 410 U.S. 113, 152-53 (1973) (recognizing that "a right of personal privacy . . . does exist under the Constitution"); *see also Whalen v. Roe*, 429 U.S. 589, 599 (1977) (noting cases finding protected privacy interests include an "individual interest in avoiding disclosure of personal matters"); William C. Donnino, Practice

Commentaries, NY Crim Pro §60.42 (citing *People v. Williams*, 614 N.E.2d 730 (1993))(New York recognized that “testimony about the past sexual acts of victims of sex crimes often serves solely to harass the victim and confuse the jurors” so it passed a rape shield law to protect the privacy of rape victims, keeping their past sexual conduct from courts when it does not serve the interests of justice.)

Despite the right to privacy, adult survivors seeking to proceed under pseudonym on their claims arising from childhood sexual abuse must overcome many hurdles, the most significant of which is the presumption of openness of courts. See *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 383 (1979) (discussing the common law rule of open civil and criminal proceedings); see also *Doe v. Blue Cross & Blue Shield United of Wisconsin*, 112 F.3d 869, 872 (7<sup>th</sup> Cir. 1997) (“Identifying the parties to the proceeding is an important dimension of publicness [of courts].”); *Doe v. Doe*, 668 N.E.2d 1160, 1164 (Ill. App. Ct. 1996) (requiring parties to identify themselves “protects the public’s legitimate interest in knowing all of the facts involved in the case, including the identities of the parties”). This presumption, however, is not absolute. See *James v. Jacobson*, 6 F.3d 233, 238 (4<sup>th</sup> Cir. 1993) (stating that openness “operates only as a presumption and not as an absolute, unreviewable license to deny”); see also, *Doe v. Stegall*, 653 F.2d 180, 186 (5<sup>th</sup> Cir. 1981) (stating that the presumption of openness of judicial proceedings may be overridden in “exceptional circumstances”). To determine whether a plaintiff should be permitted to move forward on their claim under a pseudonym, courts will consider a list of factors established by federal law and upon which state courts have built. See *Sealed Plaintiff v. Sealed Defendant #1*, 537 F.3d 185, 189-90 (2ndCir. 2008) (identifying a non-exhaustive list of factors to be considered including, but not limited to: (1) whether the litigation involves matters that are highly sensitive and of a personal nature; (2) whether identification poses a risk of retaliatory physical or mental

harm to the party seeking to proceed anonymously; (3) whether identification presents other harms and the likely severity of those harms including whether the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity; (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; (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; and (9) whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigants' identities). Courts exercise considerable discretion when determining whether a plaintiff may proceed under a pseudonym based on these factors and any other factors relevant to the case. *Id.*; see also *Doe v. Shakur*, 164 F.R.D. 359, 362 (S.D.N.Y. 1996) (citing *Jacobson*, 6 F.3d at 238).

Courts that have permitted plaintiffs to proceed under pseudonyms on their claims arising from childhood sexual abuse, even after the age of majority, have done so largely based on three common factors: 1) the public's interest (or lack thereof) in knowing the plaintiff's identity; 2) the potential harm to plaintiff if their identity were to be disclosed; and 3) the highly sensitive and intimate nature of the claims. See, e.g., *Doe No. 2 v. Kolko*, 242 F.R.D. 193, 196 (E.D.N.Y. 2006) (holding in a childhood sexual abuse case that "courts have granted anonymity to protect against disclosure of a wide range of issues involving matters of the utmost intimacy, including sexual assault"); *Doe 130 v. Archdiocese of Portland in Or.*, No. CV. 07-1732-PK, 2008 WL 656021, \*4 (D.Or. Mar. 6, 2008) (allowing adult plaintiff to maintain pseudonym in suit alleging child sex abuse by priest because of the risk to harm to which plaintiff was particularly vulnerable); *Doe v. Megless*, 2010 WL 3076246, \*2 (E.D. Pa. 2010) (permitting plaintiff to proceed anonymously because the case involved highly sensitive and personal matters); *Doe v. Brown*, 2009 WL



5322462, \*3 (Conn. Super 2009) (permitting pseudonym for adult plaintiff in suit concerning abuse that took place while a minor where it would serve the “overriding interest of protecting the plaintiff from exposure in the community of her private situation”); *Doe v. MacFarland*, 66 Misc.3d 604, 622 (NY Sup. Ct. Rockland County Dec. 10, 2019) (permitting plaintiff to proceed anonymously on claims under the Child Victims Act recognizing the sensitive and intimate nature of the claims); *Doe v. Diocese Corp.*, 647 A.2d 1067, 1072 (Conn. Super. Ct. 1994) (“One’s sexual history and practices are among the most intimate aspects of a person’s life. When one has a sexual history falling outside the realm of the ‘conventional,’ that privacy interest is enhanced greatly, whether one has created that history voluntarily or it is forced upon a person as a result of abuse.”).

In short, the ultimate test for permitting a plaintiff to proceed anonymously is whether the plaintiff’s substantial right to privacy outweighs the “customary and constitutionally-embedded presumption of openness in judicial proceedings.” *Shakur*, 164 F.R.D. at 361 (citing *Doe v. Frank*, 951 F.2d 320, 323 (11<sup>th</sup> Cir. 1992) (citing *Stegall*, 653 F.2d at 186).

**A. Plaintiff’s Involuntary Loss of Privacy if Required to Publicly Disclose Their Identity Will Deprive Them of Their Constitutional Right to Access Courts**

Regardless of this nation’s history of open courts, the presumption of openness significantly disadvantages victim plaintiffs who are forced to bear the tremendous burden on their privacy rights. *See Commonwealth ex rel. Platt v. Platt*, 404 A.2d 410, 429 (Pa. Super. Ct. 1979) (internal citation omitted) (“The essence of privacy is no more, and certainly no less, than the freedom of the individual to pick and choose for himself the time and circumstances under which, and most importantly, the extent to which, his attitudes, beliefs, behavior and opinions are to be shared with or withheld from others.”); see also, *EW v. N.Y. Blood Center*, 213 F.R.D. 108, 113 (E.D.N.Y. 2003) (granting plaintiff’s motion to proceed anonymously because the facts of the case

provided no basis for “imposing [the] invasion of privacy as the price for litigating a legitimate private complaint”).

Victim plaintiffs have a constitutional right to access courts to seek legal redress for the harms they suffered as children at the hands of their perpetrators. *See, e.g., Chappell v. Rich*, 340 F.3d 1279, 1282 (11<sup>th</sup> Cir. 2003) (“Access to the courts is clearly a constitutional right, grounded in the First Amendment, the Article IV Privileges and Immunities Clause, the Fifth Amendment, and/or the Fourteenth Amendment.”); *Ryland v. Shapiro*, 708 F.2d 967, 971 (5<sup>th</sup> Cir. 1983) (noting access to courts is a fundamental right). That right is significantly diminished if plaintiffs cannot maintain their privacy by pursuing their claims anonymously or pseudonymously. *See Globe Newspaper Co. Inc. v. Clerk of Suffolk County Superior Court*, No. 01-5588\*F, 2002 WL 202464, \*6 (Mass. Super. Feb. 4, 2002) (noting “[i]f the identit[ies] of these victims are not protected by the courts, then their access to the courts will be severely diminished, because they will not be able to turn to the courts for relief from or compensation of their emotional injuries without aggravating those same injuries.”). This involuntary loss of privacy amounts to a loss of access to the courts. *See Roe v. Providence Health System-Oregon*, Civil No. 061680-HU, 2007 WL 1876520, \*4 (D.Or. June 26, 2007) (noting that the public had an interest in seeing a case decided on the merits, which might be undermined if plaintiffs were mandated to provide their true identity and were thereby deterred from continuing the lawsuit).

**B. The Public Interest in Encouraging Victims to Disclose Sexual Abuse is Generally Coupled With a Lack of Public Interest in Knowing the Identity Of Specific Victim Plaintiffs**

Notwithstanding courts’ recognition of the presumption of openness of court proceedings, “[t]he 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.” *Stegall*, 653 F.2d at 185. Courtroom doors will not

“close” to the public and reporters may still access and report on hearings, even if the plaintiff’s identity is unknown. *See Doe v. Evans*, 202 F.R.D. 173, 176 (E.D. Pa. 2001) (“[A]lthough the public certainly has an interest in the issues Mary Doe’s complaint raises, protecting her identity will not impede the public’s ability to follow the proceedings.”). In fact, many of the justifications for openness of courts are unimpeded by anonymous or pseudonymous plaintiffs. *See, e.g., Stegall*, 653 F.2d 180 at 185 (explaining the “public right to scrutinize governmental functioning is not so completely impaired by a grant of anonymity to a party as it [would be] by [the] closure of the trial itself. 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. These crucial interests served by open trials are not inevitably compromised by allowing a party to proceed anonymously.”).

The public interest in parties’ identities is derived from the public interest in open courts generally. While it is in the interest of the public to know who has been accused in court of child sex abuse for purposes of prevention, the public interest in knowing the name of the victim is considerably less. This is particularly true in the context of civil litigation wherein plaintiffs seek to vindicate private rights. *See, e.g., Doe v. City of New York*, 201 F.R.D. 100, 102 (S.D.N.Y. 2001) (“[P]laintiff is challenging government activity [ . . . ] indicates that there is a public interest in the facts of the incident at issue as opposed merely to a public interest in knowledge of the manner in which the courts function in resolving disputes.”); *Shakur*, 164 F.R.D. at 361 (noting that governmental bodies do not share the concerns about ‘reputation’ that private individuals have when they are publicly charged with wrongdoing.); *see generally, Doe v. Hartz*, 52 F. Supp. 2d 1027, 1046-47 (N.D. Iowa 1999). It is not so much the identity of the parties to which the public

generally bears an interest but rather to the specifics of the cause of action and the legal precedential value of the case. *See MacFarland*, 66 Misc.3d at 608-09 (explaining that the risk of allowing a plaintiff to proceed anonymously is minimized when the issues raised are purely legal and do not rely upon the identification of specific parties).

In the overwhelming number of civil cases, the public has little legitimate interest in knowing plaintiff's identity if their identity has little or no bearing on the case.

## **POINT II**

### **THE USE OF PSEUDONYMS SHOULD BE EXPLICITLY RECOGNIZED BY COURTS FOR VICTIMS OF CHILDHOOD SEXUAL ABUSE TO PREVENT HARM TO THE VICTIMS**

One factor that is ubiquitous among courts considering whether to permit a plaintiff to proceed anonymously on their claims arising from childhood sexual abuse is whether identification of the victim will cause the victim further psychological harm. *See, e.g., Jacobson*, 6 F.3d at 238; *Frank*, 951 F.2d at 323; *M.M. v. Zavaras*, 139 F.3d 798, 803 (10<sup>th</sup> Cir. 1998); *Shakur*, 164 F.R.D. at 361; *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9<sup>th</sup> Cir. 2000).

Child sex abuse inflicts trauma that can result in lifelong harm that psychologically disables its victims. *See, e.g., Chen, L., BS, et. Al., Sexual Abuse and Lifetime Diagnosis of Psychiatric Disorders*, 85 (7) MAYO CLIN. PROC. 618 (July 2010) (concluding that a history of sexual abuse is associated with increased lifetime risk of diagnosis of multiple psychiatric disorders); see generally Bessel Van Der Kolk, *The Body Keeps The Score: Brain Mind And Body In The Healing Of Trauma* (2014). Victims' experience of childhood sexual abuse is often dominated by negative emotions such as shame and embarrassment that ultimately creates a barrier to disclosure. *See Paine, M. & Hansen, D., Factors Influencing Children to Self-Disclose Sexual Abuse*, 22 CLINICAL PSYCHOL. REV. 271, 271-75 (2002) (discussing shame and embarrassment about abuse, making

victim feel to blame for abuse); *see also*, Hunter, S., *Disclosure of child sexual abuse as a life-long process: Implications for health professionals*, 32(2) AUSTRALIAN AND NEW ZEALAND JOURNAL OF FAMILY THERAPY 159-172 (2011) (explaining that feelings of fear, shame, and embarrassment decrease child victims desire to disclose abuse). This is true regardless of age. *See e.g.*, *Doe v. Hartford Roman Catholic Diocesan Corp.*, No. CV074026864S, 2007 WL 4213153, \*1 (Conn. Super. Ct. Nov. 5, 2007) (holding that fact that the childhood sexual abuse “occurred more than 20 years ago and is only being made the subject of a lawsuit now, does not detract materially from the notion that the alleged event was socially stigmatizing and that revealing the plaintiff’s true identity now would promote or increase that stigmatization”).

The nature of child sex abuse is such that re-victimization and harm is particularly acute, and extends beyond mere embarrassment and humiliation, when victims’ identities are revealed when they need to remain private. *See, e.g.*, Kilpatrick, D. & Otto, R., *Constitutionally Guaranteed Participation in Criminal Proceedings for Victims: Potential Effects on Psychological Functioning*, 34 WAYNE L. REV. 7, 25 (1987) (describing secondary victimization by the justice system); *see also*, *Globe Newspaper Co. Inc. v. Clerk of Suffolk County Superior Court*, No. 01-5588\*F, 2002 WL 202464, \* 6 (Mass. Super. Feb. 4, 2002) (“[F]or many victims of sexual abuse . . . public revelation of the abuse, if not sought by them, victimizes them yet again.”).

The disclosure of the abuse itself can exacerbate existing emotional and psychological problems and seriously curtail survivors’ efforts at recovery. *See, e.g.*, *Doe v. Firn*, No. CV065001087S, 2006 WL 2847885, \*5 (Conn. Super. Ct. Sept. 22, 2006) (explaining that, “[t]o force the plaintiff to proceed without the protection of the pseudonym Jane Doe could only subject the plaintiff to additional psychological harm and emotional distress.”); *Archdiocese of Portland in Or.*, 2008 WL at \*4 (explaining that, “[t]he experience of sexual abuse can be deeply

psychologically traumatic, and public knowledge of such abuse can trigger new trauma even years after the fact. [Plaintiff] faces a real risk of harm to which he, as a survivor of clergy sexual abuse, is peculiarly vulnerable, and his fears regarding that risk are entirely reasonable.”); *see also*, Leone S., *Protecting Rape Victims’ Identities: Balance Between the Right to Privacy and the First Amendment*, 27 NEW ENG. L. REV. 883, 910-11 (1993) (“Each victim has a unique healing process and the public disclosure of her identity could disrupt that process before the victim is ready.”). This is particularly true if courts are not supportive of victims claims or sensitive to their needs. *See* O’Leary, P., *The Effect of Severe Child Sexual Abuse and Disclosure on Mental Health during Adulthood*, 19(3) J. OF CHILD SEXUAL ABUSE 275-289, 277 (2010) (“A disclosure that is met with a dismissive, disbelieving, nonsupportive, hostile, or nonprotective response can be traumatic in itself and lead to long-term mental health symptoms.”); *See also*, Shakespeare-Finch, J. & Dassel T., *Exploring Posttraumatic Outcomes as a Function of Childhood Sexual Abuse*, 18 J. CHILD SEXUAL ABUSE 623, 634 (2009) (discussing a study finding that “lack of support was particularly deleterious to [the victims’] well-being”).

The fact that minor victims are afforded anonymity in civil and criminal proceedings, attests to the fact that child sex abuse can generate long-term psychological and physical illness.. *See, e.g., Stegall*, 653 F.2d at 186 (conceding that plaintiff anonymity should be permitted in cases involving “vulnerable parties” and identifying the “safe-guarding the physical and psychological well-being” of children to be a “compelling state interest” such that the child’s age, psychological maturity and understanding as well as the nature of the crime factor into the courts determination about whether to close civil proceedings.); *see also*, Chen, L., et al., *Sexual Abuse and Lifetime Diagnosis of Psychiatric Disorders*, 85 (7) MAYO CLIN. PROC. 618, 627 (July 2010) (“[S]exual abuse survivors face a challenging spectrum of physical and mental health concerns, with

associated higher health care use and greater medical expenditures. . . [S]exual abuse is associated with multiple psychiatric disorders, including lifetime diagnosis of anxiety disorders, depression, eating disorders, PTSD, sleep disorders, and attempted suicide.”). Adults who experience the insidious psychological effects of childhood sexual abuse are simply a manifestation of this recognition.

The psychological vulnerabilities that justify anonymity for child victims generally persist, and oftentimes intensify, during adulthood. *See* Hunter, M., *ABUSED BOYS*, 59 (Ballantine Books, 1991) (“Some of the effects of sexual abuse do not become apparent until the victim is an adult and a major life event, such as marriage or birth of a child, takes place. Therefore, a child who seemed unharmed by childhood abuse can develop crippling symptoms years later and can have a difficult time connecting his adulthood problems with his past.”); Freyd, J., et. Al., *The Science of Child Sexual Abuse*, 308 *SCIENCE* 501 (Apr. 22, 2005) (explaining that childhood sexual abuse is associated with serious mental and physical health problems even late into adulthood, including substance abuse, criminality, posttraumatic stress disorder, depression, and suicide, and interferes with attachment, emotional regulation, and major stress response systems).

The general presumption against pseudonyms for adult survivors does not reflect the experience of the vast majority of victims who typically disclose abuse decades after they turned eighteen and who still need and deserve protection from further psychological injury. *See infra* section II Offering anonymity to those plaintiffs who would suffer psychological harm if their identities were publicly disclosed is an effective way to achieve the strong public interest in providing society-based justice for the victims and shifting the cost of the abuse from the victim to the ones who caused it.

### POINT III

#### THE AVAILABILITY OF PSEUDONYMS FOR ADULT SURVIVORS SEEKING LEGAL REDRESS ADVANCES THE PUBLIC POLICY OF ENCOURAGING DISCLOSURE OF CHILD SEXUAL ABUSE

The public needs to know who the hidden child predators are, and that means there is a compelling interest in not deterring child sex abuse victims from entering the legal system against their perpetrators. Permitting plaintiffs to proceed anonymously or pseudonymously promotes the legislative intent embodied by the Child Victims Act which is to “help the public identify hidden child predators. . . and shift the significant and lasting costs of child sexual abuse to the responsible parties.” *MacFarland*, 66 Misc.3d at 608-09 (citing *ARK 55 Doe v. Archdiocese of New York*, (Sup. Ct. New York County, November 4, 2019, Silver, J. Index #950049/2019) (quoting, without attribution, the New York Committee Report, 2019 NY S.B. 2440 (NS), January 26, 2019)). These interests are further implicated by the prevalence of child sexual abuse and the social costs entailed in treating victims for the same. Briere, J. and Eliot, D.M, *Prevalence and Psychological Sequence of Self-Reported Childhood Physical and Sexual Abuse in General Population*, 27 (10) CHILD ABUSE & NEGLECT, 1205-1222 (2003) (finding that as many as one in three girls and one in seven boys will be sexually abused at some point in their childhood); McGregor, K., et al., *Health Professionals' Responses to Disclosure of Child Sexual Abuse History: Female Child Sexual Abuse Survivors' Experiences*, 19(3) J. CHILD SEXUAL ABUSE 239, 240 (2010) (“Adult survivors of child sexual abuse are high users of health and mental health services and make up a significant proportion of many clinical health population groups.”); *see also*, Wurtele, S., *Preventing Sexual Abuse of Children in the Twenty-First Century: Preparing for Challenges and Opportunities*, 18(1) J. CHILD SEX ABUSE 1, 3 (2009) (citing a 1996 report from the Justice Department estimating



medical costs stemming from childhood sexual abuse at around \$1.5 billion, and medical expenses by U.S. victims at around \$23 billion).

Despite the epidemic of child sex abuse that has ravaged youth-facing institutions and families, incidents of child sex abuse have been, and continue to be, significantly underreported. In fact, data from the Department of Justice suggests that 86% of child sexual abuse goes unreported altogether. *Youth Victimizations, Prevalence and Implications*, Department of Justice, 2003 page ii. Though most victims of abuse never disclose, those who do typically wait until they are well into adulthood before they are prepared to do so. See, Alaggia, R., *An Ecological Analysis of Child Sexual Abuse Disclosure: Considerations for Child and Adolescent Mental Health*, 19 J. CAN. ACAD. CHILD ADOLESC. PSYCHIATRY 32, 32 (2010) (“By some estimates between 60-80% of CSA victims withhold disclosure[.]”); see also, Spröber, N., et. al, *Child sexual abuse in religiously affiliated and secular institutions: a retrospective descriptive analysis of data provided by victims in a government-sponsored reappraisal program in Germany*, BMC PUBLIC HEALTH, 14:282, doi: [10.1186/1471-2458-14-282](https://doi.org/10.1186/1471-2458-14-282) (2014) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3995507/> (citing a study of over 1,000 survivors where the average age at the time of disclosure of childhood sexual abuse was 52 years.).

Child sex abuse remains hidden from public view for decades until disclosure, thereby enabling predators to victimize in perpetuity. See Frawley-O'Dea, M.G., *Perversion of Power: Sexual Abuse in the Catholic Church* 21 (Vanderbilt Univ. Press 2007) (“Secrecy...is the acknowledged cornerstone of sexual abuse.”); see also, Lanning, K., *Child Molesters: A Behavioral Analysis*, 37 (4th ed. 2001) available at [http://www.cybertipline.com/en\\_US/publications/NC70.pdf](http://www.cybertipline.com/en_US/publications/NC70.pdf) (“A [ . . . ] child molester might molest 10, 50, hundreds, or even thousands of children in a lifetime, depending on the offender

and how broadly or narrowly child molestation is defined. Although pedophiles vary greatly, their sexual behavior is repetitive and highly predictable.”).

Barriers to public identification of perpetrators, such as plaintiff’s inability to proceed in civil claims under pseudonym, must be removed in order to protect children. Courts that do not permit plaintiffs to maintain anonymity create a chilling effect on victims’ willingness to identify and bring claims against their abusers. *See Evans*, 202 F.R.D. at 176 (permitting anonymity partly because “the public has an interest in protecting the identities of sexual assault victims so that other victims will feel more comfortable suing to vindicate their rights”); *Shakur*, 164 F.R.D at 362 (acknowledging the “unfortunate result” that “victims of sexual assault will be deterred from seeking relief through civil suits if they are not permitted to proceed under a pseudonym”); *see also, MacFarland*, 66 Misc.3d at 608-09 (stating that, “plaintiff faces a Hobson's choice if the Court denies her application [to proceed under pseudonym] — reveal herself and risk harm to herself and her children or discontinue the action and allow what *might* otherwise be a meritorious claim to go undetected.”). This chilling effect is exacerbated by the nearly instant and widespread dissemination of harmful, largely permanent, information on the internet and over social media. *See, e.g., Plaintiff B v. Francis*, 631 F.3d 1310, 1320 (11th Cir. 2011) (holding district court erred in ignoring the fact that minors filmed engaging in sexually explicit acts “had put on a convincing case that, by being identified, they will permanently be linked with the videos containing the footage of them.”); *see also, Kolko*, 242 F.R.D. at 197 (“[A]s courts in this Circuit have recognized, it is now possible to determine whether a given individual is a party to a lawsuit in federal court anywhere in the country by the simplest of computer searches, to access the docket sheet of any such case electronically, and... that entire case files will be accessible over the Internet. Given the

ease with which the public could access court files in this case, it is reasonable that plaintiff's fears extend beyond ostracism in the Brooklyn community.”).

For the sake of the public interest, courts need to consider whether the denial of an application to proceed anonymously or under a pseudonym will affect the willingness of a party to proceed. *L.H. A.Z., K.K, & D.R. v. Schwarzenegger*, No. CIV. S-06-2042 LKK/ GGH, 2007 WL 662463, at 18 (E.D. Cal. Feb. 28, 2007) (noting that “[w]hen the willingness to file suit is chilled by fear of retaliatory action, the public interest in seeing the suit move forward on its merits outweighs the public interest in knowing the plaintiffs’ names”). If the opportunity to seek relief under the Child Victims Act is conditioned on plaintiffs’ involuntary disclosure of their identifying information, too many victims will simply forgo their action. It would be manifestly unjust if the denial of an application to proceed anonymously were to abrogate a party’s newly restored rights. *See. N.Y. Blood Center*, 213 F.R.D. at 113 (granting plaintiff’s motion to proceed anonymously because the facts of the case provided no basis for “imposing [the] invasion of privacy as the price for litigating a legitimate private complaint”).

Granting anonymity to plaintiffs gives victims an incentive to come forward and to bring societies hidden perpetrators to light. This will increase public awareness regarding the prevalence of child abuse and may prevent harm to future victims.

## CONCLUSION

For the foregoing reasons, *Amicus Curiae* requests this Court to grant Plaintiff’s request to prosecute this action pursuant to the Child Victims Act , CPLR §214-g, using a “John Doe”/ “initials” designation in the caption in place of Plaintiff’s true name and other relief.

Respectfully submitted,



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