UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PAULA BIRD, *et al.*,

Plaintiffs,

v.

WILLIAM BARR,

Defendant.

Civil Action No. 19-cv-1581

Chief Judge Beryl A. Howell

MEMORANDUM AND ORDER

Of the seventeen (or sixteen) plaintiffs in this action, eleven seek to proceed under pseudonyms in the instant suit alleging, individually and on behalf of a class of female New Agent Trainees and Intelligence Analyst Trainees, violations by the Federal Bureau of Investigation ("FBI") of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12111 *et seq.*, and the Rehabilitation Act, 29 U.S.C. § 794. *See* Pls.' Mot. Proceed Anonymously ("Pls.' Mot.") at 1–2.[1] All plaintiffs, even those who seek to file under their real names, also seek to seal their home addresses. *See id.* at 1. For the reasons set forth below, the Court will grant the plaintiffs' motion to seal their home addresses, but will deny their request to proceed under pseudonyms.[2]

[1] Although the unredacted complaint and the list of plaintiffs accompanying this motion list seventeen plaintiffs, only sixteen plaintiffs are listed in caption and text of the complaint using pseudonyms. In addition, the language describing the plaintiffs varies between the two versions of the complaint, and the plaintiffs failed to provide a list of each plaintiff's preferred pseudonym matched with her name, making it difficult, especially given the sparse information supporting this motion, to determine the identities and circumstances of the plaintiffs who wish to proceed under pseudonyms.

[2] Under Local Civil Rule 40.7(f), the Chief Judge "shall . . . hear and determine . . . motion[s] to seal the address of the plaintiff, and motion[s] to file a pseudonymous complaint." LCvR 40.7(f).

I. BACKGROUND

The plaintiffs seek to pursue action against the Department of Justice alleging that, while attending the FBI's Training Academy in Quantico, Virginia, they were sexually harassed, subjected to a hostile work environment and outdated gender stereotypes, terminated, constructively discharged, or otherwise subjected to retaliation in whole or in part because of their gender or disability. *See id.* at 2. The plaintiffs allege that because "[m]any [plaintiffs] still work in other positions in the FBI, other federal and local law enforcement agencies or are in the Intelligence Community ('IC'), . . . their safety [and] privacy would be harmed by allowing their home addresses to be public." *Id.* Further "some [plaintiffs] are in positions where either the disclosure of their names could compromise their law enforcement positions or expose them to humiliation and reprisal for reporting some of the sexual harassment" involved in this action. *Id.*

II. LEGAL STANDARD

Generally, a complaint must state the names of the parties and address of the plaintiff. FED. R. CIV. P. 10(a) ("The title of the complaint must name all the parties."); LCvR 5.1(c)(1) ("The first filing by or on behalf of a party shall have in the caption the name and full residence address of the party," and "[f]ailure to provide the address information within 30 days of filing may result in the dismissal of the case against the defendant."); LCvR 11.1 (same requirement as LCvR 5.1(c)(1)). In fact, the Federal Rules "make no provision for suits by persons using fictitious names or for anonymous plaintiffs," *Nat'l Commodity & Barter Ass'n, Nat'l Commodity Exch. v. Gibbs*, 886 F.2d 1240, 1245 (10th Cir. 1989), but instead promote the public's interest "in knowing the names of [ ] litigants" because "disclosing the parties' identities furthers openness of judicial proceedings," *Doe v. Pub.*

Citizen, 749 F.3d 246, 273 (4th Cir. 2014); *see also Doe v. Frank*, 951 F.2d 320, 322 (11th Cir. 1992) (per curiam) ("This rule serves more than administrative convenience. It protects the public's legitimate interest in knowing all of the facts involved, including the identities of the parties."). Thus, the D.C. Circuit has instructed that "parties to a lawsuit must typically openly identify themselves in their pleadings," with "[b]asic fairness dictat[ing] that those among the defendants' accusers who wish to participate . . . as individual party plaintiffs must do so under their real names." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1463–64 (D.C. Cir. 1995) (per curiam) (internal quotation marks and citations omitted).

Nevertheless, courts have, in special circumstances, permitted a party "to proceed anonymously" when a court determines "the impact of the plaintiff's anonymity" outweighs "the public interest in open proceedings" and considers the "fairness to the defendant." *Nat'l Ass'n of Waterfront Emp'rs v. Chao* ("*Chao*"), 587 F. Supp. 2d 90, 99 (D.D.C. 2008) (RMC). When balancing these general factors, two different but analogous tests have been applied in this circuit. The first test consists of the six factors set forth in *United States v. Hubbard*, 650 F.2d 293, 317–21 (D.C. Cir. 1980):

> (1) the need for public access to the documents at issue; (2) the extent to which the public had access to the document prior to the sealing order; (3) the fact that a party has objected to disclosure and the identity of that party; (4) the strength of the property and privacy interests involved; (5) the possibility of prejudice to those opposing disclosure; and (6) the purpose for which the documents were introduced.

Doe v. CFPB ("*Doe I*"), No. 15-cv-1177 (RDM), 2015 WL 6317031, at *2 (D.D.C. Oct. 16, 2015). In other cases, a "five-part test to balance the concerns of plaintiffs seeking anonymity with those of defendants and the public interest" has been applied. *Eley v. District of Columbia*, No. 16-cv-806 (BAH/GMH), 2016 WL 6267951, at *1 (D.D.C. Oct. 25, 2016). These five factors, drawn from *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993), are:

> (1) whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of a sensitive and highly personal nature; (2) whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties; (3) the ages of the persons whose privacy interests are sought to be protected; (4) whether the action is against a governmental or private party; and (5) the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

Chao, 587 F. Supp. 2d at 99 (citing *Yacovelli v. Moeser*, No. 1:02CV596, 2004 WL 1144183, at *6–8 (M.D.N.C. May 20, 2004) (quoting *James,* 6 F.3d at 238)); *Roe v. Doe*, No. 18-cv-666 (CKK), 2019 WL 1778053, *2 (D.D.C. Apr. 23, 2019); *Doe v. Teti*, No. 15-mc-01380 (RWR), 2015 WL 6689862, at *2 (D.D.C. Oct. 19, 2015); *Roe v. Bernabei & Wachtel PLLC*, 85 F. Supp. 3d 89, 96 (D.D.C. 2015) (TSC); *Doe v. U.S. Dep't of State*, No. 15-cv-01971 (RWR), 2015 WL 9647660, at *2 (D.D.C. Nov. 3, 2015); *Doe v. Cabrera*, 307 F.R.D. 1, 5 (D.D.C. 2014) (RBW).

The *James* and *Hubbard* factors address the same general concerns regarding the "[s]trength of the [g]eneralized [p]roperty and [p]rivacy [i]nterests" involved and "the possibility of prejudice" to those opposing disclosure. *Hubbard*, 650 F.2d at 320–21. Thus, in exercising discretion "to grant the rare dispensation of anonymity . . . the court has 'a judicial duty to inquire into the circumstances of particular cases to determine whether the dispensation is warranted'. . . tak[ing] into account the risk of unfairness to the opposing party, as well the customary and constitutionally-embedded presumption of openness in judicial proceedings." *Microsoft Corp.*, 56 F.3d at 1464 (quoting *James*, 6 F.3d at 238 (other internal citations and quotation marks omitted)).

III. DISCUSSION

At this stage of the litigation, this Court is not persuaded that the plaintiffs have met their burden of showing that their privacy interests outweigh the public's presumptive and

substantial interest in knowing the details of judicial litigation such that pseudonyms are warranted. The plaintiffs' motion does not contain enough detail, particularly with respect to the circumstances of each of the eleven plaintiffs who seek to remain anonymous, to assess the privacy interests at stake. Rather, the sparse information provided assumes that the plaintiffs' need for pseudonyms can be assessed collectively, with no meaningful way of separating and evaluating each individual plaintiff's privacy interests. Whether this is merely an oversight or is in fact an attempt to camouflage variations among each individual's need for a pseudonym is unclear. Further, the motion's failure to provide sufficient detail is compounded by inconsistencies between the two submitted versions of the complaint, which make it difficult if not impossible to ascertain which plaintiff wants to use which pseudonym and why. Any renewed motion, filed under seal and not electronically, as provided in LCvR 5.1(h), must explain, for each plaintiff: (1) her real name; (2) her chosen pseudonym; and (3) a description of the circumstances *specific to that plaintiff* demonstrating that the use of a pseudonym is warranted at this stage of litigation. Further, both for ease of resolving any such motion and out of fairness to the defendant, the version of the complaint submitted using pseudonyms must match, in all other respects, the version of the complaint submitted using real names. In order to ensure that any renewed motion better accounts for the *Chao* factors, a summary of the current motion's deficiencies on those grounds follows.

As to the first *Chao* factor, the plaintiffs have not, at this time, demonstrated that anonymity is necessary for each of the eleven plaintiffs seeking to use a pseudonym in order to "preserve privacy in a matter of a sensitive and highly personal nature." *Teti*, 2015 WL 6689862, at *2. Although the plaintiffs allege that they were subject to gender discrimination and in some instances sexual harassment, Pls.' Mot. at 4, neither their motion nor their

complaint involves the type of personal, intimate, and in some instances private medical or psychological details that otherwise warrant the use of a pseudonym in cases involving sexual assault. *See, e.g.*, *Doe 1 v. George Wash. Univ.*, 369 F. Supp. 3d 49, 63–64 (D.D.C. 2019) (drawing a distinction between allegations of sexual harassment and sexual assault, and agreeing with the proposition that "sexual harassment is not typically considered a matter so highly personal as to warrant proceeding by pseudonym" (internal quotation marks, alteration, and citation omitted)); *Doe v. De Amigos, LLC*, No. 11-cv-1755 (ABJ), 2012 WL 13047579, at *2 (D.D.C. Apr. 30, 2012) (permitting the use of a pseudonym for a plaintiff alleging sexual assault out of concern that "graphic material about the assault . . . including details of the sexual assault, plaintiff's genital anatomy, hospital examinations . . . and consequent psychiatric treatment" would be discussed); *Cabrera*, 307 F.R.D. at 6 (permitting a pseudonym for pretrial proceedings when the "plaintiff's allegations include graphic details of the alleged [sexual assault], including multiple references to the plaintiff's genitalia and her hospital examination resulting from the alleged assault and battery").

The plaintiffs in this action allege that they endured sexual harassment, including sexual comments and gossip about their sex life and appearance, *see, e.g.*, Compl. ¶¶ 45, 61, 62, 63, 96, yet cases involving similar types of gender discrimination, including ones brought by law enforcement officers, are regularly litigated using the plaintiffs' real names. *See, e.g.*, *Pauling v. District of Columbia*, 286 F. Supp. 3d 179, 198 (D.D.C. 2017) (female employee of the Metropolitan Police Department alleged co-workers gossiped about women they worked with, including by rating them on their looks and breasts); *Craig v. District of Columbia*, 74 F. Supp. 3d 349, 371 (D.D.C. 2014) (female law enforcement officer alleged that her male co-worker commented on her attractiveness, rubbed her hair, touched her

buttocks, and discussed her sex life); *Jones v. District of Columbia*, 879 F. Supp. 2d 69, 72–73 (D.D.C. 2012) (female law enforcement officers alleged that they were called derogatory names based on their sex, and were "subjected to direct sexual comments and solicitations from male coworkers"). Should additional, personal details concerning the sexual harassment each plaintiff experienced come to light as litigation continues, a protective order may be a more appropriate manner to address their privacy interests. *See Teti*, 2015 WL 6689862, at *4 (finding "no injury that a protective order could not remedy in the ordinary course of the litigation should such an order become necessary").

The plaintiffs also speculate that they may experience reputational harm and retaliation at their work, particularly those seven who continue to work at the FBI. *See* Pls.' Mot. at 4. In addition to those seven, a "majority" of the other plaintiffs "also work at other law enforcement agencies or in the Intelligence Community and, due to the nature of their work, need to preserve privacy." *Id.* For those plaintiffs who work in the Intelligence Community, they fear they "will be over-exposed, creating too much public attention, and thereby[] damaging their chance of promotion or mobility within the field." *Id.* at 5. The plaintiffs further posit that "in the event that Plaintiffs win this litigation and Plaintiffs decide to return to the FBI as Special Agents, their privacy in future investigations is important." *Id.* at 4–5. These fears of reputational harm and loss of economic prospects are, at this stage, too speculative to warrant the use of pseudonyms. *See John Doe Co. No. 1 v. CFPB* ("*Doe II*"), 195 F. Supp. 3d 9, 22 (D.D.C. 2016) ("Assertions . . . about what 'could' happen, without any elaboration, explanation, or support, are inherently speculative."); *Teti*, 2015 WL 6689862, at *3 (plaintiff's "bare assertion . . . does not offer any way for a court to substantively evaluate the nature and extent of the potential reputational harms that he

asserts"). Although, particularly for those plaintiffs in the intelligence community, non-speculative arguments supporting the need for privacy may exist, those arguments have not been made adequately here. Without further elaboration, the plaintiffs' privacy interests in preventing economic or reputational harm are not sufficient to outweigh the public's interest in knowing the identities of litigants. *See, e.g.*, *Pub. Citizen*, 749 F.3d at 274; *Doe II*, 195 F. Supp. 3d at 22–23; *Chao*, 587 F. Supp. 2d at 99–100; *Qualls v. Rumsfeld*, 228 F.R.D. 8, 12 (D.D.C. 2005).

Turning to the second *Chao* factor, the plaintiffs allege that their identification "poses a risk of retaliatory physical or mental harm," Pls.' Mot. at 5, such as "hazing, being given grunt work, and/or ostracization," *id.*, or "being given a hard time and undeservedly losing respect from their peers which leads to a dangerous working environment in a predominantly male-dominated field," *id.* In addition, they claim that "making the identities of current and future law enforcement/intelligence community employees public" would "expose[] [them] to a far greater risk of being targeted for threats of violence or retaliation from subjects of investigation, or exploitation by foreign intelligence entities." *Id.* The "rare dispensation" of allowing parties to proceed pseudonymously generally demands a "critical" case, *James*, 6 F.3d at 238, and only the last argument, concerning threats of violence or retaliation from subjects of an investigation, comes close to meeting this standard. Although further elaboration on this point (and accurate information) would be needed in order to assess whether use of pseudonyms is warranted, the plaintiffs have established that their home addresses should be redacted from any filings in order to prevent retaliation or exploitation based on their work as law enforcement agents.

The third *Chao* factor, concerning the ages of the persons whose privacy interests are sought to be protected, appears to be of limited relevance to this motion because the plaintiffs are not proceeding on behalf of minor children. *See Yaman v. U.S. Dep't of State*, 786 F. Supp. 2d 148, 153 (D.D.C. 2011).

The fourth and fifth *Chao* factors ask whether the action is against a governmental or private party and for an analysis of the risk of unfairness to the opposing party in allowing an action to proceed against it anonymously. The plaintiffs assert that allowing them to proceed under pseudonyms will have no impact on private rights, as the only defendant is a government officer named in his official capacity as head of the Department of Justice. *See* Pls.' Mot. at 5 Further, in connection with anti-discrimination complaints, the plaintiffs "have already previously disclosed their identifies and addresses" so the defendant "already has full knowledge" of these facts. *Id.* at 5. Generally, these factors would weigh in favor of allowing the plaintiffs to file under pseudonyms, because anonymity would not compromise the defendant's ability to defend the action. In this case, however, due to discrepancies between the two versions of the complaint and confusion as to which plaintiffs are associated with which pseudonyms, granting the motion in its current form poses some "risk of unfairness to the opposing party." *Chao*, 587 F. Supp. 2d at 99.

In sum, the plaintiffs have not presented sufficient information to conclude that their privacy interests outweigh the public's substantial and presumptive interest in disclosure. Although this Court has analyzed the motion under the *Chao* factors, the result would be no different under the *Hubbard* analysis. As previously noted, the same general balancing inquiry is at issue in both tests: "whether the non-speculative privacy interests that the movants have identified outweigh the public's substantial interest in knowing the identities of

[the] parties in litigation, along with any legitimate interest that the non-moving parties[] . . . may have in revealing the identity of the movants." *Doe II*, 195 F. Supp. 3d at 17. The plaintiffs who seek to proceed under pseudonyms have failed, at this stage, to meet the "heavy burden" of establishing that each of their privacy interests outweigh the public's interest in knowing each of their identities. *See id.* All plaintiffs have, however, sufficiently established that their addresses should be sealed.

IV. CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that the plaintiffs' Motion to Proceed Anonymously is **DENIED;** and it is further

ORDERED that the plaintiffs' Motion to Seal Their Addresses is **GRANTED.**

SO ORDERED.

Date: June 6, 2019

BERYL A. HOWELL
Chief Judge