

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN DOE,

Plaintiff,

v.

GRAHM L. CODER, et al.,

Defendants.

No. C-10-4756 MMC

**ORDER DENYING PLAINTIFF'S EX  
PARTE MOTION TO FILE COMPLAINT  
AS "DOE" PLAINTIFF, FOR  
ELECTRONIC CASE FILING, AND FOR  
PROTECTIVE ORDERS; DISMISSING  
COMPLAINT WITH LEAVE TO AMEND**

Before the Court is the "Verified Ex Parte Motion: 1. to File Complaint as a 'Doe' Plaintiff; 2. for Electronic Case Filing; 3. for Protective Orders," filed October 21, 2010 by plaintiff, who presently is appearing herein as "John Doe" and who proceeds pro se.<sup>1</sup> Having read and considered the motion, the Court rules as follows.

**BACKGROUND**

In his complaint, plaintiff alleges that, in 2008, he applied for a position with the Federal Bureau of Investigation ("FBI") as a Special Agent, and, after passing two tests, he was "conditionally appointed" as a Special Agent in May 2009. (See Compl. ¶¶ 53, 88-91.) Plaintiff also alleges that defendant Special Agent Grahm L. Coder ("Coder"), during June 2009, "communicated with [p]laintiff numerous times" and did so for the "purpose" of

<sup>1</sup>Plaintiff represents that he is an attorney admitted to practice in California and in this District.

1 “develop[ing] disqualifying information” because plaintiff had “laughed” at Coder. (See  
 2 Compl. ¶¶ 103, 133.) Plaintiff further alleges that Coder wrote a “defamatory” report in  
 3 which Coder “falsely state[d] that [p]laintiff, acting as an attorney, negotiated an illegal drug  
 4 buy.” (See Compl. ¶ 108.) In July 2009, according to plaintiff, the FBI sent him a “rejection  
 5 letter” stating that he had been “adjudicated not suitable for ‘drug use’ and ‘criminal  
 6 conduct.’” (See Compl. ¶ 111.) Plaintiff also alleges that defendants, each of whom is  
 7 employed by the FBI, caused the “defamatory material to be placed in an interagency  
 8 database,” which, in turn, caused plaintiff to be “disqualified from the CIA, which was  
 9 [p]laintiff’s second choice.” (See Compl. ¶ 45.)

10 Based on the above allegations, plaintiff alleges claims for “defamation per se” and  
 11 “defamation pro quod.” Additionally, plaintiff alleges a claim titled “Bivens,” which is based  
 12 on the theory that plaintiff was deprived of a “Constitutional right to due process of law in  
 13 the pursuit of employment with the FBI and the CIA.” (See Compl. ¶ 151.)

#### 14 **A. Request to Proceed Anonymously**

15 Plaintiff asserts he is entitled to proceed anonymously. Plaintiff concedes that  
 16 defendants know his identity but argues he should be allowed to keep his identity from the  
 17 public.

18 Courts “recognize the paramount importance of open courts.” See Doe v.  
 19 Kamehameha Schools, 596 F.3d 1036, 1046 (9th Cir. 2010). “For this reason, the default  
 20 presumption is that the plaintiff[ ] will use [his] true name[ ].” Id. To determine whether a  
 21 plaintiff has overcome such presumption, a court considers the follows factors: (1) “the  
 22 severity of the threatened injury;” (2) “the reasonableness of the anonymous party’s fears;”  
 23 (3) “the anonymous party’s vulnerability to retaliation;” (4) “prejudice at each stage of the  
 24 proceedings to defendants;” and (5) “the public’s interest.” See Does v. Advanced Textile  
 25 Corp., 214 F.3d 1058, 1070-72 (9th Cir. 2000). The first two factors are the “most  
 26 important,” and, accordingly, a party seeking to proceed anonymously “must show both  
 27 (1) a fear of severe harm, and (2) that the fear of severe harm is reasonable.” See  
 28 Kamehameha Schools, 596 F.3d at 1043.

1 Here, plaintiff asserts that the “legal community” in Santa Clara County, where  
2 plaintiff states he practices, is “fairly small” and, further, that the “particular segment of the  
3 legal profession in which plaintiff practices is a much smaller part of the legal community.”  
4 (See Pl.’s Mot. ¶ 11.) Plaintiff also asserts he operates a website on which he criticizes the  
5 FBI’s handling of his job application, as well as those of other applicants. According to  
6 plaintiff, if he litigates the instant case under his true name, there will be “irreparable,  
7 immeasurable harm to [p]laintiff’s professional reputation.” (See id. ¶ 4.) Although plaintiff  
8 fails to explain the factual basis for his argument in detail, it appears plaintiff is arguing that  
9 if the public knew of the assertedly “false” reason the FBI did not hire him and/or knew he  
10 has criticized the FBI’s employment practices, members of the public seeking an attorney  
11 who provides the type of services plaintiff provides would decide not to retain plaintiff.

12 Plaintiff’s showing is entirely speculative. Plaintiff has not shown any threat of harm,  
13 let alone a threat of “severe harm.” See Kamehameha Schools, 596 F.3d at 1043; cf.  
14 Advanced Textile Corp., 214 F.3d at 1062, 1071 (holding “severity of threatened harm”  
15 weighed in favor of anonymity where plaintiff “foreign garment workers” faced threats of  
16 retaliation by employers in the form of “deportation, arrest, and imprisonment”). There is no  
17 showing, for example, that the general community residing in the geographic area in which  
18 plaintiff works would be hostile to plaintiff in light of the allegations in his complaint or any  
19 statement he has made on his website. Cf. Doe v. Stegall, 653 F.2d 180, 186 (5th Cir.  
20 1981) (holding parent and two minor children challenging “constitutionality of prayer and  
21 Bible reading classes in Mississippi public schools” allowed to proceed anonymously,  
22 where plaintiffs offered evidence to show they reasonably feared “extensive harassment”  
23 from community that was “hostile to the viewpoint reflected in plaintiffs’ complaint”). Nor  
24 has plaintiff shown that his fears are reasonable, as, again, such concerns are based  
25 entirely on speculation. Consequently, plaintiff has failed to show that either of the first two  
26 factors, which, as noted, are the “two most important” factors, see Kamehameha Schools,  
27 596 F.3d at 1043, weighs in favor of allowing plaintiff to proceed anonymously.

28 Further, plaintiff has not shown that the remaining factors weigh in favor of

1 anonymity. First, plaintiff has in no manner demonstrated he is particularly vulnerable.  
 2 Second, although at this stage of the proceedings there is no indication of prejudice to  
 3 defendants,<sup>2</sup> plaintiff has failed to show the public lacks an interest in knowing the identities  
 4 of all parties to the litigation. As the Fifth Circuit has pointed out, “there remains a First  
 5 Amendment interest in insuring that what transpires in the courtroom is public property.”  
 6 See Stegall, 653 F.2d at 185 (internal citation and quotation omitted).

7 In sum, plaintiff has failed to rebut the “normal presumption in litigation” that “parties  
 8 must use their real names.” See Kamehameha Schools, 596 F.3d at 1046.

9 Accordingly, to the extent the motion seeks an order allowing plaintiff to proceed  
 10 anonymously, the motion will be denied and the complaint will be dismissed with leave to  
 11 amend, specifically, for plaintiff to state his true name.

## 12 **B. Request for Special ECF Procedures**

13 Plaintiff seeks permission to create and use an ECF account under a fictitious name.  
 14 Because the Court has not granted plaintiff permission to proceed anonymously, this  
 15 request will be denied.

## 16 **C. Protective Orders**

17 Plaintiff seeks a protective order prohibiting defendants from revealing plaintiff’s true  
 18 name or identifying information to anyone. Because the Court has not granted plaintiff  
 19 permission to proceed anonymously, this request will be denied.

20 Plaintiff also seeks a protective order prohibiting defendants from revealing the true  
 21 names of or identifying information about two individuals identified by plaintiff in his  
 22 complaint as “James Doe” and “Christopher Doe.” (See Compl. ¶ 107.)<sup>3</sup> To the extent  
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24 <sup>2</sup>Because no defendant has appeared, the Court cannot properly analyze whether  
 25 any defendant would be prejudiced if plaintiff were to keep his identity from the public.

26 <sup>3</sup>According to an attachment to the complaint, plaintiff, in May 2008, “accompanied  
 27 James to [their] mutual friend Chris’s house,” where “James intended to obtain a small  
 28 amount of marijuana (less than \$100) from Chris and [plaintiff] intended to visit with Chris”  
 (see Compl. Ex. A, at 5:22-25), and where “James” and “Chris” “came to [an] agreement  
 and exchanged the marijuana” after plaintiff had “excused himself” from the room (see id.  
 Ex. A, at 18:26-27).

1 plaintiff seeks to limit discovery concerning "James" or "Christopher," the motion will be  
 2 denied without prejudice to plaintiff's renewing the motion in the event a dispute regarding  
 3 the scope of discovery arises and the parties are unable to resolve such dispute. See Fed.  
 4 R. Civ. P. 26(c)(1). To the extent plaintiff seeks to preclude defendants from speaking with  
 5 any third party regarding matters of which defendants already are informed, the motion will  
 6 be denied, as plaintiff fails to cite any authority providing for the imposition of such First  
 7 Amendment restriction on an ex parte basis.

8 Finally, plaintiff seeks a protective order precluding the United States Postal Service  
 9 from disclosing plaintiff's name or address to anyone who inquires as to the identity of the  
 10 person who rents the post office box identified in plaintiff's filings as plaintiff's address of  
 11 record. Because the Court has not granted plaintiff permission to proceed anonymously,  
 12 this request will be denied. Moreover, the request will be denied for the additional reason  
 13 that plaintiff has failed to show there exists a dispute between plaintiff and the Postal  
 14 Service, such that the Postal Service is, over plaintiff's objection, likely to disclose his name  
 15 and address to anyone who inquires. Finally, the request will be denied for the further  
 16 reason that plaintiff has failed to cite any authority providing for the granting of the  
 17 requested relief against a non-party on an ex parte basis.

### 18 CONCLUSION

19 For the reasons stated above:

- 20 1. Plaintiff's motion is hereby DENIED; and
- 21 2. Plaintiff's complaint is hereby DISMISSED with leave to amend to file, no later  
 22 than December 14, 2010, a First Amended Complaint in which plaintiff discloses his true  
 23 name.

24 **IT IS SO ORDERED.**

25  
 26 Dated: November 30, 2010

27   
 28 MAXINE M. CHESNEY  
 United States District Judge