

ORIGINAL
FILED

2010 OCT 21 A 10:27

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CALIF. JOSE

ADR

John Doe

jackbauer230@gmail.com

Plaintiff

United States District Court
Northern District of California

CV 10- 4756 MEJ

JOHN DOE,

Plaintiff

v.

GRAHM L. CODER,
ABBY M. HALLE,
VALRIE R. KOSH,
MONTCHELL C. BRICE
ROES 1-50,

Defendants.

Case No.

VERIFIED EX PARTE MOTION:

1. TO FILE COMPLAINT AS A "DOE" PLAINTIFF;
2. FOR ELECTRONIC CASE FILING;
3. FOR PROTECTIVE ORDERS

Statute of Limitations:
10/28/2010

I.

INTRODUCTION

1. The Plaintiff wishes to file an action to address abuses of power by employees of the United States of America. The proposed Complaint accompanies this Ex Parte Application.

II.

PROBLEM

2. The action must be filed anonymously because of the

1 John Doe

2 [REDACTED]
3 jackbauer230@gmail.com

4 Plaintiff

5
6
7
8 **United States District Court**
9 **Northern District of California**
10

11 JOHN DOE,

12 Plaintiff

13 v.
14

15 GRAHM L. CODER,
16 ABBY M. HALLE,
17 VALRIE R. KOSH,
18 MONTCHELL C. BRICE
19 ROES 1-50,

20 Defendants.

Case No.

VERIFIED EX PARTE MOTION:

1. TO FILE COMPLAINT AS A "DOE" PLAINTIFF;
2. FOR ELECTRONIC CASE FILING;
3. FOR PROTECTIVE ORDERS

Statute of Limitations:

10/28/2010

21 **I.**

22 **INTRODUCTION**

23 1. The Plaintiff wishes to file an action to address
24 abuses of power by employees of the United States of America.
25 The proposed Complaint accompanies this Ex Parte Application.

26 **II.**

27 **PROBLEM**

2. The action must be filed anonymously because of the

1 nature of the misconduct by government employees—libeling an
2 attorney by claiming that he “negotiated” an illegal drug deal
3 as an attorney—when the contents of the government’s own file,
4 the attorney’s polygraph examination, and a percipient witness
5 all prove that this is not what happened.

6 3. Plaintiff is an attorney who currently practices in
7 the very city in which this Court is located. Plaintiff owns
8 a website in which he anonymously criticizes the FBI for its
9 actions in this case and other applicants’ cases.

10 4. Unless the case can be filed anonymously, Plaintiff’s
11 professional reputation will be irreparably damaged because his
12 private personnel information will be published and Plaintiff
13 will be unmasked as the publisher of the website located at:
14 <http://www.fullspectrumlitigator.com>.

15 III.

16 DECLARATION OF FACTS

17 5. I, John Doe, declare as follows:

18 6. I am over the age of 18 years and I have the capacity
19 to make this declaration. I have personal knowledge of the
20 facts stated herein except as to those stated on information and
21 belief, in which case I believe them to be true to the best of my
22 knowledge and ability.

23 7. I am an attorney admitted to practice in California and
24 in the Northern District of California.

25 8. The FBI and the Defendants know who I am. First, I
26 have corresponded with the FBI and some of the Defendants at
27 length about my application, including email messages, numerous

1 letters, and filings with the Merit Systems Protection Board.¹
2 Second, I have a website at <http://www.fullspectrumlitigator.com>
3 where I anonymously criticize the Defendants and discuss my FBI
4 application, appeal, and litigation. The website is primarily a
5 resource for other applicants and prospective applicants to use
6 in understanding the application process.

7 9. Third, I wrote all of the Defendants on October 8, 2010
8 offering them a tolling agreement and specifically referencing
9 the upcoming Statute of Limitations on the libel claims. The FBI
10 and the Defendants know who I am and there is no harm to them in
11 keeping my identity confidential from everyone else.

12 10. No one is assisting me with this Complaint. I am
13 representing myself. No one has made any financial or other
14 contributions to this matter. To the extent my filings run
15 afoul of the Local Rules, I apologize in advance because I cannot
16 afford to hire an attorney to represent me and my experience in
17 Federal court is limited.

18 IV.

19 KEY LAW

20 "Doe Plaintiff" cases are rare. "Such pleadings are
21 disfavored because they impair the public's common law right
22 of access to court proceedings." The Rutter Group, California
23 Practice Guide Federal Civil Procedure Before Trial at § 8:580
24 (2010) (citing Femedeer v. Haun (10th Cir. 2000) 227 F.3d 1244,
25 1246).

26
27 1 In September 2009, I filed an appeal with the MSPB that was
(properly) dismissed in December 2009 for lack of jurisdiction
over the Excepted Service.

1 "Nevertheless, in exceptional cases, plaintiffs may be
2 permitted to proceed under fictitious names where the court
3 determines plaintiff's privacy right outweighs the public's right
4 of access to judicial proceedings." Cal. Prac. Guide Fed. Civ.
5 Proc. Before Trial at § 8:581 (citing Does I through XXIII v.
6 Advanced Textile Corp. (9th Cir. 2000) 214 F.3d 1058, 1062-1063)
7 (emphasis in original).

8 Leave of the court is required before filing a Doe
9 Plaintiff case; "[p]ermission is often granted upon condition
10 that plaintiffs' real names be disclosed to the defense and the
11 court and thereafter kept under seal." Cal. Prac. Guide Fed.
12 Civ. Proc. Before Trial at § 8:586. No specific citation is
13 available.

14 The balancing test set forth in the Does I through XXIII
15 case and applicable in the Ninth Circuit considers the following
16 factors:

- 17 1. The severity of the threatened harm;
- 18 2. The reasonableness of plaintiff's fears;
- 19 3. Plaintiff's vulnerability to harm or retaliation;
- 20 4. Whether the proceedings can be structured to avoid
21 any prejudice to defendant in allowing plaintiff to
22 proceed anonymously; and
- 23 5. Whether the public's interest in the case would be best
24 served by requiring that the litigants reveal their
25 identities.

26 Does I through XXIII, v. Advanced Textile Corp., supra, 214 F.3d
27 at 1068.

1 Anonymity is not bilateral. That is to say, Plaintiff
2 may file this case anonymously without having to grant the
3 Defendants, who are Federal law enforcement personnel, the
4 same privilege. The law is settled that the identities of law
5 enforcement personnel and their acts while in office are public
6 record when the public interest outweighs the employees' privacy
7 interest. Professor James T. O'Reilly's practice guide, Federal
8 Information Disclosure, gives an excellent treatment of this very
9 subject at § 16:49 (2010 Supplement).

10 By contrast, the identities and personnel information
11 of applicants for Federal employment are not public, and are
12 protected by the Privacy Act notwithstanding the applicants'
13 partial disclosure of the same information. Otherwise a chilling
14 effect would occur, preventing applicants for employment from
15 challenging selection decisions for fear that their personnel
16 information would be published under their real names in
17 litigation.

18 Under current policy of the Northern District, pro se
19 plaintiffs are required to obtain the permission of the Court in
20 order to use Electronic Case Filing. A citation was not found in
21 the Local Rules or General Order 45.

22 V.

23 **ARGUMENT**

24 **A. Plaintiff's Right to Privacy Outweighs the Public's Right of**
25 **Access to His Identity in This Case**

26 //

27 //

1 **(1) The Harm in Disclosure Would be Severe**

2 11. Plaintiff is an attorney who practices law in this
3 District and who resides in this District. Short of a complete
4 victory on the merits, revealing Plaintiff's real name or any
5 identifying information would cause irreparable, immeasurable
6 harm to Plaintiff's professional reputation. Among other issues,
7 the legal community in Santa Clara County is fairly small. The
8 particular segment of the legal profession in which plaintiff
9 practices is a much smaller part of the legal community in this
10 District. Identifying Plaintiff or allowing the Defendants to
11 do so would be a disaster, compounding the damage caused by the
12 Defendants' defamation of Plaintiff in the first place.

13 **(2) Plaintiff's Fears Are Reasonable**

14 12. PACER allows worldwide access to most of the same
15 information that the litigants in a case see. The public's
16 access to this case file raises troubling concerns that can
17 only be remedied through semi-anonymity. The anonymity is
18 not complete and does not need to be, because the FBI and the
19 Defendants know Plaintiff's real name, profession, and other
20 identifying information. Plaintiff simply wishes to have his
21 side of this case treated as if it were a personnel file.

22 **(3) Plaintiff is Vulnerable to Harm or Retaliation**

23 13. Plaintiff runs a website where he criticizes the
24 Defendants and the FBI generally for the actions that occurred in
25 this case. Of note, Plaintiff "calls out" an Assistant Director
26 in the FBI, an unidentified FBI executive, and multiple other
27 supervisory personnel, not to mention multiple Special Agents, a

1 Paralegal, and one Analyst.

2 14. Not counting the FBI, Plaintiff has told less than ten
3 people in the world that he runs the website. For example, his
4 immediate family. Aside from the FBI and its employees, who have
5 accessed Plaintiff's website, no one except those whom Plaintiff
6 has told appear to know the identity and real name of Plaintiff.

7 **(4) The Proceedings Can be Structured to Avoid Any Prejudice to**
8 **Defendants in Allowing Plaintiff to Proceed Anonymously**

9 15. The Defendants, as discussed, already know who
10 Plaintiff is. The only structure required is to prevent the
11 Defendants from disclosing Plaintiff's name and other identifying
12 information in the course of this case. In addition, the
13 identities of Plaintiff's friends James Doe and Christopher
14 Doe must be protected. The section below on Protective Orders
15 discusses the requested relief.

16 **(5) The Public Interest in The Case is Served by Allowing**
17 **Plaintiff to Litigate Anonymously Against Non-Anonymous**
18 **Defendants.**

19 16. The honesty and integrity of law enforcement personnel
20 are always a matter of public interest, under the Brady-Giglio
21 line of cases and others. For example, Inspector General Glenn
22 A. Fine announced on September 27, 2010 that an undetermined
23 number of Special Agents had engaged in "significant abuses
24 and cheating" on internal tests affecting American citizens'
25 Constitutional rights.² Specifically, citizens' Constitutional
26 rights to be free from FBI surveillance unless the FBI has some

27 ² Jerry Seper, "Justice IG: FBI cheated on test of rules,"
Washington Times (September 27, 2010 online edition).

1 evidence of criminal wrongdoing.

2 17. As Plaintiff has told Inspector General Fine, this
3 matter is far beyond cheating on an open book test. The American
4 people have the right to know how the powers they have entrusted
5 to the FBI are being used or abused.

6 18. By contrast, Plaintiff has the right to privacy because
7 he is a civilian who holds no public office or office of power.
8 Plaintiff is just an attorney who happened to anger the wrong
9 people in the FBI. The American people have the right to know
10 who those people are, but not who caught them.

11 **B. ECF Account**

12 19. Plaintiff already has PACER and ECF accounts under his
13 real name. Access to the docket in this matter is not a problem.
14 However, filing documents electronically is a problem, because
15 each filing will bear or at least be associated with Plaintiff's
16 real name and email address if filed with his regular ECF
17 account.

18 20. Plaintiff seeks the Court's permission to register
19 a new ECF account under the name John Doe, with Plaintiff's
20 anonymous email address jackbauer230@gmail.com. Mailing will
21 be unaffected, as Plaintiff registered his P.O. Box under his
22 real name with an "aka" of John Doe, specifically for this case.
23 Access to PACER will be unaffected as Plaintiff already has
24 payment information on file.

25 **C. Protective Orders**

26 21. This Court has the power to make protective orders
27 concerning disclosure of Plaintiff's identity and others'

1 identities.

2 22. In the Complaint lodged herewith and requested to be
3 filed, Plaintiff has identified "James Doe" and "Christopher Doe"
4 as participants in the events that are the subject of Defendants'
5 libel. The FBI and the Defendants already know the Does' real
6 names, because Plaintiff gave the FBI their real names during the
7 application process. Plaintiff also specifically identified the
8 Does in his Applicant Appeal, which is attached to the Complaint
9 as an exhibit, as the Does offered to go on the record to correct
10 the false information in the FBI's file. James and Christopher
11 were never contacted.

12 23. Plaintiff believes the Defendants will "accidentally
13 on purpose" reveal the Does' names even though doing so would be
14 illegal, in order to punish Plaintiff for filing this case and
15 punish the Does for cooperating in the preparation of Plaintiff's
16 Applicant Appeal.

17 24. Accordingly, Plaintiff seeks a protective order from
18 the Court enjoining the Defendants from ever saying, mentioning,
19 filing, using, or otherwise revealing Plaintiff's real name, home
20 address, State Bar number, or any other identifying information,
21 and requiring redaction of all such information from any filings
22 of Defendants, at their expense.

23 25. Plaintiff seeks the same protective order as to "James"
24 and "Christopher" due to their involvement in a transaction
25 that was illegal under Federal law and possibly illegal under
26 State law. Notwithstanding DOJ policy not to prosecute users of
27 medical marijuana, requiring Plaintiff to identify his friends

1 in his Initial Disclsoure and/or public court filings, or to
2 allow the FBI to do so, would be unfair and unjust. This is
3 particularly true where the FBI already knows their identities
4 and has no need to use or identify them in this case. Plaintiff
5 intends to identify them as Does in the Initial Disclosure with
6 sufficient factual specificity (e.g., "the person identified in
7 Plaintiff's email message to SA Coder of 6/30/2009") to enable
8 easy contact. Plaintiff can also reference his Applicant Appeal,
9 where the Does' real names, addresses, and telephone numbers
10 were given. In sum, the Defendants and the FBI already has much
11 of the information necessary to evaluate this case. The FBI,
12 while not a party, is mentioned because its manual provides for a
13 fund for the payment of judgments against employees. Plaintiff
14 assumes the FBI will also be funding the defense of this action.

15 **VI.**

16 **RELIEF REQUESTED**

17 26. Plaintiff seeks leave of the Court to file the proposed
18 Complaint anonymously, and an order directing the Clerk to
19 file it. Plaintiff is willing to file a sealed Declaration
20 identifying himself and providing a copy of his law license, if
21 required by the Court. Plaintiff is also willing to identify
22 himself in chambers at the Court's convenience.

23 27. Plaintiff seeks the protective orders described above.

24 28. Plaintiff seeks leave of the Court to register and use
25 a new ECF account under the name John Doe, and an order directing
26 the ECF service center to create the account.

27 29. Pursuant to U.S. Postal Service regulations, Plaintiff

1 seeks a protective order enjoining the Postmaster General/U.S.
2 Postal Service from revealing Plaintiff's real name or home
3 address to anyone who inquires about the registered owner of the
4 Plaintiff's P.O. Box, unless the permission of this Court is
5 obtained.

6 30. A proposed order accompanies this motion.

7 **VII.**

8 **VERIFICATION**

9 As to paragraphs one through twenty, inclusive and twenty-
10 two through thirty, inclusive:

11 I declare under penalty of perjury under 28 U.S.C. § 1746
12 that the foregoing is true and correct.

13 Executed on _____

14 John Doe

15 As to paragraph twenty-one and remaining statements of fact
16 in unnumbered paragraphs:

17 On information and belief, I declare under penalty of
18 perjury under 28 U.S.C. § 1746 that the foregoing is true and
19 correct to the best of my knowledge and belief.

20 Executed on _____

21 John Doe

22
23 Respectfully Submitted By:

24
25 Date: _____

26 John Doe
27 Plaintiff
Pro Se

1 seeks a protective order enjoining the Postmaster General/U.S.
2 Postal Service from revealing Plaintiff's real name or home
3 address to anyone who inquires about the registered owner of the
4 Plaintiff's P.O. Box, unless the permission of this Court is
5 obtained.

6 30. A proposed order accompanies this motion.

7 **VII.**

8 **VERIFICATION**

9 As to paragraphs one through twenty, inclusive and twenty-
10 two through thirty, inclusive:

11 I declare under penalty of perjury under 28 U.S.C. § 1746
12 that the foregoing is true and correct.

13 Executed on 10/19/2010

X John Doe

14 John Doe

15 As to paragraph twenty-one and remaining statements of fact
16 in unnumbered paragraphs:

17 On information and belief, I declare under penalty of
18 perjury under 28 U.S.C. § 1746 that the foregoing is true and
19 correct to the best of my knowledge and belief.

20 Executed on 10/19/2010

X John Doe

21 John Doe

22
23 Respectfully Submitted By:

24
25 Date: 10/19/2010

X John Doe

26 John Doe
27 Plaintiff
Pro Se