

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

The Diocese of Buffalo, N.Y.,
Debtor.

)
)
) Case No. 20-[10322]
)
) Chapter 11
)
)
)

MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DIOCESE TO FILE PORTIONS OF SCHEDULE F, THE MASTER CREDITOR MAILING MATRIX, AND OTHER PLEADINGS AND DOCUMENTS UNDER SEAL

The Diocese of Buffalo, N.Y. (the “Diocese”), by and through its undersigned counsel, hereby moves the Court (this “Motion”) for entry of an order, substantially in the form of the proposed order attached hereto as *Exhibit A*, authorizing the Diocese to file under seal portions of Schedule F and the Master Creditor Mailing Matrix, and to seek approval to file under seal any additional pleadings in this Chapter 11 Case that may contain Confidential Information (as defined below) on an expedited basis, and granting related relief. In support of this Motion, the Diocese respectfully represents as follows:

BACKGROUND

1. On February 28, 2020 (the “Petition Date”), the Diocese filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (11 U.S.C. § 101 *et seq.*, the “Bankruptcy Code”) with the United States Bankruptcy Court for the Western District of New York (the “Court”), commencing the Diocese’s chapter 11 case (this “Chapter 11 Case”). The Diocese continues to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for a trustee or examiner has been made in this Chapter 11 Case, and as of the date of this filing, no official committees have been appointed or designated.

2. Information regarding the Diocese's history, business operations and structure, and the events leading up to this Chapter 11 Case is set forth in the *Affidavit of Rev. Peter J. Karalus Regarding Structure and Pre-Filing History of The Diocese of Buffalo and in Support of the Chapter 11 Petition and First Day Pleadings* and the *Affidavit of Charles Mendolera Regarding the Diocese's Assets and Operations and in Support of the Chapter 11 Petition and First Day Pleadings*, each of which was filed on the Petition Date and is incorporated herein by reference.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

6. The statutory and rule-based predicates for the relief requested herein are sections 105 and 107 of the Bankruptcy Code, and Rules 1007, 9018, and 9037 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

7. The Diocese does not, by filing its petition for relief and other documents in this Chapter 11 Case, waive any of its rights under any applicable law, including, without limitation, the Code of Canon law, the First Amendment of the United States Constitution, the Constitution for the State of New York, the Religious Freedom Restoration Act, the church autonomy doctrine, charitable trust law, New York trust law, and the rights to object to disclosure of information and to contend that certain assets which may be discussed in the Motion are not property of the estate.

THE CONFIDENTIAL INFORMATION

8. Many of the unsecured creditors in this Chapter 11 Case are individuals whose claims against the Diocese are premised on allegations of sexual abuse ("Abuse Claimants"). Some Abuse Claimants have filed tort claims against the Diocese following the passage of New

York's Child Victims Act (the "CVA Plaintiffs"). Many, but not all, of the CVA Plaintiffs have elected to file their litigation claims against the Diocese pseudonymously, with their real identity to be revealed only to the defendants in the course of litigation and with the understanding that their identities would not be publicly disclosed. Other Abuse Claimants are non-litigants who contacted the Diocese pre-petition, either with or without the assistance of counsel, and asserted claims of abuse by Diocesan employees or agents with the understanding that the Diocese would protect their identities and keep their claims confidential. The Diocese has previously entered into out-of-court settlements with some of those Abuse Claimants where the Diocese agreed to keep the Abuse Claimant's name confidential but did not require the Abuse Claimant to keep the settlement confidential.

9. In light of the sensitive nature of the claims of the CVA Plaintiffs and other Abuse Claimants, to avoid causing unnecessary additional anguish or embarrassment, and to encourage such individuals to feel safe and secure in advancing their claims without fear of retribution or reprisal, the Diocese submits that it would be inappropriate and potentially harmful to require the public disclosure of identifying information relating to individuals who have, either informally, formally, or through filing a lawsuit, notified the Diocese of allegations of abuse by clergy members or other persons employed by Catholic entities or otherwise subject to Diocesan supervision (the "Confidential Information").

10. As described below, the Diocese has been operating under confidentiality restrictions for some time, and believes that it is imperative that the decision to come forward and identify oneself as an Abuse Claimant be left to the individuals in question, and that such accommodations can be made without adversely affecting the rights of any other parties in interest.

RELIEF REQUESTED

11. By this Motion, the Diocese respectfully requests permission to protect the identities of CVA Plaintiffs and other Abuse Claimants while providing them notice of this Chapter 11 Case and notice of such events and motions as is required by the Bankruptcy Code and applicable Bankruptcy Rules. The Diocese further seeks to share names and contact information for CVA Plaintiffs and other Abuse Claimants with the Court and Bankruptcy Clerk under seal. It is proposed that CVA Plaintiffs and those Abuse Claimants currently represented by counsel be given notices in the Diocese's Chapter 11 Case only through their respective counsel. The Diocese, through this Motion, seeks leave of the Court to serve notice of this Chapter 11 Case, and other requisite notices, directly on Abuse Claimants who have advised the Diocese of potential claims but have not yet identified counsel, without disclosing those Abuse Claimants' names or addresses to other parties. The Diocese believes that it has contact information for some, but not all, of these Abuse Claimants.

12. The Diocese requests in this Motion that the Court enter an order:
- i. Authorizing the Diocese to file under seal portions of Schedule F and an unredacted copy of the Master Creditor Mailing Matrix, and to seek approval on an expedited basis to file under seal any other pleadings, reports or other documents that might be filed from time to time in this Chapter 11 Case, that, if made publicly available, would disclose any of the Confidential Information;
 - ii. Authorizing the Diocese to publicly file redacted copies of the Master Creditor Mailing Matrix and Schedule F so as to eliminate Confidential Information from those documents;
 - iii. Authorizing the Diocese to identify, schedule and notify CVA Plaintiffs and other Abuse Claimants who are represented by counsel by and through their counsel on Schedule F and the Master Creditor Mailing Matrix;
 - iv. Authorizing the Diocese to provide copies of the sealed portions of any such pleadings, reports or documents to the

Office of the United States Trustee, as necessary, and authorizing the United States Trustee to use such documents in the discharge of its duties and obligations, including but not limited to solicitation and appointment of any committee under 11 U.S.C. § 1102 but as protected by 11 U.S.C. § 107(c)(3);

- v. Authorizing the Diocese to provide sealed reports, documents and pleadings to counsel for any committee appointed under 11 U.S.C. § 1102 who has been retained pursuant to Court approval, but only after confidentiality procedures are agreed upon between the Diocese and counsel for any such committee;
- vi. Authorizing the Diocese to file a full and complete unredacted copy of the mailing matrix above (the “Confidential Mailing List”) with the Court to be held under seal pending further order of the Court;
- vii. Providing that notwithstanding any applicable rule to the contrary, the relief granted under the order shall be immediately effective and enforceable upon entry; and
- viii. Providing that any order granting the relief requested in this Motion is without prejudice to any future determined confidentiality protocol regarding filing proofs of claim and objections to proofs of claim.

BASIS FOR RELIEF

13. The relief sought herein is designed to protect the confidential nature of sensitive information relating to Abuse Claimants and confidential settlement terms and to allow the Diocese to file necessary pleadings with respect to commencement of this chapter 11 case and comply with applicable requirements of disclosure required by the Bankruptcy Code and the Bankruptcy Rules.

14. The Diocese respectfully submits that it should be authorized to file documents that contain Confidential Information under seal. The Diocese acknowledges that the general policy regarding access to information in bankruptcy proceedings favors openness. *See In re Farmland Indus., Inc.*, 290 B.R. 364, 367 (Bankr. W.D. Mo. 2003). However, that policy is subject to certain

express statutory limitations set forth in section 107 of the Bankruptcy Code which provides, in relevant part:

(b) On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may –

...

(2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

(c) (1) The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of . . . unlawful injury to the individual or the individual's property:

(A) any means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed, in a case under this title.

...

11 U.S.C. § 107.

15. Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under section 107(b):

On motion or on its own initiative, with or without notice, the court may make any order which justice requires . . . to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code[.]

Fed. Bankr. P. 9018. Similarly, Bankruptcy Rule 9037 provides for filings to be redacted or filed under seal where they contain the name or other identifying information of individuals, other than the debtor, known to be and identified as a minor, and provides for protective orders directing redaction or limitations on access to other information for cause. *See* Fed R. Bankr. P. 9037(a), (c) and (d).

16. The Ninth Circuit has observed that the language of section 107(b)(2) is mandatory and requires the bankruptcy court, upon request by the affected person or party, to issue a protective order with respect to matters that are scandalous or defamatory. *Father M. v. Various Tort Claimants (In re Roman Catholic Archbishop of Portland in Oregon)*, 661 F.3d 417, 430-431 (9th Cir. 2011). The Ninth Circuit further held in *Father M.* that “scandalous” must be given its plain meaning for purposes of section 107(b)(2), and that a matter is “scandalous” if it is “disgraceful, offensive, shameful and the like.” *Id.* at 432. The court went on to hold explain that “[u]nder the common usage of the word, allegations that a priest has sexually abused children are most assuredly ‘scandalous’ . . .” Although *Father M.* addressed the issue from the perspective of clergy members seeking to protect themselves from being mislabeled as perpetrators, the Diocese respectfully submits that, unless an Abuse Claimant wishes to come forward and tell their story to the world, the public suggestion that an individual is a victim of such abuse is sufficiently intrusive into that person’s personal privacy as to make the matter “scandalous” within the meaning of section 107(b)(2).

17. The Diocese acknowledges that some courts have found mere reputational damage or the perceptions of third parties to be insufficient to merit a protective order under section 107(b)(2). *See, e.g., Neal v. Kansas City Star (In re Neal)*, 461 F.3d 1048, 1054 (8th Cir. 2006) (holding that former judge’s listing of attorneys as creditors should be made publicly available where “[p]otential scandal only surfaces when one looks ‘outside the lines’ of the bankruptcy proceeding . . . and speculates as to motives of the creditor and the debtor.”). However, in contrast to cases such as *Neal* where the mere disclosure of an individual’s identity, without more, did not imply anything other than a standard debtor-creditor relationship, in the present case there is simply no way to identify the Abuse Claimants without at the same time disclosing to the world

that such individuals were allegedly the victims of abuse, information which is by its very nature incredibly personal and painful and which, regrettably, still carries a stigma for many victims. Accordingly, the Diocese submits that the Confidential Information should be protected from disclosure not only under section 107(b)(2) of the Bankruptcy Code, but also pursuant to section 107(c) in order to avoid the potential for any further injury to Abuse Claimants by way of harassment, retaliation, or otherwise. *C.f., Traversa v. Educ. Credit Mgmt. Corp. (In re Traversa)*, 2008 Bankr. LEXIS 1280 (Bankr. D. Ct. April 16, 2008) (finding protective order appropriate to avoid potential unlawful employment discrimination if specifics of alleged disabilities at issue in adversary proceeding became available to potential employers). As noted above, and consistent with section 107(c)(3) of the Bankruptcy Code, the Diocese proposes to provide the office of the United States Trustee with access to all documents filed in this chapter 11 case, subject to the United States Trustee's obligation not to disclose any information specifically protected by court order.

18. Filing the Confidential Information under seal is additionally supported by Bankruptcy Rule 1007(j), which provides:

(j) Impounding of Lists. On motion of a party in interest and for cause shown the court may direct the impounding of lists filed under this rule, and may refuse to permit inspection by any entity. The court may permit inspection or use of lists, however, by any party in interest on terms prescribed by the court.

Fed. R. Bankr. P. 1007(j). The Diocese respectfully submits that sufficient cause exists here to justify the relief requested in this Motion pursuant to Rule 1007(j).

19. State courts have already considered this issue and decided in many cases to permit CVA Plaintiffs to proceed anonymously, with plaintiffs only disclosing their actual identities to the defendants. For example, certain CVA Plaintiffs obtained a court order allowing them to file

claims using a pseudonym.¹ Additionally, in support of the application to file under a pseudonym in *AB-1 Doe v. John Doe(s) 1-5*, CVA Plaintiffs' counsel identified an expert who opined that victims of sexual abuse should have their identities kept private in order to both avoid any stigma associated with victimhood and because many victims opt not to seek compensation if there is a risk they will be publicly identified.² Because the Diocese has already been ordered by state courts to maintain the confidentiality of CVA Plaintiff identifying information in several cases, it has a legal duty to protect the identities of these CVA Plaintiffs. Moreover, the Diocese strongly believes that it has a moral and ethical duty to protect the identities of all Abuse Claimants unless they choose to identify themselves. Such individuals should not be required to make their identities public in order to participate in this chapter 11 case. Subject to the limitations imposed by sections 107(b) and (c) of the Bankruptcy Code, the Diocese has no intention to oppose any steps by individual Abuse Claimants who wish to make their identities public or to disclose Confidential Information regarding their claims; however, the Diocese believes that such a decision should be of the Abuse Claimants' own accord.

20. The Diocese proposes that only CVA Plaintiffs who have already filed suit will be identified on public matrices and schedules, and they will be identified only by their counsel and in the manner that they listed in their respective summons and complaints (i.e., those CVA Plaintiffs who filed suit in their true name will be identified as such, those who filed suit under a pseudonym will be identified only by that pseudonym. On all schedules and matrices filed under

¹ See *AB-1 Doe v. John Doe(s) 1-5*, Erie County Index No. 809838/2019 [Doc. No. 7]; see also *PB-1 DOE v. The Diocese of Buffalo, N.Y., et. al.*, Erie County Index No. 810245/2019 [Doc. No. 10]. True and correct copies of these orders are attached hereto as **Exhibit B**.

² A true and correct copy of the Affidavit of David G. Heffler, Ph.D., filed in connection with *AB-1 Doe v. John Doe(s) 1-5*, Erie County Index No. E2019/809838 [Doc. No. 4] is attached hereto as **Exhibit C**.

seal, CVA Plaintiffs and other Abuse Claimants will be identified by their true name to the extent it is known to the Diocese.

21. In addition to the filing of the Master Creditor Mailing Matrix under seal, the Diocese will file a redacted version of the Master Creditor Mailing Matrix on the docket for use by other parties seeking to provide notice in this chapter 11 case. The Diocese also intends to seek approval of the retention of a claims noticing agent to help fulfill these confidential noticing procedures, to keep claimants informed of developments in the chapter 11 case, and to assist in the claims and solicitation processes with respect to all Abuse Claimants and other creditors in this chapter 11 case.

22. Relief similar to that requested in this Motion has been requested and granted in a number of other diocesan cases on similar facts. *See In re The Diocese of Rochester*, Case No. 19-20905 (Bankr. W.D.N.Y., September 13, 2019) [Docket No. 29]; *In re Archbishop of Agaña*, Case No. 19-00010 (Bankr. D. Guam., January 18, 2019) [Docket No. 45]; *In re Roman Catholic Church of the Archdiocese of Santa Fe*, Case No. 18-13027 (Bankr. D. N.M., Dec. 4, 2018) [Docket No. 31]; *In re The Diocese of New Ulm*, Case No. 17-30601 (Bankr. D. Minn. March 7, 2017) [Docket No. 29]; *In re Diocese of Duluth*, Case No. 15-50792 (Bankr. D. Minn, Dec. 17, 2015) [Docket No. 24]; *In re The Archdiocese of Saint Paul and Minneapolis*, Case No. 15-30125 (Bankr. D. Minn., Jan. 1, 2015) [Docket No. 53]; *In re Roman Catholic Church of the Diocese of Gallup*, Case No. 13-13676 (Bankr. D. N.M., Nov. 25, 2013) [Docket No. 63]; *In re The Catholic Bishop of Spokane*, Case No. 04-08822 (Bankr. E.D. Wash., Dec. 6, 2004) [Docket No. 18]; *In re The Roman Catholic Church of the Diocese of Tucson*, Case No. 04-04721 (Bankr. D. Az., Sept. 27, 2004) [Docket No. 35].

RESERVATION OF RIGHTS

23. Nothing in this Motion is intended or should be construed as an admission as to the validity, priority or amount of any claim against the Diocese, a waiver of the Diocese's right to dispute any claim or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code, nor does the Diocese waive its rights under the Code of Canon law, or any applicable State or Federal law, and the Diocese expressly reserves its rights with respect thereto.

NOTICE

24. Notice of this Motion will be given to (i) the Office of the United States Trustee for the Western District of New York, (ii) the Diocese's twenty (20) largest unsecured creditors as set forth in the list filed with the Diocese's petition, (iii) all required governmental agencies and (iv) the Diocese's banks. In light of the nature of the relief requested herein, the Diocese submits that no further notice is required.

NO PRIOR REQUEST

25. The Diocese has not previously sought the relief requested herein from this or any other court.

WHEREFORE, for the reasons set forth above, the Diocese respectfully requests that this Court enter an order, in substantially the form attached hereto as *Exhibit A*, authorizing the Diocese to file under seal portions of Schedule F and the Master Creditor Mailing Matrix, and requesting consideration on shortened notice for the filing under seal of any additional pleadings in this chapter 11 case that may contain Confidential Information, and granting such other and further relief as the Court deems just and proper.

EXHIBIT A

Proposed Order

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

The Diocese of Buffalo, N.Y.,
Debtor.

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) Case No. 20-[10322]
)
) Chapter 11
)
)
)

**ORDER AUTHORIZING THE DIOCESE TO FILE PORTIONS
OF SCHEDULE F, THE MASTER CREDITOR MAILING MATRIX,
AND OTHER PLEADINGS AND DOCUMENTS UNDER SEAL**

Upon the motion of The Diocese of Buffalo, N.Y. (the “Diocese”) for entry of an order authorizing the Diocese to file under seal portions of Schedule F, an unredacted version of the Master Creditor Mailing Matrix, and to seek approval to file under seal any additional pleadings in this Chapter 11 Case that may contain Confidential Information (as defined below) on an expedited basis [Docket No. ____] (the “Motion”);¹ and it appearing that the Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this Chapter 11 Case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that proper and adequate notice of the Motion has been given under the circumstances and that, except as otherwise ordered herein, no other or further notice is necessary; and the Court having reviewed the Motion and the record in this Chapter 11 Case and determined that granting the relief requested in the Motion on an interim basis is in the best interests of the Diocese, its estate, creditors and other parties in interest; and after due deliberation thereon, and good and sufficient cause appearing therefor;

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Diocese is authorized to file under seal those portions of Schedule F and an unredacted version of the Master Creditor Mailing Matrix (the “Confidential Mailing List”) that disclose or contain any Confidential Information.
3. The Diocese may also seek approval to file under seal any additional pleadings in this Chapter 11 Case that may contain Confidential Information on an expedited basis, and any such request shall be heard not later than three (3) business days following the Diocese’s filing of a motion requesting such relief and service of same on counsel to any statutory committee appointed in the Chapter 11 Case or, if no such committee has been appointed, to the Debtor’s twenty (20) largest unsecured creditors.
4. The Diocese is authorized to publicly file redacted copies of the Master Creditor Mailing Matrix and Schedule F so as to eliminate Confidential Information from those documents.
5. The Diocese is authorized to identify, schedule and notify CVA Plaintiffs and other Abuse Claimants, who have also identified counsel representing them, by and through their counsel on Schedule F and the Master Creditor Mailing Matrix.
6. The Diocese is authorized to provide copies of the sealed portions of any such pleadings, reports or documents to the Office of the United States Trustee, as necessary, and the United States Trustee is authorized to use such documents in the discharge of its duties and obligations, including but not limited to solicitation and appointment of any committee under 11 U.S.C. § 1102 but as protected by 11 U.S.C. § 107(c)(3).
7. The Diocese is authorized to provide copies of any sealed reports, documents and pleadings to counsel for any committee appointed under 11 U.S.C. § 1102 who has been retained

pursuant to Court approval, but only after confidentiality procedures are agreed upon between the Diocese and counsel for any such committee.

8. The Diocese is authorized to file a full and complete unredacted copy of the Confidential Mailing List with the Court to be held under seal pending further order of the Court. The Confidential Mailing List may also be provided to any noticing agent retained by the Diocese in this chapter 11 case.

9. Any pleadings which are required to be sent to the parties on the Confidential Mailing List will be sent by the party filing the pleading, *provided however*, that if such party does not have access to the sealed portion of the Confidential Mailing List, the party may contact counsel for the Diocese and/or any noticing agent retained by the Diocese to coordinate service, and such party filing the pleading shall be responsible for any fees and costs associated with such service.

10. The clerk of court shall not provide any notices to those creditors on Schedule F filed under seal. The Diocese's counsel, or a claims noticing agent retained by the Diocese shall provide such notices, under Bankruptcy Rule 2002(f) and otherwise, and file a certificate of service certifying that those individuals whose identifying information has been provided under seal have been served.

11. The Diocese's authorization to file the documents referenced in paragraph 2 of this Order under seal shall be carried out in accordance with the directions of the clerk of court.

12. This Order is without prejudice to any future determined confidentiality protocol regarding filing of proofs of claim and objections to proofs of claim.

13. Nothing contained herein or in the Motion is intended or should be construed as an admission or determination as to the validity of any claim against the Diocese, a waiver of the

Diocese's rights to dispute any claim, or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code, nor does the Diocese waive its rights under the Code of Canon law, or any applicable State or Federal law.

14. The requirements set forth in Local Rule 9013-1(A) and (B) are satisfied.

15. This Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise. Any subsequent modification or vacatur of this Order shall not invalidate any action taken pursuant to this Order prior to the modification or vacatur of the Order.

16. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Order.

Dated: _____, 2020
Buffalo, New York

Hon. Carl L. Bucki
United States Bankruptcy Judge

EXHIBIT B

Erie County Orders

At a Special Term of the Supreme Court of the State of New York held in and for the County of Erie at the Erie County Courthouse, 50 Delaware Avenue, Part 33, Buffalo, NY 14202, on the 9th day of August, 2019.

PRESENT: Hon. Deborah A. Chimes, J. S.C.
Supreme Court Justice

AB 1 Doe

Petitioner,

vs.

John Doe(s) 1 - 5

Respondent.

Amended

ORDER

Index No.: 809838/2019

Petitioner AB 1 Doe having moved ex parte for an Order granting Petitioner the right to file a claim in the Eighth Judicial District under the Child Victims Act using the pseudonym AB 1 Doe, directing the parties handling such claim not to disclose Petitioner's identity to the general public, and granting all other Plaintiffs filing claims under the Child Victims Act the same relief with respect to proceeding under a pseudonym, and

Petitioner AB 1 Doe, by Petitioner's attorney, Stephen Boyd, Esq., of counsel to Steve Boyd, PC, having moved for an Order granting Petitioner the right to file a claim in the Eighth Judicial District under the Child Victims Act using the pseudonym AB 1 Doe, directing the parties handling such claim not to disclose Petitioner's identity to the general public, and granting all other Plaintiffs filing claims under the Child Victims Act the same relief with respect to proceeding under a pseudonym, and

UPON reading the Notice of Ex Parte Petition and the Petition of Stephen Boyd, Esq., sworn to the 6th day of August, 2019, in support of Petitioner's request, and

UPON reading the *amicus curiae* affirmation of attorney Christopher J. O'Brien, Esq., of counsel to O'Brien and Ford, PC, sworn to the 8th day of August, 2019, and the accompanying affidavit of psychotherapist David G. Heffler, PhD, LMHC, sworn to the 8th day of August, 2019, in support of Petitioner's request, and

UPON hearing oral argument by Steve Boyd, PC, Steve Boyd, Esq., of counsel, in support of Petitioner's request, and

UPON due deliberation thereon, it is hereby,

ORDERED:

That Petitioner is permitted to use of the pseudonym "AB 1 Doe" and the caption "AB 1 Doe vs. John Doe(s) 1-5," in a claim to be brought under the Child Victims Act; and it is further

ORDERED:

That Petitioner is permitted to file an action under the Child Victims Act using the pseudonym "AB 1 Doe" and it is further

ORDERED:

That the parties to such claim brought under the Child Victims Act are to refrain from disclosing Petitioner's true identity to the general public and direct all individuals or entities to whom disclosure is necessary during the course of the litigation that they are barred under this Order from disclosing Petitioner's true identity to the general public; and it is further

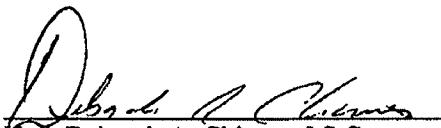
ORDERED:

That all papers filed in the Child Victims Act action, and all judgments, orders, decisions, notices to the Court and any other documents relating to the action refer to the Petitioner as "AB 1 Doe," and it is further

ORDERED:

That all other Anderson/Boyd Plaintiffs filing claims under the Child Victims Act in the Eighth Judicial District are granted the same relief granted to Petitioner as set forth above, with each Plaintiff's pseudonym to consist "AB" and a numeric designation.

ENTERED:

 8/13/19
Hon. Deborah A. Chimes, J.S.C.

GRANTED:

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

<p>PB-1 DOE,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>THE DIOCESE OF BUFFALO, N.Y. A/K/A DIOCESE OF BUFFALO, ST. MARY OF SORROWS SCHOOL, and BISHOP FALLON HIGH SCHOOL,</p> <p style="text-align: center;">Defendants.</p>

Index No.: 810245/19

ORDER

Upon the filing and service of an Order to Show Cause for an order that this action proceed and continue with the anonymous identity of Plaintiff and such further relief stated therein, along with the supporting affirmation of Michael DeRuve, Esq., dated October 4, 2019, and the Exhibits annexed thereto, and oral argument having been heard on October 15, 2019¹ and the Defendants having not objected, it is hereby:

ORDERED that Plaintiff has established the need for the use of a pseudonym, and there is no objection by Defendants;

ORDERED that Plaintiff is permitted to file and proceed with the use of a pseudonym and accompanying caption with a pseudonym in the claim under the Child Victim Act;

ORDERED that the parties to such claim refrain from disclosing Plaintiff's true identity to the general public;

¹ Ex. 1, transcript of hearing on October 15, 2019.

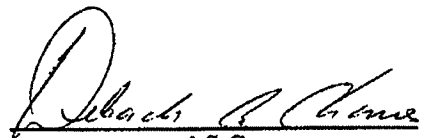
{00047411}

ORDERED that the parties to such claim direct all individuals or entities to whom disclosure is necessary during the course of the litigation that they are barred under this order from disclosing Plaintiff's true identity to the general public; and

ORDERED that all papers filed in this action, and all judgments, orders decisions, notices to the Court, and any other documents relating to this action refer to the Plaintiff by the pseudonym.

Dated:

ENTER:

 11/19/19

J.S.C.

HON. DEBORAH A. CHIMES, J.S.C.

{00047411}

FILED: ERIE COUNTY CLERK 11/15/2019 02:15 PM

NYSCEF DOC. NO. 19

INDEX NO. 810245/2019

RECEIVED NYSCEF: 11/15/2019

EXHIBIT 1

1 STATE OF NEW YORK : COUNTY OF ERIE
2 SUPREME COURT

3 PB-1 DOE, PB-2 DOE, PB-3 DOE,
4 PB-4 DOE, PB-5 DOE, PB-6 DOE,

5 PLAINTIFFS, INDEX #810245/2019
6 #810380/2019
7 #811475/2019
8 #1701347/2019
9 #811478/2019
10 #811773/2019

11 -VS-

12 THE DIOCESE OF BUFFALO, ET AL, DECISION
13 DEFENDANTS,
14

15 50 Delaware Avenue
16 Buffalo, New York 14202
17 October 15, 2019.

18 HELD BEFORE: HONORABLE DEBORAH A. CHIMES,
19 SUPREME COURT JUSTICE.

20 APPEARANCES: PAUL BARR, ESQ.,
21 Appearing for the Plaintiffs.

22 RANDALL WHITE, ESQ.,
23 Appearing for the Defendants.

24 LISA G. PAZDERSKI,
25 Supreme Court Reporter.

1 THE COURT: The Court is going to render its
2 decision on the orders to show cause on various
3 cases. Plaintiff moves for an order deeming
4 plaintiffs' use of the pseudonym proper, and
5 directing that defendants refrain from publishing
6 plaintiffs' true identity.

7 The CPLR requires that the caption of the
8 summons and complaint include the names of all
9 parties. See CPLR 2101(c).

10 Quote: The determination of whether to allow
11 a plaintiff to proceed anonymously requires the
12 court to use its discretion in balancing
13 plaintiff's privacy interest against the
14 presumption in favor of open trials and against
15 any potential prejudice to defendants, end of
16 quote, *Anonymous versus Lerner*, 124 AD3d 487.

17 Here, the plaintiff has made the requisite
18 showing for the need of the use of a pseudonym and
19 defendants have made no objection. The case is of
20 a highly sensitive nature, and anonymity would
21 protect plaintiff from future harm, including
22 public exposure to the abuse and social
23 stigmatization.

24 Further, defendants are not prejudiced as
25 plaintiff has agreed to reveal his or her true

1 identity to the defendants. Plaintiff is also
2 entitled to the directive that defendants shall
3 not reveal plaintiff's identity to the general
4 public.

5 Therefore, I grant the plaintiffs' motion and
6 direct plaintiff to prepare an order with the
7 following ordering paragraphs:

8 That plaintiff has established the need for
9 the use of a pseudonym, and there is no objection
10 by defendants. That plaintiff is permitted to
11 file and proceed with the use of a pseudonym and
12 accompanying caption with a pseudonym in the claim
13 under the Child Victim Act.

14 The -- that the parties to such claim are to
15 refrain from disclosing plaintiffs' true identity
16 to the general public, and direct all individuals
17 or entities to whom disclosure is necessary during
18 the course of the litigation that they are barred
19 under this order from disclosing plaintiffs' true
20 identity to the general public; and that all
21 papers filed in the action, and all judgments,
22 orders, decisions, notices to the Court and any
23 other documents relating to this action refer to
24 the plaintiff by the pseudonym.

25 Plaintiff is to prepare and submit an order

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within 30 days attaching a transcript of the decision to the orders.

Did that address the agreed upon ordering paragraphs that the parties agreed to?

MR. BARR: Yes.

MR. WHITE: Yes, Your Honor.

THE COURT: Very good. Thank you.

* * * * *

Certified to be a true and accurate transcript of the minutes and/or testimony taken herein transcribed into English text through Computer Assisted Transcription.



Lisa G. Pazderski, Supreme Court Reporter

EXHIBIT C

Heffler Affidavit

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

AB 1 Doe,

Petitioner,

vs.

AFFIDAVIT

Index No.: 809838/2019

John Doe(s) 1 - 5,

Respondent.

David G. Heffler, Ph.D., LMHC, being duly sworn, hereby deposes and states:

1. I am a Licensed Mental Health Counselor in the State of New York and I am a clinically certified Sex Offender Treatment Specialist with respect to the National Association of Forensic Counselors. I also maintain a number of other certifications with respect to the treatment of sex offenders and their victims.

2. I have been asked to submit this affidavit by the law firm of OBrien & Ford, PC with respect to the Child Victims Act and the public identification of victims of sexual abuse in lawsuits. As always, when dealing with the victims of sexual abuse, we must keep in the forefront of our thinking the very simple fact that these victims did nothing wrong which in any way justifies their being sexually abused.

3. My professional experience with respect to victims of sexual abuse is that I have been involved in the treatment of individuals who have been the victims of sexual abuse for more than 30 years. A copy of my curriculum vitae is attached hereto as **Exhibit A.**

4. In the course of my care and treatment of adolescents and other victims of sexual abuse, I have become aware of the strong stigma attached to being a victim of sexual abuse. I have personally treated hundreds if not thousands of sexual abuse victims who have exhibited fear of their status as a victim of sexual abuse becoming known to family members or to others in their communities.

5. It has been my experience as a mental health care professional that many victims of sexual abuse either delay treatment or do not seek out treatment due to their fear of this identification as a sex abuse victim. Further, for those individuals who do seek treatment, many times they do so only upon receiving reassurance that their identities will not be made public.

6. I am aware that the Child Victims Act in New York State will allow many victims to receive compensation for their suffering. However, based on my education, training and experience as a Licensed Mental Health Counselor with expertise in the field of sexual abuse victimization, it is my professional opinion supported by research in the field of sexual abuse victimization that the public identification of the victims of sexual abuse will have a strong dampening effect on the willingness of these victims to come forward and seek compensation.

7. It is my expert opinion that the impact of being publicly identified could result in the same impact as having the offense take place all over again; the effect to the victims would be tantamount to a re-victimization against these victims, who have struggled for years to keep their names anonymous. As a result, many victims who were abused through no fault of their own will effectively be denied the justice that the law intends to provide.

8. I am aware that several law firms are requesting that all victims be allowed to proceed forward anonymously with respect to public court documents. I

4. In the course of my care and treatment of adolescents and other victims of sexual abuse, I have become aware of the strong stigma attached to being a victim of sexual abuse. I have personally treated hundreds if not thousands of sexual abuse victims who have exhibited fear of their status as a victim of sexual abuse becoming known to family members or to others in their communities.

5. It has been my experience as a mental health care professional that many victims of sexual abuse either delay treatment or do not seek out treatment due to their fear of this identification as a sex abuse victim. Further, for those individuals who do seek treatment, many times they do so only upon receiving reassurance that their identities will not be made public.

6. I am aware that the Child Victims Act in New York State will allow many victims to receive compensation for their suffering. However, based on my education, training and experience as a Licensed Mental Health Counselor with expertise in the field of sexual abuse victimization, it is my professional opinion supported by research in the field of sexual abuse victimization that the public identification of the victims of sexual abuse will have a strong dampening effect on the willingness of these victims to come forward and seek compensation.

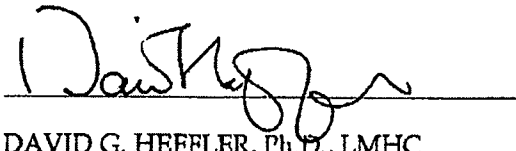
7. It is my expert opinion that the impact of being publicly identified could result in the same impact as having the offense take place all over again; the effect to the victims would be tantamount to a re-victimization against these victims, who have struggled for years to keep their names anonymous. As a result, many victims who were abused through no fault of their own will effectively be denied the justice that the law intends to provide.

8. I am aware that several law firms are requesting that all victims be allowed to proceed forward anonymously with respect to public court documents. I

strongly support such a handling of public documents such that these victims of sexual abuse will have the opportunity to proceed anonymously with respect to any documents filed in court.

Dated: August 8, 2019

Amherst, NY



DAVID G. HEFFLER, Ph.D., LMHC

Christopher J. O'Brien
Notary Public
Sworn this 8th day of
August, 2019
CHRISTOPHER J. O'BRIEN
Notary Public, State of New York
Qualified in Erie County
Commission Expires July 20, 2022

David Glenn Heffler, Ph.D., LMHC
239 Bewley Building
Lockport, NY 14094
(716) 439-1936
(716) 628-5638

30 Viscount Drive
Williamsville, NY 14221
(716) 631-8491
Page 1

Date of Birth: September 6, 1948
Place of Birth: Niagara Falls, New York
Marital Status: Married, Three Children

Education

- 12/94 – 11/98 **Pacific Western University**
Los Angeles, California
Completion of requirements for Ph.D., Clinical Psychology
(Forensic Emphasis)
- 09/73 - 05/76 **SUNY at Binghamton; Binghamton, NY**
Ph. D. Candidate in Clinical Psychology
MA. Clinical Psychology; 81 Credit Hours Toward Ph.D.
- 01/71 - 06/73 **SUNY at Buffalo; Buffalo, NY**
B.A. (Cum Laude) Clinical/Community Psychology Emphasis
- 09/67 - 06/68 **University of Nebraska; Lincoln, NE**
Engineering Emphasis

Professional Licenses/Certifications

NYS Licensed Mental Health Counselor
License #003291

Clinically Certified Sex Offender Treatment Specialist
Cert. #16571, National Association of Forensic Counselors

Clinically Certified Criminal Justice Specialist
Cert. # 16571, National Association of Forensic Counselors

Clinically Certified Forensic Counselor
Cert. #16571, National Association of Forensic Counselors

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Page 2

Clinically Certified Juvenile Sex Offender Treatment Specialist
Cert. #16571, National Association of Forensic Counselors

Clinically Certified Juvenile Treatment Specialist
Cert. # 16571, National Association of Forensic Counselors

Certified Sexual Disorder Diagnostician
Cert. #16571, National Association of Forensic Counselors

Clinically Certified Sexual Addictions Specialist
Cert. #16571, National Association of Forensic Counselors

Clinical and Administrative Experience

5/06 – Present

Forensic Mental Health Counseling of WNY, PLLC
239 Bewley Building, Lockport, NY 14094

Title: Accredited Forensic Counselor/Psychotherapist/Owner
Specializing in Forensic Risk Assessment and Treatment including sexual offenders and substance abuse, Extended Sexual Abuse Assessments, other criminal behaviors (e.g. Shop lifting, domestic violence, DWI) Return to work determinations, disability determinations, workers' compensation and No Fault.

1991 - 2006

Niagara Frontier Psychiatric Associates, PLLC
230 Bewley Building, Lockport, NY 14094
(716) 433-3927

Title: Psychotherapist/Executive Director
Treatment of affective and anxiety disorders; impulse control disorders, substance abuse, child, adolescent and couples treatment; and evaluation and treatment of sexual offenders. Clinical expertise in forensic mental health, sex offender evaluation/treatment and cognitive behavior therapy and behavior therapy techniques.

7/83 – 7/06

Western New York Children's Psychiatric Center
1010 East & West Road, West Seneca, NY 14224
(716) 674-9730

David Glenn Heffler, Ph.D., LMHC
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Page 3

7/03 – 7/06 (Retired) - Title: Executive Director

Chief Executive Officer for a NYS operated, JCAHO accredited, 46 bed, children and youth psychiatric facility. Under the governance of the NYS Office of Mental Health, responsible for all aspects of facility operation of inpatient and outpatient programs.

5/97 – 7/03 - Title: Chief of Outpatient Services

Responsible for overall development and operation of facility outpatient services. Includes contract and service negotiations and program developments. Member of Executive Cabinet of WNYCPC

2/89–5/97-Title: Outpatient Program Coordinator/Psychologist II

Responsible for administration of outpatient programs including Clinic Treatment, Day Treatment, Home Support/Crisis Team and Mobile Mental Health Team. Services provided primarily to severely emotionally disturbed children and adolescents. Responsibilities are: overall program operation, including budget, staffing, development of program policy and procedure, compliance with all relevant regulations and certifying agencies. Report to Mr. Jed Cohen, Acting Executive Director, WNYCPC.

7/84 –2/89 - Title: Chief of Inpatient Services

Responsible for administrative direction of inpatient treatment services. Supervision of clinical disciplines and management of various facility operations. Assist Director of Facility Administrative Services in supervision of, Labor Management, Safety, Food Service and Housekeeping, Maintenance and Capital Construction projects. Report to Executive Director.

7/83 – 7/84 - Title: Treatment Team Leader/Psychologist II

Responsible for clinical direction of four inpatient treatment teams, providing services to children and adolescents. Develop and implement, treatment plans, quality assurance activities, staffing, plans and overtime management.

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Page 4

1975 - 1983

Willard Psychiatric Center
Willard, New York

8/79 - 7/83 - Title: Program Director - Seneca County
Community Services Center

1977 - 1979 - Title: Treatment Team Leader/Psychologist II -
Adult Services; Seneca and Wayne County Inpatient Treatment
Units

1975 - 1978 - Title: Psychologist II - Seneca and Wayne County
Inpatient Treatment Units

1976 - 1980

Seneca County Mental Health Clinic
Waterloo, NY
Title: Psychologist, part-time

1973 - 1975

Binghamton Psychiatric Center
Binghamton, NY
Title: Psychologist Trainee

1972 - 1973

SUNY at Buffalo
Buffalo, NY
Title: Researcher, Co-Author for NIMH Funded Research

Teaching Experience

11/00-present

State University of New York at Buffalo
Department of Psychiatry, School of Medicine
Title: Clinical Instructor

1976 - 1982

Rochester Institute of Technology
Eisenhower Campus, Rochester, NY
Title: Visiting Professor
Instructor for Theories of Learning, Theories of Personality, and
Tests and Measurements.

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Page 5

Memberships and Affiliations and Awards

National Association for the Treatment of Sexual Abusers (ATSA)

New York State Chapter of The Association for the Treatment of Sexual Abusers (NYSATSA)

National Association of Forensic Counselors

New York Mental Health Counselors Association

American Board of Disability Analysts

American Professional Society on the Abuse of Children (APSAC)

Awarded the "2013 Shepard Goldberg Champion of Children Award" by Child and Adolescent Treatment Services, Buffalo, NY

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Page 6

Specialized Training and Expertise

**Child Forensic Interview Clinic, American Professional Society
on the Abuse of Children (March 15-19, 2013)**

40 hour training on conducting empirically-based child Forensic Interviews.

Former - Special Investigator, NYS Office of Mental Health

Conduct special investigations regarding allegations of abuse and neglect within NYS Office of Mental Health and facilities.

Publications and Highlighted Conference Presentations

Taheri, M.S., Heffler, D.G., "Making Your Client a More Effective Witness." The Federal Public Defender Report, October 1995

Heffler, D.G., Lisman, S.A., "Attribution and Insomnia: a Replication Failure," The Psychological Record, 1978, 28, 123-128.

Lick, J.R., Heffler, D.G., "Relaxation Training and Attention Placebo in the Treatment of Severe Insomnia," Journal of Counseling and Clinical Psychology, 1977, Vol. 45, Number 2, 153-161.

Heffler, D.G., Connor, W.H., "Assertion Training with Psychiatric Patients." Presented at the 1978 Conference of Psychologists in New York State Service.

Heffler, D. G., "Identification and Assessments of Adolescent Sexual Abusers," Grand Rounds Presentation Catholic Health System of Buffalo, 11/30/99.

Heffler, D.G., "Identification of Healthy and Unhealthy Sexual Behavior in Children and Adolescence." Presentation to Erie County Probation Department, 10/03.

Heffler, D.G., "Assessment and Treatment of Adult Sexual Offenders. Presentation to the Erie County Probation Department, 5/03

Heffler, D.G., "Sex Offender Treatment", NYS Child Advocacy Resource and Consultation Center, 9/07

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Page 7

Heffler, D.G., "Sex Offender Assessment and Treatment (Adults and Adolescents), Presentation for
Niagara County Child Advocacy Center, 5/08

Heffler, D.G., "Adult and Adolescent Sexual Abuser Assessment & Treatment,
Conference Presentation for Bivona Summit on Child Abuse, 4/09

Heffler, D.G., "Apology, Reconciliation and Reunification: Should Sex Offenders
Reunite with their Families?"

"Adolescent Sexual Abusers: Distinctions Among Abusers:
Are They Tomorrow's Adult Offenders?"

Conference Presentation: Bivona Summit on Child Abuse, 4/10

Heffler, D.G., "Apology, Reconciliation and Reunification: Should Sex Offenders
Reunite with their Families?"

"Adolescent sexual abusers: Distinctions among abusers. Are they
tomorrow's adult offenders?"

Conference Presentation for Niagara County Child Advocacy Center, 4/10

Heffler, D.G., "Characteristics and Typology of Child Sexual Behavior Problems – Including
Distinction between Normative and Problematic Sexual Behaviors."

"Key Considerations for Reconciliation of Adult Sexual Offenders and Their
Families."

Conference Presentation: Bivona Summit on Child Abuse, 4/11

Heffler, D.G., "Assessment and Treatment of Adult Sexual Offenders"
Presentation: Town Justices of Niagara County, 5/12

Heffler, D.G., "Assessment and Treatment of Adolescent Sexual Abusers"
Presentation: Niagara County Department of Social Services, 6/12

Heffler, D.G., "Hey Doc, is this normal? Characteristics and Typology of Juvenile
Sexual Behavior problems"

"Ready or not, here I come! When the sexual perpetrator returns home."

Conference Presentation: Niagara County Child Advocacy Center, 10/12

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(716) 631-8491
Page 8

Heffler, D.G., "Assessment and Treatment of Adult Sexual Offenders",
Presentation: Defense Bar, 10/12

Heffler, D.G., "Conducting Extended Sexual Abuse Assessments"
Presentation: Erie County, Assigned Counsel, 9/13

Heffler, D.G., "Assessment and Treatment of Sexual Offenders: Suspension of Conscience"
Presentations: Erie County, Judges, Amherst New York, 1/14

Heffler, D.G., "Character Psychopathology and The Sexual Offender"; "The Science of Evil – Empathy Deficits and Criminogenic Behavior"
Conference Presentations: Niagara County Safe at Home Conference, 10/14

Heffler, D.G., "Dynamics of Domestic Violence and The Science of Evil"
Presentation: Niagara County Department of Social Services, 9/15

Heffler, D.G., "Do People Change? Character Psychopathology and the Sexual Offender and The Science of Evil – Empathy Deficits and Criminogenic Behavior"
Presentation: New York State Probation Officers Association, 7/16

Heffler, D.G. "Current Trends in Sexual Offender Treatment"
Presentation: Erie County Committee on Alternative to Incarceration, 12/16

Heffler, D.G. "Extended Child Sexual Abuse Assessments and Typology and Assessment of Child Pornography"
Presentation: Legal Aid Bureau of Buffalo, Inc. – Mental Health Issues and The Law, 2/2017

Heffler, D.G. "Responding to Child Sexual Behaviors and Management of Child Victims of Sexual Abuse"
Presentation: Niagara County Department of Social Services, 5/2017

EXHIBIT B

Erie County Orders

At a Special Term of the Supreme Court of the State of New York held in and for the County of Erie at the Erie County Courthouse, 50 Delaware Avenue, Part 33, Buffalo, NY 14202, on the 9th day of August, 2019.

PRESENT: Hon. Deborah A. Chimes, J. S.C.
Supreme Court Justice

AB 1 Doe

Petitioner,

vs.

John Doe(s) 1 - 5

Respondent.

Amended
ORDER

Index No.: 809838/2019

Petitioner AB 1 Doe having moved ex parte for an Order granting Petitioner the right to file a claim in the Eighth Judicial District under the Child Victims Act using the pseudonym AB 1 Doe, directing the parties handling such claim not to disclose Petitioner's identity to the general public, and granting all other Plaintiffs filing claims under the Child Victims Act the same relief with respect to proceeding under a pseudonym, and

Petitioner AB 1 Doe, by Petitioner's attorney, Stephen Boyd, Esq., of counsel to Steve Boyd, PC, having moved for an Order granting Petitioner the right to file a claim in the Eighth Judicial District under the Child Victims Act using the pseudonym AB 1 Doe, directing the parties handling such claim not to disclose Petitioner's identity to the general public, and granting all other Plaintiffs filing claims under the Child Victims Act the same relief with respect to proceeding under a pseudonym, and

UPON reading the Notice of Ex Parte Petition and the Petition of Stephen Boyd, Esq., sworn to the 6th day of August, 2019, in support of Petitioner's request, and

UPON reading the *amicus curiae* affirmation of attorney Christopher J. O'Brien, Esq., of counsel to O'Brien and Ford, PC, sworn to the 8th day of August, 2019, and the accompanying affidavit of psychotherapist David G. Heffler, PhD, LMHC, sworn to the 8th day of August, 2019, in support of Petitioner's request, and

UPON hearing oral argument by Steve Boyd, PC, Steve Boyd, Esq., of counsel, in support of Petitioner's request, and

UPON due deliberation thereon, it is hereby,

ORDERED:

That Petitioner is permitted to use of the pseudonym "AB 1 Doe" and the caption "AB 1 Doe vs. John Doe(s) 1-5," in a claim to be brought under the Child Victims Act; and it is further

ORDERED:

That Petitioner is permitted to file an action under the Child Victims Act using the pseudonym "AB 1 Doe" and it is further

ORDERED:

That the parties to such claim brought under the Child Victims Act are to refrain from disclosing Petitioner's true identity to the general public and direct all individuals or entities to whom disclosure is necessary during the course of the litigation that they are barred under this Order from disclosing Petitioner's true identity to the general public; and it is further

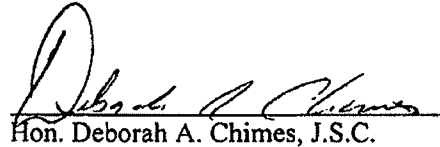
ORDERED:

That all papers filed in the Child Victims Act action, and all judgments, orders, decisions, notices to the Court and any other documents relating to the action refer to the Petitioner as "AB 1 Doe," and it is further

ORDERED:

That all other Anderson/Boyd Plaintiffs filing claims under the Child Victims Act in the Eighth Judicial District are granted the same relief granted to Petitioner as set forth above, with each Plaintiff's pseudonym to consist "AB" and a numeric designation.

ENTERED:

 8/13/19
Hon. Deborah A. Chimes, J.S.C.

GRANTED:

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

<p>PB-1 DOE,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>THE DIOCESE OF BUFFALO, N.Y. A/K/A DIOCESE OF BUFFALO, ST. MARY OF SORROWS SCHOOL, and BISHOP FALLON HIGH SCHOOL,</p> <p style="text-align: center;">Defendants.</p>

Index No.: 810245/19

ORDER

Upon the filing and service of an Order to Show Cause for an order that this action proceed and continue with the anonymous identity of Plaintiff and such further relief stated therein, along with the supporting affirmation of Michael DeRuve, Esq., dated October 4, 2019, and the Exhibits annexed thereto, and oral argument having been heard on October 15, 2019¹ and the Defendants having not objected, it is hereby:

ORDERED that Plaintiff has established the need for the use of a pseudonym, and there is no objection by Defendants;

ORDERED that Plaintiff is permitted to file and proceed with the use of a pseudonym and accompanying caption with a pseudonym in the claim under the Child Victim Act;

ORDERED that the parties to such claim refrain from disclosing Plaintiff's true identity to the general public;

¹ Ex. 1, transcript of hearing on October 15, 2019.

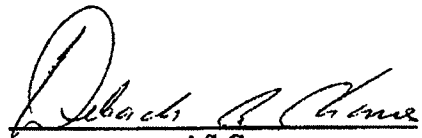
{00047411}

ORDERED that the parties to such claim direct all individuals or entities to whom disclosure is necessary during the course of the litigation that they are barred under this order from disclosing Plaintiff's true identity to the general public; and

ORDERED that all papers filed in this action, and all judgments, orders decisions, notices to the Court, and any other documents relating to this action refer to the Plaintiff by the pseudonym.

Dated:

ENTER:

 11/19/19

J.S.C.

HON. DEBORAH A. CHIMES, J.S.C.

{00047411}

FILED: ERIE COUNTY CLERK 11/15/2019 02:15 PM

NYSCEF DOC. NO. 19

INDEX NO. 810245/2019

RECEIVED NYSCEF: 11/15/2019

EXHIBIT 1

1 STATE OF NEW YORK : COUNTY OF ERIE
2 SUPREME COURT

3 . PB-1 DOE, PB-2 DOE, PB-3 DOE,
4 PB-4 DOE, PB-5 DOE, PB-6 DOE,

5 PLAINTIFFS, INDEX #810245/2019
6 #810380/2019
7 #811475/2019
8 #1701347/2019
9 #811478/2019
10 #811773/2019

11 -VS-

12 THE DIOCESE OF BUFFALO, ET AL, DECISION
13 DEFENDANTS,

14 50 Delaware Avenue
15 Buffalo, New York 14202
16 October 15, 2019.

17 HELD BEFORE: HONORABLE DEBORAH A. CHIMES,
18 SUPREME COURT JUSTICE.

19 APPEARANCES: PAUL BARR, ESQ.,
20 Appearing for the Plaintiffs.

21 RANDALL WHITE, ESQ.,
22 Appearing for the Defendants.

23 LISA G. FAZDERSKI,
24 Supreme Court Reporter.
25

1 THE COURT: The Court is going to render its
2 decision on the orders to show cause on various
3 cases. Plaintiff moves for an order deeming
4 plaintiffs' use of the pseudonym proper, and
5 directing that defendants refrain from publishing
6 plaintiffs' true identity.

7 The CPLR requires that the caption of the
8 summons and complaint include the names of all
9 parties. See CPLR 2101(c).

10 Quote: The determination of whether to allow
11 a plaintiff to proceed anonymously requires the
12 court to use its discretion in balancing
13 plaintiff's privacy interest against the
14 presumption in favor of open trials and against
15 any potential prejudice to defendants, end of
16 quote, Anonymous versus Lerner, 124 AD3d 487.

17 Here, the plaintiff has made the requisite
18 showing for the need of the use of a pseudonym and
19 defendants have made no objection. The case is of
20 a highly sensitive nature, and anonymity would
21 protect plaintiff from future harm, including
22 public exposure to the abuse and social
23 stigmatization.

24 Further, defendants are not prejudiced as
25 plaintiff has agreed to reveal his or her true

1 identity to the defendants. Plaintiff is also
2 entitled to the directive that defendants shall
3 not reveal plaintiff's identity to the general
4 public.

5 Therefore, I grant the plaintiffs' motion and
6 direct plaintiff to prepare an order with the
7 following ordering paragraphs:

8 That plaintiff has established the need for
9 the use of a pseudonym, and there is no objection
10 by defendants. That plaintiff is permitted to
11 file and proceed with the use of a pseudonym and
12 accompanying caption with a pseudonym in the claim
13 under the Child Victim Act.

14 The -- that the parties to such claim are to
15 refrain from disclosing plaintiffs' true identity
16 to the general public, and direct all individuals
17 or entities to whom disclosure is necessary during
18 the course of the litigation that they are barred
19 under this order from disclosing plaintiffs' true
20 identity to the general public; and that all
21 papers filed in the action, and all judgments,
22 orders, decisions, notices to the Court and any
23 other documents relating to this action refer to
24 the plaintiff by the pseudonym.

25 Plaintiff is to prepare and submit an order

1 within 30 days attaching a transcript of the
2 decision to the orders.

3 Did that address the agreed upon ordering
4 paragraphs that the parties agreed to?

5 MR. BARR: Yes.

6 MR. WHITE: Yes, Your Honor.

7 THE COURT: Very good. Thank you.

8 * * * * *

9

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11 Certified to be a true and accurate transcript
12 of the minutes and/or testimony taken herein
13 transcribed into English text through Computer
14 Assisted Transcription.

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Lisa G. Pazderski

Lisa G. Pazderski, Supreme Court Reporter

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EXHIBIT C

Heffler Affidavit

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

AB I Doe,

Petitioner,

vs.

AFFIDAVIT

Index No.: 809838/2019

John Doe(s) 1 - 5,

Respondent.

David G. Heffler, Ph.D., LMHC, being duly sworn, hereby deposes and states:

1. I am a Licensed Mental Health Counselor in the State of New York and I am a clinically certified Sex Offender Treatment Specialist with respect to the National Association of Forensic Counselors. I also maintain a number of other certifications with respect to the treatment of sex offenders and their victims.

2. I have been asked to submit this affidavit by the law firm of OBrien & Ford, PC with respect to the Child Victims Act and the public identification of victims of sexual abuse in lawsuits. As always, when dealing with the victims of sexual abuse, we must keep in the forefront of our thinking the very simple fact that these victims did nothing wrong which in any way justifies their being sexually abused.

3. My professional experience with respect to victims of sexual abuse is that I have been involved in the treatment of individuals who have been the victims of sexual abuse for more than 30 years. A copy of my curriculum vitae is attached hereto as **Exhibit A.**

4. In the course of my care and treatment of adolescents and other victims of sexual abuse, I have become aware of the strong stigma attached to being a victim of sexual abuse. I have personally treated hundreds if not thousands of sexual abuse victims who have exhibited fear of their status as a victim of sexual abuse becoming known to family members or to others in their communities.

5. It has been my experience as a mental health care professional that many victims of sexual abuse either delay treatment or do not seek out treatment due to their fear of this identification as a sex abuse victim. Further, for those individuals who do seek treatment, many times they do so only upon receiving reassurance that their identities will not be made public.

6. I am aware that the Child Victims Act in New York State will allow many victims to receive compensation for their suffering. However, based on my education, training and experience as a Licensed Mental Health Counselor with expertise in the field of sexual abuse victimization, it is my professional opinion supported by research in the field of sexual abuse victimization that the public identification of the victims of sexual abuse will have a strong dampening effect on the willingness of these victims to come forward and seek compensation.

7. It is my expert opinion that the impact of being publicly identified could result in the same impact as having the offense take place all over again; the effect to the victims would be tantamount to a re-victimization against these victims, who have struggled for years to keep their names anonymous. As a result, many victims who were abused through no fault of their own will effectively be denied the justice that the law intends to provide.

8. I am aware that several law firms are requesting that all victims be allowed to proceed forward anonymously with respect to public court documents. I

4. In the course of my care and treatment of adolescents and other victims of sexual abuse, I have become aware of the strong stigma attached to being a victim of sexual abuse. I have personally treated hundreds if not thousands of sexual abuse victims who have exhibited fear of their status as a victim of sexual abuse becoming known to family members or to others in their communities.

5. It has been my experience as a mental health care professional that many victims of sexual abuse either delay treatment or do not seek out treatment due to their fear of this identification as a sex abuse victim. Further, for those individuals who do seek treatment, many times they do so only upon receiving reassurance that their identities will not be made public.

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8. I am aware that several law firms are requesting that all victims be allowed to proceed forward anonymously with respect to public court documents. I

strongly support such a handling of public documents such that these victims of sexual abuse will have the opportunity to proceed anonymously with respect to any documents filed in court.

Dated: August 8, 2019

Amherst, NY



DAVID G. HEFFLER, Ph.D., LMHC

Christopher J. O'Brien
Notary Public
Sworn this 8th day of
August, 2019
CHRISTOPHER J. O'BRIEN
Notary Public, State of New York
Qualified in Erie County
Commission Expires July 20, 2022

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Date of Birth: September 6, 1948
Place of Birth: Niagara Falls, New York
Marital Status: Married, Three Children

Education

12/94 – 11/98 **Pacific Western University**
Los Angeles, California
Completion of requirements for Ph.D., Clinical Psychology
(Forensic Emphasis)

09/73 - 05/76 **SUNY at Binghamton; Binghamton, NY**
Ph. D. Candidate in Clinical Psychology
MA. Clinical Psychology; 81 Credit Hours Toward Ph.D.

01/71 - 06/73 **SUNY at Buffalo; Buffalo, NY**
B.A. (Cum Laude) Clinical/Community Psychology Emphasis

09/67 - 06/68 **University of Nebraska; Lincoln, NE**
Engineering Emphasis

Professional Licenses/Certifications

NYS Licensed Mental Health Counselor
License #003291

Clinically Certified Sex Offender Treatment Specialist
Cert. #16571, National Association of Forensic Counselors

Clinically Certified Criminal Justice Specialist
Cert. # 16571, National Association of Forensic Counselors

Clinically Certified Forensic Counselor
Cert. #16571, National Association of Forensic Counselors

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Clinically Certified Juvenile Sex Offender Treatment Specialist
Cert. #16571, National Association of Forensic Counselors

Clinically Certified Juvenile Treatment Specialist
Cert. # 16571, National Association of Forensic Counselors

Certified Sexual Disorder Diagnostician
Cert. #16571, National Association of Forensic Counselors

Clinically Certified Sexual Addictions Specialist
Cert. #16571, National Association of Forensic Counselors

Clinical and Administrative Experience

5/06 – Present

Forensic Mental Health Counseling of WNY, PLLC
239 Bewley Building, Lockport, NY 14094

Title: Accredited Forensic Counselor/Psychotherapist/Owner
Specializing in Forensic Risk Assessment and Treatment including sexual offenders and substance abuse, Extended Sexual Abuse Assessments, other criminal behaviors (e.g. Shop lifting, domestic violence, DWI) Return to work determinations, disability determinations, workers' compensation and No Fault.

1991 - 2006

Niagara Frontier Psychiatric Associates, PLLC
230 Bewley Building, Lockport, NY 14094
(716) 433-3927

Title: Psychotherapist/Executive Director
Treatment of affective and anxiety disorders; impulse control disorders, substance abuse, child, adolescent and couples treatment; and evaluation and treatment of sexual offenders. Clinical expertise in forensic mental health, sex offender evaluation/treatment and cognitive behavior therapy and behavior therapy techniques.

7/83 – 7/06

Western New York Children's Psychiatric Center
1010 East & West Road, West Seneca, NY 14224
(716) 674-9730

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7/03 – 7/06 (Retired) - Title: Executive Director

Chief Executive Officer for a NYS operated, JCAHO accredited, 46 bed, children and youth psychiatric facility. Under the governance of the NYS Office of Mental Health, responsible for all aspects of facility operation of inpatient and outpatient programs.

5/97 – 7/03 - Title: Chief of Outpatient Services

Responsible for overall development and operation of facility outpatient services. Includes contract and service negotiations and program developments. Member of Executive Cabinet of WNYCPC

2/89–5/97-Title: Outpatient Program Coordinator/Psychologist II

Responsible for administration of outpatient programs including Clinic Treatment, Day Treatment, Home Support/Crisis Team and Mobile Mental Health Team. Services provided primarily to severely emotionally disturbed children and adolescents. Responsibilities are: overall program operation, including budget, staffing, development of program policy and procedure, compliance with all relevant regulations and certifying agencies. Report to Mr. Jed Cohen, Acting Executive Director, WNYCPC.

7/84 –2/89 - Title: Chief of Inpatient Services

Responsible for administrative direction of inpatient treatment services. Supervision of clinical disciplines and management of various facility operations. Assist Director of Facility Administrative Services in supervision of, Labor Management, Safety, Food Service and Housekeeping, Maintenance and Capital Construction projects. Report to Executive Director.

7/83 – 7/84 - Title: Treatment Team Leader/Psychologist II

Responsible for clinical direction of four inpatient treatment teams, providing services to children and adolescents. Develop and implement, treatment plans, quality assurance activities, staffing, plans and overtime management.

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1975 - 1983

Willard Psychiatric Center
Willard, New York

**8/79 - 7/83 - Title: Program Director - Seneca County
Community Services Center**

**1977 - 1979 - Title: Treatment Team Leader/Psychologist II -
Adult Services; Seneca and Wayne County Inpatient Treatment
Units**

**1975 - 1978 - Title: Psychologist II - Seneca and Wayne County
Inpatient Treatment Units**

1976 - 1980

Seneca County Mental Health Clinic
Waterloo, NY
Title: Psychologist, part-time

1973 - 1975

Binghamton Psychiatric Center
Binghamton, NY
Title: Psychologist Trainee

1972 - 1973

SUNY at Buffalo
Buffalo, NY
Title: Researcher, Co-Author for NIMH Funded Research

Teaching Experience

11/00-present

State University of New York at Buffalo
Department of Psychiatry, School of Medicine
Title: Clinical Instructor

1976 - 1982

Rochester Institute of Technology
Eisenhower Campus, Rochester, NY
Title: Visiting Professor
Instructor for Theories of Learning, Theories of Personality, and
Tests and Measurements.

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Memberships and Affiliations and Awards

National Association for the Treatment of Sexual Abusers (ATSA)

New York State Chapter of The Association for the Treatment of Sexual Abusers (NYSATSA)

National Association of Forensic Counselors

New York Mental Health Counselors Association

American Board of Disability Analysts

American Professional Society on the Abuse of Children (APSAC)

Awarded the "2013 Shepard Goldberg Champion of Children Award" by Child and Adolescent Treatment Services, Buffalo, NY

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Specialized Training and Expertise

**Child Forensic Interview Clinic, American Professional Society
on the Abuse of Children (March 15-19, 2013)**

40 hour training on conducting empirically-based child Forensic Interviews.

Former - Special Investigator, NYS Office of Mental Health

Conduct special investigations regarding allegations of abuse and neglect within NYS Office of Mental Health and facilities.

Publications and Highlighted Conference Presentations

Taheri, M.S., Heffler, D.G., "Making Your Client a More Effective Witness." The Federal Public Defender Report, October 1995

Heffler, D.G., Lisman, S.A., "Attribution and Insomnia: a Replication Failure," The Psychological Record, 1978, 28, 123-128.

Lick, J.R., Heffler, D.G., "Relaxation Training and Attention Placebo in the Treatment of Severe Insomnia," Journal of Counseling and Clinical Psychology, 1977, Vol. 45, Number 2, 153-161.

Heffler, D.G., Connor, W.H., "Assertion Training with Psychiatric Patients." Presented at the 1978 Conference of Psychologists in New York State Service.

Heffler, D. G., "Identification and Assessments of Adolescent Sexual Abusers," Grand Rounds Presentation Catholic Health System of Buffalo, 11/30/99.

Heffler, D.G., "Identification of Healthy and Unhealthy Sexual Behavior in Children and Adolescence." Presentation to Erie County Probation Department, 10/03.

Heffler, D.G., "Assessment and Treatment of Adult Sexual Offenders. Presentation to the Erie County Probation Department, 5/03

Heffler, D.G., "Sex Offender Treatment", NYS Child Advocacy Resource and Consultation Center, 9/07

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Heffler, D.G., "Sex Offender Assessment and Treatment (Adults and Adolescents), Presentation for
Niagara County Child Advocacy Center, 5/08

Heffler, D.G., "Adult and Adolescent Sexual Abuser Assessment & Treatment,
Conference Presentation for Bivona Summit on Child Abuse, 4/09

Heffler, D.G., "Apology, Reconciliation and Reunification: Should Sex Offenders
Reunite with their Families?"

"Adolescent Sexual Abusers: Distinctions Among Abusers:
Are They Tomorrow's Adult Offenders?"

Conference Presentation: Bivona Summit on Child Abuse, 4/10

Heffler, D.G., "Apology, Reconciliation and Reunification: Should Sex Offenders
Reunite with their Families?"

"Adolescent sexual abusers: Distinctions among abusers. Are they
tomorrow's adult offenders?"

Conference Presentation for Niagara County Child Advocacy Center, 4/10

Heffler, D.G., "Characteristics and Typology of Child Sexual Behavior Problems – Including
Distinction between Normative and Problematic Sexual Behaviors."

"Key Considerations for Reconciliation of Adult Sexual Offenders and Their
Families."

Conference Presentation: Bivona Summit on Child Abuse, 4/11

Heffler, D.G., "Assessment and Treatment of Adult Sexual Offenders"
Presentation: Town Justices of Niagara County, 5/12

Heffler, D.G., "Assessment and Treatment of Adolescent Sexual Abusers"
Presentation: Niagara County Department of Social Services, 6/12

Heffler, D.G., "Hey Doc, is this normal? Characteristics and Typology of Juvenile
Sexual Behavior problems"

"Ready or not, here I come! When the sexual perpetrator returns home."

Conference Presentation: Niagara County Child Advocacy Center, 10/12

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Heffler, D.G., "Assessment and Treatment of Adult Sexual Offenders",
Presentation: Defense Bar, 10/12

Heffler, D.G., "Conducting Extended Sexual Abuse Assessments"
Presentation: Erie County, Assigned Counsel, 9/13

Heffler, D.G., "Assessment and Treatment of Sexual Offenders: Suspension of Conscience"
Presentations: Erie County, Judges, Amherst New York, 1/14

Heffler, D.G., "Character Psychopathology and The Sexual Offender"; "The Science of Evil – Empathy Deficits and Criminogenic Behavior"
Conference Presentations: Niagara County Safe at Home Conference, 10/14

Heffler, D.G., "Dynamics of Domestic Violence and The Science of Evil"
Presentation: Niagara County Department of Social Services, 9/15

Heffler, D.G., "Do People Change? Character Psychopathology and the Sexual Offender and The Science of Evil – Empathy Deficits and Criminogenic Behavior"
Presentation: New York State Probation Officers Association, 7/16

Heffler, D.G. "Current Trends in Sexual Offender Treatment"
Presentation: Erie County Committee on Alternative to Incarceration, 12/16

Heffler, D.G. "Extended Child Sexual Abuse Assessments and Typology and Assessment of Child Pornography"
Presentation: Legal Aid Bureau of Buffalo, Inc. – Mental Health Issues and The Law, 2/2017

Heffler, D.G. "Responding to Child Sexual Behaviors and Management of Child Victims of Sexual Abuse"
Presentation: Niagara County Department of Social Services, 5/2017