

CAUSE NO. 2021-15324

JANE DOE,	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
VS.	§	HARRIS COUNTY, T E X A S
	§	
DESHAUN WATSON,	§	
<i>Defendant.</i>	§	113 <sup>th</sup> JUDICIAL DISTRICT

**DEFENDANT DESHAUN WATSON'S  
SPECIAL EXCEPTION TO PLAINTIFF'S ORIGINAL PETITION,  
MOTION FOR EMERGENCY HEARING, AND MOTION TO STRIKE**

Pursuant to Texas Rule of Civil Procedure 91, Defendant Deshaun Watson ("Mr. Watson") files this Special Exception to Plaintiff's Original Petition, Motion for Emergency Hearing, and Motion to Strike, and shows the Court the following:

**INTRODUCTION**

Plaintiff's counsel's incessant public attacks on Mr. Watson have not stopped. Lacking the desire to present his case in a court of law – where concepts of fundamental fairness apply – Mr. Buzbee is intent on conducting discovery by Facebook and trial by press conference. He is asking the public to act as judge and jury without ever allowing Mr. Watson to responsibly respond. Because Plaintiff's counsel filed the actions anonymously, Mr. Watson's counsel can only speculate about Plaintiff's identity. Yet, it would be wildly irresponsible for Mr. Watson or his defense team to publicly speculate about it. The risk of being wrong is simply too high. A misidentified person would immediately and involuntarily be drawn into a public media frenzy. As such, if Mr. Watson is ever to have a chance at properly defending himself, he can no longer refrain from requesting that the Court mandate that Plaintiff identify herself as required by the law.

## BACKGROUND

The plaintiff in this lawsuit, Jane Doe (“Ms. Doe”), has filed this action using a pseudonym instead of providing her real name. See Plaintiff’s Original Petition, section IV. Immediately after the filing of the lawsuit, Mr. Hardin asked Mr. Buzbee to provide him with Ms. Doe’s true identity. Mr. Buzbee refused and stated that Mr. Hardin would have to file a motion to get this information.<sup>1</sup>

Mr. Buzbee, hiding behind this anonymity, has attempted to try this case in the court of public opinion rather than in a court of law. He has held multiple press conferences and selectively released misleading excerpts of alleged evidence to the public regarding the allegations made in this case. Mr. Buzbee has consistently used social media posts to thrust the allegations of this case into public view. He begs people to reserve judgment about his clients, while deliberately and publicly attacking Mr. Watson and seeking to get the public at large to rush to judgment. Only when it seemingly benefits his public display does he selectively release crumbs of information about his clients. Mr. Buzbee is wielding Plaintiff’s anonymity as a sword instead of a shield.

Just this week, Mr. Buzbee held yet another press conference, where he continued to hammer Mr. Watson’s reputation with ad hominem attacks on behalf of mostly anonymous women. However, after more than two weeks of being the target of 22 “Jane Doe” lawsuits making similar salacious allegations, Mr. Watson is still only certain of the identity of two of his accusers – the first of whom was known only because she sought

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<sup>1</sup> Two days ago, when Mr. Hardin conferred with Mr. Buzbee about the present Motion, Mr. Buzbee suggested for the first time that Ms. Doe might be willing to provide Mr. Hardin her name if the parties could agree to some type of unspecified confidentiality order. However, as explained below, this offer is inconsistent with the law in Texas and is patently unfair given that Mr. Buzbee initially refused to provide the information and has spent the last several weeks using social media and the press to attempt to gain an unfair advantage in this case.

\$100,000 before filing suit and the second because Mr. Buzbee identified her during the recent press conference.

Through the spectacle of the last few weeks, Mr. Watson has been unable to responsibly defend himself in the face of overwhelming national media coverage. Mr. Watson's counsel cannot in good conscience publicly respond to the specific allegations being made because any response would be based on dangerous speculation about the identity of the accusers. It is easy to imagine the harm that would be caused if Ms. Doe was mistakenly identified. Thus, Mr. Buzbee's public castigation of Mr. Watson has remained largely unanswered for fear that counsel would disparage the claims based on identifying the wrong person. The only way to allow Mr. Watson to properly defend himself is for the Court to follow the law by requiring Ms. Doe to identify herself in her civil lawsuit.

In light of the way Mr. Buzbee has chosen to conduct this litigation, it is only fair and indeed critical that the public, as well as defense counsel, be able to assess the current anonymous accuser. Plaintiff's counsel should not be heard to complain about the media scrutiny his client may suffer as the result of his deliberate actions. Mr. Buzbee cannot claim to be surprised or concerned about such scrutiny because he invited it. He told the media that there are "questions" they should be asking. If so, they should be able to ask them of both parties.

Importantly, Texas law does not permit Ms. Doe to file her civil claims using a pseudonym nor should it in this case. Therefore, Mr. Watson asks that the Court require Ms. Doe to comply with the Texas Rules of Civil Procedure by amending her petition to state the names of the parties.

## ARGUMENT & AUTHORITIES

### A. Ms. Doe's counsel has violated Texas Rules of Civil Procedure 79 and 47 by failing to state Ms. Doe's real name in the original petition.

It is mandatory under Texas Rule of Civil Procedure 79 that, when filing a civil lawsuit, a plaintiff "shall" state the names of the parties. TEX. R. CIV. P. 79 ("The petition shall state the names of the parties and their residences, if known, together with the contents prescribed in Rule 47."). And Rule 47 requires a party to require fair notice of the claims involved. Tex. R. Civ. P. 47 (requiring fair notice of the claims involved).

In *Doe v. Univ. of the Incarnate Word*, No. 04-19-00453-CV, 2020 WL 3260080 (Tex. App.—San Antonio June 17, 2020, no pet.), the plaintiff filed a lawsuit using a pseudonym. The defendant filed a special exception arguing that the plaintiff's petition violated Rules 79 and 47. *Id.* at \*1. The trial court granted the special exception, ordered the plaintiff to amend his pleading, and warned the plaintiff that the court would dismiss the lawsuit with prejudice if the plaintiff failed to amend. *Id.* The plaintiff failed to comply and the lawsuit was dismissed. *Id.*

On appeal the plaintiff argued that Rule 79 did not "prohibit a party from proceeding anonymously." *Id.* at \*2. The court of appeals rejected this argument. Instead, it held that "Rule 79 plainly requires a petition to state the parties' names." *Id.* Furthermore, the court of appeals concluded that by using a pseudonym, the plaintiff also violated Rule 47:

Texas Rule of Civil Procedure 47 requires all petitions to contain a short statement of the cause of action sufficient to give fair notice of the claim involved." "The test for determining whether a pleading gives adequate notice is whether an opposing attorney of reasonable competence, with the pleadings before him, can ascertain the nature and the basic issues of the controversy and the testimony probably relevant." While [the plaintiff] asserted in the trial court that [the defendants] can prepare a

defense because “the facts are well known to [them],” he did not identify any evidence supporting that contention in either the trial court or this court. ***Nor has Doe explained how [the defendants] can adequately prepare a defense if they do not know who sued them.***

*Id.* (internal citations omitted) (emphasis added).

Here, as in *UIW*, Ms. Doe’s pleading violates Texas Rules of Civil Procedure 79 and 47 by refusing to state her real name in her Original Petition. TEX. R. CIV. P. 79 and 47; *see also De Leon v. City of El Paso*, 353 S.W.3d 285, 287 n.1 (Tex. App.—El Paso 2011, no pet.) (recognizing that the use of pseudonyms did not conform with Rule 79). There is no exception under this rule. Nor is there any other rule that allows a party to instead use a pseudonym. As such, the Court should order Ms. Doe to replead to satisfy the requirement of Rules 79 and 47.

**B. In civil cases involving allegations of sexual abuse, only minors can use a pseudonym.**

To the extent Ms. Doe claims that the nature of her allegations gives rise to the need for anonymity, the Texas Legislature has addressed the issue and recognized only a very limited exception to Rule 79’s requirement that a civil petition state the plaintiff’s real name. Texas Civil Practice and Remedies Code section 30.013 states that ***a minor*** seeking to recover damages based on conduct described as a felony sexual assault or aggravated sexual assault may use a pseudonym and is entitled to a protective order prohibiting the disclosure of the minor’s identity. *See* TEX. CIV. PRAC. & REM. CODE. § 30.013(a), (b), (c) (emphasis added). Section 30.013 further states “the supreme court may not amend or adopt rules in conflict with this section.” *Id.* § 30.013(f). Thus, courts cannot adopt a rule in conflict with section 30.013’s limited permission to use pseudonyms. Because Ms. Doe is not a minor, she cannot use a pseudonym and the

Court cannot ignore Rule 79's requirement that Ms. Doe plead her actual name. See *Id.* § 30.013.

**C. Fundamental fairness dictates that Ms. Doe plead her case as required by Texas Rules of Civil Procedure 79 and 47.**

Even if the Court had discretion to permit Ms. Doe to proceed under a pseudonym (which, as shown above, it does not), it should not do so here. The United States Court of Appeals for the Fifth Circuit recognized that in civil proceedings anonymity is inherently unfair to a defendant and counter to the public's interest in knowing who is using the courts. *S. Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707, 713 (5th Cir. 1979). The court noted that:

The mere filing of a civil action against other private parties may cause damage to their good names and reputation and may also result in economic harm. [The defendants] stand publicly accused of serious violations of federal law. Basic fairness dictates that those among the defendants' accusers who wish to participate in this suit as individual party plaintiffs must do so under their real names.

*Id.*

While federal courts, unlike Texas law, recognize that in limited circumstances a party to a civil action, after seeking permission from the court, may proceed using a pseudonym, those same courts warn that such plaintiffs can quickly lose this ability by taking actions antithetical to anonymity:

This ruling should not be read to suggest that the Court may not reverse its position on anonymity should circumstances change, warranting a different result. ***In that regard, counsel and the parties themselves should appreciate that the Court will not tolerate attempts to gain an advantage through the use of the media, including social media.*** Therefore, should the parties, their counsel, or others acting on their behalf, cause further unnecessary dissemination of public comment about this case, the Court's position on the plaintiffs' anonymity, both at the pretrial and trial stages, may change.

*Doe 1 v. George Washington Univ.*, 369 F.Supp.3d 49, 68 n.9 (D.D.C. 2019) (emphasis added).

Much like the activity the court warned about in *GW*, Mr. Buzbee has attempted to gain advantage through the use of media. As such, the Court should not permit Ms. Doe to remain anonymous in contradiction to the Texas Rules of Civil Procedure that require her to name herself in the Original Petition.

**D. Mr. Watson requests that the hearing on his special exception be heard on an expedited basis.**

Mr. Watson's answer to Ms. Doe's lawsuit is due on April 19, 2021. Due to plaintiff's counsel's repeated refusals to identify for Mr. Watson's counsel the real name of Ms. Doe, Mr. Watson's counsel cannot fully evaluate or plead his defenses to her claims. See *Univ. of the Incarnate Word*, 2020 WL 3260080 at \*2 (noting the inability to "adequately prepare a defense if [defendants] do not know who sued them."). Accordingly, Mr. Watson requests an expedited hearing on the special exception.

**PRAYER**

For these reasons, Mr. Watson requests that the Court sustain this special exception and order Ms. Doe to replead to include her real name in the petition. Because Watson's answer is due on April 19, 2021, and the information requested is required to properly defend Mr. Watson, Mr. Watson further requests that Ms. Doe be ordered to replead within two (2) business days, and that if she fails to do so, her entire petition be stricken and all claims dismissed with prejudice. Mr. Watson requests all other relief to which he is entitled, at law or equity.

Respectfully submitted,

RUSTY HARDIN & ASSOCIATES, LLP

/s/ Rusty Hardin

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### **CERTIFICATE OF CONFERENCE**

I certify that on Monday, April 5, 2021, I communicated with Mr. Buzbee, Plaintiff's counsel regarding the substance of this filing. Mr. Buzbee indicated that Plaintiff is opposed to the relief requested herein.

/s/ Rusty Hardin

Rusty Hardin

### **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing instrument has been served upon the Plaintiff by email on April 8, 2021, pursuant to Rule 21a.

/s/ Rusty Hardin

Rusty Hardin