

BY THE COURT:

**DEFENDANT’S MOTION IN OPPOSITION OF PLAINTIFFS’ MOTION FOR LEAVE TO
PROCEED ANONYMOUSLY**

Date: May 8, 2018

**MEMORANDUM IN SUPPORT OF DEFENDANT’S MOTION IN OPPOSITION OF
PLAINTIFFS’ MOTION FOR LEAVE TO PROCEED ANONYMOUSLY**

I. BACKGROUND

Plaintiffs allege that their case arose from the brutal massacre of unarmed civilians seeking shelter in the St. Peter's Church (hereinafter "the Lutheran Church") in Monrovia, Liberia during the Liberian civil war. See Complaint (hereinafter "Cmplt") at ¶1. Plaintiff allege that on July 29, 1990, Defendant, Moses W. Thomas, was the head of a specialized branch of the Government's Armed Forces of Liberia. (hereinafter "AFL"). According to Plaintiffs, on July 29, 1990, at Defendant's command, armed forces surrounded the Lutheran Church and indiscriminately shot or hacked to death approximately 600 sleeping civilian men, women, and children who were taking refuge in the Lutheran Church. According to Plaintiffs, the Lutheran Church Massacre was part of a larger campaign of violence against the Mano and Gio ethnic groups by the AFL. Cmplt at ¶2. Plaintiffs claim that they were in the Lutheran

Church on July 29, 1990, that they witnessed the slaughter of hundreds of civilians, including their own family members and that they survived the Lutheran Church Massacre by hiding under piles of dead bodies. Two of the Plaintiffs, Jane W. and John X, allege that, in addition to their individual claims, they are also seeking recovery as personal representatives of the estates of relatives (James W., Julie W., Jen W., Jane X, Julie X, James X, and Joseph X) who were all killed at the Lutheran Church on July 29, 1990. ¶9.

Plaintiffs are Liberian citizens currently residing in Liberia. Defendant is a Liberian citizen and has been residing in the United States since 2000. Complaint at ¶¶ 8, 9. On February 12, 2018, Plaintiffs filed a fourteen (14) count Complaint against Defendant seeking compensatory and punitive damages against Defendant under the Torture Victim Protection Act of 1991¹ (herein after “TVPA”) and under the Alien Tort Statute (hereinafter “ATS), 28 U.S.C. §1350² for Defendant’s alleged action on July 29, 1990. Plaintiffs alleges that Defendant played a role in a massacre of unarmed Liberian civilians seeking refuge at St. Peter’s Lutheran Church in Monrovia, Liberia during the Civil War. Compl. ¶¶ 2-3. For reasons that follow, Plaintiffs’ should reveal their real identities to proceed herein.

II. ARGUMENT

A. Plaintiffs Identity Should be Revealed to Defendant and his Attorneys

Defendant oppose Plaintiffs’ motion for leave to proceed anonymously as it seeks to withhold Plaintiffs’ identities from Defendant and his attorneys: Plaintiffs should be required to reveal their real names to Defendant and his attorneys, in order to proceed with this matter. Rule 10 (a) of the Federal Rules of Civil Procedure requires that “the title of the Complaint must name all the parties...” See Fed.

¹ The Torture Victim Protection Act of 1991 (TVPA; Pub.L. 102–256, H.R. 2092, 106 Stat. 73, enacted March 12, 1992) allows for the filing of civil suits in the United States against individuals who, acting in an official capacity for any foreign nation, committed torture and/or extrajudicial killing.

² The Alien Tort Statute (ATS), 28 U.S.C. § 1350; ATS), also called the Alien Tort Claims Act (ATCA) provides that "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.

R. Civ. P. 10(a). “This requirement, though seemingly pedestrian, serves the vital purpose of facilitating public scrutiny of judicial proceedings and therefore cannot be set aside lightly. . . . ‘The people have a right to know who is using their courts.’” See *Sealed Plaintiff v. Sealed Defendant #1*, 537 F.3d 185, 188-89 (2d Cir. 2008). Generally, the presumption is that all judicial proceedings remain open to the public. *Craig v. Harney*, 331 U.S. 367 (1947) (holding “[w]hat transpires in a courtroom is public property”).

Moreover, the use of pseudonyms is necessary in specific circumstances, but to overcome the presumption, litigants must show that they possess a “substantial privacy interest that outweighs the public’s interest in disclosure.” *Doe v. Prudential Insurance Co. of America*, 744 F.Supp.2d 40, 41 (D.R.I. 1990). Defendant’s ability to adequately defend this matter, which allegedly occurred in Liberia on July 29, 1990, over twenty-seven years ago, outweighs any privacy concerns by the Plaintiffs. Defendant will suffer undue prejudice, should Plaintiffs proceed anonymously. Plaintiffs can file a motion for a protective order to protect the identities of Plaintiffs and/or their representatives, which would address the privacy or safety concerns raised in their motion for leave to proceed anonymously. Also, identifying litigants, impacts future adverse parties. See *Lindsey v. Dayton-Hudson Corp.*, 592 F.2d 1118, 1125 (10th Cir. 1979) (noting that use of pseudonyms “may cause problems ... in fixing res judicata effects of judgments”).

Additionally, Defendant requires the names of Plaintiffs to test standing, conduct discovery, and cross-examine Plaintiffs’ evidence. The allegations in Plaintiffs complaint stems from July 29, 1990. Without the real identities of Plaintiffs, Defendant will be prejudiced in his defense against the allegations of the Plaintiffs, individually, and/or collectively. Defendant already faces a significant burden to gather evidence and witnesses from Liberia in order to defend this matter. Without the names and identity of Plaintiffs, Defendant will be prejudiced in adequately investigating and preparing his defense in this matter.

Furthermore, as Plaintiff seeks relief under the ATS and TVPA, and alleges that Defendant is responsible for extrajudicial killing, war crimes, crimes against humanity, Defendant desires to conduct a thorough discovery as to the status of the individual Plaintiffs. The ATS and TVPA requires a plaintiff to be a “civilian” when seeking liability for extrajudicial killing, war crimes, and crimes against humanity, as a violation of the “laws of nations.” Defendant avers that the alleged acts referenced were between soldiers and rebel groups during a civil war, thus the identity of Plaintiffs and/or their representatives would be necessary to determine standing under the allegations in their Complaint. Furthermore, the identity of Plaintiffs and/or their representatives is also relevant in considering whether the scope of this matter “touch and concern” the territory of the United States to confer jurisdiction under the ATS and TVPA. See *Doe v. Drummond Co., Inc.*, 782 F.3d 576 (11th Cir. 2015).

B. Plaintiffs fail to Satisfy the Stringent Standard Necessary to Proceed Anonymously

Plaintiff does not satisfy the requirements to proceed anonymously. The Third Circuit has identified the following factors favoring and disfavoring anonymity when determining whether a party may proceed anonymously; factors favoring anonymity include:

(1) the extent to which the identity of the litigant has been kept confidential; (2) the bases upon which disclosure is feared or sought to be avoided, and the substantiality of these bases; (3) the magnitude of the public interest in maintaining the confidentiality of the litigant's identity; (4) whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigant's identities; (5) the undesirability of an outcome adverse to the pseudonymous party and attributable to his refusal to pursue the case at the price of being publicly identified; and (6) whether the party seeking to sue pseudonymously has illegitimate ulterior motives.

Provident Life, 176 F.R.D. at 467-468. Factors disfavoring anonymity include:

(1) the universal level of public interest in access to the identities of litigants; (2) whether, because of the subject matter of this litigation, the status of the litigant as a public figure, or otherwise, there is a particularly strong interest in knowing the litigant's identities, beyond the public's interest which is normally obtained; and (3) whether the opposition to pseudonym by counsel, the public, or the press is illegitimately motivated.

Id.

Here, the factors supporting anonymity do not outweigh the factors against it. Plaintiffs generalized fear of alleged threats to their lives and physical well-being, as argued in their motion, is insufficient to suggest that revealing their true identities would subject them to retaliatory harm. The alleged incidents, as pleaded, occurred during a civil war in Liberia, over twenty-six years ago. Plaintiffs are unaware of any individual who poses a threat of harm to them, as they live in Liberia. In fact, Defendant relocated from Liberia with his family many years ago, and Liberia has democratically elected three different presidents without conflict.

a. Public interest disfavors proceeding anonymously

First, public interest in access to the identities of the litigants is significant. Plaintiffs are Liberian citizens suing another Liberian citizen for alleged activities that occurred during a civil war in Liberia, in the United States District Court in the Eastern District of Pennsylvania. Both Liberians and Americans are interested in knowing the parties and following the legal issues involved. It is the public, not the court [or the defendants], which has an interest in the parties identities.” *Free Market Compensation v. Commodity Exchange, Inc.*, 98 F.R.D. 311, 313 (S.D.N.Y. 1983); *see also Roe v. Aware Woman Ctr. for Choice, Inc.*, 253 F.3d 678, 691 n.7 (11th Cir. 2001) (Hill, J., concurring in part); *Doe v. Megless*, 654 F.3d 404 411 (3d Cir. 2011)

(“[T]he thumb on the scale ... is the universal interest in favor of open judicial proceedings. There is universal public interest in access to the identities of litigants.”).

b. Due to the Subject Matter of this Litigation, there is a Strong Interest in Knowing Plaintiffs Identities

Plaintiffs should not be able to shield their identities and prevent public scrutiny of their truthfulness. Defendant’s reputation has been harmed by this lawsuit, as pleaded. Defendant is being held accountable for the acts of others, who allegedly were under his command. Plaintiff has not identified these individuals who allegedly were under Defendant’s command, during the period of a civil war. Defendant avers that he was never a member of a rebel group or did any wrong doing: he was responsible for protecting citizens during this war period, a duty he honorably performed. As his reputation has been tarnished by this litigation, the public is interested in the identities of the Plaintiffs to test the veracity of their claims, based on their history.

Also, Defendant cannot determine whether Plaintiffs’ are or were public figures at the time of this alleged incident, or even whether defendants participated in the Liberian tribal civil war, and are before this Court with unclean hands. The identities of Plaintiffs are very meaningful to Liberians all over the world and in the United States, as well as United States citizens, whom are all interested in understanding the full context of Plaintiffs’ allegations.

c. The Opposition to Pseudonym is not illegitimately Motivated.

As delineated herein, Defendant has several legitimate basis for opposing Plaintiffs’ motion to proceed anonymously, including his need to avoid prejudice in defending this matter, and the general public interest in this matter.

III. CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs'

Motion for Leave to Proceed Anonymously.

Respectfully submitted,
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Date: May 8, 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JANE W , IN HER INDIVIDUAL CAPACITY, AND IN	:
HER CAPACITY AS THE PERSONAL REPRESENTATIVE	:
OF THE ESTATES OF HER RELATIVES JAMES W, JULIE W,	: CIVIL ACTION
AND JEN W; JOHN X , IN HIS INDIVIDUAL CAPACITY, AND	: NO.: 18-569
IN CAPACITY AS THE PERSONAL REPRESENTATIVES OF	:
THE ESTATES OF HIS RELATIVES JANE X, JULIE X, JAMES X,	:
AND JOSEPH X; JOHN Y , IN HIS INDIVIDUAL CAPACITY; AND	:
JOHN Z , IN HIS INDIVIDUAL CAPACITY	:
Plaintiffs	:
v.	:
MOSES W. THOMAS	:
Defendant	:

CERTIFICATE OF SERVICE

I hereby certify that on the date below, the Defendants’ Motion in Opposition of Plaintiffs Motion for Leave to Proceed Anonymously, was filed via the Court’s electronic filing system and is available for downloading and thus served upon the parties of record.

Date: May 8, 2018

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