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<b>RIVERSIDE COALITION OF</b>	:	<b>SUPERIOR COURT OF NEW JERSEY</b>
<b>BUSINESS PERSONS AND</b>	:	<b>BURLINGTON COUNTY</b>
<b>LANDLORDS, RUTH MARINO,</b>	:	<b>LAW DIVISION</b>
<b>and JOHN DOE 1,</b>	:	
	:	
<b>Plaintiffs,</b>	:	<b>DOCKET NO.</b>
	:	
<b>v.</b>	:	
	:	<b>MEMORANDUM IN SUPPORT OF</b>
<b>TOWNSHIP OF RIVERSIDE,</b>	:	<b>PLAINTIFFS' APPLICATION FOR</b>
	:	<b>ONE OF THE PLAINTIFFS TO</b>
<b>Defendant.</b>	:	<b>PROCEED ANONYMOUSLY</b>

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**I. PRELIMINARY STATEMENT**

This matter arises upon a Verified Complaint and Order to Show Cause filed by plaintiffs Riverside Coalition of Business Persons and Landlords, Ruth Marino, and John Doe 1 against the Township of Riverside (hereinafter “the Township”), seeking declaratory and injunctive relief, to invalidate and preliminarily and permanently enjoin the Riverside Township Illegal Immigration Relief Act (hereinafter “the Riverside ordinance”) (copy attached as Exhibit “A” to plaintiff’s Verified Complaint), which represents an unprecedented attempt to ban immigrants from renting, residing, using property or being employed in the Township. The ordinance, without offering any definition of the term “illegal immigrant” or how that status is to be determined, makes it unlawful for any property owner to rent, lease, or allow their property to be used by an “illegal immigrant” or

for a for-profit entity to aid or abet any “illegal immigrant,” including but not limited to, the hiring or attempted hiring of “illegal immigrants.” This ordinance applies to conduct by businesses not only within the Township, but also to actions that aid or abet “illegal immigrants” *anywhere* within the United States. Violations of the ordinance result in fines of one thousand (\$1,000) to two thousand (\$2,000) dollars; a term of imprisonment or period of community service not exceeding ninety (90) days; denial of approval of a business permit or non-renewal of a business permit, or Township contracts or grants for a period of not less than five (5) years from the last offense.

Plaintiffs include the Riverside Coalition of Business Persons and Landlords (hereinafter “the Coalition”), an unincorporated association comprised of landlords and employers, all of whom either operate businesses, some of whom employ persons in Riverside, or rent or lease property to tenants in the Township of Riverside; Ruth Marino, an individual landlord who leases multiple residential properties to tenants in Riverside, New Jersey; and John Doe 1, a Latino immigrant tenant, who has resided in Riverside for several years, and is facing loss of his tenancy and inability to continue to reside in the Township as a result of this ordinance. John Doe is asking this Court to permit him to prosecute this lawsuit anonymously, so that he does not have to disclose his name and address. For the reasons that follow, this request should be granted.

## **II. STATEMENT OF FACTS**

The facts relevant to this matter are set forth in plaintiffs’ brief in support of plaintiffs’ application for an Order to Show Cause and preliminary injunctive relief, submitted contemporaneously with this memorandum. The material facts are undisputed.

### III. LEGAL ARGUMENT

#### A. John Doe should be permitted to litigate this case anonymously.

Judicial proceedings are presumptively open. See *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980). One aspect of that openness, embodied in the Rules of Court, is the requirement that parties to litigation identify themselves by name and address. R. 1:4-1(a)(1).

“This rule is not merely one of administrative convenience. It also serves society’s interest in having access to the facts of the lawsuit, among which are the actual names of the parties involved.” *A.B.C. v. XYZ Corp.*, 282 N.J. Super. 494, 500 (App. Div. 1995); see R. 1:2-1 (all judicial proceedings “shall be conducted in open court”).

However, the presumption of openness is not absolute. If interests in confidentiality outweigh the interests served by the presumption, neither the first amendment nor the common law prevents a court from entering an appropriate protective order. *Hammock by Hammock v. Hoffmann La-Roche, Inc.*, 142 N.J. 356, 378 (1995). See generally, *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 35 (1984).<sup>1</sup> See also, *Does I Thru XXIII v. Advanced Textile Corporation*, 214 F.3d 1058, 1067 (9<sup>th</sup> Cir. 2000) (“Nevertheless, many federal courts . . . have permitted parties to proceed anonymously when special circumstances justify secrecy.”) (and cases cited therein).

This principle extends to anonymous litigation. “There is no bright line rule available for determining” when to let a party litigate anonymously; rather, a court must balance “the public interest in open proceedings against the particularized injury which a party will suffer

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<sup>1</sup> In certain cases, a statute or court rule mandates anonymity. See, e.g., N.J.S.A. 2A:61B-1(f) (sexual abuse plaintiffs); N.J.S.A. 9:6-8.10a (child abuse); R. 5:19-2 (juvenile proceedings). These mandates represent classes of cases in which the legislature or courts have calculated the balance between privacy and openness on a case-by-case basis. See *N.J. DYFS v. J.B.*, 120 N.J. 112 (1990).

if anonymity is lost.” *T.S.R. v. J.C.*, 288 N.J. Super. 48, 57 (App. Div. 1996); see *A.B.C.*, 282 N.J. Super. at 501; *Advanced Textile Corporation*, 214 F.3d at 1068 (“a court must balance the need for anonymity against the general presumption that parties’ identities are public information and the risk of unfairness to the opposing party.”) (and cases cited therein).

Thus, “[u]nder both the common law and the first amendment, a court may craft a protective order” to limit public access to otherwise available information, including a litigant’s identity. *T.S.R.*, 288 N.J. Super. at 56, citing *Hammock by Hammock*, 142 N.J. at 378. “[W]e allow parties to use pseudonyms in the ‘usual case’ when nondisclosure of the party’s identity ‘is necessary . . . to protect a person from harassment, injury, ridicule, or personal embarrassment.’” *Advanced Textile Corporation*, 214 F.3d at 1067-1068 (citation omitted).

Recently, the District of New Jersey in *Doe v. Hartford Life and Accident Insurance Co.*, 2006 U.S. Dist. LEXIS 73119 (D.N.J. 2006), enumerated those factors which should weigh in favor of anonymity, including:

- (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.

The court explained that factors weighing against the use of a pseudonym include:

(1) the universal level of public interest in access to the identities of litigants; (2) whether, because of the subject matter of the 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.*, at \* 12-13 (citing, *Doe v. Provident Life & Accident Ins. Co.*, 176 F.R.D. 464, 467-468 (E.D. Pa. 1997)].

Here the required balance tips strongly in favor of allowing John Doe to prosecute this action with a pseudonym for several related reasons.

First, John Doe seeks anonymity to protect his personal privacy, a matter of constitutional dimension. See *Right to Choose v. Byrne*, 91 N.J. 287, 303-310 (1982).

Disclosure of his identity could subject plaintiff Doe to a host of adverse consequences, including harassment, threatened or actual physical harm, ostracism, loss of home or employment, and possible retaliatory reporting to the Department of Homeland Security. It could, in fact, compromise the very rights he seeks to vindicate in this lawsuit. “[P]laintiff should not be compelled to turn himself into a social outcast” to pursue his rights in court. *Doe v. Tris Comprehensive Medical Health, Inc.*, 298 N.J. Super. 677, 683 (Law Div. 1996).

This is not a hypothetical concern. The Riverside ordinance has resulted from and has encouraged the spread of virulent anti-immigration sentiments within the Riverside community. At public events, speakers have characterized immigrants and undocumented persons as sexual predators, rapists, and thieves. Public demonstrations have been

accompanied by the wave of Confederate flags and verbal disparagement of immigrants and their supporters (see Exhibit "A" hereto). Over the last three months, numerous press articles have described the turmoil and dissension which the ordinance has created (Exhibit "B" hereto), and many immigrants have experienced other forms of harassment, including public posting of signs outside of immigrant businesses, vilifying the presence of immigrants as an assault to the rule of law and as leading to anarchy (Exhibit "C" hereto). John Doe has a legitimate reason to be concerned regarding retaliation and harassment.

New Jersey courts have long recognized the need for confidentiality in appropriate cases. See, e.g., *In re Registrant C.A.*, 146 N.J. 71, 84 n.2 (1996). See also, *In re Registrant J.M.*, 167 N.J. 490 (2001); *In re Registrant G.B.*, 147 N.J. 62 (1996); *Doe v. Poritz*, 142 N.J. 1 (1995). Certainly, this is such a case.

Second, to date, the identity of the litigant has been kept confidential.

Third, certain "negative" considerations support allowing plaintiff Doe to litigate anonymously. This is not a tort action, or a situation in which John Doe is attempting to redress a private wrong. Compare *Doe v. Frank*, 951 F.2d 320 (11<sup>th</sup> Cir. 1992); *A.B.C. v. XYZ Corp.*, 282 N.J. Super. 494. Rather, he seeks to vindicate a public right. It is not a case in which a party seeks anonymity because of accusations of wrongdoing against him. Compare *Coe v. United States District Court*, 676 F.2d 411 (10<sup>th</sup> Cir. 1982); *T.S.C v. J.S.*, 288 N.J. Super. 488. Moreover, the issues in dispute are primarily legal questions and disclosure of plaintiff Doe's identity will add nothing to the Township's defense of its ordinance.

Nor is it a case in which plaintiff Doe seeks to avoid inconvenience, economic harm,

embarrassment, or public criticism. *Compare Stern v. Stern*, 66 N.J. 340, 343 (1975); *T.S.C.*, 288 N.J. Super. 48. He is not a public figure about whose identity the community might have special concern. *T.S.C.*, 288 N.J. Super. at 60, quoting Steinman, "Public Trial, Pseudonymous Parties," 37 *Hastings L.J.* 1, 36 (1985).

Fourth, John Doe represents a group of immigrants subject to a particularly draconian municipal ordinance which could result in homelessness and loss of livelihood, and who have a particular interest in this Court adjudicating the legal validity of significant restraints upon their freedom. Both the nature of the case and the nature of plaintiff Doe's role in it make anonymous participation appropriate. See *Doe v. Steagall*, 653 F.2d 180 (5<sup>th</sup> Cir. 1981) (anonymous constitutional challenge to school prayer). The public has a substantial interest in ensuring that cases like this are adjudicated fairly and without the risk of stigmatization. This goal cannot be achieved if immigrant litigants are chilled from ever reaching the courthouse steps for fear of repercussions and retaliation if their identity and situations were made public.

Fifth, this is not a jury trial, so the problems anonymity might cause in that circumstance are not present. *A.B.C.*, *supra*, 282 N.J. Super at 504.

Finally, allowing plaintiff to proceed with a pseudonym will not interfere with the public's right to follow the litigation. The proceedings will be open to the public while maintaining the confidentiality of Doe's identity. Moreover, the other plaintiffs have been identified. The burden on the proceeding's openness is minimal.

In *Doe v. Tris Comprehensive Mental Health*, 29 N.J. Super. 677, the court permitted anonymity even though the suit sought money damages for private discrimination, and

plaintiff was a psychiatric professional. John Doe presents a far more compelling case for anonymity, as this case primarily involves a legal challenge to governmental action.

The issue of anonymity recently arose in *Valdez v. Brookhaven*, 05-CV-4323 (E.D.N.Y. Sept. 25, 2006) (Exhibit “D” hereto), a challenge to the Township’s efforts in connection with housing code enforcement and eviction of immigrants in violation of the immigrant’s right to Due Process and Equal Protection under the United States Constitution, and the Federal Fair Housing Act, 42 U.S.C. §3601, *et seq.* In upholding plaintiffs’ use of pseudonyms, federal district court Judge Seybert explained:

Plaintiffs in this case request leave to proceed anonymously because of their immigration status. They fear that they will be deported if their identities are revealed. Presuming the facts alleged in the Amended Complaint to be true, the fear is more than speculative. Plaintiffs allege that Levy sent Suffolk County Police Department officials to detain and question a Latino laborer who discussed the ‘no notice standards’ problem with a New York Newsday reporter. Such facts strongly favor anonymity. On the opposite side, the Court does not find any significant prejudice to defendants. Defendants cross-examined several Juan Valdez plaintiffs during the hearing, and plaintiffs represent that they will continue to be amenable to any discovery requests. In light of the foregoing, the Court grants plaintiffs leave to proceed anonymously. [*Id.*, Exhibit “D” at 14].

*See also, Advanced Textile Corporation*, 214 F.3d 1069, 1073 (9<sup>th</sup> Cir. 2000) (granting immigrant workers’ request for anonymity where they faced risk of severe retaliation, including termination from employment, deportation, and arrest and imprisonment).

The same rationale compels granting plaintiff Doe’s request in this case. Here John Doe seeks to protect important, constitutionally based interests at a negligible cost to the goals of judicial transparency. His immigrant status and legitimate concern about retaliation



justify his request, and granting it will not prejudice the Township. Plaintiff Doe seeks to proceed anonymously not for personal gain but in the interests of his privacy. In this case, the balance of interests weigh strongly in favor of granting plaintiff Doe's request.

#### **IV. CONCLUSION**

For all of the foregoing reasons, the Court should permit John Doe to proceed anonymously in this case, without publicly disclosing his name or residence address.

Dated: October 18, 2006

Respectfully submitted,

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