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12 UNITED STATES DISTRICT COURT
13 DISTRICT OF ARIZONA

14 D.H., by and through his mother, Janice
15 Hennessy-Waller; and John Doe, by and
16 through his guardian and next friend,
17 Susan Doe, on behalf of themselves and
18 all others similarly situated,

18 Plaintiffs,

19 vs.

19 Jami Snyder, Director of the Arizona
20 Health Care Cost Containment System,
21 in her official capacity,

21 Defendant.

) No.

) **PLAINTIFF JOHN DOE'S MOTION**
) **TO PROCEED UNDER A**
) **PSEUDONYM**

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1 **I. INTRODUCTION**

2 Pursuant to Federal Rule of Civil Procedure 5.2(e), Plaintiff John Doe, by and through his
3 guardian and next friend, Susan Doe, requests this Court’s leave to proceed using pseudonyms
4 for himself and his guardian to protect his identity from public disclosure.¹

5 John is a transgender teenager challenging Arizona Medicaid’s refusal to cover the male
6 chest reconstruction surgery he urgently needs to alleviate the physical and emotional harms
7 caused by his gender dysphoria. As a transgender person, John is a member of a stigmatized
8 group that frequently encounters discrimination and harassment. He is especially vulnerable to
9 the harms experienced by the transgender community in general because of his youth. To mitigate
10 the serious risk of harm John would face from the discrimination and harassment if his
11 transgender identity were disclosed, John seeks this Court’s leave to proceed anonymously in
12 this litigation.

13 As discussed below, John easily meets the Ninth Circuit’s standard for allowing a plaintiff
14 to proceed anonymously. Specifically, because he is especially vulnerable to the severe harms
15 outlined in the preceding paragraph, John’s “need for anonymity outweighs” any “prejudice to
16 the opposing party” caused by allowing him to proceed anonymously and “the public’s interest
17 in knowing” his identity. *Publius v. Boyer-Vine*, 321 F.R.D. 358, 361 (E.D. Cal. 2017).

18 **II. ARGUMENT**

19 Though “[t]he normal presumption in litigation is that parties must use their real names,”
20 *Publius*, 321 F.R.D. at 361, the Ninth Circuit permits “parties to use pseudonyms . . . when
21 nondisclosure of the party’s identity is necessary to protect a person from harassment, injury,
22 ridicule or personal embarrassment,” *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058,
23 1067, 1067-68 (9th Cir. 2000) (internal quotation marks and alterations omitted). A court
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26 ¹ Though the focus of this Motion is the harm that would come to John if his identity were public,
27 his guardian’s identity should be kept anonymous as well because identifying her would
28 necessarily expose the identity of the child in her care. *See Doe ex rel. Doe v. Elmbrook Sch. Dist.*, 658 F.3d 710, 724 (7th Cir. 2011), *vacated on other grounds*, 687 F.3d 840, 842-43 (7th Cir. 2012).

1 determines whether proceeding under a pseudonym is appropriate by balancing three factors—
2 “(1) the severity of the threatened harm; (2) the reasonableness of the anonymous party’s fears;
3 and (3) the anonymous party’s vulnerability to such retaliation”—against “the general
4 presumption that parties’ identities are public information.” *Doe v. Ayers*, 789 F.3d 944, 945 (9th
5 Cir. 2015). “[W]hen the party’s need for anonymity outweighs prejudice to the opposing party
6 and the public’s interest in knowing the party’s identity,” that party may proceed anonymously.
7 *Publius*, 321 F.R.D. at 361.

8 “Applying this balancing test, courts have permitted plaintiffs to use pseudonyms . . .
9 when identification creates a risk of retaliatory physical or mental harm” or “when anonymity is
10 necessary to preserve privacy in a matter of sensitive and highly personal nature.” *Advanced*
11 *Textile Corp.*, 214 F.3d at 1068 (internal quotation marks omitted). Additionally, “[t]he decision
12 of whether or not to allow a party to remain anonymous is within” a district court’s “discretion
13 and will not be reversed unless the [district c]ourt relies on an erroneous view of the law, makes
14 an erroneous assessment of the evidence, or strikes an unreasonable balance of the relevant
15 factors.” *Id.*

16 Here, John reasonably fears that he will suffer from suffer severe harm in the form of lost
17 privacy, discrimination, and harassment if he is forced to publicly disclose his transgender
18 identity as part of this litigation. He is particularly vulnerable to this type of harm as a transgender
19 youth. Defendant will suffer no prejudice by allowing John to proceed anonymously as he does
20 not intend to withhold his identity from the Defendants or the Court, and allowing John to proceed
21 anonymously is in the public interest. As such, the court should exercise its discretion to grant
22 John leave to proceed under a pseudonym.

23 **A. John Reasonably Fears He Will Suffer Severe Harm if His Identity is Made**
24 **Public**

25 “In order to proceed anonymously, a plaintiff must show both (1) a fear of severe harm,
26 and (2) that the fear of severe harm is reasonable.” *Doe v. Kamehameha Sch./Bernice Pauahi*
27 *Bishop Estate*, 596 F.3d 1036, 1043 (9th Cir. 2010); *see also id.* (noting that these two showings
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1 are “intricately related and should be addressed together”). A harm is sufficiently “severe” to
2 allow a plaintiff to proceed anonymously where he “face[s] greater threats of retaliation than the
3 typical plaintiff” in civil litigation would. *Advanced Textile Corp.*, 214 F.3d at 1070 (9th Cir.
4 2000). The threatened retaliatory harm does not need to be physical in nature. For example, the
5 Ninth Circuit has specifically recognized the loss of privacy “in a matter of [a] sensitive and
6 highly personal nature” as a harm that can necessitate allowing a plaintiff to proceed
7 anonymously. *Id.* at 1068; *see also United States v. Doe*, 655 F.2d 920, 922 (9th Cir. 1980)
8 (“Where it is necessary, however, to protect a person from harassment, . . . ridicule or personal
9 embarrassment, courts have permitted the use of pseudonyms.”). A loss of privacy harm is likely
10 to be especially severe where, as here, the plaintiff is “compelled . . . to disclose information of
11 the utmost intimacy.” *Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir. 1981).

12 Courts from around the country “have long recognized that the harms arising from
13 disclosing a person’s transgender status are among those that make protection by pseudonym
14 appropriate.” *Doe v. Pa. Dep’t of Corr.*, No. 4:19-CV-01584, 2019 WL 5683437, at *2 & nn.12-
15 13 (M.D. Pa. Nov. 1, 2019) (collecting cases); *see also Doe v. City of Detroit*, No. 18-CV-11295,
16 2018 WL 3434345, at *2 (E.D. Mich. July 17, 2018) (“Several courts have held that an
17 individual’s transgender identity can carry enough of a social stigma to overcome the
18 presumption in favor of disclosure.”). This is so because “[t]he excruciatingly private and
19 intimate nature of transsexualism, for persons who wish to preserve privacy in the matter, is really
20 beyond debate.” *Powell v. Schriver*, 175 F.3d 107, 111 (2d Cir. 1999). Courts also regularly
21 extend this protection to guardians and next kin in cases involving transgender youth. *See, e.g.*,
22 *Doe v. Volusia Cnty. Sch. Bd.*, No. 6:18-cv-102-Orl-37GJK, ECF No. 8 (M.D. Fla. Jan. 30, 2018);
23 *Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, No. 2:16-CV-524, 2016 WL 4269080, at *5
24 (S.D. Ohio Aug. 15, 2016); *Doe v. United States*, No. 16-CV-0640-SMY-DGW, 2016 WL
25 3476313, at *1 (S.D. Ill. June 27, 2016)

26 Here, John will suffer harm in the form of lost privacy, discrimination, and harassment if
27 he is forced to publicly disclose his transgender identity as part of this litigation. John has already
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1 experienced significant psychological distress resulting from his gender dysphoria and continues
2 to experience debilitating anxiety during regular social interactions as a result of it. Declaration
3 of John Doe (“J. Doe Decl.”) ¶ 5-6; Declaration of Susan Doe (“S. Doe Decl.”) ¶¶ 11, 20. Having
4 the intimate details of his gender dysphoria disclosed on the public record will only exacerbate
5 the emotional distress he already faces daily. J. Doe Decl. ¶ 18; S. Doe. Decl. ¶ 20; Declaration
6 of Dr. Mischa Cohen Peck (“Peck Decl.”) ¶ 10. John also fears that his involvement in this case
7 will lead to harassment from his peers and members of the public directed at himself and his
8 family. J. Doe Decl. ¶ 19; S. Doe Decl. ¶ 20; Peck Decl. ¶ 10. Additionally, the harm that flows
9 from the “[t]he excruciatingly private and intimate nature of transsexualism” generally is
10 magnified in this case because of the type of challenge John brings. See *Powell*, 175 F.3d at 111.
11 Because John brings a claim under the Medicaid Act, whether the male chest reconstruction
12 surgery which John seeks is “medically necessary” will be at issue. As such, intimate details
13 about John’s physical and mental health will be in the record and will be publicly associated with
14 him in perpetuity if he is not allowed to proceed anonymously. In other words, the type of
15 information that will be at issue at this litigation is “of the utmost intimacy,” *Stegall*, 653 F.2d at
16 185, and thus “anonymity is necessary to preserve privacy in” this matter of a “sensitive and
17 highly personal nature,” *Advanced Textile Corp.*, 214 F.3d at 1068.

18 Moreover, John’s fear of lost privacy, discrimination, and harassment is reasonable. As
19 the Seventh Circuit has observed, “[t]here is no denying that transgender individuals face
20 discrimination, harassment, and violence because of their gender identity.” *Whitaker By*
21 *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1051 (7th Cir. 2017);
22 *Arroyo Gonzalez v. Rossello Nevares*, 305 F. Supp. 3d 327, 333 (D.P.R. 2018) (finding that
23 forcing individuals “to disclose their transgender status . . . exposes” them “to a substantial risk
24 of stigma, discrimination, intimidation, violence, and danger.”). Survey data supports the
25 *Whitaker* court’s observation. For example, the court itself cited to a 2011 survey which found
26 that “78% of students who identify as transgender or as gender non-conformant . . . report being
27 harassed while in grades K-12.” *Id.* Likewise, a 2017 national school climate survey found that
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1 more than sixty percent of respondents in Arizona reported verbal harassment based on gender
2 expression and more than a quarter reported experienced physical harassment. hearing negative
3 remarks about transgender people. GLSEN, *School Climate in Arizona (State Snapshot)* 1 (2019),
4 available at, https://www.glsen.org/sites/default/files/2019-11/Arizona_Snapshot_2017_2.pdf; see
5 also, Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey* 4 (2016),
6 <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf> (survey of
7 nearly 28,000 transgender individuals from across the United States found “high levels of
8 mistreatment, harassment, and violence in every aspect of life.”).

9 In sum, John reasonably fears discrimination and harassment if his identity is disclosed to
10 the public. The attendant loss of privacy will also cause John significant psychological harm and
11 distress if the intimate details of his transition are connected to him in publicly available
12 documents.

13 **B. As a Transgender Youth, John is Particularly Vulnerable to Harm from the**
14 **Disclosure of His Identity**

15 “[T]he anonymous party’s vulnerability to” the harm he fears is a third factor a court
16 considers in determining whether proceeding anonymously is appropriate. *Ayers*, 789 F.3d 944,
17 945. Here, John is particularly vulnerable to the harm he fears for the same reason those fears are
18 reasonable: transgender individuals are a target of pervasive harassment and discrimination in
19 our society. See Part II.A., *supra*; see also *Doe v. UNUM Life Ins. Co. of Am.*, 164 F. Supp. 3d
20 1140, 1145 (N.D. Cal. 2016) (“The most compelling situations in which plaintiffs are allowed to
21 proceed anonymously involve matters which are highly sensitive, such as social
22 stigmatization.”). John is doubly vulnerable to harm here because he is both transgender and a
23 minor. Recognizing that “[t]he law of . . . many . . . states . . . shields the identities of child-
24 litigants from public disclosure in certain circumstances, . . . the youth of” plaintiffs is often “a
25 significant factor in the matrix of considerations arguing for anonymity.” See *Stegall*, 653 F.2d
26 at 186 (finding the plaintiffs’ youth to be an “especially persuasive” factor justifying anonymity);
27 see also *Al Otro Lado, Inc. v. Nielsen*, No. 17-CV-02366-BAS-KSC, 2017 WL 6541446, at *5
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1 (S.D. Cal. Dec. 20, 2017) (“[C]hild-plaintiffs are deemed to be especially vulnerable, warranting
2 their anonymity.” (internal quotation marks omitted)). That John is a member of not one but two
3 groups that are particularly vulnerable to harm weighs strongly in favor of anonymity in this case.

4 **C. Allowing John to Proceed Anonymously Will Not Prejudice Defendant and is**
5 **in the Public Interest**

6 A court in the Ninth Circuit must weigh the plaintiff’s interest in proceeding anonymously
7 against any prejudice that the defendant might suffer as a result and determine whether allowing
8 the plaintiff to proceed anonymously serves the public interest. *Ayers*, 789 F.3d at 945; *Publius*,
9 321 F.R.D. at 361. The defendant’s knowledge of the plaintiff’s identity “lessens” any claims the
10 defendant can make that it is “prejudiced by the use of pseudonyms,” *Advanced Textile*, 214 F.3d
11 at 1069 n.11, because this knowledge gives a defendant “the information [it] need[s] to defend
12 against the claims” brought against it. *Al Otro Lado, Inc.*, 2017 WL 6541446, at *6.

13 Additionally, though the public has a “right to open courts,” it also “has an interest in
14 seeing” cases involving important issues “decided on the merits.” *Kamehameha Sch.*, 596 F.3d
15 at 1043. In these cases, “permitting plaintiffs to use pseudonyms” can “serve the public’s interest
16 in th[e] lawsuit by enabling it to go forward.” *Advanced Textile*, 214 F.3d at 1073. This is
17 especially true in cases “[w]here a plaintiff attacks governmental activity, for example a
18 governmental policy or statute,” because “[i]n such circumstances the plaintiff presumably
19 represents a minority interest (and may be subject to stigmatization), and there is arguably a
20 public interest in a vindication of his rights.” *EW v. N.Y. Blood Ctr.*, 213 F.R.D. 108, 111
21 (E.D.N.Y. 2003) (citation omitted).

22 Here, John does not object to revealing his identity to Defendant and thus will have the
23 information she needs to defend against John’s claims in this suit. As such, Defendant will not
24 be prejudiced if John is allowed to proceed anonymously. *See Advanced Textile*, 214 F.3d at 1069
25 n.11. Similarly, because John is challenging the government of Arizona’s policy of excluding
26 medically necessary male chest reconstruction surgeries to youth on Medicaid there is a public
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1 interest in the “vindication” of John’s rights and in seeing this case “decided on the merits.” *See*
2 *Kamehameha Sch.*, 596 F.3d at 1043; *N.Y. Blood Ctr.*, 213 F.R.D. at 111.

3 **III. CONCLUSION**

4 Because Plaintiff John Doe is especially vulnerable to severe harm in the form of
5 “harassment, . . . ridicule or personal embarrassment,” *Advanced Textile Corp.*, 214 F.3d at 1067-
6 68, his “need for anonymity outweighs” any “prejudice to the opposing party” or “the public’s
7 interest in knowing” his identity, *Publius*, 321 F.R.D. at 361. As such, the Court should grant
8 him, and his guardian leave to proceed under a pseudonym.

9
10 Respectfully submitted,

11 DATED: AUGUST 6, 2020

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12
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