

C. D. Michel - S.B.N. 144258
Don B. Kates - S.B.N. 39193
Jason A. Davis - S.B.N. 222250
Clinton B. Monfort - S.B.N. 255609
TRUTANICH • MICHEL, LLP
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
Telephone: 562-216-4444
Facsimile: 562-216-4445
Email: cmichel@tmlp.com

Attorneys for Plaintiffs

E-filing

FILED
JUN 27 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

GUY MONTAG DOE, NATIONAL
RIFLE ASSOCIATION OF
AMERICA, INC., CITIZENS
COMMITTEE FOR THE RIGHT TO
KEEP AND BEAR ARMS,

Plaintiffs,

vs.

SAN FRANCISCO HOUSING
AUTHORITY, MIRIAM SAENZ, IN
HER OFFICIAL CAPACITY,
HENRY ALVAREZ III, IN HIS
OFFICIAL CAPACITY, JOHN
STEWART COMPANY, CITY AND
COUNTY OF SAN FRANCISCO,
GAVIN NEWSOM, IN HIS
OFFICIAL CAPACITY, AND DOES
1-10,

Defendants.

CASE NO.

PLAINTIFF GUY MONTAG DOE'S
MOTION TO PROCEED
ANONYMOUSLY

CV 08

ORIGINAL

EDL

3112

1 PLAINTIFF GUY MONTAG DOE hereby moves this court for leave to file
2 the accompanying Complaint for Declaratory and Injunctive Relief, filed
3 concurrently herewith, under the anonymous pseudonym GUY MONTAG DOE.

4 All factual allegations of plaintiffs' Complaint for Declaratory and Injunctive
5 Relief are incorporated herein by reference as if set forth verbatim.

6 Plaintiff files this motion out of an abundance of caution, noting that the court
7 does not lose jurisdiction merely because the plaintiff files under a fictitious name
8 but fails to request leave to proceed anonymously at the same time the complaint is
9 filed. Rule 17 of the Federal Rules of Civil Procedure provides that no action may
10 be dismissed on the ground that it is not prosecuted in the name of the real party in
11 interest until a reasonable time has been allowed after objection for joinder or
12 substitution of the real party in interest. Once a defendant has moved to dismiss a
13 complaint on the ground that it fails to name a plaintiff, courts have allowed the
14 plaintiff to move at that time for leave to proceed under a fictitious name. 2 James
15 W.M. Moore et al., Moore's Federal Practice - Civil § 10.02 (2)(c)(ii) (3d. ed.
16 2008). The decision to allow use of a fictitious name is generally deemed to be
17 within the court's discretion. *Ibid.*

18 Accordingly, plaintiff respectfully makes this request for leave to proceed
19 anonymously under the authority of the Ninth Circuit's decision in *Does I through*
20 *XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 2000 U.S. App. Lexis 12049 (9th
21 Cir. 2002). In *Does I-XXIII*, the Court reversed the district court's order granting
22 defendants' motion to dismiss and denied plaintiffs' cross motion to proceed
23 anonymously. Specifically, the court stated:

24 We join our sister circuits and hold that a party may preserve his or her
25 anonymity in judicial proceedings in special circumstances when the
26 party's need for anonymity outweighs prejudice to the opposing party and
27 the public's interest in knowing the party's identity. We further hold that
28 in cases where, as here, pseudonyms are used to shield the anonymous
party from retaliation, the district court should determine the need for
anonymity by evaluating the following factors: (1) the severity of the
threatened harm, see *Southern Methodist Univ.*, 599 F.2d at 713; [**23]
(2) the reasonableness of the anonymous party's fears, see *Stegall*, 653

1 F.2d at 186; and (3) the anonymous party's vulnerability to such
2 retaliation, see *id.* (discussing vulnerability of child plaintiffs); *Doe II*,
3 655 F.2d at 922 n.1 (recognizing enhanced risks to long-term prison
inmate).

4 *Doe v. Advanced Textile Corp.*, 214 F.3d at 1067.

5 In the present case, plaintiff Doe's need for anonymity outweighs any
6 prejudice to the opposing party and the public's interest in knowing plaintiff Doe's
7 true identity. As set forth fully in the accompanying Complaint, plaintiff is a
8 resident of public housing provided by defendant San Francisco Housing
9 Authority. Should plaintiff's identity be revealed, he faces the possibility of being
10 evicted from his home. The severity of an eviction of plaintiff Doe by defendants
11 is heightened given that plaintiff will likely be unable to secure comparably
12 affordable housing elsewhere. Moreover, as a firearm owner, disclosure of
13 plaintiff's true identity subjects plaintiff to criminal prosecution for violation of
14 San Francisco Police Code Section 617. The need for anonymity to protect
15 Plaintiff from eviction for violation of his lease provisions and from criminal
16 prosecution is substantial.

17 Conversely, defendants' interest and the public's interest in knowing
18 plaintiff's identity are minimal. Defendants are aware that the aggrieved party
19 whom is filing the suit against them is a resident of Valencia Gardens Housing.
20 Defendants do not have a significant interest in learning the exact identity of
21 plaintiff Doe, nor will defendants be burdened in their defense of plaintiffs' claims
22 that defendants' policies of banning firearms in public housing is unconstitutional.
23 Any public interest in favor of disclosure is outweighed by the need for anonymity
24 to protect plaintiff from eviction for violation of his lease provisions and from
25 criminal prosecution.

26 As well, application of the factors set forth in *Does through XXIII* where
27 pseudonyms are used to shield a party from retaliation weigh in favor of proceeding
28 anonymously. First, plaintiff Doe faces the potential for severe harm through the

1 threat of retaliatory eviction for his violation of the lease provisions and/or for
2 unrelated reasons motivated solely by plaintiff's filing of this suit. As well, plaintiff
3 faces the possibility of retaliation by defendant City and County of San Francisco
4 through harassment and/or criminal prosecution. Plaintiff also faces the potential
5 for physical retaliation by members of the public due to disclosure of his sexual
6 orientation.

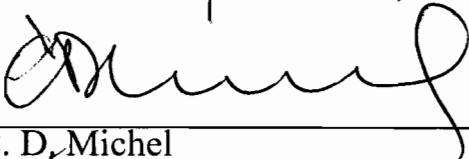
7 Second, plaintiff's fears are reasonable and justifiable given defendants'
8 openly hostile stance on the ownership of firearms, and in light of the difficulty of
9 securing public housing along with the scrutiny in which it is regulated.

10 Finally, plaintiff Doe's vulnerability to retaliation weighs in favor of
11 anonymity. As a resident of public housing, plaintiff Doe is not well-situated to
12 defend against retaliation or harassment by defendants. Moreover, as a homosexual
13 living in a high crime neighborhood, plaintiff is especially vulnerable to physical
14 retaliation by the public due his perceived sexual orientation and the prevalence of
15 sexual orientation-based hate crimes in plaintiff's neighborhood and surrounding
16 areas.

17 It is hereby requested that the Court grant plaintiff Guy Montag Doe's motion
18 for leave to proceed anonymously.

19 Date: June 26, 2008

TRUTANICH - MICHEL, LLP

20
21 

22 C. D. Michel
23 Attorneys for Plaintiffs
24
25
26
27
28