

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JOHN DOE,

Plaintiff,

v.

KANSAS STATE UNIVERSITY,

Defendant.

Case No. 2:20-cv-02258-HLT-TJJ

MEMORANDUM AND ORDER

Plaintiff, proceeding pro se,¹ who wishes to proceed anonymously, has filed a complaint against Kansas State University alleging an extensive list of grievances and allegations dating back to 2010 against numerous individuals who attended or were employed by Kansas State University and the University of Kansas. This matter is before the Court on Defendant’s motion to dismiss based in part on Plaintiff’s anonymous pleading, and on Plaintiff’s request to be allowed to proceed under a pseudonym. For the reasons discussed below, the Court denies Plaintiff’s request to proceed under a pseudonym and grants Defendant’s motion to dismiss.

I. BACKGROUND

Plaintiff, proceeding under the pseudonym “John Doe,” has filed a complaint alleging various conduct and conspiracies among several individuals dating back to 2010 and spanning multiple universities and cities. The only named defendant is Kansas State University. Plaintiff’s complaint asserts 16 causes of action, including discrimination, retaliation, failure to provide due process, violations of Title IX, violation of the Kansas Consumer Protection Act, claims under 42

¹ Because Plaintiff proceeds pro se, his pleadings are construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). The Court does not, however, assume the role of advocate. *Id.*

U.S.C. §§ 1983 and 1985, violation of 20 U.S.C. § 1232g, federal criminal perjury and giving false statements, breach of fiduciary duty, negligent and intentional infliction of emotional distress, contribution and exasperation of Plaintiff's disabilities, violation of Title VII and Title VIII, and "[v]iolation of multiple state and federal laws." *See* Doc. 1 at 26-28. For relief, he seeks damages and attorney's fees, corrections to various student records at Kansas State University from between 2010 and 2012, removal of certain Kansas State University employees, investigations into those employees' conduct since 1990, incarceration of certain individuals, referral of his complaint to the FBI and United States Attorney's Office for criminal prosecution, a protective order, and restrictions of federal and state funding to Kansas State University. *Id.* at 28-30.

The magistrate judge subsequently issued a Notice and Order to Show Cause. Doc. 20. Specifically, Plaintiff was ordered to show cause why his name should not be fully disclosed. *Id.* at 2.

Defendant Kansas State University also moved to dismiss the case. Doc. 26. In the motion, Defendant primarily argues that this Court lacks jurisdiction over the case because Plaintiff did not seek leave to proceed anonymously. Defendant also raises other substantive defenses, such as Eleventh Amendment immunity, that Kansas State University is not a person for purposes of 42 U.S.C. § 1983, lack of standing to seek criminal remedies, statute of limitations issues, and that the complaint fails to state a plausible claim for relief. *See generally* Doc. 27. Although Plaintiff initially sought an extension of time to respond to the motion to dismiss, he has never responded, and the time to do so has passed. *See* Docs. 37, 41.

Plaintiff has, however, filed two responses to the magistrate judge's show-cause order, and a motion for a protective order. The two responses and the motion for protective order, while slightly different in describing the underlying facts of the case, make identical legal arguments and

are functionally identical. In these filings, Plaintiff seeks leave to proceed under a pseudonym. *See* Docs. 30-33.² Plaintiff contends that this litigation involves sensitive personal information, including information about his disciplinary records, which “would expose personal and highly confidential information to the public that is likely to damage his professional reputation.” Doc. 30 at 6. He contends Defendant already knows his identity and his identity is not something that the public has an interest in, and that allowing him to proceed anonymously would avoid any future retaliation. *Id.* He alleges he suffers from various mental disorders and that “he is fearful that identification poses a risk of retaliatory physical or mental harm,” and that “this matter [is] highly sensitive as he fully expects to work in a position which requires high level security clearance.” *Id.* at 9. Although Plaintiff argues that his mental disorders entitle him to proceed anonymously, *id.*, it is not clear how any mental disorders he has are related to the allegations in the complaint.

Defendant has filed a response to Plaintiff’s motion for a protective order, arguing that the motion should be denied for lack of jurisdiction because Plaintiff filed the case anonymously and without leave, and that Plaintiff has otherwise failed to show why he should be allowed to proceed under a pseudonym. *See generally* Doc. 36. Plaintiff has not filed a reply.

II. STANDARD

The Federal Rules of Civil Procedure require that pleadings include the names of all parties, and that actions be prosecuted in the name of the real party in interest. *See* Fed. R. Civ. P. 10(a); Fed. R. Civ. P. 17(a). “The Federal Rules thus make no provision for suits by persons using fictitious names or for anonymous plaintiffs.” *Nat’l Commodity & Barter Ass’n, Nat’l Commodity Exch. v. Gibbs*, 886 F.2d 1240, 1245 (10th Cir. 1989). Generally, a party who wishes to file

² Plaintiff’s responses and his memorandum in support of the protective order contained dates of birth for non-parties. Redacted versions of these documents are available at Docs. 30-1, 31-5, and Doc. 33-6.

anonymously or proceed under a pseudonym must first petition the district court for permission. *W.N.J. v. Yocom*, 257 F.3d 1171, 1172 (10th Cir. 2001). If the court does not grant permission, the federal court lacks jurisdiction over the unnamed parties. *Id.* Where a party does not make a request, the “case has not been commenced with respect to them.” *Nat’l Commodity & Barter Ass’n*, 886 F.2d at 1245.

Even if a plaintiff makes a request to proceed anonymously, the Tenth Circuit has stated that allowing a plaintiff to do so is “unusual,” although “there may be exceptional circumstances warranting some form of anonymity in judicial proceedings.” *Femedeer v. Haun*, 227 F.3d 1244, 1246 (10th Cir. 2000). Those circumstances include “cases involving matters of a highly sensitive and personal nature, real danger of physical harm, or where the injury litigated against would be incurred as a result of the disclosure of the plaintiff’s identity.” *Id.* (quoting *Doe v. Frank*, 951 F.2d 320, 324 (11th Cir.1992)). “The risk that a plaintiff may suffer some embarrassment is not enough.” *Id.* (quoting *Doe*, 951 F.2d at 324). Ultimately, whether to allow a party to proceed under a pseudonym is within the district court’s discretion. *See Raiser v. Brigham Young Univ.*, 127 F. App’x 409, 410 (10th Cir. 2005).

III. ANALYSIS

Plaintiff initially filed this case using the pseudonym “John Doe.” He did not request permission to do so and in fact made no effort to request permission until after the magistrate judge issued a show-cause order. Because Plaintiff filed anonymously and without leave of court, this Court lacks jurisdiction over this case. *W.N.J.*, 257 F.3d at 1172. Plaintiff’s failure to seek permission at the outset of this case cannot now be rectified or cured by his subsequent request to do so after the fact. Effectively, no case has properly been commenced by Plaintiff because he did not use his real name. *Id.* For this reason, this case should be dismissed without prejudice.

Spurred by the show-cause order, Plaintiff did later seek permission to proceed anonymously. Although this cannot cure the jurisdictional defect, *see W.N.J.*, 257 F.3d at 1172-73, the Court finds that Plaintiff's request nevertheless still fails to show that "exceptional circumstances" warrant anonymity. *See Femedeer*, 227 F.3d at 1246.

Plaintiff's briefing sets forth three reasons why he believes he should be permitted to proceed anonymously, all of which are somewhat interrelated. First, he alleges that this case involves sensitive personal information that could jeopardize his future employment prospects and possibly his ability to receive a security clearance at some point. Doc. 30 at 6, 9. But general allegations of harm to reputation are not sufficient. *See Raiser*, 127 F. App'x at 411. Further, the information Plaintiff believes could be damaging to his reputation are his disciplinary records that he apparently believes might be made public during the course of the litigation. But the fact that certain sensitive documents or records might be involved does not warrant a Plaintiff's entire identity being shielded. *See Femedeer*, 227 F.3d at 1246 ("Lawsuits are public events." (quoting *Doe*, 951 F.2d at 324)).

Second, Plaintiff argues that using his real name will pose a risk of retaliation by "third parties (serving the K-State's interests), and the defendant." Doc. 30 at 6. But again, the Court finds that a conclusory fear of unspecified retaliation is not enough. *See Raiser*, 127 F. App'x at 411; *see also United States ex rel. Little v. Triumph Gear Sys., Inc.*, 870 F.3d 1242, 1249 n.10 (10th Cir. 2017).³ Further, Defendant is already aware of Plaintiff's identity. *See* Doc. 36 at 7; Doc. 30 at 6. While the Court does not presume that any retaliation has or would occur, the Court

³ Although threats of physical harm may justify anonymity, *Nat'l Commodity & Barter Ass'n*, 886 F.2d at 1245, Plaintiff has only made a conclusory allegation that "he is fearful that identification poses a risk of retaliatory physical or mental harm." Doc. 30 at 9. This is insufficient.

agrees that allowing Plaintiff to proceed anonymously would not prevent any feared retaliation by Defendant or its agents as Defendant already knows Plaintiff's identity.⁴

Third, Plaintiff argues he should be allowed to proceed anonymously because he suffers from mental disorders and disclosing his real name will aggravate his condition and cause him stigmatization. But he offers nothing but his own conclusory declaration in support of this claim and fails to explain how or why this would be the case. *See* Doc. 33-5. The existence of a mental disorder is not grounds in and of itself to proceed anonymously. *Goico v. Kansas*, 773 F. App'x 1038, 1040 (10th Cir. 2019) (affirming denial of leave to proceed anonymously in part because the plaintiff's mental condition was not logically tied to the merits of the case).

IV. CONCLUSION

THE COURT THEREFORE ORDERS that Defendant's Motion to Dismiss (Doc. 26) is GRANTED on the grounds that Plaintiff never properly commenced this matter because he filed under a pseudonym. This case is therefore DISMISSED WITHOUT PREJUDICE.⁵ This case is closed.

THE COURT FURTHER ORDERS that Plaintiff's Motion for a Protective Order (Doc. 32) is DENIED.

IT IS SO ORDERED.

Dated: January 11, 2021

/s/ Holly L. Teeter
HOLLY L. TEETER
UNITED STATES DISTRICT JUDGE

⁴ Defendant also notes that Plaintiff has brought other lawsuits against Defendant and other entities raising similar or related issues under his real name.

⁵ Because the Court finds dismissal is proper based on Plaintiff's use of a pseudonym, it does not reach Defendant's other arguments. Although the dismissal here is without prejudice, the Court does caution Plaintiff that the other arguments made by Defendant in the motion to dismiss do raise serious questions about the merits of Plaintiff's claims.