



1 should leave her boyfriend for him, and, after a period of time during which he assumed greater and  
2 greater familiarity with her, directly propositioned Plaintiff for sex.” (*Id.*) She alleges she “reported  
3 [this] misconduct to a close friend, to her parents, and to a counselor, which led to the police being  
4 immediately notified.” (*Id.*)

5 She asserts the allegations of “sexual abuse of Plaintiff and other wards and juvenile hall”  
6 against Defendant Anderson were investigated by the Bakersfield Police Department, which “submitted  
7 a report to the Kern County District Attorney’s Office to request that ... Anderson be charged with  
8 three counts of P.C. 289(a)(1)(A) (sexual penetration), three counts of P.C. 149 (assault under color of  
9 authority), two counts of P.C. 647(j)(1) (invasion of privacy), and one count of P.C. 647.6(a)(1)  
10 (annoying or molesting a child).” (Doc. 37 at 2-3, ¶ 3)

11 Plaintiff asserts Heath Appleton was an employee of the County, who “acted in a supervisory  
12 capacity and under color of state law.” (Doc. 37 at 4, ¶ 9; *id.* at 17, ¶ 89) Plaintiff alleges Appleton  
13 was the “direct supervisor” of Defendant Anderson and “was responsible for ensuring that the actions  
14 of his subordinates complied with written policies, including policies designed to prevent and deter  
15 sexual abuse.” (*Id.* at 8, ¶¶ 31-32)

16 She asserts: “Juvenile Hall written policies provided for ‘zero tolerance’ of sexual abuse of  
17 wards by staff,” which was “defined to include, without limitation, sexual voyeurism by staff” under  
18 the Prison Rape Elimination Act (“PREA”). (Doc. 37 at 8, ¶ 33) In addition, Plaintiff alleges “basic  
19 rules” at Juvenile Hall “prohibited staff members from being alone with wards of the opposite gender  
20 outside of emergencies.” (*Id.*, ¶ 34) Plaintiff alleges written policies “required staff members to report  
21 sexual abuse, the suspicion of sexual abuse, or any deviation from written policy in writing.” (*Id.*)  
22 Further, she asserts that under the PREA, “the presumptive discipline for any form of sexual abuse by  
23 staff is termination.” (*Id.* at ¶ 33)

24 Plaintiff asserts that Heathe Anderson knew Anderson violated the written policies and rules of  
25 Juvenile Hall, stating:

26 Despite written policies that strictly prohibited staff members from being alone in a  
27 rooms with a minor of the opposite gender outside of an emergency, HEATHE  
28 APPLETON observed GEORGE ANDERSON in a room alone with a female ward on  
three to four occasions (none of which were emergencies) and failed to document or  
report it. HEATHE APPLETON failed to intervene to enforce policy, protect wards, or  
discipline GEORGE ANDERSON in connection with these observations. On at least

1 one occasion, HEATHE APPLETON observed GEORGE ANDERSON alone with  
2 Plaintiff, in clear violation of written policy, before Plaintiff complained of the sexual  
3 abuse that is the subject of this case. HEATHE APPLETON took no action in  
4 connection with these observations, even though what he had observed was a clear  
5 violation of written policy.

6 (Doc. 29-1 at 8-9, ¶ 35)

7 According to Plaintiff, Appleton “never documented or reported in writing that [Anderson] had  
8 been supervising showers of female wards alone.” (Doc. 37 at 10, ¶ 44) In addition, she asserts  
9 Appleton “never documented in writing the fact that he observed [Anderson] alone a room with a  
10 female ward, nor did he re-train or reprimand [Anderson] for being in a room alone with a female  
11 ward.” (*Id.*) Therefore, Plaintiff contends Appleton failed to address Anderson’s misconduct “in a  
12 ‘zero tolerance’ manner.” (*Id.*, ¶ 45) Instead, Plaintiff alleges, “Written policies that were designed to  
13 prevent and deter sexual abuse were not enforced, and violations of policy were covered up and  
14 ignored.” (*Id.*) She asserts that because “the written policies in question were designed, at least in part,  
15 to prevent and deter sexual abuse, [Appleton] knew or reasonably should have known that his failure to  
16 enforce these policies heightened the danger of sexual abuse of wards.” (*Id.* at 11, ¶ 47) Further,  
17 Plaintiff asserts that if Anderson was “adequately trained and supervised prior to the sexual abuse of  
18 [Plaintiff], if his errant behavior had been investigated, and if he had been punished as a result, then the  
19 sexual abuse of [Plaintiff] in this case could have been averted.” (*Id.*, ¶ 49)

20 According to Plaintiff, the County exhibited “deliberate indifference to the safety of Plaintiff  
21 and other victims.” (Doc. 37 at 3, ¶ 4) Further, she reports that as of the date of the filing of the initial  
22 complaint in this action, Anderson, Appleton and the “Doe” defendants were not “disciplined,  
23 reprimanded, retrained, suspended, or otherwise penalized in connection with the incident.” (Doc. 37  
24 at 16, ¶ 85)

25 Based upon the foregoing facts, Plaintiff is proceeding upon the following causes of action: (1)  
26 “Civil Rights Action” under 42 U.S.C. § 1983 for violations of the Fourth, Eighth, and Fourteenth  
27 Amendments, against Anderson; (2) substantive due process violation against Anderson; (3)  
28 unconstitutional custom, practice, or policy against the County of Kern; (4) inadequate training/ policy  
of inaction, against the County; (5) ratification, against the County; and (6) supervisor liability, against  
Appleton and the “Doe” Defendants. (*See generally* Doc. 37 at 12-18)

1 Anderson now seeks to have Plaintiff disclose her true name, arguing Plaintiff should not be  
2 permitted to continue using a pseudonym in this action. (Doc. 49) The County and Appleton joined in  
3 the motion. (Doc. 51) Plaintiff filed her opposition to the motion on October 25, 2017 (Doc. 52), to  
4 which Anderson filed a brief in reply on November 1, 2017 (Doc. 53).

## 5 **II. Legal Standards**

6 “The normal presumption in litigation is that parties must use their real names.” *Doe v.*  
7 *Kamehameha Schools*, 596 F.3d 1036, 1042 (9th Cir. 2010). However, some exceptions allow parties  
8 to proceed anonymously. For example, under Rule 5.2(a) of the Federal Rules of Civil Procedure,  
9 filings must refer to minors by their initials, unless the court orders otherwise. In addition, the Ninth  
10 Circuit determined “a party may preserve his or her anonymity in judicial proceedings in special  
11 circumstances when the party’s need for anonymity outweighs prejudice to the opposing party and the  
12 public’s interest in knowing the party’s identity.” *Does I - XXIII v. Advanced Textile Corp.*, 214 F.3d  
13 1058, 1067-68 (9th Cir. 2000).

14 The Court “must balance the need for anonymity against the general presumption that parties’  
15 identities are public information and the risk of unfairness to the opposing party.” *Advanced Textile*,  
16 214 F.3d at 1068, citing *M.M. v. Zavaras*, 139 F.3d 798, 803 (10th Cir. 1998); *James v. Jacobson*, 6  
17 F.3d 233, 238 (4th Cir. 1993); *Doe v. Frank*, 951 F.2d 320, 323-24 (11th Cir. 1992); *Doe v. Stegall*,  
18 653 F.2d 180, 186 (5th Cir. 1981). Courts applying this balancing test have recognized three situations  
19 allowing a plaintiff to proceed anonymously:

20 (1) when identification creates a risk of retaliatory physical or mental harm; (2) when  
21 anonymity is necessary to preserve privacy in a matter of sensitive and highly personal  
22 nature; and (3) when the anonymous party is compelled to admit his or her intention to  
engage in illegal conduct, thereby risking criminal prosecution.

23 *Advanced Textile*, 214 F.3d at 1068 (internal quotation marks, citations omitted). The decision of  
24 whether to allow a party to proceed anonymously is committed to the Court’s discretion. *Id.* at 1069.

## 25 **III. Discussion and Analysis**

26 Plaintiff contends “[t]he use of a pseudonym is warranted under the facts and circumstances of  
27 this case.” (Doc. 52 at 3, emphasis omitted) She notes the Ninth Circuit permits a party to proceed  
28 with a pseudonym where “anonymity is necessary to preserve privacy in a matter that is sensitive and

1 highly personal in nature,” and asserts this action “clearly” satisfies this standard. (*Id.* at 4, citing  
2 *Advanced Textile*, 214 F.3d at 1068. In addition, she asserts the action “meets the criteria for the use of  
3 a pseudonym in light of the fact that plaintiff is in fear of physical or mental retaliation.” (*Id.*)

4 On the other hand, Defendant contends Plaintiff’s use of a pseudonym is not appropriate in this  
5 action. (Doc. 49 at 3) He acknowledges that “Courts have often held that sexual abuse allegations tend  
6 to favor allowing a party to proceed under a pseudonym to protect the victim’s privacy, and so that  
7 other victims will not be discouraged from reporting such crimes.” (*Id.*, citing *Doe v. Penzato*, WL  
8 1833007 at \*3 (N.D. Cal. May 13, 2011)) However, he asserts Plaintiff’s claims “should not qualify  
9 her for the use of a pseudonym.” (*Id.*) Defendant concludes, “To allow Plaintiff to proceed under ‘Jane  
10 Doe’ is contrary to the Ninth Circuit’s requirement that pseudonymity be limited to the ‘unusual case.’”  
11 (*Id.*, citing *U.S. v. Doe*, 488 F.3d 1154, 1155 n.1 (9th Cir. 2007).

12 **A. Special Circumstances to Preserve Privacy**

13 In *Advanced Textile*, the Court observed that “many federal courts, including the Ninth Circuit,  
14 have permitted parties to proceed anonymously when special circumstances justify secrecy.” *Id.*, 214  
15 F.3d at 1067. However, “[t]he Ninth Circuit has not adopted any specific set of factors that courts  
16 must consider when a plaintiff requests anonymity based on the alleged humiliation, embarrassment or  
17 mental distress that she will suffer by public disclosure of her identity.” *Doe v. JBF RAK LLC*, 2014  
18 U.S. Dist. LEXIS 146985 at \*9 (D. Nev. Oct. 15, 2014). “In general, federal courts balance the  
19 severity of emotional distress or mental injury the plaintiff appears likely to suffer against the  
20 unfairness or prejudice that defendant will suffer if plaintiff is allowed to proceed anonymously, and  
21 the public’s interest in knowing the identities of all litigants.” *Id.*; *see also Advanced Textile*, 214 F.3d  
22 at 1068.

23 Plaintiff asserts anonymity is warranted because “courts have often held that plaintiffs who  
24 bring forth sexual abuse allegations should be permitted to proceed under a pseudonym to protect the  
25 victim’s privacy and to encourage victims from reporting similar misconduct.” (Doc. 52 at 4, citing  
26 *Penzato*, WL 1833007 at \*3. In the First Amended Complaint, Plaintiff alleges:

27 While Plaintiff was incarcerated at the James G. Bowles juvenile detention facility,  
28 she was a victim of grooming, exploitation, voyeurism and sexual abuse by Defendant  
Anderson. Defendant Anderson viewed Plaintiff while she showered and peeped into  
her cell while she was using the toilet on multiple occasions. Defendant Anderson told

1 Plaintiff that he liked watching her shower, suggested that she should leave her  
2 boyfriend for him, and, after a period of time during which he assumed greater and  
greater familiarity with her, directly propositioned Plaintiff for sex.

3 (Doc. 37 at 2, ¶ 2) Further, she alleges that “[u]nder the Prison Rape Elimination Act (PREA), sexual  
4 abuse is defined to include, without limitation, sexual voyeurism by staff.” (*Id.* at 8, ¶ 33) Plaintiff  
5 contends these allegations make this “a sensitive matter that is highly personal in nature,” and her  
6 anonymity should be preserved. (Doc. 52 at 4)

7 Although the Court agrees that grooming, exploitation, and voyeurism are repugnant acts, these  
8 actions do not satisfy the common definition of sexual assault, which requires touching. *See, e.g.*, Cal.  
9 Penal Code § 243 (“Any person who touches an intimate part of another person while that person is  
10 unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the  
11 person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty  
12 of sexual battery”). Rather, the acts alleged are similar to allegations made in a Title VII sexual  
13 discrimination case—which would not be sufficient for the use a pseudonym. Moreover, the PREA  
14 definition of sexual abuse—which is clearly more broadly defined than state laws governing sexual  
15 assault and sexual battery—does not govern here, as there is no private right of action for a claim for a  
16 violation of the PREA. *See Reed v. Racklin*, 2017 U.S. Dist. LEXIS 90090 at \*6, 2017 WL 2535388  
17 (E.D. Cal. June 9, 2017) (“PREA does not give rise to a private cause of action”); *Faz v. North Kern*  
18 *State Prison*, 2011 U.S. Dist. LEXIS at \*13-14, 2011 WL 4565918 (E.D. Cal. Sept. 29, 2011) (“the  
19 PREA does not create a private right of action”). Accordingly, the Court finds the allegations here  
20 must be distinguished from the sexual assault actions where courts have determined the plaintiff may  
21 proceed anonymously.

22 Plaintiff does not argue that she will suffer a psychological injury if her identity were to be  
23 made public. (*See* Doc. 52 at 2-3) As the court observed in *JBF RAK LLC*, “The stronger the showing  
24 that plaintiff makes regarding the psychological injury she will suffer if her identity is publicly  
25 disclosed, the more likely it is that the motion to proceed anonymously will be granted.” *Id.*, 2014 U.S.  
26 Dist. LEXIS 146985 at \*18. For example, in *Penzato*, the court found the plaintiff’s “ability to recover  
27 from her trauma would... be compromised” if her name was made public and she was made “open her  
28 to inquiries from the press and other interested individuals.” *Id.*, 2011 U.S. Dist. LEXIS 51681 at \*6.

1 Likewise, where a plaintiff presented evidence from a doctor stating the motion for disclosure of the  
2 plaintiff's full name had "already caused... emotional trauma" and "disclosure ... would exacerbate his  
3 depression and anxiety," the court found the plaintiff's need for anonymity outweighed the possible  
4 prejudiced to defendants and the public interest. *John Doe 140 v. Archdiocese of Portland in Or.*, 249  
5 F.R.D. 358, 360 (D. Or. 2008). In contrast, here there is no evidence Plaintiff suffered any trauma from  
6 the filing of the motion, or that her ability to recover from the alleged events would be compromised.

7 **B. Fear of Retaliation**

8 When, as here, a plaintiff asserts a pseudonym is "used to shield the anonymous party from  
9 retaliation, the district court should determine the need for anonymity by evaluating the following  
10 factors: (1) the severity of the threatened harm, (2) the reasonableness of the anonymous party's fears;  
11 and (3) the anonymous party's vulnerability to such retaliation." *Advanced Textile*, 214 F.3d at 1068. A  
12 plaintiff seeking anonymity is "not required to prove that the defendants intend to carry out the  
13 threatened retaliation," but must show she was threatened and "a reasonable person would believe that  
14 the threat might actually be carried out." *Id.* at 1071.

15 In evaluating the reasonableness of plaintiff's fear of retaliation, "[f]irst, the district court must  
16 identify the harm that the plaintiff[] fear[s]." *Kamehameha Schools*, 596 F.3d at 1043. Here, Plaintiff  
17 contends she "is in fear of physical or mental retaliation." (Doc. 52 at 4) During her deposition,  
18 Plaintiff was asked if she was threatened by Mr. Anderson, and responded as follows:

19 Q. He never threatened you; correct?

20 A. He's only told me, like, I know where you live and I know a lot of people who  
21 live in Delano, I know a lot of people who work for, like, law and the law  
enforcement people.

22 Q. Anything else that you can think of?

23 A. That's it.

24 (Doc. 49 at 4; *see also* Doc. 52 at 5) In addition, Plaintiff asserts she "saw a tattoo of what she believed  
25 was a gang symbol imprinted on Defendant Anderson's body." (Doc. 52 at 5) Plaintiff reports she  
26 "was frightened of Defendant Anderson" and "[s]he was and remains afraid that he could retaliate  
27 against her for reporting the sexual abuse." (*Id.*)

28 Significantly, the Court is unable to identify any specific threat made to Plaintiff. In addition,

1 given the lack of information regarding the context in which the statement was made, the Court is  
2 unable to determine whether it was made as a statement of fact—such as a probation officer would  
3 make to individuals to encourage them to stay out of trouble—or was intended to be a veiled threat.  
4 Regardless, Anderson has been aware of Plaintiff’s identity throughout this litigation. (See Doc. 49 at  
5 5) Thus, the public disclosure of her identity does not render Plaintiff any more vulnerable to  
6 retaliation. Indeed, as Defendant observes, “Two and a half years have elapsed since Plaintiff made  
7 her allegations against Anderson and not only has she not seen or heard from him, she has never  
8 reported any threats since making these claims against Anderson or once the lawsuit commenced.”  
9 (*Id.*) On these facts, the Court is unable to find Plaintiff has a reasonable fear of retaliation or harm  
10 such that continued anonymity from the public is necessary in this action. See *Advanced Textile*, 214  
11 F.3d at 1068.

12 **C. Public Interest**

13 Defendant asserts that he “intends to file a motion for summary adjudication,” and “[d]ue to the  
14 nature of this motion, the public has a legitimate interest in knowing the names of the parties as well as  
15 the facts and events surrounding these court proceedings.” (Doc. 49 at 7) According to Defendant,  
16 “Under these circumstances, the interest weighing in favor of open judicial proceedings greatly  
17 outweighs the low value of pseudonymity at this point in the proceedings.” (*Id.*) Indeed, public  
18 interest tends to favor open access to judicial proceedings, and there is a general presumption against  
19 anonymity, *Advanced Textile*, 214 F.3d at 1067. Plaintiff has failed to rebut this presumption, and the  
20 public interest outweighs her desire to preserve her privacy in this action.

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1 **IV. Conclusion and Order**

2 Based upon the foregoing, the Court finds the factors set forth by the Ninth Circuit weigh  
3 against allowing Plaintiff to continue using a pseudonym in this action. *See Advanced Textile*, 214  
4 F.3d at 1068. Based upon the foregoing, the Court **ORDERS** that Defendant’s motion for the  
5 disclosure of Plaintiff’s true name (Doc. 49) is **GRANTED**.

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7 IT IS SO ORDERED.

8 Dated: November 11, 2017

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

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