IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND, NORTHERN DIVISION

GABRIELLE DOE,	*	
Plaintiff,	*	
v.	*	CIVIL NO.: WDQ-14-2367
THE NEW RITZ, INC., *et al.*,	*	
Defendants.	*	

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MEMORANDUM OPINION

Gabrielle Doe[1] sued The New Ritz, Inc., and others (collectively, the "Defendants")[2] in a class action complaint alleging violations of federal[3] and state[4] labor laws. ECF No. 1. Pending is the Defendants' motion to dismiss the complaint. ECF No. 9.[5] No hearing is necessary. Local Rule 105.6 (D. Md.

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[1] "Gabrielle Doe" is a pseudonym. ECF Nos. 1 at 1-2; 10-1 at 1.

[2] Doe also sued Ritz of Baltimore, Inc., O.I. Enterprises, Inc., Omid Ilkhan, Joseph J. Soltas, David Hitchiner, Ari Cohen, and Michelle Silver. ECF No. 1.

[3] *See* Federal Fair Labor Standards Act ("FLSA") of 1938, as amended, 29 U.S.C. §§ 201 *et seq.* (2012).

[4] *See* Maryland Code Ann., Lab. & Empl. §§ 3-401 *et seq* (West 2010).

[5] The Defendants moved to dismiss the complaint for failure to state a claim. ECF No. 9 at 1 (*citing* Fed. R. Civ. P. 12(b)(6)). As grounds, the Defendants contend that Doe failed to allege facts that would allow her to proceed anonymously; thus, she has violated Federal Rule of Civil Procedure 10(a),

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2014). For the following reasons, the Defendants' motion will be denied.

I. Background[6]

From January 2012 to August 2014, Doe worked as an exotic dancer for the Defendants' dance club--the Ritz Cabaret--in Baltimore, Maryland. ECF Nos. 1 ¶¶ 29-30; 10-2 ¶ 2.[7] Doe worked about 55 hours each week. ECF No. 10-2 ¶ 4. The Defendants did not pay Doe the minimum wage for all hours worked or duties performed. ECF No. 1 ¶ 31. The Defendants charged Doe "a series of charges, fees[,] and fines" to start her work shift, including fees to begin a work shift and for music, DJ services, backstage access, and VIP access, and fines for late reporting to the Ritz Cabaret or being late to appear on stage. *Id.* ¶ 49.

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which requires complaints to name all parties. ECF No. 9-1 at 6; Fed. R. Civ. P. 10(a). The Defendants have not provided--nor has the Court located--authority for resolving what is essentially a Rule 10(a) motion under Rule 12(b)(6). One case relied upon by the Defendants, *Roe v. State of New York*, stated that "[t]his is a motion for defendants for an order dismissing the complaint 'for failure of the infant plaintiffs herein to state their true names in the title thereof'. *The motion is said to be under Fed. R. Civ. P. 10(a)*," 49 F.R.D. 279, 280 (S.D.N.Y. 1970)(emphasis added). Accordingly, the Court will construe the motion as a motion to dismiss under Rule 10(a), and will apply the framework well-established in the Fourth Circuit to determine whether Doe may proceed anonymously.

[6] The facts are from the complaint and an affidavit attached to Doe's opposition. ECF Nos. 1, 10-2.

[7] Although the Defendants classified Doe and other exotic dancers as independent contractors, Doe alleges that she and others were employees. ECF No. 1 ¶¶ 37, 74-75.

In a typical shift, Doe paid the Defendants about $75 or more. *Id.* ¶ 50. The Defendants' fee and fine system resulted in Doe "receiving negative wages." *Id.* ¶ 51.

On July 25, 2014, Doe filed suit alleging violations of the FLSA (count one) and the Maryland Wage and Hour Law (count two). ECF No. 1. On October 14, 2014, the Court granted the Defendants' consent motion for an extension of time to respond to the complaint. ECF No. 8. On November 10, 2014, the Defendants moved to dismiss the complaint. ECF No. 9. On November 25, 2014, Doe opposed the motion. ECF No. 10. Doe filed a sworn affidavit with her opposition stating she is afraid of physical and verbal abuse if she has to reveal her identity because the Defendants have her personal information, including her home address. ECF No. 10-2 ¶ 10. Doe swore that when she worked at the Ritz Cabaret, she "was the subject of physical abuse" by the Defendants' and their employees, such as being struck on "[her] rear-end if [she] was running late to perform on stage or . . . for no reason at all." ECF No. 10-2 ¶ 6.[8] The Defendants "constantly referr[ed] to [Doe] as 'slut,' 'skank,' 'whore,' [and] 'bitch,'" and "threatened [her] with forced sexual favors if [she] did not perform when told." *Id.* ¶¶ 8-9. Additionally, though Doe no longer works at the Ritz

[8] Doe also saw the Defendants and their employees physically assault a patron by beating him and throwing him down a flight of stairs. ECF No. 10-2 ¶ 7.

Cabaret, she swore that she may be fired by her current employer and "de facto barred from working in the exotic dance industry" if her identity is revealed because of its "tight-knit nature." *Id.* ¶ 11. The Defendants have not replied to Doe's opposition.[9]

II. Analysis

As a general rule, "[t]he title of the complaint must name all the parties . . . ." Fed. R. Civ. P. 10(a). However, "in exceptional circumstances, compelling concerns relating to personal privacy or confidentiality may warrant some degree of anonymity in judicial proceedings, including use of a pseudonym." *Doe v. Pub. Citizen*, 749 F.3d 246, 273 (4th Cir. 2014)(*citing James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993)).

To determine whether a party may litigate anonymously, courts must consider: (1) "[w]hether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of sensitive and highly personal nature," (2) "whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent nonparties," (3) "the age[] of the person whose privacy interests are sought to be protected," (4) "whether the

[9] The Defendants' reply was due on December 12, 2014; as of today's date, they have not replied. *See* Docket.

action is against a governmental or private party," and (5) "the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously." *Jacobsen*, 6. F.3d at 238. Courts must also balance the party's interest in anonymity against the public's interest in open judicial proceedings. *Pub. Citizen*, 749 F.3d at 274. "The decision whether to permit parties to proceed anonymously at trial . . . [is]committed in the first instance to trial court discretion." *Jacobson*, 6 F.3d at 238.

As to the first *Jacobsen* factor, Doe does not seek anonymity to preserve her privacy because sensitive or highly personal matters are involved in her wage-related claims;[10] though the degrading behavior she averred to--if true--is undoubtedly personal.[11] Doe is not merely concerned with avoiding annoyance or criticism; her unrebutted affidavit articulates a legitimate fear of physical and mental harm that

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[10] *Cf. Roe v. Aware Woman Ctr. for Choice, Inc.*, 253 F.3d 678, 685 (11th Cir. 2001)("[A] number of decisions have pointed to abortion as the paradigmatic example of the type of highly sensitive and personal matter that warrants a grant of anonymity.")(collecting cases); *Freedom From Religion Found., Inc. v. Emanuel Cnty. Sch. Sys.*, No. CV615-013, 2015 WL 3797133, at *3 (S.D. Ga. June 18, 2015)(religion is a "quintessentially private matter.").

[11] *E.E.O.C. v. Spoa, LLC*, No. CIV. CCB-13-1615, 2013 WL 5634337, at *4 (D. Md. Oct. 15, 2013) (granting motion to proceed under a pseudonym, in part, because of the "highly sensitive and personal" nature of the sexual harassment and assault alleged in the complaint).

may arise if her identity is revealed.[12] Although the threat of economic harm does not merit anonymity,[13] harassment by the Defendants or Doe's current employer does.[14] The second factor favors anonymity. The third factor does not apply to Doe because, presumably, she was above the age of majority when she worked for the Defendants.[15] Because Doe has sued private parties, the compelling public interest in litigation against the government is absent.[16] However, private parties have an

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[12] *See Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981) (threats of harassment and violence favored anonymity); ECF No. 10-2 ¶¶ 6-10. *Cf. Michael v. Bloomberg L.P.*, No. 14-CV-2657 TPG, 2015 WL 585592, at *3 (S.D.N.Y. Feb. 11, 2015) (denying anonymity in FLSA suit when there was no threat of physical or mental harm).

[13] *See Ashbourne v. Geithner*, No. CIV.A. RWT-11-2818, 2012 WL 2874012, at *1 (D. Md. July 12, 2012) *aff'd*, 491 F. App'x 429 (4th Cir. 2012)(*citing Free Mkt. Comp. v. Commodity Exch., Inc.*, 98 F.R.D. 311, 313 (S.D.N.Y. 1983).

[14] *See Stegall*, 653 F.2d at 186.

[15] *See Doe v. Cabrera*, No. CV 14-1005 (RBW), 2014 WL 4656610, at *6 (D.D.C. Sept. 10, 2014) ("Where victims are not minors, courts are generally less inclined to let the alleged victim proceed in litigation under a pseudonym."); *E.E.O.C.*, 2013 WL 5634337, at *4; *see also* Rule 2, Rules and Regulations for the Board of Liquor License Commissioners for Baltimore City (Adult Entertainment Businesses)("All dancers in an adult-entertainment establishment must be at least 18 years old . . . .").

[16] *See, e.g.*, *Pub. Citizen*, 79 F.3d at 274 ("[T]he public interest in the underlying litigation is especially compelling given that Company Doe sued a federal agency."); *Ashbourne*, 2012 WL 2874012, at *1 ("[V]ery rarely is anonymity justified in a case challenging the government.").

interest in protecting against harm to reputation.[17] The fourth factor disfavors anonymity.

As to the fifth factor, the Defendants generally contend that without knowing Doe's true identity, they have "little, if any, means to defend themselves against [her] allegations, which are tied to [her] identity." ECF No. 9-1 at 5-6. To the contrary, Doe filed her complaint on behalf of herself *and* exotic dancers who worked at the Ritz Cabaret from July 2011 to July 2014 and were not paid minimum wage,[18] suggesting that the allegedly improper fee and fine system applied to all workers, not just Doe. The Defendants have not identified specific obstacles that Doe's anonymity poses to their ability to defend against allegations of widespread noncompliance with state and federal labor laws. The fifth factor, at the very least, is neutral.

Finally, although the Court is mindful of the public's interest in open proceedings, there is also a long-standing strong public interest in preventing worker exploitation. *See, e.g.*, *Perkins v. Lukens Steel Co.*, 310 U.S. 113, 125, 60 S. Ct.

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[17] *See Cabrera*, 2014 WL 4656610, at *6 ("This consideration is significant because governmental bodies do not share the concerns about reputation that private individuals have when they are publicly charged with wrongdoing."); *Freedom From Religion Found., Inc.* 2015 WL 3797133, at *2 (suit against private parties disfavors anonymity).

[18] ECF No. 1 ¶ 52.

869, 875, 84 L. Ed. 1108 (1940); Letter to Congress from President Franklin D. Roosevelt (May 24, 1937) (reprinted in H.R. Rep. No. 101-260 (Sept. 26, 1989), 1989 U.S.C.C.A.N. 696-97)(FLSA was intended to protect the right of men and women to receive "a fair day's pay for a fair day's work"). Further, this is not a suit "attacking . . . popularly enacted legislation,"[19] but rather is a suit seeking to *enforce* legislation. In sum, balancing Doe's interest in remaining anonymous, the lack of prejudice to the Defendants, and the public interest leads the Court to conclude that anonymity is merited. Accordingly, the Defendants' motion to dismiss will be denied.

III. Conclusion

For the reasons stated above, the Defendants' motion to dismiss will be denied.

7/14/15
Date

William D. Quarles, Jr.
United States District Judge

[19] *Femedeer v. Haun*, 227 F.3d 1244, 1246 (10th Cir. 2000) (ordering appellee to disclose his identity in suit challenging sex offender notification system).