UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

John Doe 18,

Plaintiff,

Case No. 10-CV-0992
Judge: Hon. C.N. Clevert, Jr.

vs.

AFFIDAVIT OF PATRICK W. NOAKER

Joseph Clazmer, and
Downloaders 1 to 100,

Defendants.

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

Patrick Noaker, being first duly sworn on oath, deposes and states as follows:

1. That I am an attorney licensed in the State of Minnesota, admitted to practice in this Court and one of the attorneys that represents Plaintiff John Doe 18 in the current matter.

2. Attached hereto as Exhibit A is a true and correct copy of the criminal complaint in the matter of State v. Joseph Clazmer.

3. Attached hereto as Exhibit B is a true and correct copy of a news article appearing in the Racine Journal times on March 8, 2010.

4. Attached hereto as Exhibit C is a true and correct copy of a news article appearing in the Racine Journal times on March 9, 2010.

5. Attached hereto as Exhibit D is a true and correct copy of a news article appearing in the Racine Journal times on November 8, 2010.

6. Attached hereto as Exhibit E is a true and accurate copy of Roe v. St. Louis University, 2009 WL 910738.

FURTHER YOUR AFFIANT SAYETH NAUGHT

Dated: March 10, 2011

s/Patrick W. Noaker
Patrick W. Noaker

Subscribed and sworn to before me
this 10th day of March, 2011.

s/Erin M. Dalluge
Notary Public, my commission expires 1/31/15.

State of Wisconsin | BRANCH 8 | Racine County

State of Wisconsin, plaintiff,
versus

Joseph T Clazmer, DOB: 07/13/1961
3211 Wright Ave
Racine, WI 53405
M W Brown Brown Weight: 450 lbs Height: 5 ft 10 in
defendant(s).

CRIMINAL COMPLAINT

Circuit Court File No: 2010CF000339

FILED
MAR 08 2010
CLERK OF CIRCUIT COURTS
RACINE COUNTY

DA Case No: 2010RA001710
Status: Prisoner on March 08, 2010 at 1:30 PM
Prosecutor: Robert S Repischak
Agency: Racine Police Department 10-011799
Officer(s) Jody L Spiegelhoff # 1650, of the Racine Police Department

The defendant did:

Count 1: CHILD ENTICEMENT

The above-named defendant during the Summer of 2009, in the City of Racine, Racine County, Wisconsin, with intent to have sexual contact with the child in violation of Section 948.095, Wis. Stats., did cause a child, A.V., DOB 2/5/92, who had not attained the age of 18 years to go into a room, contrary to sec. 948.07(1), 939.50(3)(d) Wis. Stats., a Class D Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars ($100,000), or imprisoned not more than twenty five (25) years, or both.

Count 2: POSSESSION OF CHILD PORNOGRAPHY

The above-named defendant on or about Sunday, March 07, 2010, in the City of Racine, Racine County, Wisconsin, did, having attained the age of 18, knowingly possess photograph(s) of a child engaging in sexually explicit conduct, and knew that the child was under the age of 18, contrary to sec. 948.12(1m) and (3)(a), 939.50(3)(d) Wis. Stats., a Class D Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars ($100,000), or imprisoned not more than twenty five (25) years, or both. And furthermore, invoking the provisions of Wisconsin Statute 973.042(2), upon conviction for a crime under 948.05 or 948.12 and the defendant is at least 18 years of age at the time of the commission of the crime, the Court shall impose a surcharge of $500.00 for each image or each copy of an image, as defined in 973.042(1), associated with the crime. The court shall determine the number of images or copies of images associated with the crime by a preponderance of the evidence and without a jury. And furthermore, invoking the provisions of Wisconsin Statute Section 939.617, upon conviction the Court shall impose a bifurcated sentence including a term of initial confinement for at least three years. The Court may impose a sentence less than three years or place the person on probation upon a finding on the record that the Court finds the lesser sentence is in the best interests of the community and the public will not be harmed.

Count 3: POSSESSION OF TETRAHYDROCANNABINOLS (THC)

The above-named defendant on or about Sunday, March 07, 2010, in the City of Racine, Racine County, Wisconsin, did knowingly possess a controlled substance, Tetrahydrocannabinols (THC), contrary to sec. 961.41(3g)(e) Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than One Thousand Dollars ($1,000), or imprisoned for not more than six (6) months, or both. And the Court may suspend the defendant's operating privileges for not less than six (6) months nor more than five (5) years. If the defendant's driving privileges are already suspended, any suspension imposed must be served consecutively.

Count 4: POSSESSION OF DRUG PARAPHERNALIA

The above-named defendant on or about Sunday, March 07, 2010, in the City of Racine, Racine County, Wisconsin, did knowingly use, or possess with the primary intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or a controlled substance analog, contrary to sec. 961.573(1) Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than Five Hundred Dollars ($500), or imprisoned

for not more than thirty (30) days, or both. And the Court may suspend the defendant's operating privileges for not less than six (6) months nor more than five (5) years. If the defendant's driving privileges are already suspended, any suspension imposed must be served consecutively.

The official records and files of the Racine County District Attorney's Office, the Wisconsin Department of Justice and/or Department of Transportation reflect that the defendant has the following record of convictions:

The complainant, being first duly sworn on oath, on information and belief, alleges and states that in the County of Racine, State of Wisconsin, the defendant(s) did commit the above described offense(s) and prays that said defendant(s) be dealt with according to the laws of the State of Wisconsin.

The complainant states that he or she is an adult citizen and has reviewed the official law enforcement reports prepared under the above mentioned complaint numbers by the above stated officer(s), whose reports your complainant relies upon as truthful and accurate inasmuch as they were prepared during the course of an official law enforcement investigation. The complainant relies upon the statements of the mentioned witnesses inasmuch as they are citizens and their statements are based on personal knowledge or eyewitness observations; the complainant relies upon the statements of the defendant(s), if any, inasmuch as they are contrary to the defendant's penal interests and are, therefore, to be believed.

The complainant thereby informs the court that the basis for the above charge(s) is as follows:

Your complainant is thereby advised by Inv. Spaulding that on March 7, 2010, at approximately 7:51 a.m., he was contacted by Off. Lofy in reference to a sexual assault report. Off. Lofy was speaking with a victim, A.V., date of birth 2/5/1992, who disclosed that he was inappropriately touched by his high school teacher, Joseph Clazmer.

A.V. disclosed that he and two others routinely went to Clazmer's house located at 3211 Wright Avenue, in the City and County of Racine, State of Wisconsin, to drink alcohol and smoke marijuana. A.V. disclosed that Clazmer took some nude photographs of A.V. and paid him cash to do so. A.V. also disclosed that Clazmer would rub A.V.'s body when A.V. had his clothes off. A.V. stated that Clazmer would text message him on a number of different occasions such things as "TT$, TT$", which meant "touch time for cash". A.V. explained that he was supposed to go over to Clazmer's house and Clazmer would pay A.V. for allowing Clazmer to touch A.V.'s body. A.V. stated other messages he would receive from Clazmer would include such things as "surprise me tonight" and "be a friend tonight and make some money". Other text messages would include the number "12", which meant a blow job, as the number "2", the second letter of the alphabet, the "B", plus the number "10", is the alphabet "J", and it would equate to the number "12."

A.V. stated that he met Clazmer when he was 15 years old working up at Johnson Park Golf Course where Clazmer would spend a lot of time drinking at the bar. The next summer when A.V. was 16 years old and had a driver's license, Clazmer would ask A.V. for a ride home when he had too much to drink. A.V. stated during the school year when he was 16 years old, he had Clazmer as a Geometry teacher and he and his friends would go to Clazmer's house and drink alcohol and smoke marijuana. A.V. reports that sometimes Clazmer would provide the marijuana and alcohol and sometimes they would bring it with them. A.V. reported that Clazmer began asking A.V. to come to his house and "be risky" and "be a friend", and that Clazmer wanted to touch A.V.'s body and would pay him cash at his house for doing this.

A.V. stated during the Summer of 2009 when he was 17 years old, he broke his toe and was prescribed Vicodin. After A.V.'s Vicodin prescription ran out, he needed cash to buy more Vicodin and would visit Clazmer's house in July and August of 2009. A.V. allowed Clazmer to take photographs of A.V. while he was fully nude. A.V. reports these photographs were taken by Clazmer with a digital camera in Clazmer's bedroom near the bedroom door. A.V. did not want to do the photos but was in need of cash and so he closed his eyes and allowed the photos to be taken. A.V. reports that Clazmer paid him a couple of hundred dollars for allowing Clazmer to take the photographs.

During September or October of 2009, while A.V. was 17 years old, Clazmer wanted to touch A.V.'s body. Clazmer would continue to ask for "touching time" or "blow job" via text messaging. A.V. indicates that he would ask him to "come and make some money" and A.V. would take his clothes off, except for his boxer shorts, and allow Clazmer to rub A.V.'s body for cash. A.V. reports that the rubbing or messaging occurred three times while A.V. was laying on Clazmer's living room couch. A.V. described Clazmer as rubbing A.V.'s with his hands. A.V. states Clazmer would his hand inside of A.V.'s boxer shorts but

Clazmer would not touch A.V.'s penis. Clazmer did kiss A.V.'s nipple on one occasion and on one occasion, did have his face hovering over A.V.'s pubic area while sniffing. A.V. described the rub/massages to last fiv to ten minutes.

Based on the information obtained from the interview of A.V., Inv. J. Spiegelhoff advises that a search warrant was executed at 3211 Wright Avenue, the residence of Joseph Clazmer. Officers seized two laptop computers, a computer tower, numerous storage media including CD's and DVD's, as well as a digital camera and memory cards for the digital camera. Also during the search warrant, officers recovered a pill bottle, which contained a green leafy substance that later tested positive for the presence of Tetrahydrocannabinol, weighing 12.2 grams. Officers also recovered a marijuana bong in another drawer of the computer desk. A.V. has stated that Clazmer would keep the marijuana in a standard yellow or orange pill bottle with a white cap, which would be located in the third or bottom drawer of the computer desk, and that Clazmer had a water bong used for smoking marijuana, which was made of glass had a bluish green stripe on it, located in the desk drawer above the drawer containing the marijuana.

Clazmer was transported to the City of Racine Police Department and read his Miranda rights. Clazmer did waive his rights and agreed to speak with investigators.

Clazmer stated that he was trying to help A.V. because he was getting involved in too much "risky behavior". Clazmer did admit to taking a nude photograph of A.V. prior to A.V. turning 18 in February of 2010. When asked how long ago he took the picture, Clazmer believed it was over Christmas break in 2009. Clazmer went on to state that he was giving A.V. a test to see if A.V. would actually stand there and allow somebody to take a picture of him without any clothes on.

Clazmer stated that he could have touched A.V. about three times when he gave A.V. massages. Clazmer stated that he did not know of anything illegal that he was doing. Clazmer did admit to giving A.V. money in exchange for him taking the photographs, however, he does not recall the amount of money.

Investigators asked Clazmer if he would be willing to point out which CD's the nude photographs of A.V. was on. Clazmer stated he transferred the photograph of A.V. from his camera to his computer and placed it on a CD and that it was white, and he'd probably be able to advise investigators which one it was. Clazmer looked through the CD's that officers had confiscated and pulled out a Memorex CD, which was in a clear plastic jewel case that was white with blue lettering. Handwritten on the front of this CD was the name "Eric". Clazmer stated "Eric" was another Walden student, who had done a movie for a class project and was not certain what other files would be on that CD.

Upon examining that CD, investigators located five different file folders on the disk. Under a file folder labeled "junk", investigators located several pictures taken inside of Clazmer's home. There were several pictures of A.V., one of which shows full frontal nudity and does expose A.V.'s penis. Other photos located under this file included a photograph which exposes the entire buttocks of A.V., as well as two other photos, which partially expose A.V.'s buttocks.

Clazmer wanted to know what was going to happen next and investigators advised him he was going to the county jail. Investigators advised Clazmer that they did find marijuana in his home and Clazmer admitted the marijuana was his. Clazmer acknowledged that he was known A.V. for approximately three years and was transported to the Racine County Jail where he was held on child enticement, possession of child pornography, possession of THC, and possession of drug paraphernalia.

Subscribed and sworn to before me and approved for filing on the 8th day of March, 2010.

COMPLAINANT ASSISTANT DISTRICT ATTORNEY

Michael F. Nieskes, District Attorney, State Bar No. 01002564
730 Wisconsin Ave., Racine, WI 53403 (262) 636-3172

JournalTimes.com

Prosecutors: Walden teacher paid a student for nude photos, allowing assault

MARCI LAEHR TENUTA mtenuta@journaltimes.com | Posted: Monday, March 8, 2010 9:13 am

RACINE - A math teacher at Walden III is accused of paying at least one of his students in exchange for letting him sexually assault the teenage boy and take nude photos of him.

Joseph T. Clazmer, 48, of 3211 Wright Ave. was charged Monday with child enticement, possession of child pornography, possession of marijuana and possession of drug paraphernalia. If convicted he faces more than 50 years imprisonment.

Clazmer was arrested by Racine police Sunday after the boy accused him of sexually assaulting him over a period of years.

According to the criminal complaint, Clazmer and the teen first met when the now 18-year-old was 15 and working at a local golf course. The boy told authorities after he got his driver's license, Clazmer would drink at the bar and ask him for a ride home.

During the school year when the boy was 16, Clazmer was reportedly his geometry teacher. He told police he and other students would go to Clazmer's house to drink alcohol and smoke marijuana. At that point, Clazmer allegedly began paying the teen to touch his body.

Reports said in the summer of 2009, the boy became injured and was given a prescription for Vicodin. When the prescription ran out, the teen said he would visit Clazmer's house and allow him to take nude photos of him in exchange for cash.

According to the complaint, Clazmer would send text messages to the boy that said "TT$," which meant "touching time for cash."

The boy told police Clazmer would rub his nude body and then pay him for it.

Racine police said the 18-year-old reported the sexual assault on March 7. After he made the allegations against Clazmer, a search warrant was executed at Clazmer's home Sunday. During the search police said they recovered marijuana and nude photos of the victim from Clazmer's computer.

Clazmer was taken into custody. Reports said he told police he was trying to help the victim, because the teen was getting involved in too much "risky behavior."

Clazmer also reportedly admitted to taking nude photos of the teen and giving him massages.

In court Monday afternoon, Clazmer's bond was set at $75,000. He was ordered not to have any contact with the victim or anyone under the age of 18. He was also ordered not to drink alcohol, use any controlled substances or use a computer.

Clazmer is scheduled to make his next court appearance on March 18.

Student, school district reaction

Monday morning at Walden, 1012 Center St., students of Clazmer said they didn't believe he had done anything wrong.

"He didn't do nothing," said Sergio Reza, 16, a student in Clazmer's geometry class. "He was cool."

Reza said he believes Clazmer has been falsely accused.

Neil Ehleiter, 15, was a teacher's assistant and student of Clazmer. He and Reza said Clazmer always took time to make sure his students understood their work. "He always asked me if I needed help," Ehleiter said.

"He was a fabulous teacher," Reza said. "He helped you. He wanted to make sure you understood."

Jane Finkenbine, president of the Walden Parent Teacher Student Association (PTSA), said the school held a "town hall meeting" to tell students and staff about Clazmer's arrest. Finkenbine was out of town Monday morning, but was told about the meeting by her daughter, one of two of her children who are students at Walden.

EXHIBIT
Tabbies
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"That's how Walden handles things," she said. "They don't know much."

Speaking for the PTSA, Finkenbine said, "We are concerned. We're just waiting for more information. We trust the school and the police department will handle this."

Racine Unified School District spokesman Paul Holley said they have begun their own internal investigation.

"We are aware of this and are awaiting more information from official police reports," he said.

Holley said the school district is reviewing Clazmer's employment status, based on its own investigation and in cooperation with law enforcement. The district did not immediately release information regarding Clazmer's employment history with Unified.

An open records request has been made by The Journal Times.

Clazmer won third place in the Journal Times 2005 Best of Racine County Best Teacher category when he was a teacher at the REAL School, according to newspaper archives. He was nominated again in 2007 and was also nominated in 2005 as Racine County's "Citizen with the Biggest Heart."

JournalTimes.com

Accused Walden teacher has been at RUSD for 20 years

JANINE ANDERSON janine.anderson@journaltimes.com | Posted: Tuesday, March 9, 2010 6:04 pm

RACINE - The Walden III High School teacher now in jail for child enticement has a 20-year history with the Racine Unified School District.

Joseph T. Clazmer, 48, 3211 Wright Ave., was charged Monday with child enticement, possession of child pornography, possession of marijuana and possession of drug paraphernalia.

A male student told police that Clazmer paid cash in exchange for allowing him to take nude photographs of the 17-year-old boy, and to touch him. The student, who is now 18, said Clazmer also had him and his friends over to drink and smoke marijuana. The boy allegedly told police that he needed the money to purchase Vicodin after a prescription ran out.

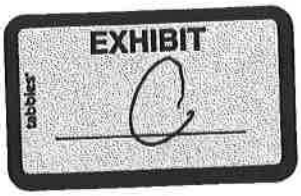
During his 20 years with the district the math teacher worked at Gilmore Middle School, Walden III middle and high schools and the REAL School. He started at Gilmore in 1989, moved to Walden in 1993, to the REAL School in 2001, and back to Walden in 2007. Prior to this week's allegations of criminal activity, there were no disciplinary actions against him.

Once the criminal investigation was announced, the district began its own internal investigation into the allegations, district officials said.

The investigation could lead to the recommendation of disciplinary action, including the possibility that the district recommend the termination of employment. Any recommendation for disciplinary action would be made to the School Board, which has final say over teacher employment issues. If termination were recommended, the School Board would hold a termination hearing and decide what action to take.

Clazmer got his license to teach in 1984 after graduating from the University of Wisconsin-Parkside, according to the Wisconsin Department of Public Instruction. His license has been current since then, and is currently under investigation.

After graduation, Clazmer taught at St. Catherine's, according to current and former teachers at the school.



JournalTimes.com

Former Walden teacher out on bond awaiting criminal trial

Teen suing alleged abuser, former teacher

JANINE ANDERSON janine.anderson@journaltimes.com | Posted: Monday, November 8, 2010 3:06 pm

MILWAUKEE - A teenage boy who said his math teacher took explicit photographs of him has filed a civil lawsuit in federal court against the former Walden III teacher.

The 18-year-old man said his ninth grade geometry teacher, Joseph Clazmer, sexually abused him for about 2*f* years, starting in February 2007, and ending in the fall of 2009. The Racine County District Attorney's Office filed criminal charges - child enticement, possession of child pornography, possession of marijuana and possession of drug paraphernalia - against Clazmer in March, alleging Clazmer engaged in sexually explicit behavior with the teenager.

The civil suit, filed Monday, names Clazmer and 100 unknown "downloaders" as defendants. Minnesota Attorney Patrick Noaker filed the suit on behalf of the victim, identified as John Doe 18 in court records. The teen is a senior in high school, Noaker said; he no longer attends Walden.

"The statute allows for this kid to not only recover damages against the person that produced the pornography, but also anybody who downloaded the image," Noaker said. "I know that the police seized the photograph off this guy's computer. We believe it was uploaded and downloaded by others. When we find out who those are, then we're going to name them publicly, and they'll be on the hook."

There is no information in the Racine County Circuit Court criminal case about images being uploaded to the Internet. Noaker said he hasn't gone searching for the photograph - which would be against the law - but said that allegation is being made "upon information and belief."

"We do believe we have circumstantial information that it was in the format to be uploaded, and for the most part that's how this whole industry works," Noaker said. "We hope there are no downloaders, but we believe there probably are."

These are new allegations, according to Attorney Mark Richards, who is representing Clazmer in his criminal case but not on the newly filed civil matter.

The abuse alleged in the civil suit is the same as Clazmer's alleged activity in the criminal case. The civil suit goes one step further and is looking to recover damages if Clazmer uploaded pornographic images of the teen to the Internet, and if others then downloaded that material.

"I do represent him on the allegations of criminal conduct that the civil suit covers and out of all the information I've been provided by the state, there is absolutely nothing that supports their allegations of uploading and distribution of images," Richards said. "I believe that those allegations are made up out of whole cloth."

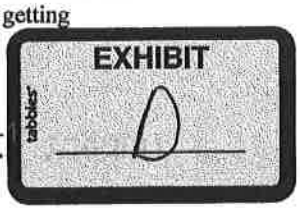
The criminal case against Clazmer has not been resolved. Clazmer is out on bond and is restricted to his home, except to see his attorney, go to church and to counseling. Clazmer is no longer an active employee of the district, according to spokeswoman Stacy Tapp.

"That's one of the reasons that we felt compelled to act, is that the criminal case still goes on," Noaker said. "We just made a decision that it's time to go forward on the civil case as well. Most of the criminal evidence will not be available to us until after the criminal case is over. We will not get in the way of this prosecution."

Noaker is an attorney at St. Paul-based Jeff Anderson & Associates, a law firm that represents victims of childhood sexual abuse. Noaker previously represented a boy who had been sexually abused by Lisa Myhre, when she was an educational assistant for the Racine Unified School District. Myhre's victim sued her in Racine County Civil Court; she remains in prison for her conviction of repeated sexual assault of the same child.

In this case, the victim and his attorney are seeking $150,000 in damages for the teenager, per image, per download, as the federal law allows.

"We're really looking to combat child pornography," Noaker said. "This kid would like to stand up not only for himself, but for victims and potential victims. He'd like people to know this law has real teeth, and if they're contemplating getting involved with child pornography, they should not do it, and if they do, victims can come after them."



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2009 WL 910738
Only the Westlaw citation is currently available.
United States District Court,
E.D. Missouri,
Eastern Division.

Joan ROE, Mary Roe, and John Roe, Plaintiff(s),
v.
ST. LOUIS UNIVERSITY and Doe Defendants 1-50, Defendant(s).

No. 4:08CV1474 JCH. April 2, 2009.

West KeySummary

1 **Federal Civil Procedure** ⇨ Parties

Interest in preserving a former student's privacy through the use of a pseudonym outweighed the public interest in ascertaining her true identity where the student's allegations in her complaint against a university included the fact that she was a rape victim, which was a personal matter of the utmost intimacy. The student's status as a rape victim would become publicly known if she were required to file suit using her true name and thus, allowing the student to sue anonymously was necessary to keep the sensitive matter private.

Attorneys and Law Firms

Dawn M. Guillory, Jennifer C. Best, Kelly Law Firm, P.C., Richmond, TX, Heidi O. Vicknair, Lannie Todd Kelly, Kelly Law Firm, P.C., Houston, TX, for Plaintiffs.

Neal F. Perryman, Jami L. Boyles, Lewis Rice, St. Louis, MO, for Defendants.

Opinion

MEMORANDUM AND ORDER

JEAN C. HAMILTON, District Judge.

*1 This matter is before the Court on Defendant Saint Louis University's Motion to Dismiss Plaintiff's Complaint, filed November 20, 2008. (Doc. No. 8). This matter is fully briefed and ready for disposition.

BACKGROUND [1]

1 The Court's background section is taken from Plaintiffs' Complaint, to which Defendant St. Louis University has not yet filed an answer.

Plaintiff Joan Roe ("Joan") and her parents, Mary and John Roe (the "Roes") (collectively "Plaintiffs") bring this suit under fictitious names. Joan was a student at Defendant Saint Louis University ("Defendant" or "SLU") from August, 2006, to December, 2006. (Complaint and Jury Demand ("Compl."), ¶ 2). Joan attended SLU on an athletic scholarship for field hockey. (*Id.*, ¶ 7). On or about September 27, 2006, Joan developed back pain during her field hockey practice. (Compl., ¶ 8). She

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EXHIBIT E

reported the pain to the team trainer the same day, but was not referred to the health clinic at SLU until October 3, 2006. (*Id.*, ¶¶ 8, 9). At the health clinic Joan was seen by a resident health care practitioner in training, and prescribed pain relievers and muscle relaxants with narcotic effects. (*Id.*, ¶ 9). No one from the SLU Athletic Department or SLU Clinic advised any of Joan's professors or her academic-department advisor that she had been placed under the influence of narcotics. (*Id.*).

Although Joan's field hockey coaches purported to place her on limited duty due to her injury, she was in fact directed to continue practicing, often enduring double duty. (Compl., ¶ 10). Joan further was required to participate in a weight lifting strength test, despite having advised the assistant strength and conditioning coach that she was suffering from a back injury. (*Id.*).

On November 6, 2006, x-rays were taken of Joan's back, which had not gotten any better. (Compl., ¶ 11). The Roes traveled to St. Louis to be with their daughter for the tests. (*Id.*). At John Roe's request, an MRI was taken on November 8, 2006. (*Id.*, ¶ 12). The MRI revealed a herniated disc at the L5-S1 level, with narrowing of the spinal canal and mass effect on the S1 nerve root. (*Id.*). Joan continues to undergo treatment for the injury to this day. (*Id.*).

On October 27, 2006, Joan was raped at a SLU fraternity party. (Compl., ¶ 14). Joan told a teammate about the incident, and the teammate indirectly relayed this information to the NCAA Compliance Officer for SLU. (*Id.*, ¶¶ 15, 16). The NCAA Compliance Officer and the Head and Assistant Coaches of the field hockey team subsequently met with Joan, and Joan verified the sexual assault. (*Id.*, ¶ 17). Plaintiffs allege SLU's officials responded to the report of the sexual assault in numerous inappropriate ways. Among other things, Plaintiffs allege SLU officials suspended Joan from the field hockey team[2]; referred Joan to a general counselor, rather than a rape crisis specialist; failed to share information regarding the assault with Joan's professors or academic-department advisor; failed to encourage Joan to reveal the identity of her assailant, or to tell the authorities or her parents of the assault; and failed to make any special accommodations to ensure Joan would not endure further contact with the assailant. (*Id.*, ¶¶ 18-23, 26).

2 Plaintiffs maintain Joan needed the support of her teammates at the time. (Compl., ¶ 18).

*2 By early November it was clear that Joan was not performing academically at SLU. (Compl., ¶¶ 28-29). On November 6, 2006, the Roes met with the Associate Dean of Athletics and the NCAA Compliance Officer, to discuss their daughter's situation. (*Id.*, ¶ 32). During this meeting the Roes were not informed about the sexual assault, nor were they told of Joan's suspension from the field hockey team.[3] (*Id.*, ¶¶ 31, 32). They were, instead, encouraged to punish their daughter for her failing grades. (*Id.*, ¶ 33). The Roes took this advice and punished Joan by cancelling a planned vacation over the Thanksgiving holiday. (*Id.*, ¶ 53).

3 Joan maintains she was never informed she was suspended from the team, but instead understood only that she was relieved of her team obligations while she dealt with the trauma of the injury and sexual assault. (Compl., ¶ 30).

On November 15, 2006, Joan was terminated entirely from the field hockey team. (Compl., ¶ 29).[4] John Roe requested that the dismissal be characterized as a medical withdrawal, but the request was denied. (*Id.*, ¶¶ 35-38).

4 The termination purportedly was based on Joan's academic performance, including her failure to attend classes or admit to missing classes, and her having been suspended from the field hockey team on November 1, 2006. (Compl., ¶ 29).

While home on Christmas break, Joan told her parents of the sexual assault. (Compl., ¶ 39). John Roe then made several calls to Father Biondi, the President of SLU, in an attempt to figure out what was going on with his daughter, and to see if there was a way to salvage her academic record. (*Id.*, ¶ 40). His calls were never returned. (*Id.*). With assistance from the Jesuit Conference, John Roe finally was granted a conference with Father Biondi on February 5, 2007. (*Id.*, ¶ 41). While Joan eventually was granted a medical withdrawal from SLU, this meant that her first semester at college yielded no academic credits. (*Id.*, ¶ 42). Joan has since moved back home with her parents, and now attends the University of Hawaii. (*Id.*). She spent a semester out of school, and has been in counseling continuously since the fall of 2006, for the assault and her "treatment at the hands of the University." (*Id.*, ¶ 42-43).

Plaintiffs filed their Complaint in this matter on September 25, 2008. (Doc. No. 1). Plaintiff Joan Roe asserts the following causes of action against SLU and Doe Defendants 1-50: Negligence, and Title IX-Disparate Treatment, based on Defendants' actions with regard to Joan's back injury (Counts I and III); and Title IX-Deliberate Indifference, based on Defendants' actions with respect to the sexual assault (Count II). All Plaintiffs assert the following causes of action against Defendants: Intentional Misrepresentation/False Promise, and Negligent Misrepresentation, based on Defendants' representations with respect to Joan's enrollment at SLU and participation in the athletic department programming (Counts IV and V); Intentional Infliction of Emotional Distress, based on Defendants' outrageous response to Joan's reporting of a sexual assault (Count VI); and Breach of Contract, based on Defendants' violation of various agreements Plaintiffs signed with the University (Count VII).

As stated above, Defendant SLU filed the instant Motion to Dismiss on November 20, 2008. (Doc. No. 8). Defendant asserts that Plaintiffs' Complaint must be dismissed for lack of jurisdiction, because they filed the lawsuit using fictitious names without first petitioning this Court for permission to do so. (Defendant St. Louis University's Memorandum in Support of its Motion to Dismiss ("SLU's Memo in Supp."), P. 1). Defendant also asserts that Plaintiffs' claim for intentional infliction of emotional distress must be dismissed for failure to state a claim upon which relief can be granted. (*Id.*). Finally, Defendant argues the claims against the fifty unidentified defendants must be dismissed because this Court lacks jurisdiction over unnamed defendants, and because Plaintiffs failed to state claims against them based on Title IX or breach of contract. (*Id.*, P. 9).

STANDARD FOR MOTION TO DISMISS

*3 In ruling on a motion to dismiss, the Court must view the allegations in the Complaint in the light most favorable to Plaintiff. *Scheuer v. Rhodes,* 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974). Additionally, the Court, "must accept the allegations contained in the complaint as true and draw all reasonable inferences in favor of the nonmoving party." *Coons v. Mineta,* 410 F.3d 1036, 1039 (8th Cir.2005) (citation omitted). A motion to dismiss must be granted if the Complaint does not contain, "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 127 S.Ct. 1955, 1974, 167 L.Ed.2d 929 (2007) (abrogating the "no set of facts" standard for Fed.R.Civ.P. 12(b)(6) found in *Conley v. Gibson,* 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)). Stated differently, to survive a motion to dismiss, the Complaint's factual allegations, "must be enough to raise a right to relief above the speculative level." *Id.* at 1965 (citations omitted).

DISCUSSION

I. *Failure To Sue In Plaintiffs' Proper Names*

In its Motion to Dismiss, Defendant first asserts Plaintiffs' Complaint must be dismissed for lack of jurisdiction, because Plaintiffs brought suit under pseudonyms without first petitioning this Court for permission to do so. (SLU's Memo in Supp., P. 3). Furthermore, even if Plaintiffs properly had petitioned this Court for permission to sue under pseudonyms, Defendant argues this case does not "present rare and exceptional facts such that suing under a pseudonym would be permissible." (*Id.*).

Rule 10(a) of the Federal Rules of Civil Procedure requires that, "[t]he title of the complaint must name all the parties." Pursuant to this rule, there is a "strong presumption against allowing parties to use a pseudonym." *W.G.A. v. Priority Pharmacy, Inc.,* 184 F.R.D. 616, 617 (E.D.Mo.1999) (citations omitted). "The reason for the presumption is a First Amendment interest in public proceedings such as lawsuits, which is furthered by identifying the parties to an action." *Id.* (citation omitted). *See also Doe v. Blue Cross & Blue Shield United of Wisconsin,* 112 F.3d 869, 872 (7th Cir.1997) ("Identifying the parties to the proceeding is an important dimension of publicness. The people have a right to know who is using their courts."). Courts occasionally have recognized exceptions to the requirement that parties' names be stated in the case caption for various reasons, however, including cases involving, "limited 'matters of a sensitive and highly personal nature.' " *W.G.A.,* 184 F.R.D. at 617, quoting *Heather K. v. City of Mallard, Iowa,* 887 F.Supp. 1249, 1255 (N.D.Iowa 1995).

Neither the Eighth Circuit nor the Supreme Court has provided guidance on when a pseudonym may be used. Many federal courts of appeal and numerous district courts have addressed the issue, however. These courts have held that a totality-of-the-

circumstances balancing test must be used when deciding whether a party can sue under a pseudonym; in other words, the court must ascertain whether the plaintiff, "has a substantial privacy right which outweighs the customary constitutionally-embedded presumption of openness in judicial proceedings." *Doe v. Frank,* 951 F.2d 320, 323 (11th Cir.1992) (internal quotations and citation omitted). *See also M.M. v. Zavaras,* 139 F.3d 798, 803 (10th Cir.1998); *Sealed Plaintiff v. Sealed Defendant,* 537 F.3d 185, 189 (2nd Cir.2008); *Doe v. Advanced Textile Corp.* 214 F.3d 1058, 1068 (9th Cir.2000); *EW v. New York Blood Ctr.,* 213 F.R.D. 108, 110 (E.D.N.Y.2003); *Heather K. v. City of Mallard,* 887 F.Supp. at 1255-56. The courts have identified several factors common to cases in which the plaintiff has been permitted to proceed under a fictitious name, including "(1) where the plaintiff is challenging government activity; (2) where the plaintiff is required to disclose information of the utmost intimacy; and (3) where the plaintiff risks criminal prosecution through the information contained in the pleading." *Doe H.M. v. St. Louis County,* 2008 WL 151629 at *1 (E.D.Mo. Jan.14, 2008), citing *Doe v. Frank,* 951 F.2d at 323.

*4 In the instant case, Plaintiffs allege this case involves "very private and personal matters," because it relates to "their personal sexual lives." (Plaintiffs Joan Roe, Mary Roe and John Roe's Suggestions in Opposition to Defendant's Motion to Dismiss ("Plaintiffs' Sugg. in Opp."), P. 4). This relation to Plaintiffs' sexual lives, and consequently, their case for pseudonymity, is based on Joan Roe's alleged sexual assault. Defendant cites several cases where courts have found that an allegation of sexual assault in a civil case does not qualify as "highly sensitive" or, as other courts have termed it, as "a matter of utmost intimacy." *See, e.g., Doe v. Hartz,* 52 F.Supp.2d 1027, 1034, 1048 (N.D.Iowa 1999) (holding allegations of "an unsolicited kiss and a rub on the back" by a priest did not warrant bringing suit anonymously); *Doe v. Shakur,* 164 F.R.D. 359, 361 (S.D.N.Y.1996) (holding plaintiff may not prosecute using a fictitious name when the plaintiff alleged in the complaint she was "the victim of a brutal sexual assault"); *Doe v. University of Rhode Island,* 1993 WL 667341 (D.R.I.1993) (refusing to let the student plaintiff use a pseudonym in a suit claiming the university's negligence caused the sexual assault of the plaintiff).

Hartz, the case Defendant classifies as "strongly analogous" to the case at hand (SLU's Memo in Supp., P. 5), is easily distinguishable from this case. In Hartz, the alleged sexual assault involved a kiss on the neck and rub on the back. 52 F. Supp .2d at 1035. The Court finds these facts substantially less private than the allegation here, that Joan was the victim of a rape. Furthermore, while the sexual assaults did rise to the level of rape in Shakur and University of Rhode Island, other factors in the balancing test, not present here, led those courts to hold anonymity was not necessary. Specifically, in those cases there was evidence that the plaintiffs' names had already been publicly disclosed. For example, in Shakur, the plaintiff conceded that the media had known her name for some time. 164 F.R.D. at 362. In University of Rhode Island, there was some indication the plaintiff had been named in prior litigation involving the incident. 1993 WL 667341 at *1. Therefore, allowing plaintiffs to sue anonymously was not necessary to keep sensitive matters private, since they were already public.

When sexual assault rises to the level of rape, at least one court has indicated that anonymity is warranted. In *Doe v. Blue Cross & Blue Shield,* the Seventh Circuit noted, "fictitious names are allowed when necessary to protect the privacy of children, **rape victims,** and other particularly vulnerable parties...." 112 F.3d at 872 (emphasis added). *See also Doe v. City of Chicago,* 360 F.3d 667, 669 (7th Cir.2004) (emphasis added) (in denying the right to proceed anonymously, court emphasized the fact that the plaintiff was, "not a minor, **a rape or torture victim,** a closeted homosexual, or ... a likely target of retaliation by people who would learn her identity only from a judicial opinion or other court filing").

*5 In the instant case the allegations of the Complaint include the fact that Joan is a rape victim, and that her status as such would become publically known if she were required to file suit using her true name. "It is understandable that plaintiff does not wish to be publicly identified as [a rape victim], which is a personal matter of the utmost intimacy." *W.G.A.,* 184 F.R.D. at 617. Upon consideration, the Court concludes the interest in preserving Plaintiffs' privacy through the use of pseudonyms outweighs the public interest in ascertaining their true identities, and so Plaintiffs will be allowed to proceed under pseudonyms in the instant case. *See Doe H.M. v. St. Louis County,* 2008 WL 151629 at *1.[5]

5 As further support for its ruling, the Court notes Defendant here knows Plaintiffs' true identities, and does not identify how its ability to conduct discovery or impeach Plaintiffs' credibility will be impaired if pseudonyms are allowed. *Doe No. 2 v. Kolko,* 242 F.R.D. 193, 198 (E.D.N.Y.2006). In any event, "the restrictions contained in this order only apply to the discovery period and may be reconsidered if this case goes to trial." *Id.* (citation omitted).

II. ***Failure To State A Claim For Intentional Infliction Of Emotional Distress***

Defendant next asserts that Plaintiffs' claim for intentional infliction of emotional distress should be dismissed for failure to state a claim upon which relief can be granted. (SLU's Memo in Supp ., PP. 7-8). Under Missouri law, the "essential elements" of a claim for intentional infliction of emotional distress are: "(1) the defendant's conduct must be outrageous or extreme; (2) the defendant must act intentionally or recklessly; (3) there must be extreme emotional distress that results in bodily harm; (4) caused by the defendant's conduct; and (5) the conduct must be intended solely to cause extreme emotional distress to the victim." *Crow v. Crawford & Co.,* 259 S.W.3d 104, 119 (Mo.App.2008) (citation omitted). *See also, Conway v. St. Louis County,* 254 S.W.3d 159, 165-66 (Mo.App.2008). The Eastern District of Missouri recently confirmed these are the correct elements in applying Missouri law to a claim of intentional infliction of emotional distress. *Bakhtiari v. Beyer,* 2008 WL 3200820 at *5 (E.D.Mo. Aug.6, 2008).

Upon consideration, the Court finds Plaintiffs fail to state a claim for intentional infliction of emotional distress, for two reasons. First, it is undisputed that Plaintiffs make no claim they suffered extreme emotional distress resulting in bodily harm; instead, in their response Plaintiffs maintain only that they need not plead bodily harm as part of their claim. (*See* Plaintiffs' Sugg. in Opp., P. 12 ("[T]here is no need for Plaintiffs to formally plead bodily harm and therefore no reason to dismiss based on failure to allege any bodily injury.")).[6] Second, Plaintiffs' Complaint does not allege that Defendant's conduct was intended "solely" to cause emotional distress to Plaintiffs. *See Bakhtiari,* 2008 WL 3200820 at *5; *Gibson v. Brewer,* 952 S.W.2d 239, 249 (Mo.1997); *Conway,* 254 S.W.3d at 166. This portion of Defendant's Motion to Dismiss will therefore be granted.

6 *Bogan v. General Motors Corp.,* 500 F.3d 828 (8th Cir.2007), does not support Plaintiffs' position. In that case, the Eighth Circuit held only that, "medically documented damages need not be proven for the tort of intentional infliction of emotional distress." *Id.* at 832 (internal quotations and citation omitted). The Court neither discussed nor altered the underlying elements of the tort itself, including that Plaintiff must allege "extreme emotional distress *resulting in bodily harm." Lingo v. Burle,* 2007 WL 2768385 at *2 (E.D.Mo. Sep.20, 2007) (citation omitted) (emphasis added).

III. ***Doe Defendants 1-50***

In its Motion to Dismiss, Defendant finally asserts that Plaintiffs' claims against the fifty unnamed defendants should be dismissed, because the Court cannot exercise jurisdiction over unnamed parties. (SLU's Memo in Supp., P. 9). "In general, fictitious parties may not be named as defendants in a civil action." *Irby v. Poplar Bluff City Com'rs,* 2009 WL 482682 at *2 (E.D.Mo. Feb.25, 2009), citing *Phelps v. United States,* 15 F.3d 735, 739 (8th Cir.1994). "An action may proceed against a party whose name is unknown, however, if the complaint makes allegations sufficiently specific to permit the identity of the party to be ascertained after reasonable discovery." *Id.,* citing *Munz v. Parr,* 758 F.2d 1254, 1257 (8th Cir.1985).

***6** In the instant Complaint, the only substantive allegation against the Doe Defendants is as follows: "The true names or capacities, whether individual, corporate, associate, or otherwise, of Defendants Does 1 to 50, inclusive, and each of them, are unknown to plaintiff, who therefore sues defendants by fictitious names and will amend this Complaint to show their true names and capacities when ascertained. Plaintiff is informed and believes, and thereon alleges, that each of the defendants designated as a DOE is responsible in some manner for the events and happenings herein referred to and proximately caused injuries and damages to plaintiff as herein alleged." (Compl., ¶ 4). Upon consideration, the Court finds this allegation insufficiently specific to permit the identities of the Doe Defendants to be ascertained after reasonable discovery. *Williams v. Crawford,* 2008 WL 2967641 at *7 (E.D.Mo. Jul.25, 2008). The Court therefore will grant this portion of Defendant's Motion to Dismiss.[7]

7 From the record, it appears that the names of several possible defendants actually are known to Plaintiffs. (*See, e.g.,* Compl., ¶¶ 32, 35). Pursuant to this Court's Case Management Order, Plaintiffs have until April 13, 2009, within which to move to join additional parties and/or amend their pleadings. (*See* Doc. No. 22, P. 1). Furthermore, if through discovery Plaintiffs ascertain the identities of additional defendants, they are free to ask for leave of Court to add the additional parties by amendment. *Estate of Rosenberg by Rosenberg v. Crandell,* 56 F.3d 35, 37 (8th Cir.1995).

CONCLUSION

Accordingly,

IT IS HEREBY ORDERED that Defendant Saint Louis University's Motion to Dismiss (Doc. No. 8) is **GRANTED** in part and **DENIED** in part, in accordance with the foregoing.

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