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Phone: 703-456-8082	Date: December 20, 2004
Re: Civil Action No. 1:04CV1360	CC: [Click here and type name]

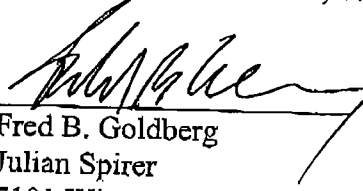
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● **Comments:**

Motion to Dismiss Claims of Anonymous Plaintiffs and Memorandum of Law in Support attached.

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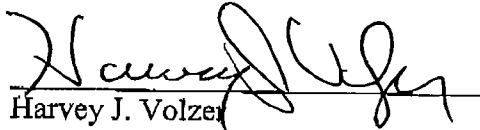
Attorneys for Defendant

CERTIFICATE OF SERVICE

I, Harvey J. Volzer, hereby certify that on this 20th day of December, 2004, I caused to be served a true and correct copy of the foregoing Motion to Dismiss Claims of Anonymous Plaintiffs by first-class U.S. Mail, postage pre-paid, as indicated below on the following:

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**PLAINTIFFS JOHN DOE I-IV AND JANE DOE I
HAVE NO BASIS TO PROCEED ANONYMOUSLY**

This Court recently highlighted the limited conditions under which a plaintiff may be allowed the "rare dispensation" of anonymity. Jane Doe I v. Merten, 219 F.R.D. 387, 391 (E.D. Va. 2004) ("Doe I") (quoting James v. Jacobson, 6 F.3d 233, 238 (4th Cir. 1993) ("James")). The circumstances of the Anonymous Plaintiffs do not satisfy the stringent standards for permitting anonymity. In Doe I, this Court identified the following factors as ones to be considered with others as appropriate, in evaluating anonymity requests:

- (1) whether the justification asserted by the requesting party to proceed anonymously 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 non-parties;
- (3) the ages of the persons whose privacy interests are sought to be protected;
- (4) whether the action is against a governmental or private party; and relatedly
- (5) the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

Doe I, 219 F.R.D. at 391-92 (quoting James, 6 F.3d at 238). The court in Doe I applied these factors to determine that alien students challenging a policy of considering immigration status in college admissions were not entitled to proceed anonymously even though the avowed consequence would be to cause them to withdraw their Complaint.

An application of the Doe I factors to the instant circumstances should lead to the same outcome. Four of the five enumerated Doe I factors either have no application here or weigh unequivocally against anonymity. Only the second factor, risk of retaliation, could have any arguable relevance to the Anonymous Plaintiffs' situation, but its application in the instant action

would be unsupported by the facts as stated in the Complaint.

**THE ANONYMOUS PLAINTIFFS HAVE PRESENTED NO EVIDENCE OF
A REASONABLE FEAR OF REPRISAL**

Federal courts allow plaintiffs to preserve their anonymity on the basis of fear of reprisal only when there is a genuine need for such, as determined by the following factors: (1) the severity of the threatened harm; (2) the reasonableness of the anonymous party's fears; and (3) the anonymous party's vulnerability to retaliation. Does I through XXIII, 214 F.3d 1058 (9th Cir. 2000). The court also must also consider the "prejudice at each stage of the proceeding to the opposing party." Id. at 1068.

Here, the Anonymous Plaintiffs fail to provide a specific description of the type and severity of the harm that they maintain justifies shielding their identities. Indeed, they fail to allege *any* facts supporting their assertion that identification could pose a risk of retaliatory physical or mental harm to them or to non-parties. The Complaint only states generally, "Plaintiff . . . seeks to proceed under a pseudonym because he fears reprisals against himself or his family as a result of participation in this lawsuit." Complaint, ¶¶ 9, 11-13. Likewise, nowhere do the Anonymous Plaintiffs set forth evidence of the reasonableness of their fears or their specific vulnerability. On the contrary, rather than supporting a request to proceed anonymously, the Complaint suggests that since 1997 the Plaintiffs have felt reasonably safe from reprisal by Defendant.

Until approximately 1997, victims' reasonable fear of reprisals against themselves or members of their families still residing in Somalia served as an insurmountable deterrent to such action. Also, until approximately 1997, it would not have been possible to conduct safely investigation and discovery in Somalia in support of such a case.

Complaint at para. 81. With the filing of this action, any perceived danger presumably has passed.

Furthermore, as detailed below, the Anonymous Plaintiffs simply cannot establish any risk that Defendant could take revenge upon any of them or close family members because most of them live either outside of Somalia altogether or in the area called Somaliland, which even the Plaintiffs admit is “dominated by the Isaaq clan” and enjoys relative “peace and security.” Opposition to Defendant’s Motion to Dismiss for Lack of Personal Jurisdiction and for Failure to State a Claim Upon Which Relief Can Be Granted (“Opposition”) at 6.

One of the Anonymous Plaintiffs, John Doe III, lives in Kuwait (Complaint, ¶ 12) where no risk of retaliation is alleged. The location of his family is unidentified, but can be presumed to be with him. Three of the plaintiffs, Jane Doe I and John Does I and II, reside in Somalia (Complaint, ¶¶ 9-11). The first two appear to reside in Somaliland (Complaint, ¶¶ 45, 54) where, according to the most recent State Department Report and Plaintiffs’ Opposition, conditions of relative calm prevail. Department of State 2003 Country Report on Human Rights Practices in Somalia (Feb. 25, 2004); Opposition at 6. The third presumably lives in this area of Somalia as well, since it is the region from which he fled following the events alleged. The families of the first two resided and presumably still reside in Ethiopia, where, as with Kuwait, no risk of retaliation is identified. The location of the family of the third, John Doe II, also is unspecified, but presumably is Somaliland, since they likely reside with him. Only John Doe IV might live in a more unsettled area of Somalia, having fled from Mogadishu in central Somalia and being identified solely as having returned to Somalia without specification as to exact location. The residence of his family is unidentified.

Even as to John Doe IV and his family, however, assuming they do reside in Mogadishu, experts on Somali political and judicial affairs, including a recent official in the Somalia Country Office of the United Nations Development Program, have stated unequivocally, in an affidavit previously submitted to the court, that none runs any risk of retaliation for their actions in connection with this case. Affidavit of Mohamed Abdirizak, ¶ 10 ("The government [of Defendant] was comprised of individuals from various clans with different political beliefs. Today, the remaining members of the government do not exist in an organized fashion and would be incapable of taking retaliatory action against Plaintiffs or their families."); Affidavit of Alessandro Campo, ¶ 11; Affidavit of Mahmoud Haji Nur, ¶ 12.

**THE REMAINING FACTORS FOR EVALUATING ANONYMITY REQUESTS
ARE EITHER INAPPLICABLE OR WEIGH STRONGLY
IN FAVOR OF DISMISSAL**

Returning to the first factor articulated by this Court in John Doe I – a need to preserve privacy in a highly personal matter – being an alleged victim or having a close relative who is an alleged victim of torture or other heinous act does not represent the kind of “‘personal information of the utmost intimacy’ that warrants abandoning the presumption of openness in judicial proceedings.” Doe I, 219 F.R.D. at 392 (quoting S. Methodist Univ. Ass’n of Women Law Students v. Wynne & Jaffe, 599 F.2d 707, 713 (5th Cir. 1979)). “[T]he types of personal intimate information justifying anonymity for litigating parties have typically involved such intimate personal matters as birth control, abortion, homosexuality, or the welfare rights of illegitimate children or abandoned families.” Id. (citations omitted). Being a victim of a crime is more likely to elicit sympathy than the salacious attention or opprobrium that could accompany disclosure of the kinds of personal information that has been held to warrant anonymity.

As for the third factor, which protects the privacy of minors, the Complaint makes no assertion that any of the Anonymous Plaintiffs is a minor. Similarly irrelevant is the fourth factor, which considers whether the action is against a governmental party. Defendant is, and for fourteen years has been, a private party. Thus, there should be no concern that disclosure might lead to official retaliation.

Finally, the fifth factor, the risk of unfairness to Defendant, weighs heavily against anonymity for at least two reasons. First, given the many years that have passed since the events alleged in the Complaint, it is likely that much of the evidence against Defendant will come from the oral testimony of the Plaintiffs. Accordingly, in order to prevail, Defendant may well be required to impeach the credibility of the Plaintiffs. Defendant will be prejudiced in this effort if he cannot examine every relevant detail of the Plaintiffs' lives, an effort that will be impeded if five of the six Plaintiffs can proceed without even disclosing their identities. See generally James, 6 F.3d at 240-41.

In addition, if this Court allows the Anonymous Plaintiffs to avoid naming themselves for fear of "reprisal" against themselves or their families (Complaint, ¶¶ 9-13), it would give unfair and unsupported judicial credence to the suggestion in the Complaint that Defendant had (and continues to have) sufficient control over the military and judicial machineries in Somalia so as to wreak vengeance on these plaintiffs for their challenge in a United States court. Notably, as discussed above, the Plaintiffs contradict their assertion of fear of reprisal with the Complaint itself. Complaint, ¶ 81. As it is undisputed that Defendant left his governmental positions and fled the country almost 15 years ago, and the Complaint provides only bald and contradictory assertions that he has any current power to retaliate against the Anonymous Plaintiffs, the Court

should not tacitly suggest that such power exists by permitting John Does I-IV and Jane Doe I to proceed anonymously.

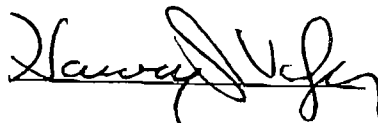
These two categories of prejudice – impeding a defendant's ability to cross examine the plaintiffs effectively and lending judicial support to a central feature of the plaintiffs' case – are the very kinds of prejudice that the Fourth Circuit Court of Appeals in the James decision described as weighing against allowing plaintiffs to proceed anonymously. James, 6 F.3d at 240-41. Unlike the circumstances in the James case (where the court ultimately permitted the anonymous plaintiffs to proceed), here the second kind of prejudice cannot be cured by giving the Defendant and his counsel confidential access to the Anonymous Plaintiffs' true identity or through any of the other ameliorating devices suggested by the James court.

CONCLUSION

Since none of the Doe 1 factors unequivocally supports the ability of the Anonymous Plaintiffs to proceed without identifying themselves, and at least one of the factors, the potential prejudice to Defendant, strongly inclines against allowing such a "rare dispensation" (Doe 1, 219 F.R.D. at 391), Defendant respectfully requests that the claims of the Anonymous Plaintiffs be dismissed.

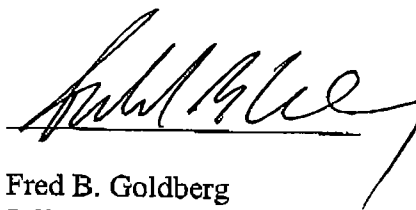
Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

BASHE ABDI YOUSUF, ET AL.

Plaintiffs,

v.

MOHAMED ALI SAMANTAR

Defendant

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Civil Action No. 1:04W1360

ORDER

Upon consideration of Defendant's Motion to Dismiss Claims of Anonymous Plaintiffs and the accompanying Memorandum of Law, and any opposition thereto, it is this _____ day of _____, 200___, hereby :

ORDERED Defendant's Motion to Dismiss is GRANTED and that

pursuant to Federal Rules of Civil Procedure 12(b)(1)

pursuant to Federal Rules of Civil Procedure 12(b)(6)

the claims of Plaintiffs, John Doe I, Jane Doe I, John Doe II, John Doe III, and John Doe IV are DISMISSED.

IT IS SO ORDERED

UNITED STATES DISTRICT JUDGE

At Alexandria