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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Eugene Division

BRANDON AUSTIN,

Plaintiff,

v.

UNIVERSITY OF OREGON; SANDY
WEINTRAUB; CHICORA MARTIN; ROBIN
HOLMES; and MICHAEL R.
GOTTFREDSON, all in their individual
capacities only,

Defendants.

Case No. 6:15-cv-02257-MC (Lead)

DEFENDANTS' UNOPPOSED MOTION
TO SEAL DOCUMENTS AND
MEMORANDUM IN SUPPORT

DOMINIC ARTIS and DAMYEAN DOTSON,

Plaintiffs,

v.

UNIVERSITY OF OREGON; SANDY
WEINTRAUB; CHICORA MARTIN; ROBIN
HOLMES; and MICHAEL R.
GOTTFREDSON, all in their individual
capacities only,

Defendants.

CV No. 6:16-cv-00647-MC

Page 1 - Defendants' Unopposed Motion to Seal Documents and Memorandum in Support

Pursuant to Oregon Local Rules 3-8(d) and (e), Defendants hereby move the court to file under seal the following documents filed by plaintiffs as they contain the name of the complainant in the underlying sexual misconduct matter at issue in this case: Exhibits A, B, D, and E to Plaintiffs' Supplemental Memorandum (Dkt. No. 31 under Case No. 6:16-cv-00647-MC).

Plaintiffs do not oppose sealing the documents at this motion to dismiss stage and acknowledge their oversight in filing the documents in a public manner. The court has informed the parties that it temporarily sealed the documents in response to defense counsel's email request to the court. *Id.* at ¶ 4. Defendants file this motion to ensure the documents continue to remain sealed.

MEMORANDUM OF POINTS AND AUTHORITIES

At oral argument on Defendants' motion to dismiss held on August 9, 2016, plaintiffs' counsel Alex Spiro appeared by phone. Due to Mr. Spiro's location outside during the call, the court was unable to hear Mr. Spiro and therefore allowed Mr. Spiro to submit in writing the comments he intended to make orally during the hearing. On Tuesday afternoon, August 16, plaintiffs' counsel submitted a Supplemental Memorandum as well as numerous new documents as exhibits (Docket Nos. 31).¹ Many of the exhibits plaintiffs filed contain the name of the female complainant in the underlying sexual misconduct at issue in this lawsuit and defendants

¹ Defendants received no notice and had no reason to anticipate that plaintiffs would file such exhibits. Defendants did not understand the court's ruling during the oral argument to allow the filing of new documents outside of the briefing but rather, understood the court as allowing plaintiffs' counsel to submit in writing only those statements plaintiffs' counsel intended to make orally during the hearing but could not due to the poor audio reception. Defendants, therefore, were surprised that plaintiffs filed new documents, let alone documents that included the name of the female complainant, particularly given that she has previously proceeded under a pseudonym in court filings. The issue of whether the court will consider the new documents, all of which, in defendants' view, actually support defendants' motion to dismiss, is an issue separate from this motion.

ask that the court protect her privacy and seal such documents from the public record. The exhibits also contain the names, phone numbers, and e-mail addresses of other students and Defendants also ask that such information be sealed. Defendants redacted the complainant's name and other student information from its submissions in this case to protect privacy interests. Plaintiffs did not similarly redact their submissions.

Upon learning of the exhibits filed by plaintiffs, defense counsel e-mailed the court on Wednesday, August 17, copying opposing counsel, to ask that the documents be sealed and the complainant's identity be kept confidential. Declaration of Michelle Smigel at ¶ 2. plaintiffs' counsel responded by e-mail acknowledging their oversight and agreeing that the documents should be sealed. *Id.* On Monday, August 22, plaintiffs' counsel emailed the court and defense counsel indicating that they agree to sealing the identity of the complainant "regarding only this particular subject at this time" and that they are only agreeing to keep her identity confidential "until such other time" in the case. *Id.* at ¶ 3. Because defendants intend to advocate that the complainant's identity be kept confidential throughout the case, defense counsel will confer further with plaintiffs' counsel, as required, and will bring any disputes about the scope of confidentiality to the court's attention if and when necessary, should the court deny defendants' motion to dismiss and allow the case to proceed.

The compelling interest in protecting the privacy of a complainant in a sexual misconduct matter who previously proceeded under a pseudonym in court filings outweighs the general right to inspect and copy public records and documents, including judicial records and documents. *Kamakana v. City & Cty. of Honolulu*, 447 F3d 1172, 1178 (9th Cir 2006) (quoting *Foltz v. State Farm Mutual Auto. Insurance Company*, 331 F3d 1122, 1135 (9th Cir 2003)). If the party seeking seal presents compelling reasons why a judicial record should be sealed, "the court must 'conscientiously balance[] the competing interests' of the public and the party who seeks to keep certain judicial records secret." *Kamakana*, 447 F3d at 1178 (quoting *Foltz*, 331 F3d at 1135). *See, e.g., Bolla v. Univ. of Hawaii*, No. CIV. 09-00165 SOM, 2010 WL 5388008, Page 3 - Defendants' Unopposed Motion to Seal Documents and Memorandum in Support

at *1 (D Haw Dec. 16, 2010), *aff'd sub nom. Bolla v. McClain*, 469 F App'x 531 (9th Cir 2012) ("The proposed redactions of the names maintain those individuals' rights to medical privacy and spare those individuals from the public embarrassment of being the alleged victims of Bolla's actions or the subject of possible discipline by UH. In other words, the redactions of the names prevents the use of court files for improper purposes, such as promoting public scandal."); *see also J.M. ex rel. Morris v. Hilldale Indep. Sch. Dist. No. 1-29*, 397 F App'x 445, 449 (10th Cir 2010) (granting unopposed motion to seal records, which disclose student's "prior sexual history, as well as excerpts of her diary" in Title IX case).

While defendants intend to ask the court to keep the identity of the complainant confidential as long as possible, at the very least, her confidentiality should be maintained until the court rules on defendants' motion to dismiss.

DATED this 23rd day of August, 2016.

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s/ Michelle B. Smigel

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Defendants' Unopposed Motion to Seal

Documents and Memorandum in Support on:

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by the following indicated method or methods on the date set forth below:

- CM/ECF system transmission.**
- E-mail.** (Courtesy copy.)
- Facsimile communication device.**
- First-class mail, postage prepaid.**
- Hand-delivery.**

DATED this 23rd day of August, 2016.

s/ Michelle B. Smigel

Michelle Barton Smigel, OSB No. 045530

*Of Attorneys for Defendants University of
Oregon, Sandy Weintraub, Chicora Martin,
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