

1 ALEXANDER HERNAEZ, State Bar No. 201441
ahernaез@foxrothschild.com
2 ANDREW S. ESLER, State Bar No. 320772
aesler@foxrothschild.com
3 HYUNKI (JOHN) JUNG, State Bar No. 318887
JJung@foxrothschild.com
4 FOX ROTHSCHILD LLP
345 California Street, Suite 2200
5 San Francisco, CA 94104-2670
Telephone: 415.364.5540
6 Facsimile: 415.391.4436
Attorneys for Defendants
7 SUNDAR IYER and RAMANA KOMPELLA

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 1/12/2021 12:18 PM
Reviewed By: F. Miller
Case #20CV372366
Envelope: 5624060**

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SANTA CLARA

11
12 DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING, an agency of the State of
13 California,

14 Plaintiff,

15 v.

16 CISCO SYSTEMS, INC., a California
Corporation; SUNDAR IYER, an individual;
17 RAMANA KOMPELLA, an individual,

18 Defendants.
19
20
21
22

Case No. 20CV372366

**DEFENDANTS SUNDAR IYER AND
RAMANA KOMPELLA'S OPPOSITION
TO PLAINTIFF CALIFORNIA
DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING'S
MOTION TO PROCEED USING A
FICTITIOUS NAME**

Date: January 26, 2021
Time: 9:00 a.m.
Dept: 2
Judge: Hon. Drew C. Takaichi

Action Filed: October 16, 2020
Trial Date: None set.

TABLE OF CONTENTS

Page No.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- I. INTRODUCTION 1
- II. STATEMENT OF FACTS 1
 - A. The DFEH Improperly Files Suit On Behalf Of Doe By Filing A Complaint Pseudonymously 1
 - B. Doe’s Identity Is Already Public Knowledge3
 - C. Doe Has Offered No Evidence To Substantiate His Subjective Fears Of Retaliation And Social Stigmatization If His Real Name Is Used..... 3
- III. LEGAL STANDARD5
- IV. LEGAL ARGUMENT6
 - A. Doe’s Identity Is Already Public Knowledge6
 - B. Plaintiff’s Subjective Fears Of Stigmatization And “Potential” Threats Of Retaliation Do Not Fit The Explicit Statutory Exceptions Permitting Pseudonym Litigation6
 - C. Plaintiff Has Cited No California Authority Supporting Anonymous Litigation In This Matter 7
 - D. Federal Case Law Concerning Anonymous Litigation Is Inapplicable To This Matter And Does Not Support Doe’s Request To Proceed Anonymously 8
 - 1. Plaintiff Offers No Basis To Fear Retaliation.....9
 - a. Factors 1 – 3: Doe Fails To Demonstrate Any Severity Of Threatened Harm, Any Reasonableness Of Fear, And Any Vulnerability To Retaliation9
 - b. Factor 4: Secrecy Is Prejudicial To Defendants 12
 - c. Factor 5: Secrecy Is Prejudicial To The Public Interest..... 13
 - 2. Doe’s Claims Do Not Involve Highly Sensitive Personal Information..... 14
- V. CONCLUSION 15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page(s)

Cases

4 Exotic Dancers v. Spearmint Rhino,
No. CV 08-4038ABCSSX, 2009 WL 250054 (C.D. Cal. Jan. 29, 2009) 13

Al Otro Lado, Inc. v. Nielsen,
No. 17-CV-02366-BAS-KSC, 2017 WL 6541446 (S.D. Cal. Dec. 20, 2017) 10

Cox Broadcasting Corp. v. Cohn,
420 U.S. 469 (1975) 13

Dep’t of Fair Employment & Hous. v. Law Sch. Admission Council, Inc.,
No. C-12-1830 EMC, 2012 WL 3583023 (N.D. Cal. Aug. 20, 2012) 7

Doe v. City of Los Angeles,
42 Cal. 4th 531 (2007) 8

Doe v. Coll. of New Jersey,
No. CV1920674FLWZNQ, 2020 WL 360719 (D.N.J. Jan. 22, 2020) 11

Doe v. John F Kennedy Univ.,
No. C-13-01137 DMR, 2013 WL 4565061 (N.D. Cal. Aug. 27, 2013) 12

Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate,
596 F.3d 1036 (9th Cir. 2010)..... 9, 11, 12

Doe v. Lincoln Unified School District,
188 Cal. App. 4th 758 (2010)..... 7

Doe v. Penzato,
No. CV 10-5154 MEJ, 2011 WL 1833007 (N.D. Cal. May 13, 2011)..... 14, 15

Doe v. Rostker,
89 F.R.D. 158 (N.D. Cal. 1981) 14

Does I Thru XXIII v. Advanced Textile Corp,
214 F.3d 1058 (9th Cir. 2000)..... 8, 9, 11, 13

Equal Employment Opportunity Commission v. ABM Industries Inc.,
249 F.R.D. 588 (E.D. Cal. 2008) 15

Jane Roes 1-2 v. SFBSC Management, LLC,
77 F.Supp.3d 990 (N.D. Cal. 2015) 10, 14

1	<i>Johnson v. Superior Court,</i>	
2	80 Cal. App. 4th 1050 (2000).....	8
3	<i>NBC Subsidiary (KNBC-TV), Inc. v. Superior Court,</i>	
4	20 Cal. 4th 1178 (1999)	8
5	<i>Rose v. Beaumont Indep. Sch. Dist.,</i>	
6	240 F.R.D. 264 (E.D. Tex. 2007).....	13
7	<i>S. Methodist Univ. Ass’n of Women Law Students v. Wynne & Jaffe,</i>	
8	599 F.2d 707 (5th Cir. 1979).....	12
9	<i>Simmons v. Ghaderi,</i>	
10	44 Cal. 4th 570 (2008)	6
11	<i>Singh v. I.N.S.,</i>	
12	94 F.3d 1353 (9th Cir. 1996).....	10
13	<i>Starbucks Corp. v. Superior Court,</i>	
14	168 Cal. App. 4th 1436 (2008).....	7, 8
15	<i>Tolton v. Day,</i>	
16	No. CV 19-945 (RDM), 2019 WL 4305789 (D.D.C. Sept. 11, 2019).....	13
17	<i>Zuegel v. Mountain View Police Dep’t,</i>	
18	No. 17-cv-3249 (N.D. Cal. Oct. 18, 2017), Dkt. 16, 5:14-16	12
19	Statutes	
20	Cal. Civ. Code § 1708.85	6
21	Cal. Civ. Code § 3427.3	6
22	Cal. Code Civ. Proc. § 367.....	6
23	Cal. Code Civ. Proc. § 422.40.....	5, 7
24	Cal. Penal Code § 293.5.....	6
25	Cal. Gov’t Code § 12965(a).....	5
26	Cal. R. Ct. 8.401.....	6

1 **I. INTRODUCTION**

2 This lawsuit presents a dispute between John Doe (“Doe”), an extremely highly compensated
3 software engineer, and his current employer, Cisco Systems, Inc. (“Cisco”). Filed on Doe’s behalf by
4 the California Department of Fair Employment and Housing (“DFEH” or “Plaintiff”), the Complaint
5 also names as defendants Sundar Iyer (“Iyer”) and Ramana Kompella (“Kompella”) (collectively,
6 “Defendants”). As discussed in Defendants’ earlier filed Demurrer, the claims against Iyer and
7 Kompella must be dismissed because they are not based on actionable facts, but rather time-barred
8 managerial decisions which cannot form the basis of a harassment claim as a matter of law.

9 Compounding its already significant error, the DFEH also chose to file this lawsuit using a
10 pseudonym—a practice the California Legislature has reserved for specifically delineated reasons,
11 none of which apply here. The DFEH now attempts to belatedly justify its decision to proceed
12 anonymously by filing the present Motion to Proceed Using a Fictitious Name (the “Motion”), which
13 relies entirely on a strained and procedurally improper interpretation of federal case law, which has
14 no applicability whatsoever when a California statute controls. In support of the Motion, the DFEH
15 submits nothing more than anecdotal statements of non-parties¹ and unsubstantiated threats of
16 retaliation against Doe, a tech millionaire residing in the prosperous San Francisco Bay Area whose
17 identity is already ascertainable from the allegations of the Complaint. Doe’s request for anonymity
18 completely lacks justification, let alone any reasoning that would outweigh the public’s interest in
19 open judicial proceedings. Accordingly, the Motion should be denied and the DFEH should be
20 required to file an amended complaint identifying Doe by name.

21 **II. STATEMENT OF FACTS**

22 **A. The DFEH Improperly Files Suit On Behalf Of Doe By Filing A Complaint**
23 **Pseudonymously**

24 On June 30, 2020, Plaintiff filed suit on behalf of Doe in the District Court for the Northern
25 District of California by filing a complaint pseudonymously. Doe alleges that Iyer and his
26 _____

27 ¹ Defendants have concurrently filed their evidentiary objections to Plaintiff’s Motion to Proceed Using a Fictitious
28 Name, in addition to an opposition to Plaintiff’s Request for Judicial Notice filed in support of their Motion to Proceed
Using a Fictitious Name.

1 subsequent *interim* manager, Kompella, harassed him in violation of the California Fair Employment
2 and Housing Act because he is a self-identified Dalit. (*See* Complaint.)

3 Specifically, the Complaint alleges that, “[i]n or around October 2016, two of Doe’s
4 colleagues told Doe that Iyer informed them that Doe was from the ‘Scheduled Caste’ (Dalit) and
5 enrolled in the Indian Institute of Technology (IIT) through affirmative action.” (Complaint, ¶ 31.)
6 Defendant Iyer denied making the statement, indicating “Doe’s colleagues were not telling the truth.”
7 (*Id.*, ¶ 32.) In fact, Defendant Iyer was responsible for recruiting and hiring Doe into an engineering
8 role on an elite project. (*Id.* at ¶ 30.) Iyer offered Doe a very competitive starting salary, in addition
9 to stock grants valued in in the millions of dollars, making him one of the mostly highly compensated
10 members of the project. (Declaration of Sundar Iyer [“Iyer Decl.”], 2:3-8.) Iyer sacrificed the
11 entirety of his own equity in Cisco to provide Doe, and other members of the project, with generous
12 compensation packages. (*Id.*) Such actions do not align with Doe’s allegations of harassment.

13 On or around February 26, 2018, Kompella became the Interim Head of Engineering after Iyer
14 stepped down from his position as head of the project. (Complaint, ¶45.) Doe’s only non-conclusory
15 allegation is that Kompella began “requiring Doe to submit weekly status reports,” although that
16 requirement was not instituted at the request of Kompella, let alone on his authority. (*Id.*; Declaration
17 of Ramana Kompella [“Kompella Decl.”], 2:2-11.) Moreover, Doe does not allege that he
18 complained to Cisco Employee Relations or Human Resources concerning this management decision.
19 (*Id.*)

20 Plaintiff voluntarily dismissed the federal action on October 16, 2020 and initiated this action
21 on behalf of Doe, again pseudonymously, by filing a complaint the same day. As grounds for
22 proceeding under a pseudonym, Plaintiff has represented in the Complaint that Doe’s status as a self-
23 identified Dalit exposes him to condemnation and retaliation, including “*potential* threats of
24 violence.” (Complaint, p.1, n.1 (emphasis added).) Doe now submits a declaration in support of the
25 present Motion, arguing that anonymity in this litigation is appropriate for two reasons. First, to
26 protect his family, in both India and the United States, from subjective perceived threats and acts of
27 violence should their status as Dalit be revealed. (*See* Doe Decl., 3:14-20.) And second, to prevent
28

1 Doe, his wife, and their children from being discriminated and retaliated against in their professional
2 and social lives. (*See id.* at 3:6-13; 3:21-24.)

3 **B. Doe’s Identity Is Already Public Knowledge**

4 As an initial matter, Doe’s identity is already easily ascertainable, not as a result of
5 Defendants’ actions, but because the DFEH chose to name the individual Defendants, Doe’s joint
6 university experience with Iyer, and over twenty other pieces of identifying information, all of which
7 was publicly broadcast by the substantial publicity the DFEH has courted. Indeed, a simple Google
8 search utilizing Doe’s education and employment history, available via both the DFEH’s publicly
9 filed complaint(s) — and cross-quoted in various press articles, opinion pieces, blogs and archives
10 across the Internet — make Doe’s identity ascertainable.

11 The DFEH cannot put the cat back in the bag, and the substantial press they have garnered to
12 this case directly contradicts the, now belated, request for anonymity. Indeed, the DFEH’s
13 contemporaneously filed Request for Judicial Notice is replete with news articles and publications
14 concerning this lawsuit, no doubt garnered following their June 30, 2020 press release. (*See*
15 Plaintiff’s Request for Judicial Notice, Document Nos. 6-17.) The DFEH is on the one hand claiming
16 Doe needs to file as a Doe plaintiff to preserve his privacy, while on the other energetically
17 publicizing the case in the media (*Id.*). Such actions belie any contention about a need to file as a
18 Doe.

19 **C. Doe Has Offered No Evidence To Substantiate His Subjective Fears Of
20 Retaliation And Social Stigmatization If His Real Name Is Used**

21 In support of the present Motion, Doe has submitted a declaration in an attempt to substantiate
22 his subjective fears of violence and social stigmatization if his real name is used in this lawsuit. Yet,
23 Doe’s declaration focuses largely on his alleged experiences as a young child *in India*, including the
24 alleged anti-Dalit violence in rural areas of the country. (*See* Doe Decl., 2:3-13.) Neither Plaintiff
25 nor Doe have provided any information concerning the source and/or severity of any actual threats of
26 violence against Doe and/or his family *in the United States*, or realistic danger of social
27 stigmatization. Even if the Court were to consider Doe’s request for anonymity based on his
28 subjective and perceived fears for the safety of his “extended” family in India, there is no indication
that any member of Doe’s family, let alone those individuals living in an undisclosed rural area of a

1 country of approximately 1.2 million square miles and over 1 billion people, could or would be linked
2 to Doe. (Doe Decl., 3:19-21.) Nonetheless, the fact that Doe’s identity is ascertainable from the
3 allegations in the Complaint makes this argument moot. Doe also submits no explanation or evidence
4 to support the notion that he would be subject to further alleged discrimination, harassment, or
5 retaliation by anyone, let alone Iyer and Kompella. (Doe Decl., 3:6-13.) Indeed, the Defendants are
6 already aware of Doe’s identity and caste as a result of this litigation and yet, despite this knowledge,
7 have not shared it. (Iyer Decl., 2:15-24; Kompella Decl., 2:12-16.)

8 Moreover, Defendants have never held casteist views, and have actively opposed the caste
9 system in their personal and professional lives. (Iyer Decl., 1:9-22; Kompella Decl., 1:14-19.)
10 People of the Dalit caste (when such information was made available by self-identifying Dalits) have
11 chosen to work with both Iyer and Kompella in the past, as well as at Cisco. (Iyer Decl., 2:9-14;
12 Kompella Decl., 1:14-19.) Defendant Iyer recruited, mentored, and promoted meritorious personnel
13 who self-identified as Dalit, including within the current group at Cisco. (Iyer Decl., 2:9-14.)

14 In an apparent attempt to fill these unmistakable evidentiary gaps, Plaintiff submits several
15 declarations of non-parties identifying perceived caste discrimination. (*See* Declarations of Dr. Suraj
16 Yengde, Thenmozhi Soundararajan, and Prof. Laurence Simon.) These declarations, which lack any
17 relevant admissible evidence, are properly the subject of Defendants’ contemporaneously filed
18 evidentiary objections. Indeed, the declarations are comprised entirely of unrelated narratives of
19 caste identity in India (*see* Yengde Decl.) and the efforts of an unrelated university to expand its anti-
20 discrimination policy (*see* Simon Decl.). Without any factual support, these declarants argue that
21 Doe would be subject to the same anti-Dalit sentiment allegedly faced in India *in the United States*.
22 Anti-Dalit sentiment *in India* has no rational nexus to the alleged fears of violence and social
23 stigmatization faced by a highly compensated engineer living in California.

24 Plaintiff also embraces a report conducted by Equality Labs, a self-proclaimed “Dalit Civil
25 Rights Organization.” (*See* Soundararajan Decl., 1:22.) The report, entitled “*Caste in the United*
26 *States: A Survey Among South Asian Americans*,” was generated from a self-administered and self-
27 reporting questionnaire submitted by roughly 1,500 *self-identifying* South Asian Americans. (*See*
28 Soundararajan Decl., Ex. 1, p. 15.) Yet, and by Equality Lab’s own admission, “[i]t is unclear

1 whether the Caste distribution in our survey reflects the actual distribution of Caste groups of South
2 Asians in the diaspora, or that some groups disproportionately participated.” (*Id.* at 17.) Equality
3 Lab plainly states that there is “no existing data . . . to correlate [the report’s] findings.” (*Id.* at Ex. 1,
4 p. 16.) Truly, the report, which is not representative of the population being analyzed, is nothing
5 more than a biased, scientifically flawed attempt to quantify perceived caste discrimination in the
6 United States.

7 Plaintiff’s Motion, accompanied by of over 300 pages of immaterial documentation, is merely
8 an attempt to insulate Doe from the normal inconveniences associated with litigation, which have
9 been exacerbated by the whirlwind of media attention Plaintiff has, by its own actions, garnered to
10 this case.² The Court should not countenance such actions.

11 **III. LEGAL STANDARD**

12 California Code of Civil Procedure section 422.40 requires that a complaint include in the title
13 of the action “the names of all the parties.” Cal. Code Civ. Proc. § 422.40. As Plaintiff alleges, its
14 authority to institute this action is provided by Government Code Section 12965(a). (Complaint, ¶
15 17.) Section 12965(a) provides, in relevant part:

16 In the case of failure to eliminate an unlawful practice under this part . . . , the director
17 . . . may bring a civil action in the name of the department *on behalf of the person*
18 *claiming to be aggrieved* In any civil action, the person claiming to be aggrieved
shall be the real party in interest

19 Cal. Gov’t Code § 12965(a) (emphasis added). Thus, Section 12965(a) confirms that in “any” civil
20 action the DFEH brings in court, it sues “on behalf of” the complaining employee, like Doe.
21 Moreover, this section commands that when DFEH sues “on behalf of” the employee, the employee
22 shall be “the real party in interest” in the civil action. Accordingly, the pleading requirements of
23 section 422.40 apply with equal force to Doe, the real party in interest. *See* Cal. Code Civ. Proc. §
24 367 (“Every action must be prosecuted in the name of the real party in interest, except as otherwise
25 provided by statute.”).

26 _____
27 ² Defendants concurrently filed Opposition to Plaintiff’s Request for Judicial Notice explains in greater detail why *all* of
28 Plaintiff’s supporting documentation is not properly the subject of a request for judicial notice.

1 **IV. LEGAL ARGUMENT**

2 **A. Doe’s Identity Is Already Public Knowledge**

3 It is unnecessary to engage in a lengthy analysis of the merits of Plaintiff’s Motion because
4 Doe’s identity is already public knowledge. The DFEH made the decision to reference identifying
5 information in both publicly filed complaints. This information is sufficient to ascertain Doe’s
6 identity. As a result, and due to the actions of the DFEH, the adjudication of this motion is moot.

7 **B. Plaintiff’s Subjective Fears Of Stigmatization And “Potential” Threats Of**
8 **Retaliation Do Not Fit The Explicit Statutory Exceptions Permitting Pseudonym**
9 **Litigation**

10 Plaintiff has not alleged that Doe meets any statutory exception that would authorize him to
11 proceed in this litigation under a fictitious name under California law, which governs here. In fact,
12 no such exception exists. The only California statutes authorizing the use of fictitious names in
13 pleadings do so under very limited situations that are inapplicable to the current matter. *See, e.g.,*
14 Cal. R. Ct. 8.401 (requiring the use of pseudonyms in cases involving juveniles); Cal. Civ. Code §
15 1708.85 (allows a plaintiff in a civil proceeding to use a pseudonym when bringing an action against
16 a person who intentionally distributes intimate or sexual imagery of the person); Cal. Civ. Code §
17 3427.3 (permits health care patients and staff to file complaints using a pseudonym); Cal. Penal Code
18 § 293.5 (allows victims of sex related crimes to request that their identity be either Jane or John).

19 As a matter of statutory construction, where the Legislature explicitly delineates exceptions to
20 a general rule, the presumption is that those exceptions are the only permissible exceptions absent
21 legislative intent to the contrary. *See, e.g., Simmons v. Ghaderi*, 44 Cal. 4th 570, 583 (2008).

22 Here, and as discussed above, Plaintiff’s basis for shielding Doe’s identity is that if Doe’s
23 caste were publicly disclosed, members of the public would subject him and his family to retaliation,
24 including threats and/or actual acts of violence, and social stigmatization. Doe’s desire to shield his
25 caste and the stated reasoning do not fit any of the specifically enumerated statutory exceptions that
26 would permit a party to proceed anonymously. As a result, Doe’s request to proceed under a
27 pseudonym should be denied.
28

1 C. **Plaintiff Has Cited No California Authority Supporting Anonymous Litigation In**
2 **This Matter**

3 Consistent with Defendants’ argument above, the only exceptions to the general rule that a
4 complaint must name all of the parties per California Code of Civil Procedure section 422.40 are
5 those the Legislature has explicitly delineated. Doe does not fit into any of these exceptions. There
6 is no California case law that sets forth a general test that, if met, would permit a real party in interest,
7 such as Doe, to proceed using a pseudonym.

8 Plaintiff’s citation to *Doe v. Lincoln Unified School District*, 188 Cal. App. 4th 758 (2010),
9 for the proposition that California “courts have allowed parties to proceed under fictitious names
10 where ‘exceptional circumstances’ exist” is misguided. (Motion, 5:9-11.) In *Lincoln Unified School*
11 *District*, the court simply rejected the defendant’s argument that a fictitious name may **never** be used
12 by a plaintiff. 188 Cal. App. 4th at 766-67. The case stands for little more than that, says nothing
13 about the circumstances under which pseudonyms may be used, and certainly does not stand for the
14 proposition that a plaintiff may unilaterally elect to sue as a Doe. *See id.*; *see also Dep’t of Fair*
15 *Employment & Hous. v. Law Sch. Admission Council, Inc.*, No. C-12-1830 EMC, 2012 WL 3583023,
16 at *3 (N.D. Cal. Aug. 20, 2012) (“DFEH’s citation to *Doe v. Lincoln Unified Sch. Dist.*, . . . is
17 unhelpful here since **the court’s decision did not reach the merits of whether anonymity should or**
18 **should not have been granted.**”) (emphasis added). Defendants are not arguing that fictitious names
19 may never be used; only that doing so without a specifically delineated statutory exemption is
20 improper. Plaintiff has failed to cite any case law to the contrary.

21 Plaintiff’s citation to *Starbucks Corp. v. Superior Court*, 168 Cal. App. 4th 1436 (2008), for
22 the proposition that “the judicial use of ‘Doe plaintiffs’ to protect **legitimate** privacy rights has gained
23 wide currency,” is similarly unpersuasive. *Id.* at 1452 n.7 (emphasis added). There, and although the
24 court opines in *dictum* that identifying a plaintiff by pseudonym might be an option “in appropriate
25 circumstances to protect persons convicted of relatively minor marijuana offenses from being further
26 stigmatized,” the court explicitly confirms “[w]e do not decide the appropriate standards or
27 mechanisms for protective nondisclosure of identity in California, because the matter is not now
28 before us.” *Id.* Moreover, the cases cited by the *Starbucks* court in support of the general proposition

1 that the use of “doe” may be appropriate to protect “legitimate privacy rights” dealt exclusively with
2 issues of sexuality, and did not address a general test for when anonymous litigation is appropriate.
3 *Id.* (citing *Doe v. City of Los Angeles*, 42 Cal. 4th 531 (2007) (doe pseudonym used to protect the
4 identity of plaintiff child sex abuse victims) and *Johnson v. Superior Court*, 80 Cal. App. 4th 1050
5 (2000) (protecting identity of non-party sperm donor during discovery)).

6 If Doe is allowed to hide behind a pseudonym without proper legal justification, then any
7 litigant would be permitted to use a pseudonym simply because they want to avoid public knowledge
8 of their involvement in litigation. This would be contrary to public policy and the presumption that
9 the public should have free access to information. *See, e.g., NBC Subsidiary (KNBC-TV), Inc. v.*
10 *Superior Court*, 20 Cal. 4th 1178, 1210 (1999) (“We believe that the public has an interest, in *all* civil
11 cases . . . and that interest strongly supports a general right of access in ordinary civil cases.”)
12 (emphasis in original).

13 Additionally, Defendants may be constrained in building their defense, specifically in
14 pursuing certain discovery if they were prevented from disclosing the identity of Doe. For example,
15 Defendants should not be precluded from reaching out to co-workers to obtain relevant testimony
16 about Doe and Doe’s performance. Similarly, Defendants should not be constrained in seeking
17 evidence from third parties (some of whom could be unknown to defendants) with whom Doe might
18 have shared relevant information. Any such constrains on Defendants’ ability to defend against
19 Doe’s allegations would be unjust and violate Defendants’ rights.

20 **D. Federal Case Law Concerning Anonymous Litigation Is Inapplicable To This**
21 **Matter And Does Not Support Doe’s Request To Proceed Anonymously**

22 Plaintiff, in an effort to circumvent the California Legislature’s narrow exceptions to the
23 general rule prohibiting pseudonym litigation, tries to shoehorn its argument using the inapplicable
24 Ninth Circuit test for anonymity developed in *Does I Thru XXIII v. Advanced Textile Corp*, 214 F.3d
25 1058 (9th Cir. 2000). And, the *federal* test espoused in *Advanced Textile Corp.* has not been
26 expressly adopted by California courts, making such analysis irrelevant. Truly, if Plaintiff wished for
27 federal law to apply, then it should have continued to litigate Doe’s case in the Northern District of
28 California, as opposed to voluntarily dismissing that action and proceeding before this Court, which

1 applies California law and procedure. Nonetheless, Defendants will address Plaintiff’s extraneous
2 federal arguments.

3 In *Advanced Textile Corp*, the Ninth Circuit set the legal standard for “a *district court’s*
4 *discretionary decision* to permit a party to proceed anonymously.” *Advanced Textile Corp*, 214 F.3d
5 at 1068 (emphasis added). There, the court held that a party *may* proceed anonymously only when
6 the party’s need for anonymity outweighs prejudice to the opposing party and the public’s interest in
7 knowing the party’s identity. *Id.* The court identified this need in three situations: (1) when
8 identification creates a risk of retaliatory physical or mental harm; (2) when anonymity is necessary
9 to preserve privacy in a matter of a sensitive and highly personal nature; and (3) when the anonymous
10 party is compelled to admit his or her intention to engage in illegal conduct, thereby risking criminal
11 prosecution (this situation is not applicable in this matter). *Id.* Even if the Court were to consider
12 federal law on this issue, Plaintiff fails to demonstrate that Doe is entitled to proceed in this manner
13 under the legal standard set forth in *Advanced Textile Corp*.

14 **1. Plaintiff Offers No Basis To Fear Retaliation**

15 When a plaintiff seeks to proceed under a pseudonym to “shield the anonymous party from
16 retaliation,” the Ninth Circuit has instructed district courts to evaluate the following factors to
17 determine the need for anonymity: (1) the severity of the threatened harm, (2) the reasonableness of
18 the anonymous party’s fears, (3) the anonymous party's vulnerability to retaliation, (4) prejudice to
19 the opposing party, and (5) whether the public's interest in the case requires that litigants reveal their
20 identities. *See Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate*, 596 F.3d 1036, 1042 (9th
21 Cir. 2010). Plaintiff cannot demonstrate any need for anonymity under the factors listed above.

22 **a. Factors 1 – 3: Doe Fails To Demonstrate Any Severity Of**
23 **Threatened Harm, Any Reasonableness Of Fear, And Any**
24 **Vulnerability To Retaliation**

25 In the Ninth Circuit, courts have permitted a plaintiff to proceed under a fictitious name where
26 the plaintiff faces a severe and reasonable threat of physical or personal harm, including:

- 27 • Factory workers who had been personally threatened with “termination and
28 blacklisting, . . . deportation, arrest, and imprisonment” for protesting working
conditions. *Advanced Textile*, 214 F.3d at 1064.

- 1 • Exotic dancers who provided evidence that “there are risks inherent in working as an
2 exotic dancer, including risk of [physical] injury” by nightclub patrons if their names
3 or addresses are publicly disclosed and, for that reason, “it is customary for the exotic
4 dancers to use . . . stage names” when performing. *Jane Roes 1-2 v. SFBSC
5 Management, LLC*, 77 F.Supp.3d 990, 994-995 (N.D. Cal. 2015) (noting that the
6 defendant agreed that “the public disclosure of an exotic dancer’s true identity presents
7 substantial risk of harm.”).
- 8 • Asylum seekers, who offered evidence of the harms faced in their home countries
9 prompting them to seek asylum and use pseudonyms, “are particularly vulnerable . . .
10 to the retaliation they fear if their true names are revealed.”
11 *Al Otro Lado, Inc. v. Nielsen*, No. 17-CV-02366-BAS-KSC, 2017 WL 6541446, at *6
12 (S.D. Cal. Dec. 20, 2017).

13 Plaintiff’s reliance on *Singh v. I.N.S.*, 94 F.3d 1353 (9th Cir. 1996), is entirely misplaced.

14 There, the Ninth Circuit reviewed the decision of the Board of Immigration Appeals denying an
15 ethnic Indian citizen of Fiji’s application for asylum. *Id.* at 1356. ***The court did not address***
16 ***pseudonym litigation in any context.*** In reversing the Board of Immigration Appeals’ decision, the
17 court noted that the petitioner had introduced sufficient evidence to justify asylum. Specifically, the
18 court found that evidence of “persistent death threats and assaults on [petitioner’s] life, family, and
19 business” constituted persecution within the meaning of the Immigration and Nationality Act. *Id.* at
20 1360 (“Singh was told that if he did not quit his job as the only Indo-Fijian shipping general manager
21 in Fiji, he would be killed and his wife and daughter ‘finish[ed] off.’ Shortly thereafter, loaded cargo
22 pallets were dropped nearly on top of Singh as he walked on the wharf.”). The decision to grant
23 asylum was also influenced by the fact that the Fijian government, including the police, were
24 unwilling or incapable of protecting the petitioner. *Id.*

25 Here, Plaintiff has not made an affirmative showing sufficient to establish that Doe’s desire to
26 proceed anonymously outweighs any prejudice to Defendants and the public’s interest in knowing
27 Doe’s identity. Neither Plaintiff nor Doe have provided any information concerning the source
28 and/or severity of any actual threats of violence against Doe and/or his family ***in the United States***, or
that authorities in the United States would be unable, or unwilling, to offer protection against such
threats.

Moreover, and as discussed above, Doe’s identity and caste are already public knowledge, yet
he offers no evidence that he has been harmed or threatened in any way. Also undermining Doe’s
claim of vulnerability is his admission that Iyer—colleagues for at least 20 years—apparently knew

1 Doe’s caste at the time he hired Doe. Accordingly, it is unclear how permitting Doe to proceed
2 anonymously would alleviate any subjective unsubstantiated fear that Iyer, who gave Doe millions in
3 compensation and recruited, hired, managed, and promoted self-identified Dalit at Cisco, would
4 retaliate against Doe. (Iyer Decl., 2:3-24.) Nor is there any factual basis for assuming that Kompella
5 harbors any animus towards Doe. (Kompella Decl., 1:14-19.)

6 Thus, Plaintiff’s showing is entirely speculative, and largely relates to conditions allegedly in
7 India. These assertions are insufficient to establish a “severe” and reasonable fear of threatened
8 harm in the United States. *See Kamehameha Schools*, 596 F.3d at 1040-1046 (affirming the District
9 Court’s decision that plaintiffs could not proceed anonymously despite claimed fear for their safety
10 if their identities were revealed because “[w]hat is relevant is [whether] plaintiffs were threatened,
11 and [whether] a reasonable person would believe that the threat might actually be carried out.”)
12 (quoting *Advanced Textile Corp.*, 214 F.3d at 1068); *see also Doe v. Coll. of New Jersey*, No.
13 CV1920674FLWZNQ, 2020 WL 360719, at *3 (D.N.J. Jan. 22, 2020) (holding that fears of safety if
14 plaintiff’s status as a “traditional Jew” was revealed were “speculative and not reasonable” because
15 “Doe had failed to show any evidence that Jewish litigants are put at a greater risk of anti-Semitic
16 discrimination or violence by virtue of using their names in federal court.”). This is true even if the
17 Court were to consider the alleged anonymous internet postings concerning Doe and the filing of this
18 lawsuit. (*See Soundararajan Decl.*, 2:27-3:12, Ex. 2); *Kamehameha Schools*, 596 F.3d at 1045
19 (affirming decision to deny anonymous litigation because “many times people say things
20 anonymously on the internet that they would never say in another context and have no intention of
21 carrying out.”).

22 Plaintiff cannot establish that Doe is more vulnerable to retaliatory harm than any other
23 plaintiff filing a discrimination, harassment, and/or retaliation complaint. If Doe truly wanted to
24 protect his identity, he could (and should) have arbitrated his claims pursuant to his arbitration
25 agreement, which would have resulted in very little, if any, publicity. Rather, Doe chose to have the
26 DFEH pursue this action on his behalf, at which time it engaged in a media blitz to garner (now
27 unwanted) attention. The issue of anonymity is nothing more than a media strategy to engender
28 sympathy; there is no real concern for Doe’s safety.

1 **b. Factor 4: Secrecy Is Prejudicial To Defendants**

2 While Defendants know the identity of Doe because of the DFEH investigatory process,
3 allowing him to proceed under a pseudonym prejudices Defendants in at least two respects. First,
4 “the mere filing of a civil action against [] private parties may cause damage to their good names and
5 reputation.” *S. Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707, 713
6 (5th Cir. 1979). It therefore would be fundamentally unfair to allow Plaintiff to make such serious
7 allegations against the Defendants without Doe standing, as he must, in a public
8 forum. *See Kamehameha Schools*, 596 F.3d at 1042 (“The normal presumption in litigation is that
9 parties must use their real names . . . [because of] the right of private individuals to confront their
10 accusers.”). Plaintiff named both Defendants in the Complaint and disclosed both their (perceived)
11 castes and cities of residence. If Plaintiff was truly concerned about caste discrimination and
12 stereotypes in the United States, then it could have named Iyer and Kompella as “Doe” defendants.
13 Instead, Plaintiff chose to perpetuate caste-based stereotypes by forcing a caste status on Defendants
14 based on their birth, not beliefs, subjecting Defendants to public commentary while hamstringing their
15 ability to defend themselves by masking their accuser. (Iyer Decl., 1:13-22; Kompella Decl., 1:14-
16 19.) It therefore would be fundamentally unfair to allow Doe to make such serious allegations while
17 hiding behind a cloak of anonymity. *See Wynne & Jaffe*, 599 F.2d at 713 (noting basic fairness of an
18 accuser being identified in litigation); (Iyer Decl., 2:25-3:3; Kompella Decl., 2:17-3:7.)

19 Second, and as discussed above, Defendants would be constrained in defending against Doe’s
20 allegations if they are prevented from disclosing the identity of Doe. *See Doe v. John F Kennedy*
21 *Univ.*, No. C-13-01137 DMR, 2013 WL 4565061, at *4 (N.D. Cal. Aug. 27, 2013) (“Allowing
22 Plaintiff to proceed anonymously would create significant barriers for the defense. Defendants’
23 efforts to investigate the case would be hampered.”); *see also Zuegel v. Mountain View Police Dep’t*,
24 No. 17-cv-3249 (N.D. Cal. Oct. 18, 2017), Dkt. 16, 5:14-16 (“Even if, as Plaintiff suggests,
25 Defendants already know Plaintiff’s real name, the prejudice results from withholding Plaintiff’s
26 name from third parties [in discovery], and eventually from the jury.”). This prejudice is current,
27 tangible, and substantial, unlike Doe’s subjective, vague, and unsubstantiated fears.

1 **c. Factor 5: Secrecy Is Prejudicial To The Public Interest**

2 A court “must decide whether the public's interest in the case would be best served by
3 requiring that the litigants reveal their identities.” *Advanced Textile*, 214 F.3d at 1068. A plaintiff's
4 “use of fictitious names runs afoul of the public's common law right of access to judicial
5 proceedings.” *Id.* at 1067. The Supreme Court recognized the importance of the public's interest
6 in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), where it stated:

7 A trial is a public event. What transpires in the courtroom is public property . . . There
8 is no special perquisite of the judiciary which enables it . . . to suppress, edit, or censor
9 events which transpire in proceedings before it.

10 *Id.* at 492–93.

11 As set forth above, Plaintiff has failed to rebut the normal presumption in litigation
12 that parties must use their real names. Accordingly, permitting anonymity in this context “runs afoul
13 of the public’s common law right of access to judicial proceedings.” *Advanced Textile Corp.*, 214
14 F.3d at 1067; *see also 4 Exotic Dancers v. Spearmint Rhino*, No. CV 08-4038ABCSSX, 2009 WL
15 250054, at *3 (C.D. Cal. Jan. 29, 2009) (“Identifying the parties to the proceeding is an important
16 dimension of publicness. The people have a right to know who is using their courts.”) (internal
17 quotations omitted); *Tolton v. Day*, No. CV 19-945 (RDM), 2019 WL 4305789, at *2 (D.D.C. Sept.
18 11, 2019) (denying Doe designation as limiting public access erodes public confidence in judicial
19 system).

20 Here, Plaintiff and Doe’s conclusory allegations that there is stigma and potential threats of
21 violence associated with a person’s status as Dalit are nowhere close to the affirmative showing
22 sufficient to establish that Doe’s desire to proceed anonymously outweighs the public’s interest in
23 open proceedings or prejudice to Defendants in their efforts to defend against these claims. Plaintiff
24 has submitted absolutely zero evidence that Doe has faced, or will face, any stigmatization, threats of
25 violence, or acts of violence if his identity is known. Additionally, the public interest and
26 fundamental fairness strongly weigh in favor disclosing Doe’s real name, particularly given the
27 DFEH’s attempts to gin up media and public interest in his Complaint. *See Rose v. Beaumont Indep.*
28 *Sch. Dist.*, 240 F.R.D. 264, 267 (E.D. Tex. 2007) (fundamental fairness considerations where

1 defendant would not be able to defend itself in the public arena and plaintiff would be able to “hurl
2 accusations” behind “a cloak of anonymity”).

3 **2. Doe’s Claims Do Not Involve Highly Sensitive Personal Information**

4 Courts in the Ninth Circuit have also held that where there is a substantial privacy interest, a
5 plaintiff may be allowed to proceed anonymously. *See e.g. Doe v. Rostker*, 89 F.R.D. 158, 162 (N.D.
6 Cal. 1981). In *Rostker*, Doe plaintiffs requested leave to remain anonymous in a case challenging the
7 allegedly unlawful administration of the Selective Service registration system. The court, in denying
8 their request, characterized their fear of retaliatory conduct resulting from their suit was “both
9 speculative and prospective.” *Id.* After comprehensively surveying prior decisions, the court
10 identified the types of cases in which plaintiffs have been allowed to proceed anonymously. Not
11 surprisingly, the most common instances are cases involving mental illness, children, personal safety,
12 and sexuality. *Id.* at 161. The mere fact that the plaintiff “may suffer some embarrassment or
13 economic harm is not enough.” *Id.*

14 Plaintiffs argue that this case involves matters that are sensitive and highly personal. But the
15 cases Plaintiff cites in support of this unfounded allegation deal exclusively with sexuality and are
16 clearly distinguishable from the present situation.

17 In *SFBSC Management, LLC*, exotic dancers provided evidence that “there are risks inherent
18 in working as an exotic dancer, including risk of [physical] injury” by nightclub patrons if their
19 names or addresses are publicly disclosed and, for that reason, “it is customary for the exotic dancers
20 to use . . . stage names” when performing. *SFBSC Management, LLC*, 77 F.Supp.3d at 994, 995. The
21 court noted that the request to proceed anonymously fell into the area of “human sexuality,” a
22 “sensitive and highly personal area” which may justify anonymity. *Id.* at 994. Additionally, the
23 defendant in that matter agreed that “the public disclosure of an exotic dancer’s true identity presents
24 substantial risk of harm.” *Id.* at 995.

25 In *Doe v. Penzato*, No. CV 10-5154 MEJ, 2011 WL 1833007 (N.D. Cal. May 13, 2011), the
26 court granted the plaintiff’s motion to proceed anonymously after she presented evidence that her
27 injury arose out of sensitive and personal matters involving human trafficking, sexual battery, and
28 invasion of privacy. *Id.* at *1. The court was also persuaded by the fact that the plaintiff resided in a

1 facility housing female victims of violence, and that those victims would face unwanted attention if
2 her name was made public. *Id.* at *3. Finally, the court noted that the defendants had not been
3 prejudiced by the anonymous filing because the case had not received any media attention—clearly
4 not the situation here. *Id.* at *4.

5 In *Equal Employment Opportunity Commission v. ABM Industries Inc.*, 249 F.R.D. 588 (E.D.
6 Cal. 2008), victims of sexual assault provided evidence that they faced “danger of serious physical
7 injury” where the named defendant “has committed violent crimes against [the victims]” and was “a
8 registered sex offender who was convicted of forcible rape.” *Id.* at 594.

9 Plaintiff is seeking to proceed under a fictitious name to protect Doe from the alleged
10 stigmatization associated with his status as a self-identifying Dalit. As discussed above, caste is not a
11 privacy interest that would justify bringing a claim under a fictitious name. Moreover, Plaintiff has
12 presented zero evidence to support the assertion that Doe or his family would face “social
13 stigmatization, ostracization, harassment, ridicule, [or] personal embarrassment.” (Motion, 8:20-21.)
14 Doe’s fears are entirely subjective and speculative.

15 Accordingly, because neither the Complaint nor Motion discloses any credible basis to
16 proceed anonymously, any fair balancing makes it clear that the continued use of a pseudonym is
17 improper and unwarranted.

18 **V. CONCLUSION**

19 For the reasons set forth above, Defendants respectfully request that the Court deny Plaintiff’s
20 Motion to Proceed Using a Fictitious Name and require that Plaintiff file an amended complaint
21 identifying Doe by name.

22 Dated: January 12, 2021

23 FOX ROTHSCHILD LLP

24 By 

25 ALEXANDER HERNAEZ

26 ANDREW S. ESLER

27 HYUNKI (JOHN) JUNG

28 Attorneys for Defendants SUNDAR IYER
and RAMANA KOMPELLA