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FILED
FEB 11 2021

Clerk of the Court
Superior Court of California County of Santa Clara
BY FARRIS BRYANT DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

Decision on Submitted Matter

CALIFORNIA DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING, an agency of the
State of California,

Plaintiff,

Vs.

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

Defendants.

CASE NO. 20CV372366

**ORDER RE: MOTION TO PROCEED USING
FICTICIOUS NAME**

The motion of CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING ("DFEH") to proceed using fictitious name came on for hearing before the Honorable Drew C. Takaichi on January 26, 2021 at 9:00 a.m. in Department 2. The matter having been submitted, after full consideration of the authorities submitted by each party, and arguments made by the parties in their papers and at the hearing, the court makes the following ruling:

This is an action for discrimination based on caste. John Doe ("Doe") is an employee for defendant Cisco Systems, Inc. ("Cisco"). Doe is a Dalit Indian, the most disadvantaged people under India's centuries-old caste system. The complaint alleges specific statements and conduct of Doe's supervisor, defendant Iyer ("Iyer"), as constituting discrimination against Doe,

1 and further alleges that harassment and retaliation by Iyer occurred after Plaintiff confronted
2 Iyer about the statement. Doe contacted Cisco's human resources and employee relations to
3 file a discrimination complaint against Iyer. After Cisco investigated Doe's complaint, Iyer's
4 retaliatory efforts continued. Doe sought review of Cisco's investigation's findings, and a
5 reopening of the investigation occurred. Cisco, however, refused to recognize discrimination
6 based on caste as an unlawful basis for discrimination, and did not train managerial employees
7 to prevent, deter, or monitor casteism in its workforce. Defendant Kompella succeeded Iyer as
8 Doe's supervisor, and continued to discriminate, harass and retaliate against Doe.

9 Doe filed an administrative complaint against Cisco, and plaintiff California Department
10 of Fair Employment and Housing (DFEH) served the administrative complaint on Cisco, followed
11 by an amended administrative complaint against Cisco, Iyer and Kompella. DFEH filed a civil
12 rights complaint in the United States District Court which was subsequently voluntarily
13 dismissed by DFEH. On October 16, 2020, DFEH filed the instant complaint in this Court against
14 Cisco, Iyer and Kompella (collectively, "Defendants").

15 DFEH moves for an order permitting it to proceed with its action using the fictitious
16 name John Doe for the complainant, and to require Defendants to redact personally identifying
17 information from all public communications, filings, and statements. Cisco has filed a separate
18 motion to compel arbitration and stay proceedings. The motion is submitted and a separate
19 ruling will be issued.

20 DFEH asserts that: the identification of Doe's name and caste creates significant risk of
21 retaliatory physical and mental harm; a fictitious name should be permitted due to the personal
22 and sensitive nature of caste disclosure for Doe; Doe has a legitimate fear of further
23 discrimination should his identity be revealed; and Doe's need for anonymity outweighs any
24 prejudice to the opposing parties or the public. DFEH asserts that "State and federal courts
25 have adopted a balancing test between the need for anonymity and the public interest in open
26 proceedings," citing to *Doe v. Lincoln Unified School Dist.* (2010) 188 Cal.App.4th 758 (hereafter,
27 "*Lincoln*"). However, in *Lincoln*, the court addressed the defendants' argument that "California
28 state courts do not permit plaintiffs to sue under fictitious names," citing cases disproving the

1 argument. (See *Lincoln*, supra, 188 Cal.App.4th at pp.766-767.) After quoting the Ninth Circuit,
2 in *Does I thru XXIII v. Advanced Textile Corp.* (9th Cir. 2000) 214 F.3d 1058 (hereinafter,
3 “*Advanced Textile*”), it concluded:

4 In the present matter, defendants have taken a blanket approach in arguing that
5 fictitious names can never be used by a plaintiff. They have therefore presented no argument
6 as to why the use of a pseudonym by plaintiff, a tenured teacher accused of being mentally
7 unfit to teach, is inappropriate in this case....

8 Because defendants fail to present any argument as to why plaintiff should not have
9 been permitted to use a fictitious name under the circumstances of this case, we need not
10 consider the issue further. (*Lincoln*, supra, 188 Cal.App.4th at p.767.)

11 Plainly, *Lincoln* does not adopt any federal standard; rather, it merely concludes that
12 fictitious names can be used in certain circumstances, such as “to protect legitimate privacy
13 rights.” (Id. at p.766, quoting *Starbucks Corp. v. Super. Ct. (Lords)* (2008) 168 Cal.App.4th 1436,
14 1452, fn. 7.) That said, this Court does not suggest that *Advanced Textile* is incompatible with
15 California law. *Advanced Textile* stated that, generally “Plaintiffs’ use of fictitious names runs
16 afoul of the public’s common law right of access to judicial proceedings.” (*Advanced Textile*,
17 supra, 214 F.3d at p.1067.) However, as *Lincoln* stated, the Ninth Circuit allows a party “to use
18 pseudonyms in the ‘unusual case’... (1) when identification creates a risk of retaliatory physical
19 or mental harm [citations]; (2) when anonymity is necessary ‘to preserve privacy in a matter of
20 sensitive and highly personal nature,’ [citations]; and (3) when the anonymous party is
21 ‘compelled to admit [his or her] intention to engage in illegal conduct, thereby risking criminal
22 prosecution’ [citations].” (*Lincoln*, supra, 188 Cal.App.4th at p.767, quoting *Advanced Textile*,
23 supra, 214 F.3d at p.1068; see also *Doe v. Frank* (11th Cir. 1992) 951 F.2d 320, 324 (stating that
24 “[I]awsuits are public events...[a] plaintiff should be permitted to proceed anonymously only in
25 those exceptional cases involving matters of a highly sensitive and personal nature, real danger
26 of physical harm, or where the injury litigated against would be incurred as a result of the
27 disclosure of the plaintiff’s identity”); see also *NBC Subsidiary (KNBC-TV), Inc. v. Super. Ct.*
28 (*Locke*) (1999) 20 Cal.4th 1178, 1210 (California Supreme Court case stating that “the public has

1 an interest, in all civil cases... and that interest strongly supports a general right of access in
2 ordinary civil cases"); see also *In re Shortridge* (1893) 99 Cal. 526, 530 (stating that "[i]n this
3 country it is a first principle that the people have the right to know what is done in their
4 courts").)

5 In support of Plaintiff's and Doe's position, Plaintiff submits the declarations of DFEH
6 counsel Siri Thanasombat, Dr. Suraj Yengde, Executive Director of Equality Labs Thenmozhi
7 Soundararajan, Doe, and Professor Laurence Simon. Plaintiff also requests judicial notice of a
8 report by the U.S. Department of State, Bureau of Democracy, Human Rights and Labor
9 concerning human rights practices in India, and 23 articles.

10 The articles are not proper subjects of judicial notice and the request for judicial notice
11 as to these articles is DENIED. The report by the U.S. Department of State is a proper subject of
12 judicial notice, but its relevance is unclear as to the determination of whether the complainant
13 may proceed with a fictitious name. While the report establishes violence, human rights
14 violations and discrimination towards those members of the Dalit in India, it does not concern
15 members of the Dalit in the United States, or any actions against those persons.

16 Doe's declaration supports his assertion that there is rampant discrimination against the
17 Dalit in India. Doe's "greatest concern is for the safety of [his] wife and children, and [his]
18 family who still live in India and share the same last name." Similarly, the declarations of
19 Yengde and Simon concern discrimination and violence towards the Dalit in India. While the
20 Court has great sympathy for the plight of those members of the Dalit in India, research has not
21 revealed any case authority—and Plaintiff has not pointed to any case authority—as to whether
22 residents of another country or another country's discriminatory practices is a consideration as
23 to whether a party in California may remain anonymous in a lawsuit alleging violation of the
24 California FEHA against a corporation in California.

25 As to the risk of retaliatory physical or mental harm to Doe, the evidence submitted is
26 speculative. Doe is "worried that revealing my identity as the complainant this lawsuit will
27 significantly hinder my ability to obtain future employment, free from caste-based
28 discrimination, harassment, or retaliation, in companies that employ predominately Indian

1 engineers.” (Doe decl., ¶ 13.) However, Doe’s concern is not premised on any threat of such
2 hindrance of ability to obtain future employment, but on a late 2016 or 2017 interaction with
3 an engineering friend who works in Silicon Valley who told Doe that another friend was
4 considering approaching Iyer with a business proposal which made Doe realize that Iyer and
5 Doe work and live in a relatively small community and that Iyer and Doe share professional and
6 social connections beyond Cisco. (Id.) This does not establish retaliatory physical or mental
7 harm. (See *Doe v. Kamehameha Sch.* (9th Cir. 2010) 596 F.3d 1036, 1042-1046 (affirming denial
8 of motion to proceed anonymously, finding district court did not abuse its discretion in finding
9 that the plaintiffs’ fears were unreasonable despite actual threats of physical retaliation, stating
10 “we recognize the paramount importance of open courts... [f]or this reason, the default
11 presumption is that the plaintiffs will use their true names”).)

12 As to whether being Dalit is of a highly sensitive and personal nature, DFEH cites to *Roes*
13 *1-2 v. SFBSC Mgmt., LLC* (N.D.Cal. 2015) 77 F. Supp. 3d 990, a case involving nude exotic
14 dancers, in which the court stated that:

15 This case moreover falls into what may be roughly called the area of human sexuality....
16 The most famous case of this sort—which, however, did not address the question of
17 pseudonymity—is certainly *Roe v. Wade*, 410 U.S. 1113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973).
18 But there are many others. E.g., *United States v. Doe*, 488 F.3d 1154, 1155 n.1 (9th Cir. 2007)
19 (allowing defendant convicted of producing child pornography to use pseudonym); *Doe v.*
20 *Megless*, 654 F.3d 404, 408 (3rd Cir. 2011) (“Examples of areas where courts have allowed
21 pseudonyms include . . . abortion, . . . transexuality . . . and homosexuality.”) (quotation
22 omitted) (cited by SFBSC at ECF No. 19 at 4-5); *John Doe 140 v. Archdiocese of Portland*, 249
23 F.R.D. 358, 361 (D. Or. 2008) (plaintiff alleging that he was sexually abused [**9] as minor
24 allowed to proceed anonymously); *Doe v. United Serv. Life Ins. Co.*, 123 F.R.D. 437 (sexual
25 orientation); *Doe v. Deschamps*, 64 F.R.D. 652 (D. Mont. 1974) (abortion; collecting older cases).
26 (*Roes 1-2 v. SFBSC Mgmt., LLC* (N.D.Cal. 2015) 77 F. Supp. 3d 990, 994.)

27 *Roes 1-2 v. SFBSC Mgmt., LLC*, is inapposite. DFEH also cites to *Doe v. Penzato* (N.D.Cal.
28 May 13, 2011, No. CV10-5154 MEJ) 2011 U.S. Dist. LEXIS 51681, at *9, a case involving a victim

1 of sexual assault. However, as defendants Iyer and Kompella argue, victims of sexual assault
2 are explicitly subject to protection. (See Pen. Code § 293.5, subs. (a), (b).) Moreover, the
3 Court does not find the identification of one's caste in a different country to be akin to the
4 privacy interest of victims of sexual assault. DFEH lastly cites *EEOC v. ABM Indus.* (E.D.Cal.
5 2008) 249 F.R.D. 588, which involves a registered sex offender who was convicted of forcible
6 rape, raped a female employee at the complainants' worksite, and committed numerous sexual
7 crimes against the complainants. This too is distinguishable from the identification of one's
8 caste. DFEH and Doe fail to establish that the identification of one's caste is per se a matter of
9 sensitive and highly personal nature.

10 In reply, DFEH argues that it is the plaintiff, and that Doe is merely a witness and
11 informant. However, the suggestion that Doe is merely a witness is specious: the complaint
12 seeks remedies expressly for Doe. While the Court agrees that plaintiffs and witnesses can
13 proceed anonymously, DFEH and Doe have failed to establish a basis for doing so here. DFEH's
14 motion for an order permitting it to proceed with its action using the fictitious name John Doe
15 for the complainant is DENIED.

16 Stay of Order is granted for a period of 60 days from date the Order is filed.

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18 Dated: February 3, 2021

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Hon. Drew C. Takaichi
Judge of the Superior Court



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**
DOWNTOWN COURTHOUSE
191 NORTH FIRST STREET
SAN JOSÉ, CALIFORNIA 95113
CIVIL DIVISION

FILED
FEB 11 2021

Clerk of the Court
Superior Court of California County of Santa Clara
BY FARRIS BRYANT DEPUTY

RE: **California Department Of Fair Employment And Housing vs Cisco Systems, Inc. et al**
Case Number: **20CV372366**

PROOF OF SERVICE

ORDER RE: MOTION TO PROCEED USING FICTITIOUS NAME was delivered to the parties listed below the above entitled case as set forth in the sworn declaration below.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line (408) 882-2690 or the Voice/TDD California Relay Service (800) 735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown below, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on February 11, 2021. CLERK OF THE COURT, by Farris Bryant, Deputy.

cc: Melanie Lea Proctor CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING 2218 Kausen Drive Suite 100 ELK GROVE CA 95758
Lynne C Hermle 1000 Marsh Road Menlo Park CA 94025
Alex Hemaiez 345 California St Suite 2200 San Francisco CA 94104
Timothy Carl Travelstead Narayan Travelstead PC 7901 Stoneridge Drive Ste 230 PLEASANTON CA 94588