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CISCO SYSTEMS, INC.

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

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

14 Plaintiff,

15 v.

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

18 Defendants.

Case No. 20CV372366

**OPPOSITION BY DEFENDANT CISCO
SYSTEMS, INC. TO MOTION BY
PLAINTIFF DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING TO
PROCEED USING A FICTITIOUS
NAME**

Date: January 26, 2021
Time: 9:00 am
Dept.: 2
Judge: Honorable Drew C. Takaichi

Complaint Filed: October 16, 2020

1 This proceeding is subject to arbitration and the pending motions to compel arbitration
2 should be granted. When that occurs, DFEH’s present Motion on behalf of real party in interest
3 John Doe to hide Doe’s identity becomes moot (or to the extent it remains relevant, can be
4 decided by the arbitrator). *See* Motion to Compel Arbitration and Stay Proceedings by Defendant
5 Cisco Systems, Inc.¹ Not only does arbitration better serve DFEH’s and Doe’s goals with the
6 present Motion because the parties’ filings will not automatically be made public, but this dispute
7 should always have been submitted to arbitration due to real party in interest Doe’s enforceable
8 arbitration agreement. DFEH and Doe could have easily avoided any issue regarding his identity
9 in public filings by complying with his arbitration agreement, which neither DFEH nor Doe
10 contend is unenforceable. *See* Opposition to Cisco’s Motion to Compel Arbitration and Stay
11 Proceedings.

12 Even if this action were to remain in court, this Motion fails because DFEH does not
13 address the applicable California law that specifies the very limited circumstances when a party
14 may proceed under a fictitious name. There is good reason for DFEH’s avoidance: real party in
15 interest John Doe does not fall into any of the California statutory exceptions that might otherwise
16 permit him to proceed anonymously. In short, there is no basis in California law for this action to
17 remain in court and Doe to be anonymous. DFEH’s motion should be denied.

18 As the California Supreme Court has explained, “it is a first principle that the people have
19 the right to know what is done in their courts.” *In re Shortridge*, 99 Cal. 526, 530 (1893); *In re*
20 *Providian Credit Card Cases*, 96 Cal. App. 4th 292, 310 (2002) (applying *In Re Shortridge* and
21 affirming trial court refusal to seal documents where requesting party could not overcome “the
22 right of public access.”). Given this principle, California Code of Civil Procedure § 422.40
23 requires that a complaint include in the title of the action “the names of all the parties.” As DFEH
24 alleges, its authority to institute this action is provided by Government Code § 12965(a). Section
25 12965(a) confirms that in “any” civil action brought by DFEH, it sues “on behalf of” the
26 complaining employee (here, Doe). This section commands that when DFEH sues “on behalf of”
27

28 ¹ Iyer and Kompella are third-party beneficiaries to Doe’s arbitration agreement, so Doe’s claims
against them similarly belong in arbitration.

1 the employee, the employee shall be “the real party in interest” in the civil action. Accordingly,
2 the requirements of section 422.40 apply with equal force to real party in interest John Doe. Doe
3 must be named. *See* Cal. Code Civ. Proc. § 367 (“Every action must be prosecuted in the name of
4 the real party in interest, except as otherwise provided by statute.”).

5 Given these requirements, the Legislature has delineated specific enumerated instances
6 which permit an individual to file a lawsuit using a pseudonym. *See* Rule of Court 8.401
7 (juveniles); Cal. Civ. Code § 1708.85(f)(1) (distribution of intimate or sexual imagery, operative
8 July 1, 2015, see § 1078.85(j)); Cal. Civ. Code § 3427.3 (health care patients and staff); Health &
9 Safety Code § 120291(c)(1) (victim deliberately infected with HIV); Cal. Penal Code § 293.5
10 (victims of criminal sexual abuse, trafficking, child molestation, hate crimes). Cal. Code Civ.
11 Proc. § 372.5 (authorizes a court to permit a *guardian ad litem* to be appointed and appear under a
12 pseudonym if the *guardian ad litem* establishes facts and circumstances that demonstrate an
13 overriding interest in preserving his or her anonymity); Cal. Code Civ. Proc. § 367.3 (participants
14 in the address confidentiality program may proceed in a civil proceeding using pseudonyms).

15 No other exceptions to file a lawsuit using a pseudonym exist under California law.

16 Where the Legislature explicitly delineates exceptions to a general rule, the presumption is
17 that those exceptions are the only permissible exceptions. *See e.g., Simmons v. Ghaderi*, 44
18 Cal.4th 570, 583 (2008) (“Under the maxim of statutory construction, *expressio unius est exclusio*
19 *alterius*, if exemptions are specified in a statute, courts may not imply additional exemptions
20 unless there is a clear legislative intent to the contrary.”) (internal citations omitted).

21 Here, DFEH does not acknowledge the public’s broad right to know who the parties in
22 this action are. *In re Shortridge*, 99 Cal. at 530; *In re Providian*, 96 Cal. App. 4th at 31. None of
23 the statutory exceptions that would otherwise permit pseudonymous pleading apply here. John
24 Doe is not a minor, so Rule of Court 8.401 does not protect his identity. Nor does this case
25 involve the distribution of intimate or sexual imagery, medical issues, or HIV. Cal. Civ. Code §
26 1708.85(f)(1); Cal. Civ. Code § 3427.3; Health & Safety Code § 120291(c)(1). There are
27 certainly no allegations of crimes of sexual abuse, trafficking, child molestation, or hate crimes.
28 Cal. Penal Code § 293.5. And the other statutes that permit anonymity – none of which are raised

1 by DFEH or Doe – are wholly inapplicable to this case. Cal. Code Civ. Proc. § 372.5 (authorizes
2 court to permit *guardian ad litem* to be appointed and appear under pseudonym if *guardian*
3 establishes facts and circumstances demonstrating overriding interest in preserving anonymity);
4 Cal. Code Civ. Proc. § 367.3 (participants in the address confidentiality program may proceed in
5 a civil proceeding using pseudonyms).

6 The Motion has many pages addressing the federal standard and federal cases, but none of
7 those apply in California state court. Indeed, if DFEH and Doe wished to have the federal
8 standard apply, they could have remained in federal court where DFEH originally filed this
9 action. Compl. ¶ 14. But DFEH voluntarily dismissed the federal action and refiled here, and
10 California law applies. DFEH cannot pick and choose between California and federal law. State
11 law applies in state court except “in matters governed by the Federal Constitution or by Acts of
12 Congress”. *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). Here, neither the Federal
13 Constitution nor any congressional statute is invoked, and DFEH has not suggested otherwise.
14 Indeed, in the federal court action, the Complaint contained federal Title VII claims, which DFEH
15 voluntarily dismissed to refile in state court. DFEH and Doe cannot avail themselves of the
16 federal standard in this purely state law matter.

17 In any event, even if the federal standard applied, DFEH has not met that standard. The
18 Ninth Circuit instructs federal district courts to evaluate the following factors to determine a
19 plaintiff’s need for anonymity: (1) the severity of the threatened harm, (2) the reasonableness of
20 the anonymous party’s fears, (3) the anonymous party’s vulnerability to retaliation, (4) prejudice
21 to the opposing party, and (5) whether the public’s interest in the case requires that litigants reveal
22 their identities. *Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate*, 596 F.3d 1036,
23 1040-46 (9th Cir. 2010) (quoting *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058,
24 1068 (9th Cir. 2000)); *see also Doe v. Coll. of New Jersey*, No. CV1920674FLWZNQ, 2020 WL
25 360719, at *3 (D.N.J. Jan. 22, 2020), *aff’d*, No. CV 19-20674 (FLW), 2020 WL 3604094 (D.N.J.
26 July 2, 2020) (fears of safety “speculative and not reasonable”). Here, DFEH’s evidence of
27 potential harm falls short of meeting this standard. DFEH has not made an affirmative showing
28 sufficient to establish that Doe’s desire to proceed anonymously outweighs any prejudice to

1 Defendants and the public's interest in knowing Doe's identity. This is particularly true given
2 that DFEH inexplicably chose to publicly name the individual defendants based on unsupported,
3 conclusory allegations that DFEH well knows from its investigation cannot be sustained and
4 expose these individuals to the alleged harassment and threats from which DFEH claims Doe
5 must be protected. There was no need for DFEH to publicly name the individual defendants, and
6 DFEH easily could have used pseudonyms in its filings and its wide publicity efforts for the case.
7 It is grossly unfair for DFEH and Doe to claim that Doe is somehow entitled to protection that
8 DFEH and Doe unilaterally and intentionally – and without good reason – chose not to extend to
9 the individual defendants.

10 Because DFEH cannot establish an exception to the requirements of Code of Civil
11 Procedure § 422.40, DFEH must comply with California law and specify Doe's name in the
12 Complaint. DFEH's Doe Motion must be denied.

13
14 Dated: January 12, 2021

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19 By: _____



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