

1 JANETTE WIPPER (#275264)  
2 MELANIE L. PROCTOR (#228971)  
3 SIRITHON THANASOMBAT (#270201)  
4 JEANETTE HAWN (#307235)  
5 2218 Kausen Drive, #100  
6 Elk Grove, CA 95758  
7 Telephone: (916) 478-7251  
8 Facsimile: (888) 382-5293

9 Attorneys for Plaintiff, DFEH  
10 (Fee Exempt, Gov. Code, § 6103)

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **IN AND FOR THE COUNTY OF SANTA CLARA**

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

16 Plaintiff,

17 vs.

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

21 Defendants.

22 **Case No.: 20CV372366**

23 **PLAINTIFF CALIFORNIA DEPARTMENT  
24 OF FAIR EMPLOYMENT AND HOUSING'S  
25 NOTICE OF MOTION AND MOTION TO  
26 PROCEED USING A FICTITIOUS NAME**

27 **Date:** TBD  
28 **Time:** TBD  
**Department:** TBD  
**Judge:** TBD

**Action Filed:** October 16, 2020  
**Trial Date:** TBD

29 **TO ALL NAMED PARTIES AND THEIR ATTORNEYS OF RECORD:**

30 **YOU ARE HEREBY NOTIFIED THAT**, pursuant to this Court's instructions regarding  
31 COVID-19<sup>1</sup> as of the filing of this Motion, plaintiff California Department of Fair Employment and  
32 Housing (DFEH) submits this Motion without a hearing date. The Calendar clerks will assign a hearing  
33 date based on the Court's availability once the Motion is processed.

34 At the hearing on this Motion, in the Department to be assigned, in this Court located at 191  
35 North First Street in San Jose, California 95113, plaintiff DFEH will move the Court for an order  
36 permitting the DFEH to proceed with its action using the fictitious name John Doe for the complainant,

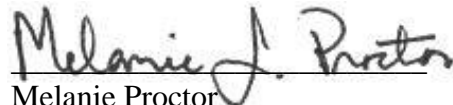
37 \_\_\_\_\_  
38 <sup>1</sup> The Court's Updates and Information Regarding Novel Coronavirus 2019 (COVID-19) are available  
at [https://www.scscourt.org/general\\_info/news\\_media/covid19.shtml#changes](https://www.scscourt.org/general_info/news_media/covid19.shtml#changes).

1 and to require defendants Cisco Systems, Inc., Sundar Iyer, and Ramana Kompella, to redact personally  
2 identifying information from all public communications, filings, and statements.

3 The DFEH makes this motion on the ground that exceptional circumstances justify the use of a  
4 fictitious name to protect the true identity of the complainant because identification would create a risk  
5 of retaliatory physical and mental harm to the complainant and his family, and anonymity is necessary to  
6 preserve privacy in a matter of a sensitive and highly personal nature, specifically complainant's caste.  
7 (*Doe v. Lincoln Unified Sch. Dist.* (2010) 188 Cal.App.4th 758, 767.) This motion is based on this  
8 notice, the attached points and authorities, the concurrently filed request for judicial notice, and  
9 declarations of Siri Thanasombat, John Doe, Dr. Suraj Yengde, Thenmozhi Soundararajan, and  
10 Professor Laurence Simon.

11  
12 DATED: November 2, 2020

CALIFORNIA DEPARTMENT OF FAIR  
EMPLOYMENT AND HOUSING

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15 Melanie Proctor  
16 Attorneys for the DFEH  
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16 Corporation; SUNDAR IYER, an individual;  
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17 Defendants.

**Case No.: 20CV372366**

**PLAINTIFF CALIFORNIA DEPARTMENT  
OF FAIR EMPLOYMENT AND HOUSING'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF MOTION  
TO PROCEED USING A FICTITIOUS  
NAME**

**Date:** TBD  
**Time:** TBD  
**Department:** TBD  
**Judge:** TBD

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18 [reported-during-lockdown-cpim/article32072865.ece](https://www.thehindu.com/news/national/tamil-nadu/81-cases-of-violence-against-dalits-reported-during-lockdown-cpim/article32072865.ece)> ..... 3

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1 **I. INTRODUCTION**

2 The Department of Fair Employment and Housing (DFEH) moves the Court to allow the  
3 complainant to proceed anonymously, using the fictitious name of John Doe. The use of a fictitious  
4 name would protect the safety and privacy interest of the complainant and his family as Dalit Indian, a  
5 population once known as the “Untouchables” who are the most disadvantaged people under India’s  
6 millenia-old caste system, and also guard against threats of violence, retaliation, and harm to reputation.  
7 No prejudice to the opposing party would occur because defendants Cisco Systems, Inc. (Cisco), Sundar  
8 Iyer, and Ramana Kompella already possess the information that the complainant wishes to keep private.

9 Under these extraordinary circumstances, requiring the complainant to reveal his identity, and  
10 thus, his caste, would effectively discourage victims of caste-based discrimination, harassment, and  
11 retaliation from seeking justice out of fear that their caste would become even more widely known  
12 putting them at risk of caste-based violence and retribution beyond that for which they originally sought  
13 the justice system’s help to address. It is therefore in the public’s interest to allow the complainant to  
14 maintain his privacy in order to encourage victims of discrimination based on religion, ancestry, national  
15 origin/ethnicity, and race/color to report violations of state and federal law. Accordingly, the Department  
16 requests the Court to grant its motion.

17 **II. PROCEDURAL HISTORY**

18 On July 30, 2018, John Doe filed a verified administrative complaint against defendant Cisco  
19 Systems, Inc. under the California Fair Employment and Housing Act and related authorities (FEHA).  
20 On or around October 9, 2018, Doe filed an amended administrative complaint against defendants  
21 Cisco, Sundar Iyer, and Ramana Kompella. The administrative complaints alleged that defendants  
22 unlawfully discriminated, harassed, and retaliated against Doe in violation of the FEHA.<sup>1</sup> (Declaration  
23

24 \_\_\_\_\_  
25 <sup>1</sup> FEHA prohibits employment discrimination and harassment based on race, religious creed, color,  
26 national origin, **ancestry**, physical disability, mental disability, medical condition, genetic information,  
27 marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and  
28 veteran status. (Gov. Code, § 12940, subds. (a) and (j) [national origin includes but is not limited to an  
individual’s or an ancestor’s actual or perceived: **physical, cultural, or linguistic characteristics**; tribal  
affiliation; **religious institutions**; and **name** associated with a national origin group; and national origin  
groups include but are not limited to **ethnic groups** or **geographic places of origin**].)

1 of Siri Thanasombat in Support of Plaintiff Department of Fair Employment and Housing’s Motion to  
2 Proceed Using Fictitious Names (“Thanasombat Decl.”), ¶¶ 3, 4.)

3 DFEH investigated the complainant’s administrative complaint and determined that there was  
4 merit to the complaint. The parties then participated in a mandatory mediation on February 11, 2020,  
5 and private mediation on June 10, 2020, which were unsuccessful. (*Id.*, ¶ 5.) The parties entered  
6 consecutive tolling agreements to toll the statutory deadline for DFEH to file a civil action to June 30,  
7 2020. (*Ibid.*) The EEOC issued a right to sue letter regarding the complainant’s federal claims on June  
8 29, 2020. (*Id.*, ¶ 6.) DFEH initially filed an action in federal court on June 30, 2020. On October 16,  
9 2020, DFEH voluntarily dismissed without prejudice pursuant to Federal Rules of Civil Procedure 41,  
10 subdivision (a)(1) and filed its state-court complaint pursuant to Government Code section 12965 and 28  
11 U.S.C. section 1367, subdivision (d). (*Id.*, ¶¶ 7, 9.) The Department now moves this Court for an order  
12 to protect the complainant’s identity.

### 13 III. FACTUAL BACKGROUND

14 The Complaint alleges that defendants Cisco Systems, Inc., Sundar Iyer, and Ramana Kompella  
15 discriminated, harassed, and retaliated against Doe based on his caste-based characteristics of religion,  
16 ancestry, national origin/ethnicity, and race/color. Doe still works at Cisco, resides in Silicon Valley,  
17 and has family in India. (Declaration of John Doe in Support of Plaintiff Department of Fair  
18 Employment and Housing’s Motion to Proceed Using a Fictitious Name (“Doe Decl.”), ¶¶ 6, 10.) The  
19 complainant has requested that the Department seek permission for him to participate in this litigation  
20 anonymously. (*Id.*, ¶¶ 12-19; Thanasombat Decl., ¶ 12.)

21 John Doe is Dalit Indian, a population once known as the “Untouchables,” who are the most  
22 disadvantaged people under India’s millennia-old caste system. Doe is Dalit because of his religion,  
23 ancestry, national origin/ethnicity, and race/color. The caste to which someone belongs is immutable and  
24 determines their social status in traditional Indian culture. Social stratification and discrimination based  
25 on caste persists in India and among those living outside India, including in America. (Encyclopedia  
26 Britannica, *India: Caste* (Oct. 21, 2020) <<https://www.britannica.com/place/India/Caste>> [as of Oct. 26,  
27 2020]; see Declaration of Thenmozhi Soundararajan in Support of Plaintiff Department of Fair  
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1 Employment and Housing’s Motion to Proceed Using a Fictitious Name (“Soundararajan Decl.”), ¶¶ 3-  
2 5; Declaration of Suraj Yengde in Support of Plaintiff Department of Fair Employment and Housing’s  
3 Motion to Proceed Using a Fictitious Name (“Yengde Decl.”), ¶ 4.)

4 Not only do Dalits endure the most severe inequality and deep prejudice in all spheres of life,  
5 they are often the targets of hate violence, rape, and torture. It is widely reported. (U.S. Department of  
6 State, Bureau of Democracy, Human Rights and Labor, *2019 Country Reports on Human Rights  
7 Practices: India* (Mar. 11, 2020) <[https://www.state.gov/wp-content/uploads/2020/03/INDIA-2019-  
9 HUMAN-RIGHTS-REPORT.pdf](https://www.state.gov/wp-content/uploads/2020/03/INDIA-2019-<br/>8 HUMAN-RIGHTS-REPORT.pdf)> [as of Oct. 22, 2020]; see also Soundararajan Decl., ¶¶ 5, 11.)<sup>2</sup>

9 Violence against Dalits is widespread, and police authorities in India often do little to address it.  
10 (See, e.g., Sen, *As India Drifts Into Autocracy, Nonviolent Protest is the Most Powerful Resistance*, *The  
11 Guardian* (Oct. 26, 2020) <[https://www.theguardian.com/commentisfree/2020/oct/26/india-autocracy-  
13 nonviolent-protest-resistance](https://www.theguardian.com/commentisfree/2020/oct/26/india-autocracy-<br/>12 nonviolent-protest-resistance)> [as of Oct. 27, 2020]; Yengde Decl., ¶¶ 4-6; Soundararajan Decl., ¶¶ 5,  
14 11.) Statistics compiled by India’s National Crime Records Bureau indicate that in 2000, every hour two  
15 Dalits were assaulted; every day three Dalit women were raped, two Dalits were murdered, and two  
16 Dalit homes were torched.<sup>3</sup> Recently, even during the COVID-19 lockdown, there were 81 cases of  
17 caste-related atrocities against Dalits reported in just the state of Tamil Nadu, resulting in 22 murders,  
18 eight attacks on Dalit neighborhoods, and violence against 134 people.<sup>4</sup>

18 Although the Indian constitution prohibits the practice of “untouchability,” the caste system is  
19 deeply entrenched in society, and these numbers are not likely close to the actual number of crimes  
20 committed against Dalits. (See Yengde Decl., ¶¶ 4-6.) Because police, village councils, and government  
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22 <sup>2</sup> Narula, *Caste Discrimination: A Global Concern, Background: “Untouchability” and Segregation*  
23 (2001) Human Rights Watch <[https://www.hrw.org/reports/2001/globalcaste/caste0801-  
25 03.htm#P133\\_16342](https://www.hrw.org/reports/2001/globalcaste/caste0801-<br/>24 03.htm#P133_16342)> (as of Oct. 18, 2020).

26 <sup>3</sup> Mayell, *India's "Untouchables" Face Violence, Discrimination*, *National Geographic* (June 2, 2003)  
27 <[https://www.nationalgeographic.com/news/2003/6/indias-untouchables-face-violence-  
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<sup>4</sup> Naig, *81 Cases of Violence Against Dalits Reported During Lockdown: CPI(M)*, *The Hindu* (July 14,  
2020) <[https://www.thehindu.com/news/national/tamil-nadu/81-cases-of-violence-against-dalits-  
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1 officials often support the caste system, police authorities in India have often turned a blind eye, stalled  
2 investigations, or sided against Dalits.<sup>5</sup> On average 88.5% of cases under the Scheduled Castes and  
3 Tribes (Prevention of Atrocities) Act of 1989 remain pending trial during 2009 to 2018.<sup>6</sup>

4 Doe has expressed concern that defendants will disclose his identity, inadvertently or  
5 intentionally in retaliation. Once his identity is disclosed, the harm will be irreparable, and there will be  
6 very few remedies available to him. This threat is significant as the community of Indian engineers who  
7 work on Doe’s specialization is limited. (Doe Decl., ¶ 13; see Soundararajan Decl., ¶¶ 8, 9.) Even after  
8 separating from Cisco, Sundar Iyer continued to exercise his ties with Doe’s community and social  
9 networks. (Doe Decl., ¶¶ 12, 13.) Additionally, while in India, Doe, and his family have been targets of  
10 caste slurs and other harassment and discrimination by neighbors, school mates, and past employers.  
11 (*Id.*, ¶¶ 3-8.) Years ago, his family in India changed their last name and moved to the city in an attempt  
12 to escape their caste, a secret maintained over many lifetimes. (*Id.*, ¶ 7; see also Yengde Decl., ¶¶ 6, 7.)  
13 Doe still has family with the same surname who live in rural areas of India, where they are particularly  
14 vulnerable to hate violence and physical attacks. (Doe Decl., ¶ 6; Declaration of Laurence Simon in  
15 Support of Plaintiff Department of Fair Employment and Housing’s Motion to Proceed Using a  
16 Fictitious Name (“Simon Decl.”), ¶¶ 7, 10.)

17 Moreover, renewed furor and outrage in the U.S. and India have sprouted from certain  
18 communities who view the filing of this lawsuit as revolting against a two-millennia-old system. (Simon  
19 Decl., ¶¶ 10-12; Yengde Decl., ¶ 8; Soundararajan Decl., ¶¶ 6-9.) DFEH and other pro-Dalit  
20 organizations have received threats and pressure for pursuing this lawsuit. (Thanasombat Decl., ¶ 8;  
21 Soundararajan Decl., ¶¶ 6-9.) As such, Doe has expressed deep concerns about his safety, his privacy,  
22 and his family’s safety and privacy because he is Dalit Indian. (Doe Decl., ¶¶ 13-19; see also

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23  
24 <sup>5</sup> Gettleman and Raj, *Tell Everyone We Scalped You! How Caste Still Rules in India*, New York Times  
25 (Nov. 17, 2018) <<https://www.nytimes.com/2018/11/17/world/asia/tell-everyone-we-scalped-you-how-caste-still-rules-in-india.html>> (as of Oct. 22, 2020); U.S. Department of State, *2019 Country Reports on Human Rights Practices: India*, *supra*.

26  
27 <sup>6</sup> *Crimes Against Dalits Increased by 6 Percent Between 2009 and 2018: Report*, The Hindu (Sept. 11,  
28 2020) <<https://www.thehindu.com/news/national/report-flags-increase-in-crimes-against-dalits/article32584803.ece>> (as of Oct. 25, 2020).

1 Soundararajan Decl., ¶¶ 8-12.) He also is concerned that if his real name is used, he and his family will  
2 suffer additional discrimination, harassment, and retaliation based not only on his caste but also on the  
3 mere fact that he challenged the caste hierarchy. (Doe Decl., ¶¶ 13-19; see also Soundararajan Decl., ¶¶  
4 8-12.)

#### 5 IV. ARGUMENT

6 The Department requests the Court’s permission to proceed with its litigation on behalf of the  
7 complainant using the fictitious name John Doe and to order defendants to redact personally identifying  
8 information from all public communications, filings, and statements. Although party names are usually  
9 required in any pleading (Code Civ. Proc., § 422.40), courts have allowed parties to proceed under  
10 fictitious names where “exceptional circumstances” exist. (*Doe v. Lincoln Unified School Dist.* (2010)  
11 188 Cal.App.4th 758, 767 (“*Lincoln*”).) This case presents those exceptional circumstances.

12 Courts in California have permitted plaintiffs to proceed anonymously: (1) when identification  
13 creates a risk of retaliatory physical or mental harm; (2) when anonymity is necessary to preserve  
14 privacy in a matter of a sensitive and highly personal nature; and (3) when the anonymous party is  
15 compelled to admit his or her intention to engage in illegal conduct, thereby risking criminal  
16 prosecution. (*Lincoln, supra*, 188 Cal. App. 4th at pp. 766–767 [citing *Does I Thru XXIII v. Advanced*  
17 *Textile Corp.* (9th Cir. 2000) 214 F.3d 1058, 1067-1068 (“*Advanced Textile*”).) A party requesting to  
18 remain anonymous must show that “the party’s need for anonymity outweighs prejudice to the opposing  
19 party and the public’s interest in knowing the party’s identity.” (*Ibid.*) On balance, the complainant  
20 should be permitted to proceed anonymously.

#### 21 A. Identification of Doe’s Name and Caste Creates Significant Risk of Retaliatory 22 Physical and Mental Harm

23 Disclosing the complainant’s name and Dalit status will create a tremendous risk of retaliatory  
24 physical and mental harm to him and his family. (*Advanced Textile, supra*, 214 F.3d at p. 1067.)  
25 Reversing the district court, the Ninth Circuit in *Advanced Textile* held that the court was required to  
26 consider evidence of threatened retaliation by third parties. (*Ibid.*)

27 Moreover, the Ninth Circuit has held in asylum cases that while a single incident in some cases  
28 may not rise to the level of persecution, the cumulative effect of several incidents can constitute

1 persecution. (*Singh v. I.N.S.* (9th Cir. 1996) 94 F.3d 1353, 1358–1359**Error! Bookmark not defined.**)  
2 In cases where membership in a particular group results in being targeted for discrimination, harassment,  
3 and violence, like in this case, courts have granted applicants asylum. (*Ibid.*) There, the Ninth Circuit  
4 found persuasive evidence that plaintiff, an ethnic Indian citizen of Fiji, was a member of an  
5 ethnic/racial group that, after the 1987 coups, was targeted with discrimination, harassment, and  
6 violence on account of their race.

7 The Country Reports on Human Rights Practices for 1990 published by the Department of  
8 State regarding Fiji verify that Indians are subject to significant harassment and crime  
9 based on race compounded by inadequate police protection.... [T]his documentation  
substantiates ... that there is a concerted effort being made by the native ethnic Fijians to  
harass and humiliate the Indians living in the country.

10 (*Id.* at p. 1360.) Additionally, the court found noteworthy that the discrimination, harassment, and  
11 violence were conducted by groups that the Fiji “government was unwilling or unable to control.” (*Id.* at  
12 pp. 1358–1359.)

13 For Dalit Indians like the complainant, the risk of retaliatory physical and mental harm is  
14 tremendous: a 2018 survey of 1,500 South Asians in the United States found that 26 percent said they  
15 had experienced a physical assault because of their caste, while 59 percent reported caste-based  
16 derogatory jokes or remarks directed at them.<sup>7</sup> Anecdotal data also indicate that Dalit Indians in the  
17 United States, once their caste is revealed, have been raped, attacked, and spat on because of their caste.<sup>8</sup>  
18 (See Yengde Decl., ¶¶ 3, 5-7; Soundararajan Decl., ¶¶ 3-4, 6-9, 11.) In India, the risk of retaliatory  
19 violence is worse. A 2019 U.S. State Department report on India contains a catalog of systemic abuses  
20 against Dalits, including extrajudicial killings and sexual violence against Dalit women.<sup>9</sup> (Yengde Decl.,  
21 ¶ 4; Soundararajan Decl., ¶¶ 5, 11.) According to a Human Rights Watch report, Dalits are physically  
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23 <sup>7</sup> Zwick-Maitreyi et al., *Caste in the United States: A Survey of Caste Among South Asian Americans*  
24 (2018) pp. 26-27, Equality Labs <<https://www.equalitylabs.org/caste-in-the-united-states>> (as of Oct.  
20, 2020).**Error! Bookmark not defined.**

25 <sup>8</sup> Ray, *Caste in America: The US Isn't Safe From the Trauma of Caste Bias* (Mar. 8, 2019) WGBH  
26 News, The World <<https://www.pri.org/stories/2019-03-08/us-isn-t-safe-trauma-caste-bias>> (as of Oct.  
20, 2020)**Error! Bookmark not defined.**

27 <sup>9</sup> U.S. Department of State, *2019 Country Reports on Human Rights Practices: India, supra.*  
28

1 assaulted and threatened with economic and social retaliation for refusing to carry out various caste-  
2 based tasks. (Narula, *Caste Discrimination: A Global Concern, Background: “Untouchability” and*  
3 *Segregation, supra*.) The report noted that any attempt to defy the social order led to “violence and  
4 economic retaliation on the part of those most threatened by changes in the status quo.” (*Ibid.*; see also  
5 Yengde Decl., ¶¶ 3, 7-8; Soundararajan Decl., ¶¶ 6, 7.)

6 Here, Doe will face actual and formidable risk of physical violence, or the threat of physical  
7 violence, and mental harm if his identity is disclosed. (*Advanced Textile, supra*, 214 F.3d at p. 1063.) As  
8 shown before, one defendant supervisor is willing to talk about Doe to other engineers and those in their  
9 shared social circles. (Doe Decl., ¶ 13.) The risk of retaliatory harm, thus, is concrete as Iyer can easily  
10 leak Doe’s name to their shared networks to encourage social and economic backlash against Doe.  
11 (*Ibid.*) Furthermore, Doe continues to work at defendant Cisco. (*Id.*, ¶ 10.) He fears his name will be  
12 disclosed to his new workplace colleagues or he will be terminated pretextually in retaliation.

13 Not only that, his family in the U.S. and in India will be at risk of similar threats of physical and  
14 mental retaliation. (*Advanced Textile, supra*, 214 F.3d at p. 1063 [finding noteworthy that plaintiffs  
15 “reasonably fear that their families may face similar threats of physical and economic retaliation if their  
16 true identity is revealed”].) Doe and his family have been the victims of caste slurs, isolation, and  
17 ostracization, and employment discrimination by neighbors, school mates, and employers in India  
18 because of their caste. (Doe Decl., ¶¶ 4-7.) Some of his family in India have been able to avoid hate  
19 violence because they changed their name and moved to the city. (*Id.*, ¶ 7.) However, Doe still has  
20 family with his last name who live in rural areas of India, and they are especially at risk for being  
21 physically attacked because of their caste.<sup>10</sup> (*Id.*, ¶¶ 6, 14.) Additionally, news of this lawsuit has gained  
22 traction in India. (See Plaintiff Department of Fair Employment and Housing’s Request for Judicial  
23 Notice in Support of DFEH Motion to Proceed Using a Fictitious Name, Exhs. 6-17.) For Doe’s family  
24 in India, disclosure of their caste, after decades fearing that they will be “outed,” will set off angry and  
25 potentially violent reactions, unchecked by the police, that a community has been deceived. Moreover,  
26 the international attention that this lawsuit has garnered in the United States and India, and the ensuing

27 \_\_\_\_\_  
28 <sup>10</sup> Gettleman and Raj, *Tell Everyone We Scalped You! How Caste Still Rules in India, supra*.

1 threats to pro-Dalit organizations, make the public disclosure of Doe’s name particularly dangerous and  
2 create an imminent risk to Doe and his family. (Doe Decl., ¶¶ 6-8, 13-19; see also Soundararajan Decl.,  
3 ¶¶ 8-12.) Doe should be able to vindicate his rights without fear of such retaliatory physical and mental  
4 harm.

5 **B. A Fictitious Name Should Be Permitted Due to The Personal and Sensitive Nature**  
6 **of Caste Disclosure for The Complainant**

7 Parties have been allowed to proceed under fictitious names where the subject matter of the  
8 dispute is highly sensitive and personal, such that public disclosure would inflict irreparable injury. A  
9 United States district court in California considered social stigmatization among the “most compelling”  
10 reasons for permitting anonymity. (*Jane Roes 1-2 v. SFBSC Mgmt., LLC* (N.D. Cal. 2015) 77 F.Supp.3d  
11 990, 994.) This is consistent with the Ninth Circuit’s instruction that anonymity is permitted where the  
12 subject matter of a case is “sensitive and highly personal,” and where disclosing a party’s identity  
13 threatens to subject the person to “harassment, . . . ridicule or personal embarrassment.” (*Ibid.* [citing  
14 *Advanced Textile*, 214 F.3d at pp. 1067–1068; see also *Doe v. Penzato* (N.D.Cal. May 13, 2011, No.  
15 CV10–5154 MEJ) 2011 WL 1833007 at \*3 [granting anonymity to prevent public exposure and stigma  
16 of having been a victim of sexual assault].) Another district court in California permitted  
17 employee plaintiffs to intervene anonymously where “[t]hey [we]re concerned that they will be  
18 embarrassed by the public disclosure of the nature of their allegations against Defendants . . . in the  
19 small community where they live and work.” (*EEOC v. ABM Indus. Inc.* (E.D. Cal. 2008) 249 F.R.D.  
20 588, 593.)

21 If identified outside of this litigation, Doe, and his family will face social stigmatization,  
22 ostracization, harassment, ridicule, and personal embarrassment. One’s caste is a highly sensitive and  
23 personal matter, especially if one is from the lowest class, as Doe is. A 2018 study uncovered that 52%  
24 of surveyed Dalits in the U.S., or “Untouchables,” feared being outed. (Zwick-Maitreyi et al., *Caste in*  
25 *the United States: A Survey of Caste Among South Asian Americans, supra*, pp. 17-18.) Those surveyed  
26 expressed significant psychological turmoil around the secrecy of their caste. (*Id.* at p. 18.) In its  
27 Complaint, the Department alleged that Doe confronted defendant Iyer when he learned that Iyer had  
28 revealed Doe’s Dalit status to his co-workers. (Complaint, ¶¶ 31-37.) DFEH also alleged defendants

1 Cisco, Iyer, and Kompella continued to discriminate and harass him because he is Dalit Indian, and  
2 when he opposed the unlawful actions, Doe faced swift and sweeping retaliation. (*Id.*, ¶¶ 31-47.) As a  
3 result of defendants’ actions, Doe suffered psychological injury, emotional pain, mental anguish, and  
4 humiliation. (*Id.*, ¶¶ 57, 68, 78, 89.) Revealing Doe’s identity would not only reveal his caste, it would  
5 also reveal him as one who is openly challenging a two-millennia-old caste system that its beneficiaries  
6 feel passionately about retaining.

7 Therefore, to protect John Doe from further harassment, injury, ridicule, and personal  
8 embarrassment due to the personal and highly sensitive nature of caste disclosure, the Department  
9 requests that he be permitted to proceed anonymously.

10 **C. Doe Has A Legitimate Fear of Further Discrimination Should His Identity Be**  
11 **Revealed**

12 A fictitious name will also protect Doe from further discrimination as he continues to work at  
13 Cisco and seeks work in the future. In *Advanced Textile*, where the plaintiffs requested to use fictitious  
14 names out of a fear of future retaliation from their employer, the court identified three relevant factors in  
15 determining whether the use of pseudonyms were appropriate: “(1) the severity of the threatened harm,  
16 (2) the reasonableness of the anonymous party’s fears, and (3) the anonymous party’s vulnerability to  
17 such retaliation.” (*Advanced Textile, supra*, 214 F.3d at p. 1068.)

18 Here, DFEH seeks to maintain Doe’s anonymity to prevent further injury to him and his family  
19 and to avoid the possibility that non-Cisco employers will discriminate against him based on his caste.  
20 (Thanasombat Decl., ¶ 11, 12.) Each of these concerns is concrete and legitimate. Especially in this age  
21 of internet-accessible information, Doe’s concerns should be addressed by the use of a fictitious name.  
22 “The judicial use of ‘Doe plaintiffs’ to protect legitimate privacy rights has gained wide currency,  
23 particularly given the rapidity and ubiquity of disclosures over the World Wide Web.” (*Starbucks Corp.*  
24 *v. Super. Ct.* (2008) 168 Cal.App.4th 1436, 1452, fn.7.) Defendant Iyer has already displayed a  
25 willingness to reveal Doe’s caste to other people. (Complaint, ¶¶ 31-32.) Once Doe’s identity is  
26 disclosed, the damage will be irreparable, and he will have very few remedies to stem further public  
27 disclosure while working at Cisco or if he looks for another job. (*Advanced Textile, supra*, 214 F.3d at p.  
28 1058 [“Anonymity in litigation can be used to shield plaintiffs from economic injury”].) Moreover,

1 courts have found that employees are more effectively protected from retaliation by concealing their  
2 identities than by relying on the deterrent effect of *post hoc* remedies. (*Id.* at p. 1071.) Therefore, the  
3 severity of the harm once public disclosure is made, the reasonableness of Doe’s fears, and his particular  
4 vulnerability to retaliation warrant allowing him to proceed anonymously.

5 **D. Doe’s Need for Anonymity Outweighs Any Prejudice to The Opposing Parties or**  
6 **The Public**

7 The use of the pseudonym in this case will neither prejudice defendants nor impair the public’s  
8 right to know. State and federal courts have adopted a balancing test between the need for anonymity  
9 and the public interest in open proceedings. (*Lincoln, supra*, 188 Cal.App.4th at pp. 766–767 [citing  
10 *Advanced Textile, supra*, 214 F.3d at pp. 1067-1068].) As the Ninth Circuit Court of Appeals explained  
11 in *Advanced Textile*, “a party may preserve his or her anonymity in judicial proceedings in special  
12 circumstances when the party’s need for anonymity outweighs prejudice to the opposing party and the  
13 public’s interest in knowing the party’s identity.” (*Advanced Textile, supra*, 214 F.3d at p. 1068.)

14 In contrast to Doe’s legitimate need for anonymity, there is no prejudice to the defendants, who  
15 already know his identity. (*Id.* at p. 1069, fn. 11 [“[W]hatever knowledge defendants have of plaintiffs’  
16 identities . . . lessens their claims to be prejudiced by the use of pseudonyms”].) In addition, the use of a  
17 fictitious name is in the public interest because it encourages victims of caste discrimination and  
18 harassment to bring their own claims against their alleged harassers. (*Id.* at p. 1073 [“Employee suits to  
19 enforce their statutory rights benefit the general public”].) Otherwise, victims of caste-based  
20 discrimination, harassment, and retaliation will face a Hobson’s choice between seeking justice and  
21 having their caste more widely publicized in the process, thereby subjecting them to further caste-based  
22 discrimination, harassment, and retaliation from strangers, or avoiding the risk of further damage by  
23 staying silent. As is the case here, “[p]arty anonymity does not obstruct the public’s view of the  
24 issues joined or the court’s performance in resolving them.” (*Id.* at p. 1068 [internal citations omitted].)  
25 Moreover, as the Supreme Court has recognized, fear of employer reprisals will frequently chill  
26 employees’ willingness to challenge employers’ violations of their rights. (*Id.* at p. 1073.) Permitting  
27 Doe to use a pseudonym will serve the public’s interest by enabling the lawsuit to go forward and  
28 encourage other victims to come forward. On balance, the Court should allow Complainant John Doe to



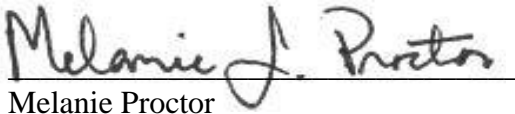
1 proceed anonymously.

2 **V. CONCLUSION**

3 Anonymity will prevent tremendous retaliatory harm to John Doe and his family without  
4 impairing defendants' rights or those of the public. For these reasons, the Department respectfully  
5 requests that the Court grant permission for John Doe to proceed in this lawsuit under a fictitious name  
6 and order defendants to redact personally identifying information in all public communications, filings,  
7 and statements.

8  
9 DATED: November 2, 2020

CALIFORNIA DEPARTMENT OF FAIR  
EMPLOYMENT AND HOUSING

10  
11 By:   
12 Melanie Proctor  
13 Attorneys for Plaintiff DFEH