

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 289417 NAME: Nicholas J. Horton FIRM NAME: Orrick, Herrington & Sutcliffe, LLP STREET ADDRESS: 400 Capitol Mall, Suite 3000 CITY: Sacramento STATE: CA ZIP CODE: 95814 TELEPHONE NO.: 916-447-9200 FAX NO.: 916-329-4900 E-MAIL ADDRESS: nhorton@orrick.com ATTORNEY FOR (name): Defendant Cisco Systems, Inc.	<i>FOR COURT USE ONLY</i>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 N. First Street MAILING ADDRESS: 191 N. First Street CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Court	CASE NUMBER: 20CV372366
PLAINTIFF/PETITIONER: California Dep't of Fair Employment and Housing DEFENDANT/RESPONDENT: Cisco Systems, Inc. OTHER:	JUDICIAL OFFICER: Hon. Amber Rosen
PROPOSED ORDER (COVER SHEET)	DEPT: 16

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
Defendant Cisco Systems, Inc.
2. Title of the proposed order:
[Proposed] Order on Plaintiff's Motion to Proceed Using a Fictitious Name
3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding: Plaintiff's Motion to Proceed Using a Fictitious Name
 - b. Date and time: November 16, 2023, 9:00 a.m.
 - c. Place: Superior Court of California, County of Santa Clara, Department 16
4. The proposed order was served on the other parties in the case.

Nicholas J. Horton

(TYPE OR PRINT NAME)



/s/ Nicholas J. Horton

(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME:

California Dep't of Fair Employment and Housing v. Cisco Systems, Inc.

CASE NUMBER:

20CV372366

**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action.**

a. My residence or business address is (*specify*):

Orrick, Herrington & Sutcliffe LLP, 400 Capitol Mall, Suite 3000, Sacramento, CA 95814

b. My electronic service address is (*specify*): BOrozco@orrick.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):
(Please See Attachment A for full list)

b. To (*electronic service address of person served*): (Please See Attachment A for full list)

c. On (*date*): December 1, 2023

Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: December 1, 2023

Betty J. Orozco

(TYPE OR PRINT NAME OF DECLARANT)



/s/ Betty J. Orozco

(SIGNATURE OF DECLARANT)

Attachment A to Proposed Order Cover Sheet –
Proof of Electronic Service

2 (a)(b):

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Filed
December 7, 2023
Clerk of the Court
Superior Court of CA
County of Santa Clara
20CV372366
By: dprok

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

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

Plaintiff,

v.

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

Defendants.

Case No. 20CV372366

~~PROPOSED~~ ORDER ON PLAINTIFF'S
MOTION TO PROCEED USING A
FICTITIOUS NAME

Dept.: 16
Judge: Hon. Amber Rosen

Complaint Filed: October 16, 2020

Plaintiff's (formerly FEHA, now Civil Rights Department (CRD)) Motion to Proceed Using a Fictitious Name came on for hearing before the Honorable Amber Rosen on November 16, 2023 at 9:00 a.m. in Department 16. The matter having been submitted, after full consideration of the authorities and evidence submitted by each party, and the arguments made by the parties in their papers and at the hearing, the Court makes the following ruling:

I. PROCEDURAL BACKGROUND

Plaintiff moves for permission to use a fictitious name for the real party in interest in the course of this litigation. The trial court initially denied the motion. *See* Order of February 3, 2021. Because the trial court failed to consider the risk to the real party in interest's (hereinafter Doe)

1 family members in India as a basis for allowing him to proceed anonymously, the Court of
2 Appeal issued a Peremptory Writ of Mandate vacating the order denying Plaintiff's Motion and
3 instructing the Court to reconsider the Motion based on the views expressed in its Opinion
4 attached to the Remittitur ("Opinion"). This Court's Order declined to consider "residents of
5 another country or another country's discriminatory practices" when assessing "whether a party
6 in California may remain anonymous in a lawsuit alleging violation of the California FEHA
7 against a corporation in California." Order 4. The Court of Appeal found this to be error. The
8 Court of Appeal concluded that "evidence of potential harm to family members anywhere is a
9 legitimate consideration in determining whether a party should be granted anonymity in
10 litigation." Opinion 1. The Appellate Court found that CRD "has the burden to show that
11 geographically distant family members are at risk," that the Court must consider evidence
12 presented by CRD and assign it the appropriate weight, and that the Court must engage in the
13 "fact-dependent exercise" of assessing whether the likelihood and severity of harm "to the
14 identified family members" constitutes an overriding interest that "outweighs the First
15 Amendment right to public access to court proceedings." Opinion 7. The Court of Appeal
16 cautioned that, unless permitted by statute, allowing a party to litigate under a pseudonym should
17 occur "only in the rarest of circumstances." *Id.* 6. This is a very high bar.

18 **II. LEGAL STANDARD**

19 The Court of Appeal adopted the overriding interest test used to seal court records as the
20 standard for assessing CRD's request to proceed using a fictitious name. Opinion 5, 8. Relying on
21 *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178, 1221 (1990) ("*KNBC*"),
22 the Court of Appeal held: "A party's request for anonymity should be granted only if the court
23 finds that an overriding interest will likely be prejudiced without use of a pseudonym, and that it
24 is not feasible to protect the interest with less impact on the constitutional right of access."
25 Opinion 6. The Court of Appeal noted that, "[r]etaliatory harm to family members—wherever they
26 are located—is precisely the kind of interest that may justify allowing a party to litigate under a
27 pseudonym." (*Id.* at 6-7.) Again, the Court of Appeal further cautioned: "Outside of cases where
28 anonymity is expressly permitted by statute, litigating by pseudonym should occur '**only in the**

1 **rarest of circumstances.”** *Id.* (quoting *KNBC*, 20 Cal. 4th at 1226) (emphasis added).

2 As applied here, the Opinion’s test means that the Court cannot grant CRD’s Motion
3 unless it finds that: (i) protecting Doe’s family in India from an identifiable risk of harm is an
4 overriding interest supporting anonymity; (ii) there is a substantial probability that this overriding
5 interest will be prejudiced if his identity is revealed in this case; (iii) permitting Doe to proceed
6 anonymously is narrowly tailored to protect Doe’s family from that identifiable risk; and (iv)
7 there is no less restrictive means of protecting Doe’s family in India from that identifiable risk.
8 *See* Opinion 6; *KNBC*, 20 Cal. 4th at 1181.

9 **III. ANALYSIS**

10 While the Court does not minimize the facts presented in CRD’s evidence, the Court
11 considered the risk of harm to Doe and his family should his identity be revealed and finds that
12 the evidence is insufficient to meet the high burden set by the overriding interest test.

13 Except with respect to the effect of risk of harm to Doe’s family in India, the decision of
14 this court from February 11, 2021 is incorporated into this decision and this Court again finds that
15 the Plaintiff has failed to provide sufficient evidence to show that the risk of harm to Doe
16 outweighs the public’s right to access in this case.

17 As ordered, the Court now assesses whether the potential harm to Doe’s family in India is
18 sufficient to allow him to proceed under a fictitious name in this lawsuit. Doe has provided
19 general evidence of discrimination and violence toward members of the Dalit in India, as
20 indicated in the court’s opinion of February 11, 2021. But generalized discrimination against an
21 entire group does not demonstrate a likelihood of harm to Doe’s specific family members. Doe
22 also indicates that his father faced discrimination at work based on his caste but fails to say when
23 this was. He asserts that that he was ostracized for his status as a child. He says that his wife’s
24 family changed its names “decades ago.” All of this conduct appears to have occurred decades
25 ago and fails to demonstrate a likelihood of current harm.¹

26
27 ¹ His statement that his mother-in-law recalls a time when neighbors stopped interacting with her
28 because she cooked meat does not indicate it was a recent event, does not establish it was tied to
her being a Dalit, and, in any event, is hearsay and as such will not be considered by this Court.

1 The Court does not find the evidence submitted, including the various declarations,
2 sufficient to show the necessary likelihood or severity of harm to warrant allowing Doe to
3 proceed anonymously. Doe does not describe any assaults, acts of violence, or even threats of
4 violence toward his family now or ever. India is an enormous country and there is no evidence
5 showing how many people in India share Doe's last name or whether any of the (likely) vast
6 number of people that share his last name can be identified as his family members. That he has
7 declarations from a few people who have suffered reprisal for protesting the caste system does not
8 provide sufficient proof of likelihood of harm to him or his family. This is all the more true
9 (though true even so) considering that Doe is potentially identifiable already from the facts
10 disclosed about him in the press and from the fact that his wife's family changed it names decades
11 ago. If claims of lack of promotion and name-calling from decades ago coupled with generalized
12 statistics of continuing and sometimes violent discrimination were sufficient to allow a person to
13 file anonymously there is scarcely any discrimination case in which a plaintiff could not meet the
14 burden to proceed under a fictitious name, as racism and antisemitism, to name just a few
15 examples, are all alive and well both here and abroad.

16 **IV. CONCLUSION AND ORDER**

17 Plaintiff's motion to proceed by fictitious name is DENIED. Defendant is relieved from
18 its obligation to file a responsive pleading to the operative complaint. Within seven (7) days of
19 the entry of this Order, Plaintiff shall file an Amended Complaint identifying the Real Party in
20 Interest in this matter and to comply with the Court's prior order denying and granting in part
21 Cisco's motion to strike. Defendant shall have thirty (30) days from the filing of the Amended
22 Complaint to file a responsive pleading.

23 **IT IS SO ORDERED.**

24
25 DATED: 12/6/2023 1:28:44 PM

26 
27 _____
28 HON. AMBER ROSEN
SANTA CLARA SUPERIOR COURT JUDGE