

Joseph R. Saveri (State Bar No. 130064)
 Steven N. Williams (State Bar No. 175489)
 Cadio Zirpoli (State Bar No. 179108)
 Christopher K.L. Young (State Bar No. 318371)
 Elissa A. Buchanan (State Bar No. 249996)
 Travis Manfredi (State Bar No. 281779)
JOSEPH SAVERI LAW FIRM, LLP
 601 California Street, Suite 1000
 San Francisco, California 94108
 Telephone: (415) 500-6800
 Facsimile: (415) 395-9940
 Email: jsaveri@saverilawfirm.com
 swilliams@saverilawfirm.com
 czirpoli@saverilawfirm.com
 cyoung@saverilawfirm.com
 eabuchanan@saverilawfirm.com
 tmanfredi@saverilawfirm.com

*Counsel for Individual and Representative
 Plaintiffs and the Proposed Class*

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION**

J. DOE 1 et al.,
 Individual and Representative Plaintiffs,
 v.
 GITHUB, INC., et al.,
 Defendants.

Case Nos. 4:22-cv-06823-JST
 4:22-cv-07074-JST

**PLAINTIFFS' NOTICE OF MOTION
 AND MOTION TO MAINTAIN
 CONFIDENTIALITY DESIGNATIONS
 FOR PLAINTIFFS' TRUE NAMES
 PURSUANT TO SECTION 6.3 OF THE
 STIPULATED PROTECTIVE ORDER
 (ECF NO. 63)**

Date: May 4, 2023
 Time: 2:00 p.m.
 Courtroom: 6, 2nd Floor
 Judge: Hon. Jon Tigar

4:22-cv-06823-JST

PLAINTIFFS' NOTICE OF MOTION AND MOTION TO MAINTAIN CONFIDENTIALITY
 DESIGNATIONS FOR PLAINTIFFS' TRUE NAMES PURSUANT TO SECTION 6.3 OF THE STIPULATED
 PROTECTIVE ORDER (ECF NO. 63)

NOTICE OF MOTION AND MOTION

TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on May 4, 2023 at 2:00 p.m., before the Honorable Jon S. Tigar seated in Courtroom 6 of the United States Courthouse at Oakland, California, with appearances to be made by Zoom videoconference unless otherwise ordered by the Court, Plaintiffs Does 1–4 (“Plaintiffs”) will, and hereby do, move, pursuant to Section 6.3 of the Stipulated Protective Order for Litigation Involving Patents, Highly Sensitive Confidential Information, and/or Trade Secrets (ECF No. 63) (“Stipulated Protective Order”), to Maintain the Confidentiality Designation of the true names.

The grounds for the Motion are as follows. Plaintiffs have legitimate fears for their safety should their true names be publicly disclosed. To preserve their safety while allowing Defendants’ counsel to perform an investigation of Plaintiffs needed, Plaintiffs have provided their true names to Defendants’ counsel and designated them HIGHLY CONFIDENTIAL–ATTORNEYS’ EYES ONLY.

Accompanying this Motion is the Declaration of Travis Manfredi in Support of Plaintiffs’ Motion to Maintain Confidentiality Designations for Plaintiffs’ True Names Pursuant to Section 6.3 of the Stipulated Protective Order (ECF No. 63) (“Manfredi Decl.”) and a proposed order.

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs’ counsel disclosed Plaintiffs’ true names to Defendants on March 8, 2023, and designated their true names HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY pursuant to the Stipulated Protective Order. On March 9, 2023, Defendants Microsoft Corp. and GitHub, Inc. (collectively, “Defendants”) notified Plaintiffs by letter of their challenge of Plaintiffs’ designation of their true names as “HIGHLY CONFIDENTIAL”¹ pursuant to Section 6.2 of the Stipulated Protective Order. Manfredi Decl. ¶ 2.

¹ Defendants’ letter does not include the additional “–ATTORNEYS’ EYES ONLY” portion of the designation. The Stipulated Protective Order does not contain a designation of “HIGHLY CONFIDENTIAL” alone.

Under the Stipulated Protective Order, Information or Items may be marked HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY if the Information or Item is “extremely sensitive ‘Confidential Information or Items,’ disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.” ECF No. 63 § 2.8. Plaintiffs’ true names meet these criteria due to the legitimate fears for their safety.

Pursuant to Section 6.2 of the Stipulated Protective Order, counsel for the parties met and conferred in voice-to-voice dialogue prior to the filing of this motion. Manfredi Decl. ¶ 4. Defendants’ basis for their challenge is “that Rule 10(a) and the Advanced Textile case require extraordinary circumstances for keeping such information a secret, and that no such circumstances are present here.” Manfredi Decl. ¶ 3.

“To determine whether to allow a party to proceed anonymously when the opposing party has objected, a district court must balance five factors: ‘(1) the severity of the threatened harm, (2) the reasonableness of the anonymous party’s fears, . . . (3) the anonymous party’s vulnerability to such retaliation,’ (4) the prejudice to the opposing party, and (5) the public interest.” *Doe v. Kamehameha Sch./Bernice Pauahi Bishop Est.*, 596 F.3d 1036, 1042 (9th Cir. 2010). Plaintiffs have met this burden and should be permitted to proceed anonymously.

Plaintiffs recognize that proceeding anonymously is unusual. But the circumstances justify it. Plaintiffs filed under pseudonyms because they reasonably feared they would be subject to threats of retaliation and violence. Unfortunately, those fears were well-founded. Plaintiffs, though their counsel, have received legitimate and credible threats of physical violence.² Omnibus Declaration of Joseph R. Saveri in Support of Plaintiffs’ Responses in Opposition to Defendants’ Motions to Dismiss (“Saveri Decl.”), ¶¶ 3–5 & Exs. 1–3 (ECF Nos. 68, 68-1, 68-2, 68-3). These threats are not merely anonymous postings on internet forums. They were specific threats sent directly to Plaintiffs’ counsel. *See, e.g., id.* Nothing about the threats from their

² Indeed, the threats of physical violence predate the filing of Plaintiffs’ initial complaint. Saveri Decl., ¶¶ 3–5 & Exs. 1–3 (ECF Nos. 68, 68-1, 68-2, 68-3).

context “demonstrates frustration, a joke, or political commentary instead of a true intent to harm.” *Kamehameha Sch.*, 596 F.3d at 1044 (citing *Watts v. United States*, 394 U.S. 705, 706–07 (1969)). One message states: “I literally hope someone murder you.” Saveri Decl., Ex. 2 (ECF No. 68-2). Mere days after Plaintiffs filed their initial Complaint, Plaintiffs’ counsel received the following message: “go f*****g cry about github you f*****g piece of s**t n****r, I hope your throat gets cut open and every single family member of you is burnt to death.” *Id.*, Ex. 3 (ECF No. 68-3) (alterations added).

These threats are neither trifling nor benign. Unlike in *Kamehameha Schools*, the threats are not accompanied by any statements opposing violence. 596 F.3d at 1044; *see also* Saveri Decl., Exs. 1–3 (ECF Nos. 68-1, 68-2, 68-3). These circumstances justify allowing Plaintiffs to proceed pseudonymously. *See, e.g., United States v. Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1981) (using pseudonym because appellant “faced a risk of serious bodily harm” if his identity were disclosed); *Doe v. UNUM Life Ins. Co. of Am.*, 164 F. Supp. 3d 1140, 1147 (N.D. Cal. 2016).

Lastly, Defendants face no prejudice. Defendants have all they need to investigate Plaintiffs and their claims.

I. CONCLUSION

For the reasons stated above, the Plaintiffs request their true names retain a confidentiality designation of HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.

1 Dated: March 30, 2023

2 By: /s/ Joseph R. Saveri
3 Joseph R. Saveri

4 Joseph R. Saveri (State Bar No. 130064)
5 Steven N. Williams (State Bar No. 175489)
6 Cadio Zirpoli (State Bar No. 179108)
7 Christopher K.L. Young (State Bar No. 318371)
8 Elissa A. Buchanan (State Bar No. 249996)
9 Travis Manfredi (State Bar No. 281779)
10 **JOSEPH SAVERI LAW FIRM, LLP**
11 601 California Street, Suite 1000
12 San Francisco, California 94108
13 Telephone: (415) 500-6800
14 Facsimile: (415) 395-9940
15 Email: jsaveri@saverilawfirm.com
16 swilliams@saverilawfirm.com
17 czirpoli@saverilawfirm.com
18 cyoung@saverilawfirm.com
19 eabuchanan@saverilawfirm.com
20 tmanfredi@saverilawfirm.com

21 Matthew Butterick (State Bar No. 250953)
22 1920 Hillhurst Avenue, #406
23 Los Angeles, CA 90027
24 Telephone: (323) 968-2632
25 Facsimile: (415) 395-9940
26 Email: mb@buttericklaw.com

27 *Counsel for Individual and Representative*
28 *Plaintiffs and the Proposed Class*