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 13 CITY AND COUNTY OF SAN FRANCISCO

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16

17 JANE ROE, an individual; MARY ROE, an
 18 individual; SUSAN ROE, an individual; JOHN
 19 ROE, an individual; BARBARA ROE, an
 individual; PHOENIX HOTEL SF, LLC, a
 20 California limited liability company; FUNKY
 FUN, LLC, a California limited liability
 21 company; and 2930 EL CAMINO, LLC, a
 California limited liability company,

22 Plaintiffs,

23 vs.

24 CITY AND COUNTY OF SAN
 FRANCISCO, a California public entity,

25 Defendant.
 26

Case No. 3:24-cv-01562-AMO

**DEFENDANT CITY AND COUNTY OF SAN
 FRANCISCO'S RESPONSE TO PLAINTIFFS'
 APPLICATIONS FOR ORDERS GRANTING
 PERMISSION TO USE PSEUDONYMS IN
 PUBLICLY FILED PLEADINGS (ECF Nos. 3-7)**

Trial Date: Not set.

INTRODUCTION AND RELEVANT BACKGROUND

1
2 Plaintiffs Jane, Barbara, John, Mary, and Susan Roe have each filed an Application For An
3 Order Granting Permission to Use The Pseudonym “[Name] Roe” In Publicly Filed Pleadings
4 (“Applications”). ECF Nos. 3-7. Neither this Court’s Civil Local Rules nor the Federal Rules provide
5 for such Applications. To the extent these Applications are Motions for Administrative Relief under
6 Civil Local Rule 7-11, Plaintiffs have failed to comply with Local Rule 7-11 and their Applications
7 should accordingly be denied. Each Application, which is based on identical, conclusory statements
8 unsupported by declarations or even citations to the unverified Complaint for Injunctive and Equitable
9 Relief (ECF No. 1, “Complaint”), fails to meet Plaintiffs’ burden to overcome the strong presumption
10 that “parties’ identities are public information.” *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d
11 1058, 1068 (9th Cir. 2000). In lieu of five duplicative responses, Defendant City and County of San
12 Francisco (“San Francisco”) submits this single response to Plaintiffs’ Applications, each of which
13 makes an identical argument for relief. *See* ECF Nos. 3-7 at 2-3 (changing only names and pronouns).

14 In May 2020, six plaintiffs, represented by the same counsel as Plaintiffs here, brought Due
15 Process, Equal Protection, Americans with Disabilities Act, nuisance, and related claims against San
16 Francisco for the City’s alleged inaction and action in treating the Tenderloin neighborhood as a
17 “containment zone” for drug dealing and abuse, violence, homelessness, and other social ills. *See*
18 *Complaint, Hastings College of the Law et al v. City and County of San Francisco*, No. 4:20-cv-
19 03033-JST, ECF No. 1 (the “2020 Action”). The four individual plaintiffs in the 2020 Action were
20 named in the complaint and proceeded under their true identities. Despite the similarities in their
21 claims, Plaintiffs in this action have identified no harms that the 2020 Action plaintiffs have suffered
22 as a result of proceeding under their true identities and San Francisco is aware of none, which weighs
23 against granting the relief Plaintiffs seek here.

24 Plaintiffs, apparently dissatisfied with the outcome of the 2020 Action, filed the instant action
25 again alleging the City has unlawfully treated the Tenderloin as a “containment zone” for drug dealing
26 and abuse, violence, homelessness, and other social ills and again make nearly identical claims. *See*
27 *generally* ECF No. 1. Plaintiffs not only acknowledge the similarity of the two actions, they claim
28 they are so similar they must be related. *See* Plaintiffs’ Administrative Motion to Consider Whether

1 Cases Should Be Related, *Hastings College of the Law et al v. City and County of San Francisco*, No.
 2 4:20-cv-03033-JST, ECF No. 127. And, as in the 2020 Action, Plaintiffs here have litigated their case
 3 in the press to demand the changes they seek in court. See Maggie Angst, *S.F. hit with another lawsuit*
 4 *over drug crisis, alleging Tenderloin is a ‘containment zone’*, S.F. Chronicle (Mar. 14, 2024, updated
 5 Mar. 15, 2024) <<https://www.sfchronicle.com/sf/article/tenderloin-lawsuit-drug-crisis-18892378.php>>
 6 (quoting Plaintiffs’ counsel and their Complaint); George Kelly, *Tenderloin residents, businesses to*
 7 *sue San Francisco over ‘containment zone’ policy*, The San Francisco Standard (Mar. 14, 2024)
 8 <<https://perma.cc/87PW-HMU8>>; Janie Har, *Terrified residents of San Francisco’s Tenderloin*
 9 *district sue for streets free of drugs, tents*, AP (Mar. 14, 2024) <<https://perma.cc/5PNR-E56P>>; Patrick
 10 Hoge and Adam Shanks, *Tenderloin residents, businesses sue SF over drug use, encampments*, The
 11 Examiner (Mar. 15, 2024) <<https://perma.cc/7UF2-E6V3>>.

12 Now, in contrast to the named plaintiffs in the 2020 Action who remained unharmed despite
 13 disclosing their identities, Plaintiffs here assert – based on no more than their lawyers’ unverified
 14 statements – that they must be permitted to proceed under pseudonyms to avoid physical harm. These
 15 conclusory and unsupported assertions are insufficient to overcome the presumption that parties’
 16 identities are public.

17 ARGUMENT

18 I. Plaintiffs’ “Applications” Are Improper and Insufficient Administrative Motions

19 Plaintiffs do not cite any rule or statute permitting their Applications. Civil Local Rule 7-11
 20 permits Motions for Administrative Relief when a matter is “not otherwise governed by a federal
 21 statute, Federal Rule, local rule, or standing order” and courts in this District have considered
 22 administrative motions to proceed anonymously. See, e.g., *Alyssa C. v. Palo Alto Hous. Corp.*, No. C
 23 07-1112 JW, 2007 WL 878524, at *1-2 (N.D. Cal. Mar. 20, 2007) (denying plaintiff’s administrative
 24 motion for leave to proceed under a fictitious name). To the extent that Plaintiffs’ Applications are
 25 Motions for Administrative Relief, they have failed to submit “either a stipulation under Civil L.R. 7-
 26 12 or . . . a declaration that explains why a stipulation could not be obtained.” N. Cal. L.R. 7-11(a).
 27 Plaintiffs’ Applications should therefore be denied. See *Tri-Valley CAREs v. U.S. Dept. of Energy*,

1 671 F.3d 1113, 1131 (9th Cir. 2012) (affirming denial of Civil Local Rule 7-11 administrative motion
2 where plaintiff failed to “include the requisite stipulation or declaration”).

3 **II. Plaintiffs Fail to Meet Their Burden to Overcome the Presumption That All Parties’
4 Identities Are Public Information**

5 Federal Rule of Civil Procedure 10(a) requires that “[t]he title of the complaint must name all
6 the parties.” The Ninth Circuit has “recognize[d] the paramount importance of open courts” and
7 therefore requires plaintiffs seeking to proceed under fictitious to overcome the “strong general
8 presumption that plaintiffs will conduct litigation under their own names.” *Doe v. Kamehameha*
9 *Sch./Bernice Pauahi Bishop Est.*, 596 F.3d 1036, 1043, 1046 (9th Cir. 2010). “To determine whether
10 to allow a party to proceed anonymously when the opposing party has objected, a district court must
11 balance five factors: ‘(1) the severity of the threatened harm, (2) the reasonableness of the anonymous
12 party’s fears, ... (3) the anonymous party’s vulnerability to such retaliation,’ (4) the prejudice to the
13 opposing party, and (5) the public interest.” *Id.* (quoting *Advanced Textile Corp.*, 214 F.3d at 1068).

14 To conduct this analysis, courts in the Ninth Circuit rely on declarations from the anonymous
15 plaintiffs or, occasionally, their representatives, signed under penalty of perjury, and have denied
16 motions to use fictitious names for lack of supporting declarations. *See, e.g., Roe v. State Bar of*
17 *California*, No. SA CV 22-00983-DFM, 2023 WL 6193023, at *2 (C.D. Cal. Mar. 17, 2023)
18 (analyzing “Plaintiffs’ declarations” to conclude that “[t]he evidence proffered by Plaintiffs falls
19 short”); *Student A v. Berkeley Unified Sch. Dist.*, No. 17-CV-02510-MEJ, 2017 WL 2171254, at *4
20 (N.D. Cal. May 17, 2017) (denying motion where “[t]here are no declarations from the guardians ad
21 litem stating they fear retaliation if their identities are revealed”); *Palo Alto Hous. Corp.*, 2007 WL
22 878524, at *2 (finding, based on plaintiff’s representative’s declaration, that she “has not stated
23 sufficient facts for the Court to determine whether Plaintiff’s case constitutes the kind of ‘special
24 circumstances’ necessary to outweigh the public’s interest in knowing Alyssa C.’s identity”).

25 Here, Plaintiffs rely entirely on identical, conclusory statements that “the public identification
26 of plaintiff, *e.g.*, revealing her [or his] name or precise address in court filings, would put her [or him]
27 at risk of being hurt or killed in retaliation by persons involved in the illegal narcotics trade in the
28 Tenderloin.” ECF Nos. 3-7 at 2. San Francisco is unaware of a requirement that Plaintiffs disclose

1 their exact addresses and do not dispute that such information can be kept confidential. However,
2 Plaintiffs offer no evidence to support this contention as it relates to their names and submit no
3 declarations from themselves or even their counsel. This is insufficient. *Student A*, 2017 WL
4 2171254, at *4-5; *Palo Alto Hous. Corp.*, 2007 WL 878524, at *2.

5 The absence of any evidence of potential “retaliation by persons involved in the illegal
6 narcotics trade in the Tenderloin” is particularly deficient here. Plaintiffs must show “that a
7 reasonable person would believe that the threat might actually be carried out,” *Advanced Textile Corp.*,
8 214 F.3d at 1071, but the recent history of the 2020 Action demonstrates otherwise. Four individual
9 plaintiffs in the 2020 Action, represented by the same law firm representing Plaintiffs here, filed
10 nearly identical claims based on strikingly similar allegations of fear of violence in the Tenderloin
11 “containment zone” and, despite proceeding with their real names, have suffered no known harm as a
12 result. Compare Complaint, *Hastings College of the Law et al v. City and County of San Francisco*,
13 No. 4:20-cv-03033-JST, ECF No. 1, ¶49 (“While Plaintiff HUGHES is fearful to leave the hotel
14 because the conditions have become so unsafe, he must do so to shop, run necessary errands, and
15 perform volunteer work. Many of the people living and congregating on the sidewalks refuse to get out
16 of the way and block his path as he tries to navigate through the neighborhood in his wheelchair. He is
17 afraid of being attacked for simply ‘inconveniencing them’ by trying to use his wheelchair on the
18 sidewalk.”), ¶50 (“Now, drug dealers and drug users congregate in front of her apartment building and
19 make it impossible for her or any others to enter or exit the building without walking very close to
20 them. She regards them as threatening and intimidating.”) with ECF No. 1, ¶¶30-31, 40, 50, 56
21 (alleging similar fear of people congregated in front of Plaintiffs’ residences and the surrounding
22 streets). Plaintiffs here have done nothing to demonstrate why they, unlike the 2020 Action plaintiffs
23 who alleged nearly identical fears, will suffer harms that did not befall the prior plaintiffs.

24 This case is also markedly different from the only case Plaintiffs cite, *Advanced Textile Corp.*,
25 214 F.3d. 1058. There, plaintiffs were garment workers primarily from China employed in the
26 Northern Mariana Islands who sued their employers using fictitious names because they were afraid of
27 being fired, deported, and arrested and imprisoned by the Chinese authorities. *Id.* The workers
28 submitted evidence, including testimony, that “[r]ecruiters warn workers, prior to departing China, that

1 they must not complain about working conditions, speak to Americans, or criticize the Chinese
 2 government,” that “[w]hen workers complained about working conditions, their recruiters contacted
 3 family members in China and demanded that the family members pay fines,” that workers “had been
 4 threatened with arrest for filing labor complaints,” and “that China’s state secrets law has been used to
 5 prosecute and imprison workers for complaining about their working conditions abroad.” *Id.* at 1065.
 6 Based on this evidence, the Ninth Circuit concluded the plaintiffs had demonstrated a reasonable fear
 7 of retaliation supporting anonymity. *Id.* at 1071. Here, Plaintiffs have submitted no such evidence of
 8 retaliation and the lack of retaliation against the publicly-identified plaintiffs in the 2020 Action
 9 demonstrates otherwise.

10 Additionally, far from quietly pursuing their action away from the limelight, the very morning
 11 that Plaintiffs filed their Complaint, several news articles publicizing their case quoted Plaintiffs’
 12 counsel and Plaintiffs’ statements and allegations from the Complaint and their demands for relief.
 13 *Supra*, p.3. Plaintiffs should not be permitted to use their anonymity as a sword to press their case in
 14 the media while simultaneously shielding themselves from public attention.

15 CONCLUSION

16 For the above reasons, the Court should deny Plaintiffs’ Applications to use pseudonyms.

17 Dated: March 18, 2024

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