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9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SANTA CLARA**

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

13 Plaintiff,

14 vs.

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

17 Defendants.

Case No. 20CV372366

**PLAINTIFF CALIFORNIA DEPARTMENT
OF FAIR EMPLOYMENT AND HOUSING'S
OPPOSITION TO DEFENDANTS SUNDAR
IYER AND RAMANA KOMPELLA'S
DEMURRER**

Date: March 9, 2021
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Judge: Hon. Drew C. Takaichi

Action Filed: October 16, 2020
Trial Date: TBD

*[Filed concurrently with Pl. DFEH's Opp.
to Def. Cisco's Demurrer; Pl. DFEH's Opp
to Cisco's Mtn. to Strike; Pl. DFEH's
Objections to Def. Cisco's Request for
Judicial Notice; Declaration of Melanie
Proctor ISO Oppositions to Demurrers and
Motion to Strike]*

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1 **I. INTRODUCTION**

2 The Department of Fair Employment and Housing (“DFEH”), as the state’s civil rights agency,
3 sued in its own name to protect the rights of a Cisco employee (“Doe”), a Dalit Indian, under California
4 law and to deter caste-based discrimination in California workplaces.¹ Defendants Cisco and its
5 managers engaged in unlawful discrimination, harassment, and retaliation against Doe due to his caste
6 status. In its complaint, DFEH alleges that Cisco and Doe’s former supervisors, Iyer and Kompella,
7 engaged in these unlawful practices against Doe, a Dalit Indian Cisco employee, because of his caste-
8 based characteristics of religion, ancestry, national origin/ethnicity, and race/color, in violation of the
9 Fair Employment and Housing Act (“FEHA”). (Gov. Code, § 12900 et seq.) DFEH also alleges Cisco
10 failed to take *any* steps to prevent such unlawful practices against Dalits and other Cisco employees with
11 similar caste-based characteristics, despite its predominately South Asian workforce.

12 Defendants have demurred to the complaint. Iyer and Kompella argue the complaint is time
13 barred. Defendants’ arguments are baseless not only because of the parties’ tolling agreement and
14 federal law, but also by operation of the California’s Emergency Rules of Court. Defendants also
15 demurred to DFEH’s second cause of action for harassment arguing that the claim is untimely, and that
16 DFEH fails to state a claim because caste is not protected under the FEHA, the conduct was not severe
17 or pervasive, and Iyer and Kompella merely took personnel management actions. These arguments are
18 untenable on demurrer. First, the complaint sufficiently alleges that Doe’s pursuit of internal remedies
19 equitably tolled his administrative claims under the continuing violations doctrine. Second, defendants’
20 assertion that the FEHA does not protect ethnicity and caste disregards precedent recognizing the
21 interconnection between ethnicity, national origin, race, and ancestry, and that discrimination and
22 harassment can be based on the intersection of protected characteristics—such as Doe’s religion,
23 ancestry, national origin/ethnicity, and race/color which make up his caste. Finally, defendants’ attempts
24 to minimize their conduct fail because DFEH’s complaint sufficiently alleges that *because of Doe’s*

25 _____
26 ¹ Gov. Code, § 12965 (DFEH “bring[s] a civil action in the name of the department”); *Dept. Fair Empl. & Hous.*
27 *v. Cathy’s Creations, Inc.* (2020) 54 Cal.App.5th 404, 410 (“[t]he DFEH’s task is to represent the interests of the
28 state and to effectuate the declared public policy of the state”); Gov. Code, § 12921, subd. (a) (declaring the
opportunity to seek, obtain, and hold employment without unlawful discrimination to be a civil right). Doe has not
intervened in this action and is therefore not a party to it. (Declaration of Melanie Proctor ISO DFEH’s
Opposition to Defs.’ Demurrers and Cisco’s Mtn. to Strike (“Proctor Decl.”) ¶ 4.)

1 protected characteristics, Iyer and Kompella engaged in harassing conduct that was so severe or
2 pervasive that it altered his working conditions.

3 The Court should overrule Iyer and Kompella’s demurrer.

4 **II. FACTS AND PROCEDURAL HISTORY**

5 Complainant John Doe filed a verified administrative charge² against defendant Cisco on July
6 30, 2018. (Compl. ¶ 11.) On or around October 9, 2018, Doe filed an amended administrative charge
7 against defendants Cisco, Iyer, and Kompella. (*Ibid.*) DFEH investigated the charges and determined
8 there was merit. (*Id.* ¶ 12.) The parties entered consecutive tolling agreements to toll the statutory
9 deadline for DFEH to file a civil action to June 30, 2020, while engaging in two unsuccessful mediation
10 sessions. (*Id.* ¶ 13.)

11 DFEH initially filed a federal action on June 30, 2020 alleging the instant state-law claims, as
12 well as corresponding federal claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e,
13 et seq. (Title VII), in the United States District Court for the Northern District of California. (*Id.* ¶ 14.)
14 On October 16, 2020, DFEH voluntarily dismissed without prejudice its action in federal court, pursuant
15 to Federal Rules of Civil Procedure 41, subdivision (a)(1), and filed its state-court complaint pursuant to
16 Government Code section 12965 and 28 U.S.C. section 1367(d). (*Id.* ¶¶ 14-15.) DFEH’s complaint
17 pleads five causes of action under the FEHA: (1) discrimination on the basis of religion, ancestry,
18 national origin/ethnicity, and race/color (Gov. Code, § 12940, subd. (a)); (2) harassment on the basis of
19 religion, ancestry, national origin/ethnicity, and race/color (*id.* at (j)); (3) retaliation (*id.* at (h)); (4)
20 failure to take all reasonable steps to prevent discrimination, harassment, and retaliation on behalf of
21 Doe (*id.* at (k); Cal. Code Regs., tit. 2, § 11023, subd. (a)(2)); and (5) failure to take all reasonable steps
22 to prevent discrimination, harassment, and retaliation on behalf of DFEH (Gov. Code, § 12940, subd.
23 (k); Cal. Code Regs., tit. 2, § 11023, subd. (a)(3)). All causes of action are brought against Cisco. The
24 second cause of action for harassment is also brought against Iyer and Kompella. (Compl. ¶¶ 61-71.)

25 DFEH’s state-court action was docketed on November 2, 2020. (Proctor Decl. ¶ 7.) On
26 November 3, 2020, all defendants demurred to the complaint. Iyer and Kompella also joined Cisco’s

27 _____
28 ² In the administrative process, the FEHA refers to “complaints” being filed by the complaining party. For the sake of clarity, the DFEH will refer to the administrative complaint as a “charge.”

1 demurrer and motion to strike. (Iyer and Kompella’s Mem. Points & Auths. in Support of Demurrer
2 (“Demurrer”), p. 1, fn. 2.) The arguments raised in Cisco’s motions are addressed in DFEH’s
3 concurrently filed oppositions to Cisco’s demurrer and motion to strike.

4 **III. LEGAL STANDARD**

5 A demurrer tests only the legal sufficiency of a complaint and, as such, only raises issues of law.
6 (*Lewis v. Safeway, Inc.* (2015) 235 Cal.App.4th 385, 391; Code Civ. Proc., § 589, subd. (a).) In ruling
7 on a demurrer, a court must accept as true all well-pleaded material facts “and those arising by
8 reasonable implication” (*Young v. Gannon* (2002) 97 Cal.App.4th 209, 220), giving “the complaint a
9 reasonable interpretation, reading it as a whole and its parts in their context” (*Blank v. Kirwan* (1985) 39
10 Cal.3d 311, 318; see also Code Civ. Proc., § 430.30, subds. (a), (b) [limiting grounds for demurrers to
11 matters appearing on face of complaint or matters subject to mandatory or permissive judicial notice]).

12 “[T]he complaint need only allege facts sufficient to state a cause of action; each evidentiary
13 fact that might eventually form part of the plaintiff’s proof need not be alleged.” (*C.A. v. William S.*
14 *Hart Union High Sch. Dist.* (2012) 53 Cal.4th 861, 872.) This fair-notice pleading standard requires a
15 plaintiff “only to set forth the essential facts of his case with reasonable precision and with particularity
16 sufficient to acquaint a defendant with the nature, source and extent of his cause of action.” (*Youngman*
17 *v. Nevada Irrigation Dist.* (1969) 70 Cal.2d 240, 245.) The Court must construe the allegations in the
18 complaint liberally in favor of the pleader. (*Skopp v. Weaver* (1976) 16 Cal.3d 432, 437.) Extrinsic
19 evidence not judicially noticeable cannot be considered on demurrer. (*Arce v. Kaiser Found. Health*
20 *Plan, Inc.* (2010) 181 Cal.App.4th 471, 482; Code Civ. Proc., §§ 430.30, 430.70.)

21 **IV. ARGUMENT**

22 A. **DEFENDANTS FAILED TO MEET AND CONFER**

23 A party must meet and confer in person or by telephone before demurring to a complaint. (Code
24 Civ. Proc., § 430.41, subd. (a).) Defendants failed to meet that obligation. Defendants’ own pleadings
25 belie its argument that DFEH refused to meet and confer. (Declaration of Alexander Hernaez in Support
26 of Iyer & Kompella’s Demurrer (“Hernaez Decl.”), ¶ 4, Exs. A & B.) More than once, DFEH provided
27 several dates for a call, but the parties were unable to identify a mutually agreeable date and time.
28 Within three hours after the Complaint was publicly docketed on November 2, 2020, DFEH proposed a

1 call. DFEH received no response to this offer. (Proctor Decl., ¶ 5.) Instead, on November 3, 2020,
2 defendants served their demurrer and motion to compel arbitration. (Proctor Decl., ¶ 6.)

3 **B. DFEH’S COMPLAINT IS TIMELY**

4 1. DFEH’s state-court complaint was timely filed pursuant to tolling and 28 U.S.C. §
5 1367(d)

6 Iyer and Kompella frivolously argue that DFEH’s state-court civil rights complaint is untimely.
7 (Iyer and Kompella’s Demurrer, pp. 4 - 5.) To the contrary, the parties’ tolling agreement, California’s
8 Emergency Rules of Court, and federal law more than ensure the timeliness of DFEH’s complaint. First,
9 by operation of the parties’ tolling agreement and California’s Emergency Rules Related to COVID-19,
10 DFEH initially filed in federal court long before the deadline to do so expired. (Judicial Council of Cal.,
11 Appen. I, Emergency Rules Related to COVID-19 (2020), Emergency rule 9, p. 13 (“Emergency Rule
12 9”) [tolling time from April 1, 2020 to October 1, 2020].) During the investigation, the parties entered an
13 agreement to toll time until June 30, 2020. (Compl. ¶ 13.) At the time the Emergency Rule took effect,
14 DFEH had ninety-one days remaining before its complaint was due to be filed. (*Id.*) Thus, by operation
15 of the Emergency Rule, the complaint was not due until ninety-one days after October 1, 2020, or
16 December 20, 2020—a deadline DFEH’s state-court filing clearly meets.

17 Even absent the tolling described above, the United States Code unambiguously tolls time for
18 state-law claims filed in federal court “while the claim is pending and for a period of thirty days after it
19 is dismissed unless State law provides for a longer tolling period.” (28 U.S.C. § 1367(d); *Artis v. District*
20 *of Columbia* (2018) 583 U.S. ___ [138 S.Ct. 594, 603] (“*Artis*”).) Thus, the statute provides thirty days
21 after dismissal to allow the plaintiff to refile in state court. (28 U.S.C. § 1367(d); *Artis, supra*, 138 S.Ct.
22 at p. 603.) Tolling the state statute of limitations and providing a 30-day period avoids forcing “plaintiffs
23 to resort to wasteful, inefficient duplication to preserve their state-law claims.” (*Artis, supra*, 138 S.Ct.
24 at p. 607.)

25 Iyer and Kompella fail to address *Artis*, the controlling precedent. Instead, they cite cases that
26 address whether a plaintiff can dismiss and refile in the *same* forum. (Demurrer, 5:11-19, citing *Centaur*
27 *Classic Convertible Arbitrage Fund LTD. v. Countrywide Financial Corp.* (C.D.Cal. 2011) 878
28 F.Supp.2d 1009, 1018-1019 [plaintiffs dismissed their complaint initially filed in the U.S. District Court

1 for the Central District of California and refiled in that forum] and *Parrish v. HBO & Co.* (S.D.Ohio
2 1999) 85 F.Supp.2d 792, 793-795 [plaintiff voluntarily dismissed complaint initially filed in the
3 Southern District of Ohio and refiled in that forum].)

4 Contrary to defendants' argument, "a plaintiff has an **absolute right** to voluntarily dismiss his
5 action prior to service by the defendant of an answer." (*Wilson v. City of San Jose* (9th Cir. 1997) 111
6 F.3d 688, 692, emphasis added.) Moreover, upon DFEH's voluntary dismissal, Iyer and Kompella were
7 left as if no action had been filed in the first instance. (*Chen v. eBay Inc. et al.* (N.D.Cal. Mar. 4, 2016,
8 No. 15-CV-05048-HSG) 2016 WL 835512, at *2 ("*Chen*").) There, upon removal from state court, the
9 plaintiffs voluntarily dismissed their federal complaint and then filed a state court action bringing only
10 state law claims on behalf of only California residents. (*Id.* at *1.) Defendants again removed the
11 complaint. (*Ibid.*) The district court agreed with plaintiffs that removal was improper, and noted that
12 once plaintiffs voluntarily dismissed the first complaint, defendants "were left 'as though no action had
13 been brought.'" (*Id.* at *2.) Thus, even had DFEH filed its federal complaint on the last day to do so, the
14 DFEH had a minimum of thirty days to file a state court complaint, a deadline it clearly met. (28 U.S.C.
15 § 1367(d); *Artis, supra*, 138 S.Ct. at p. 603; *Wilson, supra*, 111 F.3d at p. 692; *Chen, supra*, 2016 WL
16 835512, at *2.)

17 Because DFEH filed this action before expiration of the statute of limitations, the Court should
18 overrule defendants' demurrer. Alternatively, because DFEH filed this action within thirty days of
19 dismissing its federal action, the Court should overrule Iyer and Kompella's demurrer.

20 2. In the alternative, the doctrine of equitable tolling applies to DFEH's state claims while
21 those claims were pending in federal court

22 The California Supreme Court has applied the doctrine of equitable tolling to suspend the statute
23 of limitations on FEHA claims while those claims are pending in federal court. (*Addison v. State of*
24 *California* (1978) 21 Cal.3d 313, 316 ("*Addison*"); *McDonald v. Antelope Valley Community College*
25 *Dist.* (2008) 45 Cal.4th 88, 110 ["equitable tolling under the FEHA, including during the period when an
26 aggrieved party's claims are being addressed in an alternate forum"].) Courts will apply the equitable
27 tolling doctrine to relieve a "plaintiff from the bar of a limitations statute when, possessing several legal
28 remedies he, reasonably and in good faith, pursues one designed to lessen the extent of his injuries or

1 damage.” (*Addison, supra*, 21 Cal.3d at p. 317.) The equitable tolling doctrine “soften[s] the harsh
2 impact of technical rules which might otherwise prevent a good faith litigant from having a day in
3 court.” (*Id.* at p. 316.) The doctrine of equitable tolling should be applied when, as here: (1) defendants
4 had timely notice of the plaintiff’s intent to sue; (2) there is no prejudice to the defendants in defending a
5 claim on the merits; and (3) there is objectively reasonable and subjectively good faith conduct on the
6 part of the plaintiff. (*Id.* at p. 319; *Saint Francis Memorial Hosp. v. State Dept. of Public Health* (2020)
7 9 Cal.5th 710, 727-729.)

8 Here, defendants had ample notice of DFEH’s claims. (Compl. ¶¶ 11, 14-15, 33, 37-39, 41-43.)
9 Second, there is no prejudice to defendants because they had ample “opportunity to begin gathering their
10 evidence and preparing their defense.” (*Addison, supra*, 21 Cal.3d at p. 319.) Finally, DFEH filed its
11 state action the same day it voluntarily dismissed its federal action without prejudice. (Compl., ¶¶ 14-
12 15.) DFEH’s conduct in timely filing in federal court under Title VII and the FEHA, and then dismissing
13 the federal claims to litigate on state law grounds before any defendant answered, was both objectively
14 reasonable and in good faith. Accordingly, equitable tolling applies.

15 C. THE DOCTRINE OF EQUITABLE TOLLING APPLIES TO DOE’S ADMINISTRATIVE
16 CLAIM FOR HARASSMENT WHILE HE WAS PURSUING INTERNAL REMEDIES

17 Defendants argue that the harassment occurred outside of Doe’s limitations period. (Demurrer,
18 pp. 5-7.) Iyer and Kompella ignore that the California Supreme Court has held the one-year period to
19 file an administrative charge with DFEH is subject to equitable tolling under the continuing violation
20 doctrine. Under this doctrine, equitable tolling applies where (1) internal grievance procedures are
21 pursued, (2) the three elements set forth under *Addison* are met, and (3) at least one violation occurred
22 within the one-year period preceding the administrative charge. (See *Richards v. CH2M Hill, Inc.*
23 (2001) 26 Cal.4th 798, 819-823 [“to carry out the purpose of the FEHA to safeguard the employee’s
24 right to hold employment without experiencing discrimination, the limitations period set out in the
25 FEHA should be interpreted so as to promote the resolution of potentially meritorious claims on the
26 merits”], quoting *Romano v. Rockwell Internat. Inc.* (1996) 14 Cal.4th 479, 493-494.) As a continuing
27 violation, harassment “should be viewed as a single, actionable course of conduct” if the actions are
28 sufficiently similar in kind; they occur with sufficient frequency; and they have not acquired a degree

1 of ‘permanence’ so that employees are on notice that further efforts at informal conciliation with the
2 employer to end harassment would be futile. (*Richards, supra*, 26 Cal.4th at p. 802.) When the
3 employee seeks resolution through internal procedures, the statute of limitations is triggered when the
4 employee learns of the violation and “*is on notice that litigation, not informal conciliation, is the only*
5 *alternative for the vindication of his or her rights.*” (*Id.* at p. 823, italics added.)

6 Here, equitable tolling is appropriate because Doe availed himself of Cisco’s internal grievance
7 process multiple times (Compl. ¶¶ 33, 37-39, 41-43); the three *Addison* elements are met (see *supra*,
8 Section IV.B.2); and at least one violation occurred within the one-year period preceding the
9 administrative charge (Compl. ¶¶ 43-47 [Powell concluded in her report that caste discrimination was
10 not unlawful on August 2017; Kompella became the Interim Head of Engineering in February 2018 and
11 continued harassing Doe; Gupta failed to promote Doe in May 2018 based on Iyer’s harassing and
12 retaliatory personnel feedback].)

13 Moreover, the continuing violation doctrine applies here because the harassment “should be
14 viewed as a single, actionable course of conduct.” (*Richards, supra*, 26 Cal.4th at p. 802.) As adverse
15 employment actions, the alleged violations are sufficiently similar in kind and occurred with sufficient
16 frequency. After Doe complained to HR about Iyer disclosing Doe’s caste, Iyer immediately removed
17 him as lead on two technologies. (Compl. ¶¶ 33, 34.) The next day, Iyer promoted two of Doe’s non-
18 Dalit peers (*id.* ¶ 35) and removed the entire team from Doe’s supervision on his remaining technology
19 (*id.* ¶ 36). Iyer continued to isolate Doe by disparaging him to his colleagues, misrepresenting that he did
20 not perform his job adequately, and warning his colleagues not to work with him. (*Id.* ¶ 40.) Similarly,
21 Kompella continued Iyer’s harassment as the Interim Head of Engineering when he gave Doe
22 assignments without proper resources and time, and suddenly required him to submit weekly status
23 reports to him and a Senior Vice President. (*Id.* ¶ 45.) Even after Iyer stepped down, he continued to
24 exercise retaliatory influence over Doe when, in July 2018, Doe’s new supervisor cited disparaging
25 comments Iyer made two years earlier as the reason for denying Doe a promotion. (*Id.* ¶ 47.)

26 These adverse employment actions did not acquire a degree of permanence until after Doe
27 realized that informal conciliation through Cisco’s internal processes, from December 2016 to August
28 2017, would not vindicate his rights. (*Id.* ¶¶ 33, 37-39, 41-43.) When it did become clear that the

1 discriminatory, harassing, and retaliatory conduct would continue, Doe promptly filed his administrative
2 charge with DFEH. (*Id.* ¶¶ 45-47.) Therefore, the complaint pleads sufficient facts to allege both that
3 equitable tolling attaches because Doe pursued internal remedies with Cisco, and the existence of a
4 continuing violation. (*Richards, supra*, 26 Cal.4th at p. 802.)

5 D. ETHNICITY AND CASTE ARE PROTECTED CHARACTERISTICS WITHIN THE
6 MEANING OF THE FEHA

7 Defendants Iyer and Kompella erroneously assert that the FEHA does not protect caste and
8 ethnicity merely because those terms are not explicitly enumerated in the FEHA. (Demurrer, p. 7, fn. 4.)
9 However, defendants do not dispute that the FEHA expressly prohibits an employer or any other
10 person from “harass[ing] an employee because of race, religious creed, color, national origin, [or]
11 ancestry.” (Gov. Code, § 12940, subd. (j).) Nor do they dispute that individual employees, like
12 themselves, are personally liable for any harassment prohibited by the FEHA that is perpetrated by the
13 employee. (*Id.* at (j)(3).) The FEHA must be construed liberally to accomplish its purposes. (*Id.* at §
14 12993, subd. (a); *Kelly v. Methodist Hosp. of So. Cal.* (2000) 22 Cal.4th 1108, 1114 [“the court must
15 construe the FEHA broadly, not . . . restrictively”], internal quotations and citation omitted; see also
16 Gov. Code, § 12920 [“It is the purpose of this part to provide effective remedies that will eliminate these
17 discriminatory practices”].) In light of this well-established precedent that civil rights laws must be read
18 broadly, defendants’ demurrer should be overruled.

19 1. Ethnicity is a protected characteristic under the FEHA

20 The FEHA regulations define “national origin” to include, but not be limited to, “physical,
21 **cultural**, or linguistic characteristics associated with a national origin group” and “**ethnic groups**.” (Cal.
22 Code Regs., tit. 2, § 11027.1, subd. (a)(1), (b), emphasis added.) California and federal courts have long
23 held that race, national origin, ancestry, and ethnicity are intertwined. Notably, the U.S. Supreme Court
24 rejected an argument like the one made here by Iyer and Kompella. (*Saint Francis College v. Al-*
25 *Khazraji* (1987) 481 U.S. 604 (“*St. Francis*”).)³ In *St. Francis*, a Muslim professor born in Iraq alleged

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27 ³ *Guz v. Bechtel Nat., Inc.* (2000) 24 Cal.4th 317, 354 (“Because of the similarity between state and federal
28 employment discrimination laws, California courts look to pertinent federal precedent when applying our own
statutes”); *Sandhu v. Lockheed Missiles & Space Co.* (1996) 26 Cal.App.4th 846, 855-856 (finding § 1981 case
law relevant to analyzing race discrimination claims under the FEHA).

1 he was discriminated against because of his national origin, religion, and/or race in violation of 42
2 U.S.C. § 1981. (*Id.* at p. 606.) The Court concluded “Congress intended to protect from discrimination
3 ***identifiable classes of persons who are subjected to intentional discrimination solely because of their***
4 ***ancestry or ethnic characteristics.*” (*Id.* at p. 613, emphasis added).**

5 California’s Sixth District Court of Appeal relied upon *St. Francis* to overrule a demurrer to an
6 employment discrimination complaint. (*Sandhu, supra*, 26 Cal.App.4th at pp. 855-857.) The appellate
7 court held that Sandhu, who alleged he experienced employment discrimination because he was Asian,
8 Punjabi, and of East Indian descent, made out a cognizable claim under FEHA because he pled
9 discrimination “based on his membership in a group which is perceived as distinct when measured
10 against other Lockheed employees, and which is not based on his birthplace alone.” (*Id.* at p. 857.) Other
11 courts have agreed that ethnicity is a protected class. (See, e.g., *Gathenji v. Autozoners, LLC* (E.D.Cal.
12 2010) 703 F.Supp.2d 1017, 1029 [holding ethnicity protected under Title VII and FEHA]; *Dee v.*
13 *Vintage Petroleum, Inc.* (2003) 106 Cal.App.4th 30, 35-37 (“*Dee*”) [finding harassment based on
14 ethnicity under FEHA]; *Nadaf-Rahrov v. Neiman Marcus Group, Inc.* (2008) 166 Cal.App.4th 952, 991-
15 992 [overruling summary judgment to find discrimination based on ethnicity under FEHA].)

16 2. Caste is a protected characteristic under the FEHA

17 Iyer and Kompella erroneously contend that caste is not a protected class simply because it is not
18 explicitly enumerated in the FEHA. (Demurrer, p. 7, fn. 4.) Defendants’ argument ignores the legislative
19 mandate to construe the FEHA’s provisions “liberally for the accomplishment of the purposes of this
20 part.” (Gov. Code, § 12993, subd. (a).) Thus, the FEHA does not exclude caste discrimination simply
21 because caste is not a stand-alone category. Moreover, “it’s irrelevant what an employer might call its
22 discriminatory practice, [and] how others might label it[.]” (*Bostock v. Clayton Cty., Georgia* (2020) __
23 U.S. __ [140 S.Ct. 1731, 1744] (“*Bostock*”) [finding homosexuality and transgender status fall under
24 sex as a protected category under Title VII].) The Supreme Court noted that employers tried to justify
25 discriminatory treatment of women by calling the basis of the differential treatment a “life expectancy”
26 adjustment or “motherhood,” only to have the Supreme Court hold that they had indeed discriminated
27 based on sex. (*Id.* at p. 1744 [citing *Los Angeles Dept. of Water and Power v. Manhart* (1978) 435 U.S.
28 702; *Phillips v. Martin Marietta Corp.* (1971) 400 U.S. 542].) “Title VII prohibits all forms of

1 discrimination because of sex, *however they may manifest themselves or whatever other labels might*
2 *attach to them.*” (*Bostock, supra*, 140 S.Ct. at pp. 1746-1747, emphasis added.) Indeed, “the fact that [a
3 statute] ... applie[s] in situations not expressly anticipated by Congress’ does not demonstrate
4 ambiguity; instead, it simply ‘demonstrates [the] breadth’ of a legislative command.” (*Id.* at p. 1749
5 [quoting *Sedima, S.P.R.L. v. Imrex Co.* (1985) 473 U.S. 479, 499].) California courts have long relied on
6 federal Title VII jurisprudence when interpreting the FEHA. (See *Dept. Fair Empl. & Hous. v. Law Sch.*
7 *Admission Council, Inc.* (N.D.Cal. 2013) 941 F.Supp.2d 1159, 1167-1168; *Levy v. Regents of Univ. of*
8 *Cal.* (1988) 199 Cal.App.3d 1334, 1343 [examining federal law and how Title VII claims are broached
9 to guide court’s analysis of FEHA claims].)

10 In this case, harassment based on religion, ancestry, national origin/ethnicity, and race/color
11 manifest themselves in casteism. Caste-based harassment cuts across family ancestry, religious faith
12 (e.g., Buddhists and Christians can adhere to casteism), country of origin (e.g., casteism occurs in India,
13 Sri Lanka, and Nepal), race and color (e.g., caste is not limited to certain physiological characteristics).
14 (Compl., ¶¶ 1, 3, 4, 29.) Caste intersects all these FEHA-protected categories, which demonstrates there
15 are at least four statutory reasons that caste *can and should* be protected. (Gov. Code, § 12993, subd. (a)
16 [holding FEHA “shall be construed liberally for the accomplishment of the purposes of this part”].)

17 Moreover, courts have long recognized that discrimination and harassment may be based upon
18 the intersection of protected characteristics. (See, e.g., *Lam v. Univ. of Hawai’i* (9th Cir. 1994) 40 F.3d
19 1551, 1562 [“when a plaintiff is claiming race *and* sex bias, it is necessary to determine whether the
20 employer discriminates on the basis of that *combination* of factors, not just whether it discriminates
21 against people of the same race or of the same sex”], italics original; *Brendt v. Cal. Dept. of Corrections*
22 (N.D.Cal., Oct. 13, 2005, No. C03-3174 TEH) 2005 WL 2596452, *7-8 [denying motion to dismiss
23 where Title VII plaintiff could not “single out race or gender as the cause . . . because it was . . . a
24 combination of both . . . that led to her disparate treatment”]; *Jefferies v. Harris County Community*
25 *Action Assn.* (5th Cir. 1980) 615 F.2d 1025, 1034 [“[W]hen a Title VII plaintiff alleges that an employer
26 discriminates against black females, the fact that black males and white females are not subject to
27 discrimination is irrelevant and must not form any basis for a finding that the employer did not
28 discriminate against the black female plaintiff”].) Any “attempt to bisect . . . [Doe’s] identity at the

1 intersection of” these protected characteristics would “distort[] or ignore[] the particular nature of” his
2 experience. (*Lam, supra*, 40 F.3d at p. 1562.)

3 E. THE COMPLAINT ALLEGES FACTS TO SUPPORT A CLAIM THE HARASSMENT WAS
4 SEVERE OR PERVASIVE ENOUGH TO ALTER THE CONDITIONS OF EMPLOYMENT

5 Contrary to Iyer and Kompella’s assertion (Demurrer, pp. 11-13), under California’s fair-notice
6 pleading standard and liberal construction of the FEHA, DFEH pleads facts to assert that Iyer and
7 Kompella’s harassing conduct was sufficiently severe or pervasive to be actionable. (See *Ludgate Ins.*
8 *Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 608 (“*Ludgate*”); *Skopp v. Weaver, supra*, 16
9 Cal.3d at p. 437; Compl., ¶¶ 34-36, 40, 45-47.) The fact finder determines whether harassing conduct is
10 severe or pervasive by looking at the totality of the circumstances of the work environment. (*Caldera v.*
11 *Dept. of Corrections & Rehabilitation* (2018) 25 Cal.App.5th 31, 39; *Miller v. Dept. of Corrections*
12 (2005) 36 Cal.4th 446, 462 (“*Miller*”).)

13 To show that the harassment unreasonably interfered with Doe’s work performance, DFEH need
14 only prove it changed Doe’s working conditions such that it kept him from advancing in his career and
15 made “it more difficult to do the job.” (*Harris v. Forklift Sys.* (1993) 510 U.S. 17, 22; *id.* at p. 25, conc.
16 opn. of Ginsburg, J.; see Gov. Code, § 12923, subd. (a) [endorsing this language as reflective of
17 California law].) If the environment “reasonably would be perceived, and is perceived, as hostile or
18 abusive, there is no need for it also to be psychologically injurious.” (*Kelly-Zurian v. Wohl Shoe Co.,*
19 *Inc.* (1994) 22 Cal.App.4th 397, 412 [citing *Harris v. Forklift Sys., supra*, 510 U.S. at p. 22].)
20 Harassment by a supervisor can be more impactful on the work environment than by a coworker. (See,
21 e.g., *Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 706-707 (“*Roby*”) [finding harassment by a
22 manager more injurious “because of the prestige and authority that the manager enjoys”]; *Dee, supra*,
23 106 Cal.App.4th at p. 36 [noting a single act of harassment committed by manager may be sufficiently
24 severe because “the employer cloaks the supervisor with authority.”].) As his supervisors, Iyer and
25 Kompella revealed Doe’s caste to colleagues, took his lead roles away and gave them to non-Dalit
26 colleagues, isolated him from coworkers, gave him tasks impossible to complete under the
27 circumstances, maligned his work product to coworkers, over scrutinized him, and denied him a
28 promotion. Iyer and Kompella’s conduct made it more difficult for Doe to do his job, impeded his career

1 advancement, and created a workplace that was hostile, intimidating, and oppressive. (CACI No. 2522A;
2 Compl., ¶¶ 34-36, 40, 45-47.)

3 Additionally, defendants ignore that the work environment must be viewed subjectively and
4 objectively from the perspective of a reasonable person in Doe’s position, considering “all the
5 circumstances.” (*Beyda v. City of Los Angeles* (1998) 65 Cal.App.4th 511, 518-519 [citing *Oncale v.*
6 *Sundowner Offshore Servs., Inc.* (1998) 523 U.S. 75, 81].) A reasonable person in Doe’s position would
7 be another Dalit Indian. (*McGinest v. GTE Serv. Corp.* (9th Cir. 2004) 360 F.3d 1103, 1115
8 [“[A]llegations of a racially hostile work-place must be assessed from the perspective of a reasonable
9 person belonging to the racial or ethnic group of the plaintiff”].) “Racially motivated comments or
10 actions may appear innocent or only mildly offensive to one who is not a member of the targeted group,
11 but in reality be intolerably abusive or threatening when understood from the perspective of a plaintiff
12 who is a member of the targeted group.” (*Ibid.*) Considering the severe inequality, deep prejudice, and
13 hate violence to which Dalits are subjected, any reasonable Dalit would have perceived defendants’
14 actions to be abusive, hostile, and intimidating. (Compl., ¶¶ 1, 34-36, 40, 45-47.)

15 Under the required liberal construction of the FEHA, defendants’ demurrer should be overruled
16 because DFEH met its burden under California’s fair-notice pleading standard to allege that defendants’
17 harassing conduct was severe or pervasive. (See *Ludgate, supra*, 82 Cal.App.4th at p. 608; *Skopp v.*
18 *Weaver, supra*, 16 Cal.3d at p. 437.)

19 F. ADVERSE PERSONNEL MANAGEMENT ACTIONS CAN CONSTITUTE HARASSMENT

20 Defendants wrongly assert that the adverse employment actions alleged in the Complaint cannot
21 support a harassment claim. (Demurrer, pp. 7-11.) Adverse personnel management decisions can, in
22 fact, constitute actionable harassment when they are based on the employee’s protected characteristics
23 and create a hostile work environment. (*Roby, supra*, 47 Cal.4th at p. 708 [clarifying the holding in *Rend*
24 *v. Baird* (1998) 18 Cal.4th 640 by explaining “there is no basis for excluding evidence of biased
25 personnel management actions so long as that evidence is relevant to prove the communication of a
26 hostile message”].) Indeed, official employment actions, like those alleged in DFEH’s complaint, can
27 form the basis for a harassment claim when those actions are used as a means to convey the supervisor’s
28 “offensive message” and his actions are “so severe or pervasive as to alter the working conditions.” (*Id.*

1 at pp. 708-709 [finding that shunning Roby, belittling Roby’s job, and reprimanding Roby in front of
2 coworkers could provide evidentiary support for harassment claim].) Similarly, Doe was subjected to
3 adverse employment actions that indicated Iyer and Kompella’s unlawful bias against Doe’s caste and
4 were so severe and pervasive as to alter his working environment.

5 Nor should the Court disregard defendants’ alleged remarks about Doe’s caste and work product
6 as defendants urge. (Demurrer, pp. 10-11.) Contrary to the cases cited by defendants, the California
7 Supreme Court has held that discriminatory remarks, considered in light of all of the evidence, may be
8 probative of discriminatory intent. (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 540-542 [discussing the
9 evolution of and rejecting the “stray remarks” doctrine].) Taken collectively, ““a series of subtle, yet
10 damaging injuries”” can constitute adverse employment action to be harassment. (*Horsford v. Bd. of*
11 *Trustees of Cal. State Univ.* (2005) 132 Cal.App.4th 359, 374 [quoting *Yanowitz v. L’Oreal USA, Inc.*
12 (2005) 36 Cal.4th 1025, 1055].) Even the federal summary judgment decisions referenced by defendants
13 note that remarks about caste, religion, or national origin may be probative of discrimination if
14 connected to adverse employment action, as they are here. (*Gautam v. Prudential Fin., Inc.* (E.D.N.Y.,
15 Sept. 3, 2008, No. 06-CV-3614 (JS)(AKT)) 2008 WL 11417411, *7 [granting *summary judgment* in
16 favor of defendant, relying on rejected stray remarks doctrine to disregard interview questions about
17 plaintiff’s age, religion, and India’s caste system]; *Chudnovsky v. Prudential Securities Inc.* (S.D.N.Y.,
18 Oct. 23, 2000, No. 98 Civ. 7753 (SAS)) 2000 WL 1576876, *7-8 [noting national origin comments
19 demonstrating impermissible bias may constitute Title VII violation *if harasser played role in adverse*
20 *employment action*]; *Jalal v. Columbia Univ.* (S.D.N.Y. 1998) 4 F.Supp.2d 224, 235-236 [finding
21 statement can “support a rational inference of bias” in two ways, including if it reveals a speaker’s
22 prejudice if it references a protected class and indicates membership in such a class is disapproved of].)

23 Here, defendants’ harassing conduct and comments are probative of discriminatory bias against
24 Doe’s caste and can constitute actionable employment harassment. DFEH sufficiently alleged a claim on
25 this ground. As such, Iyer and Kompella’s demurrer should be overruled.

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1 G. IF THE COURT SUSTAINS DEFENDANTS’ DEMURRER, IT SHOULD GRANT LEAVE
2 TO AMEND

3 “Where the defect raised . . . by demurrer is reasonably capable of cure, ‘leave to amend is
4 routinely and liberally granted’” (*CLD Const., Inc. v. City of San Ramon* (2004) 120 Cal.App.4th
5 1141, 1146 [quoting *Price v. Dames & Moore* (2001) 92 Cal.App.4th 355, 360].) “It is generally abuse
6 of discretion to deny leave to amend, because the drastic step of denial of the opportunity to correct the
7 curable defect effectively terminates the pleader’s action.” (*Id.* at pp. 1146-1147.)

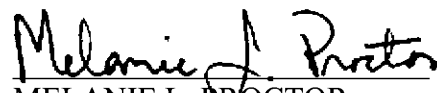
8 The Court should reject defendants’ legally unsupported request to dismiss this action. That
9 DFEH conducted an administrative investigation is irrelevant. DFEH investigations are not actions or
10 even quasi-judicial proceedings. (See *Dept. Fair Empl. & Hous. v. Super. Ct.* (2002) 99 Cal.App.4th
11 896, 901 [finding DFEH administrative investigations “are similar to grand jury proceedings”, internal
12 citations omitted].) Furthermore, in providing DFEH with the authority to file civil actions if it
13 determines a complaint has merit, the Legislature did not abrogate DFEH’s right to conduct discovery.
14 (See Gov. Code, § 12965, subs. (a)-(c).) If this Court is inclined to sustain defendants’ demurrer, it
15 should do so with leave to amend to avoid depriving DFEH of its only opportunity for judicial
16 resolution.

17 V. CONCLUSION

18 Because DFEH’s second cause of action was timely filed and alleges sufficient facts to state a
19 cause of action for harassment in violation of the FEHA, DFEH asks this Court to overrule defendants’
20 demurrer. Alternatively, if the Court grants any portion of the demurrer, DFEH asks this Court to grant
21 DFEH leave to amend.

22 Dated: February 24, 2021

CALIFORNIA DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING

23
24 
25 MELANIE L. PROCTOR
26 Attorneys for the DFEH
27
28

PROOF OF ELECTRONIC SERVICE

I, the undersigned, hereby declare:

I am over eighteen years of age and not a party to the within cause. My business and mailing address is 2218 Kausen Drive, Suite 100, Elk Grove, CA 95758. My electronic service address is Elizabeth.munoz@dfeh.ca.gov.

On February 24, 2021, I served the following document(s) by electronic transmission performed directly through the DFEH’s electronic filing service provider:

- **PLAINTIFF CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING’S OPPOSITION TO DEFENDANTS SUNDAR IYER AND RAMANA KOMPELLA’S DEMURRER.**

In the case of *Department of Fair Employment and Housing v. Cisco Systems, Inc. et al*, Santa Clara Superior Court, Case No. 20CV372366, to the person(s) listed below at the following e-mail address(es):

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

15 Executed on February 24, 2021 at Sacramento, California.

16 
17 _____
18 Elizabeth Muñoz