

1 LYNNE C. HERMLE (STATE BAR NO. 99779)
lchermle@orrick.com
2 JOSEPH C. LIBURT (STATE BAR NO. 155507)
jliburt@orrick.com
3 CAROLINA GARCIA (STATE BAR NO. 311261)
cgarcia@orrick.com
4 ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
5 Menlo Park, CA 94025-1015
Telephone: +1 650 614 7400
6 Facsimile: +1 650 614 7401

7 Attorneys for Defendant
CISCO SYSTEMS, INC.
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SANTA CLARA
11
12

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

15 Plaintiff,

16 v.

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

19 Defendants.
20

Case No. 20CV372366

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO STRIKE PORTIONS OF
PLAINTIFF’S COMPLAINT BY CISCO
SYSTEMS, INC.**

Date: TBD March 9, 2021
Time: TBD 9:00 AM
Dept.: 6
Judge: Honorable Maureen A. Folan

Complaint Filed: October 16, 2020

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1 **I. INTRODUCTION AND STATEMENT OF ISSUES**

2 In addition to presenting defective and meritless claims addressed in the demurrers filed
3 concurrently by Cisco Systems, Inc. (“Cisco”), the Department of Fair Employment and Housing
4 (“DFEH”) loaded its Complaint with additional immaterial and impertinent allegations in an
5 apparent effort to garner attention from the media and public. Those allegations should be
6 stricken pursuant to California Code of Civil Procedure §§ 436(a) and 431.10(b), as well as case
7 law confirming that such allegations should be addressed at the outset to avoid discovery and
8 motion practice focused on irrelevant and prejudicial events.

9 **II. RELEVANT FACTS**

10 **A. Doe’s Employment at Cisco**

11 Doe is a current, five-year Cisco employee recruited and hired into a highly coveted
12 position by one of the very individuals who allegedly harbored animus against him. *See* Compl.
13 (Complaint) ¶ 18. As Doe admits, in 2015, Defendant Iyer recruited Doe to work for him in one
14 of Cisco’s internal technology startups. *Id.* at ¶ 30. According to Doe, Iyer, who is a Brahmin (or
15 at least of a higher caste), recruited and hired Doe. *Id.* pg. 1 fn.1, ¶¶ 18, 30. When Iyer recruited
16 and hired Doe for a coveted and highly lucrative engineering position, Iyer allegedly knew Doe
17 was a Dalit. *Id.* ¶¶ 18, 30, 31.

18 According to Doe, in or around October 2015, Iyer confirmed to Doe’s colleagues that
19 Doe was “not on the main list” at university in India, a fact Iyer allegedly knew because he
20 attended university with Doe. *Id.* ¶¶ ¶¶ 30, 31, 38, 41. Doe reported this alleged statement to
21 Human Resources, who subsequently contacted Employee Relations (ER) on or around
22 November 21, 2016. *See id.* ¶ 33.

23 On December 8, 2016, Doe detailed his concerns to ER about Iyer’s alleged disclosure of
24 his caste (by allegedly confirming that Doe wasn’t on the “main list” at university), a team
25 reorganization, and Iyer allegedly making unspecified inappropriate comments about a Muslim
26 (not Doe’s religion) employee and applicant. *Id.* ¶ 37. ER investigated Doe’s complaint, did not
27 substantiate his allegation, and closed the investigation. *Id.* ¶ 39. Doe requested and Cisco agreed
28 to review ER’s findings shortly thereafter. *Id.* ¶ 41. After a re-review of Doe’s complaint by a

1 different investigator, which involved re-interviewing employees and again reviewing documents,
2 Cisco was again unable to substantiate Doe’s allegations of caste discrimination and retaliation.
3 *Id.* ¶¶ 41-43.

4 No adverse employment actions are alleged to have occurred after July 2018 and Doe
5 remains a Cisco engineer (a highly respected position in the field) in a different technology group.
6 *See id.* ¶ 18. Neither Doe nor the DFEH have ever specified any alleged wrongdoing against any
7 other Dalit Indians.

8 **B. Doe’s Administrative Charge and the DFEH’s Lawsuit**

9 Doe filed an initial administrative charge with the DFEH on July 30, 2018, alleging only
10 claims against Cisco based on race and ancestry. *Id.* ¶ 11. On or around October 9, 2018, Doe
11 filed an amended administrative charge, again only alleging claims based on race and ancestry,
12 this time against Cisco, Iyer, and Kompella. *Id.* The DFEH alleges that it served the amended
13 charge on Cisco, Iyer, and Kompella on or about October 9, 2018.¹ *Id.* No additional charges have
14 been filed. As is statutorily required for DFEH to have standing to sue, the DFEH convened a
15 mediation between Doe, Cisco, Iyer, and Kompella on February 11, 2020, but the case did not
16 settle. *Id.* ¶ 13. The parties tolled the DFEH’s deadline to file a civil lawsuit to June 30, 2020, and
17 the EEOC issued a right to sue notice on June 29, 2020. The DFEH filed this case in federal court
18 on June 30, 2020 and served Cisco with the complaint on September 28, 2020. Request for
19 Judicial Notice, Exs. C and D (federal complaint and proof of service).² The DFEH dismissed the
20 federal action on October 16, 2020, and on the same day filed this action. *Id.*, Ex. E (federal
21 action dismissal).

22 ¹ The DFEH did not attach to the Complaint copies of Doe’s original or amended DFEH charge.
23 See Complaint. Cisco requests that the Court take judicial notice of these DFEH charges and
24 files its request for judicial notice (which is proper, see *Louie v. BFS Retail & Commercial*
25 *Operations, LLC*, 178 Cal. App. 4th 1544, 1554 (2009)) with this motion. Request for Judicial
26 Notice Exs. A & B. Moreover, Iyer and Kompella were not served with the charge until late
27 March 2019, but that fact is not material to this Motion.

28 ² Cisco attaches as Exhibits C-E to its Request for Judicial Notice the relevant portions of the
federal court docket in the case *Department of Fair Employment and Housing v. Cisco Systems,*
Inc., No. 5:20-cv-04374 EJD. See Request for Judicial Notice; *Hines v. Lukes*, 167 Cal. App. 4th
1174, 1181 n.4 (2008) (taking judicial notice of complaint in related action); *City of Sacramento*
v. State Water Res. Control Bd., 2 Cal. App. 4th 960, 968 n.3 (1992) (taking judicial notice of
court’s file in another action).

1 **III. LEGAL STANDARD**

2 When a complaint is substantively defective on its face, “the defendant should not have to
3 suffer discovery and navigate the often dense thicket of proceedings in summary adjudication,”
4 and a motion to strike such pleading defects is proper. *PH II, Inc. v. Superior Court*, 33 Cal. App.
5 4th 1680, 1682-83 (1995). Hence, a court may, on terms it deems proper, strike out any
6 irrelevant, false, or improper matter in any pleading. Cal. Code Civ. Proc. § 436(a). Factual
7 allegations that bear no relation to the claims or defenses raised by a pleading can be stricken as
8 immaterial. *See* Cal. Code Civ. Proc. § 431.10(b) (defining “immaterial allegations” as allegations
9 that are either: (1) not essential to the statement of a claim or defense; or (2) neither pertinent to
10 nor supported by an otherwise sufficient claim or defense); *see* Cal. Code Civ. Proc. § 431.10(c)
11 (equating “immaterial allegation” with “irrelevant matter” for purposes of a Section 436 motion
12 to strike); *Green v. Palmer*, 15 Cal. 411, 414 (1860) (court should have stricken complaint
13 “stuffed full of irrelevant matter-- suggestions, charges and statements, which subserve no useful
14 purpose, and are only calculated, when read to the jury, to excite prejudice against the
15 defendants”).

16 **IV. ARGUMENT**

17 **A. The Court Should Strike Allegations Not Based in Statutory Protections and**
18 **For Which Doe Failed to Exhaust Administrative Remedies**

19 The FEHA prohibits discrimination, harassment, and retaliation on the basis of “race,
20 religious creed, color, national origin, ancestry, physical disability, mental disability, medical
21 condition, genetic information, marital status, sex, gender, gender identity, gender expression,
22 age, sexual orientation, or military and veteran status.” Cal. Gov’t Code § 12940(a). The statute
23 does not address conduct based on caste or ethnicity.

24 Claims under these protections cannot proceed until they have been administratively
25 exhausted under the statutory mandates. To exhaust an allegation, a plaintiff must file a DFEH
26 charge containing: (1) a description of the alleged act or acts of discrimination, harassment, or
27 retaliation; (2) the date or dates of each alleged act of discrimination, harassment, or retaliation;
28 and (3) each protected basis upon which the alleged discrimination or harassment was based. *See*

1 2 C.C.R. § 10005(d)); *Romano v. Rockwell Int’l., Inc.*, 14 Cal. 4th 479, 492 (1996) (“filing of an
2 administrative complaint is a prerequisite to the bringing of a civil action for damages”).

3 **1. The Court Should Strike Plaintiff’s Caste and Ethnicity Allegations**

4 Here, Doe claims caste³ and ethnicity⁴-based discrimination, harassment, and retaliation,
5 although neither protection is provided under FEHA. Because the DFEH lacks the authority to
6 create new protections, 2 C.C.R. § 10000, *et seq.* (detailing the procedures for DFEH complaints
7 and prosecution of lawsuits), these allegations should be stricken as immaterial on this basis
8 alone.

9 To be clear, however, regardless of whether caste or ethnicity are protected characteristics
10 under the FEHA, Cisco took Doe’s complaint seriously, treated it as it would any discrimination
11 complaint based on a protected characteristic, and thoroughly investigated its merits consistent
12 with its policies. Cisco does not tolerate discrimination of any sort. Indeed, Doe **acknowledges**
13 that Cisco twice investigated his complaint and found his allegations of caste-based
14 discrimination and retaliation unsubstantiated. Compl. ¶¶ 38-39; 41-43.

15 **2. The Court Should Strike the Unexhausted and Immaterial Allegations**

16 Aware of the lack of protection for caste and ethnicity, the DFEH amalgamates a
17 combination of religion, ancestry, national origin/ethnicity, and race/color to build a caste
18 protection from the combined FEHA building blocks. *See e.g.*, Compl. ¶¶ 4, 29. But Doe did not
19 administratively exhaust claims based on these protections. Doe’s initial and amended DFEH
20 charges allege **only** claims based on ancestry and/or race. The Court should therefore strike the
21 allegations premised on religion, national origin, and color because Doe failed to exhaust them in
22 his administrative charges and the DFEH has no authority to add unexhausted categories. *See* 2
23 C.C.R. § 10000, *et seq.*; *Martin v. Lockheed Missiles & Space Co., Inc.*, 29 Cal. App. 4th 1718,
24 1724-1726 (1994) (plaintiff could not add claims of sexual discrimination, harassment and
25 retaliation because she failed to exhaust administrative remedies). Accordingly, the Court should
26

27 ³ The allegations regarding “caste” and “casteism” are located at: Complaint pgs. 1, fn.1; 2:6-7;
10:12-15; 10:17-20; 12:24; 13:2; 13:15; 14:22-23; paragraphs 85, 86, 96, and 97.

28 ⁴ The allegations regarding “ethnicity” are located at the following pages: 1:24; 2:7; 2, fn.2; 3:10;
8:1; 10:14; 11:10; 11:14; 11:22; 11:28; 12:19; 12:24; 13:3; 13:16; 18:19; and 18:25.

1 strike the following unexhausted and thus irrelevant allegations:

2 Religion:⁵ Doe chose not to allege in his DFEH charges that his religion played any role in
3 treatment of him at Cisco and he cannot premise claims on them now.

4 Moreover, the DFEH’s religion allegations are immaterial because, as the Complaint
5 shows, the Dalit Indian caste is not a religion.⁶ Compl. ¶ 1. And there are no factual allegations in
6 the Complaint regarding religious-based differential treatment against Doe; the DFEH only
7 alleges in a conclusory manner that Doe suffered caste-based differential treatment, which
8 allegedly includes his religion. Indeed, the only mention of religion is an alleged comment about
9 a Muslim – but Doe alleges he is Hindu. Compl. ¶ 29. DFEH fails to plead anything at all about
10 discrimination against Doe for being Hindu. This is not a well-pled allegation, but instead
11 nothing more than a legalistic label which should be disregarded and stricken. The Court should
12 strike those portions of the claims premised on religion as unexhausted.⁷

13 Color. There is no reference to color in Doe’s DFEH charge, so the DFEH may not assert
14 unexhausted color-based claims on Doe’s behalf and the Court should strike the color
15 allegations.⁸ 2 C.C.R. § 10005(d)(5). In addition, the color claim is immaterial because, although
16 the DFEH alleges that Doe has a darker complexion than people of non-Dalit Indian descent,
17 Compl. ¶ 29, it provides no facts whatsoever to suggest that Doe’s color was a factor in any
18 negative treatment at issue here. Instead, as with religion, the DFEH only makes the conclusory
19 allegations that Doe suffered caste-based differential treatment, which includes his color.

20 National Origin/Ethnicity. The Court should strike the linked “national origin/ethnicity”
21 allegations in the Complaint for three reasons.⁹ First, Doe did not exhaust administrative remedies

22 _____
23 ⁵ The only allegations in Doe’s charge having anything to do with religion are about comments
24 allegedly made about another employee and about an applicant, not about Doe (and not about
25 Doe’s religion). Compl. ¶ 37.

26 ⁶ The reference to Iyer and Kompella being of Brahmin or other higher caste suggests that Iyer,
27 Kompella, and Doe are all Hindus. Compl. ¶¶ 29, 30, 35. Thus, there are no specific allegations to
28 support the contention that Iyer or Kompella would have subjected Doe to religion-based
mistreatment given their shared religion.

⁷ The allegations regarding religion are located at pages 1:24; 2:6; 2, fn.2; 3:10; 10:14; 11:10;
11:14; 11:22; 11:27; 12:19; 12:24; 13:3; 13:15; 18:19; and 18:24.

⁸ The allegations regarding color are at pages 1:24; 2:7; 2, fn.2; 3:10; 8:1; 10:14; 11:10; 11:15;
11:22; 11:28; 12:20; 12:25; 13:3; 13:16; 18:19; and 18:25.

⁹ National origin allegations are at pages 1:24; 2:7; 2, fn.2; 3:10; 8:1; 10:14; 11:10; 11:14; 11:22;
11:28; 12:19; 12:24; 13:3; 13:15-16; 18:19; and 18:24-25.

1 as to either national origin or ethnicity; the words do not appear in Doe’s DFEH charges. Cal.
2 Gov’t Code 12940(a). Second, FEHA does not list ethnicity as a protected class. Third, these
3 allegations too are immaterial. Just as the Dalit Indian caste is not a religion or color, it is also not
4 a national origin. Doe admits that he, Iyer, Kompella (and the entire relevant Cisco team) are of
5 Indian origin. Compl. ¶¶ 2, 3 (Doe is an Indian immigrant; Doe’s team is comprised entirely of
6 Indian immigrants). There are no factual allegations, as opposed to conclusory labels, of Indian
7 origin-based discrimination, harassment, or retaliation. *Id.* ¶¶ 3-4. Indeed, DFEH allegations
8 contradict any Indian origin-based discrimination, harassment or retaliation, because DFEH
9 pleads that Iyer and Kompella (and Cisco through them) promoted and praised team members of
10 Indian origin, Compl. ¶¶ 3-4, 35, 45, and because they are all of Indian descent. These caste,
11 religion, color, national origin, and ethnicity allegations are defective and should be stricken.

12 **B. The Court Should Strike DFEH’s Additional Immaterial and Impertinent**
13 **Allegations**

14 Cisco requests that the Court strike from the Complaint several allegations and citations to
15 external materials that are immaterial, impertinent, and unduly prejudicial. Cisco moreover
16 requests that the DFEH’s reference to “similarly situated lower caste workers” be stricken on the
17 same bases. Despite the clearly isolated nature of the allegations focused solely on Doe, the
18 DFEH makes broad-based allegations about historical discrimination against the Dalit caste in
19 India and discrimination against Indian immigrants in the United States that are irrelevant here.
20 These allegations about alleged discrimination by non-parties against non-parties rely on selective
21 statements in external articles and surveys that have no bearing on whether Doe experienced
22 discrimination or harassment as a Cisco employee in San Jose, California, where he remains
23 employed in an engineering position today. Similarly, allegations about the alleged ethnic
24 composition of Cisco’s workforce and employment of those holding H-1B visas are irrelevant
25 because this is a single-complainant case, and certainly the DFEH does not allege that Doe holds
26 an H-1B visa or that his immigration status is material to this case.

1 **1. The DFEH’s Conclusory Allegations About Caste Discrimination By**
2 **Non-Parties Against Non-Parties Are Immaterial And Impertinent**

3 The Court should strike the following allegations about caste discrimination by non-
4 parties against non-parties:

- 5 • Allegations regarding historical caste discrimination in India. Compl., pg. 2:10-13
6 (“Although *de jure* segregation ended in India, lower caste persons like Dalits
7 continue to face *de facto* segregation and discrimination in all spheres. Not only do
8 Dalits endure the most severe inequality and unfair treatment in both the public and
9 private sectors, they are often targets of hate violence and torture. Of India’s
10 approximately 1.3 billion people, about 200 million are Dalits.”);
- 11 • Allegations regarding historical caste discrimination in India. *Id.* pg. 2, fn. 2
12 (“Complainant John Doe is Dalit because of his religion, ancestry, national
13 origin/ethnicity, and race/color. The caste to which someone belongs is immutable and
14 determines their social status in traditional Indian culture. Social stratification and
15 discrimination based on caste persists in India and among those living outside India,
16 including in America. Encyclopedia Britannica, India: Caste (June 24, 2020),
17 <https://www.britannica.com/place/India/Caste> (last visited June 29, 2020).”);
- 18 • Allegations regarding historical caste discrimination in India. *Id.* pg. 2, fn. 3 (citation
19 to Smita Narula, Human Rights Watch, Caste Discrimination: A Global Concern,
20 Background: “Untouchability” and Segregation (2001),
21 https://www.hrw.org/reports/2001/globalcaste/caste0801-03.htm#P133_16342 (last
22 visited June 29, 2020));
- 23 • Allegations regarding historical caste discrimination in the U.S. *Id.* pg. 2, fn.4 (citation
24 to Human Rights Watch & Center for Human Rights and Global Justice at New York
25 University School of Law, Hidden Apartheid: Caste Discrimination against India’s
26 ‘Untouchables,’ at 45 (2007),
27 <https://www.hrw.org/reports/2007/india0207/india0207webwcover.pdf>.);
- 28 • Citation to website regarding alleged number of Dalit people in India. *Id.* pg. 2, fn. 5
 (citation to Office of the Registrar General & Census Commissioner, India, Ministry
 of Home Affairs, Government of India, 2011 Primary Census Abstract,
 <https://censusindia.gov.in/pca/default.aspx>.);
- Article regarding alleged caste bias in the U.S. *Id.* pg. 2, fn. 6 (Tinku Ray, The US
 isn’t safe from the trauma of caste bias, The World (Mar. 08, 2019, 9:00 AM),
 <https://www.pri.org/stories/2019-03-08/us-isn-t-safe-trauma-caste-bias>.”);
- Allegations regarding third party survey. *Id.* pg. 4:8-14 (“ ‘inequalities associated with
 [c]aste status, ritual purity, and social exclusion [from] becom[ing] embedded . . . ’ into
 its workplace, which is a documented problem for ‘ . . . American mainstream
 institutions that have significant South Asian immigrant populations.’ A 2018 survey
 of South Asians in the U.S. found that 67% of Dalits reported being treated unfairly at
 their American workplaces because of their caste and related characteristics. However,
 few South Asian employees raised concerns to their American employers, because
 they believe ‘their concerns will not be given weight’ or will lead to ‘negative
 consequences to their career.’”);
- Citation to third party survey. *Id.* pg. 4, fns. 11-13 (citations to summary of Maari
 Zwick-Maitreyi et al., Equality Labs, Caste in the United States: A Survey of Caste

1 Among South Asian Americans, (2018)
2 https://static1.squarespace.com/static/58347d04bebafeb1e66df84c/t/5d9b4f9afbaef569c0a5c132/1570459664518/Caste_report_2018.pdf).

3 The Court should strike these allegations about historical acts of caste discrimination in
4 India and caste discrimination by non-parties against non-parties for two reasons. First,
5 allegations regarding conduct by individuals and organizations that are not parties to an action
6 “do not bear any rational nexus to plaintiff’s claims against” the actual named defendants and,
7 therefore, are properly stricken as immaterial and impertinent. *See* Cal. Civ. Proc. Code §
8 431.10(b) (permitting allegations that are either: (1) not essential to the statement of a claim or
9 defense; or (2) neither pertinent to nor supported by an otherwise sufficient claim or defense to be
10 stricken from a pleading as “immaterial”); *Green*, 15 Cal. at 414 (court should have stricken
11 complaint “stuffed full of irrelevant matter-- suggestions, charges and statements, which subserve
12 no useful purpose, and are only calculated, when read to the jury, to excite prejudice against the
13 defendants”); *Kelly-Zurian v. Wohl Shoe Co.*, 22 Cal. App. 4th 397, 411 (1994) (trial court
14 properly excluded evidence of sexual conduct and sexual affairs between defendant and people
15 other than plaintiff); *see also Adoeid v. Saudi Arabian Airlines, Inc.*, No. CV-10-2518 SJ VVP,
16 2011 WL 2222140, at *1-2 (E.D.N.Y. June 1, 2011)(striking allegations related to history because
17 they had “no bearing on the issues in the case”; plaintiffs are not permitted to show a “defendant’s
18 intent and motive” by presented purported evidence of historical wrongdoing).

19 Here, the DFEH relies on alleged historical incidents by non-parties against other non-
20 parties, citing discrimination against Dalits in India and anecdotal claims of caste discrimination
21 by non-parties to support conclusory assertions that “Doe’s higher caste supervisors and co-
22 workers imported the discriminatory [caste] system’s practices into their team and Cisco’s
23 workplace,” and that “Doe was expected to accept a caste hierarchy within the workplace where
24 Doe held the lowest status within the team . . . They also expected him to endure a hostile work
25 environment.” Compl. at ¶¶ 3-4. These allegations rely on generalized statements or on
26 selectively quoted or gathered data. *Id.* pg. 2, fn. 2 (selective statement in Encyclopedia
27 Britannica that “[s]ocial stratification and discrimination based on caste persists in India and
28 among those living outside India, including in America.”); pg. 2:11-14 (broad generalized

1 allegations that “Dalits endure the most severe inequality and unfair treatment in both the public
2 and private sectors, [and] they are often targets of hate violence and torture”); pg. 2, fn. 6 (citing
3 article about alleged caste bias in the United States that includes anecdotal claims of malfeasance
4 against non-parties by non-parties); ¶ 6, pg. 4:8-14 and fns. 11-13 (quoting from surveys by an
5 advocacy group about alleged “inequalities associated with [c]aste status . . . becom[ing]
6 embedded” into “American mainstream institutions that have significant South Asian immigrant
7 populations,” which conclusions are not based on the conduct of any party).

8 The DFEH also relies on a “2018 survey of South Asians in the U.S.” which purportedly
9 “found that 67% of Dalits reported being treated unfairly at their American workplaces because
10 of their caste and related characteristics.” As part of this study, the authoring organization,
11 Equality Labs, commented that “few South Asian employees raised concerns to their American
12 employers, because they believe ‘their concerns will not be given weight’ or will lead to ‘negative
13 consequences to their career.’” *Id.* ¶ 6, pg. 4:12-14. Aside from the hearsay and absence of other
14 evidentiary support for this comment in the study, it is plainly irrelevant here; Doe was very
15 willing to complain and indeed complained multiple times to Cisco, which investigated his
16 complaints twice. *Id.* ¶¶ 33, 37 (“Doe contacted Cisco’s human resources (HR) and ER to file a
17 discrimination complaint against Iyer”), ¶ 41 (“Doe sought review of Davis’ investigation
18 findings”), ¶ 44 (Doe’s “repeated attempts to bring the caste-based and related discrimination,
19 harassment, and retaliation to Defendant Cisco’s attention”). The Court should strike these
20 irrelevant allegations as immaterial and impertinent.

21 Next, these irrelevant allegations should be stricken because they would unduly prejudice
22 Cisco by confusing issues at trial and causing the jury to draw unwarranted inferences.
23 Immediately following its allegations about alleged unfair treatment of non-party Dalits “at their
24 American workplaces” (not Cisco), and Dalits allegedly not reporting mistreatment to “their
25 American employers” (again, not Cisco, and not Doe, who complained repeatedly), the DFEH
26 alleges that “[t]his is precisely what happened to Doe at Cisco.” Compl. ¶¶ 6, 33, 37-38, 41, 43-
27 44. These unsupported leaps from irrelevant allegations about historical caste discrimination in
28 India and anecdotal discrimination claims of non-parties, to alleged discrimination against Doe by

1 his Cisco managers, are exactly why these allegations must be stricken. The jury could draw the
2 unwarranted inference that the alleged caste-based segregation and violence referenced in the
3 DFEH's citations means that Doe was more likely to be treated unfairly in the United States.
4 Aside from any such inference deriving from impermissible character evidence, such allegations
5 only serve to unnecessarily complicate the issues because Cisco would need to explain why
6 historical discrimination elsewhere does not bear on whether Cisco, Iyer, or Kompella subjected
7 Doe to treatment in San Jose. *NetApp, Inc.*, 2015 WL 400251, at *26. All allegations about
8 alleged caste discrimination by non-parties against non-parties should be stricken.

9 **2. The Court Should Strike DFEH's Allegations About the Alleged**
10 **Composition Of Cisco's Workforce and Employment Of Individuals**
11 **On H-1B Visas As Immaterial And Impertinent**

12 The Court should strike the allegations about the claimed ethnic composition of Cisco's
13 workforce and its employment of H-1B visa holders as immaterial to DFEH's discrimination,
14 harassment, and retaliation claims brought on behalf of a single current Cisco employee who is
15 not alleged to be an H-1B visa holder. *See* Code of Civ. Proc. § 431.10(b) (permitting factual
16 allegations that bear no relation to claims or defenses raised by a pleading to be stricken as
17 immaterial).

18 Here, there is no logical nexus between the individual discrimination, harassment, and
19 retaliation causes of action brought by DFEH on behalf of John Doe and the factual allegations
20 about the claimed ethnic composition of Cisco's workforce or Cisco's employment of H-1B visa
21 users and immigrants from India. The DFEH includes allegations regarding:

- 22 • The assumed percentage of Dalits in Cisco's workforce with no factual support
23 whatsoever. *Id.* pgs. 2:14-17 ("Unlike Doe, most Indian immigrants in the United
24 States are from upper castes. For example, in 2003, only 1.5 percent of Indian
25 immigrants in the United States were Dalits or members of lower castes. More than 90
26 percent were from high or dominant castes. Similarly, upon information and belief, the
27 same is true of the Indian employees in Cisco's workforce in San Jose, California.");
- 28 • The alleged "overrepresentation" of Indians at Cisco, Cisco's alleged employment of
"South Asian Indian workers through Indian-owned consulting firms", Cisco's
employment of H-1B visa users, whether Cisco's "second largest workforce is in
India" and whether "Cisco has employed a predominantly South Asian Indian
workforce for decades". *Id.* 3:16-4:6 ("For decades, similar to Doe's team, Cisco's
technical workforce has been—and continues to be—predominantly South Asian
Indian. According to the 2017 EEO-1 Establishment Report (EEO-1 Report), for
example, Cisco has a significant overrepresentation of Asian employees compared to

1 other companies in the communications, equipment and manufacturing industry
2 (NAICS 3342) in the same geographic area, which is statistically significant at nearly
3 30 standard deviations. Such overrepresentation is also present in management and
4 professional job categories.^[10] In addition to Cisco’s direct workforce, Cisco also
5 employs a significant number of South Asian Indian workers through Indian-owned
6 consulting firms. When combining its direct employees and consultants together,
7 Cisco is among the top five H-1B visa users in the United States. Over 70 percent of
8 these H1-B workers come from India. Outside of San Jose, Cisco’s second largest
9 workforce is in India. Although Cisco has employed a predominantly South Asian
10 Indian workforce for decades...”);

- 11 • Cisco EEO report. *Id.* pg. 3, fn. 7 (citing to “2017 EEO-1 Report for Cisco Systems,
12 Inc. at 170 West Tasman Drive in San Jose, California. Because Cisco is a federal
13 contractor and employs 50 or more employees in California and the United States,
14 Cisco is required to file an Employer Information Report EEO-1, also known as the
15 EEO-1 Report. The EEO-1 Report requires employers to report employment data for
16 all employees categorized by sex, race/ethnicity, and job category. EEOC, EEO-1
17 Instruction Booklet, [https://www.eeoc.gov/employers/eo-1-survey/eo-1-instruction-](https://www.eeoc.gov/employers/eo-1-survey/eo-1-instruction-booklet)
18 [booklet](https://www.eeoc.gov/employers/eo-1-survey/eo-1-instruction-booklet) (last visited June 23, 2020).”);
- 19 • Articles about H-1B visas *Id.* pg. 4, fn. 8 (citing an article about use of H1-B visas by
20 Cisco and other technology companies, including Google, Facebook, and Paypal)
21 (citation to Joshua Brustein, Cisco, Google benefit from Indian firms’ use of H-1B
22 program, The Economic Times (June 6, 2017, 8:31 PM),
23 [https://economictimes.indiatimes.com/tech/ites/cisco-google-benefit-from-indian-](https://economictimes.indiatimes.com/tech/ites/cisco-google-benefit-from-indian-firms-use-of-h-1b-program/articleshow/59020625.cms)
24 [firms-use-of-h-1b-program/articleshow/59020625.cms](https://economictimes.indiatimes.com/tech/ites/cisco-google-benefit-from-indian-firms-use-of-h-1b-program/articleshow/59020625.cms)); fn. 9 (citing to an article
25 about the number of H-1B visas obtained by non-parties, with a single-line mention of
26 Cisco) (“Laura D. Francis & Jasmine Ye Han, Deloitte Top Participant in H-1B
27 Foreign Worker Program—By Far, Bloomberg Law (Feb. 4, 2020, 2:30 AM),
28 [https://news.bloomberglaw.com/daily-labor-report/deloitte-top-participant-in-h-1b-](https://news.bloomberglaw.com/daily-labor-report/deloitte-top-participant-in-h-1b-foreign-worker-program-by-far)
[foreign-worker-program-by-far](https://news.bloomberglaw.com/daily-labor-report/deloitte-top-participant-in-h-1b-foreign-worker-program-by-far).”); fn. 10 (citing a report to Congress about the
characteristics of H-1B specialty occupation workers that does not mention Cisco)
(citation to U.S. Citizenship and Immigration Services, Characteristics of H-1B
Specialty Occupation Workers: Fiscal Year 2019 Annual Report to Congress October
1, 2018 – September 30, 2019, at 7 (Mar. 5, 2020),
[https://www.uscis.gov/sites/default/files/reports-studies/](https://www.uscis.gov/sites/default/files/reports-studies/Characteristics_of_Specialty_Occupation_Workers_H-1B_Fiscal_Year_2019.pdf)
[Characteristics_of_Specialty_Occupation_Workers_H-1B_Fiscal_Year_2019.pdf](https://www.uscis.gov/sites/default/files/reports-studies/Characteristics_of_Specialty_Occupation_Workers_H-1B_Fiscal_Year_2019.pdf)).

20 The ethnic composition of Cisco’s workforce is immaterial because DFEH’s claims are
21 brought on behalf of a single employee, alleging discrete acts of discrimination and harassment
22 over a limited time period (October 2016 to 2018), while Cisco has almost 76,000 employees
23 worldwide. *Id.* ¶¶ 19, 27-46. There are no allegations that others were treated similarly to Doe.
24 *Id.*¹¹ Cisco’s employment of H-1B visa holders is also immaterial and impertinent because the

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26 ¹⁰ These allegations relate to Asian people, a group comprised of more than those from India.
27 Doe’s claims are based on persons from India discriminating against Indians based on their caste;
28 Doe does not allege Asians or anybody outside of people from Indian engage in discriminatory
behavior.

¹¹ Moreover, the conclusory and irrelevant allegation that “Cisco has employed a predominantly
South Asian Indian workforce for decades” could only confuse the issues here, particularly
because Cisco’s EEO-1 Report does not support this statement. Compl. ¶¶ 5-6, fn. 7. The EEO-1

1 DFEH does not allege that John Doe has an H-1B visa or that Cisco discriminated against him
2 because of it. These allegations should be stricken because they bear no rational nexus to the
3 DFEH's causes of action brought on behalf of John Doe. *Green*, 15 Cal. at 414 (court should have
4 stricken complaint "stuffed full of irrelevant matter-- suggestions, charges and statements, which
5 subserve no useful purpose, and are only calculated, when read to the jury, to excite prejudice
6 against the defendants").

7 **3. The Court Should Strike DFEH's Class Allegations**

8 The Court should strike the DFEH's vague reference to Cisco's purported failure to
9 "prevent, remedy, or deter" unlawful conduct against lower caste workers. Compl. pgs. 4:6-7;
10 17:17-20. This is a single plaintiff case and the DFEH does not allege any wrongdoing against
11 any other lower caste individuals, and none of the claims allege harm suffered by any third
12 parties. The class allegations only serve to distract from and confuse the merits of *this* case. The
13 Court should strike the DFEH's immaterial and impertinent class allegations. Code of Civ. Proc.
14 § 431.10(b).

15 **V. CONCLUSION**


16 For the reasons stated above, Cisco respectfully requests that the Court grant its motion to
17 strike in all respects.

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25 Report does not track the specific category of South Asian Indians; instead, it tracks the broader
26 category of "Asian (Not Hispanic or Latino)" defined as a "person having origins in any of the
27 original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for
28 example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands,
Thailand, and Vietnam." See <https://www.eeoc.gov/employers/eo-1-survey/eo-1-instruction-booklet> at Section 4 (Race, Ethnic, and Sex Identification) (last visited August 12, 2020). For this
additional reason, these immaterial allegations should be stricken to avoid confusion of the issues.
Code of Civ. Proc. § 431.10(b).

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LYNNE C. HERMLE
JOSEPH C. LIBURT
CAROLINA GARCIA
Orrick, Herrington & Sutcliffe LLP

By 
LYNNE C. HERMLE
Attorneys for Defendant
CISCO SYSTEMS, INC.