

1 ALEXANDER HERNAEZ, State Bar No. 201441
2 ahernaez@foxrothschild.com
3 ANDREW S. ESLER, State Bar No. 320772
4 aesler@foxrothschild.com
5 FOX ROTHSCHILD LLP
6 345 California Street, Suite 2200
7 San Francisco, CA 94104-2670
8 Telephone: 415.364.5540
9 Facsimile: 415.391.4436

10 Attorneys for Defendants
11 SUNDAR IYER and RAMANA KOMPELLA

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 1/11/2023 3:32 PM
Reviewed By: C. Roman
Case #20CV372366
Envelope: 10906748**

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SANTA CLARA

14 CALIFORNIA DEPARTMENT OF FAIR
15 EMPLOYMENT AND HOUSING, an agency
16 of the State of California,

17 Plaintiff,

18 v.

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

22 Defendants.

Case No. 20CV372366

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR SANCTIONS OF
DEFENDANTS SUNDAR IYER AND
RAMANA KOMPELLA**

Date: _____
Time: _____
Dept: 16
Judge: Hon. Amber Rosen

Action Filed: October 16, 2020
Trial Date: None set.

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION1

II. STATEMENT OF FACTS AS ALLEGED IN COMPLAINT1

III. ARGUMENT4

 A. Legal Standard4

 B. Plaintiff’s Harassment Claim Is Not Warranted By Existing Law Or
 By A Nonfrivolous Argument For The Extension, Modification, Or
 Reversal Of Existing Law Or The Establishment Of New Law5

 C. Plaintiff Does Not Have A Factual Basis To Suggest That Defendants
 Engaged In Harassment9

 D. Plaintiff’s Complaint Is Advocated For An Improper Purpose11

IV. CONCLUSION.....12

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Blank v. Kirwan</i> (1985) 39 Cal.3d 311	8
<i>Bockrath v. Aldrich</i> (1999) 21 Cal.4th 71	4, 5
<i>Business Guides, Inc. v. Chromatic Communications Enter., Inc.</i> (1991) 498 U.S. 533	4
<i>Casey v. U.S. Bank Nat’l Ass’n</i> (2005) 127 Cal.App.4th 1138.....	8
<i>Chudnovsky v. Prudential Sec., Inc.</i> (S.D.N.Y. Oct. 23, 2000) No. 98-CV-7753, 2000 WL 1576876	7
<i>Cozzi v. County of Marin</i> (N.D. Cal. 2011) 787 F.Supp.2d 1047	8
<i>Cromwell v. Cummings</i> (1998) 65 Cal.App.4th Supp. 10.....	4
<i>Doe v. Department of Corrections and Rehabilitation</i> (2019) 43 Cal.App.5th 721.....	8
<i>Fiol v. Doellstedt</i> (1996) 50 Cal.App.4th 1318.....	5
<i>Gautam v. Prudential Financial, Inc.</i> (E.D.N.Y. Sep. 3, 2008) No. 06-CV-3614 (JS)(AKT), 2008 WL 11417411	7
<i>Jalal v. Columbia Univ.</i> (S.D.N.Y. 1998) 4 F.Supp.2d 224.....	7
<i>Janken v. GM Hughes Electronics</i> (1996) 46 Cal.App.4th 55.....	5, 7
<i>Jumaane v. City of Los Angeles</i> (2015) 241 Cal.App.4th 1390.....	6
<i>Paciulan v. George</i> (N.D. Cal. 1999) 38 F.Supp.2d 1128	11
<i>Reno v. Baird</i> (1998) 18 Cal.4th 640.....	5, 7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Statutes

Cal. Code of Civil Procedure § 128.7 *passim*
Cal. Gov't. Code § 12960(d).....6
California Administrative Procedure Act11
Fair Employment and Housing Act *passim*

Other Authorities

Federal Rule of Civil Procedure, Rule 114, 11
U.S. Const., 1st Amend.....9, 10

1 **I. INTRODUCTION**

2 This lawsuit presents a dispute between John Doe (“Doe”) and his current employer,
3 Cisco Systems, Inc. (“Cisco”). Filed on Doe’s behalf by the California Civil Rights Department
4 (“CRD” or “Plaintiff,” formerly known as the Department of Fair Employment and Housing),
5 the Complaint also names as defendants Sundar Iyer (“Iyer”) and Ramana Kompella
6 (“Kompella”) (collectively, “Defendants”). Specifically, in addition to his claims against Cisco,
7 Doe says that Defendants harassed him in violation of the Fair Employment and Housing Act
8 (“FEHA”).

9 Defendants now move for sanctions under Code of Civil Procedure section 128.7 because
10 Plaintiff’s sole claim of harassment against Defendants is not warranted by existing law, is based
11 on material allegations that are lacking evidentiary support, and was only pled to harass
12 Defendants. Indeed, the harassment claim is simply not based on *any* legally actionable conduct,
13 and therefore has no basis in law. Moreover, the harassment claim relies entirely on allegations
14 that are lacking in evidentiary support and, in fact, run contrary to the undisputed facts obtained
15 during the course of this litigation and Plaintiff’s prior investigation of Doe’s administrative
16 complaints.

17 Plaintiff’s case against Defendants was legally meritless from the outset, yet at every turn
18 Plaintiff and its lawyers persisted in pursuing the litigation, forcing Defendants to not only
19 endure increased litigation fees and costs, but also public ridicule. Defendants made every
20 attempt to afford Plaintiff an opportunity to avoid this motion by terminating the litigation.
21 Instead, Plaintiff and its lawyers ignored the law and factual record, at their peril and
22 Defendants’ expense. !!!

23 Accordingly, this Court should dismiss Plaintiff’s Second Cause of Action as to
24 Defendants Iyer and Kompella, and order Plaintiff and its counsel to pay sanctions for refusing to
25 withdraw the Complaint as to Defendants Iyer and Kompella after reasonable notice.

26 **II. STATEMENT OF FACTS AS ALLEGED IN COMPLAINT**

27 Doe is a current employee of Cisco who has worked as a Principal Engineer for nearly
28 seven years, since October 2015. (Complaint, ¶¶ 3, 18, 30.) Defendant Iyer recruited and hired

1 Doe for a highly sought-after role on a Cisco engineering team because of Doe’s expertise and
2 experience with a particular development platform for building software. (*Id.* at ¶ 30.) Doe now
3 alleges that Iyer and his subsequent interim manager, Defendant Kompella, harassed him
4 because he is Dalit, the alleged lowest hierarchical position in the Indian caste system, “a strict
5 Hindu social and religious hierarchy.” (*See* Complaint.)

6 On June 30, 2020, Plaintiff filed suit on behalf of Doe in the District Court for the
7 Northern District of California. Plaintiff voluntarily dismissed the federal action on October 16,
8 2020 and initiated this action on the same day.

9 Plaintiff alleges five causes of action under FEHA, including claims for discrimination
10 and harassment on the basis of religion, ancestry, national origin/ethnicity, and race/color,
11 retaliation, and failure to take all reasonable steps to prevent discrimination, harassment, and
12 retaliation. (Complaint, ¶¶ 51-99.) The Second Cause of Action for harassment in violation of
13 FEHA is the only one cause of action asserted against Defendants Iyer and Kompella.
14 (Complaint, p.12.)

15 Specifically, the Complaint alleges that, “[i]n or around October 2016, two of Doe’s
16 colleagues told Doe that Iyer informed them that Doe was from the ‘Scheduled Caste’ (Dalit)
17 and enrolled in the Indian Institute of Technology (IIT) through affirmative action.” (Complaint,
18 ¶ 31.) This single alleged statement was not made in the presence of Doe. (*Id.*) Defendant Iyer
19 denied making the statement when purportedly confronted by Doe on November 1, 2016,
20 indicating “Doe’s colleagues were not telling the truth.” (*Id.*, ¶ 32.)

21 In or around November 21, 2016, “Doe contacted Cisco’s human resources (HR) and
22 Employee Relations to file a discrimination complaint against Iyer” stemming from Iyer’s
23 alleged statement concerning Doe’s caste. (*Id.* at ¶ 33.) Plaintiff claims that, after Doe’s
24 November 21, 2016 contact with HR, there were “sudden changes to [his] job duties,” including
25 that Iyer “[took] away Doe’s role as lead on two technologies,” “promoted two of Doe’s
26 colleagues to head engineer roles,” and “removed team members from the third technology Doe
27 was working on,” effectively “isolate[ing] Doe from all of his colleagues” and reducing his role
28 “to that of a system architect as an independent contributor.” (*Id.* at ¶¶ 34-37.) On December 8,

1 2016, Doe submitted a written complaint concerning “Iyer’s disclosure of Doe’s caste, Doe’s
2 complaint to Iyer, and Iyer’s retaliatory employment actions” (*Id.* at ¶ 37.) Between
3 December 2016 and February 2017, Cisco investigated, but did not substantiate, Doe’s
4 complaint. (*Id.* at ¶¶ 38-39.) During this investigation, Iyer again denied commenting on Doe’s
5 caste, informing Employee Relations that “he had told Doe’s colleagues that Doe was not on the
6 ‘main list’ [at IIT].” (*Id.* at ¶ 38.)

7 Plaintiff contends that, after Cisco completed its first investigation in February 2017, Iyer
8 “further isolated Doe from the team when he disparaged Doe to other employees, misrepresented
9 that Doe did not perform his job adequately, and told Doe’s team members that they should
10 avoid working with him.” (Complaint, ¶¶ 39-40.) In March 2017, Doe requested an internal
11 review of Cisco’s investigation of his December 2016 complaint, and a second investigator
12 investigated Doe’s claims but “could not substantiate any caste-based or related discrimination or
13 retaliation against Doe.” (*Id.* at ¶¶ 41, 43.)

14 On or around February 26, 2018, Kompella became the Interim Head of Engineering
15 after Iyer stepped down from his position as leader of the Candid Alpha Project. (Complaint,
16 ¶45.) Kompella allegedly “continued to discriminate, harass, and retaliate against Doe by, for
17 example, giving him assignments that were impossible to complete under the circumstances.”
18 (*Id.*) Doe also alleges that Kompella began “requiring Doe to submit weekly status reports to
19 him and Senior Vice President/General Manager Tom Edsall.” (*Id.*)

20 Finally, two months after a new manager (Rajeev Gupta) took over on or around May 21,
21 2018, “Doe applied for the position of Director of Research and Development Operations” and
22 “did not get the position,” allegedly because Gupta was “improperly influenced” by “Iyer’s . . .
23 criticisms about Doe’s work product, social skills, and insubordination.” (Complaint, ¶¶ 46-47.)

24 Doe filed a verified administrative complaint against Cisco with the CRD on July 30,
25 2018, and filed an amended administrative complaint against Cisco, Iyer, and Kompella on
26 October 9, 2018. (Complaint, ¶ 11.) The CRD investigated and this lawsuit followed. (*Id.* at ¶¶
27 12-15.)

28

1 **III. ARGUMENT**

2 **A. Legal Standard**

3 Where, as here, a plaintiff files a complaint including allegations without factual or legal
4 foundation, the defendant has a specific remedy. *See Bockrath v. Aldrich* (1999) 21 Cal.4th 71,
5 82 (California Supreme Court confirming that sanctions under Code of Civil Procedure section
6 128.7 are the appropriate remedy to address attorneys and litigants who file pleadings with
7 anything short of an “actual belief” in their claims). Subdivision (b) of Code of Civil Procedure
8 section 128.7 provides that:

9 By presenting to the court . . . or later advocating, a pleading . . . , an
10 attorney or unrepresented party is certifying that to the best of the
11 person’s knowledge, information and belief, formed after an inquiry
reasonable under the circumstances, all of the following conditions
are met:

12 (1) It is not being presented primarily for an improper purpose, such
13 as to harass or to cause unnecessary delay or needless increase in the
cost of litigation.

14 (2) The claims, defenses, and other legal contentions therein are
15 warranted by existing law or by a nonfrivolous argument for the
16 extension, modification, or reversal of existing law or the
establishment of new law.

17 (3) The allegations and other factual contentions have evidentiary
18 support, or if specifically so identified, are likely to have evidentiary
support after a reasonable opportunity for further investigation or
discovery.

19 Code of Civ. Proc. § 128.7(b)(1), (2), (3). This certification creates an affirmative duty of
20 investigation as to both law and fact, and thus deters frivolous actions and costly meritless
21 maneuvers. *See Business Guides, Inc. v. Chromatic Communications Enter., Inc.* (1991) 498
22 U.S. 533, 550 (interpreting Federal Rule 11); *see also Cromwell v. Cummings* (1998) 65
23 Cal.App.4th Supp. 10, 14 n.6 (since section 128.7 is based in large part on Rule 11 of the Federal
24 Rules of Civil Procedure as amended in 1993, the federal cases interpreting Rule 11 are
25 “persuasive authority with regard to the meaning of § 128.7”).

26 After notice and a reasonable opportunity to respond, the Court may award sanctions for
27 a violation of subdivision (b). *See* Code of Civ. Proc. § 128.7(c). Section 128.7 requires that a
28 plaintiff and her attorneys have an “actual belief” in the viability of the contentions made in the

1 Complaint. *See Bockrath, supra*, 21 Cal.4th at 82. “The actual-belief standard requires more
2 than a hunch, a speculative belief, or wishful thinking: it requires a well-founded belief. [The
3 Courts] measure the truth finding inquiry's reasonableness under an objective standard, and apply
4 this standard both to attorneys and to their clients.” *Id.*

5 Here, it is clear that the requirements of section 128.7 have not been satisfied because
6 Plaintiff, and its counsel, do not have an actual belief in their factual assertions and legal
7 arguments, as discussed more fully herein.

8 **B. Plaintiff’s Harassment Claim Is Not Warranted By Existing Law Or By A**
9 **Nonfrivolous Argument For The Extension, Modification, Or Reversal Of**
10 **Existing Law Or The Establishment Of New Law**

11 Plaintiff’s sole claim against Defendants for harassment is neither “warranted by existing
12 law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or
13 the establishment of new law.” Code of Civ. Proc. § 128.7(b)(2).

14 Indeed, and with respect to a manager’s individual liability under FEHA, California law
15 is clear: there exists a “fundamental distinction” between harassment and discrimination that
16 shields managers from individual liability for their business or personnel management decisions.
17 *See Fiol v. Doellstedt* (1996) 50 Cal.App.4th 1318, 1331; *see also Reno v. Baird* (1998) 18
18 Cal.4th 640, 663 (holding that personnel management actions are actions of a type necessary to
19 carry out the duties of business and personnel management, and that “[t]hese actions may
20 retrospectively be found discriminatory if based on improper motives, but in that event the
21 remedies provided by the FEHA are those for discrimination, **not harassment.**”) (emphasis
22 added); *Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55, 63. Nonetheless, and in
23 support of its harassment claim, Plaintiff points **only** to managerial decisions purportedly made
24 by Iyer and Kompella, which it conveniently mislabels as “harassment” in a transparent attempt
25 to impose individual liability. This tactic is improper, **and Plaintiff knows better.**

26 Plaintiff’s attempt to hold Kompella liable for harassment is predicated **solely** upon the
27 following paragraph:

28 On or around February 26, 2018, Kompella became the Interim Head of Engineering for Cisco’s team after Iyer stepped down. In his new role, Kompella supervised Doe and continued to discriminate, harass and retaliate against Doe, by

1 for example, giving him assignments that were impossible to complete under the
2 circumstances. Kompella also began requiring Doe to submit weekly status reports
3 to him and Senior Vice President/General Manager Tom Edsall.
4 (Complaint, ¶ 45). Importantly, the idea, and subsequent decision, to have Doe submit weekly
5 status reports was made by Kompella’s supervisor, Tom Edsall, and *not* Kompella. This
6 information was provided to the CRD during their investigation of Doe’s administrative
7 complaint, as well as in Kompella’s declaration submitted in support of Defendants’ January 12,
8 2021 Opposition to Plaintiff’s Motion to Proceed Using a Fictitious Name in this matter. (*See*
9 Kompella Decl., ¶ 6, attached hereto as **Exhibit A.**)

10 Nonetheless, “giving assignments” and “requiring reports” are the precise type of
11 managerial actions that *may* constitute discrimination but can *never* be harassment. Knowing
12 that binding California precedent has long prohibited individual liability for purported
13 discriminatory personnel management decisions, the decision to name Kompella in this lawsuit
14 is frankly unconscionable especially where, as here, Kompella was Doe’s *interim* manager for
15 less than three months. (Complaint, ¶¶ 45-46.)

16 Like the claim against Kompella, Plaintiff’s allegations of harassment against Iyer fail
17 because they too rely exclusively on everyday personnel management actions.¹ These personnel
18 management actions consist of Iyer purportedly taking away Doe’s role as lead on two
19 technologies, making promotion decisions, reducing Doe’s role to that of an independent
20 contributor, and not providing Doe with raises, bonuses, and awards when promised.
21 (Complaint, ¶¶ 34, 35, 36, 42). Although these allegations *may* support a FEHA discrimination
22 claim, they are insufficient as a matter of law to state a claim for FEHA harassment. Again, it is
23 well-settled that “commonly necessary personnel management actions such as hiring and firing,
24 job or project assignments, office or workstation assignments, promotion or demotion,

25 ¹ It is also important to note that Plaintiff’s claim against Iyer is predicated *entirely* on alleged adverse
26 employment actions and claimed acts of harassment that occurred over one year before Doe filed his
27 administrative complaint with the CRD on July 30, 2018. At that time, an employee had one year "from
28 the date upon which the alleged unlawful practice . . . occurred" to file a complaint with the CRD. Cal.
Gov’t. Code § 12960(d); *see also Jumaane v. City of Los Angeles* (2015) 241 Cal.App.4th 1390, 1402.
Because each of these alleged acts occurred before July 30, 2017, they are time-barred and cannot serve
as the predicate for Plaintiff’s harassment claim. Plaintiff knows this, yet still proceeds with this action.

1 performance evaluations, the provision of support, the assignment or nonassignment of
2 supervisory functions, deciding who will or who will not attend meetings, deciding who will be
3 laid off, and the like do not come within the meaning of harassment.” *Reno*, 18 Cal. 4th at 646-
4 47. Put more plainly, harassment, unlike discrimination, consists of actions outside the scope of
5 job duties which are not necessary to business and personnel management. *See Janken, supra*,
6 46 Cal.App. at 63. Indeed, many of these alleged acts of harassment form the basis for
7 Plaintiff’s discrimination claims against Cisco, further confirming that the harassment claim is
8 predicated on acts of alleged discrimination, that is, personnel management decisions.
9 (Complaint, ¶ 53.)

10 Plaintiff’s additional allegations of harassment, branded as “misrepresentat[ions]” or
11 “disparaging” comments, are nothing more than nonspecific statements by Iyer about Doe’s job
12 performance, including alleged statements “that Doe did not perform his job adequately, and
13 [telling] Doe’s team members that they should avoid working with him” and “criticisms about
14 Doe’s work product, social skills, and insubordination.” (Complaint, ¶¶ 40, 47.) However, and
15 as discussed above, such alleged actions constitute essential personnel management activities,
16 that is, staffing decisions and a supervisor’s feedback about an employee’s job performance,
17 including his social skills and insubordination.

18 Similarly, allegedly “revealing Doe’s caste to his colleagues,” whether directly or
19 indirectly, on *one* occasion, *outside* of Doe’s presence, and to an *unspecified* person, is nothing
20 more than a truthful statement acknowledging Doe’s caste; that does not constitute harassment.
21 (Complaint, ¶¶ 31 & 38.) Courts have held that truthful statements acknowledging a person’s
22 national origin or background are merely factual statements which cannot be considered
23 harassing or evidence of alleged bias. *See Gautam v. Prudential Financial, Inc.* (E.D.N.Y. Sep.
24 3, 2008) No. 06-CV-3614 (JS)(AKT), 2008 WL 11417411, at *6 (“questioning regarding . . .
25 religion, and the Indian caste system, even if true, does not demonstrate discrimination” because
26 “[s]tatements and questions acknowledging plaintiff’s national origin and background do not
27 support an inference of discriminatory animus.”) (quoting *Chudnovsky v. Prudential Sec., Inc.*,
28 (S.D.N.Y. Oct. 23, 2000) No. 98-CV-7753, 2000 WL 1576876, at *8 and citing *Jalal v.*

1 *Columbia Univ.* (S.D.N.Y. 1998) 4 F.Supp.2d 224, 236 (“Statements that merely acknowledge a
2 person’s membership in a [] protected class . . . fail to demonstrate bias.”). A **single alleged**
3 **statement** cannot be harassing when it is factual especially where, as here, it was not even heard
4 by Doe. Although Doe may have been upset that Iyer allegedly revealed Doe’s caste to his
5 colleagues, statements that are merely “frustrating or upsetting” are “not so severe as to ‘alter the
6 conditions of employment’ or ‘create an abusive working environment.’” *Doe v. Department of*
7 *Corrections and Rehabilitation* (2019) 43 Cal.App.5th 721, 737 (internal citations omitted); *see*
8 *also Cozzi v. County of Marin* (N.D. Cal. 2011) 787 F.Supp.2d 1047, 1070 (holding that “mere
9 ostracism . . . does not amount to a hostile environment.”) (internal citations and quotations
10 omitted).

11 Finally, to the extent the harassment claims are based on allegedly “subject[ing] Doe to
12 offensive comments and other misconduct based on his caste,” “disparaging [Doe] to the team,”
13 and “isolating him from the rest of the team,” these conclusory allegations are unsupported by
14 **any** factual allegations and are entitled to no weight. (Complaint, ¶ 63); *see Casey v. U.S. Bank*
15 *Nat’l Ass’n* (2005) 127 Cal.App.4th 1138, 1153; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.
16 Plaintiff fails to allege any specific “offensive” or “disparaging” comments allegedly made to
17 Doe or any alleged “misconduct” against him (other than customary personnel management
18 actions discussed above). Plaintiff also fails to allege when such comments or conduct occurred,
19 how frequently, or any facts establishing a connection between Defendants’ alleged comments or
20 conduct and Doe’s caste, let alone membership in a protected class. (Complaint, ¶¶ 29-47, 64
21 (alleging that “Defendants Iyer and Kompella subjected Doe to offensive comments and other
22 misconduct based on his caste . . . so severe or pervasive that it created a hostile work
23 environment . . .”).) A cause of action must allege facts that do more than merely create a
24 suspicion of liability through **labels and conclusions**, as the formulaic recitation of the elements
25 to a cause of action simply will not do.

26 Because the sole claim for harassment against Defendants Iyer and Kompella was
27 brought without a well-founded belief in the legal basis for this claim, sanctions are warranted
28 including dismissal of the Complaint against Defendants Iyer and Kompella.

1 **C. Plaintiff Does Not Have A Factual Basis To Suggest That Defendants**
2 **Engaged In Harassment**

3 As noted above, Plaintiff fails to allege any specific “offensive” or “disparaging”
4 comments allegedly made by Defendants to Doe or any alleged “misconduct” against him (other
5 than customary personnel management actions, as discussed above). Indeed, and
6 notwithstanding Plaintiff’s allegation that Defendants engaged in such prevalent behavior since
7 as early as November 1, 2016 (*see* Complaint, ¶ 28), Plaintiff fails to allege when such
8 comments or conduct occurred, how frequently, or any facts establishing a connection between
9 Defendants’ alleged comments or conduct and Doe’s caste, let alone membership in a protected
10 class. (Complaint, ¶¶ 29-47, 64 (alleging that “Defendants Iyer and Kompella subjected Doe to
11 offensive comments and other misconduct based on his caste . . . so severe or pervasive that it
12 created a hostile work environment . . .”).) The only claimed statement about Doe’s caste is a
13 *single* alleged statement by Iyer to Doe’s colleagues, outside of his presence, on or before
14 October 2016 that Doe “was from the ‘Scheduled Caste’ (Dalit) and enrolled in the Indian
15 Institute of Technology (IIT) through affirmative action.” (Complaint, ¶ 31.)

16 The lack of factual support for Plaintiff’s harassment claim is not surprising. This is
17 especially true when you consider the fact that Plaintiff’s entire Complaint is prefaced on the
18 allegations that: (1) caste is “a strict Hindu social and religious hierarchy” that promotes
19 segregation and discrimination; (2) both Iyer and Kompella “are from India’s highest castes”;
20 and (3) both Iyer and Kompella “expected [Doe] to accept a caste hierarchy within the workplace
21” (Complaint, ¶¶ 1, 4; *see also* Complaint, ¶¶ 30, 35 (alleging that Iyer and Kompella are,
22 “upon information and belief,” of the Brahmin caste).) These assertions are entirely unsupported
23 by the factual record established in this matter and during the CRD’s investigation of Doe’s
24 administrative complaint.

25 First, and regardless of the source of Plaintiff’s misunderstandings about Hindu beliefs
26 and practices, the government – whether the CRD, Attorney General or, respectfully, even this
27 Court – cannot define or act upon assertions of Hindu beliefs and practices. Such actions are in
28 direct violation of the First Amendment. *See* U.S. Const., 1st Amend. Similarly, the labeling of

1 both Iyer and Kompella as Hindu Brahmins directly affects their right to practice the religion of
2 their choice, or not practice any religion, in violation of the First Amendment. *Id.*

3 Second, Neither Iyer nor Kompella have ever held casteist views, and ***both have actively***
4 ***opposed the caste system*** in their personal and professional lives. Iyer has remained publicly
5 irreligious for over twenty years. These ***uncontradicted facts*** were provided to Plaintiff during
6 the investigation of Doe’s administrative complaint, and more recently in Iyer and Kompella’s
7 sworn declarations submitted in support of Defendants’ opposition to Plaintiff’s Motion to
8 Proceed Using a Fictitious Name. (A copy of Iyer’s declaration is attached hereto as **Exhibit B.**)
9 Those declarations, and the facts contained therein, conclusively disprove Plaintiff’s abstract
10 “upon information and belief” assertions regarding Defendants’ adherence, or lack thereof, to the
11 caste hierarchy. Moreover, and equally inconsistent of Plaintiff’s “information and belief,” the
12 declarations provide, in part, that:

13 Iyer has known Doe since they attended university together in India, more than 20
14 years ago. Based in part upon that long-standing relationship, ***Iyer solicited and***
15 ***hired Doe*** to join him at Cisco to work on a high-profile project. (Iyer Decl., ¶¶ 6,
8.)

16 Far from being the “untouchable” victim described in the lawsuit, ***Doe earned***
17 ***several millions of dollars working for Cisco with Iyer and Kompella*** as a
18 Principal Engineer. Indeed, to incentivize his team, Iyer ***gave away*** millions of
19 dollars — the ***entirety*** of his own equity as CEO of the high-profile project — to
20 employees including Doe. Doe was among the highest compensated employees in
the group. Yet Plaintiff, on behalf of Doe, alleges that Doe was denied
compensation increases which amounted to only a few thousand dollars. (Iyer
Decl., ¶ 8.)

21 The high-profile Cisco project that Plaintiff claims as “entirely Indian” in which
22 Doe was a “lone Dalit,” and had a “hostile-to-Dalit” environment, was staffed with
23 several non-Indian employees and at least one other self-identifying Dalit. (Iyer
Decl., ¶¶ 9, 12.)

24 ***Iyer hired, mentored, and championed a Dalit, and subsequently offered that***
25 ***individual the role leading the high-profile project.*** To this day, and upon
information and belief, Plaintiff has not interviewed this person. (Iyer Decl., ¶ 9.)

26 During Doe’s tenure, ***all three leadership positions in the high-profile project were***
27 ***first offered to (or accepted by) candidates that self-identified as Dalit***, and two
28 such offers (including the Head of Engineering position) were made ***prior*** to any
purported complaints of caste discrimination. (Iyer Decl., ¶ 9.)

1 Kompella *was unaware of Doe's caste* at the time he allegedly harassed Doe.
2 (Kompella Decl., ¶ 7.)

3 Notwithstanding the overwhelming evidence presented by Defendants directly contradicting
4 Plaintiff's spurious accusations, Plaintiff continues to litigate this matter.² Clearly, Plaintiff has
5 no "actual belief" in the viability of the contentions made in the Complaint and is instead focused
6 solely on drumming up favorable media attention, even if it means disregarding the facts of the
7 matter at the expense of Defendants' personal and professional lives. Such egregious behavior,
8 especially by attorneys in a state agency whose legislative charter is to be neutral and litigate
9 only when the evidence requires such action, is precisely the reason why the Legislature enacted
10 section 128.7, and Plaintiff should be sanctioned for its behavior.

11 **D. Plaintiff's Complaint Is Advocated For An Improper Purpose**

12 Plaintiff has also repeatedly violated section 128.7(b)(1). "Where there is no legal or factual
13 basis for a claim, improper purpose may be deduced." *Paciulan v. George* (N.D. Cal. 1999) 38
14 F.Supp.2d 1128, 1144 (imposing sanctions against plaintiff under FRCP Rule 11 for filing legally
15 frivolous complaint). Improper purpose may be deduced here because there is no factual or legal
16 basis for the filing and maintenance of Plaintiff's Complaint. All the facts point to one conclusion:
17 Iyer and Kompella did not engage in any behavior that could constitute harassment. Because
18 Plaintiff lacks the required factual and legal support to justify continued litigation against the
19 Defendants, an improper purpose can appropriately be deduced.

20
21
22
23
24
25 ² This type of behavior by the CRD has become commonplace, as documented in detail by court filings in
26 other civil cases filed by the CRD and investigative news media. For example, Tesla, Inc. filed a cross-
27 complaint against the CRD on September 22, 2022 in the Superior Court for the County of Alameda
28 alleging violation of the California Administrative Procedure Act based, in part, on the CRD failing, as
 they did here, to properly and completely investigate administrative claims before filing suit on those
 claims. See *Department of Fair Employment and Housing v. Tesla, Inc., et al.*, Case No. 22CV006830
 (Alameda County).

1 **IV. CONCLUSION**

2 For the reasons identified above, Defendants' Motion for Sanctions should be granted,
3 sanctions should be awarded in an amount of not less than \$10,000, and Plaintiff's Complaint
4 against Defendants Iyer and Kompella should be dismissed.

5
6 Dated: January 11, 2023

FOX ROTHSCHILD LLP


7
8 By 
9 ALEXANDER HERNAEZ
10 ANDREW S. ESLER
11 Attorneys for Defendants
12 SUNDAR IYER and RAMANA
13 KOMPELLA
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

1 ALEXANDER HERNAEZ, State Bar No. 201441
 ahernaez@foxrothschild.com
 2 ANDREW S. ESLER, State Bar No. 320772
 aesler@foxrothschild.com
 3 HYUNKI (JOHN) JUNG, State Bar No. 318887
 JJung@foxrothschild.com
 4 FOX ROTHSCHILD LLP
 345 California Street, Suite 2200
 5 San Francisco, CA 94104-2670
 Telephone: 415.364.5540
 6 Facsimile: 415.391.4436
 Attorneys for Defendants
 7 SUNDAR IYER and RAMANA KOMPELLA

8
 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 COUNTY OF SANTA CLARA

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

14 Plaintiff,

15 v.

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

18 Defendants.

Case No. 20CV372366

**DECLARATION OF RAMANA
 KOMPELLA IN SUPPORT OF
 DEFENDANTS SUNDAR IYER AND
 RAMANA KOMPELLA'S OPPOSITION
 TO PLAINTIFF CALIFORNIA
 DEPARTMENT OF FAIR
 EMPLOYMENT AND HOUSING'S
 MOTION TO PROCEED USING A
 FICTITIOUS NAME**

Date: January 26, 2021
 Time: 9:00 a.m.
 Dept: 2
 Judge: Hon. Drew C. Takaichi

Action Filed: October 16, 2020
 Trial Date: None set.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF RAMANA KOMPELLA

I, Ramana Kompella, declare as follows:

1. I am a Distinguished Engineer and Head of Research in the Emerging Tech and Incubation Group at Cisco Systems, Inc. (“Cisco”). I am also an individual defendant in this case. The matters set forth in this Declaration are based on my personal knowledge and if called as a witness, I could and would testify competently thereto.

2. In this lawsuit filed by the California Department of Fair Employment and Housing (“DFEH”) on behalf of John Doe (“Doe”), a colleague of mine at Cisco, the DFEH wrongfully claims that I subjected Doe to unfair treatment because he is a member of the lowest caste in the Indian caste system.

3. The DFEH grounds these absurd accusations solely on the fact that I was born into an upper social caste, Brahmin, and therefore must actively support caste hierarchy in my personal and professional lives. This is untrue.

4. Although I was born into a Brahmin family, I have never supported or advanced caste hierarchy. The entirety of my professional career has been spent in the United States, where I have worked with colleagues of different races, ethnicities, religions, and cultures harmoniously. I have never condoned or participated in any type of discrimination whatsoever. Caste identity has never influenced my personal or professional actions. To say or think that caste has somehow found its way into my thought process after 20 years of embracing diversity is just plain absurd.

5. Doe and I both joined Cisco at approximately the same time at the same Principal Engineer level. Around November 2016 I was made the (titular and temporary) Head of Engineering to lead the engineering team and deliver the product. This was not a promotion nor did it come with any additional benefits or compensation. However, this changed our dynamic from a peer status to a supervisor status. During the course of my role as titular Head of Engineering, it became apparent that Doe had little interest in timely completing tasks, choosing instead to be insubordinate, confrontational, and create a disruptive working environment. In one such instance, a critical release was delayed because Doe neglected to address a software bug for which he was responsible. Luckily, another engineer was able to formulate a workaround for the

1 issue.

2 6. In approximately February 2018, Sundar Iyer stepped down as the head of the
3 project on which I worked with Doe. As a result, I became the interim head of the project until a
4 permanent replacement could be located. My manager instructed me to maintain the status quo
5 during this transition period, avoiding any major organizational decisions. I subsequently
6 approached my manager to discuss a strategy in handling Doe’s poor work ethic, which resulted
7 in a conversation between Doe, my manager, and me. During that conversation, my manager
8 suggested to Doe that he submit weekly reports to ensure transparency in his work. This was my
9 manager’s suggestion and decision, not mine, and had absolutely nothing to do with caste. Doe
10 does not allege that he filed a complaint with Cisco against my manager or me concerning this
11 management decision, clearly demonstrating that he did not believe it was harassment.

12 7. I was unaware of Doe’s caste status prior to his complaint with the DFEH. Doe
13 did not share his caste with me, nor did anyone else share it with me. I did not inquire about
14 Doe’s caste nor try to ascertain it in any way. Accordingly, it would have been impossible for me
15 to make any decisions based on Doe’s caste, which was unknown to me during the relevant time
16 period.

17 8. Now, after one fifteen minute interview with me, the DFEH has filed this lawsuit
18 on behalf of Doe, subjecting me to public ridicule and embarrassment while Doe hides behind his
19 anonymous status. Doe’s baseless accusations, amplified by the fact that a powerful state entity
20 such as DFEH stands by them even without any credible evidence, have caused both my family
21 and me substantial stress. I resigned my employment with Cisco in September 2019 in part to
22 escape and recuperate from the stress of Doe’s unsubstantiated accusations. I have since rejoined
23 Cisco and I am now concerned with how this lawsuit, and the DFEH’s relentless media campaign,
24 will affect my career, regardless of the fact that Doe’s baseless allegations will soon be revealed
25 as exactly that.

26 9. I find it particularly concerning that a state agency such as the DFEH, created to
27 protect people from discrimination and harassment, would be so quick to adjudicate us guilty
28 without any evidence. Even if DFEH was eager to prosecute us, why have they not granted

1 Sundar Iyer and me the same level of anonymity that they are requesting to protect Doe? The
2 DFEH could have very well referred to us as Doe Supervisors without diminishing their ability to
3 litigate on behalf of Doe. Instead, they chose to subject us to public commentary and ridicule,
4 adversely affecting our reputations and consequently our career opportunities, all without any
5 regard for the anxiety and burden placed upon us, let alone any material proof to support Doe's
6 allegations. It is therefore imperative that Doe should publicly stand behind these allegations and
7 not setup an unfair fight by hiding behind the cloak of anonymity.

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

10 Executed this 12th day of January, 2021, in Cupertino, California.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DocuSigned by:
Ramana Kompella
020C3428DCE04A1... _____
Ramana Kompella

EXHIBIT B

1 ALEXANDER HERNAEZ, State Bar No. 201441
 ahernaez@foxrothschild.com
 2 ANDREW S. ESLER, State Bar No. 320772
 aesler@foxrothschild.com
 3 HYUNKI (JOHN) JUNG, State Bar No. 318887
 JJung@foxrothschild.com
 4 FOX ROTHSCHILD LLP
 345 California Street, Suite 2200
 5 San Francisco, CA 94104-2670
 Telephone: 415.364.5540
 6 Facsimile: 415.391.4436
 Attorneys for Defendants
 7 SUNDAR IYER and RAMANA KOMPELLA

8
 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 COUNTY OF SANTA CLARA
 11

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

14 Plaintiff,

15 v.

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

18 Defendants.
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

Case No. 20CV372366

**DECLARATION OF SUNDAR IYER IN
 SUPPORT OF DEFENDANTS SUNDAR
 IYER AND RAMANA KOMPELLA'S
 OPPOSITION TO PLAINTIFF
 CALIFORNIA DEPARTMENT OF FAIR
 EMPLOYMENT AND HOUSING'S
 MOTION TO PROCEED USING A
FICTITIOUS NAME**

Date: January 26, 2021
 Time: 9:00 a.m.
 Dept: 2
 Judge: Hon. Drew C. Takaichi

Action Filed: October 16, 2020
 Trial Date: None set.

DECLARATION OF SUNDAR IYER

I, Sundar Iyer, declare as follows:

1. I am a former Distinguished Engineer at Cisco Systems, Inc. (“Cisco”). I am also an individual defendant in this case. The matters set forth in this Declaration are based on my personal knowledge and if called as a witness, I could and would testify competently thereto.

2. In this lawsuit filed by the California Department of Fair Employment and Housing (“DFEH”) on behalf of John Doe (“Doe”), a former colleague of mine at Cisco, the DFEH wrongfully claims that I subjected Doe to unfair treatment because he is Dalit.

3. The DFEH’s allegations are premised on the notion that I am an adherent of the highest ranking social caste, Brahmin, and that I actively supported and advanced caste hierarchy at Cisco, which resulted in inferior terms and conditions of employment for Doe. This is categorically and demonstrably false.

4. I have publicly stated on my personal web page, for almost 20 years, that I do not practice organized religion, let alone Hinduism or Brahminism. I have publicly admonished the Indian caste system for over a decade, including in my short story from a writing class at Stanford in 2012. I actively opposed, and have never undergone, the *Upanayanam*, a Hindu rite-of-passage ritual which marks a boy’s acceptance into the religious community; the ritual is traditionally reserved for upper castes.

5. My extended family consists of at least two relatives who identify as Dalit and many others from various, non-Hindu, religious backgrounds. I have publicly declared my belief in human unity, not the outdated social constructs associated with the caste system, and I have nurtured these benevolent ideals in my personal and professional lives.

6. I first met Doe while attending the Indian Institute of Technology (“IIT”) together, where we were in the same department of only thirty-seven students. After graduating from IIT, I pursued further educational opportunities in the United States, ultimately founding numerous technology companies and advising several more in the San Francisco Bay Area.

7. I co-founded a special project at Cisco in 2015. This project was an internal technology start-up with substantial autonomy on how it operated. The project was fluid in how

1 it was managed, ensuring that the necessary staffing and expertise could be delegated to specific,
2 constantly evolving, projects.

3 8. I actively solicited and hired Doe to join Cisco as a Principal Engineer and
4 member of this project. I offered Doe a very competitive starting salary, in addition to stock
5 grants valued in the millions of dollars, making him one of the mostly highly compensated
6 members of the project. I sacrificed the entirety of my own equity in the project to provide Doe,
7 and other members of the project, with generous compensation packages. Despite these facts,
8 Doe now appears to take issue with not being given a raise in the low thousands of dollars.

9 9. During my time at Cisco, project members were recruited, hired, managed, and
10 promoted based on their qualifications and work ethic, not because of their caste identity. One of
11 these members self-identified to me as a Dalit decades ago. While knowing this and before Doe
12 raised his complaint internally, I recruited and hired him for a head position on the project. I
13 subsequently also offered him the Head of Engineering role, again before Doe raised any
14 complaint. I championed his career, and ultimately offered him my position, which he declined.

15 10. Doe's caste had absolutely no influence on any management decisions I made,
16 including decisions regarding his work assignments, training, reporting structure, and
17 performance at Cisco. Indeed, it would be illogical for me to have actively recruited and hired
18 Doe, offering him an extremely generous compensation package, the joint highest grade in my
19 group, only to then hinder his performance because of his caste. My actions in the months both
20 before and after Doe's hiring, and in giving him several leadership opportunities, further
21 demonstrate that his allegations are meritless.

22 11. I have never retaliated against Doe, let alone in relation to this lawsuit. In fact, I
23 left Cisco and the San Francisco Bay Area for the majority of the past 2.5 years in part to distance
24 myself from Doe and the substantial media attention the DFEH has garnered to this case.

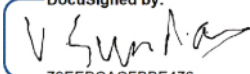
25 12. I am honored to have worked with a stellar and diverse team at Cisco, which was
26 comprised of individuals from different countries, religions, and ethnic backgrounds. We built an
27 environment of mutual respect — for each other to learn and flourish. It pains me that Doe is
28 now attempting to tarnish that image with his own false narrative, all while cloaked behind a veil

1 of anonymity. Truly, if Doe’s allegations continue in court, Doe must publicly stand behind his
2 accusations, so that those individuals impacted by his deceitful accusations can come forward and
3 openly challenge them.

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

6 Executed this 12th day of January, 2021, in Funchal, Portugal.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DocuSigned by:

79EEBCACFBBE476... _____

Sundar Iyer