

1 JAMIE CROOK (#245757)
 Chief Counsel
 2 RUMDUOL VUONG (#264392)
 Assistant Chief Counsel
 3 ROYA MASSOUMI (#242697)
 Associate Chief Counsel
 4 DYLAN COLBERT (#341424)
 Staff Counsel
 5 MACKENZIE ANDERSON (#335469)
 Staff Counsel
 6 CALIFORNIA DEPARTMENT OF FAIR
 EMPLOYMENT AND HOUSING
 7 2218 Kausen Drive, Suite 100
 Elk Grove, CA 95758
 8 Telephone: (916) 478-7251
 Facsimile: (888) 382-5293
 9

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10 Attorneys for Plaintiff,
 California Department of Fair Employment and Housing

(Fee Exempt, Gov. Code, § 6103)

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 12 **IN AND FOR THE COUNTY OF SANTA CLARA**
 13

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

16 Plaintiff,

17 vs.

18 CISCO SYSTEMS, INC., a California
 Corporation,
 19

20 Defendant.

Case No. 20CV372366

**PLAINTIFF DEPARTMENT OF FAIR
 EMPLOYMENT AND HOUSING'S
 OPPOSITION TO HINDU AMERICAN
 FOUNDATION'S MOTION FOR LEAVE TO
 INTERVENE**

Date: November 16, 2023
Time: 9:00 AM
Department: 16
Judge: Hon. Amber Rosen

Action Filed: October 16, 2020
Trial Date: TBD

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1 **I. INTRODUCTION**

2 The Fair Employment and Housing Act (“FEHA”) vests in Plaintiff Civil Rights Department
3 (“CRD” or the “Department”)¹ the authority to investigate and remedy discriminatory conduct. (See
4 Gov. Code, §§ 12900-12999.) Pursuant to this legislative authority, CRD brought this action against
5 Defendant Cisco Systems, Inc. (“Cisco”) for discrimination, harassment, and retaliation suffered by Mr.
6 John Doe during his employment at Cisco based on his caste status as a Dalit Indian.

7 Hindu American Foundation (“HAF”) seeks to intervene based not on the facts or law at issue
8 in this case, but on a singular reference contained in the complaint describing India’s caste system as a
9 “strict Hindu social and religious hierarchy.” HAF has failed to meet its burden of establishing an
10 interest that would warrant either mandatory or permissive intervention. HAF has not demonstrated that
11 its “interests” relate to the allegations of discrimination, harassment, or retaliation at issue in this action
12 or that the disposition of this matter would impede or impair its “interest”, as required for mandatory
13 intervention. Further, the Court should deny permissive intervention because HAF’s intervention
14 would enlarge the issues in this matter; HAF seeks to shoe-horn alleged constitutional violations into an
15 employment discrimination case and thus threatens to disrupt the litigation. In sum, the court should
16 deny HAF’s motion to intervene as it has not shown it meets the requirements for either mandatory or
17 permissive intervention.

18 **II. FACTS AND PROCEDURAL HISTORY**

19 On October 16, 2020, CRD filed suit against Cisco alleging violations of the FEHA. (See
20 generally, Plaintiff’s Civil Rights – Employment Discrimination Complaint, “Compl.”) The complaint
21 was filed on behalf of a single Cisco employee, Mr. Doe, alleging that he was discriminated against and
22 harassed by two of his supervisors and co-workers “based on his caste, which includes his religion,
23 ancestry, national origin/ethnicity, and race/color” and that such actions constituted FEHA violations.
24 (Compl. at ¶¶ 4,11,12,63.) CRD’s complaint further alleged that Cisco engaged in retaliation and failed
25 to prevent discrimination, harassment, and retaliation. (*Id.* at ¶¶ 72-99.)

26 CRD makes only two references to Hinduism in the 19-page complaint. (See *id.* at ¶¶ 1, 29.)
27

28 ¹ The Civil Rights Department was formerly known as the Department of Fair Employment and Housing
or DFEH.

1 One is a simple statement that Hinduism is Mr. Doe’s religion. (*Id.* at ¶ 29.) The other is a statement in
2 its introductory paragraph summarizing a Human Rights Watch report that “[a]s a strict Hindu social
3 and religious hierarchy, India’s caste system defines a person’s status based on their religion, ancestry,
4 national origin/ethnicity, and race/color—or the caste into which they are born—and will remain until
5 death.” (*Id.* at ¶ 1 [citing Smita Narula, Human Rights Watch, *Caste Discrimination: A Global Concern*
6 (Durban, South Africa, Sept. 2001) 5-24].)²

7 On January 7, 2021, HAF filed the instant motion seeking leave to intervene. (See generally
8 Motion to Intervene, “Mot.”.) Through its proposed complaint in intervention, HAF seeks to bring two
9 causes of action, the first asserting a violation of the free exercise of religion under 42 U.S.C. §1983
10 and the second alleging a denial of equal accommodations, advantages, facilities, privileges, or services
11 pursuant to the Unruh Civil Rights Act. (Mot. Intervene, Kalra Decl. Exh. 1, HAF’s proposed
12 complaint (“HAF Compl.”) at p. 5-7.)

13 In September 2022, HAF filed a separate lawsuit against CRD’s director, Kevin Kish, in federal
14 court. (See *Hindu American Foundation, Inc. v. Kish* (E.D. Cal., Aug. 31, 2023, No. 2:22-CV-01656-
15 DAD-JDP) 2023 WL 5629296, at *1.) The factual allegations between HAF’s proposed complaint in
16 this matter and the federal action are almost identical. (Compare Declaration of Hindu American
17 Foundation in Support of Motion to Intervene, ¶ 3, Exhibit 1, HAF Compl. at ¶¶ 9-21 with Plaintiff’s
18 Request for Judicial Notice (“RJN”), Exhibit B at ¶¶ 5-22 [complaint filed by HAF in the matter of
19 *Hindu American Foundation, Inc. v. Kish* (E.D. Cal., Aug. 31, 2023, No. 2:22-CV-01656-DAD-JDP)
20 (“*Kish* Compl.”)].) Both complaints are premised on the incorrect allegation that CRD is attempting to
21 “decide the scope and nature of Hindu religious teachings and practices” by seeking a court ruling that
22 caste is an “integral part of Hindu teachings and practices.” (HAF Compl. at p. 1, *Kish* Compl. at p. 2.)
23 Both complaints include causes of action for violation of the First Amendment. (HAF Compl. at ¶¶ 22-
24 29 ; *Kish* Compl. at ¶¶ 23-30.)

25 On August 31, 2023, the district court in the federal case granted CRD’s motion to dismiss for
26 lack of standing because HAF had pled insufficient facts to show either associational standing, direct
27 standing, any injury-in-fact, or a plausible connection between any “hypothetical” injury to the law it

28 ² This report is available at <https://www.hrw.org/reports/pdfs/g/general/caste0801.pdf>.

1 asserted was violated. (See *Hindu American Foundation, Inc. v. Kish* (E.D. Cal., Aug. 31, 2023, No.
2 222CV01656DADJDP) 2023 WL 5629296, at *5-10.) The district court was “skeptical that [HAF] will
3 be able to remedy all of the pleading deficiencies” but granted leave to amend. (*Id.* at *10.)

4 On September 21, 2023, HAF filed its first amended complaint in the federal action. (Plaintiff’s
5 RJN, Exhibit A [federal court docket in the matter of *Hindu American Foundation, Inc. v. Kish* (E.D.
6 Cal., Aug. 31, 2023, No. 2:22-CV-01656-DAD-JDP)].) That case is ongoing as a response by CRD’s
7 Director to the amended complaint, as well as a motion to proceed under pseudonyms, is due on
8 November 20, 2023. (See *id.*)

9 III. LEGAL STANDARD

10 A non-party to a lawsuit may petition the court for leave to intervene. (Code Civ. Proc., § 387.)³
11 If successful, the intervening party becomes a party to the litigation. (*Ibid.*) Intervention may be
12 mandatory or permissive. (*Ibid.*) Under either framework, “the moving party seeking intervention
13 always bears the burden of proving entitlement to party status.” (See *Accurso v. In-N-Out Burgers*
14 (2023) 94 Cal.App.5th 1128, as modified (Sept. 25, 2023) (“*Accurso*”).)

15 Mandatory intervention is available if a non-party can establish: (1) the non-party has “an
16 interest relating to the property or transaction that is the subject of the action,” (2) that the “disposition
17 of the action may impair or impede [the non-party’s] ability to protect that interest,” and (3) the interest
18 is not “adequately represented by one or more of the existing parties.” (§ 387 subd. (d)(1)(B).)⁴ The
19 request must also be timely. (§ 387 subd. (d)(1).) “These criteria are virtually identical to those for
20 compulsory joinder of an indispensable party.” (*Carlsbad Police Officers Association v. City of*
21 *Carlsbad* (2020) 49 Cal.App.5th 135, 148.)

22 Section 387, subdivision (d)(2) provides for permissive intervention where a nonparty timely
23 applies and “(1) the intervenor has a direct and immediate interest in the litigation, (2) the intervention
24 will not enlarge the issues in the case, and (3) the reasons for intervention outweigh opposition by the
25 existing parties.” (*Hinton v. Beck* (2009) 176 Cal.App.4th 1378, 1382–1383.)” If these factors are met,
26

27 ³ All references to statute hereafter refer to the Code of Civil Procedure unless otherwise stated.

28 ⁴ Intervention is also mandatory if “[a] provision of law confers an unconditional right to intervene.” (§
387 subd. (d)(1)(A).) HAF does not argue that any such law exists here.

1 permissive intervention is still discretionary.⁵

2 **IV. ARGUMENT**

3 HAF has not met the standard for intervention, either mandatory or permissive, as it has not
4 identified any interests HAF has relating to the subject matter of this action. HAF references
5 constitutional law, but its harms are so speculative that there is no viable theory of protection under
6 such law, and these vague constitutional interests are unrelated to the specific FEHA claims and facts
7 of CRD’s complaint. The Court should further deny HAF’s motion as the resolution of this lawsuit,
8 seeking to recover on behalf of a single worker for Cisco, does not impede or impair HAF’s interest
9 and Cisco adequately represent HAF’s interests.

10 HAF’s speculative constitutional harms are so remote that they cannot justify even permissive
11 intervention. Forcing the court to consider questions of free exercise of religion and due process, not
12 implicated in CRD’s complaint, would necessarily enlarge the scope of the issues, and any rationale for
13 intervention is greatly outweighed by the substantial delays intervention would introduce and the wider
14 risk of opening all government enforcement actions to intervention by an advocacy group.

15 **1. Court Should Deny Intervention as HAF Failed to Establish any “Interests” as**
16 **Required Under Either Mandatory or Permissive Intervention**

17 Mandatory intervention requires an interest relating to the property or transaction that is the
18 subject of the action, while permissive intervention requires the proposed intervenor show they have a
19 direct and immediate interest in the litigation. The Court should find that mandatory or permissive
20 intervention is not warranted because, under either test, HAF failed to articulate a cognizable interest.

21 In evaluating whether a non-party has a sufficient “interest” to justify intervention, under either
22 permissive or mandatory intervention, the “threshold requirement” is that a non-party has a “direct
23 rather than consequential” interest. (*Accurso, supra*, 94 Cal.App.5th at 1137.) This interest must be one
24 that is “significantly protectable” and “relat[ed] to the property or transaction that is the subject matter
25

26 ⁵ In its motion HAF incorrectly asserts that permissive intervention may be granted “when the intervenor
27 ‘is so situated that the disposition of the action may impair or impede that person’s ability to protect that
28 interest, unless that person’s interest is adequately represented by one or more of the existing parties.’”
(Mot. at 11.) Although it properly cites section 387 subdivision (d)(2), it is actually quoting section 387
subdivision (d)(1)(B), which governs mandatory intervention.

1 of the action.” (*Ibid.* at p. 1137-1145.) To be “significantly protectable” requires an interest be legally
2 protectable. (*Wilderness Soc. v. U.S. Forest Service* (9th Cir. 2011) 630 F.3d 1173, 1180 (“*Wilderness*
3 *Soc.*”)).⁶ Traditionally, “[o]nly direct pecuniary interest formed the basis for mandatory intervention.”
4 (*Coalition for Fair Rent v. Abdelnour* (1980) 107 Cal.App.3d 97, 115 (“*Coalition for Fair Rent*”).) In
5 certain circumstances a non-party may establish a right to mandatory intervention based on a non-
6 pecuniary interest, but such instances are rare and limited. (See, e.g., *Accurso*, 94 Cal.App.5th at 1144-
7 1145 [finding that a PAGA representative, who by statute is designated as an agent of the state, had a
8 “legitimate claim to representation of the public” and, therefore, need not establish that its potential
9 interest is pecuniary for mandatory intervention].) The interest HAF has alleged are neither legally
10 protectable nor directly related to this case.

11 ***a. HAF fails to articulate any legally protectable interest.***

12 For intervention as a right, the interest must be “protectable.” (*Accurso*, 94 Cal.App.5th at
13 1145.) Stated more fully, a non-party must show that the “interest is protectable under some law.”
14 (*Wilderness Soc.*, 630 F.3d at 1180; see also *Ctr. for Biological Diversity v. U.S. E.P.A.* (N.D. Cal. Mar.
15 16, 2012, 2012 WL 909831, at *2.) Although the question of intervention is distinct from the question
16 of standing, courts may rely on laws considering standing to determine whether an interest identified is
17 legally protectable. (*American Ass’n of People With Disabilities v. Herrera* (D.N.M. 2008) 257 F.R.D.
18 236, 251 (“*Herrera*”) [holding non-party had no interest to support mandatory intervention where the
19 party would not have standing to bring such suit]; *Hodes & Nauser, MDs, P.A. v. Moser* (D. Kan. Sept.
20 29, 2011) 2011 WL 4553061, at *2 [relying on cases considering party standing to “highlight[] the
21 speculative nature of [non-party]’s argument” for mandatory intervention].) HAF’s motion did not
22 identify what “interest” intervention would protect, pointing only to “constitutional rights,” (Mot. at p.
23 5.) but these rights, identically pled in the federal action, were found to be so lacking as to not meet the
24 low threshold for Article III standing and, thus, cannot be the basis for intervention here. (*Hindu*
25 *American Foundation, Inc. v. Kish* (E.D. Cal., Aug. 31, 2023, No. 2:22-CV-01656-DAD-JDP) 2023
26 WL 5629296, at *10 (“*HAF v. Kish*”); see also *Herrera*, 257 F.R.D. at 251.)

27 _____
28 ⁶ Due to the similarities between Code of Civil Procedure section 387 and Federal Rules of Civil
Procedure Rule 24, it is proper for California courts to “take guidance from federal law” in interpreting
section 387. (*Accurso, supra*, 94 Cal.App.5th at 1138.)

1 HAF has not demonstrated how the vague interests contained in its motion and proposed
2 complaint in intervention are protected under *any* law. (See *Northwest Forest Resource Council v.*
3 *Glickman* (9th Cir. 1996) 82 F.3d 825, 837 [holding for an interest to support mandatory intervention
4 the interest asserted must be “protectable under some law”].) HAF’s motion raises a free exercise claim
5 under the First Amendment. To establish a viable free exercise claim a plaintiff must show that a
6 government action substantially burdened or had a coercive effect on their practice of religion. (See
7 *Harris v. McRae* (1980) 448 U.S. 297, 321 [organizational plaintiff must demonstrate coercive effect
8 against the practice of individual member’s religions]; *Jones v. Williams* (9th Cir. 2015) 791 F.3d 1023,
9 1031–1032 [plaintiff must show that the government action in question substantially burdens the
10 person’s practice of their religion].) “A substantial burden . . . place[s] more than an inconvenience on
11 religious exercise; it must have a tendency to coerce individuals into acting contrary to their religious
12 beliefs or exert substantial pressure on an adherent to modify his behavior and to violate his beliefs.”
13 (*Jones*, 791 F.3d at 1031-1032.) A plaintiff must describe specific experiences and injuries caused by
14 the government’s actions, particularly where an organization attempts to bring those claims on behalf
15 of a membership with potentially diverse viewpoints. (*Harris*, 448 U.S. at 321.)

16 HAF has not demonstrated a viable Free Exercise Clause claim as required for mandatory
17 intervention. HAF’s complaint does not allege any facts showing that CRD coerced anyone into doing
18 something inimical to their religious convictions or otherwise prevented them from being able to
19 practice their religion. Indeed, it is implausible that seeking to end caste-based discrimination at Cisco
20 (the goal of CRD’s enforcement action) would prevent or burden Hindu Americans from practicing
21 their religion. HAF’s motion erroneously characterizes CRD’s enforcement action as seeking to define
22 Hinduism, but provides no legal authority for asserting that a state action that “defines” a religion
23 violates the Free Exercise Clause. On the contrary, erroneously defining or characterizing a religion in a
24 pleading is not regulatory, proscriptive, or compulsory, and thus does not have an unlawful coercive
25 effect on an adherent’s ability to practice their religion. (See, e.g., *Sabra v. Maricopa County*
26 *Community College District* (9th Cir. 2022) 44 F.4th 867, 890 [when the challenged government action
27 is neither regulatory, proscriptive or compulsory, alleging a subjective chilling effect on free exercise
28 rights is not sufficient to constitute a substantial burden].)

1 HAF’s motion also mentions a vague procedural due process interest, without asserting a cause
2 of action for such violation in its complaint.⁷ The concerns articulated appears to be a void for
3 vagueness claim. (See Mot. at p. 6-7.) To bring such pre-enforcement challenge, a party must identify
4 an activity that has been chilled, which the federal court has already held HAF has failed entirely to do.
5 (See *HAF v. Kish*, *supra*, 2023 WL 5629296, at *8 [citing to *Montclair Police Officers' Association v.*
6 *City of Montclair* (C.D. Cal., Oct. 24, 2012) 2012 WL 12888427, at *4].) Similarly, the Court should
7 find HAF failed to identify a due process interest that would mandate intervention.

8 ***b. HAF has no sufficiently direct interest as required for intervention.***

9 The California Court of Appeal in *Accurso* articulated that there exists a threshold interest
10 requirement for either mandatory or permissive intervention and the interest must be direct rather than
11 consequential. *Accurso*, 94 Cal.App.5th at 1137.⁸ “Not every interest in the outcome of litigation gives
12 to its possessor the right to intervene in the lawsuit.” (*Hinton*, 176 Cal.App.4th at 1383 [quoting
13 *Continental Vinyl Products Corp. v. Mead Corp.* (1972) 27 Cal.App.3d 543, 549 (“*Continental*”).])
14 Instead, the non-party must show that the interest is direct, not consequential, and “proper to be
15 determined in the action in which the intervention is sought.” (*Id.*) Simply showing that the outcome in
16 the action may “benefit or harm” the non-party’s interest is insufficient to establish that intervention is
17 proper. (*Id.* [quoting *Continental*, *supra*, 27 Cal.App.3d at p. 550].)⁹

18 HAF has failed to meet the threshold requirements under either intervention standard to show a
19 sufficient interest in this case. HAF’s main articulated interest is an abstract one – an objection to the
20 California government asserting what Hindus believe. Even if the state were seeking such a broad court
21 ruling, which it is not, HAF has failed to allege any real harm it might have suffered or might plausibly
22

23 ⁷ HAF’s proposed complaint contains a cause of action but HAF’s Unruh Act cause of action is legally insufficient as Unruh
24 “prohibits arbitrary discrimination in California business establishments on the basis of specified classifications.” (*Harrison*
25 *v. City of Rancho Mirage* (2015) 243 Cal.App.4th 162, 172.) Government entities are only liable under Unruh when they act
26 as business establishments. (*Ibid.* at p. 175-76.) Here, HAF argues that CRD’s actions are legislative in nature--the type of
27 actions courts have found is not liable under Unruh. (See *ibid.* at p. 175. HAF does not have a legal interest under Unruh as
28 HAF does not, and cannot plausibly claim, CRD is not acting as a business establishment.

⁸ In *Accurso v. In-N-Out Burger*, the Court of Appeal rejected the idea that the mandatory and permissive interest
requirements are different, instead focusing the differences in the two standards on the other factors. (See *Accurso*, 94
Cal.App.5th at 1136-1157 [analyzing first the “threshold interest-in-the-litigation requirement” before turning to the
difference between mandatory and permissive intervention].) Given this newly adopted approach, the *Accurso* court
suggested that courts need not differentiate between caselaw considering mandatory or permissive interests when evaluating
whether a non-party has put forward a sufficient interest to permit intervention.

1 suffer in the future from such actions. In *City and County of San Francisco v. State of California*, the
2 Court of Appeal rejected a non-party entity’s request to intervene in a case challenging the
3 constitutionality of Proposition 22, which attempted to define marriage in the state of California. (*City
4 and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1038–1039.) The
5 Court denied intervention even though the non-party was created for the express purpose of defending
6 the Proposition definition of marriage because the non-party could not identify how a judgment in the
7 case would directly benefit or harm its members and the non-party had not sufficiently alleged that its
8 members would suffer a tangible harm absent intervention. (*Id.*) HAF has not alleged any specific facts
9 showing it has members, much less that a judgement would harm or benefit those members or that
10 those members would suffer a tangible harm absent intervention.

11 Similarly, HAF has not demonstrated how CRD’s action “burdens, operates against, or
12 otherwise infringes on the practice of Hinduism by any individual it seeks to represent in bringing this
13 action” or “identified any activity that it alleges has been chilled by the Department’s allegations
14 advanced in its state court complaint against Cisco.” (*HAF v. Kish, supra*, 2023 WL 5629296, at *8.)
15 Indeed, it strains credulity to suggest that a prosecutorial choice made by a state government in
16 enforcing its own laws against a single company could have any *direct* and *immediate* impact on “all
17 Hindu Americans,” regardless of their state of residence. (See, e.g., *Coalition for Fair Rent, supra*, 107
18 Cal.App.3d at 114–15 [denying mandatory intervention to an organization when it “ha[d] no different
19 interest in the general question of interpretation of the . . . statutes than does any member of the general
20 public”]; *City and County of San Francisco*, 128 Cal.App.4th at 1039 [“Because the [non-party]’s
21 members stand in the same position as a broad cross-section of the California public regarding such
22 potential effects of a judgment on their opposite-sex marriages, their interests are not sufficiently
23 unique or direct to support intervention.”]; *Socialist Workers etc. Committee v. Brown* (1975) 53
24 Cal.App.3d 879, 892 [“Regarding the validity of the act on its face, petitioners stand in the same
25 position as that of all of the people of California; therefore, petitioners have only an indirect and
26 inconsequential interest.”] see also *Harris v. Pernsley* (E.D. Pa. 1986) 113 F.R.D. 615, 621, *aff’d* (3d
27 Cir. 1987) 820 F.2d 592 [finding district attorney did not have interest sufficient to support mandatory
28 intervention in case involving prison conditions noting that other agencies were vested with oversight

1 of prisons and that “an interest in enforcing the criminal law and a related interest in protecting the
2 public safety” is too indirect].)

3 In considering the same factual allegations as HAF offers up here, the district court in the
4 federal action concluded that “[a]t most, plaintiff alleges a purely hypothetical theory of harm” that
5 CRD’s “attempt[s] to define Hinduism to include caste . . . would actually require the very
6 discrimination that it seeks to ban.” (*Id.*) The court rejected HAF’s argument that it could suffer
7 cognizable injury due to “the Department’s allegations in the state court complaint—a civil rights
8 enforcement lawsuit seeking to stop and prevent caste-based discrimination.” (*Ibid.* [finding it “highly
9 speculative and seemingly implausible” that CRD’s claims against Cisco would *cause* caste-based
10 discrimination.]) The “highly speculative” and “purely hypothetical” nature of the harms articulated by
11 HAF in both the federal and state actions show that its interest in this case is not direct or immediate.
12 (See, e.g., *City of Malibu v. California Coastal Com.* (2005) 128 Cal.App.4th 897, 905 [holding that
13 speculation as to what might happen if a legal conclusion is reached is not enough to demonstrate
14 “immediate consequence”].) Further, the abstract harms articulated by HAF do not qualify as direct
15 interest, and as such cannot be grounds for intervention, since no tangible harm would result to HAF
16 from the potential *judgment* in this litigation. (See *City and County of San Francisco*, 128 Cal.App.4th
17 at 1033, 39 [rejecting intervention as intervenor’s support for a specific outcome in the litigation
18 (finding the proposition constitutional) not sufficient to qualify as direct interest absence allegation of
19 tangible harm from an adverse judgment.”].)

20 Since HAF has not identified any particularized interest or harm, either on behalf of itself or any
21 of its members, neither mandatory nor permissive intervention are proper.

22 **2. HAF’s “Interests” Are Not Related to Subject Matter of CRD’s Suit**

23 The standard for mandatory intervention also requires that the proposed intervenor’s interest
24 “relates to the transaction or property in this case.” (§ 387 subd. (a)(1)(B).) Here, the “transaction” that
25 is the subject matter of this action is the alleged misconduct of Cisco and its representatives against Mr.
26 Doe. (See *California Physicians’ Service v. Superior Court* (1980) 102 Cal.App.3d 91, 97 [“The
27 ‘transaction’ being litigated is the alleged tortious conduct of the real parties in interest and the injury to
28 [plaintiff].”].) HAF’s motion demonstrates that its interests are entirely unrelated to the transaction in

1 this case as the motion fails to mention either Cisco, Mr. Doe, or the facts alleged by CRD that make up
2 the “transaction” in this case. As such, the Court should find that mandatory intervention is improper.

3 HAF’s interests here are focused not on the transaction at issue in this matter (i.e. whether Mr.
4 Doe suffered discrimination, harassment and retaliation by Cisco) but instead on the very much larger
5 subject of the rights of all Hindu Americans not to have their religion mischaracterized or attacked.
6 HAF’s interests are even more estranged from the subject of the litigation than those before the court in
7 *Coalition for Fair Rent*, where an apartment owners association attempted to intervene and was denied
8 for lacking sufficient specific interest in the actual transaction of the litigation. (See generally *supra*,
9 107 Cal.App.3d 97.) There, the court found the association did not have sufficient interest in an action
10 where an advocacy group filed for a writ of mandate to force the city to accept supplemental filing so
11 that it could meet the signature requirements for a ballot measure regarding rent control. (*Id.* at p. 98-
12 99.) The court held that the association’s purported interest was in the ballot measure and not the
13 transaction at the center of the lawsuit, the “administration of the initiative procedure on a municipal
14 level.” (*Id.* at 115.) It concluded, therefore, that the interest was not sufficiently direct to justify
15 mandatory intervention. (*Id.* at p. 115-16.)

16 HAF’s interests are entirely premised on the erroneous speculation that CRD’s action seeks to
17 define Hinduism and such speculative interests are not sufficient to maintain an intervention motion.
18 (Cf *Coalition for Fair Rent, supra*, 107 Cal.App.3d at p. 115 [holding there was no interest to justify
19 mandatory intervention where significant intervening actions must occur to implicate purported
20 interest].) Even the speculative interests articulated by HAF are not related to the subject matter of this
21 instant action. CRD’s action seeks to remedy the caste-based employment discrimination suffered by
22 one individual at Cisco and to prevent further discrimination through remedial means. (See generally
23 *Compl.*) CRD does not allege that Hindu religious teachings and practices required Cisco to
24 discriminate in this manner, nor that Hindu religious teachings and practices require anyone to
25 discriminate in this manner. HAF has pointed to no case where any party has ever had to prove, nor a
26 court rule, that a belief is held by all members of a religion to succeed in a claim of religious
27 discrimination under FEHA. FEHA requires no such finding and thus any judgement entered in this
28 matter would not result in the harm HAF speculates about. In sum, HAF’s interest bears no relation to

1 the subject matter of the action.

2 **3. CRD Suit Does Not Impair or Impede HAF's Interests**

3 Mandatory intervention further requires a showing that the “disposition of the action may
4 impair or impede [the non-party’s] ability to protect that interest.” (§ 387 subd. (d)(1)(B)(2)). HAF
5 erroneously argues that the case’s disposition would result in a holding about what all Hindus believe
6 or have binding effect on how people must practice their religion. The Court should find that HAF
7 failed to demonstrate how the disposition of this action would impede its interest, because CRD’s
8 lawsuit seek no such relief. The list of potential dispositions of this lawsuit is extremely limited—the
9 lawsuit results in either a finding that Cisco violated Mr. Doe’s rights under FEHA or that it did not.
10 The remedies sought and which are available under FEHA are likewise limited, specifically to
11 monetary relief for Mr. Doe, attorneys’ fees and costs, and injunctive relief seeking to alter the policies
12 and practice at Cisco. (Compl. at p. 18-19, Prayer for Relief ¶¶ 1-9.) HAF has not explained how any
13 of these outcomes would impede or impair its interest, as they would have no legally binding effect on
14 HAF or anybody besides the parties to the case. (See, cf, *Siena Court Homeowners Assn. v. Green*
15 *Valley Corp.* (2008) 164 Cal.App.4th 1416, 1426 [holding non-party with interest in real property could
16 not show entitlement to mandatory intervention because the construction defect case would not alter its
17 interest in the land].) Given that none of the potential outcomes would create a holding that would
18 bind the rights of any Hindu to practice their religion, HAF has failed to meet its requirements for
19 mandatory intervention.

20 **4. HAF's Interests Are Adequately Represented by the Parties in this Suit**

21 The last element of mandatory intervention is that the interest is not adequately represented by
22 one or more of the existing parties. Here, HAF’s interest seems to be preventing CRD from defining
23 Hinduism, a goal which is adequately represented by Cisco. In determining whether representation is
24 adequate, courts will consider the following factors: “(1) whether the interest of a present party is such
25 that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is
26 capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any
27 necessary elements to the proceeding that other parties would neglect.” (*Accurso, supra*, 94
28 Cal.App.5th at 1137.) Indeed, to the extent that Cisco aims to argue that caste is not encompassed by

1 the Hindu religion, HAF's interested are adequately represented by Cisco which is already seeking to
2 strike religion and the statements made by CRD regarding the historical caste discrimination in India
3 that forms the entire basis of HAF's intervention motion. (Cisco Mot. Strike at p. 5 and 7.)

4 **5. Permissive Intervention Is Not Appropriate as HAF Attempts to Enlarge the**
5 **Case Substantially and Reasons for Intervention Outweighed by Opposition**

6 In addition to requiring a direct and immediate interest in the litigation, discussed in Section
7 IV.1.b above, courts deny permissive intervention when intervention will enlarge the issues in the case
8 and the reasons for intervention outweigh opposition by the parties. (§ 387 subd. (d)(2); *Hinton*, 176
9 Cal.App.4th at 1382–1383.) HAF addressed none of these elements in its briefing, and, in doing so, has
10 failed to meet its burden of establishing permissive intervention is justified. (See *Accurso*, *supra*, 94
11 Cal.App.5th at 1136-1137.) The Court should deny permissive intervention as HAF seeks to
12 substantially enlarge the case and the parties' interest in effective litigation of this case far outweighs
13 HAF's distant interest.

14 This case concerns allegations of discrimination, harassment, and retaliation that Mr. Doe
15 suffered during his employment at Cisco. HAF's involvement would greatly expand this case to at least
16 two new causes of actions involving new areas of laws, including expanding into federal constitutional
17 law. HAF's proffered complaint includes two causes of action under laws not yet contemplated in this
18 litigation: the Unruh Civil Rights Law and the First Amendment to the U.S. Constitution. Although not
19 pled as a cause of action, HAF's proposed complaint and motion references due process violations and
20 hints at a void for vagueness challenge. Courts regularly reject attempts to expand cases into new areas
21 of law, even when closely related. (See, e.g., *Corridan v. Rose, Zurich General Acc. & Liability Ins.*
22 *Co., Intervenor* (1955) 137 Cal.App.2d 524, 531 [holding that intervention by insurer was inappropriate
23 where "intervention interjected insurance in the damage action, a result to be avoided if not necessitated
24 by more weighty consideration"]; *Marvel Entertainment Group, Inc. v. Hawaiian Triathlon Corp.*
25 (S.D.N.Y. 1990) 132 F.R.D. 143, 146 [denying intervention despite "some overlap in the legal and
26 factual issues" because intervenor sought "to assert additional unrelated claims of unfair competition,
27 breach of a contract and fraud which would needlessly expand the scope and costs of this litigation and
28 would thus prejudice the rights of [parties] to the expeditious resolution of this action"].) HAF's

1 intervention will enlarge the case from being about the actions of a handful of employees to being
2 about Hinduism generally and the First Amendment rights of “all Hindu Americans.”

3 The Court should reject’s HAF assertion that permissive intervention is appropriate because
4 HAF’s proposed complaint shares “common questions of law and fact” with CRD’s Complaint. (Mot.
5 at 10-11.) First, CRD’s Complaint concerns questions of law and fact about the discrimination,
6 harassment and retaliation suffered by Mr. Doe; HAF’s proposed complaint seeks to go beyond those
7 issues and facts to add questions about constitutional law (free exercise of religion, due process). Thus,
8 even under the standard set forth by HAF, intervention is not appropriate. Moreover, HAF has not
9 provided any state precedent which permits intervention based solely on common question of law and
10 fact.¹⁰ In *Kuperstein v. Superior Court* (1988) 204 Cal.App.3d 598, 600, the appellate court rejected
11 that common questions of law or fact was a sufficient basis for permissive intervention, finding that the
12 existence of common questions between the complaint and the proposed complaint in intervention *did*
13 *not render intervention permissible*, as proposed intervenor had no direct interest and complaint in
14 intervention would expand the scope of the lawsuit. Accordingly, the Court should deny intervention as
15 there are not common questions, HAF’s proposed complaint would substantially enlarge the issues of
16 this case and HAF has no direct interest.

17 At this stage, HAF’s interests and alleged harms are all, at best, hypothetical and speculative.
18 By allowing a party to intervene based solely on speculation about how a litigation will unfold, the
19 court inherently enlarges the claims by forcing a potentially moot issue. In *City of Malibu v. California*
20 *Coastal Commission*, the court denied permissive intervention to the owners and inhabitants of a house
21 who argues they had an interest in the interpretation and enforcement of part of an agreement that
22 would require a “privacy buffer” between their house and a public beach accessway. (*City of Malibu v.*
23 *California Coastal Com.* (2005) 128 Cal.App.4th 897, 900, 906.) The court ultimately held that
24 allowing the owners to intervene “would necessarily enlarge the litigation” because the harm was based
25 solely on speculation “that [the owner] will be dissatisfied with the interpretation” of the agreement.

26 _____
27 ¹⁰ This language shows up in the Federal Rules of Civil Procedure, Rule 24(b)(1)(B), which governs
28 permissive intervention in federal court. Although California courts may take guidance from federal
courts in interpreting section 387, to replace well-settled California law in favor of federal procedural
rules would go beyond taking guidance and be improper.

1 (*Id.*) Here, HAF's concerns are even more speculative because they are not supported by any factual
2 allegations and/or the caselaw applying FEHA. Thus, permissive intervention would be improper
3 because any such intervention would necessarily result in a substantial and unwarranted expansion of
4 the litigation.

5 Moreover, the rationale for intervention is outweighed by the interest against intervention.
6 Intervention would grow the case from being about an individual employee's experience at one
7 company, to being about a theological debate on behalf of "all Hindu Americans," thus delaying
8 prosecution of the case and distracting the parties from the factual issues at the heart of the litigation.
9 Intervention would result in duplicative litigations as HAF is already attempting to bring a complaint
10 with identical factual allegations in federal court.¹¹ Allowing intervention in this matter would only
11 result in multiplicity of actions—the very thing the intervention statute was enacted to avoid. (See
12 *Accurso, supra*, 94 Cal.App.5th at 1136 [noting the statute goal of "obviating delay and multiplicity"
13 and that "the law abhors multiplicity of actions"].) Thus, intervention should be denied as it would
14 result in delay the prosecution of this matter, distract the parties from factual and legal issues at the
15 heart of whether there was a FEHA violation, and result in duplicative litigation.

16 In addition to the negative implications for this instant matter, allowing intervention would have
17 broader negative implications. A finding that a non-party to a government enforcement action may
18 intervene simply to police how it believes the government agency is litigating the case, without any
19 connection to the underlying facts or law, would open the floodgates of intervention for all government
20 enforcement actions in contravention of the goals of the intervention statute and would undermine
21 prosecutorial discretion. (See, e.g., *U.S. v. \$7,206,157,717 on Deposit at JP Morgan Chase Bank, N.A.*
22 (S.D.N.Y. 2011) 274 F.R.D. 125, 127 [denying intervention by victims into forfeiture action reasoning
23 that "[t]o allow those with, at most, contingent interests in a [matter] to intervene would open the
24 floodgates of intervention in forfeiture actions and thus would not serve the efficient administration of
25 justice".].) There would be nothing to stop any advocacy organization or individual who objects to the
26 government enforcement action from intervening, threatening to derail public civil rights enforcement
27

28 ¹¹ HAF's complaint focuses on its First Amendment and related rights under the federal constitution,
which would presumably render the federal court would be the more proper venue for such claims.

1 with inefficient side litigation.

2 In sum, the Court should deny intervention as it would enlarge the issues, delaying and
3 distracting from the litigation of the FEHA claims, while taxing judicial resources by requiring the
4 parties to litigate the same case on two fronts.

5 **V. CONCLUSION**

6 For the reasons stated above, the Court should find HAF has failed to meet the requirements to
7 prove it is entitled to either mandatory or permission intervention.

8 CIVIL RIGHTS DEPARTMENT

9 

10 Dated: October 27, 2023

11 _____
12 Mackenzie Anderson,
13 Attorney for Plaintiff CRD
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