	20CV372366 Santa Clara – Civil				
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9	Attorneys for Plaintiff, California Department of Fair Employment and He	ousing	(Fee Exempt, Gov. Code, § 6103)		
10 11	IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA				
11 12	IN AND FOR THE COUNTY OF SANTA CLARA				
13 14 15 16	DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, an agency of the State of California, Plaintiff, vs.	Case No. 20CV372366 PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING'S SUPPLEMENTAL OPPOSITION TO DEFENDANT'S DEMURRER			
17 18 19	CISCO SYSTEMS, INC., a California Corporation, Defendant.	Date: Time: Department: Judge:	November 2, 2023 9:00 AM 16 Hon. Amber Rosen		
20		Action Filed: Trial Date:	October 16, 2020 TBD		
21	I. <u>INTRODUCTION</u>				
22 23	Plaintiff California Civil Rights Department (hereinafter "CRD" [formerly Department of Fair				
23	Employment and Housing, or DFEH]) respectfully submits this supplemental opposition to Defendant				
25	Cisco Systems, Inc. ("Cisco")'s demurrer. CRD's supplemental briefing seeks solely to address how				
26	California Judicial Council's Emergency Rule 9 ("Emergency Rule 9"), and the caselaw interpreting Rule 9, compel a finding that the CRD's Complaint was timely filed.				
27	Rule 2, compet a mong that the CRD 5 Complaint was timery med.				
28	-1- Cal Dant Eair Empl & Hous y Ciaco Systems Inc				
	Cal. Dept. Fair Empl. & Hous. v. Cisco Systems, Inc. Pl. DFEH's Supplemental Opposition to Cisco's Demurrer				

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## II. FACTS AND PROCEDURAL HISTORY

As pertinent to this supplemental briefing, Complainant John Doe filed an administrative 2 complaint on July 30, 2018 and a tolling agreement between the CRD and Cisco extended the time to 3 file a civil action to June 30, 2020. (Compl. at ¶11, 13.) Subsequently, the Judicial Council of 4 California promulgated emergency rules because of the COVID-19 pandemic. (See Judicial Council of 5 Cal., Emergency Rules Related to COVID-19.)<sup>1</sup> Emergency Rule 9 states, "[n]otwithstanding any other 6 7 law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from 8 April 6, 2020, until October 1, 2020." Id. Emergency Rule 9 thus explicitly tolled the statute of 9 limitations for civil causes of action (with limitations periods longer than 180 days) for 178 additional days (the number of days from April 6, 2020 through October 1, 2020). 10

On June 30, 2020, CRD filed a civil rights complaint against Cisco in federal court alleging
violations of Title VII of the Civil Rights Act and California's Fair Employment and Housing Act.
(Compl. at ¶14.) On October 16, 2020, CRD voluntarily dismissed the federal action without prejudice
and filed its state court complaint. (Compl. at ¶¶ 14, 15.)

III.

#### . <u>ARGUMENT</u>

Plaintiff incorporates by reference its previous arguments that the state-court complaint was
timely filed for myriad reasons and will solely focus in this supplemental brief on the recent caselaw
supporting the application of California's Emergency Rules Related to COVID-19 to the statute of
limitations at issue. (Pl. DFEH's Opp. To Defs.' Demurrers pp.4-7.)

In determining the applicability of Rule 9, courts have looked to the Advisory Committee's
comments, including that: "Emergency rule 9 is intended to *apply broadly to toll any statute of limitations on the filing of a pleading in court asserting a civil cause of action*.... the rule also applies
to statutes of limitations on filing of causes of action in court found in codes other than the Code of Civil
Procedure, including the limitations on causes of action found in, for example, the Family Code and
Probate Code." (*People v. Financial Casualty & Surety, Inc.* (2022) 78 Cal.App.5th 879, 885–886
[emphasis added].)

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<sup>27</sup> 

<sup>&</sup>lt;sup>1</sup> https://www.courts.ca.gov/documents/appendix-i.pdf

*Cal. Dept. Fair Empl. & Hous. v. Cisco Systems, Inc.* Pl. DFEH's Supplemental Opposition to Cisco's Demurrer

1 "Federal and state courts, alike, are treating Emergency Rule 9 as having the practical effect of adding 178 days to unexpired statutes of limitations." Gianelli v. Schoenfeld (E.D. Cal., Oct. 7, 2021, 2 3 No. 221CV00477JAMKJNPS) 2021 WL 4690724, at \*18-19 (citing Palacios v. Interstate Hotels & Resorts Inc., No. 21-CV-05799-TSH, 2021 WL 4061730, at \*3-4 (N.D. Cal. Sept. 7, 2021) ("the 4 practical effect of Emergency Rule 9 is to extend the time for [plaintiff] to file such claims [by 178 days] 5 from February 1 to July 29"); Tapia v. Hyatt Corp., 2021 WL 3076650, at \*5 (C.D. Cal. June 30, 2021) 6 7 (describing ER 9 as providing "an extension of 178 days")). Emergency Rule 9 has specifically been 8 applied to toll the statute of limitations for claims brought under FEHA. (See Palacios, supra, at \*4 ("In 9 sum, the Court finds that Emergency Rule 9 extended the time for Palacios to file her FEHA causes of action, and that her claims are therefore timely."). And, most recently, the California Court of Appeal 10 upheld a trial court's finding that a complaint was timely as Emergency Rule 9 tolled the original 11 statutory deadline from August 2020 to January 2021. (LaCour v. Marshalls of California, LLC (Cal. 12 Ct. App., Aug. 29, 2023, No. A163920), Cal.Rptr.3d , 2023 WL 5543622, at \*4-5 [upholding the 13 14 constitutionality of Emergency Rule 9].)

15 Pursuant to Emergency Rule 9, as interpreted by California courts, CRD's complaint here is timely as the Emergency Rule extended the deadline to file this civil action from June 2020 to December 16 17 2020. Adding 178 additional days to the June 30, 2020 deadline provided for in the parties' tolling 18 agreement would bring the deadline to file a civil action to December 25, 2020. Accordingly, CRD timely filed its complaint in federal court in June 2020 and in state court in October 2020. 19

IV.

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## **CONCLUSION**

For the reasons stated above, Cisco's argument that the CRD's complaint was untimely should be rejected and Cisco's demurrer overruled.

## CIVIL RIGHTS DEPARTMENT

Kundwl Jum Attorney for Plaintiff CRD

Dated: October 3, 2023

# Cal. Dept. Fair Empl. & Hous. v. Cisco Systems, Inc. Pl. DFEH's Supplemental Opposition to Cisco's Demurrer

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1	PROOF OF SERVICE				
2	I, Step Newton, the undersigned, hereby declare:				
3	I am over eighteen years of age and not a party to the within cause. My business address is				
4	2218 Kausen Dr., Suite 100 Elk Grove, CA 95758. My electronic service address is				
5	Step.Newton@calcivilrights.ca.gov.				
6	On the date below, I served the following document(s) via Electronic Service:				
7	PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING'S     SUDDI EMENTAL OPPOSITION TO DEFENDANT'S DEMUDDED				
8	SUPPLEMENTAL OPPOSITION TO DEFENDANT'S DEMURRER				
9	In the case DFEH v. Cisco Systems, Inc. et al, Santa Clara County Superior Court Case No.:				
10	<b>0</b> 20CV372366, to the person(s) listed below at the following e-n	20CV372366, to the person(s) listed below at the following e-mail address(es):			
11		Lynne C. Hermle			
12	2 Jamie.Crook@calcivilrights.ca.gov Step Newton	lchermle@orrick.com Joseph C. Liburt			
13	3 <u>step.newton@calcivilrights.ca.gov</u> Rumduol Vuong	jliburt@orrick.com Nicholas J. Horton			
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15	5 Dylan Colbert Dylan.colbert@calcivilrights.ca.gov	Attorneys for Defendant Cisco			
16	6 Roya Massoumi Roya.Massoumi@CalCivilRights.ca.gov	Systems, Inc.			
17	Attorneys for Plaintiff, DFEH				
18					
19	9 I declare under penalty of perjury under the laws of the	State of California that the			
20	foregoing is true and correct.				
21	Executed on <b>October 3, 2023</b> , at Sacramento, CA.				
22	2 /s/ Step Newton				
23	Step Newton CA Civil Rights Department (formerly DFEH)				
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	Cal. Dept. Fair Empl. & Hous. v. Cisco Systems, Inc. Pl. DFEH's Supplemental Opposition to Cisco's Demurrer				