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Case #20CV372366
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10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SANTA CLARA**

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

15 Plaintiff,

16 vs.

17 CISCO SYSTEMS, INC., a California
Corporation,

18 Defendant.

Case No. 20CV372366

**PLAINTIFF DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING’S
SUPPLEMENTAL OPPOSITION TO
DEFENDANT’S DEMURRER**

Date: November 2, 2023
Time: 9:00 AM
Department: 16
Judge: Hon. Amber Rosen

Action Filed: October 16, 2020
Trial Date: TBD

21 **I. INTRODUCTION**

22 Plaintiff California Civil Rights Department (hereinafter “CRD” [formerly Department of Fair
23 Employment and Housing, or DFEH]) respectfully submits this supplemental opposition to Defendant
24 Cisco Systems, Inc. (“Cisco”)’s demurrer. CRD’s supplemental briefing seeks solely to address how
25 California Judicial Council’s Emergency Rule 9 (“Emergency Rule 9”), and the caselaw interpreting
26 Rule 9, compel a finding that the CRD’s Complaint was timely filed.

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

15 Pursuant to Emergency Rule 9, as interpreted by California courts, CRD’s complaint here is
16 timely as the Emergency Rule extended the deadline to file this civil action from June 2020 to December
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
19 timely filed its complaint in federal court in June 2020 and in state court in October 2020.

20 **IV. CONCLUSION**

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

23 CIVIL RIGHTS DEPARTMENT

24 Dated: October 3, 2023

25 
26 Attorney for Plaintiff CRD

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**
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 20CV372366, to the person(s) listed below at the following e-mail address(es):

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

24 Executed on **October 3, 2023**, at Sacramento, CA.

25 /s/ Step Newton
26 Step Newton
27 CA Civil Rights Department (formerly DFEH)