

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 16**

**(Dept 16 is now hearing cases that were formerly in Dept 2)**

**Honorable Amber Rosen, Presiding**

Felicia Samoy, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: 408.882.2270

**DATE: 03-26-24    TIME: 9 A.M.**

**All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.**

**To contest the ruling, call (408) 808-6856 before 4:00 P.M.**

Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

**The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

**TO CONTEST THE RULING: Before 4:00 p.m. today you must notify the:**

- (1) Court by calling (408) 808-6856 and
- (2) Other side by phone or email that you plan to appear and contest the ruling  
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

**TO APPEAR AT THE HEARING:** The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to Department 16.

[https://www.sccscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml)

**TO SET YOUR NEXT HEARING DATE:** You no longer need to file a blank notice of motion to obtain a hearing date. Phone lines are now open for you to call and reserve a date before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Where to call for your hearing date: **408-882-2430** When you can call: **Monday to Friday, 8:30 am to 12:30 pm**

**FINAL ORDERS:** The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

**COURT REPORTERS:** The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

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LINE #	CASE #	CASE TITLE	RULING
<a href="#">LINE 1</a>	21CV385612 Motion: Compel	Indradevi Joseph vs Xilinx, Inc. et al.	See Tentative Ruling. Defendant shall submit the final order.
<a href="#">LINE 2</a>	21CV385612 Motion: Compel	Indradevi Joseph vs Xilinx, Inc. et al.	Off calendar
<a href="#">LINE 3</a>	21CV385612 Motion to Strike	Indradevi Joseph vs Xilinx, Inc. et al.	Moot
<a href="#">LINE 4</a>	21CV385612 Motion to Deem	Indradevi Joseph vs Xilinx, Inc. et al.	Off Calendar

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<a href="#">LINE 5</a>	21CV385612 Motion: Seal Records	Indradevi Joseph vs Xilinx, Inc. et al.	Defendant moves to seal pages 3-9 of Exhibit O to Plaintiff's reply declaration of Fuschetti in support of Plaintiff's MTC RFP filed Septebmer 15, 2023, because it contains private family information of a non-party. As Defendant acknowledges, to seal a record, the moving party must show an overriding interest that overcomes the right of public access, that such interest will be prejudiced if the record is not sealed, that the sealing is narrowly tailored, and that there are no less restrictive means. <i>Cassidy v. California Bd. of Accountancy</i> (2013) 220 Cal.App.4 <sup>th</sup> 620, 625. Here, Defendant has not shown that there is an overriding interest. While the Court is of course sorry for the non-party's loss, Defendant cites no authority suggesting that the fact that someone's relative died is a private fact overriding the public interest to access. The motion is DENIED. Defendant shall submit the final order within 10 days.
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**The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

<a href="#">LINE 6</a>	21CV385612 Motion: Seal Records	Indradevi Joseph vs Xilinx, Inc. et al.	Defendant moves to redact the names of Xilinx employees involved in the investigation regarding Plaintiff, as contained in Exhibits A-B attached with Exhibit T to the Fuschetti Declaration. Defendant also moves to redact the names of individual employees whose compensation is revealed in Exhibit C to Exhibit T to the Fuschetti Declaration. To seal a record, the moving party must show an overriding interest that overcomes the right of public access, that such interest will be prejudiced if the record is not sealed, that the sealing is narrowly tailored, and that there are no less restrictive means. <i>Cassidy v. California Bd. of Accountancy</i> (2013) 220 Cal.App.4 <sup>th</sup> 620, 625. Here, sealing the records would protect the privacy interests of nonparties and given the limited nature of the redactions, such sealing would be appropriate at least at this point in the litigation. Plaintiff does not oppose the motion. The Motion to Seal is GRANTED to the following extent: Defendant may file the exhibits under seal and publicly file redacted versions of Exs. A, B, and C to Ex. T of the Fuschetti Declaration. Defendant shall only redact the names of the employees who participated in the investigation, not including the names of those who conducted the investigation or the name of the plaintiff as revealed in Exs. A and B, and shall redact the names of the individual employees in Exhibit C. Defendant shall submit the final order within 10 days.
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**The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

<a href="#">LINE 7</a>	22CV408899 Hearing: Demurrer	TPCO US Holding, LLC vs Ned Fussell et al	Off calendar as rendered moot by the amended cross-complaint
<a href="#">LINE 8</a>	20CV372366 Motion: Compel	California Department Of Fair Employment And Housing et al vs Cisco Systems, Inc. et al	Parties are ordered to an IDC on April 5 at 10 am in Department 16. Counsel must come in person.
<a href="#">LINE 9</a>	20CV372366 Motion: Compel	California Department Of Fair Employment And Housing et al vs Cisco Systems, Inc. et al	Parties are ordered to an IDC on April 5 at 10 am in Department 16. Counsel must come in person.
<a href="#">LINE 10</a>	23CV410157 Motion: Protective Order	Jane Doe vs Support Systems Homes, Inc. et al	Defendant Markolefas has filed a motion for protective order and has submitted a proposed protective order to prevent private information disclosed as part of discovery to be disseminated beyond what is required to litigate the case. No other party has objected to the specifics of the proposed protective order other than to argue that Defendant Markolefas should not be able to proceed under a pseudonym, which he is already prevented from doing. The Court is willing to grant the motion, to the extent it does not relate to any information (testimonial or documentary) made part of a public evidentiary hearing or trial. While the proposed order already excludes trial, it does not exclude evidentiary hearings. With this amendment, the Court GRANTS the motion. Defendant Markolefas shall submit the final order, with the protective order as amended.

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<a href="#">LINE 11</a>			
<a href="#">LINE 12</a>			
<a href="#">LINE 13</a>			
<a href="#">LINE 14</a>			
<a href="#">LINE 15</a>			
<a href="#">LINE 16</a>			
<a href="#">LINE 17</a>			

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**Calendar Line 1**

**Case Name: Indradevi Joseph v. Xilinx Inc.**

**Case No: 21CV385612**

On October 2, 2023, Plaintiff filed a motion to compel compliance with her requests for production of documents – set two. In the motion Plaintiff seeks responsive text messages in the possession of Defendant’s directors and employees, contending that such messages are in the custody and control of Xilinx. On March 13, 2024, Defendant filed an opposition arguing that the issue of employee text messages was already litigated in the context of Plaintiff’s motion for RFP set one, and that the Court (J. Manoukian) issued an order on December 19, 2023 compelling Xilinx only to turn over the identity of the employees, but not their actual text messages. As such, the Court should not now compel the turning over of those same text messages. In reply, Plaintiff argues that because the Court was “deeply troubled” by Defendant’s argument that text messages of its employees sent in the course of carrying on its business were exempt from discovery, it is puzzling that the texts were not ordered compelled. Plaintiff asserts that because the Court did not find that Defendant was excused from producing the messages, and because this request is broader than the set one request (and includes texts of directors, as well as texts on phones turned into the company and phones used by Xilinx employees for work purposes that Xilinx furnished, owned, or paid for), this set two request should be granted.

In the previous order, the Court did express its opinion that work-related texts, even on private devices should be subject to discovery, writing “This Court does not believe that any party can insulate itself from discovery obligations by parking work business onto third party platforms or data bases and then claim an[] [sic] inability to retrieve them when such data might be either relevant or lead to the discovery of admissible evidence.” Order of Dec. 19, 2023 p5. Despite this language the Court only required defendant “to identify all individuals” and did not say that the texts needed to be produced. It is possible that this omission may have been an error. The Court included in its order an exception for privilege, writing that Defendant “is entitled to assert any attorney-client privilege, work product privilege or privacy right of any individual, provided that such assertions are supported by an appropriate privilege log showing the same. . .” *Id.* As one would not likely assert privilege if only identifying someone who sent a text, it is reasonable to think that the Court contemplated the turning over of some texts given this exception for privileged documents. This Court acknowledges that it is difficult to square the Court’s finding that work-related texts on private platforms should not insulated from discovery and its inclusion of an exception for privilege with the fact that the Court did not order at least some of the texts to be turned over in discovery.

Yet, this Court cannot rewrite the previous order. Plaintiff failed to file for reconsideration of the order and Plaintiff cannot now in effect seek reconsideration by restyling her motion. This Court sees little difference between the MTC for RFP set one and this motion. In both, Plaintiff seeks relevant business texts of Xilinx employees and directors. Because this was already ruled on, the motion is DENIED.