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: 07-02-24 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 will call the cases of those who appear in person first. If you 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.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. You must use the current link.

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. You may make an online reservation to 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. Go to the Court's website at www.scscourt.org to make the reservation.

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
LINE 1	21CV384705 Motion: Reconsider	Varick Partners, LLC vs Rana Rekhi et al	Defendant Gibbs brings a motion for reconsideration of the order denying his motion to set aside or vacate the default against him. Defendant has failed to set out any new facts or law, as required for a motion for reconsideration under CCP 1008. Defendant has failed to address the untimeliness of his original motion or any of the bases for the Court's original decision. The Motion is DENIED. Plaintiff shall submit the final order within 10 days.
LINE 2	21CV387650 Motion: Reconsider	ITRIA VENTURES LLC, a Delaware limited liability company et al vs WINE GLOBE HOLDINGS LLC et al	Defendant Gibbs brings a motion for reconsideration of the order denying his motion to set aside or vacate the default against him. Defendant has failed to set out any new facts or law, as required for a motion for reconsideration under CCP 1008. Defendant has failed to address the untimeliness of his original motion or any of the bases for the Court's original decision. The Motion is DENIED. Plaintiff shall submit the final order within 10 days.

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LINE 3	20CV369919 Motion: Summary Judgment/Adjudication	Linh Tran vs Nakajima Yasutomo et al	See Tentative Ruling. The Court will prepare the final order.
LINE 4	21CV385612 Motion: Summary Judgment/Adjudication	Indradevi Joseph vs Xilinx, Inc. et al.	See Tentative Ruling. The Court will prepare the final order. Parties are ordered to appear for the hearing to address how the case will proceed forward.
LINE 5	21CV385612 Hearing: motion for leave to amend	Indradevi Joseph vs Xilinx, Inc. et al.	See Tentative Ruling. The Court will prepare the final order. Parties are ordered to appear for hearing to address how the case will proceed forward.
LINE 6	23CV423291 Motion: Compel	Dina Hermosillo vs FCA US LLC	Because Defendant has now responded, the motions to compel are DENIED. Many of Plaintiff's requests are overbroad and irrelevant for a simple lemon law case, and as such Defendant has substantially complied. Its tardiness in responding was from excusable neglect. Therefore, Defendant has not waived its objections. Defendant must pay sanctions of $847.50 (1.5 hours + $60 fee) for each MTC for failing to provide discovery prior to the filing of the motions. The total amount payable to Plaintiff's counsel is $2542.50 which shall be due within 20 days of service of the final order. Plaintiff 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.)

LINE 7	23CV423291 Motion: Compel	Dina Hermosillo vs FCA US LLC	Because Defendant has now responded, the motions to compel are DENIED. Many of Plaintiff's requests are overbroad and irrelevant for a simple lemon law case, and as such Defendant has substantially complied. Its tardiness in responding was from excusable neglect. Therefore, Defendant has not waived its objections. Defendant must pay sanctions of $847.50 (1.5 hours + $60 fee) for each MTC for failing to provide discovery prior to the filing of the motions. The total amount payable to Plaintiff's counsel is $2542.50 which shall be due within 20 days of service of the final order. Plaintiff 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.)

LINE 8	23CV423291 Motion: Admissions Deemed Admitted	Dina Hermosillo vs FCA US LLC	Because Defendant has now responded, the motions to compel are DENIED. Many of Plaintiff's requests are overbroad and irrelevant for a simple lemon law case, and as such Defendant has substantially complied. Its tardiness in responding was from excusable neglect. Therefore, Defendant has not waived its objections. Defendant must pay sanctions of $847.50 (1.5 hours + $60 fee) for each MTC for failing to provide discovery prior to the filing of the motions. The total amount payable to Plaintiff's counsel is $2542.50 which shall be due within 20 days of service of the final order. Plaintiff shall submit the final order within 10 days.
LINE 9	23CV425470 Motion: Compel	Michael Jadali et al vs JAGUAR LAND ROVER NORTH AMERICA, LLC et al	Moving Defendants were dismissed from the action. Motion is off calendar.
LINE 10	20CV365010 Motion: Leave to File	Dinesh Patel et al vs Santa Clara Unified School District et al	Notice appearing proper and good cause appearing, the unopposed motion for leave to file the Third Amended Complaint (TAC) is GRANTED. Plaintiff shall submit the final order and shall file the TAC within 10 days of the hearing.
LINE 11	23CV425034 Hearing: Claim of Exemption	Beneficial State Bank vs Marselina Gonzalez	Defendant shall pay $15 per pay period to Judgment Creditor. Judgment Creditor shall submit the final order.
LINE 12			

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LINE 13			
LINE 14			
LINE 15			
LINE 16			
LINE 17			

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Calendar Line 3
Case Name: *Tran v. Yasutomo et al.*
Case No.: 20CV369919

I. Factual and Procedural Background

Plaintiff Linh Tran ("Plaintiff"), appearing in pro per, brings this personal injury action against Nakajima Yasutomo ("Yasutomo") and Tuan Tran ("Tran") (collectively, "Defendants").

Plaintiff alleges that on March 29, 2020, he rented a one-bedroom unit in a property owned by Yasutomo and run by Tran. Soon after moving in, Plaintiff discovered that the interior walls were built illegally, dividing the property into many rental units to make them look like private apartments, and the ceiling duct vent was emitting hot air. Plaintiff brought these issues up with Tran but he did not want to discuss them.

On May 30, 2020, Plaintiff tripped and fell on the sidewalk leading to the laundry room because Tran had removed all of the outside lighting on the building after a building inspection, resulting in a pitch black sidewalk.

Thereafter, Plaintiff called the City of San Jose Enforcement to report the issues and Tran ordered Plaintiff to move out. Other tenants were not told to move out. The rental agreement was effective through October 2020; however, on July 4, 2020, Tran again informed Plaintiff he needed to move out. Then on August 6, 2020, a notice to vacate was taped to Plaintiff's door. Additionally, Tran made harassing phone calls and secretly video-taped Plaintiff's apartment and audio-taped his conversations without Plaintiff's consent.

On September 2, 2020, Plaintiff filed a Judicial Form Complaint, asserting the following causes of actions against Defendants:

1) General Negligence;
2) Intentional Tort;
3) Premises Liability; and
4) Exemplary Damages

On March 25, 2024, Defendants filed a motion for summary judgment, or in the alternative summary adjudication as to each of the causes of action in the complaint.

II. Request for Judicial Notice

In support of their motion for summary judgment, Defendants request the Court take judicial notice of Plaintiff's complaint. The request is DENIED. (See *Paul v. Patton* (2015) 235 Cal.App.4th 1088, 1091, fn. 1 [judicial notice of a complaint is unnecessary where it is the pleading under review]; *Snatchko v. Westfield LLC* (2010) 187 Cal.App.4th 469, 477 [pleadings frame the issues to be resolved on summary judgment].)

III. Procedural Matters

a. Plaintiff's Opposing Memorandum and Separate Statement

As an initial matter, the Court notes that Plaintiff did not file a code-compliant memorandum in opposition to the motion for summary judgment. (Cal. Rules of Court, Rule 3.1350, subd. (e)(1) [opposition to a motion must include a separate document with the opposing party's memorandum in opposition to the motion for summary judgment/adjudication].) Instead, Plaintiff filed what appears to be two declarations with evidentiary exhibits attached.

Further, Plaintiff did not submit a separate statement in response to Defendants' separate statement. "Code of Civil Procedure section 437c, subdivision (b)(3) requires that an opposition to a motion for summary judgment shall include a separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts that the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion." (*Oldcastle Precast, Inc. v. Lumbermens Mut. Cas. Co.* (2009) 170 Cal.App.4th 554, 568 [internal citations omitted]; see also Cal. Rules of Court, Rule 3.1350, subd. (f) [specifying the content and format of a separate statement in opposition to a motion].)

While Plaintiff is appearing in pro per, he entitled to the same, but no greater consideration than other litigants and attorneys. (*County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.) Nevertheless, given that there is very little evidence in this case, the Court will exercise its discretion to consider the filed oppositions and Plaintiff's supporting evidence despite the procedural defects. (See *Purdum v. Holmes* (2010) 187 Cal.App.4th 916, 922 ["The policy of the law favors a hearing on the merits."].) Plaintiff is reminded that any future violations may result in the Court declining to consider Plaintiff's papers.

IV. Legal Standard

A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).)

The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact[.]" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) "A prima facie showing is one that is sufficient to support the position of the party in question." (*Id*. at p. 851.)

If the moving party makes the necessary initial showing, the burden of production shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (*Aguilar*, *supra*, 25 Cal.4th at p. 850.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Ibid*.) "[I]f the court concludes that the [opposing party's] evidence or inferences raise a

triable issue of material fact, it must conclude its consideration and deny the [moving party's] motion." (*Id*. at p. 856.)

Throughout the process, the trial court "must consider all of the evidence and all of the inferences reasonably drawn therefrom[.]" (*Aguilar, supra,* 25 Cal.4th at p. 844 [internal quotations omitted].) The moving party's evidence is strictly construed, while the opposing party's evidence is liberally construed. (*Id*. at p. 843.)

Additionally, "a motion for summary adjudication may be made . . . as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment." (Code Civ. Proc., § 437c, subd. (f)(2).) "A party may seek summary adjudication on whether the cause of action, . . . or [] damages claim has merit[.]" (*California Bank & Trust v. Lawlor* (2013) 222 Cal.App.4th 625, 630; Code Civ. Proc., § 437c, subd. (f)(1).)

V. First Cause of Action – General Negligence and Third Cause of Action – Premises Liability

"The elements of a negligence cause of action are the existence of a legal duty of care, breach of that duty, and proximate cause resulting in injury." (*Castellon v. U.S. Bancorp* (2013) 220 Cal.App.4th 994, 998.) "The elements of a cause of action for premises liability are the same as those for negligence: duty, breach, causation, and damages." (*Ibid*.)

"In a negligence action the plaintiff must show the defendant's act or omission (breach of duty) was a cause of the plaintiff's injury. The element of causation generally consists of two components. The plaintiff must show (1) the defendant's act or omission was a cause in fact of the plaintiff's injury, and (2) the defendant should be held responsible for negligently causing the plaintiff's injury. The second component is a normative or evaluative one that asks whether the defendant should owe the plaintiff a legal duty of reasonable care under the circumstances of the case." (*Vasquez v. Residential Investments, Inc.* (2004) 118 Cal.App.4th 269, 288 (*Vasquez*).)

"The first component of causation in fact generally is a question of fact for the jury. Causation in fact is shown if the defendant's act or omission is '*a substantial factor*' in bringing about the plaintiff's injury." (*Vasquez, supra,* 118 Cal.App.4th at p. 288 [emphasis original].) "The plaintiff must introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result. A mere possibility of such causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict for the defendant." (*Leyva v. Garcia* (2018) 20 Cal.App.5th 1095, 1104.)

"The issue of causation may be decided as a question of law only if, under undisputed facts, there is no room for a reasonable difference of opinion." (*Kurinij v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 864; see also *Dawson v. Toledano* (2003) 109 Cal.App.4th 387, 396 [instances in which breach of duty and proximate cause can be resolved as matters of law are rare].)

Defendants assert there is no triable issue of material fact as to Defendants' breach of a duty of care to support a cause of action for general negligence. While Defendants have labeled the heading of their argument as being about a lack of breach, the arguments raised by Defendants address causation. Plaintiff alleges his injury was caused by Tran when he removed all outdoor lighting, resulting in a pitch black sidewalk. (Form Complaint, p. 4.) Additionally, he alleges that as a result of harassing phone calls and secret video/audio-taping, he has suffered lost sleep, anxiety, and fear. (*Ibid*.)

Defendants argue that the material facts show they did not fail to carry out their duties in accordance with the applicable standard of care because Plaintiff's medical records indicate he fell after his front door knocked him backward and not because Tran removed all of the outdoor lights.[1] To support this contention, Defendants provide Plaintiff's medical records which indicate that Plaintiff fell at home when his door knocked him backwards. (See UMF 4, citing Tran Decl., ¶ 9, Ex. B.)[2]

Additionally, Defendants contend that the Court granted their motion for admissions to be deemed admitted and that Plaintiff therefore admitted that Defendants did not make harassing phone calls or secretly audio/video-tape their conversations, and that Plaintiff was not in fear for his life. (UMF 1, citing Tran Decl., ¶ 8, Ex. A.) Admissions in response to Requests for Admissions are treated in effect as stipulations to the truthfulness of the matters admitted. Thus, no other evidence is necessary to establish the point at trial and no contrary evidence is admissible unless leave of court is obtained to withdraw or amend the response. (See Weil & Brown et al., CAL. PRAC. GUIDE: CIV. PRO. BEFORE TRIAL (The Rutter Group 2023) ¶¶ 8:1387-1388, citing *Murillo v. Superior Court* (2006) 143 Cal.App.4th 730, 736.) Accordingly, Defendants have made a showing of the nonexistence of a triable issue of material fact as to the cause of Plaintiff's injuries.

Based on the foregoing, Defendants have met their burden at the first step of the summary judgment analysis as to the first and third causes of action, and the burden now shifts to Plaintiff to establish a triable issue of fact.

To support his burden, Plaintiff asserts: 1) Tang's Declaration contains lies; 2) that the apartment contained illegally built walls; 3) he was harassed by Tran; 4) he fell and hurt his back because of a lack of outdoor lighting; and 5) Defendants breached their contract with Plaintiff.

As to Plaintiff's first argument that the Tang Declaration is improper because the date of the meet and confer states March 19, 2020, it appears that this is a repeated typographical error meant to state March 19, 2024. (See Tang Decl., ¶¶ 5-6.)

Regarding Plaintiff's second argument, it is unclear how the allegations regarding the apartment walls speak to the negligence or premises liability claim. "On a motion for summary judgment, the issues are framed by the pleadings since it is those allegations to which the

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[1] Defendants do not assert individual arguments to each of the causes of action. Instead, they refer the Court to page 5:12-28 and page 6:1-6 of their memorandum of points and authorities in support of their motion for summary judgment.

[2] Plaintiff failed to respond to the separate statement, so he makes no arguments disputing the UMFs, and he did not object to the evidence presented by Defendant.

motion must respond." (*Scolinos v. Kolts* (1995) 37 Cal.App.4th 635, 640.) Here, both the first and third causes of action allege that Defendants breached their duty by removing lights and harassing Plaintiff, resulting in his injuries. There are no allegations to support a negligence or premises liability claim for the illegally built walls. Similarly, Plaintiff does not assert a breach of contract claim in his complaint, thus, any argument regarding a breach of contract is not well taken.[3]

Regarding the third and fourth arguments, Plaintiff proffers no evidence to establish that he fell because of the lighting. Further, he does not address the medical records submitted by Defendants, which indicate a different cause of Plaintiff's injuries. As to the harassment argument, as noted above, no contrary evidence to deemed admissions is admissible and in any event, Plaintiff does not support the assertions with any evidence.

As such, Plaintiff fails to meet his burden to show a triable issue of material fact as to the first and third causes of action.

VI. Second Cause of Action – Intentional Tort

It is not clear to the Court which intentional tort Plaintiff is alleging. Defendants list the elements of battery; however, there is no mention of battery in the pleading. Additionally, Plaintiff has marked that Count Two is for a Willful Failure to Warn, pursuant to Civil Code section 846. (See Form Complaint, p. 6, Prem. L-3.) Civil Code section 846 applies to recreational property, which is not at issue here. Section 846 states in part that an "owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreation purpose or to give warning of hazardous conditions . . ." (Civ. Code, § 846, subd. (a).) Here, there are no allegations regarding recreational use of property and neither party presents evidence, or addresses, the recreational use of property. Based on the allegations that Plaintiff was being harassed and requested a restraining order against Tran, the Court will infer that Plaintiff intended to allege civil harassment.[4]

"The elements of unlawful harassment, as defined by the language in [Code of Civil Procedure] section 527.6, are as follows: (1) 'a knowing and willful course of conduct' entailing a 'pattern' of 'a series of acts over a period of time, however short, evidencing a continuity of purpose'; (2) 'directed at a specific person'; (3) 'which seriously alarms, annoys, or harasses the person'; (4) 'which serves no legitimate purpose'; (5) which 'would cause a reasonable person to suffer substantial emotional distress' and 'actually cause[s] substantial emotional distress to the plaintiff'; and (6) which is not a '[c]onstitutionally protected activity.'" (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762.)

Defendants contend there is no triable issue of material fact with regard to whether they acted willfully to cause Plaintiff harm. Defendants rely on the same evidence as above. Specifically, Plaintiff's admission that Tran did not make any harassing phone calls, secretly audiotape conversations, or videotape Plaintiff's apartment. (See UMF 13, citing Tran Decl., ¶ 8, Ex. A [Plaintiff's deemed admissions].)

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[3] No contract is attached to the Form Complaint or the opposition.

[4] Even if the intentional tort Plaintiff intended to allege is battery, the Court would still grant the motion due to lack of evidence of intentional injury.

As noted above, Plaintiff admitted that Tran did not make harassing phone calls or audio/videotape him. Plaintiff is bound by those admissions. (See e.g., *Valerio v. Andrew Youngquist Construction* (2002) 103 Cal.App.4th 1264, 1271 ["The law on this topic is well settled by venerable authority. Because an admission . . . forbids the consideration of contrary evidence, any discussion of such evidence is irrelevant and immaterial."].) Further, Plaintiff submits no additional evidence to support a claim of harassment.

Thus, while Defendants meet their burden, Plaintiff is unable to meet his burden as to the second cause of action for intentional tort.

Based on the foregoing, the motion for summary judgment is GRANTED as to the pleading's three causes of action.

VII. Exemplary Damages

"It is settled . . . that a claim for punitive damages is one of the substantive areas which is properly the subject of a motion for summary adjudication." (*Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 92.) In this case, given the Court's ruling above, there are no remaining claims to support Plaintiff's request for exemplary damages. Thus, the motion for summary adjudication of exemplary damages is GRANTED.

VIII. Conclusion and Order

The motion for summary judgment/adjudication is GRANTED in its entirety. The Court shall prepare the final order.

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Calendar Lines 4 and 5
Case Name: *Indradevi Sabrina Joseph v. Xilinx, Inc., et al.*
Case No.: 21CV385612

Currently before this Court are two motions: (1) Xilinx, Inc.'s ("Defendant" or "Xilinx") amended motion for summary judgment filed on March 1, 2024; and (2) Indradevi Sabrina Joseph's ("Plaintiff") motion for leave to file a third amended complaint ("TAC"), filed on June 5, 2024.

Plaintiff's opposition to the amended motion for summary judgment was filed on June 6, 2024. Xilinx's opposition to the motion for leave to file a TAC was timely filed on June 24, 2024.

The motion for leave to amend will be addressed first.

I. Background

This action arises from an alleged unlawful termination.

A. Factual

Plaintiff was an elite marketing specialist with unparalleled status in her field. She developed significant expertise in branding and marketing issues specific to semiconductor companies. (Second Amended Complaint ("SAC,") ¶¶ 1, 21, 25.)

In October 2016, Dennis Segers ("Segers"), Chairman of the Board of Directors for Defendant Xilinx, began encouraging Plaintiff to join Xilinx, which was in dire need of a comprehensive rebranding and repositioning plan to boost the visibility of its products and jumpstart its stagnant sales. (SAC, ¶¶ 26 – 29.) Segers had worked with Plaintiff for approximately five years while he was CEO of Tabula and, under Segers' direction, Plaintiff created and directed Tabula's marketing strategy. (SAC, ¶ 30.) During this time, Plaintiff and Segers developed a close personal relationship with Plaintiff viewing Segers as a mentor. (*Ibid.*) Plaintiff seriously considered the opportunity Segers presented. (SAC, ¶ 32.) She would have a rare opportunity to develop rebranding and repositioning of Defendant Xilinx. (*Ibid.*) Segers represented to Plaintiff that he could ensure Plaintiff was compensated commensurate with the value of her skills and expertise. (*Ibid.*)

In a meeting on October 18, 2016, Segers asked Plaintiff to create a new rebranding and marketing strategy for Defendant Xilinx. (SAC, ¶ 34.) Segers aspired to become Xilinx's next CEO and, if the Board were to appoint him for that role, Segers told Plaintiff he wanted her to join Xilinx's marketing department so that she could create the company's comprehensive marketing strategy. (*Ibid.*) Plaintiff agreed and, soon after the meeting, Plaintiff began creating a rebranding and repositioning strategy specific to Xilinx. (SAC, ¶ 35.) Plaintiff did not become a Xilinx employee or contractor at that time. (SAC, ¶ 36.)

In April 2017, Xilinx announced a multi-year CEO succession plan which would result in Victor Peng ("Peng") becoming CEO. (SAC, ¶ 37.) After this announcement, Segers asked Plaintiff to continue her work developing a rebranding and repositioning strategy for Xilinx. (SAC, ¶ 38.)

On June 23, 2017, Plaintiff met with Segers in preparation for an introduction with Peng. (SAC, ¶ 41.) Plaintiff presented Segers with her analysis of Xilinx's market performance, market position, and examples of what branding and communication strategies appear to be working for comparable companies. (*Ibid.*) Plaintiff explained the thought process behind a proposed new "brand value" for Xilinx, moving from characterizing its products as "Programmable" to "Adaptable" and proposing taglines incorporating the brand value, e.g., "Adaptable Future," "Adaptable Tomorrow," and "Adaptable Intelligence." (*Ibid.*)

On July 31, 2017, Segers introduced Plaintiff to Peng via email. (SAC, ¶ 42.) Plaintiff and Peng met in person for the first time on August 8, 2017, and Peng was very receptive to Plaintiff's rebranding and marketing strategy. (SAC, ¶ 43.) After this meeting, Peng met with Segers on August 12, 2017, and stated he was impressed by Plaintiff's rebranding and repositioning strategy and, based on Segers's recommendation and encouragement, Peng would name Plaintiff as Xilinx's Senior Vice-President of Marketing once the individual in that role resigned. (SAC, ¶ 44.) Thereafter, Segers called and texted Plaintiff to tell her the Senior Vice-President of Marketing position would be hers. (*Ibid.*)

On August 24, 2017, Plaintiff presented Peng an extensive analysis of the Xilinx marketing and investor relations program memorialized in two 50-plus page PowerPoint slide presentations. (SAC, ¶ 46.) Plaintiff also prepared detailed plans to overhaul each area of the Xilinx customer experience. (*Ibid.*) Plaintiff's analysis was so well received by Peng that he asked Plaintiff to help him work on rebranding messaging and direct upcoming events as he prepared to take over the CEO role. (*Ibid.*)

On September 11, 2017, Plaintiff presented her then current market analysis, rebranding strategy and repositioning to Xilinx executive staff and her work was well received by all. (SAC, ¶ 47.) Following this meeting, Peng verbally offered Plaintiff the position of Senior Vice-President of Marketing. (*Ibid.*) Plaintiff texted Segers letting him know and minutes later, Segers called to welcome Plaintiff to Xilinx. (*Ibid.*) After the September 11, 2017, meeting, Plaintiff and Peng were in frequent contact as Peng drew from Plaintiff's marketing expertise and the Xilinx-specific strategies she crafted. (SAC, ¶ 48.)

On November 7, 2017, Plaintiff prepared a presentation for Xilinx board members, Louis Krakauer and Elizabeth Vanderslice, on her view of the semiconductor marketplace. (SAC, ¶ 49.) The directors complimented Plaintiff telling her that they were impressed with her comprehensive analysis and the sophistication of her work. (*Ibid.*) It became clear to Plaintiff that Xilinx decision makers embraced her rebranding strategy. (SAC, ¶ 54.)

On November 26, 2017, Plaintiff received an email from Steve Douglass, Xilinx's Vice President of Corporate Sales, asking Plaintiff to integrate her new branding, messaging, and graphical language into Peng's presentation for Xilinx's 2018 Worldwide Sales Conference. (*Ibid.*) On November 27, 2017, Plaintiff created and delivered to Peng the new tagline, "Designing Adaptable Futures." (SAC, ¶ 55.) Peng praised Plaintiff for her work. (*Ibid.*)

On December 11, 2017, Catia Hagopian ("Hagopian"), then Vice President of Legal Affairs, emailed Plaintiff an offer letter. (SAC, ¶ 63.) At the time, Peng agreed Plaintiff's start date would not be until after Peng was appointed CEO. (*Ibid.*) Plaintiff submitted a signed offer letter to Hagopian on December 26, 2017. (*Ibid.*)

As Plaintiff was preparing to step into her role, Xilinx provided Plaintiff with salary and grade level information for employees in the Marketing Department as well as a number of other organizational materials. (SAC, ¶ 76.) From November 2017 through January 2018, Plaintiff regularly emailed Xilinx employees in the marketing, finance, and human resources departments regarding the organizational structure, budget, and salaries for the department Plaintiff would soon manage. (*Ibid.*) Through these materials and communications, Plaintiff discovered widespread sex-based pay disparities, sex discrimination, and sexual harassment within the marketing department. (SAC, ¶¶ 76-81.) Plaintiff also learned of a sex-based hostile working environment. (SAC, ¶ 82.) Retaliation against women who raised complaints was standard operating procedure within Xilinx. (SAC, ¶ 83.) Before and after her employment at Xilinx commenced on February 2, 2018, Plaintiff raised numerous complaints and disclosed conduct that was unlawful or reasonably believed to be unlawful with Segers, Peng, Hagopian, and others at Xilinx. (SAC, ¶¶ 84-97.)

On the morning of February 20, 2018, Plaintiff met with Marilyn Meyer ("Meyer"), the Senior Vice President of Human Resources, who interrogated Plaintiff about a January 19, 2018, meeting where Plaintiff acknowledged and stated her intent to correct sex-based pay disparities. (SAC, ¶ 103.) Meyer inquired whether Plaintiff had told the women in attendance at the January 19, 2018, meeting that they were underpaid and that there was pay inequity between female and male employees at Xilinx. (*Ibid.*) Plaintiff confirmed the statements, her belief that the statements were true, and told Meyer, Xilinx should correct female employees' salaries and titles. (*Ibid.*) Meyer became enraged and made clear she would not address pay inequity. (*Ibid.*) Meyer also stated she would have to take action to protect the CEO and Chairman of the Board. (*Ibid.*) On February 23, 2018, Peng terminated Plaintiff's employment. (SAC, ¶ 104.)

When Plaintiff asked Peng about her termination, Peng claimed a number of factors were taken into consideration. Specifically, Peng mentioned Plaintiff had made "comments" to many of the women that Xilinx was going to have to address. (SAC, ¶ 106.) Plaintiff inquired whether the "comments" concerned Plaintiff's statements regarding the treatment of women. (*Ibid.*) Peng responded, "You've said things," and refused to elaborate further twice citing "legal reasons" for his unwillingness to elaborate. (*Ibid.*)

On June 13, 2018, a now former Xilinx employee confirmed to Plaintiff that her protected conduct was the reason for her termination. (SAC, ¶ 109.) The former Xilinx employee asked Segers why Plaintiff was terminated and Segers responded, "[Plaintiff] said the females were underpaid, and one sued." (*Ibid.*) Segers also stated correcting pay disparities would cost Xilinx too much. (*Ibid.*)

B. Procedural

On August 9, 2021, Plaintiff filed a complaint against Defendant Xilinx.

On September 20, 2021, Xilinx filed a demurrer to Plaintiff's complaint.

On December 3, 2021, prior to the hearing on Xilinx's demurrer, Plaintiff filed a first amended complaint ("FAC") which asserted causes of action against Xilinx for:

(1) Retaliation (Fair Labor Standards Act of 1938, as amended by the Equal Pay Act on 1963, 29 U.S.C. § 215(a)(3))
(2) Retaliation (California Fair Employment and Housing Act, Cal. Gov. Code § 12940, et seq.)
(3) Retaliation (California Whistleblower Protection Act, Cal. Lab. Code § 1102.5(b) & (c).)
(4) Retaliation (Cal. Lab. Code § 98.6(a))
(5) Retaliation (Cal. Lab. Code § 232.5(c))
(6) Fraud
(7) Conversion
(8) Common Law Copyright Infringement (Cal. Civil Code § 980 et seq.)
(9) Common Law Misappropriation of Business Ideas
(10) Unjust Enrichment
(11) Violation of the Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 et seq.)

On January 3, 2022, Xilinx filed a demurrer to Plaintiff's FAC, in its entirety.

On May 3, 2022, the Court issued an order sustaining, without leave to amend, Defendant Xilinx's demurrer to the second and fifth causes of action; sustaining, with leave to amend, Defendant Xilinx's demurrer to the seventh and ninth causes of action; but otherwise overruling Defendant Xilinx's demurrer to Plaintiff's FAC.

On May 13, 2022, Plaintiff filed the operative SAC which now asserts causes of action for:

(1) Retaliation (Fair Labor Standards Act of 1938, as amended by the Equal Pay Act on 1963, 29 U.S.C. § 215(a)(3))
(2) Retaliation (California Whistleblower Protection Act, Cal. Lab. Code § 1102.5(b) & (c).)
(3) Retaliation (Cal. Lab. Code § 98.6(a))
(4) Fraud
(5) Conversion
(6) Common Law Copyright Infringement (Cal. Civil Code § 980 et seq.)
(7) Unjust Enrichment
(8) Violation of the Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 et seq.)

On June 13, 2022, Defendant Xilinx filed a demurrer to Plaintiff's SAC. On September 1, 2022, the Court issued an order sustaining, without leave to amend, Defendant Xilinx's demurrer to the fifth cause of action; but otherwise overruling Defendant Xilinx's demurrer to Plaintiff's SAC.

On September 22, 2022, Defendant Xilinx filed an answer to the SAC.

On August 18, 2023, Defendant Xilinx filed a motion for summary adjudication of the fourth, sixth, seventh and eighth causes of action of the SAC. On February 15, 2024, the Court

issued an order[5] granting Defendant Xilinx's motion for summary adjudication as to the fourth, sixth, and seventh causes of action, but denying the motion as to the eighth cause of action.

On March 1, 2024, Defendant Xilinx filed an amended motion for summary judgment or, in the alternative, summary adjudication, currently before the Court, targeting the first through third, and eighth causes of action of the SAC. Plaintiff filed timely opposition papers, and Defendant Xilinx filed reply papers.

On June 5, 2024, Plaintiff filed a motion for leave to file a TAC, seeking to plead the following: 1) additional factual details supporting her retaliation claims; and 2) an additional variation of a legal theory based on the facts and allegations already pled. A week later, on June 13, 2024, Plaintiff filed an *ex parte* application for an order resetting hearing date on Plaintiff's motion for leave to amend from October 8, 2024, to July 2, 2024. That same day, Defendant filed an opposition to Plaintiff's *ex parte* application on grounds of unreasonable delay and prejudice to Xilinx. This Court granted Plaintiff's *ex parte* application on June 18, 2024, and Xilinx filed an opposition to Plaintiff's motion for leave to amend on June 24, 2024. Plaintiff filed a timely reply on June 26, 2024.

II. Plaintiff's Motion for Leave to File Third Amended Complaint

Plaintiff moves for leave to file a proposed Third Amended Complaint ("TAC") that asserts causes of action for:

(1) Retaliation – (Fair Labor Standards Act of 1938, as amended by the Equal Pay Act on 1963, 29 U.S.C. § 215(a)(3))
(2) Retaliation (California Whistleblower Protection Act, Cal. Lab. Code § 1102.5(b) & (c).)
(3) Retaliation (Cal. Lab. Code § 98.6(a))
(4) Fraud
(5) Conversion
(6) Common Law Copyright Infringement (Cal. Civil Code § 980 et seq.)
(7) Unjust Enrichment
(8) Violation of the Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 et seq.)

A. Legal Standard

Motions for leave to amend are directed to the discretion of the court. "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading . . ." (Code Civ. Proc. § 473(a)(1).) The law generally favors amendments on the basis that cases should include all disputed matters between parties and be decided on their merits. As a general rule, courts liberally allow amendments. (See *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 939.) Indeed, "[i]f the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to

[5] After the January 9, 2024, hearing on Xilinx's first motion for summary adjudication, Xilinx moved for summary judgment, a second time, on January 19, 2024. Plaintiff subsequently moved for a trial continuance in February 2024, and the parties agreed on a stipulated trial schedule, which the Court adopted, that reset the hearing date for Xilinx's motion for summary judgment to July 2, 2024.

amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion." (*Morgan v. Super. Ct.* (1959) 172 Cal.App.2d 527, 530.)

However, if the party seeking amendment has been dilatory and the delay has prejudiced the opposing party, the judge has discretion to deny leave to amend. (See *Hirsa v. Sup. Ct.* (1981) 118 Cal.App.3d 486, 490.) Absent prejudice, delay alone is not considered grounds for denial. (*Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564-565 (*Higgins*.) Prejudice exists where the amendment would require delaying the trial, resulting in loss of critical evidence or added costs of preparation, increased burden of discovery, etc. (See *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 486-488.)

Nevertheless, even if some prejudice is shown, the court may still permit the amendment, but can impose conditions. (See *Fuller v. Vista Del Arroyo Hotel* (1941) 42 Cal.App.2d 400, 404-405 (*Fuller*).) For instance, the court may continue the trial date (if requested by the opposing party); limit discovery; and/or order the party seeking the amendment to pay the costs and fees incurred by the opposing party in conducting discovery and preparing for trial on a newly added claim. (*Ibid*.) The court is authorized to grant leave "on such terms as may be proper…" (See Code Civ. Proc. §§ 473, subd. (a)(1), 576.)

Furthermore, courts are bound to apply a policy of great liberality in permitting amendments to the complaint "at any stage of the proceedings, up to and including trial," absent prejudice to the adverse party. (*Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761, internal quotes omitted; see also *Mesler v. Bragg Mgmt. Co.*, 39 Cal.3d 290, 296 (1985) (*Mesler*) ["There is a strong policy in favor of liberal allowance of amendments"].) As long as no prejudice to the defendant is shown, the liberal policy regarding amendment prevails and it is an abuse of discretion to refuse the amendment. (See *Mesler, supra*, 39 Cal.3d at p. 297 [no surprise to defendant because parties had conducted discovery on the issues sought to be raised by amendment].)

B. Analysis

As noted above, Plaintiff seeks leave to file a TAC that will include additional factual details and clarification for her retaliation claims. Specifically, Plaintiff seeks: "to enumerate each example of her protected complaints and conduct" on which she bases her retaliation claims and "plead an additional variation of her legal theory under Labor Code § 1102.5(b)." (See Plaintiff's Memorandum of Points and Authorities in Support of Motion for Leave to Amend ("Amend Mot.,") pp. 4:18-23; 8:7-9; see also Reply in Support of Amend Mot. ("Reply,") p. 2:1-5.) As to Plaintiff's latter request, she specifically seeks to make "absolutely explicit" that her second cause of action under Labor Code section 1102.5, subdivision (b) includes the "variant theory of liability" in which a defendant-employer retaliates against an employee because the employer *believes* that the employee disclosed or may disclose information. (Amend Mot., p. 7:8-10; Reply, pp. 2:2-3, 4:14-16; see also Lab. Code § 1102.5, subd. (b) ["An employer…shall not retaliate against an employee…because the employer believes that the employee disclosed or may disclose information…to a person with authority over the employee"].) Plaintiff maintains this legal theory is entirely consistent with her existing Labor Code section 1102.5 cause of action, which pleads retaliation due to her actual disclosure, is based on the same facts and allegations, and will not require any additional discovery. (Amend. Mot., p. 7:11-12.) Plaintiff cites *Mesler, supra*, 39 Cal.3d at p. 297 for the

proposition that amending the complaint to include a variation of an *already alleged* legal theory at summary judgment stage does not prejudice opposing party.

Next, Plaintiff claims she filed her motion "out of excess caution," and, in response to Defendant Xilinx's argument in its motion for summary judgment that this Court "should disregard any examples of protected activity that were not specifically discussed in Plaintiff's SAC." (Amend Mot., p. 6:8-12; see also Declaration of Plaintiff's counsel, Danielle Fuschetti in Support of Amend Mot. ("Fuschetti Decl.,") ¶ 7; see Xilinx's Corrected Memorandum of Points and Authorities in Support of Motion for Summary Judgment, filed on January 22, 2024, p. 20, fn. 6.) Plaintiff contends that her motion should be granted, otherwise, she would be prevented from presenting certain facts, theories, and claims on the merits. (Fuschetti Decl. ¶ 9; see also Amend Mot., p. 4:27-30.) Plaintiff concludes that denying a "ministerial amendment" could result in "uncertainty and confusion." (*Ibid*.) Both the motion and the Fuschetti declaration state that there will be no prejudice to Defendant Xilinx from the amendment because the "parties have vigorously pursued discovery and have completed all fact discovery." (Amend Mot., p. 6:30-31; Fuschetti Decl., ¶¶ 3-4, 8-9.) Plaintiff does not intend to pursue any further discovery related to the amended allegations, and she does not seek to include additional claims. (*Ibid*.) Plaintiff concludes her amendments are "merely a ministerial clean-up exercise." (Amend Mot., pp. 7:3-4-8:7-9.)

Xilinx counters that Plaintiff's motion is "fatally flawed" because it was filed almost three years after she initiated the instant lawsuit, and Plaintiff should have known about the allegations she seeks to add since her termination. (Xilinx's Opposition to Motion for Leave to File TAC ("Opp."), pp. 4:2-6-5:3-23-6:23-25.) This Court acknowledges Defendant's efforts in providing a table with the following information: 1) Plaintiff's proposed allegations, 2) when Plaintiff purportedly knew about these allegations; and 3) whether the allegations arose from Plaintiff's own conduct. (Opp., pp. 7:7-26-9:1-8.) Based on the table compilation, Defendant concludes the proposed amendments are "almost exclusively" based on Plaintiff's own conduct. (*Ibid.*) Defendant maintains Plaintiff's delay in filing a motion for leave to amend prejudices Xilinx because it forces Xilinx to expend additional time and money to counter Plaintiff's "ever amorphous and ever expanding factual and legal claims." (Opp., pp. 4:4-6; 6:25-27.) Plaintiff's motion for leave to amend also purportedly prejudices Xilinx in that it would "likely necessitate a limited, one-way reopening of discovery" and further delay the trial date. (Opp., p. 4: 7-11.)

Defendant's argument that it is prejudiced by Plaintiff's request for leave to amend, is not, by itself, dispositive of this motion. (See *Fuller, supra*, 42 Cal.App.2d at p. 404.) Although this Court acknowledges Xilinx's frustration with the labeling of Plaintiff's amendments as "ministerial," (Opp., p. 12:11-17), Plaintiff's proposed changes to the complaint do not arise from a new set of facts or claims. Instead, she is providing additional discrete facts of alleged protected activity relating to her retaliation claims.

To the extent that Defendant Xilinx has incurred or will incur "additional costs" by litigating additional facts and altered theories, (Opp., p. 6:25-26), notably, Defendant is silent as to the anticipated amount of costs, and it appears it would likely not be high given the quantum of discovery already conducted. In other words, Defendant has not articulated the quantum of the burden despite its repeated complaints about litigation costs. Xilinx is certainly correct that Plaintiff waited a long time to seek leave to amend, but, the trial is not until December 2, 2024. Defendant Xilinx has a significant amount of time to prepare prior to trial.

Defendant Xilinx fails to demonstrate that it will suffer from any of the types of prejudice that generally support denial of a motion for leave to amend, *i.e.*, delay of trial, loss of critical evidence, excessive costs of preparation or an increased discovery burden. Xilinx insists that it will be prejudiced because the amendment will raise new discovery issues, but it fails to articulate with any level of specificity *how* additional discovery will be necessary. It must be emphasized that the allegations of this action, i.e., that Defendant committed Labor Code violations, have remained the *same* since this case was filed back in August 2021, and as noted earlier, the trial date is not until December 2, 2024. As indicated in Plaintiff's reply, Xilinx has been on notice for approximately three years "of the particulars" described in the amended complaint. (Reply, p. 2:6-7.) To illustrate this point, Plaintiff explains she has provided every instance of protected activity "in painstaking detail" both in pre-litigation communications and in discovery responses[6] early in the action. (Reply, p. 2:7-9.) Plaintiff cites a total of seven depositions taken of her, including a deposition that was taken shortly after her motion for leave to amend was filed. (Reply, p. 2:9-11.) Plaintiff concludes that evidence regarding certain protected activities emerged during depositions of Xilinx's own witnesses, and thus, Xilinx's claim of "surprise" or "prejudice" is disingenuous. (Reply, pp. 2:12-14; 6:19-21;8:6-20; see also *Mesler, supra*, 39 Cal.3d at p. 297 [no surprise to defendant because parties had conducted discovery on the issues sought to be raised by amendment].) Given Defendant Xilinx has conducted extensive discovery over the course of three years, Plaintiff's arguments are well-taken.

Plaintiff further argues that her request to set forth a variation of "anticipatory retaliation" under Labor Code section 1102.5, subdivision (b), is merely an alternative statutory ground for relief, and thus, the "factual underpinnings" of this "sub-theory" are the same. (Reply, p. 6:23-27.) Plaintiff concludes she is not alleging a new theory of liability, but instead, is providing further details about the display of "retaliatory animus" by various Xilinx members, which ultimately led to her termination. (Reply, p. 7, fn. 3.) This Court agrees that the alternative grounds for relief pursuant to Labor Code section 1102.5, subdivision (b) involve the same case facts.

The Court acknowledges Plaintiff's delay in bringing this motion, but Plaintiff indicated she did not know or believe these additional allegations were considered protected conduct until recently. (Opp., p. 9:9-16.) As Plaintiff correctly states in her reply, delay alone, is not a basis for denying leave to amend. (*Higgins, supra*, 123 Cal.App.3d at pp. 564-565.) Courts have historically permitted amendments to complaints, even where entirely new claims have been proposed close to the trial date. (Reply, p. 10, fn. 5; see *Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 760 (*Atkinson*) ["courts are bound to apply a policy of great liberality in permitting amendments … *at any stage of the proceedings, up to and including trial*"]); see also *Soderberg v. McKinney* (1996) 44 Cal.App.4th 1760, 1773-1774 [reversing trial court ruling granting summary adjudication and holding the plaintiff's motion to amend to add additional theory of liability should have been granted].)

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[6] Plaintiff seeks to present evidence via a reply declaration of Plaintiff's counsel, Maureen Slack (Slack Decl., ¶¶ 2-4.) This Court declines to consider evidence raised for the first time in a reply declaration. (See *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-38 ["The general rule of motion practice . . . is that new evidence is not permitted with reply papers."]; see also *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252; *San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.* (2002) 102 Cal.App.4th 308, 316.)

As noted in both Plaintiff's motion and reply, the parties have already engaged in extensive discovery on the retaliation issue and Xilinx identifies no further discovery or investigation that would be required as a result of Plaintiff including additional facts of alleged protected activity. (Amend Mot., p. 6:30-31; Reply, pp. 9:20-30;10:11-12.) Because the parties have fully anticipated, investigated, and litigated the retaliation issue for years, the Court finds no basis for denying the motion on prejudice grounds. (See *Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428 ["[T]he court's discretion will usually be exercised liberally to permit amendment of the pleadings. [Citations]"].)

Next, Xilinx maintains that Plaintiff's motion should be denied because it fails to comply with Rule 3.1324(b) of the California Rules of Court, which provides that a motion for leave to amend must be accompanied by a supporting declaration that specifies: (1) the effect of the amendment; (2) why amendment is necessary and proper (3) when the facts giving rise to the amended allegations were discovered; and (4) the reasons why the request for amendment was not made earlier. Xilinx explains that the Fuschetti Declaration fails to include *all four* required components under Rule 3.1324(b). (Opp., p. 9:16-23.) Defendant argues the declaration is largely speculative and fails to demonstrate that leave to amend is necessary and proper. (Opp., p. 9:17-28.) This Court disagrees.

Here, Plaintiff's counsel states that some facts giving rise to the amended allegations were discovered on June 27, 2023, and notably, on March 28, 2024, when Xilinx's witness, Tara Sims ("Sims") testified that she conveyed Plaintiff's sexual harassment complaints to Peng shortly before he decided to terminate Plaintiff – Plaintiff was unaware of these facts until this year. (Fuschetti Decl., ¶¶ 5-6.) Defendant Xilinx maintains that Plaintiff "attempts to sidestep" element four of Rule 3.1324(b) by merely providing two deposition dates. (Opp., p. 10:4-9.) Again, this Court disagrees. The dates adequately apprise the Court as to when the "unanticipated" facts were discovered. (See Fuschetti Decl., ¶ 7.)

Plaintiff's counsel also outlines reasons why leave to amend is necessary and proper: 1) denial of amendment could cause prejudice by preventing Plaintiff from asserting certain facts or theories crucial in supporting her claims of retaliation; and 2) Plaintiff's motion for leave is in response to Xilinx's summary judgment argument, which directed the Court to disregard examples of protected activity that were not specifically outlined in the SAC. (Fuschetti Decl., ¶¶ 7, 9.) Plaintiff seeks leave to amend "to avoid a potentially adverse ruling on the merits," and this Court acknowledges Plaintiff's concern. (Reply. p. 6:7-11.) Plaintiff could be prejudiced if the Court did not allow the amendment because she seeks to add the additional facts and theory of liability to avoid an adverse ruling on Defendant's summary judgment motion. (*Mesler, supra,* 39 Cal.3d at p. 297 ["…plaintiff was clearly prejudiced by this ruling [denying leave to amend], since his entire theory opposing summary judgment" revolved around the material plaintiff sought to add].)

Although the Fuschetti Declaration does not explicitly indicate the reasons why Plaintiff did not file the motion for leave to amend sooner, the motion and reply themselves address relevant circumstances more fully than the declaration. Notably, in her reply, Plaintiff states her request to amend the complaint to include the preemptive retaliation theory "is driven in large part by new information revealed in the deposition of Sims," which significantly bolsters the theory. (Reply, p. 5:25-28.) Plaintiff further counters Xilinx's assertion by demonstrating that Fuschetti's declaration "expressly refers to circumstances"

supporting amendment at this stage: 1) Xilinx's summary judgment argument based on purported deficiencies in the complaint, and 2) Peng's, and more importantly, Sims' deposition that took place this year. (Reply, p. 6:3-7; Fuschetti Decl., ¶¶ 5-7.) Thus, Plaintiff's minor technical violation is not enough for the Court to deny Plaintiff's motion.

Finally, Defendant argues that Plaintiff's motion is futile because Plaintiff did not engage in any legally protected activity, and she cannot show causation because her termination was for lawful reasons. (Opp., pp. 4:12-17; 6:27-28.) In reply, Plaintiff counters Xilinx's argument by stating that futility does not require an examination of whether claims will survive summary judgment, and that a proposed amendment is *only* denied when no liability exists based on *undisputed* facts. (Reply, p. 10:14-19.) Plaintiff cites *Huff v. Wilkins* (2006) 138 Cal.App.4th 732, 746 in support of its assertion that only undisputed facts could demonstrate a proposed amendment was unmeritorious. (Reply, p. 10:14-17.) Plaintiff maintains the "facts are very much disputed here" because there is "substantial recorded evidence" that she engaged in protected activity that resulted in her termination. (Reply, p. 10:20-21.) To illustrate, Plaintiff highlights her repeated complaints about gender-based disparities, her steps to take corrective action, and how her actions were met with resistance from Xilinx as a result. (Reply, p. 10:23-25.) Plaintiff concludes this evidence creates a triable dispute of fact on her retaliation claims. (Reply, p. 10:1-2.)

The Court is not persuaded that amendment would be futile. In ruling on a motion for leave to amend, courts generally do not consider the amended pleading's merits in a summary judgment-like analysis. (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal App.3d 1045, 1048 [" 'the preferable practice would be to permit the amendment and allow the parties to test its legal sufficiency by demurrer, motion for judgment on the pleadings or other appropriate proceedings.' [Citation]"].) Thus, Xilinx's futility arguments are better left for the summary judgment motion. Here, it is not apparent to the Court that the proposed changes, namely, Plaintiff's additional facts of alleged protected activity and her variation of a legal theory, would be futile.

Accordingly, in the absence of any clear prejudice to Defendant, and in light of the strong judicial policy favoring amendment such that denial is *rarely* justified, (see *Morgan, supra,* 172 Cal.App.2d at p. 530), the Court GRANTS Plaintiff's motion for leave to amend.

III. Defendant Xilinx's Motion for Summary Judgment, or Summary Adjudication

Defendant moves for summary judgment against Plaintiff, or in the alternative, summary adjudication of the first through third, and eighth causes of action.

Once an amended complaint is filed, it supersedes all prior complaints, and, the original pleading, "ceases to have any effect either as a pleading or as a basis for judgment. [Citation.]" (*State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1130-1131 Consequently, "the filing of an amended complaint moots a motion directed to a prior complaint." (*Ibid*.) Here, Plaintiff's filing of an amended complaint moots a motion for summary judgment or adjudication attacking the original complaint. (See *Id.* at p. 1131 [summary adjudication motion].)

In light of the Court's ruling on the motion for leave to amend, Defendant Xilinx's motion for summary judgment is MOOT.

IV. Conclusion

For the reasons stated above, Plaintiff's motion for leave to file a third amended complaint is GRANTED.

In light of the Court's ruling on the motion for leave to amend, Defendant Xilinx's motion for summary judgment is MOOT.

The parties are ordered to appear for the hearing to discuss the status of the case. Parties are still required to notify both opposing party and the court if they wish to contest the tentative ruling.

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