SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 2, Honorable Drew C. Takaichi, Presiding
Farris Bryant, Courtroom Clerk

191 North First Street, San Jose, CA 95113
Telephone 408.882-2120

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

LAW AND MOTION TENTATIVE RULINGS
DATE: November 30, 2021 TIME: 9:00 A.M.

PREVAILING PARTY SHALL PREPARE THE ORDER OR AS OTHERWISE STATED BELOW

(SEE RULE OF COURT 3.1312 - PROPOSED ORDER MUST BE E-FILED BY COUNSEL AND SUBMITTED PER 3.1312(C))

EFFECTIVE JULY 24, 2017, THE COURT NO LONGER PROVIDES OFFICIAL COURT REPORTERS FOR CIVIL LAW AND MOTION HEARINGS. SEE COURT WEBSITE FOR POLICY AND FORMS.

All persons entering Department 2 must wear face coverings, unless the Court authorizes otherwise.

TROUBLESHOOTING TENTATIVE RULINGS

If do not see this week's tentative rulings, they have either not yet been posted or your web browser cache (temporary internet files) is accessing a prior week's rulings. "REFRESH" or "QUIT" your browser and reopen it, or adjust your internet settings to see only the current version of the web page. Your browser will otherwise access old information from old cookies even after the current week's rulings have been posted.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	19CV345037	*AppsIntegration, Inc. vs Ramtek Solutions, LLC*	Plaintiff AppsIntegration, Inc.'s ("plaintiff") motion to compel responses to request for production of documents, set 2 and production of documents from defendant Ramtek Solutions, LLC ("defendant") is GRANTED. Defendant shall serve code compliant responses, without objections, and produce responsive documents within 20 days of service of the order. No opposition filed.
LINE 2	19CV345037	*AppsIntegration, Inc. vs Ramtek Solutions, LLC*	Plaintiff's motion to compel responses from defendant to special interrogatories, set 2 is GRANTED. Defendant shall serve code compliant responses, without objections, within 20 days of service of the order. No opposition filed.

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LINE 3	19CV345037	*AppsIntegration, Inc. vs Ramtek Solutions, LLC*	Plaintiff's motion for admissions deemed admitted to request for admissions, set 2 is GRANTED. Plaintiff was successful in bringing the discovery motions in lines 1-3 and Defendant shall pay attorneys' fees of $2,517 and costs of $180, for a total of $2,697, as sanctions within 20 days of service of the order. No opposition filed. Plaintiff shall prepare the orders in lines 1-3.
LINE 4	18CV323454	*Rachel Vachata vs Lucio Lanza*	Click line 4 (or scroll to line 4) for tentative ruling.
LINE 5	18CV323454	*Rachel Vachata vs Lucio Lanza*	Tentative ruling is included in line 4.
LINE 6	18CV339556	*William Garrett vs HCL AMERICA, INC. et al*	Click line 6 (or scroll to line 6) for tentative ruling.
LINE 7	21CV380497	*Firdos Sheikh vs Lowell Tan et al*	The motion of plaintiff's attorney to be relieved as counsel for plaintiff is GRANTED. No opposition filed.
LINE 8	21CV383286	*BRET PRICE-HENNESSY vs E2F, INC. et al*	The motion of plaintiff's attorney to be relieved as counsel for plaintiff is GRANTED. No opposition filed.
LINE 9	21CV383939	*Delfino Birrueta-Cruz vs Normandin's et al*	Respondent Normandin's petition to compel arbitration and stay of this court action pending completion of arbitration is GRANTED. No opposition filed. Respondent shall prepare the order.
LINE 10	2015-1-CV-276954	*IDS PROPERTY CASUALTY INSURANCE COMPANY VS J. DESHONG*	Continued from November 23, 2021 for filing of stipulation for entry of judgment. Amended declaration of plaintiff's counsel with attached stipulation for entry of judgment has been received in court's e file queue. Plaintiff's motion to vacate dismissal and enforce settlement and enter judgment is GRANTED. No opposition filed.
LINE 11			
LINE 12			

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LAW AND MOTION TENTATIVE RULINGS

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Case name: *Rachel Danae Vachata v. Lucio Lanza*
Case no.: 18CV323454

Background

On March 8, 2018, plaintiff Rachel Danae Vachata ("plaintiff") filed the operative first amended complaint ("FAC") against defendant Lucio Lanza ("defendant") alleging four causes of action for sexual battery, battery, gender violence, and intentional infliction of emotional distress from conduct of defendant during a "red-eye" commercial airline flight.

The parties have conducted written discovery and depositions of parties and witnesses, including experts.

Trial was initially set on April 13, 2020, but was vacated due to COVID-19 pandemic emergency orders. Trial was then set on November 1, 2021, but vacated by order of the court on September 24, 2021 pursuant to ex parte application for order shortening time to hear the instant motions of plaintiff.

A further case management conference is set on February 8, 2022.

Current motions

On August 4, 2021, plaintiff filed the instant motion for leave to file second amended complaint ("SAC") and on September 20, 2021, filed the concurrent set motion for leave to amend expert witness disclosure.

On November 15, 2021, defendant filed opposition to each motion, and on November 19, 2021, plaintiff filed reply in connection with leave to amend expert witness disclosure.

After consideration of the authorities and arguments of counsel in the papers filed in support, opposition, and where applicable, reply, the court makes the following tentative ruling.

<u>Leave to file SAC</u>

As a preliminary matter, defendant asserts that plaintiff has failed to comply with the mandatory provisions of Cal. Rule of Ct. 1324(b) for a motion to amend a pleading. Defendant asserts that plaintiff's counsel's declaration in support of the motion fails to specify the effect of the amendment, why the amendment is necessary and proper, when the facts giving rise to the amended allegations were discovered, and the reasons why the request for amendment was not made earlier.

Plaintiff has not filed reply addressing the asserted deficiencies.

The court agrees with defendant's assessment of plaintiff's counsel's declaration and finds that it fails to specify the four inquiries in subdivision (b) of Cal. Rule of Ct. 1324.

That said, the policy of law favors determination of matters on the merits. Accordingly, the court exercises its discretion to continue hearing of the motion to afford plaintiff an opportunity to file a declaration that complies with Cal. Rule of Ct. 1324, and provide defendant an opportunity to file opposition to the information specified in the declaration. The court exercises its discretion to continue the motion instead of denying the motion without prejudice on procedural grounds. It is the court's judgment that the latter would impose greater expense to the parties and use of court resources. Plaintiff's counsel is admonished to review and comply with the requirements of the Cal. Rules of Court in future motions and filings. Failure to do so may result in denial of motions.

The motion for leave to file SAC is continued to January 27, 2022, at 9:00 a.m. in Dept. 2. Plaintiff shall file and serve a supplemental declaration on or before 16 court days before hearing; defendant may file opposition on or before nine court days before hearing, and plaintiff may file reply five days before hearing.

Leave to file amended expert witness disclosure

Plaintiff seeks to leave to identify and disclose an expert witness, Dr. Mikel Matto, to replace a previously disclosed expert, Dr. Bruce Smith, on the topic of Dr. Smith's disclosure, plaintiff's emotional distress and reasons therefor. Dr. Smith died on September 16, 2020. Dr. Matto is also a disclosed expert on another topic in plaintiff's previously served expert witness disclosure.

Code of Civil Procedure section 2034.620, sets forth the conditions for granting leave to amend expert witness list or declaration. The grant of leave is mandatory if all conditions specified in the section are satisfied.

The first condition is that the court has taken into account the extent to which the opposing party has relied on the list of expert witnesses. Subdivision (a) of Code of Civil Procedure section 2034.620.

On February 24, 2020, plaintiff served her disclosure of three expert witnesses that included Dr. Smith and Dr. Matto. Defendants in reliance on the list of experts, deposed Dr. Smith and Dr. Matto on each expert's disclosed topic. Defendant also disclosed two defense expert witnesses, who provided rebuttal to each of plaintiff's three expert witnesses. While an amended disclosure of Dr. Matto will require deposition of Dr. Matto on a different topic, defendant does not dispute plaintiff's assertion that defendant has already deposed Dr. Smith on the topic, and researched Dr. Matto and questioned him at deposition about his credentials, experience, prior testimony and publications. Defendant is thus familiar both with the topic of the deceased expert and pertinent information about the replacement expert, circumstances that should streamline the process.

The second condition is whether the court has determined that defendant will be prejudiced in his defense on the merits. Subdivision (b) of Code of Civil Procedure section 2034.620.

The same circumstances of defendant's previous depositions of Dr. Smith on the topic and Dr. Matto, corresponding efficiency in discovery proceedings involving the replacement expert, and that trial is not set support that defendant will not prejudiced on the merits from the grant of leave to file amended expert witness disclosure.

The absence of a pending trial set affords sufficient time for Dr. Matto to conduct his investigation and prepare a report on the topic, and for defendant to consult with his experts on the topic they have previously examined, and depose Dr. Matto. Plaintiff represents that she will ensure Dr. Matto's availability for prompt deposition. As discussed, defendant is familiar with Dr. Matto, having deposed him previously in the case.

Defendant also acknowledges in a prior offer to stipulate to a new expert with a continuance of the November 1, 2021 trial date, that a continued trial date would provide defendant with adequate time to review new discovery, depose the new expert and determine whether defense experts have additional opinions relative to the new expert testimony. While the offer was rejected by plaintiff, the trial date was subsequently vacated by court order, providing defendant with the time sought in his proposed stipulation. (Defendant's opposition p. 6, l. 24-28).

The third condition is that the moving party's failure to identify Dr. Matto as the new expert offering additional testimony as to plaintiff's emotional condition is the result of mistake, inadvertence, surprise, or excusable neglect, and the moving party has also sought leave to amend promptly and promptly served the proposed expert witness information on all parties. Subdivision (c) of Code of Civil Procedure section 2034.620.

The court finds that the death of Dr. Smith is both tragic and a surprise. The expert died on September 16, 2020 and plaintiff learned of his death on May 27, 2021, after calls and voicemails were unanswered. This period of time does not infer neglect or unreasonable delay as counsel may have minimal to no contact with an expert witness after the expert performs his or her analysis and is deposed, until preparation for trial.

On June 14, 2021, plaintiff notified defendant of the expert's death, and on September 15, 2021 and on September 20, 2021, served a copy of the proposed amended expert declaration and filed the instant motion for leave to amend, following investigation and selection of a replacement expert on the topic. The time required to complete these actions was reasonable, considering the process required which was necessitated by the unexpected death of Dr. Smith. The evidence does not support the assertion of defendant of a strategic element on the part of plaintiff.

Defendant argues that the court should deny the motion as unnecessary and unfair to defendant, and proceed at trial with the videotaped deposition of Dr. Smith in lieu of trial testimony from a replacement expert. However, defendant concedes to the assertion of plaintiff that plaintiff did not conduct direct examination of her expert, Dr. Smith, at the deposition, not anticipating Dr. Smith's subsequent death and unavailability at trial.

Defendant's argument is not persuasive and will not be adopted as it would deprive the jury from receiving expert witness testimony from direct examination (and redirect and cross examination) - a consequence of not receiving all evidence from the expert, including evidence to assign weight to the testimony. This would also deprive the jury of Dr. Smith's testimony of plaintiff's emotional distress at time of trial and analysis of the continuing validity or invalidity of his opinions and findings on the subject.

Accordingly, the court finds that all conditions specified in Code of Civil Procedure section 2034.620 are satisfied for a grant of leave to amend expert witness disclosure.

Disposition

Plaintiff's motion for leave to amend expert witness disclosure is therefore, GRANTED.

Plaintiff shall prepare the order.

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Case name: *William Garrett v. HCL America, Micron Technology, Inc., et al.*
Case No.: 18CV339556

Background

According to the allegations of the complaint, in May 2015, plaintiff William Garrett ("plaintiff"), an African-American and Native American of Christian faith, was employed as a Track Lead for defendant HCL America Inc. ("HCL"). HCL provides independent contractor services to Micron Technology, Inc. ("Micron"), a manufacturer of computer chips.

On April 13, 2018, plaintiff received a complaint of harassment and bullying from a Muslim Pakistani subordinate of his by a Sikh Indian supervisor of Micron. On April 18, 2018, plaintiff forwarded his subordinate's complaint to plaintiff's supervisor, Prakash Jayapal, a Sikh Indian, for investigation. On the next day, April 19, 2018, plaintiff's subordinate informed plaintiff that Micron had reprimanded the harassing and bullying employee, and that, in turn, the harassing and bullying employee confronted plaintiff's subordinate to reprimand and intimidate him from filing a formal complaint. By May 6, 2018, plaintiff was made aware that his subordinate was indeed intimidated from filing a formal complaint and was now denying and repudiating the initial allegations that he had previously communicated to plaintiff. In late June 2018, Mr. Jayapal informed Plaintiff that HCL would be terminating Plaintiff, effective July 30, 2018.

The complaint further alleges that plaintiff's forwarding of the complaint of harassment and bullying on account of race and religion was protected activity and Plaintiff suffered retaliatory adverse employment action in violation of the Fair Employment and Housing Act ("FEHA").

As to Micron, on June 2, 2018, plaintiff filed an administrative charge with the Equal Employment Opportunity Commission ("EEOC") and the Department of Fair Employment and Housing ("DFEH") alleging that Micron had "failed to protect" plaintiff from retaliation.

Plaintiff pursued and exhausted his administrative remedies and received right-to-sue letters from the DFEH on July 17, 2018 and from the EEOC on July 23, 2018. The July 17, 2018 right-to-sue letter from the DFEH informed plaintiff of his right to file a civil action against Micron under the FEHA for retaliation "…within one year from the date of this notice."

On December 7, 2018, Plaintiff filed a complaint against HCL and Doe defendants, asserting causes of action for retaliation in violation of FEHA and wrongful termination in violation of public policy. Micron was not named as a party.

On July 3, 2019, the court granted HCL's motion to compel arbitration of plaintiff's claims against HCL, and stayed this civil action.

On June 2, 2020, plaintiff filed a second administrative charge against Micron alleging retaliation from reporting the same incident of his subordinate and the supervisor of Micron. According to plaintiff, the second administrative charge is based on newly acquired evidence of emails "that prove that Micron had ordered and effected Garrett's employment termination". Plaintiff asserts that the second administrative charge is distinguished from the first in that it

involves "active retaliatory conduct much more egregious than the passive "failure to protect" alleged in Garrett's first administrative charge against Micron." (Plaintiff's MPA p. 5-6). A right-to-sue letter was issued by the EEOC, but not by the DFEH.

On July 30, 2020, Plaintiff filed an amendment to the complaint inserting Micron Technology, Inc. as the true name of Doe defendant no. 1. Micron moved to quash the summons and Doe amendment to the complaint. Both parties conceded that the order for arbitration stayed all proceedings, and the motion to quash was ordered continued to the conclusion of the arbitration.

On August 12, 2021, a final award of arbitrator was entered, exonerating HCL from plaintiff's claims. Micron was not a party to the arbitration.

On August 25, 2021, plaintiff filed a third administrative charge against Micron alleging retaliation arising from plaintiff reporting the same incident involving his subordinate and the supervisor of Micron. It is unclear from the pleadings whether a right-to-sue letter has been issued by either the DFEH or EEOC.

On September 10, 2021, plaintiff filed the instant motion for leave to file first amended complaint ("FAC") to name Micron as a defendant and allege against Micron causes of action for FEHA retaliation and wrongful termination. Plaintiff seeks relief only against Micron, with the expectation the court will adopt the final award of arbitrator and dismiss HCL with prejudice.

On November 15, 2021, Micron filed opposition.

Plaintiff makes clear that the instant motion is a motion for leave to amend pursuant to Cal. Rule of Ct. 3.1324 and Code of Civil Procedure sections 473(a)(1) and 576, and is not a re filing of plaintiff's attempt to file a Doe Amendment. (Plaintiff's MPA p. 6, l. 27-28). Plaintiff further concedes that the July 20, 2020 amendment to complaint to name Micron as the true name of Doe defendant no. 1 was barred by the stay order. (Plaintiff's MPA p. 6, l. 18-19)

The court considers plaintiff's statement, concession and instant motion a withdrawal of the July 20, 2020 amendment to complaint to name Micron as the true name of Doe defendant no. 1, and accordingly, the court hereby strikes plaintiff's amendment to complaint filed July 20, 2020. Micron's motion to quash the summons and Doe amendment is therefore, moot, and hearing on Micron's motion is unnecessary.

Request for judicial notice

Micron requests judicial notice of Exhibits described and set forth as items 1 through 11.

The request for judicial notice is GRANTED as to the existence of the complaint and amendment (items 1 and 7). (See *Day v. Sharp* (1975) 50 Cal.App.3d 904, 914 (stating that "'a court cannot take judicial notice of hearsay allegations as being true, just because they are part of a court record or file… [a] court may take judicial notice of the existence of each document in a court file, but can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments'").

Judicial notice of the Exhibits filed or issued pursuant to proceedings with the EEOC and DFEH (items 2, 3, 4, 5, and 10) is GRANTED as to their existence, but not the hearsay statements in the Exhibits as to their truth. Both parties refer to the EEOC and DFEH Exhibits in their papers which are not reasonably subject to dispute.

Judicial notice is granted as to the Order filed July 11, 2019. (Item 6).

Judicial notice is granted as to the fact asserted about the court's docket in item 9.

Judicial notice is granted regarding the existence of legislative amendments to Government Code section 12960.

Judicial notice is denied as to the email in item 8.

Analysis

In the furtherance of justice, a court may allow a party to amend any pleading at any time, even after commencement of trial. Code of Civil Procedure sections 473(a)(1) and 576. See *Hong Sang Market, Inc. v. Peng (*2018) 20 Cal.5th 473. Courts are generally liberal in permitting amendments, as long as the statute of limitations has not expired and the opposing party will not be prejudiced by the amendment, such as a delay in the trial of the case, loss of critical evidence, or added costs of trial preparation. *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203.

Here, the papers in support and opposition identify as pivotal to the motion for leave to amend the statutes of limitation for plaintiff's claims against Micron. Issues include date of accrual of the statutes of limitation, whether a grant of leave to amend relates back to the filing of the complaint, and if not, whether the statutes of limitation have expired or have been tolled. Subdivision (b) of Government Code section 12965 establishes a one-year statute of limitations for the FEHA retaliation claim, commencing from the date of the right-to-sue notice of DFEH, except for certain statutory exceptions. Here, the right-to-sue notice of DFEH as to Micron occurred on July 23, 2018, and the one-year statute therefore expires on July 23, 2019. The parties do not assert a statutory exception to the one-year period.

After the one-year statute expired, plaintiff filed a second administrative charge against Micron on June 2, 2020. DFEH has not, despite demand of plaintiff, issued a second right-to-sue letter. Plaintiff asserts that the instant motion for leave to amend is timely because the one-year statute of limitations on plaintiff's retaliation claim against Micron does not begin to run until DFEH issues the second right-to-sue-letter.

However, even if DFEH was to issue a second right-to-sue letter, which it has not to date, such a letter would be unavailing because the filing of a new DFEH complaint will not revive an expired FEHA claim against the same party for the same FEHA violation. See *Acuna v. San Diego Gas & Elec. Co*. (2013) 217 Cal.App.4th 1402, 1417.

Here, the first administrative charge against Micron in 2018 asserted that Micron retaliated against plaintiff for engaging in protected activity at the workplace. Plaintiff suggests that the second administrative charge against Micron in 2020 is a different FEHA violation in that it

involves active retaliatory conduct more egregious than the passive "failure to protect" alleged in the first administrative charge.

The charge relates to the same incident and actions involving the subordinate of plaintiff with HCL and the supervisor of Micron, and Micron's retaliation against plaintiff for engaging in protected activity at the workplace whether alleged as "a failure to protect" in the first administrative charge or as more egregious conduct in the second administrative charge.

The court finds that the FEHA retaliation claim in this action, and applicable one-year statute of limitations, relates to the right-to-sue letter of July 23, 2018 issued pursuant to the first administrative charge.

The statute of limitations for the tort action of wrongful discharge in violation of public policy (and not founded on an instrument in writing) is two-years. Subdivision 1 of Code of Civil Procedure section 339.

Here, plaintiff was terminated from employment in late June 2018 which became effective on July 30, 2018. These facts indicate that the tort cause of action accrued no later than July 30, 2018, and the two-year statute expired on July 30, 2020.

Plaintiff further asserts that the instant motion for leave to amend is timely because the causes of action against Micron in the FAC relate back to the date of filing of the complaint against HCL on December 7, 2018, and therefore, precedes the expiration of either statute of limitation. In support, plaintiff cites *Austin v. Massachusetts Bonding and Insurance Co.* (1961) 56 Cal.2d 596 ("*Austin*") and *Smeltley v Nicholson Manufacturing Co.* (1977) 18 Cal.3d 932 ("*Smeltley*"). However, *Austin* and *Smeltley* are distinguishable because the amendments in those cases were substitution of a true name for a defendant Doe, which plaintiff acknowledges the instant motion is not.

The cases cited by plaintiff do not hold that a motion for leave to file an amended complaint which adds a new defendant, as opposed to an amended complaint that substitutes a true name of a fictitious Doe defendant named in the original complaint, relates back to the date of filing of the original complaint.

Instead, there is an opposite, general rule – that an amended complaint that adds a new defendant does not relate back to the date of filing the original complaint, and the statutes of limitation are applied as of the date the amended complaint is filed, not the date the original complaint is filed. *Woo v. Superior Court* (*Zarabi*) (1999) 75 Cal.App.4th 169, 176, citing *Liberty Transport, Inc. v. Henry W. Gorst Co*. (1991) 229 Cal.App.3d 417, 428 ("*Liberty Transport*"). While there is an exception to the general rule for a substitution of a true name for a fictitious Doe defendant named in the original complaint which sets forth a cause of action against the fictitious Doe defendant (*Liberty Transport, supra*, 229 Cal.App.3d at p. 428), no authority is cited for an exception to the rule here for an amendment that adds Micron as a new defendant. Accordingly, the statutes of limitation for claims against Micron in the FAC are applied as of the date the FAC is filed.

Alternatively, plaintiff asserts that the statute of limitations for the claims of FEHA retaliation and wrongful termination should be equitably tolled because of the stay of the civil action pending completion of arbitration against HCL, one of the two dual and joint employers of

plaintiff now alleged in the FAC. In support, plaintiff cites to *McDonald v. Antelope Valley Community College District* (2008) 45 Cal.4th 88 ("*McDonald*") and *Marcario v. County of Orange* (2007) 155 Cal.App.4th 408 ("*Marcario*") that equitable tolling of the statutes of limitation is appropriate here to ensure fundamental fairness, alleviate forfeiture, and to afford opportunity to pursue other administrative remedies and proceedings, including arbitration. Here, arbitration was ordered pursuant to motion of HCL, so there is no issue of plaintiff's good faith in participating in that proceeding.

That said, *McDonald* and *Marcario* involved a court action and administrative remedy or arbitration proceeding between the same parties – the plaintiff employee and the defendant employer. Here, Micron was not a party to the arbitration, and was neither a party to the court action nor alleged as a dual and joint employer. This is a distinction with a difference in whether equitable estoppel should be applied because the presence of the same parties in the administrative or arbitration proceeding in *McDonald* and *Marcario* avoided prejudice to defendants by affording defendants, unlike Micron here, notice of the plaintiffs' claims against them, allowed the parties to resolve some claims between them and allowed the defendants to gather and preserve evidence relative to the plaintiffs' claims.

The court finds that the statutes of limitation for plaintiff's claims against Micron are not equitably tolled by the stay pending arbitration between plaintiff and HCL.

Plaintiff further suggests that the discovery of evidence of emails on April 30, 2020 "proving Micron's culpability" should toll the statutes of limitation which had already expired. While acknowledging awareness of the facts of Micron's involvement in the incident, plaintiff neither named Micron as a defendant in the initial complaint nor sought to amend the complaint before the statutes of limitation expired. This inaction was an intentional "judgment call" of plaintiff to defer action against Micron until plaintiff obtained supporting documentary proof because plaintiff was concerned of violating sanction provisions of Code of Civil Procedure sections 128.5 and 128.7.

Assuming for discussion that Micron should have produced the emails earlier "proving Micron's culpability" as alleged by plaintiff (and before the statutes of limitation had expired), plaintiff nonetheless fails to cite authority to support that a party may intentionally defer naming a party in a lawsuit beyond the expiration of the applicable statute of limitations, until obtaining supporting documentary evidence - proof of culpability, or that concern about sanction provisions of Code of Civil Procedure sections 128.5 or 128.7 under these circumstances suffices to toll the statute of limitations.

Further, Code of Civil Procedure sections 128.5 (sanctions for bad-faith actions of tactics that are frivolous or solely intended to cause unnecessary delay), and 128.7 (pleadings filed primarily for an improper purpose) do not have a high evidence requirement of "documentary proof of culpability". Instead, allegations and factual contentions are required to have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for investigation or discovery.

Plaintiff has failed to prove that the statutes of limitations are tolled or should be tolled. The law is clear that in the furtherance of justice, a court may allow a party to amend any pleading at any time, even after commencement of trial, and that courts are generally liberal in permitting amendments. That said, grant of leave to amend is not absolute, and should be

denied where the statute of limitations has expired and the opposing party is thereby prejudiced by the amendment.

Here, the one-year statute of limitations to bring a retaliation claim against Micron accrued on the date of the DFEH right-to-sue letter of July 17, 2018, and the two-year statute of limitations for the tort of wrongful discharge accrued no later than the last day plaintiff worked for HCL on July 30, 2018. The one-year statute expired on July 17, 2019 and the two-year statute expired on July 30, 2020. Plaintiff failed to name Micron as a defendant in the complaint prior to expiration of either statute of limitations. The statutes of limitation for the claims in the FAC against Micron pursuant to the instant motion for leave to add Micron as a new defendant are considered as of the date of filing of the FAC, and do not relate back to the date of filing of the original complaint. Further, the statutes of limitation here are not tolled on any ground asserted by plaintiff.

While leave to amend does not prejudice Micron by a delay in the trial of the case, loss of critical evidence, or added costs of trial preparation, the statutes of limitation on plaintiff's claims against Micron have expired, and a grant of leave to file a FAC against Micron on expired claims is prejudicial to Micron.

Disposition

Accordingly, plaintiff's motion for leave to file FAC is DENIED.
Micron shall prepare the order.

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