SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** **PART** **05M**

Justice

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MARASH VUCINAJ,

Plaintiff,

- v -

NEW YORK CITY POLICE DEPARTMENT, CITY OF NEW YORK

Defendant.

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INDEX NO. 156145/2021

MOTION DATE 11/25/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 39, 40, 41, 42, 43 were read on this motion for LEAVE TO FILE.

Plaintiff Marash Vucinaj ("Plaintiff") moves pursuant to CPLR § 3025(b) for leave to file and serve a Second Amended Complaint ("SAC"), annexed to the motion papers, which seeks, *inter alia*, to add a claim for First Amendment retaliation pursuant to 42 USC § 1983 and to supplement the pleadings with factual allegations that post-date the filing of the First Amended Complaint. Plaintiff contends that the proposed amendments are neither palpably insufficient nor patently devoid of merit, that they arise from the same transactions and occurrences already pleaded, and that Defendant City of New York ("Defendant" or "the City") will suffer no prejudice or surprise. The motion is unopposed. For the reasons set forth below, Plaintiff's motion is granted in its entirety.

BACKGROUND AND PROCEDURAL HISTORY

This action was commenced on June 24, 2021, when Plaintiff filed a summons and complaint against the City (NYSCEF Doc No. 1). Plaintiff filed a First Amended Complaint on August 25, 2021 (NYSCEF Doc No. 2). The pleadings arise from Plaintiff's employment with the City and allege, among other things, that Plaintiff was subjected to retaliatory actions after engaging in protected activity.

By decision and order dated July 10, 2023, this Court dismissed several of Plaintiff's claims but permitted Plaintiff's retaliation claim under New York Civil Service Law § 75-b to proceed (NYSCEF Doc No. 27). Discovery thereafter proceeded slowly, with the exchange of initial paper discovery occurring in June 2025. Plaintiff's current counsel assumed responsibility for the matter shortly thereafter and, upon review of the record, determined that Plaintiff should seek leave to amend to assert a federal retaliation claim pursuant to 42 USC § 1983 based on the same alleged retaliatory conduct already at issue in the action.

Plaintiff provided Defendant with a copy of the proposed SAC on November 4, 2025. Defendant advised on November 17, 2025 that it would oppose any application for leave to amend. Plaintiff then timely filed the instant motion. Defendant failed to submit any opposition prior to full submission of the motion on December 16, 2025 at 9:30 AM.

DISCUSSION

CPLR § 3025(b) provides that leave to amend or supplement pleadings "shall be freely given upon such terms as may be just." It is well settled that applications for leave to amend should be granted absent a showing that the proposed amendment would result in prejudice or surprise to the opposing party, or that the amendment is palpably insufficient or patently devoid of merit (*see MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 499–500 [1st Dept 2010]; *McGhee v Odell*, 96 AD3d 449, 450 [1st Dept 2012]).

In reviewing such a motion, the court's role is limited. The court does not resolve ultimate questions of fact or assess the evidentiary merits of the proposed claim; rather, it asks only whether the proposed amendment is clearly lacking in merit as a matter of law (*Lucido v Mancuso*, 49 AD3d 220, 229 [2d Dept 2008]; *United Fairness, Inc. v Town of Woodbury*, 113 AD3d 754 [2d Dept 2014]). Indeed, "[a] court shall not examine the legal sufficiency or merits of a pleading unless such insufficiency or lack of merit is clear and free from doubt" (*United Fairness, Inc.*, 113 AD3d at 755).

The burden of demonstrating prejudice rests squarely with the party opposing the amendment (*Kimso Apts., LLC v Gandhi*, 24 NY3d 403, 411 [2014]; *JDI Display Am., Inc. v Jaco Elecs., Inc.*, 188 AD3d 844, 846 [2d Dept 2020]). Prejudice requires a showing that the opposing party has been hindered in the preparation of its case or prevented from taking some measure in support of its position; it is not established merely because the amendment may expose the party to greater liability or require additional preparation (*Jacobson v McNeil Consumer & Specialty Pharms.*, 68 AD3d 652, 654 [1st Dept 2009]).

Measured against these well-settled principles, Plaintiff's proposed amendment plainly satisfies the standard for leave to amend. Defendant has failed to demonstrate — or even articulate — any cognizable prejudice that would result from permitting the amendment. The proposed § 1983 retaliation claim arises from the same nucleus of operative facts as the retaliation claim under Civil Service Law § 75-b that has been in the case since 2021 and survived motion practice in 2023. The alleged retaliatory acts, the protected activity, and the factual narrative remain unchanged; the proposed amendment merely advances an additional legal theory arising from those same occurrences.

Courts routinely permit amendments at far more advanced stages of litigation than this one, including after the completion of discovery, on the eve of trial, and even following judgment, so long as no prejudice is shown (*see McGrath v Town of Irondequoit*, 120 AD3d 968, 969 [4th Dept 2014]; *Detrinca v De Fillippo*, 165 AD2d 505, 505–506 [1st Dept 1991]). Here, discovery is in its early stages, and Defendant has not identified any evidence it is now unable to obtain, any defense it is foreclosed from asserting, or any strategic decision it made in reliance on the absence of a federal retaliation claim.

Nor does delay alone warrant denial of leave to amend. It is axiomatic that "mere lateness is not a barrier to the amendment" (*Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 [1983]; *Coleman v Worster*, 140 AD3d 1002, 1003 [2d Dept 2016]). Delay must be coupled with significant prejudice, which is entirely absent here (*Park v Home Depot U.S.A., Inc.*, 183 AD3d 645, 646 [2d Dept 2020]).

Accordingly, Defendant has not come close to overcoming the "heavy presumption of validity" favoring amendment (*McGhee*, 96 AD3d at 450). To the extent Defendant suggests that the proposed § 1983 claim is time-barred, that argument is unavailing. Under CPLR § 203(f), claims asserted in an amended pleading relate back to the original pleading when they arise out of the same conduct, transaction, or occurrence. Where, as here, a plaintiff seeks to add a new cause of action against a defendant already before the court, courts apply a particularly relaxed relation-back analysis (*Buran v Coupal*, 87 NY2d 173, 177 [1995]; *Duffy v Horton Mem. Hosp.*, 66 NY2d 473, 477 [1985]).

The Appellate Division, First Department, has made clear that, in such circumstances, the only relevant considerations are whether the original pleading placed the defendant on notice of the transactions or occurrences at issue and whether permitting the amendment would result in undue prejudice (*O'Halloran v Metropolitan Transp. Auth.*, 154 AD3d 83, 87 [1st Dept 2017]). Both conditions are satisfied here. Plaintiff's First Amended Complaint alleged retaliatory conduct based on protected activity, and Defendant has been defending against those allegations for years. The proposed § 1983 claim merely elaborates on that same theory of liability (*Flowers v Mombrun*, 212 AD3d 713, 715 [2d Dept 2023]; *Benjamin v 270 Malcolm X Dev., Inc.*, 214 AD3d 762, 764 [2d Dept 2023]).

Because Defendant had timely notice of the underlying facts and occurrences, and because no prejudice has been shown, the proposed § 1983 claim properly relates back to the original pleading.

In sum, Plaintiff's proposed Second Amended Complaint is neither palpably insufficient nor patently devoid of merit; it arises from the same transactions and occurrences already at issue in this litigation; and Defendant has failed to demonstrate any prejudice or surprise that would warrant denial of leave to amend. Consistent with the strong public policy embodied in CPLR § 3025(b) favoring the resolution of actions on their merits, Plaintiff's motion must be granted.

Accordingly, it is hereby

ORDERED that Plaintiff's motion for leave to amend the complaint pursuant to CPLR § 3025(b) is granted; and it is further

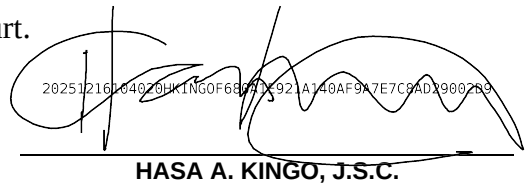
ORDERED that the Second Amended Complaint in the form annexed to the motion papers shall be deemed served upon service of a copy of this decision and order with notice of entry; and it is further

ORDERED that Defendant shall serve an answer to the Second Amended Complaint or otherwise respond thereto within twenty (20) days after service of this decision and order with notice of entry; and it is further

ORDERED that Plaintiff shall serve a copy of this decision and order with notice of entry upon Defendant and upon the Clerk of the Court, and the Clerk of the Court is directed to accept the Second Amended Complaint for filing; and it is further

ORDERED that the parties shall appear for a conference in the Differentiated Case Management Part located in Room 103 of the courthouse located at 80 Centre Street, New York, New York, 10013, on Tuesday March 31, 2026 at 2:00 PM

This constitutes the decision and order of the court.



12/16/2025
DATE

HASA A. KINGO, J.S.C.

CHECK ONE:		**CASE DISPOSED**			**X**	**NON-FINAL DISPOSITION**	
	X	**GRANTED**		**DENIED**		**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**