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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 JOHN LINDLAND, an individual,
12 Plaintiff,
13 v.
14 TUSIMPLE, INC.,
15 a California corporation; and
16 DOES 1–100, inclusive,
17 Defendants.

Case No.: 21-CV-417 JLS (MDD)

**ORDER DENYING WITHOUT
PREJUDICE PLAINTIFF’S MOTION
TO BIFURCATE AND DENYING
AS MOOT DEFENDANT’S
EVIDENTIARY OBJECTIONS**

(ECF Nos. 23, 28)

18 Presently before the Court is Plaintiff John Lindland’s (“Plaintiff” or “Mr.
19 Lindland”) Motion to Bifurcate (“Mot.,” ECF No. 23). Also before the Court are
20 Defendant TuSimple, Inc.’s (“Defendant” or “TuSimple”) Opposition to (“Opp’n,” ECF
21 No. 25) and Plaintiff’s Reply in support of (“Reply,” ECF No. 26) the Motion, as well as
22 Defendant’s Amended Evidentiary Objections (“Evid. Objs,” ECF No. 28).¹ The Court
23 vacated the hearing on the Motion and took the matter under submission pursuant to Civil
24 Local Rule 7.1(d)(1). *See* ECF No. 29. Having considered the Parties’ briefing and the
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28 ¹ Defendant filed evidentiary objections on December 28, 2021 (ECF No. 27) and amended evidentiary
objections later the same day (ECF No. 28). The Court treats the originally filed evidentiary objections
as withdrawn and considers only the later-filed document in this Order.

1 law, the Court **DENIES WITHOUT PREJUDICE** Plaintiff's Motion and **DENIES AS**
2 **MOOT** Defendant's Evidentiary Objections.

3 **BACKGROUND**

4 The Court thoroughly recounted the factual and procedural background of this
5 matter in its Order Denying Without Prejudice Defendant's Motion for Order for Choice
6 of Law Determination (ECF No. 31). The Court incorporates by reference the background
7 as set forth therein and outlines below only those facts relevant to the instant Motion.

8 Defendant hired Plaintiff on or about August 24, 2018, as a Functional Safety
9 Engineering Lead. *See* ECF No. 1 ("Compl.") ¶ 19; *see also* ECF No. 23-1 (Declaration
10 of John Lindland in Support of Motion ("Lindland Decl.)) ¶ 3. Plaintiff was offered stock
11 options prior to accepting Defendant's job offer. Lindland Decl. ¶ 4. The stock options
12 were "to vest on a three-year cliff vesting schedule in the amount of 30% after [Plaintiff's]
13 first year of employment, 30% after [his] second year of employment, and 40% after [his]
14 third year of employment." *Id.* Plaintiff's employment contract provides, in relevant part:

15 Upon approval by our Board of Directors, \$150,000 worth of
16 share options, subject to all required taxes and withholdings, will
17 be granted to you with 3-year-cliff vesting schedule as of
18 commencement of your employment with TuSimple. The
19 number of share options offered will be calculated upon the then
 valuation of TuSimple on the Valuation Date, i.e., six (6) months
 after the actual start date of your employment.

20 *Id.* Ex. A § 6. Defendant's Board of Directors approved the stock options after Plaintiff's
21 termination date. *Id.* ¶ 4. Plaintiff represents that "[r]eceiving stock options was a **key**
22 determination in [his] decision to accept employment with [Defendant]." *Id.* ¶ 5 (emphasis
23 in original).

24 On February 11, 2020, Plaintiff received an e-mail from Xin Zhao, Defendant's in-
25 house counsel, titled "Your Equity Incentive Awards." *Id.* Ex. B. The e-mail instructed
26 Plaintiff to "[p]lease let us know if you would like to select Options or SVAs for your
27 equity incentive. If you are granted Options, your exercise price would be \$2.43 per share."
28 *Id.* Plaintiff elected to receive stock options. *Id.* ¶ 7.

1 Plaintiff's employment with Defendant ended on or about March 18, 2020. Compl.
2 ¶ 49. Plaintiff contends the termination was pretextual and its timing strategic to avoid the
3 payment of his stock options. *Id.* ¶¶ 50, 54. Plaintiff contends that “[a]t no time were [his]
4 30% of vested stock options provided to [him].” Lindland Decl. ¶ 9. The Parties’
5 respective experts heavily dispute the value of the vested portion of the stock options. *Id.*
6 ¶ 5; *see also* Mot. at 2.²

7 In this action, Plaintiff asserts claims against Defendant for retaliation in violation
8 of a public policy, wrongful termination, hostile work environment, breach of the implied
9 covenant of good faith and fair dealing, and conversion. *See generally* Compl. He
10 potentially seeks the full value of his share options as damages. *See id.* at Prayer.

11 LEGAL STANDARD

12 “For convenience, to avoid prejudice, or to expedite and economize, the court may
13 order a separate trial of one or more separate issues[.]” Fed. R. Civ. P. 42(b). The rule
14 “confers broad discretion upon the district court to bifurcate a trial[.]” *Zivkovic v. S. Cal.*
15 *Edison Co.*, 302 F.3d 1080, 1088 (9th Cir. 2002). Factors relevant to bifurcation include
16 “[1] avoiding prejudice, [2] separability of the issues, [3] convenience, [4] judicial
17 economy, and [5] reducing risk of confusion.” *Bates v. United Parcel Serv.*, 204 F.R.D.
18 440, 448 (N.D. Cal. 2001) (citation omitted). The moving party carries the “burden of
19 proving that the bifurcation will promote judicial economy and avoid inconvenience or
20 prejudice to the parties.” *Spectra–Physics Lasers, Inc. v. Uniphase Corp.*, 144 F.R.D. 99,
21 101 (N.D. Cal. 1992).

22 “Reverse bifurcation of liability and damages is a sub-species of bifurcation most
23 often employed in large, complex product liability cases,” and “is most useful where the
24 parties have excellent information about the likelihood of success on the issue of liability
25 and the real sticking points are the individual issues of causation and damages.” *STC UNM*
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28 ² In citing to Plaintiff's Motion, the Court refers to the blue numbers stamped in the upper righthand corner.

1 *v. Intel Corp.*, No. 10-CV-1077 RB/WDS, 2011 WL 7562686, at *1 (D.N.M. Dec. 22,
2 2011) (citations and internal quotation marks omitted).

3 ANALYSIS

4 Plaintiff seeks to bifurcate the trial into two phases. In the first phase, Plaintiff seeks
5 to establish the value of the 30% of his stock options he claims were vested at the time of
6 his termination. Mot. at 11–12. This phase would rely primarily on expert testimony
7 regarding the proper calculations. *Id.* at 12. Plaintiff waives his right to a jury trial on this
8 issue. *Id.* at 11. The second phase would focus on Defendant’s purported liability for
9 wrongful termination and will focus on evidence of Defendant’s allegedly retaliatory
10 motives. *Id.* at 12–13. Assuming Defendant is found liable in the second phase, Plaintiff
11 would then seek to recover the remaining 70% of his stock options that would have vested
12 but-for Defendant’s wrongful termination of Plaintiff. *Id.* at 13.

13 Plaintiff argues these “issues are readily separable.” *Id.* at 14. Plaintiff claims
14 bifurcation will support economy as he is willing to dismiss the remainder of this action
15 should his expert witness’s calculation of the value of the stock options already vested be
16 adjudged correct by the Court, which could moot the proposed second phase. *Id.* at 13. He
17 also claims that “determination of the damages issue first would serve to expedite the
18 liability phase as to the damages Plaintiff seeks,” as “a jury would not be required to
19 calculate various valuation methods and would not be required to consider damages until
20 the appropriate time.” *Id.* at 14. Plaintiff claims bifurcation will promote convenience and
21 judicial economy since “the parties need not waste the court’s limited resources in
22 presenting an issue to a jury that can easily be determined by the court.” *Id.* at 15. Plaintiff
23 claims that, absent “the proper calculation of the vested Stock Options, Plaintiff will be
24 unable to ascertain the exact sum of damages he seeks in the second trial phase, which will
25 needlessly confuse and mislead a jury, let alone the lawyers.” *Id.* at 13. Plaintiff contends
26 that the valuation issues would confuse the jury and would potentially prejudice him “if he
27 argues one number, Defendant argues another, and the jury subsequently makes a decision
28 based on a number that is not the final number used to calculate the award.” *Id.* at 15–16.

1 Finally, Plaintiff argues that he will be prejudiced if the liability phase precedes the
2 damages phase “in that the outcome of the amount of Plaintiff’s damages will affect the
3 relief afforded to Plaintiff.” *Id.* at 16.

4 Conversely, Defendant argues that “damages are interwoven with [the issue] of
5 liability,” and the Complaint does not contain “any separate discernable claim for stock
6 options or the valuation of stock options that can be bifurcated from any of the other claims
7 or issues in the Complaint.” Opp’n at 6. Indeed, Plaintiff’s fifth claim is for conversion
8 of his stock options, “which is an intertwined issue that is being proposed to be bifurcated.”
9 *Id.* at 7. Defendant further contends that “great inconvenience would be involved in
10 determining Plaintiff’s potential damages requested as set forth in the Motion, without
11 knowing whether his first, second, and third options were vested – a determination that can
12 only be made *after* deciding whether Plaintiff was wrongfully terminated.” *Id.* Defendant
13 suggests that, while trying equitable issues before legal issues or liability before damages
14 is supported by authority, Plaintiff’s request to try damages first is not. *Id.* at 8 (“As much
15 as it pains me to say, the bifurcation requested and suggested by Plaintiff is borderline
16 absurd.”). Determining liability first could forego the need to assess damages at all. *Id.* at
17 8–9. Defendant argues that “two trials, multiple decisions, having its expert during both
18 trials, and having to handle an overlap of related issues . . . will result in increased litigation
19 costs” and could result in inconsistent judgments. *Id.* at 8. Finally, Defendant argues that
20 jury confusion is not a concern, as the jury, once guided by experts in the relevant valuation
21 methods, easily could compute the value of the stock options. *Id.* at 9.

22 As noted previously, “[a]ddressing the damages stage ahead of the liability stage, or
23 ‘reverse bifurcation,’ is less common” in bifurcated matters. *Cocina Cultura LLC v. State*,
24 No. 3:20-CV-01866-IM, 2021 WL 3836840, at *10 (D. Or. Aug. 27, 2021) (citing, *inter*
25 *alia*, Wright & Miller, 9A Fed. Prac. & Proc. Civ. § 2390 (3d ed.)). Indeed, it is “a
26 mechanism other courts have labeled ‘extraordinary’ and ‘drastic.’” *STC UNM*, 2011 WL
27 7562686, at *2 (citation omitted). Thus, “while so-called reverse bifurcation has found
28 some favor in the arena of complex personal injury torts, it remains relatively uncommon

1 in ordinary litigation.” *Nye v. Ingersoll Rand Co.*, No. CIV. 08-3481 DRD, 2011 WL
2 4017741, at *3 (D.N.J. Sept. 8, 2011) (footnotes omitted).

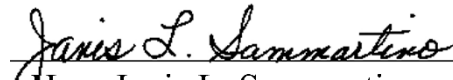
3 The Court finds that, on the record presently before it, Plaintiff has not carried his
4 burden of proving that the Rule 42 factors favor bifurcation. Given Plaintiff’s
5 representation that the stock option valuation issue “is taking 95% of the time we are
6 spending on this case,” Mot. at 3, it is not clear how determining this issue first will
7 expedite or economize this action or promote convenience. Nor has Plaintiff established
8 that bifurcation is necessary to avoid prejudice given that Plaintiff has not convinced the
9 Court that proper jury instructions would fail to alleviate any potential prejudice or
10 confusion. Even assuming bifurcation were appropriate, the Court is not convinced that
11 here, where liability appears hotly contested, reverse bifurcation is an appropriate
12 mechanism. Plaintiff provides no sound justification as to why the issue of liability could
13 not be determined first and the issue of damages second. Accordingly, the Court **DENIES**
14 Plaintiff’s Motion at this time.³

15 CONCLUSION

16 In light of the foregoing, the Court **DENIES** Plaintiff’s Motion (ECF No. 23),
17 **WITHOUT PREJUDICE** to Plaintiff renewing his motion after pretrial motion practice
18 has been completed, and **DENIES AS MOOT** Defendant’s Evidentiary Objections (ECF
19 No. 28).

20 IT IS SO ORDERED.

21 Dated: April 5, 2022


22 Hon. Janis L. Sammartino
23 United States District Judge
24

25 ³ Defendant argues that the Court should strike and/or not consider the Declaration of Stefano Riznyk in
26 Support of Plaintiff’s Reply (“Riznyk Decl.,” ECF No. 26-1) and the two exhibits attached thereto because
27 they are not responsive to the arguments made in Defendant’s Opposition and thus are new arguments and
28 evidence not properly raised in a reply brief. Evid. Objs. at 3. Given that the Court did not rely on the
Riznyk Declaration or the attached exhibits in ruling on this Motion, the Court **DENIES AS MOOT**
Defendant’s Evidentiary Objections.