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Attorneys for Defendants
GINA M. AUSTIN and
AUSTIN LEGAL GROUP APC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual,
JOE HURTADO, an individual

Plaintiffs,

v.

LARRY GERACI, an individual;
REBECCA BERRY a/k/a REBECCA
ANN BERRY RUNYAN, an
individual; MICHAEL R.
WEINSTEIN, an individual; SCOTT
TOOTHACRE, an individual;
FERRIS & BRITTON APC, a
California corporation; GINA M.
AUSTIN, an individual; AUSTIN
LEGAL GROUP APC, a California
corporation; SEAN MILLER, an
individual; FINCH THORTON &
BAIRD, a limited liability
partnership; DAVID DEMIAN, an
individual; ADAM WITT, an
individual; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: 18-cv-02751-GPC-MDD

**NOTICE OF MOTION AND EX
PARTE MOTION FOR
EXTENSION OF TIME TO
RESPOND TO PLAINTIFFS'
COMPLAINT**

Courtroom: 2D (2nd Floor)
District Judge: Gonzalo P. Curiel
Magistrate Judge: Andrew G. Schopler
Complaint Filed: December 6, 2018
Trial Date: None

Pursuant to Southern District of California Local Rule 12.1, Defendant GINA M. AUSTIN, an individual, and Defendant AUSTIN LEGAL GROUP APC, a California corporation (“Defendants”), hereby file this Ex Parte Motion for Extension of Time to File a Responsive Pleading to Plaintiffs’ Complaint.

1. On or about December 6, 2018, Plaintiffs filed this Complaint, now assigned Case No.: 3:18-cv-02751-GPC-MDD. Thereafter, on December 20, 2018, the Clerk of the Court, *sua sponte*, deemed this matter related to low-numbered Case No.: 3:18-cv-00325-GPC-MDD, filed February 9, 2018.

2. Defendants were served with the Summons and Complaint on March 5, 2019, necessitating a responsive pleading due March 26, 2019.

3. Defendants intend to respond to the Complaint with a substantive pleading challenge.

4. The related case was *sua sponte* stayed by this Court by Order dated February 28, 2019, pending a resolution of a parallel state court action pursuant to the *Colorado River Doctrine*. (Dkt. No. 7, in Case No.: 3:18-cv-00325-GPC-MDD.) The court found all eight-factors of assessing appropriateness of *Colorado River Doctrine* to favor a stay and noted Plaintiff was “clearly forum shopping.” (Dkt. No. 7, at 10:6-8, in Case No.: 3:18-cv-00325-GPC-MDD.)

5. On March 22, 2019, counsel for Defendants contacted the Clerk to determine whether the Court intended to also stay this matter, as it involves the same or substantially the same parties or property, calls for a determination of the same or substantially identical questions of law, and arises from the same or substantially identical transactions, happenings, or events.

6. Because the Court did not *sua sponte* stay or consolidate the two related federal cases, Defendants are evaluating the procedural complexities of a substantive pleading challenge to this Complaint, and its perceivable effect on matters in the related federal stayed case.

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7. Plaintiffs currently have one state court action pending, this instant federal court action pending, and one federal court action stayed. All actions arise from the same or substantially identical transactions, events, and facts, and involve the same or substantially the same parties. The two federal actions include both federal claims and state law claims. This Court is not sitting in diversity and has only supplemental jurisdiction over the state law causes of action.

8. Defendant is analyzing these procedural intricacies before filing a responsive pleading to avoid unnecessary duplicity, and efficiently and effectively file a substantive response without wasting judicial time and resources.

For these reasons, Defendants seek an extension of 30 days, up to and including April 25, 2019, to respond to the Complaint.

Good cause exists to grant the relief requested. Reasons of judicial economy favor foreseeable procedural issues be determined prior to Defendants preparing and filing a substantive, and possibly dispositive, pleading challenge to the Complaint.

**PETTIT KOHN INGRASSIA LUTZ &
DOLIN PC**

Dated: March 22, 2019

By: s/ Julia Dalzell. Esq.
Douglas A. Pettit, Esq.
Julia Dalzell, Esq.
Attorneys for Defendants
**GINA M. AUSTIN and AUSTIN LEGAL
GROUP APC**
dpettit@pettitkohn.com
jdalzell@pettitkohn.com

CERTIFICATE OF SERVICE

I hereby certify that the following document(s):

**NOTICE OF MOTION AND EX PARTE MOTION FOR
EXTENSION OF TIME TO RESPOND TO PLAINTIFFS'
COMPLAINT**

was served on this date to counsel of record:

☐ **BY MAIL:** By placing a copy of the same in the United States Mail, postage prepaid, and sent to their last known address(es) listed below.

☐ **BY E-MAIL DELIVERY:** Based on an agreement of the parties to accept service by e-mail or electronic transmission, I sent the above document(s) to the person(s) at the e-mail address(es) listed below. I did not receive, within a reasonable amount of time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ **BY ELECTRONIC TRANSMISSION:** I electronically filed the above document(s) with the Clerk of the Court using the CM/ECF system. The CM/ECF system will send notification of this filing to the person(s) listed below.

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E-mail: JPA@jacobaustinesq.com
Attorney for Plaintiffs
DARRYL COTTON and
JOE HURTADO

Executed on **March 22, 2019**, at San Diego, California.

s/ Patricia L. Green
Patricia L. Green

Douglas A. Pettit, Esq., Bar No. 160371
Julia Dalzell, Esq., Bar No. 323335
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Attorneys for Defendants
GINA M. AUSTIN and
AUSTIN LEGAL GROUP APC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual,
JOE HURTADO, an individual

Plaintiffs,

v.

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REBECCA BERRY a/k/a REBECCA
ANN BERRY RUNYAN, an
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WEINSTEIN, an individual; SCOTT
TOOTHACRE, an individual;
FERRIS & BRITTON APC, a
California corporation; GINA M.
AUSTIN, an individual; AUSTIN
LEGAL GROUP APC, a California
corporation; SEAN MILLER, an
individual; FINCH THORTON &
BAIRD, a limited liability
partnership; DAVID DEMIAN, an
individual; ADAM WITT, an
individual; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: 18-cv-02751-GPC-MDD

**DECLARATION OF JULIA
DALZELL IN SUPPORT OF
MOTION AND EX PARTE
MOTION FOR EXTENSION OF
TIME TO RESPOND TO
PLAINTIFFS' COMPLAINT**

Courtroom: 2D (2nd Floor)
District Judge: Gonzalo P. Curiel
Magistrate Judge: Andrew G. Schopler
Complaint Filed: December 6, 2018
Trial Date: None

1 I, Julia Dalzell, declare as follows:

2 1. I am an attorney duly licensed to practice law before all of the courts
3 of the State of California, and am an associate with the law firm of Pettit Kohn
4 Ingrassia Lutz & Dolin PC, attorneys of record for Defendants GINA M. AUSTIN
5 and AUSTIN LEGAL GROUP APC (“Defendants”), in the above-captioned case.
6 I am familiar with the facts and proceedings of this case and if called as a witness, I
7 could and would competently testify to the following facts of my own personal
8 knowledge.

9 1. On or about December 6, 2018, Plaintiffs filed this Complaint, now
10 assigned Case No.: 3:18-cv-02751-GPC-MDD. Thereafter, on December 20, 2018,
11 the Clerk of the Court, *sua sponte*, deemed this matter related to low-numbered
12 Case No.: 3:18-cv-00325-GPC-MDD, filed February 9, 2018.

13 2. Defendants were served with the Summons and Complaint on March
14 5, 2019, necessitating a responsive pleading due March 26, 2019.

15 3. Defendants intend to respond to the Complaint with a substantive
16 pleading challenge.

17 4. The related case was *sua sponte* stayed by this Court by Order dated
18 February 28, 2019, pending a resolution of a parallel state court action pursuant to
19 the *Colorado River Doctrine*. (Dkt. No. 7, in Case No.: 3:18-cv-00325-GPC-
20 MDD.) The court found all eight-factors of assessing appropriateness of *Colorado*
21 *River Doctrine* to favor a stay and noted Plaintiff was “clearly forum shopping.”
22 (Dkt. No. 7, at 10:6-8, in Case No.: 3:18-cv-00325-GPC-MDD.)

23 5. On March 22, 2019, I contacted the Clerk to determine whether the
24 Court intended to also stay this matter, as it involves the same or substantially the
25 same parties or property, calls for a determination of the same or substantially
26 identical questions of law, and arises from the same or substantially identical
27 transactions, happenings, or events.

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7. Plaintiffs currently have one state court action pending, this instant federal court action pending, and one federal court action stayed. All actions arise from the same or substantially identical transactions, events, and facts, and involve the same or substantially the same parties. The two federal actions include both federal claims and state law claims. This Court is not sitting in diversity and merely has supplemental jurisdiction over the state law causes of action.

9. For these reasons, Defendants seek an extension of 30 days, up to and including April 25, 2019, to respond to the Complaint. Good cause exists to grant the relief requested. Reasons of judicial economy favor foreseeable procedural issues be determined prior to Defendants preparing and filing a substantive, and possibly dispositive, pleading challenge to the Complaint.

22 Executed this 22nd day of March 2019, at San Diego, California.

CERTIFICATE OF SERVICE

I hereby certify that the following document(s):

**DECLARATION OF JULIA DALZELL IN SUPPORT OF MOTION
AND EX PARTE APPLICATION FOR EXTENSION OF TIME TO
RESPOND TO PLAINTIFFS' COMPLAINT**

was served on this date to counsel of record:

☐ **BY MAIL:** By placing a copy of the same in the United States Mail, postage prepaid, and sent to their last known address(es) listed below.

☐ **BY E-MAIL DELIVERY:** Based on an agreement of the parties to accept service by e-mail or electronic transmission, I sent the above document(s) to the person(s) at the e-mail address(es) listed below. I did not receive, within a reasonable amount of time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ **BY ELECTRONIC TRANSMISSION:** I electronically filed the above document(s) with the Clerk of the Court using the CM/ECF system. The CM/ECF system will send notification of this filing to the person(s) listed below.

Jacob P. Austin, Esq.
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Attorney for Plaintiffs
DARRYL COTTON and
JOE HURTADO

Executed on **March 22, 2019**, at San Diego, California.

s/ Patricia L. Green
Patricia L. Green