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ERIC R. DEITZ (SBN: 222565)

[edeitz@grsm.com](mailto:edeitz@grsm.com)

TATIANA DUPUY (SBN: 246705)

[tdupuy@grsm.com](mailto:tdupuy@grsm.com)

GORDON & REES SCULLY MANSUKHANI

101 West Broadway, Suite 2000

San Diego, California 92101

Tel: (619) 696-6700

Fax: (619) 696-7124

Attorneys for Defendants

MICHAEL R. WEINSTEIN, SCOTT TOOTHACRE, and FERRIS & BRITTON, APC.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual;  
JOE HURTADO, an individual,

Plaintiffs,

vs.

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 FINACH  
THORTON & BAIRD, a limited  
liability partnership, DAVID DEMIAN,  
an individual, ADAM WITT, an  
individual; and DOES 1 through 50,  
inclusive,

Defendants,

Case No. 3:18-cv-02751-GPC-MDD

**DEFENDANTS MICHAEL R.  
WEINSTEIN, SCOTT TOOTHACRE  
AND FERRIS & BRITTON, APC,'S  
NOTICE OF MOTION AND  
MOTION TO DISMISS, OR IN THE  
ALTERNATIVE TO STAY THE  
CASE; MOTION TO DISMISS  
PLAINTIFF JOE HURTADO  
PURSUANT TO FRCP 12(b)(6)**

Hearing Date: May 24, 2019

Hearing Time: 1:30 p.m.

Judge: Hon. Gonzalo P. Curiel

Courtroom: 2190

Complaint Filed: December 7, 2018

Trial Date: Not set.

**[Memorandum of Points; and  
Authorities; Declarations of Michael R.  
Weinstein, Scott Toothacre, and Rachel  
Prendergast; and Request for Judicial  
Notice filed concurrently]**

Gordon Rees Scully Mansukhani, LLP  
101 W. Broadway, Suite 2000  
San Diego, CA 92101

**TO THIS HONORABLE COURT, TO ALL PARTIES, AND TO THEIR  
ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on May 24, 2019, at 1:30 p.m. or as soon thereafter as the matter may be heard before the Honorable Gonzalo P. Curiel, in Courtroom 2190 of the United States District Court for the Southern District of California, located at 221 W. Broadway, San Diego, CA 92101, specially appearing Defendants Michael R. Weinstein, Scott Toothacre, and Ferris & Britton, APC. (“Defendants”), hereby challenge the untimely and improper service of the Summons and Complaint in this matter, and will and hereby do respectfully move this Honorable Court for an order dismissing the Complaint of Plaintiffs Darryl Cotton and Joe Hurtado (“Plaintiffs”), pursuant to Fed. R. Civ. P. 12(b)(5); 4(e); 4(h)(1)(b); 4(m); and Cal. Civ. Proc. Code § 416.10(b) and § 415.20(b), or in the alternative to quash service of summons. In addition, Defendants specially move this Court for an order dismissing the Complaint based upon the concurrently pending San Diego Superior Court Case<sup>1</sup> and the stayed Southern District Case<sup>2</sup>, or in the alternative to stay this case. Lastly, Defendants specially move this court for an order dismissing Plaintiff Joe Hurtado pursuant to Fed. R. Civ. P. 12(b)(6).

This motion is based upon this Notice of Motion and Motion; the accompanying Memorandum of Points and Authorities; the Declaration of Rachel M. Prendergast; the declaration of Michael R. Weinstein; the declaration of Scott H. Toothacre; and all other papers submitted and filed with this notice, the pleadings and papers on file in this action, all matters judicially noticeable, and on such further documentary evidence and oral argument as may be heard by this Court.

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<sup>1</sup> *Larry Geraci v. Darryl Cotton*, San Diego County Superior Court Case No. 37-2017-00010073-CU-BC-CTL.

<sup>2</sup> *Darryl Cotton v. Larry Geraci*, et al. United States District Court for the Southern District of California Case No. 3:18-cv-000325-GPC-MDD.



1 Dated: March 26, 2019

GORDON & REES SCULLY  
MANSUKHANI

By: /s/ Eric R. Deitz

Eric R. Deitz  
Tatiana Dupuy  
Attorneys for Defendant  
MICHAEL R. WEINSTEIN;  
SCOTT TOOTHACRE and FERRIS  
& BRITTON, APC.

Gordon Rees Scully Mansukhani, LLP  
101 W. Broadway, Suite 2000  
San Diego, CA 92101