

1 Steven W. Blake, Esq., SBN 235502
Andrew E. Hall, Esq., SBN 257547
2 Danielle S. Ward, Esq., SBN 270220
BLAKE LAW FIRM
3 533 2nd Street, Suite 250
Encinitas, CA 92024
4 Phone: (858) 232-1290
Email: *steve@blakelawca.com*
5 Email: *andrew@blakelawca.com*

6 Attorneys for Defendant,
STEPHEN LAKE
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**
10

11 AMY SHERLOCK, an individual and on
12 behalf of her minor children, T.S. and S.S.,
13 ANDREW FLORES, an individual,

14 Plaintiffs,

15 vs.

16 GINA M. AUSTIN, an individual; AUSTIN
LEGAL GROUP, a professional corporation,
17 LARRY GERACI, an individual, REBECCA
BERRY, an individual; JESSICA
18 MCELFFRESH, an individual; SALAM
RAZUKI, an individual; NINUS MALAN, an
individual; FINCH, THORTON, AND
19 BARID, a limited liability partnership;
ABHAY SCHWEITZER, an individual and
20 dba TECHNE; JAMES (AKA JIM)
BARTELL, an individual; NATALIE
21 TRANG-MY NGUYEN, an individual,
AARON MAGAGNA, an individual;
22 BRADFORD HARCOURT, an individual;
SHAWN MILLER, an individual; LOGAN
23 STELLMACHER, an individual;
EULENTHIAS DUANE ALEXANDER, an
24 individual; STEPHEN LAKE, an individual,
ALLIED SPECTRUM, INC., a California
25 corporation, PRODIGIOUS COLLECTIVES,
LLC, a limited liability company, and DOES 1
26 through 50, inclusive,

27 Defendants.
28

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

02/22/2023 at 03:44:00 PM

Clerk of the Superior Court
By E- Filing, Deputy Clerk

Case No. **37-2021-00050889-CU-AT-CTL**

**DEFENDANT STEPHEN LAKE'S
OPPOSITION TO EX PARTE APPLICATION
FOR STAY OF ACTION**

Hearing Date: February 23, 2023
Hearing Time: 8:30 a.m.

Case Filed: December 3, 2021
Department: Dept. C-75
Judge: Hon. James A. Mangione
Trial Date: Not Set

1 **TO THE COURT, ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 Defendant STEPHEN LAKE (“Defendant”), hereby opposes the *ex parte* application of
3 Plaintiffs, attorney Andrew Flores, Amy Sherlock and her two minor children, T.S. and S.S.
4 (“Plaintiffs”) for an order seeking a stay of this action. The Opposition is based on the following
5 argument.

6 **A. INTRODUCTION**

7 Because it is unclear whether Plaintiffs’ application is targeting a stay of the action as to
8 Defendant GINA AUSTIN (“AUSTIN”) only or to *all* Defendants, Defendant offers this opposition
9 to the extent that Plaintiffs are attempting to stay their case against Defendant. Plaintiffs’ serial *ex*
10 *parte* application to stay the case offers the same argument and the same facts present at the time
11 their first *ex parte* application to stay – also based, like this one, on *CCP* § 916(a) – was denied back
12 on October 27, 2022. [*See Dkt. No. 181*]. For the same reasons the Court outlined in denying
13 Plaintiffs’ request in October, Plaintiffs’ second bite at the apple should also be denied. The only
14 remaining claims against Defendant do not include or reference to AUSTIN, whose appeal is the
15 subject of Plaintiffs’ *ex parte* application. Thus, Plaintiffs cannot reasonably argue that the claims
16 against Defendant are “embraced” by the appeal, nor do Plaintiffs even feign an attempt to do so.

17 As it relates to Defendant, Plaintiffs request should be denied and the case should be
18 permitted to move forward.

19 **B. LEGAL ARGUMENT**

20 As Plaintiffs point out, the purpose of *CCP* § 916(a) is to stay all further trial court
21 proceedings on “the matters embraced” in or “affected by” the appeal. Notably, the trial court may
22 proceed upon any other matter embraced in the action and not affected by the judgment or order. *Id.*
23 The purpose is to prevent a judge from altering the appealed judgment or order by conducting other
24 proceedings that may affect it, thereby causing the appeal to be futile. *Varian Med. Sys., Inc. v.*
25 *Delfino* (2005) 35 Cal.4th 189, 189. The Court must consider the possible outcomes of the appeal in
26 relation to the proceeding and its possible results; whether a matter is embraced in or affected by a
27 judgment or order within the meaning of *CCP* § 916 depends on whether the proceedings on the
28 matter would have any effect on the “effectiveness” of the appeal. *Id.* Plaintiffs reliance on *Varian*

1 misstates the holding. Notably, the *Varian* court held that an appeal of an order granting or denying
2 an anti-SLAPP motion *automatically stays* all further trial court proceedings on the merits ***of the***
3 ***causes of action targeted by the motion***. *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th
4 180, 191-192.

5 First and foremost, the Court entertained this same motion by Plaintiffs back on October 26,
6 2022. Based on the same arguments now raised again in this motion, the Court ***denied*** Plaintiffs’
7 request. Nothing has changed and Plaintiffs have offered no reason as to why the Court should
8 overturn its prior ruling.

9 Second, the causes of action targeted by the Austin anti-SLAPP are ***wholly unrelated to***
10 ***Plaintiffs’ claims against Defendant***. The claims against Defendant stem from his involvement with
11 the Balboa Property and the Ramona Property. *See FAC* ¶¶ 67, 70. However, in her anti-SLAPP
12 motion, Austin declared under the penalty of perjury that she had no involvement with Ramona
13 Property and her involvement with the Balboa Property was helping Mr. Sherlock fill out a CUP
14 application, which has nothing to do with the claims against Austin that are the subject of the anti-
15 SLAPP. *See ROA* 45, Austin Declaration, ¶¶ 2-3.

16 Third, there is no tie to the remaining causes of action against Defendant and Austin.
17 Plaintiff’s First and Seventh Causes of Action for Violation of the Cartwright Act and Conspiracy
18 have respectively been dismissed. Plaintiff’s Second Cause of Action for Conversion is not stated
19 against Austin – only Defendant, Harcourt, Prodigious, and Allied. Plaintiff’s Third Cause of Action
20 for Civil Conspiracy likewise makes no reference to Austin and is stated only against Defendant and
21 Harcourt. Plaintiff’s Fourth Cause of Action for Declaratory Relief is, again, not stated against
22 Austin but only against Lake, Harcourt, Razuki, Malan, Prodigious, and Allied. Plaintiff’s Fifth and
23 final Cause of Action alleged against Defendant for Unfair Competition offers nothing that would
24 even remotely tie Defendant and Austin.

25 Put simply, there is nothing in the *ex parte* application or the Austin anti-SLAPP that would
26 provide any indication that the causes of action targeted by the Austin anti-SLAPP are the same or
27 even similar to those asserted against Defendant. Nor is there any concern whatsoever that any ruling
28 on the claims against Defendant would impact in any way the effectiveness of the Austin anti-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


SLAPP judgment on appeal. Plaintiff certainly offers nothing in the *ex parte* papers that would support a stay of the claims against Defendant.

C. CONCLUSION

For the above stated reasons, along with those relied upon the Court in denying the same motion brought by Plaintiffs back on October 26, 2022, the *ex parte* application should be denied.

Dated: February 22, 2023

BLAKE LAW FIRM

By: 

STEVEN W. BLAKE, ESQ.
ANDREW E. HALL, ESQ.
Attorneys for Defendant,
STEPHEN LAKE