

**Appellate Case No. 22-56077**

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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DARRYL COTTON, an individual  
Plaintiff/Appellant,

v.

GINA M. AUSTIN, individually, JESSICA CLAIRE McELFRESH, individually,  
and DAVID S. DEMIAN, individually,  
Defendants/Respondents.

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Appeal From a Judgment in the United States District Court  
For the Southern District of California  
Case No. 3:18-cv-00325-JO-DEB  
The Honorable District Judge Jinsook Ohta

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**APPELLEE JESSICA CLAIRE MCELFRSH'S REPLY TO  
APPELLANT'S OPPOSITION TO MOTION TO DISMISS APPEAL FOR  
LACK OF JURISDICTION**

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JESSICA CLAIRE McELFRESH, individually

**I. THE MOTION TO DISMISS SHOULD BE GRANTED FOR LACK OF JURISDICTION BECAUSE THIS APPEAL IS UNTIMELY**

Appellant DARRYL COTTON's ("plaintiff") opposition to appellee JESSICA CLAIRE McELFRESH's ("Ms. McElfresh") motion to dismiss this appeal fails to address the motion. The motion should therefore be granted.

Ms. McElfresh's motion is made on the ground that this Court lacks jurisdiction to hear plaintiff's appeal because he did not file it within 30 days. A notice of appeal must be filed within 30 days after entry of judgment. 28 U.S.C.S. § 2107(a); Fed. R. App. Proc. 4(a)(1)(A). Here, the judgment dismissing plaintiff's Second Amended Complaint against Ms. McElfresh was entered on September 21, 2022 and plaintiff did not file his notice of appeal until November 16, 2022. Accordingly, plaintiff's appeal was not timely and must be dismissed.


In his opposition, plaintiff admits that his notice of appeal was not timely and goes on to argue the merits of another lawsuit he lost against Larry Geraci (*Larry Geraci v. Darryl Cotton*, Superior Court of California, County of San Diego 37-2017-00010073-CU-BC-CTL, referred to in plaintiff's opposition as "*Cotton I*").

**II. CONCLUSION**

Ms. McElfresh therefore respectfully requests that the Court dismiss plaintiff's appeal.

Dated: January 10, 2023      Respectfully submitted,

WALSH MCKEAN FURCOLO LLP

By:   
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Laura Stewart  
Attorneys for Defendant/Respondent JESSICA  
CLAIRE McELFRESH


**CERTIFICATE OF COMPLIANCE**

**Appellate Case No. 22-56077**

I certify that Appellee Jessica McElfresh's Reply to Appellant's Opposition to Motion to Dismiss for Lack of Jurisdiction complies with Ninth Circuit Rule 27-1(1)(d) and Fed. R. App. P. 27(d)(2)(A) because it contains 197 words.

I certify that this Motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6).

Dated: January 10, 2023      WALSH MCKEAN FURCOLO LLP

By:   
\_\_\_\_\_  
Laura Stewart  
Attorneys for Defendant/Respondent JESSICA  
CLAIRE McELFRESH

**CERTIFICATE OF SERVICE  
FOR CASE NUMBER 22-56077**

I hereby certify that on January 10, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

**APPELLEE JESSICA CLAIRE McELFRESH'S REPLY TO  
APPELLANT'S OPPOSITION TO MOTION TO DISMISS APPEAL FOR  
LACK OF JURISDICTION**

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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Dated: January 10, 2023

  
Michelle Davis