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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual,

Plaintiff,

vs.

GINA M. AUSTIN, an individual;  
JESSICA MCELFRISH, an individual;  
DAVID S. DEMIAN, an individual;

Defendants.

CASE NO. 3:18-cv-00325-JO-DEB

**DEFENDANT DAVID DAMIEN'S  
OPPOSITION TO PLAINTIFF'S EX  
PARTE APPLICATION FOR  
EXTENSION OF TIME TO FILE  
AMENDED COMPLAINT**

Judge: The Hon. Jinsook Ohta  
Crtrm.:4C

Defendant DAVID S. DEMIAN ("Defendant"), by and through his respective counsel, hereby opposes Plaintiff's Ex Parte Application for Extension of Time to File Amended Complaint.

**I. PLAINTIFF'S EX PARTE SHOULD BE DENIED**

This action arises from Plaintiff Daryl Cotton's ("Plaintiff") breach of contract lawsuit against defendant Larry Geraci ("Geraci") in Superior Court (*Larry Geraci v. Darryl Cotton*, Superior Court of California, County of San Diego 37-2017-00010073-CU-BC-CTL ("Cotton I"). In this action, Plaintiff attempts to re-litigate issues that have already been presented in the state court action and resolved via judgment following a jury trial.

Plaintiff initially filed his complaint in this action on February 9, 2019, and

4865-8267-1881.1

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1 filed a First Amended Complaint (“FAC”) on May 13, 2020 adding David Demian  
 2 (“Demian”) as a defendant. Demian had briefly represented Plaintiff in *Cotton I* and  
 3 withdrew as counsel early in the litigation. Subsequently, Cotton proceeded with the  
 4 litigation represented by other counsel. The *Cotton I* action was tried before a jury  
 5 and resulted in a judgment in favor of Geraci in August 2019, which was affirmed  
 6 on appeal.

7 Plaintiff’s FAC brought causes of action against Geraci, Geraci’s counsel, and  
 8 the judges who previously presided over the *Cotton I* litigation and this action,  
 9 claiming the *Cotton I* judgment was erroneous and procured by “fraud” and “judicial  
 10 bias.” Plaintiff’s FAC against Demian alleged claims for Declaratory Relief seeking  
 11 to void that judgment and Punitive Damages. Demian previously filed a motion to  
 12 dismiss those claims, which this court granted.

13 After this Court also granted Geraci and the judges’ motions to dismiss with  
 14 prejudice, plaintiff filed a Second Amended Complaint on November 22, 2021  
 15 against defendants Gina Austin, Jessica Mcelfresh and David Demian, alleging two  
 16 causes of action for violation of 42 U.S.C. § 1983 and 42 U.S.C. § 1985 against each  
 17 defendant. Plaintiff’s new causes of action also have no merit as set forth in  
 18 defendants’ respective pending motions to dismiss, which are scheduled to be heard  
 19 on March 16, 2022.

20 Plaintiff now moves ex parte requesting a 30 day extension of time. Although  
 21 the caption states “to file amended complaint,” plaintiff’s ex parte application seeks  
 22 the extension to hire counsel and/or time to file responses to the pending motions to  
 23 dismiss. Plaintiff claims that an attorney at the law firm of Tiffany & Bosco has  
 24 agreed to represent him in this action, but *only if* he obtains an order voiding the  
 25 State Court judgment against Geraci in *Cotton I*. Plaintiff recently filed another  
 26 lawsuit against Geraci in San Diego Superior Court seeking to void the judgment,  
 27 and appeared ex parte on January 12, 2022 for an order voiding the judgment. (See  
 28

1 Dkt 102, Exh. 1 pg. 16 of 73) The State Court denied plaintiff's ex parte, and  
 2 scheduled a hearing on the motion as requested on March 25, 2022. (See Exhibit A,  
 3 Minute Order)

4 Defendant opposes plaintiff's request for an extension of time and requests  
 5 this Court deny plaintiff's ex parte application. Plaintiff has had more than sufficient  
 6 time to retain counsel in this case, as this action has been pending since February 9,  
 7 2019. Plaintiff also has and continues to have sufficient time to file his oppositions  
 8 to defendants' motions. Defendants' motions to dismiss plaintiff's SAC were each  
 9 filed on December 6, 2021, and the hearing is not until March 16, 2022.

10 Moreover, plaintiff's extension request is unwarranted, unnecessary and  
 11 would unduly delay this action. There is no justification to delay this court's  
 12 consideration of defendants' motions to dismiss, let alone until plaintiff is able to  
 13 obtain an order voiding the underlying State Court judgment in *Cotton I* so that he  
 14 can allegedly retain counsel, which is unlikely. Plaintiff already unsuccessfully  
 15 appealed the judgment in *Cotton I* and exhausted his remedies. Plaintiff's new  
 16 lawsuit will likely be unsuccessful and will not be determined anytime soon, let  
 17 alone prior to the hearing on the pending motions to dismiss in this case.

18 Defendant David Demian therefore requests this Court deny plaintiff's ex  
 19 parte application.

20 DATED: January 21, 2022 LEWIS BRISBOIS BISGAARD & SMITH LLP

21  
 22  
 23 By: s/ Corinne C. Bertsche  
 24 CORINNE C. BERTSCHE  
 25 Attorneys for Defendant DAVID DEMIAN  
 26  
 27  
 28

# **Exhibit A**

# **Exhibit A**

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 01/12/2022

TIME: 08:30:00 AM

DEPT: C-75

JUDICIAL OFFICER PRESIDING: James A Mangione

CLERK: Valerie Secaur, Sarah Doski

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: M. Morales

CASE NO: **37-2022-00000023-CU-MC-CTL** CASE INIT.DATE: 01/03/2022

CASE TITLE: **Cotton vs. Geraci [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

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**EVENT TYPE:** Ex Parte

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**APPEARANCES**

Darryl Cotton, self represented Plaintiff, present.

James Crosby, counsel, specially appearing for defendant(s).

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This being the time set for hearing on plaintiff's ex parte application to set aside void judgment or, alternatively, order shortening time on hearing to vacate void judgment, counsel and party, as noted above, are present and hearing commences.

Parties, as noted above, are sworn to testify on their behalf.

The Court, having read the moving papers and having heard from counsel and party, denies the request for an order shortening time, and sets this matter to be heard as a motion to vacate void judgment on 3/25/2022 at 9:00 am. The ex parte papers are deemed as the moving papers.

Parties waive notice.

The Motion Hearing (Civil) is scheduled for 03/25/2022 at 09:00AM before Judge James A Mangione.



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Judge James A Mangione

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA PROOF OF SERVICE**

Darryl Cotton v. Cynthia Bashant, et al.  
Case No. 3:18-cv-00325-JO-DEB

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and not a party to this action. My business address is 550 West C Street, Suite 1700, San Diego, CA 92101.

On January 21, 2022, I served true copies of the following document(s):

**DEFENDANT DAVID DAMIEN'S OPPOSITION TO PLAINTIFF'S  
EX PARTE APPLICATION FOR EXTENSION OF TIME TO FILE  
AMENDED COMPLAINT**

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

Darryl Cotton (Plaintiff in Pro Per)  
6176 Federal Blvd.  
San Diego, CA 92114  
(619) 954-4447

The documents were served by the following means:

☒ (BY U.S. MAIL) I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and:

☒ Placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope or package with the postage fully prepaid.

Additionally, I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

**SEE ATTACHED SERVICE LIST**

The documents were served by the following means:

☒ (BY COURT'S CM/ECF SYSTEM) Pursuant to Local Rule, I electronically filed the documents with the Clerk of the Court using the CM/ECF system, which sent notification of that filing to the persons listed above.

///

1 I declare under penalty of perjury under the laws of the United States of  
2 America and the State of California that the foregoing is true and correct.

3 Executed on **January 21, 2022**, at San Diego, California.

4 

5  
6 Kelly Cano

**SERVICE LIST**

**Darryl Cotton v. Cynthia Bashant, et al.**

**Case No. 3:18-cv-00325-JO-DEB**

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