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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual,

Plaintiff,

vs.

CYNTHIA BASHANT, an individual;

JOEL WOHLFEIL, an individual;

LARRY GERACI, an individual;

REBECCA BERRY, an individual;

GINA AUSTIN, an individual;

MICHAEL WEINSTEIN, an

individual; JESSICA MCELFFRESH, an

individual; and DAVID DEMIAN, an
individual,

Defendants.

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

**DAVID DEMIAN'S REPLY TO
PLAINTIFF'S NON-OPPOSITION
TO MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED
COMPLAINT PURSUANT TO
FRCP 12 (b)(6) 12(b)(5), FRCP 4**

Judge: The Hon. Todd W. Robinson

Date: May 19, 2021

Time: 1:30 p.m.

Crtrm.: 3A (Schwartz)

**[NO ORAL ARGUMENT
REQUESTED]**

TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Defendant DAVID DEMIAN (hereinafter

"DEMIAN") has received no opposition to his Motion to Dismiss Plaintiff's First

Amended Complaint Pursuant to FRCP 12(b)(6) 12(b)(5), FRCP 4. Pursuant to

Judge Robinson's Chamber Order for Civil Cases, plaintiff's opposition was due by

April 21, 2021. However, plaintiff has not served or filed any opposition and thus,

1 has failed to timely oppose DEMAIN's Motion to Dismiss. Pursuant to San Diego
2 Local Rule 7.1(f)(3)(c), plaintiff's non-opposition may be treated as consent to
3 granting this motion. See *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995)

4 Accordingly, Defendant DEMIAN respectfully requests that the Court grant
5 his Motion and dismiss Plaintiff's First Amended Complaint ("FAC") and each
6 claim for relief pursuant to Federal Rules of Civil Procedure ("FRCP") Rule
7 12(b)(6), Rule 12(b)(5) and Rule, as to claims against him from this litigation.

8 DATED: May 5, 2021

LEWIS BRISBOIS BISGAARD & SMITH LLP

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11 By: s/ Corinne C. Bertsche
12 CORINNE C. BERTSCHE
13 Attorneys for Defendant DAVID DEMIAN
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA PROOF OF SERVICE

Darryl Cotton v. Cynthia Bashant, et al.
Case No. 3:18-cv-00325-TWR-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 May 5, 2021, I served true copies of the following document(s):

**DAVID DEMIAN'S REPLY TO PLAINTIFF'S NON-OPPOSITION TO
MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT
PURSUANT TO FRCP 12 (b)(6) 12(b)(5), FRCP 4**

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.

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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 **May 5, 2021**, at San Diego, California.

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Sondra J. Bradley

SERVICE LIST

Darryl Cotton v. Cynthia Bashant, et al.

Case No. 3:18-cv-00325-TWR-DEB

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