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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ACRES BONUSING, INC., et al.,

Plaintiff,

v.

LESTER MARSTON, et al.,

Defendants.

Case No.: 3:19-cv-5418-WHO

**ADMINISTRATIVE MOTION TO SHORTEN TIME
AND STRIKE DOCKET 50.**

Date: March 12, 2020

Time: n/a

Judge: The Honorable
William H. Orrick

Table of Contents

I.	The Marston anti-SLAPP Motion Is Untimely and Duplicative, And Striking the Motion Will Not Prejudice Defendants.....	3
II.	The Marston anti-SLAPP Motion Violates The Stipulated Briefing Schedule.	3
III.	A Stipulation Is Not Possible Since Defendants Refuse to Withdraw Their Motion.	4
IV.	Shortening Time Is Appropriate Because of The Court’s Unavailability.....	4

Table of Cases

<i>Hewlett-Packard v. Oracle</i> , 239 Cal.App.4 th 1174, 1188-1189 (2015).....	3
<i>Planned Parenthood v. Ctr. for Med. Progress</i> 890 F.3d 828, 833-835 (9 th Cir. 2018).....	4

Memorandum in Support of Administrative Motion to Strike

Plaintiff, Acres Bonusing, Inc. (“ABI”) asks this Court to strike the Marston anti-SLAPP motion at Docket 50. ABI brings the motion as an administrative motion because the Marston anti-SLAPP motion is untimely and violates the briefing schedule agreed to by the parties.

ABI asks this Court to shorten time and decide the motion on Thursday, March 12 because of the Court’s unavailability from March 13 to March 18.

I. The Marston anti-SLAPP Motion Is Untimely and Duplicative, And Striking the Motion Will Not Prejudice Defendants.

The purpose of California’s anti-SLAPP statute is to dispose of causes of action “quickly and without great cost.” To achieve this goal the anti-SLAPP statute provides anti-SLAPP motions should be brought within sixty-days of service of a complaint. Because the utility of an anti-SLAPP motion diminishes as time and costs accumulate a court cannot abuse its discretion by refusing to hear an anti-SLAPP motion after the initial sixty-days have expired. [*Hewlett-Packard v. Oracle*, 239 Cal.App.4th 1174, 1188-1189 \(2015\).](#)

Here, Defendants were served on September 18, 2019. Dkts. 12-21. Defendants brought their anti-SLAPP motion on March 6, 2020, 170 days later and 110 days too late. Moreover, Defendants bring their anti-SLAPP motion more than two-months after Defendants filed a 12(b)(6) motion raising identical arguments. Dkt. 32. Because nothing prevented Defendants from filing their anti-SLAPP motion two-months ago, and because the motion duplicates arguments already briefed, Defendants will not be prejudiced, and the purposes of the anti-SLAPP statute will not be frustrated, if the Court strikes the anti-SLAPP motion.

II. The Marston anti-SLAPP Motion Violates The Stipulated Briefing Schedule.

On November 14, 2019 the parties agreed to a briefing schedule which required Defendants bring any motions attacking the complaint by January 3, 2020, and allowed ABI a

1 full month to oppose those motions. Dkt. 27, ¶8. Now, Defendants file an anti-SLAPP motion
 2 attacking the complaint sixty-three days after the agreed upon date. Defendants notice their
 3 motion such that ABI's time to respond is slashed in half. Defendants did not consult ABI
 4 before filing their untimely and duplicative motion. Blumberg Decl., ¶2.

5
 6 Defendants cannot be allowed to unilaterally disregard the agreed upon briefing schedule
 7 and compel ABI to answer untimely motions on a shortened schedule. The Court should strike
 8 Defendants' motion to insure litigation proceeds in an orderly fashion.

9 **III. A Stipulation Is Not Possible Since Defendants Refuse to Withdraw Their Motion.**

10 On March 7, 2020 ABI asked Defendants to withdraw their untimely and duplicative
 11 motion by 4pm Monday, March 9. Defendants decline, arguing their anti-SLAPP motion does
 12 not attack the complaint, and that anti-SLAPP procedural rules give way to Federal Rules in
 13 federal court. Exhibits 1-2. The second part is true. Consequently, the Court would apply a
 14 12(b)(6) or Rule 56 standard in deciding Defendants' anti-SLAPP motion. [Planned Parenthood](#)
 15 [v. Center for Medical Progress](#) 890 F.3d 828, 833-835 (9th Cir. 2018).
 16

17 As a 12(b)(6) motion, Defendants absurdly duplicate their 12(b)(6) motion already on
 18 file. See Dkt. 32. As a Rule 56 motion, Defendants are too early, because there has been no
 19 opportunity for discovery. See Dkts. 35-36.

20 **IV. Shortening Time Is Appropriate Because of The Court's Unavailability**

21 The Court is unavailable from March 13 to March 18. ABI's opposition is currently due
 22 March 20. Unless time is shortened, the Court will not resolve the administrative motion until
 23 the day before ABI's opposition is due. This cramped calendar is prejudicial to ABI.
 24

25 Because ABI promptly notified Defendants of its intent to bring this motion Defendants
 26 have ample time to oppose it. Because Defendants' arguments are duplicative of arguments
 27 already briefed, Defendants are not prejudiced if this Court shortens time to strike their motion.
 28

BLUMBERG LAW GROUP LLP

Dated: March 9, 2020

/s/ Ronald H. Blumberg

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