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10 11	EASTERN DISTRICT OF CALIFORNIA		
 12 13 14 15 16 17 18 19 20 21 22 23 	SHARIDAN STILES, et al.,) CASE NO.: Plaintiffs,) 2:14-cv-2234-MCE-CMK Plaintiffs,) PLAINTIFFS' APPLICATION v.) SHORTENING TIME TO WAL-MART STORES, INC, et al.,) DEFENDANTS' SECOND Defendants.) DECLARATION OF JAMIE L. MILLER) ORDER SHORTENING TIME ORDER SHORTENING TIME) The Honorable Morrison C. Image: Descent of the second s		
24 25 26 27 28	Plaintiffs' Application for an Order Shortening Time to Hear Motion to Strike		
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APPLICATION FOR AN ORDER SHORTENING TIME

Pursuant to Local Civil Rule 144(e), Plaintiffs Sharidan Stiles and Stiles 4 U, Inc. (hereafter "Stiles" or "Plaintiff") respectfully applies for an order shortening time to hear its Motion to Strike Defendants' Second Motion to Dismiss, filed concurrently. The undersigned counsel contacted counsel for the Defendants on October 9, 2016, to obtain their position on this application to shorten time. Counsel for Walmart, Laura Chapman, advised that she "anticipate[s] that we oppose the ex parte." She also stated that she is traveling to North Carolina for a two-day trial. As of the filing of this Application, counsel for AI has not responded. (Miller Decl., \P 4).

Plaintiff requests that this Court enter an Order in response to this Application providing that any responses to the Motion to Strike Defendants' Second Motion to Dismiss be submitted by 5:00 p.m. on October 12, 2016, that any reply in support of the Motion to Strike Defendants' Second Motion to Dismiss be filed by 5:00 p.m. on October 13, 2016, and that the Motion to Strike Defendants' Second Motion to Dismiss be heard as soon as the Court is available to hear it.

This Court has authority to shorten time to hear the Motion to Strike Defendants' Second Motion to Dismiss. Rule 6(c) of the Federal Rules of Civil Procedure set forth the time for hearings on noticed motions "except[]...when a court order—which a party may, for good cause, apply for ex parte—sets a different time." Fed. R. Ci. P. 6(c)(1); see also *United States v. Fitch*, 472 F.2d 548, 549 n.5 (9th Cir. 1973) (citing former Rule 6(c) and explaining that this rule "allows the district court discretion to shorten time.") The Local Civil Rules for the U.S. District Court for the Eastern District of California recognize this authority, and provide that "applications to shorten time shall set forth by affidavit of counsel the circumstances claimed to justify the issuance of an order shortening time." Local R. 144(e).

Plaintiffs' Application for an Order Shortening Time to Hear Motion to Strike

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Good cause exists for this application. On October 6, 2016, Defendants filed a second Motion to Dismiss (Dkt. No. 71) that violates Fed. R. Civ. P. 12(g)(2) because it makes arguments that were available to them when the first Motion to Dismiss was filed. Defendants filed the first Motion to Dismiss two months ago on August 8, 2016. (Dkt. No. 64 and 65.) Plaintiffs filed an Opposition over a month ago on September 6, 2016. (Dkt. No. 69.) Briefing on that motion completed on October 7, 2016 (Dkt. No. 73 and 74.) In good faith, counsel for Plaintiffs conferred with counsel for Defendants, and the parties stipulated on a briefing schedule and a hearing date for the first Motion to Dismiss that accommodated the parties' existing conflicts in other matters. (Dkt. No. 66 and 68.) A Second Motion to Dismiss was never mentioned during the course of those discussions. (Miller Decl., ¶ 3.) Any opposition to Defendants' Second Motion to Dismiss would otherwise be due on October 20, 2016, and thus, Plaintiffs respectfully request that the Court hear the Motion to Strike before any opposition to the Second Motion to Dismiss is due. In addition, having previously worked out a schedule for briefing on the Motion to Dismiss, counsel for Plaintiffs now have conflicts in other matters that would require additional time to file an opposition to the Second Motion to Dismiss, if the Motion is not stricken. (Miller Decl., \P 3.)

Plaintiffs' Application for an Order Shortening Time to Hear Motion to Strike

1	Plaintiffs thus respectfully request that this Court exercise the authority granted to it by			
2	Fed. R. Civ. P. 6(c)(1) and Local Civil Rule 144(e) here and shorten the time by which the			
3	3 Motion to Strike Defendants' Second Motion to	Motion to Strike Defendants' Second Motion to Dismiss will be briefed and heard.		
4	R	espectfully submitted:		
5	Dated: October 10, 2016	LIOTO LAW FIRM		
6	6	s Jamie L. Miller		
7 8	, II	amie L. Miller (SBN 271452) oseph M. Alioto (SBN 42680)		
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13	1/2	ttorney for Plaintiffs Sharidan Stiles and Stiles U, Inc.		
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DECLARATION OF JAMIE L. MILLER

I, Jamie L. Miller, declare as follows:

1. I am an associate of the Alioto Law Firm, counsel of record for Plaintiff Sharidan Stiles and Stiles 4 U, Inc. I make this Declaration pursuant to Local Rule 144(e) and in support of Plaintiffs' Motion to Strike Defendants' Second Motion to Dismiss.

2. Concurrent with this application, Plaintiff has moved to strike Defendants' Second Motion to Dismiss. The Second Motion to Dismiss violates Fed. R. Civ. P. 12(g)(2), raising arguments that should have been made two months ago when the First Motions to Dismss were filed on August 8, 2016. (Dkt. No. 64 and 65.)

3. Good cause exists to grant this application. Counsel for Plaintiff conferred with counsel for Defenant in good faith regarding a briefing schedule and a hearing date on the First Motion to Dismiss. Defendants never disclosed that they planned to file a second Motion to Dismiss during the course of those discussions or as part of the briefing schedule. Plaintiffs' opposition to the second Motion to Dismiss would otherwise be due on October 20, and Plaintiffs request that this Court hear the matter before any opposition would be due. Further, having relied on the schedule set forth by the parties, Plaintiffs now have conflicts in other matters, including: (1) a complaint and motion for injunctive relief to be filed this week in the Northern District of California; (2) a motion for reconsideration due on or before October 14, 2016, in the United States District Court for the District of Oregon; (3) and preparation for and attendance at a hearing for injunctive relief on October 19, 2016, in the Northern District of California.

4. On October 9, 2016, I sent counsel for the Defendants an electronic mail at the email addreses of record notifying them of Plaintiffs intent to seek an *ex parte* application to shorten time in this Court. Counsel for Walmart, Laura Chapman, advised that she

Plaintiffs' Application for an Order Shortening Time to Hear Motion to Strike

"anticipate[s] that we oppose the ex parte." She also stated that she is traveling to North Carolina for a two-day trial. As of the filing of this Application, counsel for AI has not responded.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on October 10, 2016, at San Francisco, California.

> /s/ Jamie L. Miller Jamie L. Miller

Plaintiffs' Application for an Order Shortening Time to Hear Motion to Strike

ORDER

The parties to this action have had a Motion to Dismiss pending before this Court and set to be heard on November 3, 2016 for some time. On October 6, 2016, Defendant Wal-Mart Stores, Inc. filed a second Motion to Dismiss additional claims in Plaintiff's Second Amended Complaint (which motion was joined by Defendant American International Industries, Inc.), also noticed for November 3, 2016. On October 10, 2016 Plaintiffs Sharidan Stiles and Stiles 4 U, Inc. filed a Motion to Strike Defendants' Second Motion to Dismiss, noticed for November 17, 2016, as well as an Ex Parte Application for an Order Shortening Time to Hear that Motion to Strike.

Plaintiffs' Application for an Order Shortening Time is DENIED; Plaintiff's Motion to Strike will be heard as noticed on November 17, 2016.

On its own motion, the Court hereby consolidates all pending motions and continues those currently noticed for November 3, 2016 to November 17, 2016. Plaintiff's deadline to file an Opposition to Defendants' Second Motion to Dismiss is therefore extended from October 20 to November 3, 2016. Should Plaintiff require additional time beyond November 3, the Court anticipates that the parties will be able to stipulate to an additional extension.

IT IS SO ORDERED.

Dated: October 18, 2016

MORRISON C. ENGLAND, JR

UNITED STATES DISTRICT JUDGE