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 CITY OF OAKLAND

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 OAKLAND DIVISION

11 SAMUEL E. AUSTIN,

12 Plaintiff,

13 v.

14 CITY OF OAKLAND, *et al.*

15 Defendants.

Case No. 17-CV-03284-YGR

STIPULATED REQUEST AND
~~PROPOSED~~ **ORDER TO EXTEND**
PLAINTIFF'S TIME TO FILE A THIRD
AMENDED COMPLAINT

As Modified by the Court

Date: N/A
 Time: N/A
 Dept.: Courtroom 1, 4th Floor
 Judge: Hon. Yvonne Gonzalez Rogers
 Action Filed: June 7, 2017

1 Pursuant to Civil Local Rules 6-1(b), 6-2 and 7-12, Plaintiff Samuel Austin and the City of
2 Oakland (the “City”) hereby stipulate and jointly request the Court to extend Plaintiff’s time to file a
3 Fourth Amended Complaint by approximately two weeks, to Monday, July 16, 2018.

4 **PROCEDURAL HISTORY**

5 On June 7, 2017, Plaintiff Samuel Austin initiated *Austin I*. [Dkt 1.] That same day,
6 Magistrate Judge Laporte issued an order settling an initial case management conference and ADR
7 deadlines. [Dkt. 2.] Plaintiff also filed a petition to proceed *in forma pauperis*, which the Court
8 granted on June 13, 2017. [Dkt. 5.] On June 16, Magistrate Judge Laporte issued a report and
9 recommendations to dismiss Plaintiff’s complaint. [Dkt. 6.]

10 On June 19, *Austin I* was reassigned to Judge Gonzalez Rogers, and the Court Clerk issued
11 notice setting a case management conference for September 18, 2017. [Dkt. 8, 9.] On July 13, 2017,
12 the Court adopted Magistrate Judge Laporte’s report and recommendations and dismissed Plaintiff’s
13 complaint, with leave to amend. [Dkt. 10.]

14 On August 1, 2017, Austin filed his First Amended Complaint (“FAC”). [Dkt 11.] On
15 August 7, the Court dismissed Plaintiff’s FAC with prejudice and ordered the Clerk to close the file.
16 [Dkt. 12.] On August 16, 2017, Plaintiff filed a motion for reconsideration of the dismissal, [Dkt.
17 13], which the Court granted on August 21, [Dkt. 14.] On August 22, 2017, Plaintiff filed a notice of
18 appeal of the Court’s order of dismissal. [Dkt. 16.] On August 23, the Court Clerk issued notice
19 setting the case management conference after the case reopened for October 17, 2017. [Dkt. 17.] On
20 August 31, the Clerk vacated the October 17 case management conference, due to the notice of
21 appeal. [Dkt. 19.]

22 On September 15, 2017, the Ninth Circuit dismissed Plaintiff’s appeal for lack of
23 jurisdiction, citing this Court’s order granting Austin’s motion for reconsideration. [Dkt 20]. On
24 September 21, the Court ordered Plaintiff to provide the Court with service information for all
25 Defendants and set a case management conference for December 11, 2017. [Dkt. 21.] Plaintiff filed a
26 response to the Court’s request for service information on October 19, [Dkt. 24], and, on October 23,
27 the Court issued an order directing the U.S. Marshal for the Northern District of California to serve
28 all Defendants, based on the information provided by Plaintiff. [Dkt. 24.]

1 On November 9, 2017, the parties filed a stipulated request to extend until December 8, the
2 City’s time to respond to Plaintiff’s FAC. [Dkt. 28.] The parties sought that request so that the City
3 of Oakland could determine which of the 17 individual defendants named in the FAC would be
4 represented by the Office of the City Attorney for the City of Oakland. [See *id.*] On November 13,
5 the Court granted the parties’ request and continued the Case Management Conference scheduled for
6 December 11, 2017, to January 22, 2018. [Dkt. 29].

7 On December 8, 2017, the City Defendants moved to dismiss the FAC under Federal Rule
8 of Civil Procedure 12(b)(6). [Dkt. 31.] The hearing on that motion to dismiss was initially set for
9 January 16, 2018. Plaintiff’s opposition to the motion was initially due on December 22, 2017.

10 On December 18, Plaintiff asked the City Defendants to stipulate to extend his time to
11 oppose the motion to dismiss by 14 days, to January 5, 2018. Accordingly, the City Defendants
12 prepared and filed a stipulated request to modify the briefing schedule and reset the hearing on
13 their motion to dismiss to January 30, 2018. [Dkt 36.] Because the requested change to the
14 hearing date placed the hearing after the Case Management Conference set for January 22, 2018,
15 the stipulation also requested for that CMC to be vacated and continued until sometime after the
16 pleadings are settled. [*Id.*] On December 20, 2017, the Court granted the parties’ request as
17 modified—vacating instead of rescheduling the hearing on the motion to dismiss. [Dkt. 37, at 7.]

18 On January 18, 2018, the Court granted the motion to dismiss, dismissing, *inter alia*, “**with**
19 **prejudice** all claims asserted in the FAC against the Individual Defendants,” and granting
20 Plaintiff leave to amend certain of his claims against the City only. [Dkt. 42, at 4, 9-10.] The
21 Court ordered Austin to file his Second Amended Complaint (“SAC”) by February 26, 2018. [*Id.*
22 at 10.]

23 On February 13, 2018, Austin filed a motion seeking to extend his time to file an SAC to
24 March 14, 2018. [Dkt. 44.] The City did not oppose Austin’s request, [Dkt 45], which the Court
25 granted on February 16. [Dkt. 46.]

26 On February 28, 2018, Austin filed a second action, *Austin v. City of Oakland et al.*, 18-
27 cv-01329 (“*Austin II*”). The Complaint in *Austin II* asserted the same factual allegations and legal
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1 theories against the same parties as did Austin’s complaints in *Austin I*. The complaint in *Austin II*
2 may allege an additional cause of action for racial discrimination. [See *Austin II*, Dkt. 1.]

3 On March, 13, 2018, the City filed an administrative motion to relate the *Austin I* and
4 *Austin II* cases. [Dkt. 49.] On March 16, 2018, this Court ordered that the *Austin I* and *Austin II*
5 cases are related, as the two cases allege nearly identical parties, and arise out of substantially
6 similar factual and legal claims. Accordingly, *Austin II* was reassigned to this Court.

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1 The requested extension will allow Plaintiff Austin, proceeding *in propria persona*,
2 additional time to prepare his Third Amended Complaint. Neither the City nor the Union opposes
3 Plaintiff Austin's request for additional time.

4 **STIPULATION**

5 Based on the foregoing, the parties hereby stipulate, subject to the Court's approval, to
6 extend Plaintiff Austin's time to file a Third Amended Complaint by approximately two weeks, to
7 Monday, July 16, 2018.

8 **IT IS SO SIPULATED.**

9 Dated: June 21, 2018

PLAINTIFF SAMUEL E. AUSTIN

11 By: /s/ Samuel E. Austin

12 Samuel E. Austin
13 PLAINTIFF IN PRO PER

14 Dated: June 21, 2018

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

16 By: /s/ Anthony J. Tucci

17 ANTHONY J. TUCCI
18 Attorneys for Defendant
19 SERVICE EMPLOYEES INTERNATIONAL UNION,
20 LOCAL 1021

21 Dated: June 20, 2018

BARBARA J PARKER, City Attorney
OTIS McGEE, Jr., Chief Assistant City Attorney
COLIN BOWEN Supervising Attorney
JASON ALLEN, Deputy City Attorney

24 By: /s/ Jason M. Allen

25 Attorneys for Defendant
26 CITY OF OAKLAND

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ATTESTATION PURSUANT TO LOCAL RULE 5-1(D)(3)

I, Jason M. Allen, attest that I obtained concurrence in the filing of this stipulation from the signatories, Plaintiff Samuel E. Austin and Anthony J. Tucci, counsel for Defendant Service Employees International Union, Local 1021.

Dated: June 21, 2018

BARBARA J PARKER, City Attorney
OTIS McGEE, Jr., Chief Assistant City Attorney
COLIN BOWEN Supervising Attorney
JASON ALLEN, Deputy City Attorney

By: /s/ Jason M. Allen
Attorneys for Defendant
CITY OF OAKLAND

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~~PROPOSED~~ ORDER

Based on the parties' stipulation and good cause appearing, the Court grants the parties' stipulated request to extend Plaintiff Austin's time to file a Third Amended Complaint by approximately two weeks, to Monday, July 16, 2018.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: June 22, 2018 _____



Hon. Yvonne Gonzalez Rogers
United States District Judge

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PROOF OF SERVICE
Samuel Austin v. City of Oakland, et al
United States District Court Case No. 17-cv-03284-YGR

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612. On the date set forth below, I served the within documents:

STIPULATED REQUEST AND [PROPOSED] ORDER TO EXTEND PLAINTIFF'S TIME TO FILE A THIRD AMENDED COMPLAINT

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- by causing the document(s) listed above to be placed into a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth.
- by causing personal delivery by (name) of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by placing the document(s) listed above in a sealed envelope and causing such envelope to be sent by Federal Express/ Express Mail.

Samuel E. Austin 1370 Tersk Court Patterson, CA 95363 510-626-7750 <u>Plaintiff in Pro Per</u>	
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I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 21, 2018, at Oakland, California.

/s/ Jason M. Allen
Jason M. Allen