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15 Attorneys for Plaintiff

16 UNITED STATES DISTRICT COURT
 17 SOUTHERN DISTRICT OF CALIFORNIA

18 PIGMENT INC., Individually and on)
 Behalf of All Others Similarly Situated,)
 19)
 Plaintiff,)
 20)
 vs.)
 21)
 THE HARTFORD FINANCIAL)
 22 SERVICES GROUP, INC., et al.,)
 23)
 Defendants.)

Case No. 3:20-cv-00794-DMS-JLB
CLASS ACTION
 PLAINTIFF’S REPLY
 MEMORANDUM IN FURTHER
 SUPPORT OF MOTION TO STAY
 PROCEEDINGS PENDING A
 DECISION BY THE JUDICIAL
 PANEL ON MULTIDISTRICT
 LITIGATION ON A MOTION TO
 TRANSFER THIS ACTION UNDER
 28 U.S.C. §1407

DATE: July 10, 2020
 TIME: 1:30 p.m.
 CTRM: 13A
 JUDGE: Hon. Dana M. Sabraw

28

1 Plaintiff Pigment, Inc. (“Plaintiff” or “Pigment”), respectfully submits this reply
2 in further support of its motion to stay proceedings pending a decision by the Judicial
3 Panel on Multidistrict Litigation (“JPML”) on whether to transfer this and all related
4 federal actions to another district for pre-trial proceedings (“Motion”), ECF No. 10.

5 **I. INTRODUCTION**

6 Recent developments tilt the scales even more heavily toward a temporary stay.
7 On June 26, 2020, the JPML set a July 30, 2020 hearing for pending motions to
8 transfer over 200 related federal cases to one or more districts for coordinated or
9 consolidated pre-trial proceedings in *In re COVID-19 Business Interruption*
10 *Protection Insurance Litigation*, MDL No. 2942.¹ It is widely expected that the JPML
11 will issue a decision within two weeks thereafter. That means any stay is expected to
12 last less than six weeks. From the perspective of efficiency and savings to the Court
13 and the parties, such a temporary delay is well worth it. It is precisely for this reason
14 that the majority of courts faced with the question of whether to stay a related federal
15 action tagged to MDL No. 2942 have answered it in the affirmative.

16 Instead of agreeing to a commonsense, short stay, Defendants² have chosen the
17 path of most resistance, forcing Plaintiff to litigate the issue and this Court to decide
18 it. In the course of doing so, Defendants’ Opposition³ misstates the law and relies on
19 some factors that are irrelevant to the stay decision while ignoring others that are. The
20 great weight of authority clearly favors granting a stay under the circumstances.

21 Commonsense should prevail here. Pigment respectfully submits that the Court
22 should grant a temporary stay pending a decision by the JPML in MDL No. 2942.

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24
25 ¹ As of the date of this filing, there were 205 related cases.

26 ² Defendants The Hartford Financial Services Group, Inc. and Sentinel Insurance
27 Company, Ltd. are referred to collectively herein as “Hartford” or “Defendants.”

28 ³ Defendant Sentinel Insurance Company, Ltd.’s Opposition to Plaintiff’s Motion to
Stay, ECF No. 18, is referred to herein as “Opposition” or “Opp.”

1 **II. DEFENDANTS OFFER NO PERSUASIVE REASON TO DENY**
 2 **A TEMPORARY STAY PENDING THE JPML’S DECISION**

3 **A. Defendants Ignored the Fourth Factor**

4 At the outset, Defendants appear to be making the erroneous argument that courts
 5 should only apply a three-factor test when considering a motion to stay pending a
 6 decision by the JPML, which includes: “(1) potential prejudice to the non-moving party;
 7 (2) hardship and inequity to the moving party if the action is not stayed; and (3) the
 8 judicial resources that would be saved by avoiding duplicative litigation if the cases are
 9 in fact consolidated.” Opp. at 5 (quoting *In re iPhone Application Litig.*, No. 10-CV-
 10 05878-LHK, 2011 WL 2149102, at *2 (N.D. Cal. May 31, 2011)).

11 However, as Pigment pointed out in its Motion, Mot. at 5, this Court utilizes a
 12 four-factor test, which also considers “the potential for conflicting rulings.” *In re Vioxx*
 13 *Prod. Liab. Cases*, No. 05cv0943DMS(LSP), 2005 WL 6573263, at *1 (S.D. Cal.
 14 July 11, 2005) (Sabraw, J., presiding). In fact, Defendants do not discuss this factor
 15 *anywhere* in their Opposition. This is no accident; Defendants avoid this topic because
 16 there is no colorable argument that allowing this action to proceed would not
 17 substantially increase the risk that conflicting rulings would emerge pending the issuance
 18 of the JPML’s order. Thus, Defendants have conceded any argument as to this factor by
 19 failing to address it in their Opposition. *See, e.g., Carbajal v. HSBC Bank USA, N.A.*, No.
 20 CV16-9297 PSG (FFM), 2017 WL 7806586, at *6 (C.D. Cal. May 16, 2017) (“Plaintiff
 21 fails to address this issue in her opposition, thus effectively conceding the argument.”).

22 Defendants also imply that, because three courts denied requests to stay under the
 23 particular circumstances of that case, a stay should be denied here. Opp. at 6. This
 24 position is incorrect for at least two reasons. First, if the Court’s decision is purely a
 25 numbers game, a stay should be granted here because courts in at least *five* of the related
 26 cases have stayed those actions pending a ruling by the JPML.⁴ Second, the fact that

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 28 ⁴ *See Caterer’s in the Park LLC v. Liberty Mut. Ins. Co.*, No. 2:20-cv-06867-MCA-LDW, Order (ECF No. 7) (D.N.J. June 30, 2020) (Declaration of Benny C. Goodman III

1 courts in some of the related actions have denied stay motions and are moving forward
2 with litigation militates *in favor* of a stay in the instant action. The reason is simple – if
3 some of the related actions are allowing pretrial proceedings to move forward, then the
4 likelihood that duplicative pretrial proceedings and inconsistent rulings will result
5 increases significantly. Unlike *iPhone Application*, this is not a situation where “this
6 action is the only one going forward.” 2011 WL 2149102, at *2 (“As [movant] itself
7 concedes, the actions outside of this District have either been stayed or not progressed
8 beyond the filing of a complaint.”).

9 Defendants also fail to address the longstanding principle that “a majority of courts
10 have concluded that it is often appropriate to stay preliminary pretrial proceedings while a
11 motion to transfer and consolidate is pending with the MDL Panel because of the judicial
12 resources that are conserved.” *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1362 (C.D.
13 Cal. 1997). Indeed, the closest Defendants come to arguing this point is by stating that
14 “[p]ast decisions from District Courts in California are in concert.” Opp. at 6.

15 To support their vague proposition, Defendants cite to a handful of cases that are
16 either inapposite or lack any discussion of the parties’ arguments or the court’s
17 reasoning in deciding the underlying motion. See *iPhone Application*, 2011 WL
18 2149102, at *2 (finding that there was no risk that duplicative proceedings or
19 inconsistent rulings would result if stay was denied because the other related actions
20 were stayed or had not progressed past the filing of a complaint); *Villarreal v.*
21 *Chrysler Corp.*, No. C-95-4414 FMS, 1996 WL 116832, at *1 (N.D. Cal. Mar. 12,
22 1996) (finding “[j]udicial economy will best be served by addressing the *remand*

23
24 filed concurrently herewith (“Goodman Supp. Decl.”), Ex. A); *N&S Rest., LLC v.*
25 *Cumberland Mut. Fire Ins. Co.*, No. 1:20-cv-05289(RBK)(KMW), Order (ECF No. 14)
26 (D.N.J. June 12, 2020) (Goodman Supp. Decl., Ex. B); *Camp 1382 LLC v. Lancer Ins.*
27 *Co.*, No. 1:20-cv-3336-RA, Order (ECF No. 9) (S.D.N.Y. May 26, 2020) (Declaration of
28 Benny C. Goodman III, filed June 11, 2020 (“Goodman Decl.”), Ex. A); *Colby Rest.*
Grp., Inc. v. UTICA Nat’l Ins. Grp., No. 1:20-cv-05927-RMB-KMW, Order (ECF No.
8) (D.N.J. June 10, 2020) (Goodman Decl., Ex. B); *Menns Inc. v. Erie Ins. Exch.*, No.
1:20-cv-02895, Minute Order (ECF No. 10) (N.D. Ill. May 29, 2020) (Goodman Decl.,
Ex. C).

1 *issue* because a determination on this issue will facilitate litigation in the appropriate
2 forum”) (emphasis added); *Turrett v. JetBlue Airways*, No. CV036785RGK(PLAX),
3 2003 WL 23171693, at *2 (C.D. Cal. Dec. 26, 2003) (finding “no compelling reason
4 to stay the action pending determination by the MDL Panel of the MDL Motion”
5 without any discussion of the court’s reasoning or the parties’ arguments). These
6 scattershot citations do not provide a persuasive reason to deny a temporary stay under
7 the circumstances here.

8 **B. Defendants Did Not Overcome the Commonsense**
9 **Conclusion that a Short Stay Will Conserve Resources**

10 The Court has concluded it makes sense to decide the stay issue prior to the
11 filing of any motion to dismiss. Pigment respectfully submits that the same logic holds
12 with respect to waiting for the JPML decision before briefing commences. To spend
13 time and resources responding to Defendants’ motion when the only possible urgency
14 is for Plaintiff to receive its rightful claim check, within weeks of a decision by the
15 JPML that very well may moot the briefing, would not be cost-effective or efficient.

16 Nevertheless, Defendants make the spurious argument that Pigment will not
17 suffer hardship because it chose to file this action and it “could easily have waited
18 until after the JPML ruled.” Opp. at 8. Less there be any doubt, Pigment is confident
19 that it will ultimately prevail in its claims that Defendants should have paid its claim
20 for business-interruption under an “all-risk” policy that does not exclude coverage for
21 Governor Newsom’s stay-at-home civil authority order. *See, e.g., Sabadin v. Hartford*
22 *Cas. Ins. Co.*, No. SACV 13-1928-JLS (ANx), 2015 WL 12672750, at *4-*5 (C.D.
23 Cal. Jan. 13, 2015); *Julian v. Hartford Underwriters Ins. Co.*, 35 Cal. 4th 747, 751
24 n.2, 753 (2005). However, there is a reason for MDLs, and whereas here the
25 insurance industry has summarily denied claims to small businesses across America
26 for paid coverage based on uniform forms, there is good reason not to litigate such
27 claims in a piecemeal fashion in already backlogged federal district courts nationwide.

28 In any event, Defendants cannot credibly argue that the costs and resources

1 incurred by Pigment in engaging in pre-motion conferences and opposing their
2 anticipated motions do not constitute a burden. Instead, Defendants – without offering
3 a shred of legal support – are suggesting that only plaintiffs that commence actions
4 prior to 28 U.S.C. §1407 petitions being filed with the JPML can suffer these
5 hardships. Given that Defendants have failed to provide any support for this odd
6 position and have not disputed that the harms identified by Pigment constitute an
7 unnecessary burden and hardship, they have effectively conceded that this Court
8 should find this factor in Pigment’s favor.

9 **C. A Stay Will Avoid Duplicative and Wasteful Ligation, and**
10 **Promote Efficiency and Consistency**

11 Defendants’ attempts to argue that a stay will not conserve judicial resources
12 are likewise without merit. For example, Defendants argue “this case is likely to
13 utilize few (if any) judicial resources” because “it seems highly unlikely this Court
14 will have heard oral argument on Sentinel’s motions before the JPML decides whether
15 to grant the petitions to consolidate.” Opp. at 10. Yet, even assuming the Court does
16 not begin reviewing the briefing until just prior to the hearing, this argument ignores
17 the fact that “any efforts on behalf of this Court concerning case management will
18 most likely have to be replicated by the judge that is assigned to handle the
19 consolidated litigation if the MDL Panel does not consolidate the . . . cases in this
20 Court.” *Addison v. DIRECTV, Inc.*, No. CV 13-08109-AB (Ex), 2014 WL 12855831,
21 at *1 (C.D. Cal. Nov. 14, 2014) (citation omitted).

22 Additionally, as discussed above, Defendants have conceded through their
23 silence that declining to stay this action substantially increases the risk that conflicting
24 rulings will emerge before the JPML issues a decision. This risk is exacerbated by the
25 fact that there are now over 200 related actions, with some of the presiding courts
26 choosing to let pretrial litigation move forward, and others deciding to grant stays.
27 Staying this action will ensure that this Court does not enter any decisions inconsistent
28 with the related actions that are currently proceeding with litigation, if the JPML

1 ultimately orders a transfer. If the JPML ultimately declines to order a transfer, then, at
2 worst, motion practice in this action will commence after only a brief delay. Indeed, as
3 aforementioned, since the filing of Pigment’s Motion, the JPML has scheduled
4 argument on the §1407 motions for July 30, 2020. *See In re COVID-19 Bus.*
5 *Interruption Prot. Ins. Litig.*, MDL No. 2942, Notice of Hearing Session (ECF No.
6 564) (J.P.M.L. June 26, 2020). Put simply, the risks attendant to the denial of a stay in
7 this action greatly outweigh the imposition of a short delay.

8 Accordingly, Defendants’ arguments should not prevent this Court from finding
9 this factor squarely in Pigment’s favor.

10 **D. Defendants Have Failed to Show that They Will Be**
11 **Prejudiced by the Grant of a Stay**

12 Finally, Defendants failed to show any prejudice from this short stay. The only
13 purported harm they claim is prejudice to their “effort to obtain a timely resolution of
14 Plaintiff’s meritless claims,” without any explanation as to how a short stay would
15 result in an “untimely” resolution. Opp. at 8. Yet, as Plaintiff explained in its Motion,
16 Mot. at 9-10, courts within this District and Circuit have found such arguments
17 wanting. *See, e.g., Giampaoli v. Anheuser-Busch Cos. LLC*, No. C-13-0828 EMC,
18 2013 U.S. Dist. LEXIS 58215, at *2 (N.D. Cal. Apr. 23, 2013) (“A stay of this matter
19 would result in minimal prejudice to Defendant. The JPML hearing on Plaintiffs’
20 motion to transfer and consolidate is currently [37 days away], suggesting that a stay
21 would be in effect for only a short period of time. If the JPML denies Plaintiffs’
22 motion, this Court can quickly resume consideration of Defendant’s pending motion
23 to dismiss. If the JPML grants the motion, staying this action serves judicial
24 economy, as a potential transferee court could consider similar legal and factual
25 questions in a coordinated fashion.”); *Little v. McKesson Corp.*, No. 16-CV-2144-
26 AJB-DHB, 2016 WL 8668899, at *2 (S.D. Cal. Dec. 16, 2016) (“[A]ny prejudice
27 Plaintiffs will suffer is *de minimis*. The JPML hearing session at which Defendants
28 anticipate their petition will be addressed is less than three weeks after the hearing the

1 Court previously set for the motions in the instant matter.”).

2 Instead of addressing the holdings in *Giampaoli* and *Little*, Defendants focus on
3 their unpersuasive dismissal arguments, which have nothing to do with the relevant
4 factors here. Opp. at 7-8. Moreover, the lone authority Defendants cite in support of
5 their argument, *iPhone Application*, is inapposite. In that case, the initial complaints
6 were filed in December 2010, the movant had already been granted an extension until
7 June 13, 2011 to respond, and there was no risk that inconsistent rulings would result
8 because the other related actions were stayed or had not progressed past the filing of a
9 complaint. See *iPhone Application*, 2011 WL 2149102, at *2-*3. The court
10 ultimately decided that further delay was unwarranted under those unique
11 circumstances. *Id.* at *3. In stark contrast, this action was commenced only two
12 months ago, and there is a substantial risk that inconsistent rulings will result due to
13 the fact that some of the related actions have been stayed while others are moving
14 forward. In short, Defendants have failed to marshal any evidence that they will
15 suffer prejudice from a brief stay.

16 **III. CONCLUSION**

17 A stay is necessary to conserve judicial resources, prevent conflicting rulings
18 among over 200 related federal actions pending across the nation, promote efficiency,
19 and avoid duplicative litigation. Whereas Defendants will suffer no prejudice,
20 Pigment and this Court stand to waste valuable time and resources if a stay is denied.
21 Pigment respectfully requests that the Court enter its proposed order staying this case
22 pending the forthcoming decision by the JPML.

23 DATED: July 2, 2020

Respectfully submitted,

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25 & DOWD LLP
26 BENNY C. GOODMAN III
RACHEL L. JENSEN

27 s/ Benny C. Goodman III
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BENNY C. GOODMAN III

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