

**DECLARATION OF JACOB P. AUSTIN REGARDING
REPORTERS' TRANSCRIPTS OF HEARINGS
PURSUANT TO CRC 8.486(b)(3)**

I, Jacob P. Austin, declare:

1. I am the attorney for Petitioner DARRYL COTTON in both this Appellate Petition and the San Diego Superior Court Case from which this Petition is taken entitled *Larry Geraci v. Darryl Cotton, et al.*, Case No. 37-2017-00010073-CU-BC-CTL ("Lower Court Case").

2. The facts contained herein are true and correct as of my personal knowledge, except those facts which are stated upon information and belief; and, as to those facts, I believe them to be true.

3. This declaration is submitted pursuant to California Rules of Court Rule 8.46(b)(3) to summarize the proceedings in the Lower Court Case relevant to this Petition.

4. For the reasons more fully discussed in this Petition, the litigation in the Lower Court Case has rendered Petitioner virtually indigent, such that he has been forced to sell off more and more of his interest in his real property to finance the litigation and now must rely on borrowing money and asking for financial assistance from friends and family members to meet his basic needs.

5. Due to Petitioner's financial condition, he was unable to afford the cost of a court reporter for hearings on law and motion matters.

6. Given the gravity of Petitioner's Motion for Appointment of Receiver ("Receiver Motion") and Motion for Judgment on the Pleadings, I paid the cost for the court reporter, and copies of the transcripts of those hearings are included in Petitioner's exhibits at V1 E4 and V3 E21.

7. The hearing on the third law and motion matter directly relevant to the issues raised in this Petition is the April 13, 2018 hearing on

Petitioner's Motion to Expunge Notice of Pendency of Action (*Lis Pendens*) ("LP Motion") (V1 E4 and V3 E18) is summarized below.

Petitioner's LP Motion

8. Petitioner's LP Motion was brought on the grounds, *inter alia*, that (a) an email sent to Petitioner by Plaintiff/Real Party in Interest Larry Geraci ("Geraci") (the "Confirmation Email") and other evidence presented in the case was undisputed, uncontroverted and case dispositive in nature because it proved that Petitioner and Geraci had never executed a final, legally-binding agreement for the purchase of Petitioner's property, (b) Geraci had not met, nor could he ever meet, his burden of proof to establish by a preponderance of evidence the probable validity of any claim ownership interest in Petitioner's property, (c) Geraci's own writings constituted willful and knowing misrepresentations made for the specific purpose of defrauding Petitioner, (d) Geraci's case was meritless, and (e) the lawsuit and *lis pendens* were filed for the specific purpose of coercing Petitioner to settle despite the fact that his case was meritless.

9. Geraci opposed the motion arguing that the evidence was barred by the statute of frauds and parol evidence rule, and supported his argument with a declaration executed April 9, 2018 alleging, *inter alia*, that he had sent the Confirmation Email *by mistake* – the very first time he raised this "mistake" after having had numerous opportunities during the preceding eleven months since he filed the lawsuit. (*See* V2 E10.)

10. At the April 13, 2018 hearing, I argued that the *lis pendens* should be expunged because Geraci's case, premised on a breach of contract, lacked merit and Geraci therefore had no viable claim to Petitioner's property. I further argued that neither party had considered the document Geraci disingenuously claimed to be the parties' final, completely integrated agreement to be a final contract. Months of communications between the parties reflect only that the final contract had not been reduced to writing.

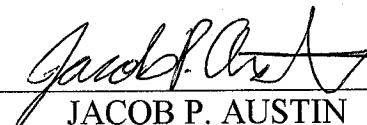
And until filing his Complaint, Geraci never treated the document as the parties' contract, nor did he even reference it while his attorney, Gina Austin, was writing and sending drafts of a Purchase and Sale Agreement for the property.

11. I discussed the document referred to in my moving papers as "The Confirmation Email," and neither Judge Wohlfeil nor Geraci's counsel, Michael R. Weinstein, would engage in that line of discussion.

12. I also made an oral motion that the Court take testimony of a witness at the hearing, but the Court denied my motion on ground that it was not permitted to do so, notwithstanding the fact that a motion to expunge a *lis pendens* is one of the few motions at which the Court may take testimony at hearing.

13. Following oral argument, the Court denied the LP Motion on the grounds set forth in its April 13, 2018 Minute Order. (*See* V1 E3.)

I declare under penalty of perjury according to the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 17, 2018 at San Diego, California.



JACOB P. AUSTIN