

Jacob P. Austin [SBN 290303]
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P. O. Box 231189
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JPA@JacobAustinEsq.com

Attorney for Defendant/Cross-Complainant
DARRYL COTTON

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
09/09/2019 at 11:54:00 AM
Clerk of the Superior Court
By Carolina Miranda, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DIVISION

LARRY GERACI, an individual,
Plaintiff,

vs.

DARRYL COTTON, an individual; and
DOES 1-10, Inclusive,
Defendants.

DARRYL COTTON, an individual,
Cross-Complainant,

vs.

LARRY GERACI, and individual, REBECCA
BERRY, an individual; and DOES 1 through 10,
Inclusive,
Cross-Defendants.

CASE NO. 37-2017-00010073-CU-BC-CTL

**EX PARTE APPLICATION BY DEFENDANT
DARRYL COTTON FOR AN ORDER
SHORTENING TIME FOR NOTICE AND
HEARING ON THE VERIFIED
APPLICATION OF EVAN P. SCHUBE FOR
PRO HAC VICE ADMISSION, AND THAT
THIS COURT HEAR THE VERIFIED
APPLICATION AT THE EX PARTE
HEARING ON THIS APPLICATION**

Hearing Date: September 10, 2019
Time: 8:30 a.m.
Department: C-73
Judge: The Honorable Joel R. Wohlfeil

Complaint Filed: March 21, 2017
Trial: June 28, 2019
Judgment Entered: August 19, 2019

[IMAGED FILE]

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1 **TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL:**


2 **PLEASE TAKE NOTICE** that on September 10, 2017, at 8:30 a.m. or as soon thereafter as the
3 matter can be heard in Department C-73 of the above entitled Court, Defendant/Cross-Complainant
4 DARRYL COTTON ("Cotton") will move this Court *ex parte* for an order shortening time for notice and
5 hearing on the Verified Application by Evan P. Schube for admission to practice before this Court *pro*
6 *hac vice* to enable him to represent Cotton on a limited scope in connection with a Motion for New Trial,
7 and that this Court hear and grant the Verified Application at the hearing on this *ex parte* application.

8 This *ex parte* application is made on the grounds that, (1) due to the jurisdictional deadlines
9 governing the time within which a Motion for New Trial must be filed and served, Cotton's moving
10 papers must be filed no later than September 13, 2019; thereby leaving insufficient time for Attorney
11 Schube to obtain *pro hac vice* admission by way of regular motion pursuant California Rules of Court
12 Rule ("CRC") 9.40(c)(1); (2) Attorney Schube is eligible for *pro hac vice* admission pursuant to
13 CRC 9.40(a), has filed and served a verified petition as required by CRC 9.40(c)-(d), and is prepared to
14 immediately pay the required filing fees to this Court and the California State Bar in connection
15 therewith; and (3) in the event that Attorney Schube is unable to obtain an expedited hearing and *pro hac*
16 *vice* admission to practice in this Court prior to the September 13, 2019 deadline to file COTTON's
17 Motion for New Trial, Cotton will suffer irreversible and irreparable prejudice.

18 This *ex parte* application is based upon this notice, Memorandum of Points and Authorities and
19 Declaration of Jacob P. Austin, the pleadings and papers on file in this action, and upon such other oral
20 and documentary evidence as may be presented at the hearing on this application.

21
22 DATED: September 9, 2019

LAW OFFICE OF JACOB P. AUSTIN

23
24 By 
25 JACOB P. AUSTIN
26 Attorney for Defendant/Cross-Complainant
27 DARRYL COTTON
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **A. HISTORY OF POST-TRIAL PROCEEDINGS**

3 The trial in this action came on regularly for hearing on June 28, 2019, and concluded with a Jury
4 Verdict in favor of Plaintiff/Cross-Defendant LARRY GERACI (“Geraci”) and against Cotton on
5 July 16, 2019 (ROA 635-636).

6 Judgment was entered on the Jury Verdict on August 19, 2019 (ROA 650), and counsel for Geraci
7 served Notice of Entry of Judgment on August 19, 2019 (ROA 652-653).

8 On September 3, 2019, counsel for Cotton filed a Notice of Intention to Move for New Trial
9 (ROA 656) within the statutory time prescribed by Code Civ. Proc. §§629, 659.

10 On or about September 5, 2019, Cotton entered into an agreement with the law firm of Tiffany &
11 Bosco, PC for Attorney Evan P. Schube to represent him on a limited scope in connection with his Motion
12 for New Trial.

13 The moving papers for Cotton’s Motion for New Trial must be filed on or before September 13,
14 2019.

15 **B. THE COURT HAS DISCRETION TO SHORTEN THE TIME FOR FILING OF**
16 **PAPERS AND HEARING ON MOTIONS**

17 CRC 3.1300(b) provides that, “[t]he court, on its own motion or on application for an order
18 shortening time supported by a declaration showing good cause, may prescribe shorter times for filing
19 and service of papers than the times specified in Code of Civil Procedure section 1005(b).”

20 A failure to oppose a motion may be deemed a consent to grant the motion. (CRC 8.54.) The
21 office Cotton’s counsel contacted opposing counsel’s office and give notice of this *ex parte* application
22 as required; however, at the present time, Cotton’s counsel is unaware of whether or not Geraci’s counsel
23 intends to oppose this motion.

24 **C. GOOD CAUSE EXISTS TO GRANT THE RELIEF REQUESTED TO SHORTEN THE**
25 **TIME FOR FILING AND SERVICE OF THE VERIFIED APPLICATION FOR *PRO***
26 ***HAC VICE* ADMISSION**

27 Because the time within which the moving papers for Cotton’s Motion for New Trial must be
28 filed is jurisdictional, in the event that an expedited hearing and *pro hac vice* admission for Attorney

1 Schube to practice in this Court is not granted prior to September 13, 2019, he will be unable represent
2 Cotton as agreed and to file the moving papers on his behalf. In such event, Cotton will suffer irreversible
3 and irreparable prejudice by the deprivation of his right to due process in post-trial proceedings.

4 Attorney Schube is eligible for *pro hac vice* admission pursuant to CRC 9.40(a), is prepared to
5 immediately file and serve his verified petition as required by CRC 9.40(c)-(d) and to pay the required
6 filing fees to this Court and the California State Bar in connection therewith.

7 Neither Cotton nor Attorney Schube were dilatory in this matter, as there was insufficient time to
8 obtain *pro hac vice* admission by way of regular motion pursuant CRC 9.40(c)(1). Accordingly, this *ex*
9 *parte* application is now being brought at the earliest possible date following Cotton's retention of
10 Attorney Schube.

11 **D. CONCLUSION AND PRAYER**

12 In light of the foregoing, Cotton respectfully submits that good cause exists for this Court to
13 shorten the time for notice and hearing in this matter and to hear and decide Attorney Schube's Verified
14 Application at the *ex parte* hearing on this application, and that so doing is necessary and appropriate,
15 and will not operate to prejudice any other party to this action in any manner.

16 In light of the foregoing, Cotton respectfully requests that this Court enter an order shortening the
17 time for notice and hearing on Attorney Schube's Verified Application, and that it hear and grant Attorney
18 Schube *pro hac vice* admission at the *ex parte* hearing on this application to enable him to represent
19 Cotton and file the moving papers for his Motion for New Trial on or before September 13, 2019.

20
21 DATED: September 9, 2019

LAW OFFICE OF JACOB P. AUSTIN

22
23
24 By



JACOB P. AUSTIN

Attorney for Defendant/Cross-Complainant
DARRYL COTTON

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2. I am an attorney at law licensed to practice in the State of California, the attorney of record for Defendant/Cross-Complainant DARRYL COTTON (“Cotton”), and I make this declaration in support of the foregoing *ex parte* application for an order shortening time of notice and hearing on the Verified Application by Evan P. Schube for admission to practice before this Court *pro hac vice* to enable me to represent Cotton on a limited scope in connection with a Motion for New Trial, and that this Court should grant the Verified Application at the hearing on this *ex parte* application.

4. The trial in this action came on regularly for hearing on June 28, 2019, and concluded with a jury verdict in favor of Plaintiff/Cross-Defendant LARRY GERACI (“Geraci”) and against Cotton on July 16, 2019 (ROA 635-636).

6. On September 3, 2019, counsel for Cotton filed a Notice of Intention to Move for New Trial (ROA 656) within the statutory time prescribed by Code Civ. Proc. §§629, 659.

8. The moving papers for Cotton's Motion for New Trial must be filed on or before September 13, 2019.

9. Because the time within which the moving papers for Cotton's Motion for New Trial must be filed is jurisdictional, in the event that an expedited hearing and *pro hac vice* admission for Attorney Schube to practice in this Court is not approved prior to September 13, 2019, he will be unable represent Cotton as agreed and file the moving papers on Cotton's behalf. In such event, Cotton will suffer irreversible and irreparable prejudice by the deprivation of his right to due process in post-trial proceedings.

10. Attorney Schube is eligible for *pro hac vice* admission pursuant to CRC 9.40(a), and is prepared to immediately file and serve his verified petition as required by CRC 9.40(c)-(d) and to immediately pay the required filing fees to this Court and the California State Bar in connection therewith.

11. True and correct copies of Attorney Schube's Verified Application and the attendant Notice of Hearing are attached hereto as Exhibit A and incorporated herein by this reference.

12. A true and correct copy of the Notice of Scope of Limited Representation is attached hereto as Exhibit B and incorporated herein by this reference.

13. Neither I, Cotton nor Attorney Schube was dilatory in bringing the motion for his admission, as there was insufficient time to obtain *pro hac vice* admission by way of regular motion pursuant CRC 9.40(c)(1). Accordingly, this *ex parte* application is now brought at the earliest possible date following Cotton's retention of Attorney Schube.

I declare under penalty of perjury according to the laws of the State California that the foregoing is true and correct and that this declaration was executed on September 9, 2019 at San Diego, California.

Jacob P. Austin
JACOB P. AUSTIN

EXHIBIT A

TIFFANY & BOSCO
P.A.

MEGAN E. LEES (SBN 277805)

mel@tblaw.com

MICHAEL A. WRAPP (SBN 304002)

maw@tblaw.com

EVAN P. SCHUBE (AZ SBN 028849)

eps@tblaw.com

1455 Frazee Road, Suite 820

San Diego, CA 92108

Tel. (619) 501-3503

Attorneys for Defendant/Cross-Complainant Darryl Cotton

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

vs.

DARRYL COTTON, an individual; and DOES 1-10, inclusive,

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

vs.

LARRY GERACI, an individual, REBECCA BERRY, an individual, and DOES 1 THROUGH 10, INCLUSIVE,

Cross-Defendants.

Case No. 37-2017-00010073-CU-BC-CTL

**VERIFIED APPLICATION OF
EVAN P. SCHUBE FOR
PRO HAC VICE ADMISSION**

Hearing Date: September __, 2019

Time: ____ .m.

Department: C-73

Judge: The Honorable Joel R. Wohlfeil

Action Filed: March 21, 2017

Trial Date: June 28, 2019

[IMAGED FILE]

1 I, Evan P. Schube, hereby apply for admission to practice before this Court *pro hac vice*,
2 in order to represent Defendant/Cross-Complainant Darryl Cotton in this action, with a limited
3 scope of representation described in the Notice of Limited Scope of Representation filed
4 concurrently herewith. In support of this Application, I state the following:

5 1. My email address is eps@tblaw.com.

6 2. My residence address is 9802 E. Caron St., Scottsdale, Arizona 85258. My office
7 address is Tiffany & Bosco, P.A., 2525 East Camelback Road, Suite 700, Phoenix, Arizona
8 85016. I am not a resident of the State of California, nor am I regularly engaged in the practice
9 of law in the State of California.

10 3. I was admitted to practice before the Supreme Court of the State of Arizona on
11 October 25, 2011, and the United States District Court for the District of Arizona on October 15,
12 2012. I am currently a licensee in good standing in each of those courts.

13 4. I am not currently, nor have I ever been, suspended or disbarred in any court.

14 5. In the preceding two years I have not applied to appear *pro hac vice* in any action
15 in the State of California.

16 6. Megan E. Lees, State Bar No. 277805, is counsel of record in this action. Her
17 address is 1455 Frazee Road, Suite 820, San Diego, California 92108. Her telephone number is
18 (619) 501-3503.

19 DATED this 5th day of September, 2019.

20 TIFFANY & BOSCO, P.A.

21
22 By 

23 EVAN P. SCHUBE, Esq. (AZ SBN 028849)
24 Attorneys for Defendant/Cross-Complainant
25 Darryl Cotton
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VERIFICATION

I am the applicant for admission *pro hac vice* and I have read the foregoing application and know its contents. The matters stated in the application are true based on my own knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXECUTED on this 5th day of September, in Phoenix, Arizona.



Evan P. Schube

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PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 years and not a party to the within action. My business address is 1455 Frazee Road, Suite 820, San Diego, CA 92108. On September __, 2019, I served the attached Verified Application for Pro Hac Vice Admission on the parties to this action by serving:

Michael R. Weinstein
Scott H. Toothacre
Elyssa K. Kulas
Ferris & Britton
501 West Broadway, Suite 1450
San Diego, CA 92101
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com
ekulas@ferrisbritton.com

Pro Hac Vice Program
Office of Special Admissions
The State Bar of California
180 Howard Street
San Francisco, CA 94105

☐ (BY U.S. MAIL) I am readily familiar with the practices of this office for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence placed for collection is deposited with the United States Postal Service with the postage thereon fully prepaid on the same day. On the date stated above, I placed an original or true copy of the foregoing document(s) described herein in an addressed, stamped, sealed envelope for collection and mailing following ordinary business practices.

☒ (BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL) I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows: Michael Weinstein (mweinstein@ferrisbritton.com) and Scott Toothacre (stoothacre@ferrisbritton.com), Ferris & Britton, 501 West Broadway, Suite 1450, San Diego, CA 92101

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

Dated: _____

By: _____
Yvette Brinkman, Declarant
1455 Frazee Road, Suite 820
San Diego, CA 92108

TIFFANY & BOSCO
P.A.

MEGAN E. LEES (SBN 277805)

mel@tblaw.com

MICHAEL A. WRAPP (SBN 304002)

maw@tblaw.com

EVAN P. SCHUBE (AZ SBN 028849)

eps@tblaw.com

1455 Frazee Road, Suite 820

San Diego, CA 92108

Tel. (619) 501-3503

Attorneys for Defendant/Cross-Complainant Darryl Cotton

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

vs.

DARRYL COTTON, an individual; and DOES 1-10, inclusive,

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

vs.

LARRY GERACI, an individual, REBECCA BERRY, an individual, and DOES 1 THROUGH 10, INCLUSIVE,

Cross-Defendants.

Case No. 37-2017-00010073-CU-BC-CTL

**NOTICE OF HEARING ON VERIFIED
APPLICATION OF
EVAN P. SCHUBE FOR
PRO HAC VICE ADMISSION**

Hearing Date: September __, 2019
Time: _____.m.

Department: C-73

Judge: The Honorable Joel R. Wohlfeil

Action Filed: March 21, 2017

Trial Date: June 28, 2019

[IMAGED FILE]

1 **TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL:**

2 **PLEASE TAKE NOTICE** that on September __, 2019 at _____.m., or as soon
3 thereafter as the matter may be heard in Department C-73 of the Superior Court of California,
4 for the County of San Diego, Central Division, located at 330 West Broadway, San Diego,
5 California 92101, this Court will hold a hearing on Evan P. Schube's Verified Application to
6 practice before this Court *pro hac vice*, in order to represent Defendant/Cross-Complainant
7 Darryl Cotton in this action, with a limited scope of representation described in the Notice of
8 Limited Scope of Representation filed concurrently herewith.

9 DATED this 8th day of September, 2019.

10 TIFFANY & BOSCO, P.A.

11
12 By _____
13 MEGAN E. LEES, Esq. (SBN 277805)
14 Attorneys for Defendant/Cross-Complainant
15 Darryl Cotton
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PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 years and not a party to the within action. My business address is 1455 Frazee Road, Suite 820, San Diego, CA 92108. On September __, 2019, I served the attached Notice of Hearing of Verified Application for *Pro Hac Vice* Admission on the parties to this action by serving:

Michael R. Weinstein
Scott H. Toothacre
Elyssa K. Kulas
Ferris & Britton
501 West Broadway, Suite 1450
San Diego, CA 92101
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com
ekulas@ferrisbritton.com

Pro Hac Vice Program
Office of Special Admissions
The State Bar of California
180 Howard Street
San Francisco, CA 94105

☐ (BY U.S. MAIL) I am readily familiar with the practices of this office for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence placed for collection is deposited with the United States Postal Service with the postage thereon fully prepaid on the same day. On the date stated above, I placed an original or true copy of the foregoing document(s) described herein in an addressed, stamped, sealed envelope for collection and mailing following ordinary business practices.

☒ (BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL) I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows: Michael Weinstein
(mweinstein@ferrisbritton.com) and Scott Toothacre (stoothacre@ferrisbritton.com), Ferris & Britton, 501 West Broadway, Suite 1450, San Diego, CA 92101

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

Dated: _____

By: _____
Yvette Brinkman, Declarant
1455 Frazee Road, Suite 820
San Diego, CA 92108

EXHIBIT B

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: Megan E. Lees FIRM NAME: Tiffany & Bosco, P.A. STREET ADDRESS: 1455 Frazee Road, Suite 820 CITY: San Diego STATE: CA ZIP CODE: 92108 TELEPHONE NO.: (619) 501-3503 FAX NO.: E-MAIL ADDRESS: mel@tblaw.com ATTORNEY FOR (name): Darryl Cotton		FOR COURT USE ONLY CASE NUMBER: 37-2017-00010073-CU-BC-CTL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, California 92101 BRANCH NAME: Central Division - Civil		
PLAINTIFF: Larry Geraci DEFENDANT: Darryl Cotton OTHER:		
NOTICE OF LIMITED SCOPE REPRESENTATION <input type="checkbox"/> Amended		JUDGE: Joel R. Wohlfeil DEPT.: C-73

[Note: This form is for use in civil cases other than family law. For family law cases, use form FL-950.]

- Attorney (name): **Megan E. Lees**
 and party (name): **Darryl Cotton**
 who is the ☐ petitioner/plaintiff ☐ respondent/defendant ☒ other (describe): **Defendant/Cross-Complainant**
 have an agreement that the attorney will provide limited scope representation in this case to the party.
- The attorney will represent the party
 - ☐ at the hearing on (date):
☐ and at any continuance of that hearing
☐ until submission of the order after hearing
 - ☐ at the trial on (date):
☐ and at any continuance of that trial
☐ until judgment
 - ☒ other (specify nature and duration of representation):
The filing of motion for new trial, reply in support of the same, and attending any hearings related thereto.
- By signing this form, the party agrees to sign *Substitution of Attorney–Civil* (form MC-050) at the completion of the representation described above.

PLAINTIFF: Larry Geraci
DEFENDANT: Darryl Cotton
OTHER:

CASE NUMBER:
37-2017-00010073-CU-BC-CTL

4. During the limited scope representation, parties and the court must serve papers on both the attorney named above and directly on the party. (Cal. Rules of Court, rule 3.36.) The party's name and address for purpose of service are as follows:

Name: Darryl Cotton

Address (for the purpose of service):

c/o Jacob P. Austin
The Law Office of Jacob Austin
PO Box 231189
San Diego, CA 92193

Telephone: (619) 357-6850

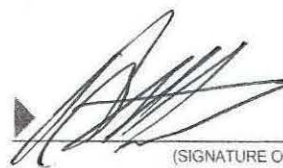
Fax: (888) 357-8501

This notice accurately states all current matters and issues on which the attorney has agreed to serve as an attorney for the party in this case. The information provided on this form is not intended to state all of the terms and conditions of the agreement between the party and the attorney for limited scope representation.

Date: September 5, 2019

DARRYL COTTON

(TYPE OR PRINT NAME OF PARTY)



(SIGNATURE OF PARTY)

Date: September 5, 2019

JACOB P. AUSTIN

(TYPE OR PRINT NAME OF ATTORNEY)



(SIGNATURE OF ATTORNEY)

PLAINTIFF: Larry Geraci
DEFENDANT: Darryl Cotton
OTHER:

CASE NUMBER:
37-2017-00010073-CU-BC-CTL

4. During the limited scope representation, parties and the court must serve papers on both the attorney named above and directly on the party. (Cal. Rules of Court, rule 3.36.) The party's name and address for purpose of service are as follows:

Name: Darryl Cotton

Address (*for the purpose of service*):

c/o Jacob P. Austin
The Law Office of Jacob Austin
PO Box 231189
San Diego, CA 92193

Telephone: (619) 357-6850

Fax: (888) 357-8501

This notice accurately states all current matters and issues on which the attorney has agreed to serve as an attorney for the party in this case. The information provided on this form is not intended to state all of the terms and conditions of the agreement between the party and the attorney for limited scope representation.

Date: September 5, 2019

DARRYL COTTON

(TYPE OR PRINT NAME OF PARTY)



(SIGNATURE OF PARTY)

Date: September 5, 2019

JACOB P. AUSTIN

(TYPE OR PRINT NAME OF ATTORNEY)



Jacob P. Austin

(SIGNATURE OF ATTORNEY)