

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

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Clerk of the Superior Court  
By Carolina Miranda, Deputy Clerk

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8

9 **SUPERIOR COURT OF CALIFORNIA**  
10 **COUNTY OF SAN DIEGO, HALL OF JUSTICE**

11 LARRY GERACI, an individual,

12 Plaintiff,

13 v.

14 DARRYL COTTON, an individual; and  
DOES 1 through 10, inclusive,

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

Judge: Hon. Joel R. Wohlfeil

**PLAINTIFF/CROSS-DEFENDANTS'  
OPPOSITION TO DEFENDANT DARRYL  
COTTON'S EX PARTE APPLICATION 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**

**[IMAGED FILE]**

**DATE: September 10, 2019**  
**TIME: 8:30 a.m.**  
**DEPT: C-73**

Filed: March 21, 2017  
Trial Date: June 28, 2019  
Notice of Entry  
of Judgment: August 20, 2019

1           **I.       INTRODUCTION**

2           Mr. Cotton’s ex parte papers appear to request an order shortening time for notice and hearing  
3 on the verified application of Evan P. Schube for *pro hac vice* admission and that the Court hear the  
4 verified application at the ex parte hearing.

5           In reality, what Mr. Cotton is asking for is to have the Court hear the *pro hac vice* application  
6 on ex parte notice only. It is left unexplained why this is necessary. The applicant, Mr. Schube, is an  
7 Arizona attorney with a firm that has a San Diego office, and an attorney from that San Diego office is  
8 apparently filing a Notice of Limited Scope of Representation for the limited purpose of filing and  
9 appearing at any hearing on a motion for new trial. That being so, why is it necessary for the *pro hac*  
10 *vice* application to be heard prior to the filing on or before September 13, 2019, of the moving papers  
11 for the Defendant’s motion for new trial? It is not necessary.

12           **II.       APPLICATION FOR ADMISSION *PRO HAC VICE* MUST BE MADE ON**  
13           **NOTICED MOTION**

14           “A person desiring to appear as counsel *pro hac vice* in a superior court must file with the court  
15 a verified application together with proof of service by mail in accordance with Code of Civil  
16 Procedure section 1013a of a copy of the application and of the notice of hearing of the application on  
17 all parties who have appeared in the cause and on the State Bar of California at its San Francisco office.  
18 The notice of hearing must be given at the time prescribed in Code of Civil Procedure section 1005  
19 unless the court has prescribed a shorter period.” (Cal. Rules of Court, Rule 9.40(c)(1).)

20           CCP § 1005 provides that all moving and supporting papers shall be served and filed at least 16  
21 court days before the hearing.

22           **III.       Mr. COTTON HAS FAILED TO ESTABLISH “GOOD CAUSE” FOR AN ORDER**  
23           **SHORTENING TIME**

24           Mr. Cotton is not asking for an order shortening time, he is asking for an ex parte approval of an  
25 order which must be made on noticed motion. Even if he were seeking an order shortening time, he has  
26 failed to establish “good cause” for such a request.

27           California Rules of Court, Rule 317(b), provides that an application for an order shortening time  
28 for service of a motion is to be supported by a declaration showing good cause. “The concept of good

1 cause ... calls for a factual exposition of a reasonable ground for the sought order. The good cause may  
2 be equated to a good reasons for a party's failure to perform that specific requirement from which [the  
3 party] seeks to be excused." (*Waters v. Superior Court* (1962) 58 Cal.2d 885, 893.) "*Mere lack of time*  
4 *for statutory notice is not a sufficient showing.*" [See CRC 3.1202(c); *Eliceche v. Federal Land Bank*  
5 *Ass'n* (2002) 103 Cal.App.4<sup>th</sup> 1349, 1369; Civil Procedure Before Trial, The Rutter Group, 9:364]

6 Here, the specific requirement from which Cotton seeks to be excused is compliance with the  
7 notice requirement for motions prescribed by CCP §1005(b). As previously noted, lack of time for  
8 statutory notice is not a sufficient showing of "good cause" for an order shortening time. (*Eliceche*,  
9 *supra*) The purported "good cause" for the requested order shortening time is that "...due to the  
10 jurisdictional deadlines governing the time within which a Motion for New Trial must be filed and  
11 served, Cotton's moving papers must be filed no later than September 13, 2019; thereby leaving  
12 insufficient time for Attorney Schube to obtain *pro hac vice* admission by way of regular motion  
13 pursuant to California Rules of Court Rule ("CRC") 9.40(c)(1)" This does not meet the standard for  
14 "good cause" for an order shortening time. The trial in this matter concluded nearly 2 months ago on  
15 July 16, 2019. Yet, according to Attorney Austin's Declaration in support of "good cause" for an order  
16 shortening time, Attorney Austin states that Mr. Cotton did not retain the law firm of Tiffany & Bosco,  
17 PC to represent him until September 5, 2019; nearly 7 full weeks after the trial concluded and only 8  
18 days before Mr. Cotton's New Trial Motion must be filed.

19 Nevertheless, Mr. Cotton's papers do not explain why he believes he is entitled to have the  
20 Court entertain his motion on shortened notice, indeed on no notice as he is asking the Court to approve  
21 the Application at the ex parte hearing. The applicant, Mr. Schube, is an Arizona attorney with a firm  
22 that has a San Diego office, and an attorney from that San Diego office is apparently filing a Notice of  
23 Limited Scope of Representation for the limited purpose of filing and appearing at any hearing on a  
24 motion for new trial. That being so, why is it necessary for the *pro hac vice* application to be heard  
25 prior to the filing on or before September 13, 2019, of the moving papers for the Defendant's motion  
26 for new trial? It is not necessary.

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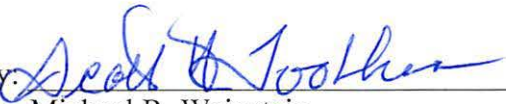
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1 **IV. CONCLUSION**

2 Mr. Cotton's attempt to have what is required to be a noticed motion heard on an ex parte basis  
3 should be denied as such a motion cannot be decided on an ex parte basis and even if it could, he has  
4 failed to establish "good cause" for an order shortening time.

5 FERRIS & BRITTON  
6 A Professional Corporation

7  
8 Dated: September 9, 2019

9 By:   
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11 Scott H. Toothacre  
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13 GERACI and Cross-Defendant REBECCA BERRY  
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