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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Ines Quirarte, Deputy Clerk

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LARRY GERACI

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73

**DECLARATION OF SCOTT H.
TOOTHACRE IN SUPPORT OF MOTION
BY PLAINTIFF/CROSS-DEFENDANT
LARRY GERACI TO COMPEL
DEFENDANT/CROSS-COMPLAINANT
DARRYL COTTON (1) TO APPEAR AND
TESTIFY AT DEPOSITION AND (2) TO
RESPOND TO WRITTEN DISCOVERY
REQUESTS, AND FOR SANCTIONS**

[IMAGED FILE]

Hearing Date: March 23, 2018
Hearing Time: 9:00 a.m.

Filed: March 21, 2017
Trial Date: May 11, 2018

I, Scott H. Toothacre, declare:

1. I am an attorney with Ferris & Britton, APC, the attorneys for Plaintiff and Cross-Defendant, LARRY GERACI ("Geraci"), and Cross-Defendant, REBECCA BERRY, in this action (hereafter, the "Geraci Lawsuit"). The Trial Date in the Geraci Lawsuit is May 11, 2018.

2. Ferris & Britton, APC also represents Larry Geraci and Rebecca Berry (as Real Parties in Interest) in a later-filed lawsuit captioned *Darryl Cotton v. City of San Diego*, Case No. 37-2017-

00037675-CU-WM-CTL, which was filed on October 6, 2017 and is also assigned to the Honorable Joel R. Wohlfeil (hereafter, the "Writ of Mandate Lawsuit").

3. I have personal knowledge of the facts stated in this Declaration. If called as a witness, I would testify competently thereto. I provide this Declaration in support of this motion in the Geraci Lawsuit to compel attendance at deposition, to compel responses to written discovery, and for an award of monetary and other sanctions representing the time and effort in bringing this motion and for willful disobedience to this Court's prior Order that Mr. Cotton attend his deposition within 20 days of this Court's ruling on an earlier motion to compel attendance at deposition, which was held on January 25, 2018.

4. As discussed in detail in the supporting Declaration of Michael R. Weinstein, Mr. Cotton has failed to serve written responses to certain discovery and has foiled all attempts to take his deposition.

5. On February 14, 2018, I, along with my associate, Mr. Weinstein, arrived at Aptus Court Reporting and set up for the video-taped deposition of Mr. Cotton. **However, once again, Mr. Cotton failed to appear for his duly noticed, and this time court-ordered, deposition.**

6. Plaintiff respectfully requests that this Court again order Mr. Cotton to appear for his deposition.

7. Plaintiff requests that the Court also order Mr. Cotton to respond to the outstanding written discovery requests, without objections.

8. I have expended 15.10 hours at the rate of \$375.00 per hour in drafting this motion to compel Mr. Cotton's attendance at his deposition, in attending the non-appearance deposition on February 14, 2018, and drafting this motion to compel responses to written discovery propounded on Mr. Cotton. I have not included in this calculation any time which will be expended appearing at this noticed motion as I am unsure of how much time will be incurred attending that hearing.

9. I have reviewed the Ferris & Britton time entries made by my colleague, attorney Michael R. Weinstein. He has spent 1.50 hours attending the two non-appearance depositions at the rate of \$350.00 per hour.

10. Plaintiff requests that this Court impose sanctions as follows: monetary sanctions in the

1 amount of \$6,687.50, which accurately reflects the fees and costs incurred in having to bring this
2 motion and for the wasted time and costs incurred at the scheduled depositions; (b) an order striking
3 Mr. Cotton's Answer to the Geraci Complaint; and (c) an order striking Mr. Cotton's Cross-Complaint.

4 I declare under penalty of perjury under the laws of the State of California that the foregoing is
5 true and correct. Executed this 27th day of February, 2018, in San Diego, California.

6
7 
8 Scott H. Toothacre