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Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Fax: (619) 229-9387

Plaintiff/Cross Defendant *In Propria Persona*

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

LARRY GERACI, an individual; Plaintiffs, vs. DARRYL COTTON, an individual; and DOES 1-10, Inclusive, Defendants.	CASE NO. 37-2017-00010073-CU-BC-CTL **OPPOSITION TO PLAINTIFF/ CROSS-DEFENDANT LARRY GERACI'S *EX PARTE* APPLICATION FOR AN ORDER SHORTENING TIME TO HEAR MOTION FOR MONETARY AND ESCALATING/ TERMINATING SANCTIONS AGAINST DEFENDANT AND CROSS-COMPLAINANT, DARRYL COTTON** **Date:** April 10, 2018 **Time:** 8:30 a.m. **Dept:** C-73 **Judge:** The Honorable Joel R. Wohlfeil
DARRYL COTTON, an individual, Cross-Complainant, vs. LARRY GERACI, and individual; REBECCA BERRY, an individual; and DOES 1 through 10, Inclusive, Cross-Defendants.	

Defendant and Cross-Complainant Darryl Cotton ("Cotton") respectfully requests that this Court defer ruling on Plaintiff Larry Geraci's ("Geraci") *ex parte* motion seeking sanctions until this Court rules on Plaintiff's Motion to Expunge Notice of Pendency of Action (*Lis Pendens*) (the "LP Motion") for the reasons set forth below. The LP Motion is scheduled to be argued before this Court this coming Friday, April 13, 2018.

Cotton believes that, upon conclusion of that hearing on Friday, this Court will finally understand

that this case ***is*** as simple as it appears. In fact, I believe this Court will be angered that attorney Michael Weinstein ("Weinstein") even brought forth this instant motion seeking sanctions which, in light of the fact that this case lacks probable cause, will make it clear that this motion is a vexatious litigation tactic meant to unduly pressure me. Declaration of Darryl Cotton ("DC Decl.") ¶2.)

Furthermore, and respectfully noted, more concerning for this Court should be the fact that Weinstein's written communications to Cotton clearly telegraph his intent to use this Court's rulings which have allowed this action to progress to this stage – notwithstanding the complete lack of probable cause – as a *defense* to a cause of action against his firm for malicious prosecution: this court on numerous occasions has denied Cotton's injunction applications, granted Geraci's injunction applications, and made factual findings that I am unlikely to prevail on my cause of action for breach of contract and that Geraci is likely to prevail on his cause of action for breach of contract against me. (DC Decl. ¶3.)

This Court's rulings are based on a grave misunderstanding of key evidence (described below) and has and is severely prejudicing me because those rulings will serve, *inter alia*, as a legal defense to my cause of action against Weinstein's law firm for malicious prosecution when I prevail in this matter. (DC Decl. ¶4.)

I urge the Court, as it reviews the evidence, to please be open to the possibility that Weinstein dug himself into a hole and is motivated to misrepresent facts to this Court to protect his firm's reputation and from legal and financial liability. This is NOT an impossible scenario. Please do not prejudice Cotton by not even entertaining the possibility and ascertaining whether it is supported by the evidence provided in the LP Motion.

INTRODUCTION

There is no easy way to put this and, even now, I am hesitant to be direct with this Court for fear of retaliation. But, euphemistically put, this Court has not properly recognized the undisputed and the case-dispositive nature of the evidence it has been presented with before. Previously, I thought that this Court was knowingly and actively biased against me because it communicated to me, *inter alia*, that it was well-acquainted with counsel Weinstein. I now understand that such is not the case. I now believe this Court is simply doing the best it can with the realities of an overburdened judicial system which has attorneys like Weinstein practicing before it and *pro se* litigants such as myself that do not know how to

succinctly and logically bring across the facts and legal reasoning of their case free of emotion. (DC Decl. ¶5.)

On January 25, 2018, after a hearing in front of this Court, it became apparent this Court did not understand that the *authenticity* of the most material piece of evidence in this case is NOT disputed (*i.e.*, Geraci/Weinstein **DO NOT** dispute the fact that Geraci sent the Confirmation Email (fully defined and explained in the LP Motion) thereby contradicting the *only* alleged factual basis of his Complaint). After the hearing, Cotton wrote to Weinstein the following:

> I note that in his minute order, [Judge Wohlfeil] states there is "disputed" evidence, and you KNOW that neither you nor Gina Austin in the City matter have ever disputed that Confirmation Email. It would appear to me, if I am not crazy, that you have an ***affirmative duty***, based on the case law and California State Bar opinions referenced in my pleading, to inform Judge Wohlfeil about his erroneous assumption. Or, you can choose to dispute the authenticity of the Confirmation Email after almost a year of not doing so.[1]

The next day, January 26, 2018, Weinstein replied by stating: "***I have not, in any pleading or oral argument, made any misrepresentation to the court about the facts or the law.***" DC Decl., Ex. B. This response by Weinstein should be **A BIG, BRIGHT RED FLAG** to this Court; inherent in this response is an indirect acknowledgement ***by*** Weinstein that a misrepresentation ***was made*** to this Court and that this Court issued orders under that misrepresentation. Weinstein's response was meant to create a record seeking to insulate himself from liability. Cotton stated as such when he replied to Weinstein the same day:

> You are correct, you have not "made any misrepresentation to the court about the facts or the law." However, you know that he has made rulings premised on his incorrect belief that there is "disputed" evidence and, as such, you have an ***Affirmative Duty*** to tell Judge Wohlfeil about his mistaken belief upon which he has made numerous incorrect rulings. I wonder what Judge Wohlfeil is going to think about you and Gina when he eventually realizes that you allowed him to continuously, over the course of months and many motions and oral hearings, issue rulings that show he does not understand that, at least to this date, you have not disputed the Confirmation Email. ***He has issued orders on that mistaken belief and you have taken advantage of that mistaken belief***. [DC Decl. Ex. C (emphasis added).]

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Over the last year I have literally begged this Court to get an understanding of the Confirmation

[1] DC Decl. ¶6; DC Decl. Exhibit ("Ex.") A.

Email and its role in this legal action throughout my pleadings and, at more than one oral hearing, my one and only question to this Court was to please address the Confirmation Email: Each of my requests were always denied without this Court providing any reasoning for said denial. (DC Decl. ¶9.)

On March 12, 2018, my counsel, Mr. Jacob Austin, emailed Weinstein the following:

> I want to note the following: in preparation for representing Mr. Cotton I have reviewed (i) every filing in both of Mr. Cotton's actions with Mr. Geraci and the City of San Diego, (ii) every document produced to and from Mr. Cotton via discovery, (iii) every single email to and from Mr. Cotton's professional and personal email accounts between October of 2016 and March of 2017 and (iv) interviewed over 17 individuals who were in constant written communications and/or working with Mr. Cotton on a daily basis during the same time period noted and whose testimony will be direct or circumstantial evidence that Mr. Cotton intended the document executed in November of 2016 to be a "receipt" (as he calls it in most of his pleadings) and that Ms. Austin knew the "November Document" was meant to be just a "receipt."....
>
> As you are aware, Judge Wohlfeil has never provided a written or verbal opinion analyzing what Mr. Cotton refers to as the "Confirmation Email." Mr. Cotton believes that Judge Wohlfeil is under a misunderstanding regarding the "undisputed" nature of the Confirmation Email. This perceived misunderstanding is a contributing factor to the irreparable mental harm that Mr. Cotton is facing per Dr. Ploesser.[2]

Later that day, Weinstein replied to this statement regarding the Confirmation Email as follows (***bold in original***):

> [Cotton] insists the email he refers to is "dispositive" of all those motions. **That email was submitted by Mr. Cotton (and/or his attorneys) into evidence in support of all of his many ex parte applications for temporary restraining orders/preliminary injunction and in support of his petition for writ of mandate**. Mr. Cotton is entitled to believe the court got those rulings wrong.[3]

Please note that Weinstein DOES NOT DENY the authenticity of the email; he relies on the fact that the Confirmation Email has been presented before to this Court and the Court was still unpersuaded. *Mistakes happen*; again, this Court has never provided its reasoning for why the Confirmation Email and other evidence presented in the LP Motion has not persuaded it.

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[2] DC Decl., Ex. D at page 5.
[3] DC Decl., Ex. D at page 3.

I respectfully ask this Court: if it was presented with a malicious prosecution case, but the preceding trial court had mistakenly made factual findings that Plaintiff did have probable cause, would this Court allow counsel in that action to use as a legal defense the preceding court's misunderstanding when counsel ***knew*** the preceding trial court was operating under a material misunderstanding?

I IMPLORE the Court to ***please***, just for 10 minutes, review the undisputed evidence it has been presented with and be open to the possibility that Weinstein brought forth this suit with no probable cause and did so to coerce me to settle with Geraci. The Rutter Guide has an entire chapter on malicious prosecution and references to thousands of cases in which attorneys have acted unethically – it is possible such is the case here and this allegation is supported by credible, undisputed evidence. (*See, e.g., HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 218 ("***[In Malicious Prosecution cases] parties rarely admit an improper motive, malice is usually proven by circumstantial evidence and inferences drawn from the evidence***.") [Internal citations omitted; emphasis added.]

CONCLUSION

My Property, the subject matter of this litigation, is potentially worth millions. Simple financial greed is the motivation here. The truth is, I now believe this Court to operate with the best of intentions; however, this Court's actions, albeit unpurposeful, are still severely prejudicial towards me and it does not change the fact that I am facing daily personal and professional hardship as a result of this meritless litigation since it was filed over a year ago. The judiciary system has and is unjustly being used as a tool of oppression against me (*e.g.*, the instant motion seeking sanctions in this case with no probable cause is the perfect example).

Judge Wohlfeil, you are a good man, I have now seen you constantly seek to see justice done on numerous occasions when I have gone to your court. If I had to guess, a guess supported by every attorney and person who has reviewed the pleadings and evidence in this matter, you simply think I am a crazy *pro se* and this case cannot possibly be as simple as it appears. (DC Decl. ¶13.) It **is** this simple.

I am 57 years old and I have people and loved ones who depend on me. Please, if not for me, believe me when I say that, if I lose my Property, I have no other means by which to have gainful employment and provide for my loved ones and the people who depend on me. (DC Decl. ¶14.)

Please review the evidence in the LP Motion and please allow yourself to contemplate the possibility that this case is unjust and every day that passes is a day this Court is being used not "*to vindicate a legal right, but to act as pawn in [plaintiff's] ongoing chess game*" against me. *Jay v. Mahaffey*

(2013) 218 Cal.App.4th 1522, 1545 (emphasis added).

Exactly like in *Jay v. Mahaffey,* "a reasonable trier of fact could conclude that this case appears to be a poster child for cases instituted primarily for an improper purpose, which is one of the hallmarks of malice. [Citation.]" *Id.* Further, similar to *Jay v. Mahaffey*, the language from that case can be used to describe Geraci's actions here: "The only evidence to contradict the facts [Cotton] established was [the Receipt and Geraci's] declaration, which, [is a] self-serving declaration… Was the evidence sufficient [to establish malice and lack of probable cause]? 'Overwhelming' would be a better word. [Cotton] more than met [his] burden to establish a prima facie case of malice [and lack of probable cause] as to [Geraci and Weinstein]." *Id.*

What does a trial court do when it realizes that it made a grave mistake and allowed a meritless action to be maintained - despite being presented with *undisputed* and *case-dispositive* evidence proving the lack of probable cause for that action - ***for over a year*** against a *pro se* litigant to his great AND irreparable psychological and financial detriment?

DATED: April 9, 2018

By _____
DARRYL COTTON
Defendant/Cross-Complainant *In Propria Persona*

Darryl Cotton
San Diego, CA 92108
Telephone: 619.357.6850
Facsimile: 888.357.8501
JPA@JacobAustinEsq.com

Pro Per Defendant and Cross-Complainant

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.	CASE NO. 37-2017-00010073-CU-BC-CTL DARRYL COTTON'S DECLARATION IN SUPPORT OF HIS OPPOSITION TO *EX PARTE* APPLICATION BY PLAINTIFF/ CROSS-DEFENDANT LARRY GERACI FOR AN ORDER SHORTENING TIME TO HEAR MOTION FOR MONETARY AND ESCALATING/TERMINATING SANCTIONS
DARRYL COTTON, an individual, Cross-Complainant, vs. LARRY GERACI, and individual, REBECCA BERRY, an individual; and DOES 1 through 10, Inclusive, Cross-Defendants.	DATE: April 10, 2018 TIME: 8:30 a.m. DEPT: C-73 JUDGE: The Honorable Joel R. Wohlfeil

I, Darryl Cotton ("Cotton"), declare:

1. I am the owner of record of the real property located at 6176 Federal Boulevard, San Diego County, California (the "Property").

2. I believe that, upon conclusion of hearing on my Motion to Expunge Notice of Pendency of Action (*Lis* Pendens) on Friday, April 13, 2018 (the "LP Motion"), this Court finally will understand

that this case ***is*** as simple as it appears. In fact, I believe this Court will be angered that attorney Michael Weinstein ("Weinstein") even brought forth the instant motion seeking sanctions which, in light of the fact that this case lacks probable cause, will make it clear that this motion is a vexatious litigation tactic meant to unduly pressure me.

3. I believe that Weinstein's written communications to me clearly telegraph his intent to use this Court's rulings which have allowed this action to progress to this stage, notwithstanding the complete lack of probable cause, as a *defense* to a cause of action against his firm for malicious prosecution: this court on numerous occasions has denied my injunction applications, granted Geraci's injunction applications, and made factual findings that I am unlikely to prevail on my cause of action for breach of contract and that Geraci is likely to prevail on his cause of action for breach of contract against me.

4. I believe this Court's rulings are based on a grave misunderstanding of key evidence in this case – most notably the Confirmation Email (described more fully in the LP Motion) – and this Court has and is severely prejudicing me because those rulings will serve, *inter alia*, as a legal defense to my cause of action against Weinstein's law firm for malicious prosecution when I prevail in this matter.

INTRODUCTION

5. There is no easy way to put this and, even now, I am hesitant to be direct with this Court for fear of retaliation. But, euphemistically put, I believe this Court has not properly recognized the undisputed and the case-dispositive nature of the evidence it has been presented with before.

6. Previously, I thought this Court was knowingly and actively biased against me because it communicated to me, *inter alia*, that it was well-acquainted with counsel Weinstein. I now understand that such is not the case. I now believe this Court is simply doing the best it can with the realities of an overburdened judicial system which has attorneys like Weinstein practicing before it and *pro se* litigants such as myself who do not know how to succinctly and logically bring across the facts and legal reasoning of their case free of emotion.

7. On January 25, 2018, after a hearing before this Court, it became apparent this Court did not understand that the *authenticity* of the most material piece of evidence in this case is NOT disputed. After the hearing, I emailed Weinstein regarding the Court's misunderstanding. Attached as Exhibit A is a true and correct copy of that email.

8. The next day, January 26, 2018, Weinstein replied by stating: "***I have not, in any pleading or oral argument, made any misrepresentation to the court about the facts or the law.***" I believe that Weinstein's response was meant to create a record seeking to insulate himself from liability. Attached as Exhibit B is a true and correct copy of that email from Weinstein.

9. I replied to Weinstein the dame day. Attached as Exhibit C is a true and correct copy of that email.

10. Over the last year I have literally begged this Court to get an understanding of the Confirmation Email and its role in this legal action throughout my pleadings. At more than one oral hearing, my one and only question to this Court was to please address the Confirmation Email: Each of my requests was denied without this Court providing any reasoning for said denial.

11. On March 12, 2018, my counsel, Jacob Austin, emailed Weinstein. Attached as Exhibit D is a true and correct copy of that email forwarded to me by Mr. Austin (Mrs. Austin's email begins at page 4).

12. Later that day, Weinstein replied to Mr. Austin's email. Mr. Weinstein's response is also in Exhibit D and starts at page 1.

13. I now believe that this Court operates with the best of intentions, however, I believe this Court's actions, albeit unpurposeful, are still severely prejudicial towards me and it does not change the fact that I am facing daily personal and professional hardship as a result of what I believe to be a meritless litigation. I think the judiciary system has and is unjustly being used as a tool of oppression against me (*e.g.*, the instant motion seeking sanctions in this case with no probable cause is the perfect example).

14. I believe Judge Wohlfeil to be a good man, as I have now personally observed him constantly seek to see justice done on numerous occasions when I have gone to his court. If I had to guess – a guess supported by every attorney and person who has reviewed the pleadings and evidence in this matter – I believe Judge Wohlfeil simply thinks I am a crazy *pro se* and this case cannot possibly be as simple as it appears.

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15. I am 57 years old, and I have people and loved ones who depend on me. If I lose my Property, I have no other means by which to have gainful employment and provide for my loved ones and the people who depend on me.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 9, 2018 at San Diego, California.

DARRYL COTTON

EXHIBIT A

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Depositions

Darryl Cotton <indagrodarryl@gmail.com> Thu, Jan 25, 2018 at 3:33 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Cc: info@austinlegalgroup.com

Mr. Weinstein,

As to the date for depositions, I choose the last day possible as I am planning to file my appeal ASAP and hope the Court of Appeals will issue an order before I have to be deposed.

The Judge started off his hearing with how well he knows all counsel in these matters as you have all been before him on numerous occasions and how he doubts you would do anything along the lines I described in my pleading. Great. Your prior relationship somehow means I am wrong. I am sure you have read my opposition, so you know my thoughts, I am either crazy or I have just never been able to get the judge to focus on that one email from Geraci that I refer to as the Confirmation Email.

I note that his minute order for today makes no reference to the Confirmation Email despite my repeated requests in my Opposition that he explain how the Confirmation Email does not dispositively resolve this matter. I am assuming, if I am not actually crazy, that he just thinks I am crazy and has not really read my pleadings. This is the third hearing that the Confirmation Email has been in front of him and he has ruled in a manner that shows that he has not taken it into account. I note that in his minute order, he states there is "disputed" evidence, and you KNOW that neither you nor Gina Austin in the City matter have ever disputed that Confirmation Email. It would appear to me, if I am not crazy, that you have an ***affirmative duty***, based on the case law and California State Bar opinions referenced in my pleading, to inform Judge Wohlfeil about his erroneous assumption. Or, you can choose to dispute the authenticity of the Confirmation Email after almost a year of not doing so.

If I really am crazy, I apologize to you. I really do. If I am not, this will eventually all come out and your actions in this matter will be incredibly clear. I note the the State Bar let me know about "Malicious Prosecution" causes of action. If I prevail in this matter, again, assuming I am not crazy and the Confirmation Email is taken into account by the COA, then you can be assured I will be using this email as evidence that you knew you had an affirmative duty to Judge Wohlfeil about letting him know that the Confirmation Email is ***not*** disputed and you did not. Again, only if I am crazy. It is not lost on me that I have yet again been before the Court and I still lost (He has never mentioned or referenced the Confirmation Email, I keep hoping he just thinks I am a crazy pro se and don't know what I am doing). At some point I have to realize no matter how sure I am about something, that maybe, I really am not thinking well. If the COA comes back with a reasoned decision taking into account and describing why the Confirmation Email (along with the other communications from Geraci, which include the drafts of purchase agreements prepared by Gina Austin months after November of 2016) does not dispositively address this action in my favor, I shall personally and sincerely offer my apologies. If not, I will eventually, no matter how much it costs me personally financially and emotionally, see you and Gina in Court for malicious prosecution. And there will be no situation where I settle. I want to see you both on the stand responding to this email and why you did not tell Judge Wohlfeil about his incorrect assumption that would have dispositively addressed this case in my favor much sooner and saved me an incredible amount financial and emotional harm.

In anticipation of your reply I remain.

Darryl Cotton

EXHIBIT B

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

RE: Depositions

Michael Weinstein <MWeinstein@ferrisbritton.com>
To: Darryl Cotton <indagrodarryl@gmail.com>

Fri, Jan 26, 2018 at 9:56 AM

Mr. Cotton,

You have chosen "the last day possible" for your deposition. By my calculation, that would be Wednesday, February 14, 2018 (20 days from today). I will serve an amended deposition notice scheduling your deposition for February 14. Thank you.

As for the remainder of your email, you are way off the mark. I have not, in any pleading or oral argument, made any misrepresentation to the court about the facts or the law.

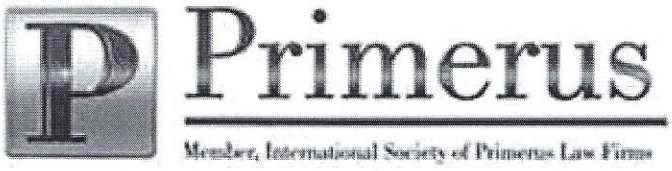
Trial Call is May 11, 2018. At the trial the disputed facts in this case will be presented through admissible witness testimony and a decision will be made by the judge or jury. That is the way the process works. And that is where I, on behalf of my client, will present and argue my case. I will not do so in emails to you.

I wish you no ill will. Please be assured that I will continue to conduct myself in an ethical and civil matter in all my dealings with you.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
501 West Broadway, Suite 1450
San Diego, CA 92101-7901
www.ferrisbritton.com
Tel (619) 233-3131
Fax (619) 232-9316

Vcard



From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Thursday, January 25, 2018 3:34 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Cc: info@austinlegalgroup.com
Subject: Depositions

Mr. Weinstein,

As to the date for depositions, I choose the last day possible as I am planning to file my appeal ASAP and hope the Court of Appeals will issue an order before I have to be deposed.

The Judge started off his hearing with how well he knows all counsel in these matters as you have all been before him on numerous occasions and how he doubts you would do anything along the lines I described in my pleading. Great. Your prior relationship somehow means I am wrong. I am sure you have read my opposition, so you know my thoughts, I am either crazy or I have just never been able to get the judge to focus on that one email from Geraci that I refer to as the Confirmation Email.

I note that his minute order for today makes no reference to the Confirmation Email despite my repeated requests in my Opposition that he explain how the Confirmation Email does not dispositively resolve this matter. I am assuming, if I am not actually crazy, that he just thinks I am crazy and has not really read my pleadings. This is the third hearing that the Confirmation Email has been in front of him and he has ruled in a manner that shows that he has not taken it into account. I note that in his minute order, he states there is "disputed" evidence, and you KNOW that neither you nor Gina Austin in the City matter have ever disputed that Confirmation Email. It would appear to me, if I am not crazy, that you have an ***affirmative duty***, based on the case law and California State Bar opinions referenced in my pleading, to inform Judge Wohlfeil about his erroneous assumption. Or, you can choose to dispute the authenticity of the Confirmation Email after almost a year of not doing so.

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Confirmation Email is ***not*** disputed and you did not. Again, only if I am crazy. It is not lost on me that I have yet again been before the Court and I still lost (He has never mentioned or referenced the Confirmation Email, I keep hoping he just thinks I am a crazy pro se and don't know what I am doing). At some point I have to realize no matter how sure I am about something, that maybe, I really am not thinking well. If the COA comes back with a reasoned decision taking into account and describing why the Confirmation Email (along with the other communications from Geraci, which include the drafts of purchase agreements prepared by Gina Austin months after November of 2016) does not dispositively address this action in my favor, I shall personally and sincerely offer my apologies. If not, I will eventually, no matter how much it costs me personally financially and emotionally, see you and Gina in Court for malicious prosecution. And there will be no situation where I settle. I want to see you both on the stand responding to this email and why you did not tell Judge Wohlfeil about his incorrect assumption that would have dispositively addressed this case in my favor much sooner and saved me an incredible amount financial and emotional harm.

In anticipation of your reply I remain.

Darryl Cotton

EXHIBIT C

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Re: Depositions

Darryl Cotton <indagrodarryl@gmail.com> Fri, Jan 26, 2018 at 12:19 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>, info@austinlegalgroup.com

Weinstein,

You are correct, you have not "made any misrepresentation to the court about the facts or the law." However, you know that he has made rulings premised on his incorrect belief that there is "disputed" evidence and, as such, you have an ***Affirmative Duty*** to tell Judge Wohlfeil about his mistaken belief upon which he has made numerous incorrect rulings. I wonder what Judge Wohlfeil is going to think about you and Gina when he eventually realizes that you allowed him to continuously, over the course of months and many motions and oral hearings, issue rulings that show he does not understand that, at least to this date, you have not disputed the Confirmation Email. He has issued orders on that mistaken belief and you have taken advantage of that mistaken belief.

This email by you is a blatant attempt to create a false record to cover your ass. This is why our judicial system fails miserably to achieve justice. I read the Ethics Opinion, I understand it. The violation here is not that you made a misrepresentation to the Court about facts or law, but that you have an Affirmative Duty to correct the judge and the rulings he has made based on an incorrect understanding of ***dispositive*** evidence. Again, his ruling is clear, he thinks the Confirmation Email is disputed, it is NOT. You are manipulating Judge Wohlfeil by not bringing this to his attention, hoping I run out of resources before the truth of your actions can come to light. And this email just proves it. You are playing word games, thinking I don't understand the nuances. You are no better than Demian. You are the absolutely the worst kind of unethical attorney there is. It is because of unethical attorneys like you, that manipulate the judicial system, that our system is so flawed. Gina conspired with Geraci from the beginning. But you, you keep doubling down, keeping on maintaining this vexatious lawsuit.

I am attaching here the California States Bar Ethics opinion regarding Deceitful Conduct that has all the language needed for you to know, to the extent you may try to argue that you previously did not know, that you have an AFFIRMATIVE DUTY to tell Judge Wohlfeil that the Confirmation Email is dispositive and this case should be resolved in my favor. I don't think that you will, you are in too deep. I dare you to show this email to Judge Wohlfeil and bring to his attention the dispositive nature of the Confirmation Email so that he finally understands you have been manipulating him by ***OMISSION***. It would be great to see you argue to him that you have allowed him to abuse his discretion on numerous occasions by stating that you "have not, in any pleading or oral argument, made any misrepresentation to the court about the facts or the law."

Per his stated opinions about you and counsel at the last oral hearing, he thinks you would not take these sorts of actions, don't you think he is going to be pissed once he finds out that after he went out of his way to make you seem like a nice, ethical guy that you actually continued to actively deceive him?

When you opposed the motions for stay, you had no problem citing case law and language to me via email. But, in response to this email, you have decided not to do so because you have no defense. Judge Wohlfeil did not read and/or take my opposition serious. It is a mess. But you did. I know you did. And you know what I tried to convey is true.

"No ill will" towards me? What kind of bullshit is that. I have lost everything. I have been to the ER for a stroke. I have been driven near insane and assaulted people, been disrespectful to people that I care about. I have lost my business and my property. Do you have any idea how I feel knowing that whether I win or lose I lost this property? I have had to negotiate away millions to keep this litigation financed. I have had to demean myself in public records. You are so good at distracting the judge that I don't even have legal representation anymore even though my cause of action is not just meritorious, the evidence makes it clear it is dispositive. No "ill will" towards me? I cannot say the same about you! When this is over, I hope that I can convince the Judge to have you prosecuted criminally for your actions here!!

Darryl Cotton

On Fri, Jan 26, 2018 at 9:56 AM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

> Mr. Cotton,
>
> You have chosen "the last day possible" for your deposition. By my calculation, that would be Wednesday, February 14, 2018 (20 days from today). I will serve an amended deposition notice scheduling your deposition for February 14. Thank you.
>
> As for the remainder of your email, you are way off the mark. I have not, in any pleading or oral argument, made any misrepresentation to the court about the facts or the law.
>
> Trial Call is May 11, 2018. At the trial the disputed facts in this case will be presented through admissible witness testimony and a decision will be made by the judge or jury. That is the way the process works. And that is where I, on behalf of my client, will present and argue my case. I will not do so in emails to you.
>
> I wish you no ill will. Please be assured that I will continue to conduct myself in an ethical and civil matter in all my dealings with you.
>
> Respectfully,
>
> Michael R. Weinstein
> mweinstein@ferrisbritton.com
> Ferris & Britton, A Professional Corporation
> 501 West Broadway, Suite 1450

San Diego, CA 92101-7901
www.ferrisbritton.com
Tel (619) 233-3131
Fax (619) 232-9316

Vcard

Primerus

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From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Thursday, January 25, 2018 3:34 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Cc: info@austinlegalgroup.com
Subject: Depositions

Mr. Weinstein,

As to the date for depositions, I choose the last day possible as I am planning to file my appeal ASAP and hope the Court of Appeals will issue an order before I have to be deposed.

The Judge started off his hearing with how well he knows all counsel in these matters as you have all been before him on numerous occasions and how he doubts you would do anything along the lines I described in my pleading. Great. Your prior relationship somehow means I am wrong. I am sure you have read my opposition, so you know my thoughts, I am either crazy or I have just never been able to get the judge to focus on that one email from Geraci that I refer to as the Confirmation Email.

I note that his minute order for today makes no reference to the Confirmation Email despite my repeated requests in my Opposition that he explain how the Confirmation Email does not dispositively resolve this matter. I am assuming, if I am not actually crazy, that he just thinks I am crazy and has not really read my pleadings. This is the third hearing that the Confirmation Email has been in front of him and he has ruled in a manner that shows that he has not taken it into account. I note that in his minute order, he states there is "disputed" evidence, and you KNOW that neither you nor Gina Austin in the City matter have ever disputed that Confirmation Email. It would appear to me, if I am not crazy, that you have an ***affirmative duty***, based on the case law and California State Bar opinions referenced in

my pleading, to inform Judge Wohlfeil about his erroneous assumption. Or, you can choose to dispute the authenticity of the Confirmation Email after almost a year of not doing so.

If I really am crazy, I apologize to you. I really do. If I am not, this will eventually all come out and your actions in this matter will be incredibly clear. I note the the State Bar let me know about "Malicious Prosecution" causes of action. If I prevail in this matter, again, assuming I am not crazy and the Confirmation Email is taken into account by the COA, then you can be assured I will be using this email as evidence that you knew you had an affirmative duty to Judge Wohlfeil about letting him know that the Confirmation Email is ***not*** disputed and you did not. Again, only if I am crazy. It is not lost on me that I have yet again been before the Court and I still lost (He has never mentioned or referenced the Confirmation Email, I keep hoping he just thinks I am a crazy pro se and don't know what I am doing). At some point I have to realize no matter how sure I am about something, that maybe, I really am not thinking well. If the COA comes back with a reasoned decision taking into account and describing why the Confirmation Email (along with the other communications from Geraci, which include the drafts of purchase agreements prepared by Gina Austin months after November of 2016) does not dispositively address this action in my favor, I shall personally and sincerely offer my apologies. If not, I will eventually, no matter how much it costs me personally financially and emotionally, see you and Gina in Court for malicious prosecution. And there will be no situation where I settle. I want to see you both on the stand responding to this email and why you did not tell Judge Wohlfeil about his incorrect assumption that would have dispositively addressed this case in my favor much sooner and saved me an incredible amount financial and emotional harm.

In anticipation of your reply I remain.

Darryl Cotton

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233K

EXHIBIT D

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Fwd: Follow Up to December 7th Ex Parte Hearings

Jake Austin <jpa@jacobaustinesq.com> Mon, Mar 12, 2018 at 5:46 PM
To: Darryl Cotton <indagrodarryl@gmail.com>

---------- Forwarded message ---------
From: Michael Weinstein <MWeinstein@ferrisbritton.com>
Date: Mon, Mar 12, 2018 at 4:27 PM
Subject: RE: Follow Up to December 7th Ex Parte Hearings
To: Jake Austin <jpa@jacobaustinesq.com>

Dear Mr. Austin,

I am glad to hear that you are substituting in as counsel. I look forward to working with you as this matter proceeds to trial. Fyi, the Trial Readiness Conference is April 27, 2018, and Trial Call is May 11, 2018.

You have asked that my client (i) withdraw his "pending motions before the Court for the execution of the proposed judgment you have submitted and renotice the pending motion for a TRO" so that you may substitute in and file an opposition on behalf of Mr. Cotton, and (ii) that we submit a joint request to the Court for a written opinion analyzing the arguments put forward in the motion for a TRO.

My client is unwilling to do so, as further explained below.

As you know, there are two lawsuits between the parties. Mr. Cotton has often confused the different issues and different relief sought in those two cases—and has failed to grasp the procedural differences.

The Geraci Lawsuit. The earlier filed action was filed by my client and is entitled *Larry Geraci v. Darryl Cotton* (hereafter the "Geraci Lawsuit."). Mr. Cotton has filed a cross-complaint in that action against Larry Geraci and Rebecca Berry. Both the complaint and cross-complaint are set for Trial Call on May 11, 2018. Since its inception that case has been before Judge Wohlfeil.

The Writ of Mandate Lawsuit. The later-filed action was filed by your client against the City of San Diego, and my clients were named as Real Parties in Interest (hereafter the "Writ of Mandate Lawsuit"). In that action Mr. Cotton sought specific relief by way of writ of mandate, namely, Mr. Cotton sought the issuance of a writ of mandate compelling the City of San Diego to recognize Mr. Cotton as the sole applicant on my clients' pending CUP Application. Mr. Cotton first sought that relief by ex parte application before Judge Sturgeon (to whom the case was originally assigned); Judge Sturgeon denied the ex parte request and transferred the case to Judge Wohlfeil. Mr. Cotton again sought that same relief by ex parte application before Judge Wohlfeil; Judge Wohlfeil denied the ex parte request but scheduled the petition for a hearing. Mr. Cotton then fired his attorney, Mr. Demian, and sought ex parte reconsideration of the denial of his ex parte application for issuance of a writ of mandate; that motion for reconsideration was denied by Judge Wohlfeil. (Mr. Cotton then appealed the ex parte rulings, which appeals he subsequently abandoned.) Mr. Cotton's petition for writ of mandate was subsequently heard on the papers submitted at a noticed hearing on October 25, 2017, and the court denied Mr. Cotton's petition. I circulated a proposed Judgment to all counsel (Mr. Cotton was pro per) and, thereafter, submitted the proposed Judgment to Judge Wohlfeil.

Your email asks me to withdraw my pending motion for entry of the proposed Judgment. There is and was no such motion pending (and thus no hearing date). As noted above, the City of San Diego, the Respondent, and my clients, Real Parties in Interest, prevailed in that action. As a matter of course, and after circulating the proposed Judgment to all counsel for review and comment, a proposed Judgment was submitted to Judge Wohlfeil. I checked the Register of Actions today and Judge Wohlfeil signed the proposed Judgment and it was entered on March 7, 2018. Mr. Cotton believes each of the judges (Judge Sturgeon and Judge Wohlfeil) ruled incorrectly the many times he brought the issue before them—my understanding is that his only available recourse now is to appeal the entered Judgment to the Fourth District Court of Appeal.

The Geraci Lawsuit Cont'd.

Although judgment has been entered in the Writ of Mandate Lawsuit, this has no impact on the Geraci Lawsuit, which continues forward.

In the Geraci Lawsuit my client has two pending motions to be heard on October 23, 2018: (1) a motion to compel the deposition of Darryl Cotton and to compel written discovery responses; and (2) a motion for a preliminary injunction or other order to compel access to the subject property for soils testing necessary to obtain approval of the CUP permit.

As to the former motion: Mr. Cotton has known about yet refused to provide written discovery responses that were due on December 29, 2017 (after I granted him a requested extension until that time). The written discovery requests are not voluminous. Mr. Cotton was originally scheduled (by notice and agreement) to have his deposition taken on December 11, 2017. Then he fired his lawyer

on approximately December 7 or 8, and would not make himself available for deposition on December 11. I understood those circumstances and took the deposition off calendar. Mr. Cotton thereafter failed to appear twice at noticed depositions—the latter time defying a court order granted after I brought a first motion to compel. This second motion to compel his deposition (and seeking sanctions this time) is scheduled for October 23, 2018. There are no valid grounds for opposing the motion. Mr. Cotton has avoided appearing for his deposition for nearly 3 months so far. This action is going to trial in 60 days, i.e., Trial Call is May 11, 2018. You have given me no valid reason why I should withdraw the motion. If Mr. Cotton wants additional time to file an opposition, then you can seek that relief ex parte. But I do not know why you would do so as there are no grounds for opposing the motion.

As to the latter motion: A CUP runs with the land. Soils testing is necessary to obtain approval of the CUP. Mr. Cotton, realizing that, at one point voluntarily agreed to allow the soils testing but has since reneged. I have no idea why as the soils testing and granting of a CUP will benefit him if he ultimately prevails at trial in two months. Mr. Cotton has constantly harped that he is worried my client will torpedo the CUP process, but he has no evidence that is the case. My client has spent substantial sums during the more than one year the CUP Application has been pending to obtain approval. Now Mr. Cotton appears to himself want to torpedo or at least delay the process—for no apparent rational reason so far as I can discern. If Mr. Cotton wants additional time to file an opposition, then you can also seek that relief ex parte. But, again, I do not know why Mr. Cotton would want to oppose the motion as soils testing is necessary to obtain approval of the CUP. Instead, he should simply allow the soils testing.

I do not have any reason to doubt that Mr. Cotton is experiencing emotional distress. That happens to litigants to one extent or another in all lawsuits. That undoubtedly explains the many vitriolic and expletive-laced emails that Mr. Cotton has sent me over the last several months (for which Mr. Cotton recently apologized). Much of the emotional distress is his own doing. Instead of submitting to a deposition and undertaking steps to prepare for a trial on the merits in the Geraci Lawsuit, Mr. Cotton has used that time instead, among other things, to pursue ill-advised motions in these two cases. He insists the email he refers to is "dispositive" of all those motions. **That email was submitted by Mr. Cotton (and/or his attorneys) into evidence in support of all of his many ex parte applications for temporary restraining orders/preliminary injunction and in support of his petition for writ of mandate.** Mr. Cotton is entitled to believe the court got those rulings wrong. Despite his beliefs to the contrary, the court did not and should not have viewed the email as dispositive and correctly ruled on those motions. He has also pursued ill-advised appeals of trial court rulings, which he has since abandoned.

Finally, I feel compelled to address your comments about Gina Austin, which are way off base. Ms. Austin has made no misrepresentations to the court. No declaration signed under penalty of perjury by Gina Austin has been submitted as evidence to the Court in any proceeding in any of the two cases. She has appeared as counsel in the Writ of Mandate case and argued with me in opposition to Mr. Cotton's first ex parte application for issuance of a writ of mandate heard by Judge Sturgeon. That is it —legal argument. She will be a witness at trial of the Geraci Lawsuit but so far has not submitted any written or other testimony. So I just do not understand your position in that regard.

If you schedule an ex parte, I authorize you to give me notice of the date and time by email and I authorize you to serve any pleadings by email.

Please feel free to call me if you want to discuss any matter related to the case.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
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501 West Broadway, Suite 1450
San Diego, CA 92101-7901
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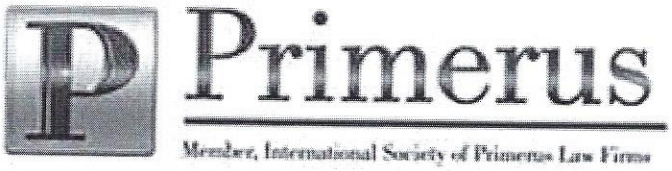


From: jacobaustinesq@gmail.com [mailto:jacobaustinesq@gmail.com] **On Behalf Of** Jake Austin
Sent: Monday, March 12, 2018 11:25 AM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>

Subject: Re: Follow Up to December 7th Ex Parte Hearings

Mr. Weinstein,

I am writing to inform you that I will shortly be substituting in as counsel for Mr. Cotton and to make a request.

First, however, I want to note the following: in preparation for representing Mr. Cotton I have reviewed (i) every filing in both of Mr. Cotton's actions with Mr. Geraci and the City of San Diego, (ii) every document produced to and from Mr. Cotton via discovery, (iii) every single email to and from Mr. Cotton's professional and personal email accounts between October of 2016 and March of 2017 and (iv) interviewed over 17 individuals who were in constant written communications and/or working with Mr. Cotton on a daily basis during the same time period noted and whose testimony will be direct or circumstantial evidence that Mr. Cotton intended the document executed in November of 2016 to be a "receipt" (as he calls it in most of his pleadings) and that Ms. Austin knew the "November Document" was meant to be just a "receipt."

In short, based on my review of all the evidence noted above, it does appear that Mr. Cotton is correct in his allegations that Ms. Austin has made misrepresentations to the court and I will shortly be filing motions to have her respond to this evidence. However, as you are aware from the Independent Psychiatric Assessment by Dr. Ploesser, Mr. Cotton is facing immediate and irreparable mental harm from what he sincerely believes to be a conspiracy by Mr. Geraci, Ms. Berry and Ms. Austin to unlawfully acquire his property. There is more than probable cause, based on my review of the evidence above, to support such a conclusion. I am primarily a criminal defense attorney and if there was a situation where I had to defend Ms. Austin against criminal charges related to her misrepresentations to the court, I would recommend she quickly strike a deal to mitigate punishment.

As you are aware, Judge Wohlfeil has never provided a written or verbal opinion analyzing what Mr. Cotton refers to as the "Confirmation Email." Mr. Cotton believes that Judge Wohlfeil is under a misunderstanding regarding the "undisputed" nature of the Confirmation Email. This perceived misunderstanding is a contributing factor to the irreparable mental harm that Mr. Cotton is facing per Dr. Ploesser.

Based on the foregoing, I am requesting that (i) you please withdraw your pending motions before the Court for the execution of the proposed judgment you have submitted and renotice the pending motion for a TRO so that I may substitute in and file an Opposition on behalf of Mr. Cotton and (ii) that we submit a joint request to the Court for a written opinion analyzing the arguments put forward in the motion for a TRO. In light of the opinion of Dr. Ploesser, the potential for Mr. Cotton's mental harm would be greatly reduced if he perceived the court to be taking all the arguments into account, and he felt you were being a reasonable attorney.

Mr. Weinstein, to be completely forthright, the record and evidence regarding the culpability of Ms. Austin in this matter is clear. And I am sending this email and request as a professional courtesy to you because I want to gauge your response before making any assumptions regarding your own personal and professional ethics in this matter. I will not lightly bring forth any allegations against another attorney to the court.

On one hand you must zealously advocate on behalf of your client, on the other, you must stay within the bounds of ethical and legal obligations to the court that supersede those of your client's. In this case, Mr. Cotton is clearly facing irreparable harm and granting the instant request, while causing a delay of a few weeks, will result in little, if any, harm to your client. Not granting the instant request allows for the possibility that a miscarriage of justice will take place and Mr. Cotton will likely end up with irreparable mental harm.

I hope you can appreciate this request. I could have simply made certain allegations against you. But, again, unlike the overwhelming evidence against Ms. Austin, the record and evidence supporting the

allegations made against you previously by Mr. Cotton are less clear. Thus, this request which is reasonable. An unreasonable response will let me know what to expect from you moving forward.

Please let me know by 5:00 PM today whether you will grant this request.

Sincerely,

Jacob Austin

Law Office of Jacob Austin

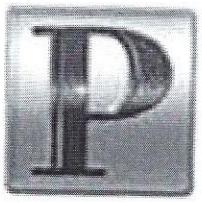
1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA

Phone: (619) 357-6850

Facsimile: (888) 357-8501

On Wed, Dec 20, 2017 at 9:48 AM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

> Mr. Austin,
>
> As a follow up to my earlier reply, attached please find a courtesy copy of the deposition notice served by mail today scheduling Mr. Cotton's deposition for Friday, January 5, 2018.
>
> Respectfully,
>
> Michael R. Weinstein
> mweinstein@ferrisbritton.com
> Ferris & Britton, A Professional Corporation
> 501 West Broadway, Suite 1450
> San Diego, CA 92101-7901
> www.ferrisbritton.com
> Tel (619) 233-3131
> Fax (619) 232-9316
>
> Vcard



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From: jacobaustinesq@gmail.com [mailto:jacobaustinesq@gmail.com] **On Behalf Of** Jake Austin
Sent: Tuesday, December 19, 2017 8:35 PM

To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Subject: Re: Follow Up to December 7th Ex Parte Hearings

Mr. Weinstein,

Please bear with me, first, I did not know Mr. Cotton would reach out to you this morning or that he would include me in this email chain. I was in court when this series of communications started.

Second, I am only assisting Mr. Cotton in a limited capacity on his appeal. I will not be representing him in the two underlying actions. Having said that, I would appreciate the professional courtesy if you would communicate through me until I get caught up to speed on what has happened in the two underlying matters and the *ex parte* motions that are the basis of his appeal.

I can verify that Mr. Cotton went to the Emergency Room after his motion for reconsideration was denied and, several days later, was seen by a medical doctor after he was involved in some kind of altercation. Mr. Cotton believes that the denial of his *ex parte* motions were wrong as a legal matter. I cannot speak to that, but, again, he believes it, and every time he starts discussing the case, Mr. Geraci, and yourself he becomes noticeably, physically high-strung and incredibly emotionally agitated to the point that he becomes incoherent.

Thus, please allow me some time to get my head around the matters here before responding substantively and, if it is the case that the appeal for Mr. Cotton has no basis, I will be happy to explain the matter to him so that he may hopefully redirect his intense emotions elsewhere.

I will get back to you as soon as I can but as I just took on my limited representation of him and my calendar this week is already over-booked, I doubt I will be able to respond substantively before sometime next week.

As to the notices of appeal, those have been filed. Please see attached.

Sincerely,

Jacob

Law Office of Jacob Austin

1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA

Phone: (619) 400-1468

(619) 357-6850

Facsimile: (888) 357-8501

On Tue, Dec 19, 2017 at 11:48 AM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

> Mr. Austin,
>
> Please telephone me to discuss this matter (or email me if you prefer). I believe your client is terribly misinformed.
>
> First, please: a) confirm whether you represent Mr. Cotton, and b) whether your representation is limited to the "appeal" of the denials of his three ex parte applications. If, contrary to what Mr. Cotton has represented, you are going to be representing him in the two underlying actions before Judge Wohlfeil, then please immediately serve and file signed Substitutions of Attorney forms.

Second, a) no judgment directing issuance of a writ of mandate has been entered, and b) no mandatory injunction has been issued. Quite the opposite, as Mr. Cotton's ex parte applications to obtain those things were denied. Thus, The Rutter Group citations and cases cited by Mr. Cotton are not applicable.

My understanding is that an appeal from the denial of a TRO (or the denial of a preliminary injunction) does not deprive the trial court of jurisdiction to proceed to try the case on the merits. (See *Gray v. Bybee,* 60 Cal.App.2d at 564, 571.) Rather, there is no automatic stay and Mr. Cotton must request a stay of the trial court proceedings if he wishes to stay the underlying proceedings while his appeal is pending. I am not aware of any appeal let alone any granting of a request for a stay. Unless and until that happens the underlying cases proceed accordingly.

If you are filing an "appeal," whether by interlocutory writ or otherwise, please notify me the moment you do. In the meantime, if you have any legal authority to support Mr. Cotton's assertion that any contemplated "appeals" will automatically stay the underlying actions, then please provide that authority to me as soon as possible.

If you agree that there is no automatic stay, please advise Mr. Cotton immediately. I need to be able to deal immediately with the attorney in the underlying actions. If that is you, then that would be great—just appear by filing your Substitution and I will deal only with you. If that is not you, then I will deal directly with Mr. Cotton.

Thank you.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
501 West Broadway, Suite 1450
San Diego, CA 92101-7901
www.ferrisbritton.com
Tel (619) 233-3131
Fax (619) 232-9316

Vcard

From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Tuesday, December 19, 2017 10:06 AM

To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Cc: Jake Austin <jacobaustinesq@gmail.com>
Subject: Re: Follow Up to December 7th Ex Parte Hearings

Michael,

You are obviously will do anything that Geraci tells you to do, even if for some reason it is lawful, you are blatantly lying to me and purposefully putting more intense and undue pressure on me when you I had a TIA. . Unfortunately for you, I can read:

In the Rutter California Practice Guide it says "An appeal automatically stays proceedings on a judgment directing issuance of a writ of mandate. [Hayworth v. City of Oakland (1982) 129 CA3d 723, 727, 181 CR 214, 217; Johnston v. Jones (1927) 74 CA 272, 273, 239 P 862]" It also says that "All mandatory injunctions are automatically stayed by appeal. Otherwise, the result upon a final adjudication could be a "barren victory" (i.e., a reversal on appeal might be "futile" if the action were already performed). [Byington v. Super.Ct. (1939) 14 C2d 68, 70, 92 P2d 896, 897; URS Corp. v. Atkinson/Walsh Joint Venture (2017) 15 CA5th 872, , CR3d , (2017 WL 4251127, *6); Agricultural Labor Relations Bd. v. Super.Ct. (Sam Andrews' Sons) (1983) 149 CA3d 709, 716-717, 196 CR 920, 925-926]"

The appeals stay the actions.

Do NOT contact me again or I will contact the California Bar and let them know that you are blatantly lying to me and that I have informed you that I have counsel who is helping me and who I have instructed you to contact directly. I have not done any research into this, but even if I am representing myself, it is my right to designate someone to act as my agent. You are clearly the worst kind of lawyer and will do anything for money and I won't believe anything you say.

DO NOT RESPOND. I DO NOT WANT TO HEAR FROM YOU AS YOU ARE PUTTING ME IN EMOTIONAL AND PHYSICAL DISTRESS. THIS IS NOT MELODRAMA OR ALARMISM ON MY PART. THIS IS REAL.

Darryl Cotton

On Tue, Dec 19, 2017 at 9:11 AM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

Dear Darryl,

If you have retained Mr. Jacob Austin in a limited capacity to assist you in appealing the denial of the three ex parte applications, then you are still representing yourself in all other respects in connection with the two underlying lawsuits. As of the present moment, those underlying actions are ongoing as no appeal has yet been filed and, if and when those appeals are filed, the underlying actions will not automatically be stayed.

Put another way, the two underlying lawsuits are still moving forward. I need to take your deposition. In my December 12th email I provided you with available dates for your deposition from which to choose. If you do not advise me by the end of the day which date you prefer, then I will pick from one of those dates and notice your deposition for that date.

In addition, as I also indicated in my December 12th email, you have an obligation to: a) serve amended notices of hearing reflecting the scheduling of the hearings on the motion for preliminary injunction and the motion for peremptory writ of mandate for January 25, 2018, at 9 a.m. in Department 73; b) prepare a proposed Order denying the ex parte application for a TRO containing the judge's findings that i) Defendant Cotton has not carried his burden to show it is more likely than not that he will prevail on the merits, and ii) Defendant Cotton has not carried his burden to show irreparable harm; and c) prepare a proposed Order denying the ex parte application for an order shortening time, which order should include the court's having denied Petitioner Cotton's request for judicial notice of his Verified Petition for Writ of Mandate as well as the court's having denied Real Parties in Interest Geraci/Cotton's request for judicial notice. I have not yet been served with amended notices or provided proposed Orders for my review. You are still obligated to do so.

Thank you.

Michael Weinstein

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
501 West Broadway, Suite 1450
San Diego, CA 92101-7901
www.ferrisbritton.com
Tel (619) 233-3131
Fax (619) 232-9316

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From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Tuesday, December 19, 2017 8:47 AM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Cc: Jake Austin <jacobaustinesq@gmail.com>

Subject: Re: Follow Up to December 7th Ex Parte Hearings

Michael,

I have decided to appeal the denial of my three ex-parte applications. I have engaged Jacob Austin, who is included in this email, in a limited capacity to help me on my appeal.

Please direct all future correspondence solely to Jacob directly from here onward.

Best regards,

Darryl

On Wed, Dec 13, 2017 at 8:00 AM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

> Darryl,
>
> I am sorry to hear about your TIA and hope you are feeling better now.

I grant your request for an extension of time for you to respond to the pending discovery requests from December 13th until December 29th. Please be aware that I will not be able to extend the deadline again as I need those responses.

I will wait for await your response on Monday on which of the dates would work for your deposition.

Thank you.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
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San Diego, CA 92101-7901
www.ferrisbritton.com
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From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Tuesday, December 12, 2017 7:24 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Subject: Re: Follow Up to December 7th Ex Parte Hearings

Michael,

First, please know that I understand your role and your duuty is to Gerraci and I have no personal ill will towards you in any way shape or form. If anything, I wish you were my attorney, David turned out to be an incredible disappointmsent.

really, My family actually sent me to the emergency room today after the hearing because I suffered a TIA, essentially a mini-stroke, and I was apparently speaking but not making sense wioth mye words.

Because of the judge's ruling finding that I am not likely to prevail on the meritsss of my casee, my financial backerr, who has at least until this point been financing my legal rrepresentation, told me today that we need to meet on Thursday or Friday and dissscuss whether we continue to proceed and under what terms

I wousld appreciate if I can get back to you on Monday on which dates would work for deposition and if we can push back the dates on delivery of discovery to COB on the 29th. I do not want to push back the OSC hearing becasue the jjudge shuld finally focus on the facts of the case then.

I am meeting with attorneys this week, in case I lose my financial backing, to see if I can find one that will take this matter on on a contingency basis.

Thank you in advance and I appreciate your professional courtesy.

Sincerrely,

Darryl

On Tue, Dec 12, 2017 at 10:30 AM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

> Mr. Cotton,
>
> There are three outstanding issues we need to discuss now that you are representing yourself.
>
> 1. <u>Your Deposition</u>

Last Friday Mr. Demian sent me the Substitution of Attorney forms that were going to be filed with the Court substituting you in as your own attorney (in pro per) in place of Mr. Demian. Mr. Demian also confirmed that you were unable to attend the deposition that was scheduled for Monday, December 11.

I still need to schedule and take your deposition and I need to do so sufficiently in advance of the January 11, 2018, date my clients' opposition papers are due to the pending motions for a preliminary injunction and motion for a peremptory writ of mandate.

I am available to take your deposition on either of the following dates: December 28, December 29, January 3, January 4, or January 5. Please advise me by reply email by 5 p.m. on Thursday, December 14, which of those available dates you prefer for your deposition. If I do not hear from you by then regarding your preferred date, then I will simply schedule and notice your deposition from among those 5 dates.

2. Your Discovery Responses

Please be reminded that on or before tomorrow, Wednesday, December 13, 2017, your written responses are due to the attached pending discovery requests previously served on you by mailing them to your then attorneys on November 8, 2013. Copies are attached for your ease of reference.

3. The Amended Notices of Hearing and the Proposed Orders Re Your December 7th Ex Parte Hearings

At the conclusion of the two ex parte hearings on December 7, Judge Wohlfeil ordered David Demian, as your attorney, to: a) serve amended notices of hearing reflecting the scheduling of the hearings on the motion for preliminary injunction and the motion for peremptory writ of mandate for January 25, 2018, at 9 a.m. in Department 73; b) prepare a proposed Order denying the ex parte application for a TRO containing the judge's findings that i) Defendant Cotton has not carried his burden to show it is more likely than not that he will prevail on the merits, and ii) Defendant Cotton has not carried his burden to show irreparable harm; and c) prepare a proposed Order denying the ex parte application for an order shortening time, which order should include the court's having denied Petitioner Cotton's request for judicial notice of his Verified Petition for Writ of Mandate as well as the court's having denied Real Parties in Interest Geraci/Cotton's request for judicial notice. The obligation to prepare and file the amended notices of hearing and to prepare and file the proposed Orders now falls to you as you have

substituted in as your own attorney. If you have any questions about these obligations, then you may wish to ask Mr. Demian about them.

Also, please be aware that you should send the proposed Orders to me for my review and comment before submitting them to the court. (You are not required to send me the amended notices of hearing for my review in advance of your filing them with the court.)

Thank you.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
501 West Broadway, Suite 1450
San Diego, CA 92101-7901
www.ferrisbritton.com
Tel (619) 233-3131
Fax (619) 232-9316

Vcard

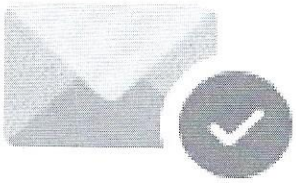
Primerus
Member, International Society of Primerus Law Firms

From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Monday, December 11, 2017 2:19 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Subject: Geraci Notice of Ex Parte Hearing 12-12-17

Michael,

I have decided to replace my legal counsel in the Geraci matter and will be representing myself tomorrow in front of Judge Wohlfeil. Please see the attached pleadings.

Darryl Cotton



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Law Office of Jacob Austin
1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA
Phone: (619) 357-6850
Facsimile: (888) 357-8501

Darryl Cotton
San Diego, CA 92108
Telephone: 619.357.6850
Facsimile: 888.357.8501
JPA@JacobAustinEsq.com

Pro Per Defendant and Cross-Complainant

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.	CASE NO. 37-2017-00010073-CU-BC-CTL DARRYL COTTON'S DECLARATION IN SUPPORT OF HIS OPPOSITION TO *EX PARTE* APPLICATION BY PLAINTIFF/ CROSS-DEFENDANT LARRY GERACI FOR AN ORDER SHORTENING TIME TO HEAR MOTION FOR MONETARY AND ESCALATING/TERMINATING SANCTIONS
DARRYL COTTON, an individual, Cross-Complainant, vs. LARRY GERACI, and individual, REBECCA BERRY, an individual; and DOES 1 through 10, Inclusive, Cross-Defendants.	DATE: April 10, 2018 TIME: 8:30 a.m. DEPT: C-73 JUDGE: The Honorable Joel R. Wohlfeil

I, Darryl Cotton ("Cotton"), declare:

1. I am the owner of record of the real property located at 6176 Federal Boulevard, San Diego County, California (the "Property").

2. I believe that, upon conclusion of hearing on my Motion to Expunge Notice of Pendency of Action (*Lis* Pendens) on Friday, April 13, 2018 (the "LP Motion"), this Court finally will understand

that this case ***is*** as simple as it appears. In fact, I believe this Court will be angered that attorney Michael Weinstein ("Weinstein") even brought forth the instant motion seeking sanctions which, in light of the fact that this case lacks probable cause, will make it clear that this motion is a vexatious litigation tactic meant to unduly pressure me.

3. I believe that Weinstein's written communications to me clearly telegraph his intent to use this Court's rulings which have allowed this action to progress to this stage, notwithstanding the complete lack of probable cause, as a *defense* to a cause of action against his firm for malicious prosecution: this court on numerous occasions has denied my injunction applications, granted Geraci's injunction applications, and made factual findings that I am unlikely to prevail on my cause of action for breach of contract and that Geraci is likely to prevail on his cause of action for breach of contract against me.

4. I believe this Court's rulings are based on a grave misunderstanding of key evidence in this case – most notably the Confirmation Email (described more fully in the LP Motion) – and this Court has and is severely prejudicing me because those rulings will serve, *inter alia*, as a legal defense to my cause of action against Weinstein's law firm for malicious prosecution when I prevail in this matter.

INTRODUCTION

5. There is no easy way to put this and, even now, I am hesitant to be direct with this Court for fear of retaliation. But, euphemistically put, I believe this Court has not properly recognized the undisputed and the case-dispositive nature of the evidence it has been presented with before.

6. Previously, I thought this Court was knowingly and actively biased against me because it communicated to me, *inter alia*, that it was well-acquainted with counsel Weinstein. I now understand that such is not the case. I now believe this Court is simply doing the best it can with the realities of an overburdened judicial system which has attorneys like Weinstein practicing before it and *pro se* litigants such as myself who do not know how to succinctly and logically bring across the facts and legal reasoning of their case free of emotion.

7. On January 25, 2018, after a hearing before this Court, it became apparent this Court did not understand that the *authenticity* of the most material piece of evidence in this case is NOT disputed. After the hearing, I emailed Weinstein regarding the Court's misunderstanding. Attached as Exhibit A is a true and correct copy of that email.

8. The next day, January 26, 2018, Weinstein replied by stating: "***I have not, in any pleading or oral argument, made any misrepresentation to the court about the facts or the law.***" I believe that Weinstein's response was meant to create a record seeking to insulate himself from liability. Attached as Exhibit B is a true and correct copy of that email from Weinstein.

9. I replied to Weinstein the dame day. Attached as Exhibit C is a true and correct copy of that email.

10. Over the last year I have literally begged this Court to get an understanding of the Confirmation Email and its role in this legal action throughout my pleadings. At more than one oral hearing, my one and only question to this Court was to please address the Confirmation Email: Each of my requests was denied without this Court providing any reasoning for said denial.

11. On March 12, 2018, my counsel, Jacob Austin, emailed Weinstein. Attached as Exhibit D is a true and correct copy of that email forwarded to me by Mr. Austin (Mrs. Austin's email begins at page 4).

12. Later that day, Weinstein replied to Mr. Austin's email. Mr. Weinstein's response is also in Exhibit D and starts at page 1.

13. I now believe that this Court operates with the best of intentions, however, I believe this Court's actions, albeit unpurposeful, are still severely prejudicial towards me and it does not change the fact that I am facing daily personal and professional hardship as a result of what I believe to be a meritless litigation. I think the judiciary system has and is unjustly being used as a tool of oppression against me (*e.g.*, the instant motion seeking sanctions in this case with no probable cause is the perfect example).

14. I believe Judge Wohlfeil to be a good man, as I have now personally observed him constantly seek to see justice done on numerous occasions when I have gone to his court. If I had to guess – a guess supported by every attorney and person who has reviewed the pleadings and evidence in this matter – I believe Judge Wohlfeil simply thinks I am a crazy *pro se* and this case cannot possibly be as simple as it appears.

/ / /

/ / /

/ / /

15. I am 57 years old, and I have people and loved ones who depend on me. If I lose my Property, I have no other means by which to have gainful employment and provide for my loved ones and the people who depend on me.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 9, 2018 at San Diego, California.

DARRYL COTTON

EXHIBIT A

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Depositions

Darryl Cotton <indagrodarryl@gmail.com> Thu, Jan 25, 2018 at 3:33 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Cc: info@austinlegalgroup.com

Mr. Weinstein,

As to the date for depositions, I choose the last day possible as I am planning to file my appeal ASAP and hope the Court of Appeals will issue an order before I have to be deposed.

The Judge started off his hearing with how well he knows all counsel in these matters as you have all been before him on numerous occasions and how he doubts you would do anything along the lines I described in my pleading. Great. Your prior relationship somehow means I am wrong. I am sure you have read my opposition, so you know my thoughts, I am either crazy or I have just never been able to get the judge to focus on that one email from Geraci that I refer to as the Confirmation Email.

I note that his minute order for today makes no reference to the Confirmation Email despite my repeated requests in my Opposition that he explain how the Confirmation Email does not dispositively resolve this matter. I am assuming, if I am not actually crazy, that he just thinks I am crazy and has not really read my pleadings. This is the third hearing that the Confirmation Email has been in front of him and he has ruled in a manner that shows that he has not taken it into account. I note that in his minute order, he states there is "disputed" evidence, and you KNOW that neither you nor Gina Austin in the City matter have ever disputed that Confirmation Email. It would appear to me, if I am not crazy, that you have an ***affirmative duty***, based on the case law and California State Bar opinions referenced in my pleading, to inform Judge Wohlfeil about his erroneous assumption. Or, you can choose to dispute the authenticity of the Confirmation Email after almost a year of not doing so.

If I really am crazy, I apologize to you. I really do. If I am not, this will eventually all come out and your actions in this matter will be incredibly clear. I note the the State Bar let me know about "Malicious Prosecution" causes of action. If I prevail in this matter, again, assuming I am not crazy and the Confirmation Email is taken into account by the COA, then you can be assured I will be using this email as evidence that you knew you had an affirmative duty to Judge Wohlfeil about letting him know that the Confirmation Email is ***not*** disputed and you did not. Again, only if I am crazy. It is not lost on me that I have yet again been before the Court and I still lost (He has never mentioned or referenced the Confirmation Email, I keep hoping he just thinks I am a crazy pro se and don't know what I am doing). At some point I have to realize no matter how sure I am about something, that maybe, I really am not thinking well. If the COA comes back with a reasoned decision taking into account and describing why the Confirmation Email (along with the other communications from Geraci, which include the drafts of purchase agreements prepared by Gina Austin months after November of 2016) does not dispositively address this action in my favor, I shall personally and sincerely offer my apologies. If not, I will eventually, no matter how much it costs me personally financially and emotionally, see you and Gina in Court for malicious prosecution. And there will be no situation where I settle. I want to see you both on the stand responding to this email and why you did not tell Judge Wohlfeil about his incorrect assumption that would have dispositively addressed this case in my favor much sooner and saved me an incredible amount financial and emotional harm.

In anticipation of your reply I remain.

Darryl Cotton

EXHIBIT B

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

RE: Depositions

Michael Weinstein <MWeinstein@ferrisbritton.com>
To: Darryl Cotton <indagrodarryl@gmail.com>

Fri, Jan 26, 2018 at 9:56 AM

Mr. Cotton,

You have chosen "the last day possible" for your deposition. By my calculation, that would be Wednesday, February 14, 2018 (20 days from today). I will serve an amended deposition notice scheduling your deposition for February 14. Thank you.

As for the remainder of your email, you are way off the mark. I have not, in any pleading or oral argument, made any misrepresentation to the court about the facts or the law.

Trial Call is May 11, 2018. At the trial the disputed facts in this case will be presented through admissible witness testimony and a decision will be made by the judge or jury. That is the way the process works. And that is where I, on behalf of my client, will present and argue my case. I will not do so in emails to you.

I wish you no ill will. Please be assured that I will continue to conduct myself in an ethical and civil matter in all my dealings with you.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
501 West Broadway, Suite 1450
San Diego, CA 92101-7901
www.ferrisbritton.com
Tel (619) 233-3131
Fax (619) 232-9316

Vcard

Primerus
Member, International Society of Primerus Law Firms

From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Thursday, January 25, 2018 3:34 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Cc: info@austinlegalgroup.com
Subject: Depositions

Mr. Weinstein,

As to the date for depositions, I choose the last day possible as I am planning to file my appeal ASAP and hope the Court of Appeals will issue an order before I have to be deposed.

The Judge started off his hearing with how well he knows all counsel in these matters as you have all been before him on numerous occasions and how he doubts you would do anything along the lines I described in my pleading. Great. Your prior relationship somehow means I am wrong. I am sure you have read my opposition, so you know my thoughts, I am either crazy or I have just never been able to get the judge to focus on that one email from Geraci that I refer to as the Confirmation Email.

I note that his minute order for today makes no reference to the Confirmation Email despite my repeated requests in my Opposition that he explain how the Confirmation Email does not dispositively resolve this matter. I am assuming, if I am not actually crazy, that he just thinks I am crazy and has not really read my pleadings. This is the third hearing that the Confirmation Email has been in front of him and he has ruled in a manner that shows that he has not taken it into account. I note that in his minute order, he states there is "disputed" evidence, and you KNOW that neither you nor Gina Austin in the City matter have ever disputed that Confirmation Email. It would appear to me, if I am not crazy, that you have an ***affirmative duty***, based on the case law and California State Bar opinions referenced in my pleading, to inform Judge Wohlfeil about his erroneous assumption. Or, you can choose to dispute the authenticity of the Confirmation Email after almost a year of not doing so.

If I really am crazy, I apologize to you. I really do. If I am not, this will eventually all come out and your actions in this matter will be incredibly clear. I note the the State Bar let me know about "Malicious Prosecution" causes of action. If I prevail in this matter, again, assuming I am not crazy and the Confirmation Email is taken into account by the COA, then you can be assured I will be using this email as evidence that you knew you had an affirmative duty to Judge Wohlfeil about letting him know that the

Confirmation Email is ***not*** disputed and you did not. Again, only if I am crazy. It is not lost on me that I have yet again been before the Court and I still lost (He has never mentioned or referenced the Confirmation Email, I keep hoping he just thinks I am a crazy pro se and don't know what I am doing). At some point I have to realize no matter how sure I am about something, that maybe, I really am not thinking well. If the COA comes back with a reasoned decision taking into account and describing why the Confirmation Email (along with the other communications from Geraci, which include the drafts of purchase agreements prepared by Gina Austin months after November of 2016) does not dispositively address this action in my favor, I shall personally and sincerely offer my apologies. If not, I will eventually, no matter how much it costs me personally financially and emotionally, see you and Gina in Court for malicious prosecution. And there will be no situation where I settle. I want to see you both on the stand responding to this email and why you did not tell Judge Wohlfeil about his incorrect assumption that would have dispositively addressed this case in my favor much sooner and saved me an incredible amount financial and emotional harm.

In anticipation of your reply I remain.

Darryl Cotton

EXHIBIT C

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Re: Depositions

Darryl Cotton <indagrodarryl@gmail.com> Fri, Jan 26, 2018 at 12:19 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>, info@austinlegalgroup.com

Weinstein,

You are correct, you have not "made any misrepresentation to the court about the facts or the law." However, you know that he has made rulings premised on his incorrect belief that there is "disputed" evidence and, as such, you have an ***Affirmative Duty*** to tell Judge Wohlfeil about his mistaken belief upon which he has made numerous incorrect rulings. I wonder what Judge Wohlfeil is going to think about you and Gina when he eventually realizes that you allowed him to continuously, over the course of months and many motions and oral hearings, issue rulings that show he does not understand that, at least to this date, you have not disputed the Confirmation Email. He has issued orders on that mistaken belief and you have taken advantage of that mistaken belief.

This email by you is a blatant attempt to create a false record to cover your ass. This is why our judicial system fails miserably to achieve justice. I read the Ethics Opinion, I understand it. The violation here is not that you made a misrepresentation to the Court about facts or law, but that you have an Affirmative Duty to correct the judge and the rulings he has made based on an incorrect understanding of ***dispositive*** evidence. Again, his ruling is clear, he thinks the Confirmation Email is disputed, it is NOT. You are manipulating Judge Wohlfeil by not bringing this to his attention, hoping I run out of resources before the truth of your actions can come to light. And this email just proves it. You are playing word games, thinking I don't understand the nuances. You are no better than Demian. You are the absolutely the worst kind of unethical attorney there is. It is because of unethical attorneys like you, that manipulate the judicial system, that our system is so flawed. Gina conspired with Geraci from the beginning. But you, you keep doubling down, keeping on maintaining this vexatious lawsuit.

I am attaching here the California States Bar Ethics opinion regarding Deceitful Conduct that has all the language needed for you to know, to the extent you may try to argue that you previously did not know, that you have an AFFIRMATIVE DUTY to tell Judge Wohlfeil that the Confirmation Email is dispositive and this case should be resolved in my favor. I don't think that you will, you are in too deep. I dare you to show this email to Judge Wohlfeil and bring to his attention the dispositive nature of the Confirmation Email so that he finally understands you have been manipulating him by ***OMISSION***. It would be great to see you argue to him that you have allowed him to abuse his discretion on numerous occasions by stating that you "have not, in any pleading or oral argument, made any misrepresentation to the court about the facts or the law."

Per his stated opinions about you and counsel at the last oral hearing, he thinks you would not take these sorts of actions, don't you think he is going to be pissed once he finds out that after he went out of his way to make you seem like a nice, ethical guy that you actually continued to actively deceive him?

When you opposed the motions for stay, you had no problem citing case law and language to me via email. But, in response to this email, you have decided not to do so because you have no defense. Judge Wohlfeil did not read and/or take my opposition serious. It is a mess. But you did. I know you did. And you know what I tried to convey is true.

"No ill will" towards me? What kind of bullshit is that. I have lost everything. I have been to the ER for a stroke. I have been driven near insane and assaulted people, been disrespectful to people that I care about. I have lost my business and my property. Do you have any idea how I feel knowing that whether I win or lose I lost this property? I have had to negotiate away millions to keep this litigation financed. I have had to demean myself in public records. You are so good at distracting the judge that I don't even have legal representation anymore even though my cause of action is not just meritorious, the evidence makes it clear it is dispositive. No "ill will" towards me? I cannot say the same about you! When this is over, I hope that I can convince the Judge to have you prosecuted criminally for your actions here!!

Darryl Cotton

On Fri, Jan 26, 2018 at 9:56 AM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

> Mr. Cotton,
>
> You have chosen "the last day possible" for your deposition. By my calculation, that would be Wednesday, February 14, 2018 (20 days from today). I will serve an amended deposition notice scheduling your deposition for February 14. Thank you.
>
> As for the remainder of your email, you are way off the mark. I have not, in any pleading or oral argument, made any misrepresentation to the court about the facts or the law.
>
> Trial Call is May 11, 2018. At the trial the disputed facts in this case will be presented through admissible witness testimony and a decision will be made by the judge or jury. That is the way the process works. And that is where I, on behalf of my client, will present and argue my case. I will not do so in emails to you.
>
> I wish you no ill will. Please be assured that I will continue to conduct myself in an ethical and civil matter in all my dealings with you.
>
> Respectfully,
>
> Michael R. Weinstein
> mweinstein@ferrisbritton.com
> Ferris & Britton, A Professional Corporation
> 501 West Broadway, Suite 1450

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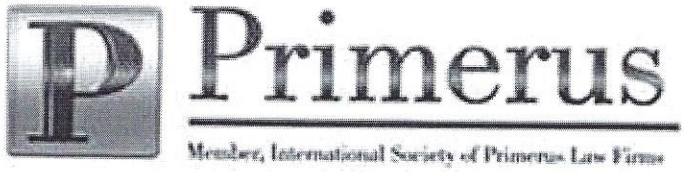

From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Thursday, January 25, 2018 3:34 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Cc: info@austinlegalgroup.com
Subject: Depositions

Mr. Weinstein,

As to the date for depositions, I choose the last day possible as I am planning to file my appeal ASAP and hope the Court of Appeals will issue an order before I have to be deposed.

The Judge started off his hearing with how well he knows all counsel in these matters as you have all been before him on numerous occasions and how he doubts you would do anything along the lines I described in my pleading. Great. Your prior relationship somehow means I am wrong. I am sure you have read my opposition, so you know my thoughts, I am either crazy or I have just never been able to get the judge to focus on that one email from Geraci that I refer to as the Confirmation Email.

I note that his minute order for today makes no reference to the Confirmation Email despite my repeated requests in my Opposition that he explain how the Confirmation Email does not dispositively resolve this matter. I am assuming, if I am not actually crazy, that he just thinks I am crazy and has not really read my pleadings. This is the third hearing that the Confirmation Email has been in front of him and he has ruled in a manner that shows that he has not taken it into account. I note that in his minute order, he states there is "disputed" evidence, and you KNOW that neither you nor Gina Austin in the City matter have ever disputed that Confirmation Email. It would appear to me, if I am not crazy, that you have an ***affirmative duty***, based on the case law and California State Bar opinions referenced in

my pleading, to inform Judge Wohlfeil about his erroneous assumption. Or, you can choose to dispute the authenticity of the Confirmation Email after almost a year of not doing so.

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In anticipation of your reply I remain.

Darryl Cotton

CAL 2013-189 [11-0002] v.1.pdf
233K

EXHIBIT D

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Fwd: Follow Up to December 7th Ex Parte Hearings

Jake Austin <jpa@jacobaustinesq.com>
To: Darryl Cotton <indagrodarryl@gmail.com>

Mon, Mar 12, 2018 at 5:46 PM

---------- Forwarded message ---------
From: Michael Weinstein <MWeinstein@ferrisbritton.com>
Date: Mon, Mar 12, 2018 at 4:27 PM
Subject: RE: Follow Up to December 7th Ex Parte Hearings
To: Jake Austin <jpa@jacobaustinesq.com>

Dear Mr. Austin,

I am glad to hear that you are substituting in as counsel. I look forward to working with you as this matter proceeds to trial. Fyi, the Trial Readiness Conference is April 27, 2018, and Trial Call is May 11, 2018.

You have asked that my client (i) withdraw his "pending motions before the Court for the execution of the proposed judgment you have submitted and renotice the pending motion for a TRO" so that you may substitute in and file an opposition on behalf of Mr. Cotton, and (ii) that we submit a joint request to the Court for a written opinion analyzing the arguments put forward in the motion for a TRO.

My client is unwilling to do so, as further explained below.

As you know, there are two lawsuits between the parties. Mr. Cotton has often confused the different issues and different relief sought in those two cases—and has failed to grasp the procedural differences.

The Geraci Lawsuit. The earlier filed action was filed by my client and is entitled *Larry Geraci v. Darryl Cotton* (hereafter the "Geraci Lawsuit."). Mr. Cotton has filed a cross-complaint in that action against Larry Geraci and Rebecca Berry. Both the complaint and cross-complaint are set for Trial Call on May 11, 2018. Since its inception that case has been before Judge Wohlfeil.

The Writ of Mandate Lawsuit. The later-filed action was filed by your client against the City of San Diego, and my clients were named as Real Parties in Interest (hereafter the "Writ of Mandate Lawsuit"). In that action Mr. Cotton sought specific relief by way of writ of mandate, namely, Mr. Cotton sought the issuance of a writ of mandate compelling the City of San Diego to recognize Mr. Cotton as the sole applicant on my clients' pending CUP Application. Mr. Cotton first sought that relief by ex parte application before Judge Sturgeon (to whom the case was originally assigned); Judge Sturgeon denied the ex parte request and transferred the case to Judge Wohlfeil. Mr. Cotton again sought that same relief by ex parte application before Judge Wohlfeil; Judge Wohlfeil denied the ex parte request but scheduled the petition for a hearing. Mr. Cotton then fired his attorney, Mr. Demian, and sought ex parte reconsideration of the denial of his ex parte application for issuance of a writ of mandate; that motion for reconsideration was denied by Judge Wohlfeil. (Mr. Cotton then appealed the ex parte rulings, which appeals he subsequently abandoned.) Mr. Cotton's petition for writ of mandate was subsequently heard on the papers submitted at a noticed hearing on October 25, 2017, and the court denied Mr. Cotton's petition. I circulated a proposed Judgment to all counsel (Mr. Cotton was pro per) and, thereafter, submitted the proposed Judgment to Judge Wohlfeil.

Your email asks me to withdraw my pending motion for entry of the proposed Judgment. There is and was no such motion pending (and thus no hearing date). As noted above, the City of San Diego, the Respondent, and my clients, Real Parties in Interest, prevailed in that action. As a matter of course, and after circulating the proposed Judgment to all counsel for review and comment, a proposed Judgment was submitted to Judge Wohlfeil. I checked the Register of Actions today and Judge Wohlfeil signed the proposed Judgment and it was entered on March 7, 2018. Mr. Cotton believes each of the judges (Judge Sturgeon and Judge Wohlfeil) ruled incorrectly the many times he brought the issue before them—my understanding is that his only available recourse now is to appeal the entered Judgment to the Fourth District Court of Appeal.

The Geraci Lawsuit Cont'd.

Although judgment has been entered in the Writ of Mandate Lawsuit, this has no impact on the Geraci Lawsuit, which continues forward.

In the Geraci Lawsuit my client has two pending motions to be heard on October 23, 2018: (1) a motion to compel the deposition of Darryl Cotton and to compel written discovery responses; and (2) a motion for a preliminary injunction or other order to compel access to the subject property for soils testing necessary to obtain approval of the CUP permit.

As to the former motion: Mr. Cotton has known about yet refused to provide written discovery responses that were due on December 29, 2017 (after I granted him a requested extension until that time). The written discovery requests are not voluminous. Mr. Cotton was originally scheduled (by notice and agreement) to have his deposition taken on December 11, 2017. Then he fired his lawyer

on approximately December 7 or 8, and would not make himself available for deposition on December 11. I understood those circumstances and took the deposition off calendar. Mr. Cotton thereafter failed to appear twice at noticed depositions—the latter time defying a court order granted after I brought a first motion to compel. This second motion to compel his deposition (and seeking sanctions this time) is scheduled for October 23, 2018. There are no valid grounds for opposing the motion. Mr. Cotton has avoided appearing for his deposition for nearly 3 months so far. This action is going to trial in 60 days, i.e., Trial Call is May 11, 2018. You have given me no valid reason why I should withdraw the motion. If Mr. Cotton wants additional time to file an opposition, then you can seek that relief ex parte. But I do not know why you would do so as there are no grounds for opposing the motion.

As to the latter motion: A CUP runs with the land. Soils testing is necessary to obtain approval of the CUP. Mr. Cotton, realizing that, at one point voluntarily agreed to allow the soils testing but has since reneged. I have no idea why as the soils testing and granting of a CUP will benefit him if he ultimately prevails at trial in two months. Mr. Cotton has constantly harped that he is worried my client will torpedo the CUP process, but he has no evidence that is the case. My client has spent substantial sums during the more than one year the CUP Application has been pending to obtain approval. Now Mr. Cotton appears to himself want to torpedo or at least delay the process—for no apparent rational reason so far as I can discern. If Mr. Cotton wants additional time to file an opposition, then you can also seek that relief ex parte. But, again, I do not know why Mr. Cotton would want to oppose the motion as soils testing is necessary to obtain approval of the CUP. Instead, he should simply allow the soils testing.

I do not have any reason to doubt that Mr. Cotton is experiencing emotional distress. That happens to litigants to one extent or another in all lawsuits. That undoubtedly explains the many vitriolic and expletive-laced emails that Mr. Cotton has sent me over the last several months (for which Mr. Cotton recently apologized). Much of the emotional distress is his own doing. Instead of submitting to a deposition and undertaking steps to prepare for a trial on the merits in the Geraci Lawsuit, Mr. Cotton has used that time instead, among other things, to pursue ill-advised motions in these two cases. He insists the email he refers to is "dispositive" of all those motions. **That email was submitted by Mr. Cotton (and/or his attorneys) into evidence in support of all of his many ex parte applications for temporary restraining orders/preliminary injunction and in support of his petition for writ of mandate.** Mr. Cotton is entitled to believe the court got those rulings wrong. Despite his beliefs to the contrary, the court did not and should not have viewed the email as dispositive and correctly ruled on those motions. He has also pursued ill-advised appeals of trial court rulings, which he has since abandoned.

Finally, I feel compelled to address your comments about Gina Austin, which are way off base. Ms. Austin has made no misrepresentations to the court. No declaration signed under penalty of perjury by Gina Austin has been submitted as evidence to the Court in any proceeding in any of the two cases. She has appeared as counsel in the Writ of Mandate case and argued with me in opposition to Mr. Cotton's first ex parte application for issuance of a writ of mandate heard by Judge Sturgeon. That is it —legal argument. She will be a witness at trial of the Geraci Lawsuit but so far has not submitted any written or other testimony. So I just do not understand your position in that regard.

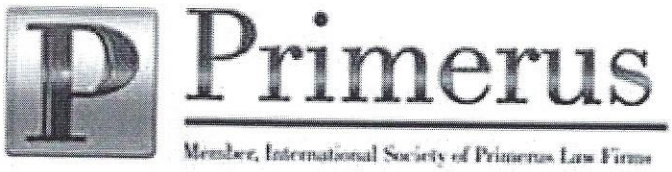
If you schedule an ex parte, I authorize you to give me notice of the date and time by email and I authorize you to serve any pleadings by email.

Please feel free to call me if you want to discuss any matter related to the case.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
501 West Broadway, Suite 1450
San Diego, CA 92101-7901
www.ferrisbritton.com
Tel (619) 233-3131
Fax (619) 232-9316

Vcard



From: jacobaustinesq@gmail.com [mailto:jacobaustinesq@gmail.com] **On Behalf Of** Jake Austin
Sent: Monday, March 12, 2018 11:25 AM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>

Subject: Re: Follow Up to December 7th Ex Parte Hearings

Mr. Weinstein,

I am writing to inform you that I will shortly be substituting in as counsel for Mr. Cotton and to make a request.

First, however, I want to note the following: in preparation for representing Mr. Cotton I have reviewed (i) every filing in both of Mr. Cotton's actions with Mr. Geraci and the City of San Diego, (ii) every document produced to and from Mr. Cotton via discovery, (iii) every single email to and from Mr. Cotton's professional and personal email accounts between October of 2016 and March of 2017 and (iv) interviewed over 17 individuals who were in constant written communications and/or working with Mr. Cotton on a daily basis during the same time period noted and whose testimony will be direct or circumstantial evidence that Mr. Cotton intended the document executed in November of 2016 to be a "receipt" (as he calls it in most of his pleadings) and that Ms. Austin knew the "November Document" was meant to be just a "receipt."

In short, based on my review of all the evidence noted above, it does appear that Mr. Cotton is correct in his allegations that Ms. Austin has made misrepresentations to the court and I will shortly be filing motions to have her respond to this evidence. However, as you are aware from the Independent Psychiatric Assessment by Dr. Ploesser, Mr. Cotton is facing immediate and irreparable mental harm from what he sincerely believes to be a conspiracy by Mr. Geraci, Ms. Berry and Ms. Austin to unlawfully acquire his property. There is more than probable cause, based on my review of the evidence above, to support such a conclusion. I am primarily a criminal defense attorney and if there was a situation where I had to defend Ms. Austin against criminal charges related to her misrepresentations to the court, I would recommend she quickly strike a deal to mitigate punishment.

As you are aware, Judge Wohlfeil has never provided a written or verbal opinion analyzing what Mr. Cotton refers to as the "Confirmation Email." Mr. Cotton believes that Judge Wohlfeil is under a misunderstanding regarding the "undisputed" nature of the Confirmation Email. This perceived misunderstanding is a contributing factor to the irreparable mental harm that Mr. Cotton is facing per Dr. Ploesser.

Based on the foregoing, I am requesting that (i) you please withdraw your pending motions before the Court for the execution of the proposed judgment you have submitted and renotice the pending motion for a TRO so that I may substitute in and file an Opposition on behalf of Mr. Cotton and (ii) that we submit a joint request to the Court for a written opinion analyzing the arguments put forward in the motion for a TRO. In light of the opinion of Dr. Ploesser, the potential for Mr. Cotton's mental harm would be greatly reduced if he perceived the court to be taking all the arguments into account, and he felt you were being a reasonable attorney.

Mr. Weinstein, to be completely forthright, the record and evidence regarding the culpability of Ms. Austin in this matter is clear. And I am sending this email and request as a professional courtesy to you because I want to gauge your response before making any assumptions regarding your own personal and professional ethics in this matter. I will not lightly bring forth any allegations against another attorney to the court.

On one hand you must zealously advocate on behalf of your client, on the other, you must stay within the bounds of ethical and legal obligations to the court that supersede those of your client's. In this case, Mr. Cotton is clearly facing irreparable harm and granting the instant request, while causing a delay of a few weeks, will result in little, if any, harm to your client. Not granting the instant request allows for the possibility that a miscarriage of justice will take place and Mr. Cotton will likely end up with irreparable mental harm.

I hope you can appreciate this request. I could have simply made certain allegations against you. But, again, unlike the overwhelming evidence against Ms. Austin, the record and evidence supporting the

allegations made against you previously by Mr. Cotton are less clear. Thus, this request which is reasonable. An unreasonable response will let me know what to expect from you moving forward.

Please let me know by 5:00 PM today whether you will grant this request.

Sincerely,

Jacob Austin

Law Office of Jacob Austin

1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA

Phone: (619) 357-6850

Facsimile: (888) 357-8501

On Wed, Dec 20, 2017 at 9:48 AM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

> Mr. Austin,
>
> As a follow up to my earlier reply, attached please find a courtesy copy of the deposition notice served by mail today scheduling Mr. Cotton's deposition for Friday, January 5, 2018.
>
> Respectfully,
>
> Michael R. Weinstein
> mweinstein@ferrisbritton.com
> Ferris & Britton, A Professional Corporation
> 501 West Broadway, Suite 1450
> San Diego, CA 92101-7901
> www.ferrisbritton.com
> Tel (619) 233-3131
> Fax (619) 232-9316
>
> Vcard

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From: jacobaustinesq@gmail.com [mailto:jacobaustinesq@gmail.com] **On Behalf Of** Jake Austin
Sent: Tuesday, December 19, 2017 8:35 PM

To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Subject: Re: Follow Up to December 7th Ex Parte Hearings

Mr. Weinstein,

Please bear with me, first, I did not know Mr. Cotton would reach out to you this morning or that he would include me in this email chain. I was in court when this series of communications started.

Second, I am only assisting Mr. Cotton in a limited capacity on his appeal. I will not be representing him in the two underlying actions. Having said that, I would appreciate the professional courtesy if you would communicate through me until I get caught up to speed on what has happened in the two underlying matters and the *ex parte* motions that are the basis of his appeal.

I can verify that Mr. Cotton went to the Emergency Room after his motion for reconsideration was denied and, several days later, was seen by a medical doctor after he was involved in some kind of altercation. Mr. Cotton believes that the denial of his *ex parte* motions were wrong as a legal matter. I cannot speak to that, but, again, he believes it, and every time he starts discussing the case, Mr. Geraci, and yourself he becomes noticeably, physically high-strung and incredibly emotionally agitated to the point that he becomes incoherent.

Thus, please allow me some time to get my head around the matters here before responding substantively and, if it is the case that the appeal for Mr. Cotton has no basis, I will be happy to explain the matter to him so that he may hopefully redirect his intense emotions elsewhere.

I will get back to you as soon as I can but as I just took on my limited representation of him and my calendar this week is already over-booked, I doubt I will be able to respond substantively before sometime next week.

As to the notices of appeal, those have been filed. Please see attached.

Sincerely,

Jacob

Law Office of Jacob Austin

1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA

Phone: (619) 400-1468

(619) 357-6850

Facsimile: (888) 357-8501

On Tue, Dec 19, 2017 at 11:48 AM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

> Mr. Austin,
>
> Please telephone me to discuss this matter (or email me if you prefer). I believe your client is terribly misinformed.
>
> First, please: a) confirm whether you represent Mr. Cotton, and b) whether your representation is limited to the "appeal" of the denials of his three ex parte applications. If, contrary to what Mr. Cotton has represented, you are going to be representing him in the two underlying actions before Judge Wohlfeil, then please immediately serve and file signed Substitutions of Attorney forms.

Second, a) no judgment directing issuance of a writ of mandate has been entered, and b) no mandatory injunction has been issued. Quite the opposite, as Mr. Cotton's ex parte applications to obtain those things were denied. Thus, The Rutter Group citations and cases cited by Mr. Cotton are not applicable.

My understanding is that an appeal from the denial of a TRO (or the denial of a preliminary injunction) does not deprive the trial court of jurisdiction to proceed to try the case on the merits. (See *Gray v. Bybee,* 60 Cal.App.2d at 564, 571.) Rather, there is no automatic stay and Mr. Cotton must request a stay of the trial court proceedings if he wishes to stay the underlying proceedings while his appeal is pending. I am not aware of any appeal let alone any granting of a request for a stay. Unless and until that happens the underlying cases proceed accordingly.

If you are filing an "appeal," whether by interlocutory writ or otherwise, please notify me the moment you do. In the meantime, if you have any legal authority to support Mr. Cotton's assertion that any contemplated "appeals" will automatically stay the underlying actions, then please provide that authority to me as soon as possible.

If you agree that there is no automatic stay, please advise Mr. Cotton immediately. I need to be able to deal immediately with the attorney in the underlying actions. If that is you, then that would be great—just appear by filing your Substitution and I will deal only with you. If that is not you, then I will deal directly with Mr. Cotton.

Thank you.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
501 West Broadway, Suite 1450
San Diego, CA 92101-7901
www.ferrisbritton.com
Tel (619) 233-3131
Fax (619) 232-9316

Vcard

From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Tuesday, December 19, 2017 10:06 AM

To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Cc: Jake Austin <jacobaustinesq@gmail.com>
Subject: Re: Follow Up to December 7th Ex Parte Hearings

Michael,

You are obviously will do anything that Geraci tells you to do, even if for some reason it is lawful, you are blatantly lying to me and purposefully putting more intense and undue pressure on me when you I had a TIA. . Unfortunately for you, I can read:

In the Rutter California Practice Guide it says "An appeal automatically stays proceedings on a judgment directing issuance of a writ of mandate. [Hayworth v. City of Oakland (1982) 129 CA3d 723, 727, 181 CR 214, 217; Johnston v. Jones (1927) 74 CA 272, 273, 239 P 862]" It also says that "All mandatory injunctions are automatically stayed by appeal. Otherwise, the result upon a final adjudication could be a "barren victory" (i.e., a reversal on appeal might be "futile" if the action were already performed). [Byington v. Super.Ct. (1939) 14 C2d 68, 70, 92 P2d 896, 897; URS Corp. v. Atkinson/Walsh Joint Venture (2017) 15 CA5th 872, , CR3d , (2017 WL 4251127, *6); Agricultural Labor Relations Bd. v. Super.Ct. (Sam Andrews' Sons) (1983) 149 CA3d 709, 716-717, 196 CR 920, 925-926]"

The appeals stay the actions.

Do NOT contact me again or I will contact the California Bar and let them know that you are blatantly lying to me and that I have informed you that I have counsel who is helping me and who I have instructed you to contact directly. I have not done any research into this, but even if I am representing myself, it is my right to designate someone to act as my agent. You are clearly the worst kind of lawyer and will do anything for money and I won't believe anything you say.

DO NOT RESPOND. I DO NOT WANT TO HEAR FROM YOU AS YOU ARE PUTTING ME IN EMOTIONAL AND PHYSICAL DISTRESS. THIS IS NOT MELODRAMA OR ALARMISM ON MY PART. THIS IS REAL.

Darryl Cotton

On Tue, Dec 19, 2017 at 9:11 AM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

Dear Darryl,

If you have retained Mr. Jacob Austin in a limited capacity to assist you in appealing the denial of the three ex parte applications, then you are still representing yourself in all other respects in connection with the two underlying lawsuits. As of the present moment, those underlying actions are ongoing as no appeal has yet been filed and, if and when those appeals are filed, the underlying actions will not automatically be stayed.

Put another way, the two underlying lawsuits are still moving forward. I need to take your deposition. In my December 12th email I provided you with available dates for your deposition from which to choose. If you do not advise me by the end of the day which date you prefer, then I will pick from one of those dates and notice your deposition for that date.

In addition, as I also indicated in my December 12th email, you have an obligation to: a) serve amended notices of hearing reflecting the scheduling of the hearings on the motion for preliminary injunction and the motion for peremptory writ of mandate for January 25, 2018, at 9 a.m. in Department 73; b) prepare a proposed Order denying the ex parte application for a TRO containing the judge's findings that i) Defendant Cotton has not carried his burden to show it is more likely than not that he will prevail on the merits, and ii) Defendant Cotton has not carried his burden to show irreparable harm; and c) prepare a proposed Order denying the ex parte application for an order shortening time, which order should include the court's having denied Petitioner Cotton's request for judicial notice of his Verified Petition for Writ of Mandate as well as the court's having denied Real Parties in Interest Geraci/Cotton's request for judicial notice. I have not yet been served with amended notices or provided proposed Orders for my review. You are still obligated to do so.

Thank you.

Michael Weinstein

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
501 West Broadway, Suite 1450
San Diego, CA 92101-7901
www.ferrisbritton.com
Tel (619) 233-3131
Fax (619) 232-9316

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From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Tuesday, December 19, 2017 8:47 AM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Cc: Jake Austin <jacobaustinesq@gmail.com>

Subject: Re: Follow Up to December 7th Ex Parte Hearings

Michael,

I have decided to appeal the denial of my three ex-parte applications. I have engaged Jacob Austin, who is included in this email, in a limited capacity to help me on my appeal.

Please direct all future correspondence solely to Jacob directly from here onward.

Best regards,

Darryl

On Wed, Dec 13, 2017 at 8:00 AM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

> Darryl,
>
> I am sorry to hear about your TIA and hope you are feeling better now.

I grant your request for an extension of time for you to respond to the pending discovery requests from December 13th until December 29th. Please be aware that I will not be able to extend the deadline again as I need those responses.

I will wait for await your response on Monday on which of the dates would work for your deposition.

Thank you.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
501 West Broadway, Suite 1450
San Diego, CA 92101-7901
www.ferrisbritton.com
Tel (619) 233-3131
Fax (619) 232-9316

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From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Tuesday, December 12, 2017 7:24 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Subject: Re: Follow Up to December 7th Ex Parte Hearings

Michael,

First, please know that I understand your role and your duuty is to Gerraci and I have no personal ill will towards you in any way shape or form. If anything, I wish you were my attorney, David turned out to be an incredible disappointmsent.

really, My family actually sent me to the emergency room today after the hearing because I suffered a TIA, essentially a mini-stroke, and I was apparently speaking but not making sense wioth mye words.

Because of the judge's ruling finding that I am not likely to prevail on the meritsss of my casee, my financial backerr, who has at least until this point been financing my legal rrepresentation, told me today that we need to meet on Thursday or Friday and dissscuss whether we continue to proceed and under what terms

I wousld appreciate if I can get back to you on Monday on which dates would work for deposition and if we can push back the dates on delivery of discovery to COB on the 29th. I do not want to push back the OSC hearing becasue the jjudge shuld finally focus on the facts of the case then.

I am meeting with attorneys this week, in case I lose my financial backing, to see if I can find one that will take this matter on on a contingency basis.

Thank you in advance and I appreciate your professional courtesy.

Sincerrely,

Darryl

On Tue, Dec 12, 2017 at 10:30 AM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

> Mr. Cotton,
>
> There are three outstanding issues we need to discuss now that you are representing yourself.
>
> 1. <u>Your Deposition</u>

Last Friday Mr. Demian sent me the Substitution of Attorney forms that were going to be filed with the Court substituting you in as your own attorney (in pro per) in place of Mr. Demian. Mr. Demian also confirmed that you were unable to attend the deposition that was scheduled for Monday, December 11.

I still need to schedule and take your deposition and I need to do so sufficiently in advance of the January 11, 2018, date my clients' opposition papers are due to the pending motions for a preliminary injunction and motion for a peremptory writ of mandate.

I am available to take your deposition on either of the following dates: December 28, December 29, January 3, January 4, or January 5. Please advise me by reply email by 5 p.m. on Thursday, December 14, which of those available dates you prefer for your deposition. If I do not hear from you by then regarding your preferred date, then I will simply schedule and notice your deposition from among those 5 dates.

2. Your Discovery Responses

Please be reminded that on or before tomorrow, Wednesday, December 13, 2017, your written responses are due to the attached pending discovery requests previously served on you by mailing them to your then attorneys on November 8, 2013. Copies are attached for your ease of reference.

3. The Amended Notices of Hearing and the Proposed Orders Re Your December 7th Ex Parte Hearings

At the conclusion of the two ex parte hearings on December 7, Judge Wohlfeil ordered David Demian, as your attorney, to: a) serve amended notices of hearing reflecting the scheduling of the hearings on the motion for preliminary injunction and the motion for peremptory writ of mandate for January 25, 2018, at 9 a.m. in Department 73; b) prepare a proposed Order denying the ex parte application for a TRO containing the judge's findings that i) Defendant Cotton has not carried his burden to show it is more likely than not that he will prevail on the merits, and ii) Defendant Cotton has not carried his burden to show irreparable harm; and c) prepare a proposed Order denying the ex parte application for an order shortening time, which order should include the court's having denied Petitioner Cotton's request for judicial notice of his Verified Petition for Writ of Mandate as well as the court's having denied Real Parties in Interest Geraci/Cotton's request for judicial notice. The obligation to prepare and file the amended notices of hearing and to prepare and file the proposed Orders now falls to you as you have

substituted in as your own attorney. If you have any questions about these obligations, then you may wish to ask Mr. Demian about them.

Also, please be aware that you should send the proposed Orders to me for my review and comment before submitting them to the court. (You are not required to send me the amended notices of hearing for my review in advance of your filing them with the court.)

Thank you.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
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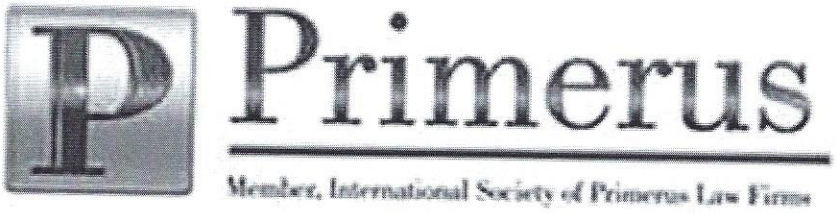
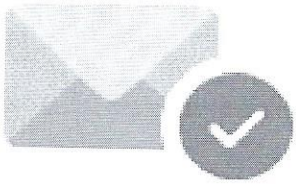


From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Monday, December 11, 2017 2:19 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Subject: Geraci Notice of Ex Parte Hearing 12-12-17

Michael,

I have decided to replace my legal counsel in the Geraci matter and will be representing myself tomorrow in front of Judge Wohlfeil. Please see the attached pleadings.

Darryl Cotton



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Law Office of Jacob Austin
1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA
Phone: (619) 357-6850
Facsimile: (888) 357-8501