

Darryl Cotton
6176 Federal Boulevard
San Diego, CA 92114
Telephone: (619) 954-4447
Facsimile: (619) 229-9387

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

04/25/2018 at 01:52:00 PM
Clerk of the Superior Court
By Katelin O'Keefe, Deputy Clerk

Defendant/Cross-Complainant *In Propria Persona*

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DIVISION

LARRY GERACI, an individual,
Plaintiff,

vs.

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

DARRYL COTTON, an individual,
Cross-Complainant,

vs.

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

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

**EX PARTE APPLICATION FOR AN ORDER
EXTENDING THE TIME WITHIN WHICH
DEFENDANT/CROSS-COMPLAINANT
DARRYL COTTON MAY FILE A PETITION
FOR WRIT OF MANDATE REGARDING
THIS COURT'S APRIL 13, 2018 ORDER
DENYING HIS MOTION TO EXPUNGE
LIS PENDENS (NOTICE OF PENDENCY
OF ACTION); MEMORANDUM OF POINTS
AND AUTHORITIES, AND DECLARATION
OF DARRYL COTTON IN SUPPORT
THEREOF**

DATE: April 26, 2018
TIME: 8:30 a.m.
DEPT: C-73
JUDGE: The Honorable Joel R. Wohfeil

[CIVIL IMAGED FILE]

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, on April 26, 2018 at 8:30 a.m. or as soon thereafter as the matter
may be heard in Department C-73 of the above-entitled Court, Defendant and Cross-Complainant
DARRYL COTTON ("Cotton") will move this Court *ex parte* for an Order extending his time to file a

1 Petition for Writ of Mandate regarding this Court's April 13, 2018 Order denying his Motion to Expunge
2 *Lis Pendens* (Notice of Pendency of Action) ("LP Motion").

3 This Motion brought pursuant to the provisions of Code of Civil Procedure section 405.39 which
4 empowers this Court to extend the time within which a Petition for Writ of Mandate may be filed by an
5 additional ten (10) days upon the timely application by a party requesting such extension.

6 This Motion is made on the grounds that good cause exists to extend Cotton's time to file his
7 Petition for Writ of Mandate given that he is a self-represented litigant who may suffer serious and
8 potentially irreversible financial losses, physical and emotional stress and other damages if his time is
9 not extended to enable him to properly prepare and file a Petition for Writ of Mandate, and the requested
10 extension will not operate to prejudice any other party to this litigation.

11 This *ex parte* motion is based upon this this Application and the accompanying Memorandum of
12 Points and Authorities and Declaration of Darryl Cotton in support hereof, the records and papers on file
13 in this action, and such oral testimony and documentary evidence which may be presented on this hearing
14 of this Motion.

15
16 DATED: April 25, 2018

17 /s/
DARRYL COTTON
Defendant/Cross-Complainant *In Propria Persona*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **A. Factual Background**

3 This dispute forming the bases of this litigation arises out of negotiations which began in or
4 around August 2016 between Cotton and Plaintiff in connection with Plaintiff's desire to purchase the
5 real property owned by Cotton located at 6176 Federal Boulevard, San Diego, California ("Property").

6 Over the course of the ensuing months, the parties extensively negotiated the terms of Plaintiff's
7 potential purchase of the Property. Plaintiff alleges that the parties entered into a final agreement for his
8 purchase of the Property. Cotton contends that the parties never entered into any such final agreement
9 for Plaintiff's purchase of the Property.

10 On March 22, 2018, Plaintiff recorded a *lis pendens* on Cotton's property. On April 4, 2018,
11 Cotton filed a motion to expunge Plaintiff's *Lis Pendens* ("LP Motion") which was heard before this
12 Court on April 13, 2018. The Court denied Cotton's LP Motion (the "April 13, 2018 Order"). The denial
13 of a motion to expunge a *lis pendens* is not appealable, Cotton's only remedy is to file a Petition for Writ
14 of Mandate ("PWM") challenging that Order. On April 13, 2018, Plaintiff's counsel served notice of
15 that Order by mail in the form of a Notice of Ruling After Hearing re Defendant Darryl Cotton's Motion
16 to Expunge *Lis Pendens*.

17 **B. This Court Is Empowered and Has the Discretion to Extend the Time Within Which a**
18 **Petition for Writ of Mandate Must Be Filed by Ten Days, and Good Cause Exists to Grant**
19 **Cotton the Maximum Ten-Day Extension Provided by Statute.**

20 Code of Civil Procedure section 405.39 provides as follows:

21 Any party aggrieved by an order [granting or denying] ... a motion
22 [regarding a *lis pendens*] under this chapter may petition the proper
23 reviewing court to review the order by writ of mandate. The petition for
24 writ of mandate shall be filed and served within 20 days of service of
25 written notice of the order by the court or any party. The court which
26 issued the order may, within the initial 20-day period, extend the initial
20-day period for one additional period not to exceed 10 days. A copy of
the petition for writ of mandate shall be delivered to the clerk of the court
which issued the order with a request that it be placed in the court file.

27 ///

28 ///

1 As the aggrieved party pursuant to the April 13, 2018 Order, Cotton is entitled to – and hereby
2 does – make application to this Court to obtain a ten-day extension to file his PWM, and Cotton
3 respectfully submits that good cause exists for this Court to grant his request.

4 As the record in this matter clearly reflects, since the inception of this case, the majority of issues
5 and disputes which have arisen primarily have been adjudicated through numerous law and motion
6 proceedings. Despite the virtual break-neck speed at which this litigation has progressed, Cotton has
7 done the best he can to represent himself in all proceedings, with the only exception being his LP Motion
8 for which Attorney Jacob Austin specially appeared and represented him on a limited basis.

9 As the record also clearly reflects, attempting to keep up with the filing deadlines associated with
10 both the flurry of motions and other matters, filing appeals regarding several Orders in this case and, in
11 particular, the potential looming threat of losing his Property, have been extremely stressful for Cotton
12 such that they have dramatically affected his already compromised physical and mental health to such an
13 extent that some of his maladies have become exacerbated.

14 In addition, since entry of the April 13, 2018 Order, Cotton also has been tasked with drafting and
15 filing his opposition to Plaintiff's recent sanctions motion scheduled for hearing in two days on April 27,
16 2018 seeking termination of this case in the favor of Plaintiff and Cross-Defendant Rebecca Berry. Given
17 the fact that the motion was filed and is being heard on shortened time, and the gravity of that motion
18 and the resulting severe consequences to Cotton if this Court was to grant the motion imposing the
19 sanctions requested by Plaintiff, it was both prudent and necessary for Cotton to devote a considerable
20 amount of his time and effort (which he otherwise could and would have devoted to drafting the PWM)
21 to oppose that motion which ultimately could prove to be the final death knell to this litigation.

22 **C. Granting Cotton's Request for a 10-Day Extension to File His Petition for Writ of Mandate**
23 **Will Not Operate to Prejudice Any Party to This Litigation; Instead, it Only Will Operate**
24 **to Further Justice by Protecting Cotton's Right to Due Process to Obtain a Fair and Proper**
25 **Adjudication of This and All Other Issues in this Litigation, and a Final Disposition of this**
26 **Case on its Merits.**

27 California law strongly favors the disposition of cases on their merits. (*Mink v. Superior Court*
28 (1992 2 Cal.App.4th 1338, 1343.) The job of the court is to allow disputes to be fairly and properly

1 adjudicated, protecting the rights *of all litigants*. (Emphasis added.) (*Palomar Mortgage Co. v. Lister*
2 (1963) 212 Cal.App.2d 237, 240.)

3 Cotton believes that the *lis pendens* Plaintiff recorded on his Property should be expunged because
4 he has demonstrated – based upon the evidence and argument presented by *both parties* in the LP Motion
5 – that the parties never entered into any final agreement by which Plaintiff was or is entitled to purchase
6 the Property; notwithstanding, however, this Court disagreed with Cotton and ruled against him, thus
7 leaving him no other remedy but to seek appellate review. In order to do so, being a pro per litigant,
8 Cotton is in need of additional time beyond the statutory 20 days to enable him to properly, thoughtfully
9 and fully brief the matter for filing with the Court of Appeals.

10 Extending the time for Cotton to file and serve his PWM by a mere ten days will not operate to
11 prejudice or create a hardship to any of the other parties to this case. To the contrary, granting Cotton
12 the relief he requests would further the legislative intent of providing litigants the opportunity to obtain
13 an extension of time to facilitate a resolution of this and other issues in this case on their merits, rather
14 than adjudication “by ambush.” (*Greyhound Corp v. Superior Court* (1961) 56 Cal.2d 355, 376.)

15 **CONCLUSION**

16 In light of the foregoing, Cotton respectfully submits that good cause exists for this Court to grant
17 this motion, and hereby requests that this Court Order that his time to file his PWM be extended for a
18 period of ten days.

19 DATED: April 25, 2018

/s/

DARRYL COTTON

Defendant/Cross-Complainant *In Propria Persona*

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

I, Darryl Cotton, declare:

1. I am over the age of eighteen years, the Plaintiff and Cross-Defendant in the above-entitled action and I submit this declaration in support of my foregoing *Ex Parte* Application for an order extending my time to file a Petition for Writ of Mandate in connection with the April 13, 2018 Order.

2. This dispute forming the bases of this litigation arises out of negotiations which began in or around August 2016 between myself and Plaintiff in connection with his desire to purchase the real property I own located at 6176 Federal Boulevard, San Diego, California ("Property").

3. Over the course of the ensuing months, the Plaintiff and I parties extensively negotiated the terms of his potential purchase of my Property. Plaintiff alleges that we entered into a final agreement for his purchase of my Property. I contends that we never entered into any such final agreement for Plaintiff's purchase of my Property.

4. On March 22, 2018, Plaintiff recorded a *lis pendens* on my property.

5. On April 4, 2018, I filed the “LP Motion” which was heard before this Court on April 13, 2018. The Court denied my LP Motion.

6. Because the denial of my motion to expunge a *lis pendens* is not appealable, my only remedy is to file a Petition for Writ of Mandate challenging the April 13, 2018 Order.

7. On April 13, 2018, Plaintiff's counsel served notice of the April 13, 2018 Order by mail in the form of a Notice of Ruling After Hearing re Defendant Darryl Cotton's Motion to Expunge *Lis Pendens*.

8. As the record in this matter clearly reflects, since the inception of this case, the majority of issues and disputes which have arisen primarily have been adjudicated through numerous law and motion proceedings. Despite the virtual break-neck speed at which this litigation has progressed, I have done my best to represent myself in all proceedings, with the only exception being my LP Motion for which Attorney Jacob Austin specially appeared and represented me on a limited basis.

9. As the record also clearly reflects, attempting to keep up with the filing deadlines associated with both the flurry of motions and other matters, filing appeals regarding several Orders in this case and, in particular, the potential looming threat of losing my Property, have been extremely

1 stressful for me such that they have dramatically affected my already compromised physical and mental
2 health to such an extent that some of my maladies have become exacerbated.

3 10. In addition, since entry of the April 13, 2018 Order, I also was tasked with drafting and
4 filing my opposition to Plaintiff's recent sanctions motion scheduled for hearing in two days on April 27,
5 2018 seeking termination of this case in the favor of Plaintiff and Cross-Defendant Rebecca Berry.
6 Given the fact that the motion was filed and is being heard on shortened time, and the gravity of that
7 motion and the resulting severe consequences to me if this Court was to grant the motion imposing the
8 sanctions requested by Plaintiff, it was both prudent and necessary for me to devote a considerable
9 amount of my time and effort (which I otherwise could and would have devoted to drafting the PWM)
10 to oppose that motion which ultimately could prove to be the final death knell to this litigation.

11 11. It is my belief that the *lis pendens* recorded by Plaintiff on my Property should be
12 expunged because Plaintiff has demonstrated – based upon the evidence and argument presented by *both*
13 *parties* in the LP Motion – that the we never entered into any final agreement by which Plaintiff was or
14 is entitled to purchase my Property; notwithstanding, however, this Court disagreed with me and ruled
15 against me, thus leaving me no other remedy but to seek appellate review. In order to do so, being a pro
16 per litigant, I am in need of additional time beyond the statutory 20 days to enable me to properly,
17 thoughtfully and fully brief the matter for filing with the Court of Appeals.

18 12. Extending the time for me to file and serve my PWM by a mere ten days will not prejudice
19 or create a hardship to any of the other parties to this case.

20 I declare under penalty of perjury according to the law of the State of California that the foregoing
21 is true and correct and that this declaration was executed on April 25, 2018 at San Diego, California.

22
23 /s/

24 DARRYL COTTON