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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Richard Day, Deputy Clerk

Attorney for Defendant/Cross-Complainant DARRYL COTTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

LARRY GERACI, an individual,
Plaintiff,
vs.
DARRYL COTTON, an individual; and
DOES 1 through 10, inclusive,
Defendants.

AND RELATED CROSS-ACTION.

) Case No. 37-2017-00010073-CU-BC-CTL
)
) **DECLARATION OF JACOB P. AUSTIN**
) **IN SUPPORT OF DARRYL COTTON'S EX**
) **PARTE APPLICATION FOR A STAY AND AN**
) **ORDER CONTINUING TRIAL SCHEDULED**
) **FOR AUGUST 17, 2018**
) **(CRC Rules 3.1203 and 3.1204)**
)
) Date: August 2, 2018
) Time: 8:30 a.m.
) Dept: C-73
) Judge: The Hon. Joel R. Wohlfeil

I, Jacob P. Austin, declare as follows:

1. I am an attorney admitted to practice before this Court and all courts in the State of California, counsel of record for Defendant/Cross-Complainant Darryl Cotton ("Cotton"). I make this declaration in support of Cotton's *ex parte* application for a stay and an order continuing trial scheduled for August 17, 2018 pursuant to CRC Rules 3.1203 and 3.1204.

2. The facts set forth in this declaration is true and correct of my own personal knowledge, except for the information stated upon information and belief; and, as to those matters, I believe them to be true. If called upon as a witness, I could and would competently testify to the matters stated herein.

1 3. As ordered on April 27, 2018, Defendant provided full and complete written discovery
2 responses and attended his deposition as ordered. However, even assuming *arguendo* that Defendant
3 and I would not have been required to spend the next ten days following that hearing completing
4 substantial written discovery responses and preparing for and attending his deposition, the new trial date
5 in and of itself effectively precluded us from being afforded any reasonable amount of time to meet the
6 numerous deadlines associated with trial preparation.

7 4. The two deadlines which were most critical to Defendant's and my efforts to properly
8 prepare for trial in this case were those governing the time afforded to file a motion for summary
9 judgment/ adjudication and to propound discovery.

10 5. Specifically, Defendant and I were only afforded two calendar days within which to draft
11 and mail serve a summary judgment/adjudication motion (110 calendar days before trial – CCP §§437c,
12 1110), and seven calendar days to draft and personally serve the motion (105 calendar days before trial
13 – CCP §437c) - a deadline even the most seasoned attorney with a large staff would have struggled to
14 meet. By being deprived of adequate – or even somewhat reasonable – time to prepare such a motion,
15 my only avenue was to bring a motion for judgment on the pleadings – an undertaking which ultimately
16 proved futile.

17 6. In addition, Defendant's and my ability to propound and serve written discovery in
18 sufficient time to enable him to file a motion to compel in the event such was necessary (100 calendar
19 days before trial if mail served – CCP §§2024, 2030, 2031, 2019. 1005, 1013) also was impeded since
20 he would have been required to serve the discovery no later than May 9, 2018 – 12 days after entry of
21 the order, five days before Defendant's deposition, and on the same day we served his discovery
22 responses.

23 7. Moreover, as the Court and opposing counsel will recall, it was not until April 5, 2018
24 that I substituted into this case on a limited representation basis to assist Defendant in the preparation of
25 a motion to expunge the *lis pendens*, but I did not substitute in to fully represent Defendant until May 1,
26 2018 – four days *after* the order – following which I spent the next two weeks assisting Defendant to
27 complete his discovery responses and prepare him for his deposition.

1 8. In addition to the discovery responses and deposition preparation, I also was required to
 2 assist Defendant in taking the steps necessary to preserve his appeals, and to prepare and submit relevant,
 3 viable law and motion matters to this Court in addition to the motion for judgment on the pleadings.

4 9. Attached is a true and correct copy of the Motion of Points and Authorities of the Motion
 5 for Judgment on the Pleadings (JOP) filed on June 20, 2018.

6 10. Attached is a true and correct copy of the preliminary draft transcript from the JOP
 7 hearing heard on July 13, 2018.

8 11. On August 1, 2018 at 9:38 a.m., Attorney Weinstein’s office was given notice of the
 9 instant *ex parte* application including the date and time of the hearing, the department in which the
 10 matter would be heard, and the relief being sought.

11 I declare under penalty of perjury according to the laws of the State of California that the
 12 foregoing is true and correct and that this declaration was executed on August 1, 2018 at San Diego,
 13 California.

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 17 JACOB P. AUSTIN
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