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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Patricia Xavier, Deputy Clerk

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Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and
Cross-Defendant REBECCA BERRY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

Judge: Hon. Joel R. Wohlfeil

**PLAINTIFF/CROSS-DEFENDANTS EX
PARTE APPLICATION FOR AN ORDER
ADVANCING THE TRIAL DATE AND
RELATED DATES BY SEVERAL WEEKS**

[IMAGED FILE]

DATE: August 23, 2018

TIME: 8:30 a.m.

DEPT: C-73

Filed: March 21, 2017

Trial Date: January 25, 2019

NOTICE OF EX PARTE APPLICATION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, on August 23, 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, located at 330 West
Broadway, San Diego, California 92101, Plaintiff and Cross-Defendant, LARRY GERACI (hereafter
"Geraci"), and Cross-Defendant, REBECCA BERRY (hereafter "Berry"), will appear *ex parte* seeking

1 an order advancing the recently continued Trial date and related Trial Readiness Conference and
2 Motion/Discovery Cutoff dates by several weeks due to Plaintiff's business conflicts arising from the
3 start of tax season for his business, as follows:

4 Current Trial Date: January 25, 2019 @ 8:30 a.m.

5 Current TRC Date: January 18, 2019 @ 10:45 a.m.

6 Current Motion/
7 Discovery Cutoff Date: January 4, 2019

8 Proposed Trial Date: January 4, 2019; January 11, 2019; and January 18, 2019
(in order of preference)

9 Proposed TRC Date: As appropriate given new Trial Date selected

10 Proposed Motion/
11 Discovery Cutoff Date: As appropriate given new Trial Date selected

12 Pursuant to California Rules of Court, rule 3.1202(a), so far as is known to moving parties
13 Geraci and Berry, the names, addresses, and telephone numbers of the attorneys and parties in this case
14 are:

15 Parties

Attorneys

16 Larry Geraci

Michael R. Weinstein
FERRIS & BRITTON, APC
501 West Broadway, Suite 1450
San Diego, Ca. 92121
Telephone: (619) 233-3131
Fax: (619) 232-9316

20 Rebecca Berry

Michael R. Weinstein
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Fax: (619) 232-9316

23 Darryl Cotton

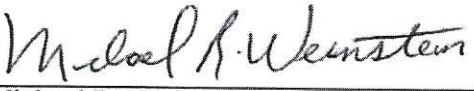
Jacob P. Austin
Law Offices of Jacob P. Austin
1455 Frazee Road, #500
San Diego, CA 92108
Telephone: (619) 357-6850
Fax: (888) 357-8501

27 This application is made pursuant to California Rules of Court, rules 3.1200 through 3.1207 and
28 3.1335. It is based on the attached supporting Memorandum of Points and Authorities and Declaration

1 of Michael R. Weinstein, and on all pleadings, papers, and records in this action, as well as on such
2 further oral or documentary evidence or argument presented before or at the hearing. Counsel for
3 Geraci and Berry provided timely notice of this *ex parte* application to all parties pursuant to California
4 Rules of Court, rule 3.1203(a). (Declaration of Michael R. Weinstein, ¶ 2.)
5

6 Dated: August 22, 2018

FERRIS & BRITTON,
A Professional Corporation

8
9 By: 
10 Michael R. Weinstein
Scott H. Toothacre

11 Attorneys for Plaintiff/Cross-Defendant LARRY GERACI
12 and Cross-Defendant REBECCA BERRY
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1 **SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. RELIEF REQUESTED AND BASIS FOR RELIEF**

3 Pursuant to the Superior Court of San Diego County, Local Rules, rules 3.1200 through 3.1207
4 and 3.1335, Plaintiff and Cross-Defendant, Larry Geraci, and Cross-Defendant, Rebecca Berry, apply
5 *ex parte* for an order from this Court to advance by several weeks the current Trial date of January 25,
6 2019, and the related Trial Readiness Conference and Motion/Discovery Cutoff dates of January 18,
7 2019, and January 4, 2019, respectfully.

8 The current Trial date and related Trial Readiness Conference and Motion Discovery/Cutoff
9 date were set by the Court on August 3, 2018, following a hearing on Defendant/Cross-Complainant
10 Cotton's *ex parte* application for a continuance of then existing August 17, 2018, Trial Date.
11 Plaintiff/Cross-Defendant Geraci and Berry did not object to continuance of the Trial Date and their
12 counsel requested a Trial Date in early January 2019. The Court set the Trial Date for January 25,
13 2019, and the Trial Readiness Conference for January 18, 2019. At the time, Plaintiff/Cross-
14 Defendants' counsel was not aware that Mr. Geraci, who runs a tax and financial planning business,
15 would be into the start of the tax season and, on January 25, 2019, and thereafter for several months,
16 would be continuously occupied by tax preparation appointments. To accommodate his unavailability
17 given this appointment schedule, Plaintiff/Cross-Defendants request that the Trial date be advanced by
18 several weeks into early January 2019 to, in order of preference, January 4, 2019, January 11, 2019, or
19 January 18, 2019, and that the Trial Readiness Conference and Motion/Discovery Cutoff dates be
20 advanced as well to an appropriate date in light of the selected new Trial Date.

21 **II. LEGAL STANDARD**

22 **A. The Court has the Authority to Grant this Request**

23 California Rules of Court, rule 3.1335, states a party may advance or specially set trial by *ex*
24 *parte* application, and "[t]he request may be granted only upon an affirmative showing by the moving
25 party of good cause based on a declaration served and filed with the motion or application." "An
26 applicant for an *ex parte* application must make an affirmative factual showing in a declaration
27 containing competent testimony based on personal knowledge of irreparable harm, immediate danger,
28 or any other statutory basis for granting relief *ex parte*." Cal. Rules of Court, rule 3.1202(c).

B. Good Cause Exists for Granting The Requested Relief

Good cause exists for the advancement of the Trial Date by several weeks (by up to 21 days) in that Plaintiff/Cross-Defendants' have brought this motion promptly after counsel's learning of the business conflict. (Declaration of Michael R. Weinstein, ¶¶3-5.) Given that the current Trial date is approximately 5 months away, advancing the Trial date by up to 21 days will still leave sufficient time for the completion any additional discovery and the service, filing and hearing of any motion for summary judgment/summary adjudication, if any.

III. CONCLUSION

For these reasons, Plaintiff/Cross-Defendant, Larry Geraci, and Cross-Defendant, Rebecca Berry, request the Court issue an order advancing the Trial date and related TRC and Motion/Discovery Cutoff dates as follows:

Proposed Trial Date: January 4, 2019; January 11, 2019; and January 18, 2019
(in order of preference)

Proposed TRC Date: As appropriate given new Trial Date selected

Proposed Motion/
Discovery Cutoff Date: As appropriate given new Trial Date selected

Respectfully submitted,

Dated: August 22, 2018

FERRIS & BRITTON,
A Professional Corporation

By: Michael R. Weinstein
Michael R. Weinstein
Scott H. Toothacre
Attorneys for Plaintiff/Cross-Defendant LARRY GERACI
and Cross-Defendant REBECCA BERRY

1 **SUPPORTING DECLARATION OF MICHAEL R. WEINSTEIN**

2 I, Michael R. Weinstein, declare:

3 1. I am an attorney with Ferris & Britton, APC, the attorneys for Plaintiff/Cross-Defendant,
4 Larry Geraci, and Cross-Defendant, Rebecca Berry, in this action. I have personal knowledge of the
5 facts stated in this declaration and, if called as a witness, would so testify.

6 2. I gave written notice of this ex parte hearing to Darryl Cotton's attorney, Jacob P.
7 Austin, via email on August 21, 2018 at 3:22 p.m., a true and correct copy of which is attached hereto
8 as Exhibit 1.

9 3. The Trial Date in this action is January 25, 2019. The Trial Readiness Conference date
10 is January 18, 2019. The Motion and Discovery Cutoff Date is January 4, 2019.

11 4. Recently, on August 3, 2018, these dates were set by the Court following a hearing on
12 Defendant/Cross-Complainant Cotton's ex parte application for a continuance of then existing August
13 17, 2018, Trial Date. Plaintiff/Cross-Defendant Geraci and Berry did not object to continuance of the
14 Trial Date and, as their counsel, I counsel requested a Trial Date "in early January 2019," a time at
15 which my client Mr. Geraci had complete availability for Trial. The Court set the Trial Date for
16 January 25, 2019, the Trial Readiness Conference for January 18, 2019, and the Motion/Discovery
17 Cutoff date to January 4, 2019, to which I, admittedly, did not object. At the time, I was not aware that
18 Mr. Geraci, who runs a tax and financial planning business, would be into the start of the tax season
19 and, on January 25, 2019, and thereafter would be busy continuously during the business day with
20 scheduled tax preparation appointments. To avoid the interference by these scheduled appointments of
21 his availability to attend Trial, Plaintiff/Cross-Defendants now requests that the Trial date be advanced
22 by several weeks into early January 2019 to, in order of preference, January 4, 2019, January 11, 2019,
23 or January 18, 2019, and that the Trial Readiness Conference and Motion/Discovery Cutoff dates be
24 advanced as well to an appropriate date in light of the selected new Trial date.

25 5. Good cause exists for the advancement of the Trial Date by several weeks (by up to 21
26 days) in that Plaintiff/Cross-Defendants' have brought this motion promptly after I learned of my
27 client's business conflicts. Given that trial is approximately 5 months away, advancing the Trial date
28 and related dates by up to 21 days will still leave sufficient time for the completion any additional

1 discovery and the service, filing and hearing of any motion for summary judgment/summary
2 adjudication, if any.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing is
4 true and correct. Executed this 22nd day of August, 2018, in San Diego, California.

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6 _____
7 MICHAEL R. WEINSTEIN
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EXHIBIT 1

Michael Weinstein

From: Michael Weinstein
Sent: Tuesday, August 21, 2018 3:22 PM
To: Jake Austin
Subject: Geraci v. Cotton - Notice of Ex Parte Hearing on Thursday, Aug 23, 2018, at 8:30 a.m. in Dept C-73
Follow Up Flag: Moved to Wordox (Client Files\4892\001\00502355.MSG)

Dear Mr. Austin,

This email constitutes notice that I will be appearing ex parte on Thursday, August 23, 2018, at 8:30 a.m. in Dept C-73, to request an order advance the current Trial Date of January 25, 2019, by several weeks (up to 21 days) into early January 2019 and to advance the related current Trial Readiness Conference Date of January 18, 2019, and the current Motion and Discovery Cutoff Date of January 4, 2019, by several weeks as appropriate in light of any new Trial Date set by the Court. Specifically, in order of preference, I will be asking to advance the Trial Date to January 4, 2019, or January 11, 2019, or January 18, 2019. The reason for my request is that Mr. Geraci is fully into tax season by January 25, 2019, and has continuous pre-scheduled appointments during the business day the weeks of January 28, 2019, and following weeks.

I will be timely e-serving you with our ex parte moving papers tomorrow, August 22, 2018.

Respectfully,

Michael R. Weinstein
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