

ROA 298

6 pgs

APP-003

ATTORNEY OR PARTY WITHOUT ATTORNEY		STATE BAR NO.: 290,303	ELECTRONICALLY FILED Superior Court of California, County of San Diego 09/06/2018 at 05:25:00 PM Clerk of the Superior Court By Leticia Romo, Deputy Clerk
NAME: JACOB P. AUSTIN			
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ATTORNEY FOR (name): Defendant/Appellant DARRYL COTTON			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, CA 92101-2994 BRANCH NAME: Central Division - Civil			
PLAINTIFF/PETITIONER: DARRYL COTTON			
DEFENDANT/RESPONDENT: LARRY GERACI and REBECCA BERRY, et al.			
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)			SUPERIOR COURT CASE NUMBER: 37-2017-00010073-CU-BC-CTL
RE: Appeal filed on (date): 06/18/18; Amended Notice of Appeal 07/26/18			COURT OF APPEAL CASE NUMBER (if known): D073818
Notice: Please read form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.			

1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the superior court (check a, b, c, or d, and fill in any required information):

- a. ☒ A clerk's transcript under rule 8.122. (You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)
- (1) ☐ I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
- (2) ☒ I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b)):
- (a) ☒ An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
- (b) ☐ An application for a waiver of court fees and costs under rule 3.50 et seq. (Use Request to Waive Court Fees (form FW-001) to prepare and file this application.)
- b. ☐ An appendix under rule 8.124.
- c. ☐ The original superior court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, and Fourth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d. ☐ An agreed statement under rule 8.134. (You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I elect to proceed (you must check a or b below):

- a. ☐ WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.

CASE NAME: DARRYL COTTON v. LARRY GERACI, et al.

SUPERIOR COURT CASE NUMBER:
37-2017-00010073-CU-BC-CTL2. b. ☒ WITH the following record of the oral proceedings in the superior court (you must check (1), (2), or (3) below):(1) ☒ A reporter's transcript under rule 8.130. (You must fill out the reporter's transcript section on page 3 of this form.) I have (check all that apply):

- (a) ☐ Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
- (b) ☐ Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
- (c) ☐ Attached the reporter's written waiver of a deposit for (check either (i) or (ii)):
- (i) ☐ all of the designated proceedings.
- (ii) ☐ part of the designated proceedings.
- (d) ☒ Attached a certified transcript under rule 8.130(b)(3)(C).

(2) ☐ An agreed statement. (Check and complete either (a) or (b) below.)

- (a) ☐ I have attached an agreed statement to this notice.
- (b) ☐ All the parties have agreed in writing (stipulated) to try to agree on a statement. (You must attach a copy of this stipulation to this notice.) I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.

(3) ☐ A settled statement under rule 8.137. (You must check (a), (b), or (c) below.)

- (a) ☐ The oral proceedings in the superior court were not reported by a court reporter.
- (b) ☐ The oral proceedings in the superior court were reported by a court reporter, but the appellant has an order waiving his or her court fees and is unable to pay for a reporter's transcript.
- (c) ☐ I am requesting to use a settled statement for reasons other than those listed in (a) or (b). (You must attach the motion required under rule 8.137(b) to this form.)

3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT

☐ I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court (give the title and date or dates of the administrative proceeding):

Title of Administrative Proceeding	Date or Dates

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

(You must complete this section if you checked item 1a above indicating that you elect to use a clerk's transcript as the record of the documents filed in the superior court.)

a. Required documents. The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed, or if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
(1) Notice of appeal	06/14/18, Amd. 07/26/18
(2) Notice designating record on appeal (this document)	09/06/18
(3) Judgment or order appealed from	06/14/18
(4) Notice of entry of judgment (if any)	07/26/18
(5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (if any)	N/A
(6) Ruling on one or more of the items listed in (5)	N/A
(7) Register of actions or docket (if any)	ROA 10/06/17 to 09/06/18

CASE NAME: DARRYL COTTON v. LARRY GERACI, et al.

SUPERIOR COURT CASE NUMBER:
37-2017-00010073-CU-BC-CTL**4. NOTICE DESIGNATING CLERK'S TRANSCRIPT**

b. **Additional documents.** (If you want any documents from the superior court proceeding in addition to the items listed in 4a. above to be included in the clerk's transcript, you must identify those documents here.)

- ☒ I request that the clerk include the following documents from the superior court proceeding in the transcript. (You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)

	Document Title and Description	Date of Filing
(8)	Complaint [ROA 1]	03/21/17
(9)	Second Amended Cross-Complaint [ROA 47]	08/25/17
(10)	Notice of & Demurrer to Second Amended Cross-Complaint [ROA 52]	09/28/18
(11)	Memorandum of Points & Authorities ISO Demurrer [ROA 53]	09/28/17
(12)	Reply Memorandum of Points & Authorities IOT Demurrer [ROA 58]	10/27/18

- ☒ Additional documents are listed on Attachment 4b beginning with number (13).

c. **Exhibits to be included in clerk's transcript**

- ☐ I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court (for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			
(4)			
(5)			

- ☐ Additional exhibits are listed on Attachment 4c beginning with number (6).

5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT

You must complete both a and b in this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.

a. I request that the reporters provide (check one):

- (1) ☐ My copy of the reporter's transcript in electronic format.
- (2) ☒ My copy of the reporter's transcript in paper format.
- (3) ☐ My copy of the reporter's transcript in electronic format and a second copy in paper format.

(Code Civ. Proc., § 271.)

CASE NAME: DARRYL COTTON v. LARRY GERACI, et al.

SUPERIOR COURT CASE NUMBER:
37-2017-00010073-CU-BC-CTL5. b. **Proceedings**

I request that the following proceedings in the superior court be included in the reporter's transcript. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—and the name of the court reporter who recorded the proceedings [if known], and whether a certified transcript of the designated proceeding was previously prepared.)

Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1) 06/14/18	D-73	Partial Day	Hrg. on Defendant's Motion for Appointment of Receiver	David W. Rhoads CSR 13508	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(2) 07/13/18	D-73	Partial Day	Hrg. on Defendants Motion for Judgment on the Pleadings	Darla Kmety, RPR CSR 12956	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(3)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)					<input type="checkbox"/> Yes <input type="checkbox"/> No

☐ Additional proceedings are listed on Attachment 5b beginning with number (5).

6. **NOTICE DESIGNATING PROCEEDINGS TO BE INCLUDED IN SETTLED STATEMENT**

(You must complete this section if you checked item 2b(3) above indicating you elect to use a settled statement.) I request that the following proceedings in the superior court be included in the settled statement. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—and, if applicable, the name of the court reporter who recorded the proceedings [if known], and whether a certified transcript of the designated proceeding was previously prepared.)


Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)					<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(2)					<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(3)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)					<input type="checkbox"/> Yes <input type="checkbox"/> No

☐ Additional proceedings are listed on Attachment 6 beginning with number (5).

7. a. The proceedings designated in 5b or 6 ☐ include ☐ do not include all of the testimony in the superior court.
- b. If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal (rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise).
- Points are set forth: ☐ Below ☐ On Attachment 7.

Date: September 6, 2018

JACOB P. AUSTIN
(TYPE OR PRINT NAME)


(SIGNATURE OF APPELLANT OR ATTORNEY)

APPELLANT'S NOTICE OF DESIGNATION OF TRANSCRIPT ON APPEAL**Attachment 4b – Continued Designation of Clerk's Transcript**

NO.	DOCUMENT TITLE AND DESCRIPTION	DATE OF FILING
13	<i>Ex Parte</i> Application for Order Granting Motion for Reconsideration re Application for Temporary Restraining Order and Order to Show Cause Regarding Preliminary Injunction; Memorandum of Points and Authorities, Request for Judicial Notice and other supporting documents [ROA 77]	12/11/17
14	<i>Ex Parte</i> Application for Orders (1) Shortening Time for Hearing on Motion to Expunge Notice of Pendency of Action (<i>Lis Pendens</i>) [CCP §405.30 et seq.]; Declaration of Jacob P. Austin, Request for Judicial Notice and other supporting documents [ROA 160]	04/04/18
15	Notice of Motion and Motion to Expunge Notice of Pendency of Action (<i>Lis Pendens</i>); Memorandum of Points and Authorities, Declaration of Darryl Cotton and other supporting documents [ROA 161]	04/04/18
16	Opposition to Plaintiff/Cross-Defendant Larry Geraci's <i>Ex Parte</i> Application for an Order Shortening Time to Hear Motion for Monetary and Escalating/Terminating Sanctions Against Defendant and Cross-Complainant, Darryl Cotton [ROA 166]	04/09/18
17	Declaration of Larry Geraci in Opposition to Defendant Darryl Cotton's Motion to Expunge <i>Lis Pendens</i> [ROA 180]	04/10/18
18	Notice of Lodgment in Support of Plaintiff Larry Geraci's Opposition to Defendant Darryl Cotton's Motion to Expunge <i>Lis Pendens</i> [ROA 183]	04/10/18
19	Tentative Ruling on Defendant's Motion to Expunge <i>Lis Pendens</i> [ROA 191]	04/10/18
20	Minute Order on Defendant's Motion to Expunge <i>Lis Pendens</i> [ROA 192]	04/11/18
21	<i>Ex Parte</i> Application for Appointment of Receiver and Other Relief; Memorandum of Points and Authorities, Declaration of Jacob P. Austin, Declaration of Darryl Cotton, Declaration of Joe Hurtado, Notice of Lodgment and other supporting documents [ROA 237]	06/13/18
22	Minute Order Denying Motion for Appointment of Receiver [ROA 240]	06/14/18
23	Notice of Motion and Motion by Defendant Darryl Cotton for Judgment on the Pleadings [ROA 247]	06/20/18
24	Memorandum of Points and Authorities in Support of Motion by Defendant Darryl Cotton for Judgment on the Pleadings [ROA 243]	06/20/18
25	Declaration of Jacob P. Austin in Support of Motion by Defendant Darryl Cotton for Judgment on the Pleadings [ROA 244]	06/20/18
26	Declaration of Darryl Cotton in Support of Motion by Defendant Darryl Cotton for Judgment on the Pleadings [ROA 245]	06/20/18
27	Request for Judicial Notice in Support of Motion by Defendant Darryl Cotton for Judgment on the Pleadings [ROA 246]	06/20/18
28	Plaintiff Larry Geraci's Memorandum of Points and Authorities in Opposition to Motion by Darryl Cotton for Judgment on the Pleadings [ROA 250]	06/29/18

APPELLANT'S NOTICE OF DESIGNATION OF TRANSCRIPT ON APPEAL

Attachment 4b – Continued Designation of Clerk's Transcript

NO.	DOCUMENT TITLE AND DESCRIPTION	DATE OF FILING
29	Darryl Cotton's Reply to Plaintiff's Opposition to Motion for Judgment on the Pleadings [ROA 252]	07/05/18
30	Tentative Ruling on Motion for Judgment on the Pleadings [ROA 253]	07/12/18
31	Minute Order Denying Motion for Judgment on the Pleadings [ROA 256]	07/13/18
32	Amended Notice of Appeal of June 14, 2018 of Order Denying Motion for Appointment of Receiver [ROA 281]	07/26/18