2 pages

ELECTRONICALLY FILED Superior Court of California, County of San Diego

04/15/2019 at 08:25:00 AM

Clerk of the Superior Court By E. Filing Deputy Clerk

FERRIS & BRITTON A Professional Corporation Michael R. Weinstein (SBN 106464) Scott H. Toothacre (SBN 146530) 501 West Broadway, Suite 1450 San Diego, California 92101 Telephone: (619) 233-3131 Fax: (619) 232-9316 mweinstein@ferrisbritton.com stoothacre@ferrisbritton.com

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. Judge: V. DARRYL COTTON, an individual; and DOES 1 through 10, inclusive, Defendants. AND RELATED CROSS-ACTION IMAGED FILE

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

Hon, Joel R. Wohlfeil

DECLARATION OF SCOTT H. TOOTHACRE IN SUPPORT OF PLAINTIFF/CROSS-DEFENDANT LARRY GERACI'S OPPOSITION TO DEFENDANT/CROSS-COMPLAINANT DARRYL COTTON'S MOTION FOR ORDER THAT INITIAL ANSWERS TO INTERROGATORIES BE DEEMED **BINDING AND FOR SANCTIONS**

DATE: TIME: DEPT:

April 26, 2019 9:00 a.m.

C-73

Filed: Trial Date: March 21, 2017 June 28, 2019

22 23

24

25

26

27

28

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

I, SCOTT H. TOOTHACRE, declare and say as follows:

1. I am an attorney with the law firm of Ferris & Britton, APC, attorneys of record herein for Plaintiff/Cross-Defendant Larry Geraci, and for Cross-Defendant Rebecca Berry. I am licensed to practice before all Courts in the State of California. I make this declaration upon personal knowledge except as to those matters stated upon information and belief, and if called as a witness I would and could competently testify under oath as follows:

1

- 2. With respect to my qualifications and background: I am an attorney licensed by the State of California. I am a graduate of San Diego State University and Western State School of Law. I have been admitted to practice law in California for 29 years (1989 to the present). I have tried in excess of 30 jury trials. I have also had numerous appearances before the Fourth District Court of Appeals, Division One and have appeared and argued once before the California Supreme Court, which resulted in a published opinion, *Jones v. The Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158. Upon remand in the *Jones* matter, Judge Richard Strauss approved my hourly rate and awarded \$725,868.55 in attorneys' fees.
- 3. Most recently on August 7, 2015, San Diego Superior Court Judge Timothy B. Taylor approved my hourly rate of \$400 per hour in *Phoung To Tieu v. Adam Cook, et al.*, Case No. 37-2015-00015133-CL-UD-CTL. The Order in that case reflects Judge Taylor's decision was based on his 20 years in practice in San Diego and in the intervening years. In so ruling, Judge Taylor noted that "the court has had the opportunity to keep current on the rates charged by lawyers in San Diego by considering and ruling upon hundreds of fee applications, in a variety of settings."
- 4. My usual hourly rate is \$400 per hour. However, on this matter, I am billing at the reduced rate of \$375 per hour. I spent a total of four hours reading Mr. Austin's papers, researching his cited cases, trying to discern his arguments, and drafting an opposition to the motion to bind. On behalf of my client, Larry Geraci, I seek an award of attorney's fees in the amount of \$1,500.00 (4 hrs. x \$375) as a sanction against Darryl Cotton and his attorney, Jacob Austin, for filing the instant motion without substantial justification. I believe the amount of time and resources dedicated to the opposition justifies the sanction amount requested.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, and that this declaration was executed on April 15, 2019, in San Diego, California.

SCOTT H. TOOTHACKE