

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Ines Quirarte, Deputy Clerk

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Attorneys for Plaintiff/Cross-Defendant
LARRY GERACI

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
Dept.: C-73

**NOTICE OF MOTION AND MOTION BY
PLAINTIFF/CROSS-DEFENDANT
LARRY GERACI TO COMPEL
DEFENDANT/CROSS-COMPLAINANT
DARRYL COTTON (1) TO APPEAR AND
TESTIFY AT DEPOSITION AND (2) TO
RESPOND TO WRITTEN DISCOVERY
REQUESTS, AND FOR SANCTIONS**

[IMAGED FILE]

Hearing Date: March 23, 2018
Hearing Time: 9:00 a.m.

Filed: March 21, 2017
Trial Date: May 11, 2018

**TO EACH PARTY AND THE ATTORNEY OF RECORD FOR EACH PARTY TO
THIS ACTION:**

YOU ARE HEREBY NOTIFIED THAT, on March 23, 2018, at 9:00 a.m., or as soon thereafter
as the matter may be heard before the Honorable Joel R. Wohlfeil, in Department C-73 of this Court,
located at 330 West Broadway, San Diego, California, 92101, plaintiff/cross-defendant, LARRY
GERACI ("Geraci"), will move this Court for an order compelling defendant/cross-complainant,

1 DARRYL COTTON ("Cotton"), (1) to appear and testify at deposition and (2) to respond to written
2 discovery requests by serving verified, written responses, without any objections or assertions of
3 privilege, to a) Form Interrogatories-General (Set One), b) Special Interrogatories (Set One), and
4 3) Requests for Admission (Set One) propounded by Geraci to Cotton.

5 NOTICE IS FURTHER GIVEN that Geraci seeks sanctions under Code of Civil Procedure
6 sections 2025.410(d), 2023.010, 2030.290, subdivision (c), and 2031.300, subdivision (c), because Mr.
7 Cotton acted without substantial justification with regard to his refusal to attend his deposition, respond
8 to interrogatories and produce documents, and there are no other circumstances which make the
9 imposition of sanctions unjust.

10 This motion is made on the following grounds:

11 (1) Mr. Cotton has now failed on two occasions appear and testify at his properly noticed
12 deposition, the last of which failure to appear occurred on February 14, 2018, in defiance of a court
13 order that he do so;

14 (2) Mr. Cotton has failed to timely serve any written responses to written discovery requests
15 propounded by Geraci to Cotton, namely, a) Form Interrogatories-General (Set One), b) Special
16 Interrogatories (Set One), and 3) Requests for Admission (Set One), served on December 29, 2017.

17 (3) Mr. Cotton has no substantial justification for his willful failure to comply with his
18 discovery obligations, and that this warrants the imposition against him of both a) monetary sanctions
19 in the amount of \$6,687.50, b) non-monetary sanctions in the form of the striking of his Answer to the
20 Complaint and the striking of his operative Second Amended Cross-Complaint.


21 NOTICE IS FURTHER GIVEN that a tentative ruling will be issued the day before the date set
22 forth for hearing, this court follows rule 3.1308(a)(2), and no notice of intent to appear is required to
23 appear for argument. The tentative ruling shall be made available at 3:30 p.m. on the court day prior to
24 the scheduled hearing. The tentative ruling may direct the parties to appear for oral argument and may
25 specify the issues on which the court wishes the parties to provide further argument. The tentative
26 ruling may be obtained by calling the court tentative ruling number at (619) 450-7381 or by navigating
27 to the court's website www.sandiego.courts.ca.gov.

28 This motion will be based upon this Notice of Motion and Motion and the supporting

1 Memorandum of Points and Authorities, Declaration of Michael R. Weinstein, Declaration of Scott H.
2 Toothacre, and Notice of Lodgment, all of which are served and filed concurrently herewith. Geraci
3 was not required to meet and confer prior to filing this motion, and a separate statement is not required
4 because no discovery responses have been served. (See *Sinaiko Healthcare Consulting, Inc. v. Pacific*
5 *Healthcare Consultants* (2007) 148 Cal. App. 4th 390, 404.)

6 Dated: February 27, 2018

FERRIS & BRITTON,
A Professional Corporation

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8 By: 
9 Michael R. Weinstein
10 Scott H. Toothacre
11 Attorneys for Plaintiff/Cross-Defendant
12 LARRY GERACI
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