

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

ROA 150
2pgs

MINUTE ORDER

DATE: 03/23/2018

TIME: 09:00:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Juanita Cerda, Candy Cheely

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: 37-2017-00010073-CU-BC-CTL CASE INIT.DATE: 03/21/2017

CASE TITLE: Larry Geraci vs Darryl Cotton [Imaged]

CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Discovery Hearing

MOVING PARTY: Larry Geraci

CAUSAL DOCUMENT/DATE FILED: Motion to Compel Discovery Notice of Motion and Motion to Compel (1) to Appear and Testify at Deposition and (2) to Respond to Written Discovery Requests, and for Sanctions, 02/27/2018

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: Larry Geraci

CAUSAL DOCUMENT/DATE FILED: Motion for Preliminary Injunction, 02/27/2018

APPEARANCES

Michael R Weinstein, counsel, present for Respondent on Appeal, Cross - Defendant, Cross - Complainant, Plaintiff(s).

Jacob Austin, specially appearing for Darryl Cotton, self represented Defendant.

Jacob Austin specially appearing only as to a motion to expunge lis pendens for Darryl Cotton.

Plaintiff counsel makes an oral motion objecting to the appearance and this motion is GRANTED.

The Court CONFIRMS the tentative ruling as follows:

The Motion (ROA # 122) of Plaintiff / Cross-Defendant, LARRY GERACI ("Plaintiff" or "Geraci") for an order compelling Defendant / Cross-Complainant DARRYL COTTON ("Defendant" or "Cotton") (1) to appear and testify at deposition and (2) to respond to written discovery requests by serving verified, written responses, without any objections or assertions of privilege, to a) Form Interrogatories-General (Set One), b) Special Interrogatories (Set One), and 3) Requests for Admission (Set One) propounded by Geraci to Cotton, and for sanctions, is DENIED IN PART AND GRANTED IN PART.

The Court has already issued an order directing Defendant to submit to a deposition. ROA # 107, 108. Plaintiff's remedy, if any, is not to ask the Court to re-issue an existing order but to pursue the imposition of escalating sanctions based on Defendant's non-compliance with the Court's order. For this reason

alone, this part of Plaintiff's Motion is DENIED.

Defendant is directed to serve responses, without objections, to Plaintiff's Form Interrogatories - General (Set One), Special Interrogatories (Set One), and Requests for Admission (Set One), within twenty (20) days of the hearing of this Motion.

Plaintiff's request for sanctions is DENIED. The Court would be inclined to find that Plaintiff has failed to provide discovery responses without substantial justification; however, as much as the Court recognizes the value of Plaintiff counsel's services, counsel's declaration fails to specify the services rendered or his hourly rate; accordingly, Plaintiff has failed to carry his burden which would permit the Court to find that the services are reasonable and necessary and counsel's hourly rate is reasonable.

The Court CONFIRMS the tentative ruling as follows:

The unopposed Motion (ROA # 115) of Plaintiff / Cross-Defendant LARRY GERACI ("Plaintiff" or "Geraci") for a mandatory injunction requiring Defendant / Cross- Complainant DARRYL COTTON ("Defendant" or "Cotton") to Sign the Property Owner Consent Form Allowing Soils Testing on the Subject Property, and to Otherwise Allow SCST Engineering Unhindered Access to the Subject Property to Conduct Said Soils Testing, is GRANTED.

Defendant is required to immediately sign the property owner consent form allowing soils testing on the subject property, and to otherwise allow SCST Engineering unhindered access to the subject property to conduct soils testing. Sufficient evidence has been presented demonstrating that the County of San Diego is requiring a soils sample analysis as a condition precedent to obtaining a CUP to operate a Medical Marijuana Dispensary. Thus, injunctive relief is necessary to prevent irreparable injury and waste. Also, there is a reasonable probability that Plaintiff will prevail on the merits.

The Court confirms and modifies the tentative as to sanctions (375 x 3 hours) and the Court directs counsel to serve notice regarding the sanctions granted at this hearing.