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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

**PLAINTIFF LARRY GERACI'S
OBJECTIONS TO REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
DEFENDANT DARRYL COTTON'S
MOTION TO EXPUNGE LIS PENDENS**

[IMAGED FILE]

Hearing Date: April 13, 2018
Hearing Time: 9:00 a.m.

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

Plaintiff, LARRY GERACI, hereby objects to Defendant Darryl Cotton's Request for Judicial Notice in Support of his Motion to Expunge Notice of Pendency of Action ("Request for Judicial Notice").

Specifically, it is noted that Cotton fails to cite any evidence code section whatsoever in support of his Request for Judicial Notice. Nor does he cite any case law to support his Request for Judicial

1 Notice. As such, the Request for Judicial Notice should be denied outright.

2 Notwithstanding this general objection to the entirety of the Request For Judicial Notice,
3 specific documents for which Cotton requests judicial notice are not relevant to the instant proceeding
4 to expunge *lis pendens*, nor are they the proper subject of judicial notice.

5 Cotton requests judicial notice of the following documents:

6 1. Verified Petition for Alternative Writ of Mandate (Code Civ. Proc., § 1085) filed by
7 Plaintiff on October 6, 2017;

8 2. Plaintiff Larry Geraci's Complaint for: 1) Breach of Contract; 2) Breach of the Covenant
9 of Good Faith and Fair Dealing; 3) Specific Performance; and 4) Declaratory Relief filed March 21,
10 2017;

11 3. City of San Diego, Development Services Department Information Bulletin 170
12 (October 2017) (City Information Bulletin describing "the application process for a Marijuana Outlet");

13 4. Ownership Disclosure Statement – Form DS-318;

14 5. City of San Diego Development Services Department Parcel Information Report -
15 Report Number 101, dated March 20, 2018; and

16 6. Verified Memorandum of Points and Authorities in Support of Darryl Cotton's
17 Response to (1) Motion by Plaintiff/Cross-Defendant Larry Geraci and Cross-Defendant Rebecca Berry
18 to Compel the Deposition of Darryl Cotton, and (2) Motion by Real Parties in Interest, Larry Geraci
19 and Rebecca Berry, to Compel the Deposition of Darryl Cotton, filed January 22, 2018.

20 **I. JUDICIAL NOTICE SHOULD BE DENIED BECAUSE COTTON HAS PROVIDED NO**
21 **INFORMATION FOR THE COURT TO EVALUATE THE PROPRIETY OF**
22 **JUDICIAL NOTICE**

23 Judicial notice should be denied because Cotton has provided no information to support his
24 request. Section 453(b) of the California Evidence Code states that a court shall take judicial notice
25 only when the requesting party "[f]urnishes the court with sufficient information to enable it to take
26 judicial notice of the matter. (Cal. Evid. Code, § 453(b).) A court may deny a request for judicial
27 notice made without support. (*Willis v. State of California* (1994) 223 Cal.App.4th 291 [denying a
28 request for judicial notice where request was made 'without appending any information whatsoever'].)

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1 Here, Cotton's Request for Judicial Notice fails to include any supporting documentation or
2 citation to any Evidence Code sections. Cotton also fails to indicate the relevance or purpose for taking
3 judicial notice of these documents. He simply provides no indication as to the nature or scope of
4 judicial notice being requested. Likewise, Cotton provides no legal justification for the Court to base
5 its decision on the Request. As in *Willis*, Cotton's request is so deficient in supporting information that
6 it must be denied. (See *Willis*, *supra*, 22 Cal.App.4th at p. 291.)

7 **II. JUDICIAL NOTICE SHOULD BE DENIED BECAUSE THE PROFFERED**
8 **DOCUMENTS CONTAIN INADMISSIBLE HEARSAY**

9 Judicial notice should be denied because the proffered documents contain inadmissible hearsay
10 if they are offered for the truth of the matters asserted therein. A "court cannot take judicial notice of
11 hearsay allegations as being true, just because they are part of a court record or file." (*Bach v. McNelis*
12 (1989) 207 Cal.App.3d 852, 865; *Mangini v. R.J. Reynolds* (1994) 7 Cal.4th 1057, 1063 ["While courts
13 may notice official acts and public records, we do not take judicial notice of the truth of all matters
14 stated therein."].)

15 Here, because Cotton does not specify his purpose for the Request, Plaintiff's must assume he
16 intends to offer the exhibits for the truth of the matters stated therein. If so, the matters are
17 inadmissible hearsay. "Although the *existence* of a document may be judicially noticeable, the truth of
18 the statements contained in the document and its proper interpretation are not subject to judicial notice
19 if those matters are reasonably disputable." (*Fremont Indemnity Co. v. Fremont General Corp.* (2001)
20 148 Cal.App. 4th 97, 113.)

21 Further, out-of-court statements may not be admitted in a request for judicial notice simply
22 because these statements have been previously filed with the court: "What is meant by taking judicial
23 notice of Court records? There exists a mistaken notion that this means taking judicial notice of the
24 existence of facts asserted in *every document* of a court file, including *pleadings* and *affidavits*.
25 However, a court *cannot* take judicial notice of *hearsay allegations* as being true, just because they are
26 part of a court record or file. A court may take judicial notice of the *truth* of facts asserted in
27 documents such as order, findings of fact and conclusions of law, and judgments." (*Sosinsky v. Grant*
28 (1992) 6 Cal.App.4th 1548, 1568, emphasis in original [quoting 2 *Jefferson's California Evidence*

1 *Benchbook* (2d ed. 1982) § 47.2, p. 1757].) Because Cotton has submitted these hearsay statements for
2 no purpose other than to take judicial notice of the truth of the facts stated in the documents, then
3 judicial notice should be denied.

4 **III. CONCLUSION**

5 Cotton's request for judicial notice should be denied. He has failed to provide any information
6 to support his request as required by section 453(b) of the Evidence Code. Additionally, Cotton's use
7 of these documents indicates that judicial notice would be improper because the subject matter
8 constitutes inadmissible hearsay.

9 Dated: April 10, 2018

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16 and Cross-Defendant REBECCA BERRY
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