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SAN DIEGO COUNTY, CA

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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

**AMENDED NOTICE OF HEARING ON
MOTION BY PLAINTIFF AND CROSS-
DEFENDANT, LARRY GERACI, AND
CROSS-DEFENDANT, REBECCA
BERRY, FOR MONETARY AND
ESCALATING/ TERMINATING
SANCTIONS AGAINST DEFENDANT
AND CROSS-COMPLAINANT, DARRYL
COTTON**

[IMAGED FILE]

Hearing Date: April 27, 2018
Hearing Time: 10:45 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 April 27, 2018, at 10:45 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"), and cross-defendant, REBECCA BERRY ("Berry"), will move this

1 Court for orders:

2 1. Imposing monetary sanctions of \$2,062.50 in favor of moving parties and against
3 defendant and cross-complainant DARRYL COTTON ("Cotton") to compensate for the attorneys' fees
4 and costs associated with Cotton's non-appearance at his April 5, 2018, deposition, and with the
5 preparation and hearing of this motion for sanctions; and

6 2. Imposing escalating/terminating sanctions as follows: (a) for an order striking
7 Mr. Cotton's Answer to the Complaint; and (b) for an order striking Mr. Cotton's operative Second
8 Amended Cross-Complaint; or

9 3. Alternatively, as a possible lesser but escalating sanctions, for an order continuing the
10 Trial date for 60 days to permit Mr. Cotton one final chance to provide the written discovery responses
11 and make himself available for deposition on a date certain within 10 days, and at the same time
12 extending the discovery cutoff by 60 days for plaintiff/cross-defendants only so that plaintiff/cross-
13 defendants are given opportunity to conduct follow up discovery, including depositions that they deem
14 necessary in light of the information provided in those responses and deposition testimony.

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

20 This motion is made on the following grounds:

21 (1) Mr. Cotton has now failed on three occasions to appear and testify at his properly
22 noticed deposition, the last of which failure to appear occurred on April 5, 2018, in defiance of a second
23 court order compelling his attendance;

24 (2) That Mr. Cotton's failure to appear at the April 5, 2018, deposition was without
25 substantial justification;

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

1 (4) Mr. Cotton has no substantial justification for his willful failure to comply with his
2 discovery obligations, and that this warrants the imposition against him of both a) additional monetary
3 sanctions in the amount of \$2,062.50, and b) the requested non-monetary, escalating/terminating
4 sanctions.

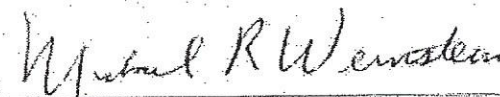
5 This motion will be based upon this Amended Notice of Motion and Motion and the supporting
6 Memorandum of Points and Authorities, Declaration of Michael R. Weinstein, and Notice of Lodgment
7 previously served and filed on April 9, 2018.

8 **NOTICE IS FURTHER GIVEN** that a tentative ruling will be issued the day before the date
9 set forth for hearing, this court follows California Rules of Court, rule 3.1308(a)(2), and no notice of
10 intent to appear is required to appear for argument. The tentative ruling shall be made available at 3:30
11 p.m. on the court day prior to the scheduled hearing. The tentative ruling may direct the parties to
12 appear for oral argument and may specify the issues on which the court wishes the parties to provide
13 further argument. The tentative ruling may be obtained by calling the court tentative ruling number at
14 (619) 450-7381 or by navigating to the court's website www.sandiego.courts.ca.gov.

15 Dated: April 11, 2018

FERRIS & BRITTON,
A Professional Corporation

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19 By:



Michael R. Weinstein

Scott H. Toothacre

Attorneys for Plaintiff and Cross-Defendant

LARRY GERACI and Cross-Defendant REBECCA BERRY