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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Treva Cutts, Deputy Clerk

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,

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/CROSS-DEFENDANTS'
NOTICE OF MOTION AND MOTION IN
LIMINE TO EXCLUDE TESTIMONY
THAT MR. GERACI'S PRIOR
SETTLEMENT AGREEMENTS BAR HIM
FROM OBTAINING A CUP OR OWNING
A BUSINESS OPERATING A
DIPENSARY PURSUANT TO A CUP**

[MIL NO. 9 OF 15]

[IMAGED FILE]

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

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:

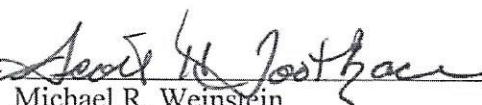
PLEASE TAKE NOTICE that on June 28, 2019 at 8:30 a.m. or as soon thereafter as the
matter may be heard in Department C-73 of the San Diego Superior Court, located at 330 West
Broadway, San Diego, California, Plaintiff/Cross-Defendant, LARRY GERACI, and Cross-
Defendant, REBECCA BERRY, will move *in limine* pursuant to Evid. Code §§ 210, 350, 352, 703,
1101(a) and 1200 et seq., for an order excluding any evidence, examination, argument or other

1 reference to Mr. Cotton and Mr. Hurtado's allegations that Mr. Geraci's prior settlement agreements
2 bar him from obtaining a CUP or owning a business operating a dispensary pursuant to a CUP.

3 This motion will be based on this Notice of Motion, the Memorandum of Points and
4 Authorities, and Notice of Lodgment served and filed herewith, on the records and file herein, and
5 on such evidence as may be presented at the hearing of this motion.

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7 FERRIS & BRITTON
A Professional Corporation

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9 Dated: June 21, 2019

10 By: 
11 Michael R. Weinstein
12 Scott H. Toothacre
13 Attorney for Plaintiff and Cross-Defendant LARRY
14 GERACI and Cross-Defendant REBECCA BERRY
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 As acknowledged by Mr. Cotton in multiple pleadings throughout this case, this is a simple
4 breach of contract case. Yet Mr. Cotton seeks to raise collateral issues that are irrelevant to the
5 resolution of the claims and are instead directed at falsely impugning the credibility of Mr. Geraci
6 in order to prejudice him.

7 As it relates to this motion, it has been the theory of Mr. Cotton (and his litigation investor
8 Mr. Hurtado) that Mr. Geraci is precluded from obtaining a CUP and that therefore Rebecca Berry
9 acting as Mr. Geraci's agent in applying for the CUP was somehow illegal. In that regard, Mr.
10 Cotton's counsel added item 40 to the Legal Issues in Dispute in the Trial Readiness Conference
11 Report, which states: "40. Whether pursuant to state and city regulations, Mr. Geraci's prior
12 settlement agreements with the City of San Diego bar him from having an ownership interest in a
13 business operated pursuant to a marijuana outlet CUP."

14 Mr. Cotton incorrectly asserts that Mr. Geraci's prior settlement agreements with the City of
15 San Diego bar him from obtaining a CUP or owning a business operating a dispensary pursuant to
16 a CUP. This assertion is false and inflammatory. The court records in those actions demonstrate that Mr.
17 Geraci, like Mr. Cotton, has been named in actions in which he was a landlord subjected to injunctive
18 relief because a tenant operated an unpermitted medical marijuana dispensary. However, nothing in those
19 orders preclude Mr. Geraci from obtaining a CUP or operating a dispensary that is properly permitted.
20 In fact, the stipulated orders/judgments in those cases expressly provide that Mr. Geraci is not precluded
21 from maintaining and operating a dispensary upon obtaining the necessary CUP. (See Court Orders, true
22 and correct copies of which are attached as Exhibit 14 to NOL.) In fact those settlement agreements
23 demonstrate that Mr. Geraci is permitted to maintain and operate a marijuana dispensary upon obtaining
24 a CUP. (Exhibit 14 to NOL.)

25 **II. LEGAL ARGUMENT**

26 **A. The Court May Exclude Prejudicial Evidence in Advance of Trial by way of an**
27 **In Limine Motion.**

28 The court has the inherent power to grant a motion in limine to exclude "any kind of evidence

1 which could be objected to at trial, either as irrelevant or subject to discretionary exclusion as unduly
2 prejudicial.” (*Clemens v. American Warranty Corp.* (1987) 193 Cal.App.3d 444; *Peat, Marwick,*
3 *Mitchell & Co. v. Superior Court* (1988) 200 Cal.App.3d 272, 288).

4 **B. Mr. Cotton and Mr. Hurtado’s Allegations Regarding the Prior Settlement**
5 **Agreements is Inadmissible Hearsay – Evidence Code § 1200**

6 Evidence Code § 1200(a) provides: “Hearsay evidence” is evidence of a statement that was
7 made other than by a witness while testifying at the hearing and that is offered to prove the truth of
8 the matter stated.” “Except as provided by law, hearsay evidence is inadmissible.” (Evidence Code
9 § 1200(b).) Mr. Cotton and Mr. Hurtado’s “knowledge” regarding Mr. Geraci’s prior settlement
10 agreements bar him from obtaining a CUP or owning a business operating a dispensary has to have
11 been obtained via hearsay statements. Not only is this inadmissible hearsay, it is false as shown by
12 the Court orders attached as Exhibit 14 to the NOL.

13 **C. The Evidence is Not Made on Personal Knowledge – Evidence Code § 703**

14 Pursuant to Evidence Code Section 703, the testimony of a witness concerning a particular
15 matter is inadmissible unless he has personal knowledge of the matter. Here, neither Mr. Hurtado
16 nor Mr. Cotton have personal knowledge that Mr. Geraci’s prior settlement agreements bar him
17 from obtaining a CUP or owning a business operating a dispensary pursuant to a CUP. Not having
18 personal knowledge of the event, neither Mr. Cotton nor Mr. Hurtado may offer testimony on this
19 issue.

20 **D. This Evidence Should Be Excluded as Impeachment on a Collateral Matter**

21 “[C]ollateral matters are admissible for impeachment purposes” (*People v. Lavergne*
22 (1971) 4 Cal.3d 735, 742.) However, “the collateral character of the evidence reduces its probative
23 value.” (*Ibid.*) Therefore, when a party seeks to impeach a witness on a collateral matter, a trial court
24 must determine whether the probative value of the evidence is substantially outweighed by the
25 likelihood that its admission will necessitate undue consumption of time or create substantial danger
26 of undue prejudice, of confusing the issues or of misleading the jury. (Evid. Code, § 352.) Mr.
27 Cotton has not taken Mr. Geraci’s deposition and therefore has not investigated the truth or falsity
28 of his theory, which is demonstrably false. The time for discovery has come and gone. Mr. Cotton

1 should not be permitted to go on a fishing expedition regarding potentially harmful inadmissible
2 character evidence in the presence of the jury.

3 Moreover, it is improper to elicit otherwise irrelevant testimony on cross-examination merely
4 for the purpose of contradicting it. (*Lavergne, supra*, 4 Cal.3d at p. 744 [“A party may not cross-
5 examine a witness upon collateral matters for the purpose of eliciting something to be
6 contradicted.”].) Thus, Mr. Cotton may not during cross-examination ask Mr. Geraci questions
7 regarding his theory that Mr. Geraci’s prior settlement agreements bar him from obtaining a CUP
8 or owning or operating a dispensary pursuant to a CUP.

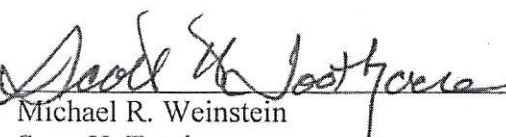
9 Admission of these collateral issues will only confuse the jury and would lead them down a
10 rabbit hole that has nothing whatsoever to do with this case. As such, the evidence should be
11 excluded pursuant to Evidence Code § 352.

12 **III. CONCLUSION**

13 For all the foregoing reasons, Mr. Geraci asks this Court to issue an order in limine excluding
14 any evidence, examination, argument or other reference to Mr. Cotton and Mr. Hurtado’s allegations
15 that Mr. Geraci’s prior settlement agreements bar him from obtaining a CUP or owning a business
16 operating a dispensary pursuant to a CUP, and further, that Mr. Cotton, Attorney Jacob Austin and
17 all attorneys and witnesses be cautioned not to refer to these allegations.

18
19 FERRIS & BRITTON
A Professional Corporation

20
21 Dated: June 21, 2019

22 By 
Michael R. Weinstein
Scott H. Toothacre
23 Attorney for Plaintiff and Cross-Defendant LARRY
24 GERACI and Cross-Defendant REBECCA BERRY
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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

10 LARRY GERACI, an individual,

11 Plaintiff,

12 v.

13 DARRYL COTTON, an individual; and DOES 1
14 through 10, inclusive,

15 Defendants.

16 DARRYL COTTON, an individual,

17 Cross-Complainant,

18 v.

19 LARRY GERACI, an individual, REBECCA
20 BERRY, an individual, and DOES 1
THROUGH 10, INCLUSIVE,

21 Cross-Defendants
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Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73

**ORDER [PROPOSED]
RE PLAINTIFF/CROSS-DEFENDANTS'
MOTION IN LIMINE NO. 9 OF 15 TO
EXCLUDE TESTIMONY THAT MR.
GERACI'S PRIOR SETTLEMENT
AGREEMENTS BAR HIM FROM
OBTAINING A CUP OR OWNING A
BUSINES OPERATING A DIPSENSARY
PURSUANT TO A CUP**

[MIL NO. 9 OF 15]

[IMAGED FILE]

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

1 After considering all moving, opposition and reply papers, as well as the oral argument of counsel,
2 **IT IS HEREBY ORDERED THAT** Plaintiff/Cross-Defendants' Motion in Limine No. 9 of 15 is
3 [GRANTED/GRANTED WITHOUT PREJUDICE/DENIED/DENIED WITHOUT PREJUDICE].
4 [Any evidence, examination, argument or other reference to Mr. Cotton and Mr. Hurtado's
5 allegations that Mr. Geraci's prior settlement agreements bar him from obtaining a CUP or owning
6 a business operating a dispensary pursuant to a CUP is precluded, and all counsel are ordered to
7 advise their clients and witnesses of the Court's Order.]

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9 Dated: July __, 2019

10 HON. JOEL R. WOHLFEIL
11 Judge of the San Diego County Superior Court
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

During the deposition of Mr. Hurtado, he testified that he knew Bianca Martinez, a former employee of Mr. Bartell and she told him Geraci was working on some other deal, and he screwed some other guy, and the guy committed suicide and shot himself because he lost his life savings and everything. (Hurtado Depo. 97:20-25, true and correct excerpt is attached as Exhibit 5 to NOL.)

II. LEGAL ARGUMENT

A. The Court May Exclude Prejudicial Evidence in Advance of Trial by way of an In Limine Motion.

The court has the inherent power to grant a motion in limine to exclude "any kind of evidence which could be objected to at trial, either as irrelevant or subject to discretionary exclusion as unduly prejudicial." (*Clemens v. American Warranty Corp.* (1987) 193 Cal.App.3d 444; *Peat, Marwick, Mitchell & Co. v. Superior Court* (1988) 200 Cal.App.3d 272, 288).

B. This Information, Allegedly Relayed to Mr. Hurtado by Bianca Martinez Is Inadmissible Hearsay

The alleged statement made by Bianca Miller to Mr. Hurtado that Mr. Geraci had screwed over some other guy who ended up killing himself because of it, is inadmissible hearsay. Indeed, it is likely multi-level hearsay depending on how Bianca Martinez allegedly came by this information. There is no hearsay exception which would render this testimony admissible.

C. The Evidence is Not Made on Personal Knowledge – Evidence Code § 703

Pursuant to Evidence Code Section 703, the testimony of a witness concerning a particular matter is inadmissible unless he has personal knowledge of the matter. Here, neither Mr. Hurtado nor Mr. Cotton have personal knowledge that Mr. Geraci ever screwed over some other guy who shot himself because he lost his life savings. The allegation appears to have come from Bianca Martinez, a former employee of Mr. Bartell. Ms. Martinez's deposition has not been taken; it is unknown how she allegedly came by this information.

D. The Evidence is Inadmissible Evidence of Character – Evidence Code § 1101(a)

Evidence Code § 1101(a) provides: "Except as provided in this section and in Sections 1102,

1 1103, 1108, and 1109, evidence of a person's character or a trait of his or her character (whether in
2 the form of an opinion, evidence of reputation, or evidence of specific instances of his or her
3 conduct) is inadmissible when offered to prove his or her conduct on a specified occasion.

4 The only possible relevance of this testimony would be to show that Mr. Geraci screwed over
5 someone else in a similar fashion to the way he allegedly screwed over Mr. Cotton. This is the
6 precise use for which Evidence Code 1101(a) bars its admission into evidence.

7 **E. The Evidence is More Prejudicial than Probative – Evidence Code § 352**

8 Evidence Code Section 352 provides: "The court in its discretion may exclude evidence if
9 its probative value is substantially outweighed by the probability that its admission will (a)
10 necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of
11 confusing the issues, or misleading the jury."

12 It is self-evident that any unsubstantiated speculation that Mr. Geraci allegedly screwed over
13 a prior business associate whom ended up taking his own life over it is highly inflammatory and
14 would result in great prejudice to Mr. Geraci. Admission of this evidence will irreparably harm Mr.
15 Geraci's character with the jury and will likely result in a mistrial. The evidence should be excluded
16 pursuant to Evidence Code Section 352.

17 **III. CONCLUSION**

18 For all the foregoing reasons, Mr. Geraci asks this Court to issue an order in limine that Mr.
19 Cotton, Attorney Jacob Austin and all attorneys and witnesses be cautioned not to refer to Mr. Cotton
20 and Mr. Hurtado's allegations that Mr. Geraci screwed over a prior business associate that ended up
21 committing suicide.

22 FERRIS & BRITTON
23 A Professional Corporation

24 Dated: June 20, 2019

25 By: Scott H. Toothacre
26 Michael R. Weinstein
27 Scott H. Toothacre
28 Attorney for Plaintiff and Cross-Defendant LARRY
GERACI and Cross-Defendant REBECCA BERRY

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

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14 through 10, inclusive,

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18 v.

19 LARRY GERACI, an individual, REBECCA
20 BERRY, an individual, and DOES 1
THROUGH 10, INCLUSIVE,

21 Cross-Defendants.
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Case No. 37-2017-00010073-CU-BC-CTL

Judge:

Hon. Joel R. Wohlfeil

Dept.:

C-73

**ORDER [PROPOSED]
PLAINTIFF/CROSS-DEFENDANTS'
MOTION IN LIMINE NO. 8 OF 15 TO
EXCLUDE REFERENCE TO MR.
HURTADO'S ALLEGATIONS THAT MR.
GERACI "SCREWED SOME OTHER
GUY, AND THE GUY COMMITTED
SUICIDE AND SHOT HIMSELF
BECAUES HE LOST HIS LIFE SAVINGS
AND EVERYTHING"**

[MIL NO. 8 OF 15]

[IMAGED FILE]

Complaint Filed:

March 21, 2017

Trial Date:

June 28, 2019

1 After considering all moving, opposition and reply papers, as well as the oral argument of counsel,
2 **IT IS HEREBY ORDERED THAT** Plaintiff/Cross-Defendants' Motion in Limine No. 8 of 15 is
3 [GRANTED/GRANTED WITHOUT PREJUDICE/DENIED/DENIED WITHOUT PREJUDICE].
4 [Any evidence, examination, argument or other reference to Mr. Cotton and Mr. Hurtado's
5 allegations to the effect that Mr. Geraci "screwed some other guy, and the guy committed suicide
6 and shot himself because he lost his life savings and everything", is precluded, and all counsel are
7 ordered to advise their clients and witnesses of the Court's Order.]

8
9 Dated: July __, 2019

10 HON. JOEL R. WOHLFEIL
11 Judge of the San Diego County Superior Court
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