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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.

AND RELATED CROSS-ACTION

Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil

**PLAINTIFF/CROSS-DEFENDANT  
LARRY GERACI'S OBJECTIONS TO  
DEFENDANT/CROSS-COMPLAINANT  
DARRYL COTTON'S REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT OF  
MOTION FOR ORDER THAT INITIAL  
ANSWERS TO INTERROGATORIES BE  
DEEMED BINDING AND FOR  
SANCTIONS**

[IMAGED FILE]

**DATE: April 26, 2019**  
**TIME: 9:00 a.m.**  
**DEPT: C-73**

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

Plaintiff and Cross-Defendant, Larry Geraci, hereby objects to the Request for Judicial Notice  
in Support of Motion by Defendant/Cross-Complainant Darryl Cotton for Order that Plaintiff/Cross-  
Defendant Larry Geraci's Initial Answers to Interrogatories be Deemed Binding and for Sanctions.

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1 **I. INTRODUCTION**

2 In support of his Motion for Order that Initial Answers to Interrogatories Be Deemed Binding,  
3 Defendant/Cross-Complainant Darryl Cotton ("Cotton") has filed a Request for Judicial Notice asking  
4 the Court to grant judicial notice of 10 documents: 1) Real Party In Interest Larry Geraci's Verified  
5 Answer to Petition for Writ of Mandate filed 11.30.2017; 2) Answer of Cross-Defendant Larry Geraci  
6 to Cotton's Complaint, filed 05.08.2017; 3) Plaintiff Geraci's Complaint for: Breach of Contract,  
7 Breach of the Covenant of Good faith and Fair Dealing, Specific Performance; and Declaratory Relief,  
8 filed 03.21.2017; 4) Answer of Cross-Defendant Larry Geraci to Cotton's Complaint, filed 11.20.2017;  
9 5) Cotton's Second Amended Cross-Complaint for: Breach of Contract; Intentional Misrepresentation;  
10 negligent Misrepresentation; False Promise; and Declaratory Relief , filed 08.25.2017; 6) Notice of  
11 Demurrer and Demurrer by Cross-Defendant Larry Geraci to Second Amended Cross-Complaint by  
12 Darryl Cotton, filed 09.28.2017; 7) Opposition by Cotton to Larry Geraci's Demurrer, filed 10.23.2017;  
13 8) Reply Memorandum of Points and Authorities in Support of Cross-Defendant Larry Geraci's  
14 Demurrer to Second Amended Cross-Complaint by Darryl Cotton, filed 10.27.2017; 9) Verified  
15 Petition for Writ of Mandate, dated 10.02.2017; 10) Declaration of Larry Geraci in Opposition to  
16 Defendant Cotton's Motion to Expunge *Lis Pendens*, filed 04.10.2018.

17 Cotton and his counsel have brought this motion to bind Geraci to his original response to  
18 discovery, which has never been amended. It is unclear for what purpose Cotton requests judicial  
19 notice be taken of these documents, many of which are simply unverified pleadings and motions and  
20 have no evidentiary value, and certainly are not relevant to the instant motion to bind. All that would  
21 be relevant to a motion to bind would be the original discovery response and the amended discovery  
22 response and the reasons for the amendment. In the context of the instant motion, the Request for  
23 Judicial Notice is absurd; the request for judicial notice should be denied.

24 **II. APPLICABLE LAW CONCERNING JUDICIAL NOTICE**

25 "Judicial notice may not be taken of any matter unless authorized or required by law." (Evid.  
26 Code, § 450.) "Matters that are subject to judicial notice are listed in Evidence Code sections 451 and  
27 452. A matter ordinarily is subject to judicial notice only if the matter is reasonably beyond dispute.  
28 [Citation.]" (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4<sup>th</sup> 97, 113.)

1 "Taking judicial notice of a document is not the same as accepting the truth of its contents or accepting  
2 a particular interpretation of its meaning." (*Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369,  
3 374.) "...A court may take judicial notice of the existence of each document in a court file, but can  
4 only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and  
5 conclusions of law, and judgment." (*Day v. Sharp* (1975) 50 Cal.App.3d 904, 914, citing 2 Jefferson,  
6 Cal. Evidence Benchbook (2d ed. 1982) Judicial Notice, § 47.2, p. 1757.) For example, although the  
7 existence of statements contained in a deposition transcript filed as a part of the court record can be  
8 judicially noticed, their truth is not subject to judicial notice. Consequently, the court could not  
9 conclude that any part of the defendant's answer was false based upon his allegedly conflicting  
10 deposition testimony. (*Garcia v. Sterling* (1985) 176 Cal.App.3d 17.) "While judicial notice may be  
11 taken of court records (Evid. Code, § 452, subd. (d)), the truth of matters asserted in such documents is  
12 not subject to judicial notice." *Coenbarger v. Morris Cerullo World Evangelism, Inc.* 29 Cal.App.4th 1,  
13 citing *Board of Pilot Commissioners v. Superior Court* (2013) 218 Cal.App.4th 577, 597; see *Ragland*  
14 *v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 193 [" 'When judicial notice is taken of a  
15 document, however, the truthfulness and proper interpretation of the document are disputable' [".]

16 Generally, the court may take judicial notice of statutorily proscribed materials if they are  
17 *relevant* to the issues before it. (*Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063.)  
18 None of the documents for which Cotton requests judicial notice are relevant to the motion to bind.

19 Furthermore, Cotton has failed to furnish the court "with sufficient information to enable it to  
20 take judicial notice of the matter." (Evid. Code § 453(b); see 1 Witkin, *California Evidence* (4th Ed.  
21 2000) Judicial Notice § 36, p. 132.) The bare request for judicial noticed filed by Cotton does not  
22 identify which portions of the offered documents he seeks to have judicially noticed, nor does he  
23 explain the relevance of the documents to the motion to bind Geraci to his discovery responses. Only  
24 relevant evidence is admissible. (Evid. Code, § 350); *People v. Shamrock Foods Co.* (2000) 24 Cal.4th  
25 315, 422, footnote 2 [matter to be noticed must be relevant to material issue].)


### 26 **III. CONCLUSION**

27 The Court has discretion to take judicial notice of the fact that the pleadings, motions and  
28 declarations were filed, but Court cannot take notice of the truth of the matters asserted therein. Given

1 that elementary and well-established rule, it is unclear as to what Cotton's purpose is in requesting  
2 judicial notice of these documents. Nor is it clear what portions of the documents Cotton claims are  
3 relevant to his Motion for Order that Initial Answers to Interrogatories Be Deemed Binding. The  
4 request for judicial notice should be denied.

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6 Dated: April 15, 2019

FERRIS & BRITTON,  
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7  
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