

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

**ORDER [PROPOSED] RE  
PLAINTIFF/CROSS-DEFENDANTS'  
MOTION IN LIMINE NO. 6 OF 15 TO  
EXCLUDE TESTIMONY THAT GERACI  
WAS SOMEHOW BEHIND AN ARMED  
ROBBERY OF MR. COTTON AND HIS  
EMPLOYEES**

**[MIL NO. 6 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. 6 of 15 is  
3 [GRANTED/GRANTED WITHOUT PREJUDICE/DENIED/DENIED WITHOUT PREJUDICE].  
4 [Any evidence, examination, argument or other reference to allegations that Mr. Geraci was  
5 somehow behind a burglary of his 151 farms on June 10, 2017, is precluded, and all counsel are  
6 ordered to advise their clients and witnesses of the Court's Order.]

7  
8 Dated: July \_\_, 2019

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

FERRIS & BRITTON  
A Professional Corporation  
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Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and  
Cross-Defendant REBECCA BERRY

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**06/21/2019** at 03:16:00 PM

Clerk of the Superior Court  
By Treva Cutts, Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA**  
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LARRY GERACI, an individual,

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

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

**PLAINTIFF/CROSS-DEFENDANTS'  
MOTION IN LIMINE TO EXCLUDE  
REFERENCE TO MR. COTTON'S  
ALLEGATIONS REGARDING  
INTIMIDATION BY SEAN MILLER,  
LOGAN STULMACHER AND AN  
INDIVIDUAL NAMED DUANE**

**[NO. 7 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,  
and 1101(a) for orders precluding any evidence, examination, argument or other reference to Mr.  
Cotton and Mr. Hurtado's allegations that Mr. Geraci is somehow connected to Sean Miller, Logan

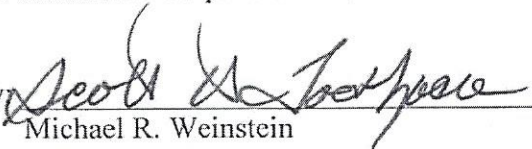


1 Stulmacher and an individual known only as Duane, individuals whom they allege threatened Mr.  
2 Cotton and Mr. Hurtado to force a settlement of the instant action.

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.

6  
7 FERRIS & BRITTON  
A Professional Corporation

8  
9 Dated: June 20 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 **A. Sean Miller**

4 During his deposition Mr. Hurtado testified that he was attempting to hire a paralegal to help  
5 Attorney Jacob Austin with this case. Mr. Hurtado found Sean Miller either off of Craigslist or a  
6 paralegal referral service. Mr. Hurtado met with Mr. Miller and gave Mr. Miller the case file to read  
7 to become familiar with this litigation. Mr. Hurtado testified that while reviewing the file, Mr. Miller  
8 said "Oh, I know Larry Geraci." (Hurtado Depo. p. 88:7-89:15, true and correct excerpts are attached  
9 as Exhibit 5 to NOL.) Allegedly Mr. Miller also told Mr. Hurtado either he was "out on parole" or  
10 that he was a "convict." (Hurtado Depo. 89:16-21, a true and correct excerpt is attached hereto as  
11 Exhibit 1.) Mr. Hurtado testified that Mr. Miller has been convicted of witness tampering and money  
12 laundering. (Hurtado Depo. 92:22-23, a true and correct excerpt is attached hereto as Exhibit 1.)  
13 Mr. Hurtado then threatened Mr. Miller that if he talked to Larry Geraci about their meeting that  
14 Mr. Hurtado would report Mr. Miller to the State Bar. Mr. Miller said "I get it" and the two parted  
15 ways amicably. (Hurtado Depo. p. 90:3-16, true and correct excerpts are attached as Exhibit 5 to  
16 NOL.)

17 Mr. Hurtado further testified that two hours after the meeting, Mr. Miller called him and said  
18 "I think it would be in your best interests if you contact Mr. Cotton, you know, and get him to settle."  
19 Although this alleged statement seems fairly innocuous, Mr. Hurtado took it as a threat which  
20 "scared the shit out of [him]." (Hurtado Depo. p. 90:17-91:9, true and correct excerpts are attached  
21 as Exhibit 5 to NOL.) Mr. Hurtado specifically asked Mr. Miller if he had spoken to Mr. Geraci to  
22 which he replied "no". (Hurtado Depo. 91:10-12, true and correct excerpts are attached as Exhibit  
23 5 to NOL.) Nevertheless, Mr. Hurtado somehow concluded the "threat" from Mr. Miller was really  
24 a threat coming from Mr. Geraci. Mr. Hurtado has no evidentiary support for this conclusion, it is  
25 merely based on his irrational conjecture and speculation.

26 **B. Logan Stulmacher and Duane (last name unknown)**

27 According to Mr. Hurtado, Logan Stulmacher and an individual known only as Duane,  
28 contacted Darryl Cotton ostensibly to discuss a business proposition. However, when they met with



1 Mr. Cotton, they insinuated that he should settle with Mr. Geraci. From this conversation Mr. Geraci  
2 and Mr. Hurtado have concluded that Mr. Geraci sent Logan Stulmacher and Duane to intimidate  
3 Mr. Cotton into settling with Mr. Geraci. (Hurtado Depo. 96:13-97:1, a true and correct excerpt is  
4 attached as Exhibit 5 to NOL.) Specifically, the threat was "One was, like, a criminal element of,  
5 like, physical intimidation. The other one was that Geraci and Bartell have all this influence with  
6 the city, so they could have the police just show up and – I don't want to speculate but make (sic)  
7 things difficult for him." (Hurtado Depo. 99:13-100:1, a true and correct excerpt is attached as  
8 Exhibit 5 to NOL.)

9 Mr. Hurtado believes Logan threatened Mr. Cotton a second time, after Mr. Cotton filed his  
10 federal lawsuit. Allegedly Logan returned to Mr. Cotton's property and had a heated discussion  
11 (which was videotaped) telling Mr. Cotton "Hey, keep me out of this; I don't want to be a part of  
12 this anymore." (Hurtado Depo. 100:5-22, a true and correct excerpt is attached as Exhibit 5 to NOL.)

### 13 C. Mr. Hurtado and Mr. Cotton's Federal Complaint

14 Based on the above-referenced alleged incidents, Mr. Cotton and Mr. Hurtado filed a  
15 Complaint in the United States District Court Southern District of California Case No. '18CV2751  
16 W AGS, alleging that Sean Miller ("Miller") is an agent of Geraci and a violent convict out on parole  
17 who was found guilty on two counts of committing wire fraud, in violation of 18 U.S.C. § 1343, two  
18 counts of money laundering, in violation of 18 U.S.C. § 1957, and one count of witness tampering,  
19 in violation of 18 U.S.C. § 1512(b)(3); *United States v. Miller*, 531 F.3d 340, 342 (6<sup>th</sup> Cir. 2008).  
20 Miller threatened Hurtado and his family with the goal of having Hurtado use his influence with  
21 Cotton to have him forcibly settle with Geraci. (Federal Complaint ¶ 21, a true and correct copy is  
22 attached as Exhibit 3 to NOL.)

23 Mr. Hurtado and Mr. Cotton further alleged that "Geraci's efforts included physical threats  
24 and intimidation tactics that were not only aimed at Cotton, but also Cotton's friends, employees  
25 and his litigation investor Mr. Hurtado." (Federal Complaint ¶23, 7:10-12, a true and correct copy  
26 is attached as Exhibit 3 to NOL.)

27 On May 14, 2019, the Federal Court dismissed Mr. Hurtado and Mr. Cotton's federal action  
28 with prejudice. (A true and correct copy of the Federal Court Order is attached as Exhibit 4 to NOL.)

1 **II. LEGAL ARGUMENT**

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

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

8 **B. Mr. Cotton and Mr. Hurtado’s Irrational Speculation – That Individuals They**  
9 **Contacted, Threatened Them as an Agent of Geraci Is Inadmissible Hearsay**

10 Clearly the statements alleged to have been made by Sean Miller, Logan Stulmacher and  
11 Duane [last name unknown] are out of court statements offered for the truth of the matter asserted.  
12 As such, they should be excluded as hearsay pursuant to Evidence Code § 1200 et seq. It is  
13 anticipated that Mr. Cotton and Mr. Hurtado may claim that the statements were not made for the  
14 truth of the matter stated, but rather, as to their respective states of mind. However, neither Mr.  
15 Cotton’s nor Mr. Hurtado’s states of mind are in issue. To that extent, the hearsay statements are  
16 irrelevant to any issue in the case and inadmissible.

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

18 Pursuant to Evidence Code Section 703, the testimony of a witness concerning a particular  
19 matter is inadmissible unless he has personal knowledge of the matter. Here, neither Mr. Hurtado  
20 nor Mr. Cotton have personal knowledge that Mr. Geraci had anything whatsoever to do with the  
21 alleged threats made by Mr. Miller, Mr. Stulmacher or Duane. As such, the evidence is inadmissible  
22 for lack of personal knowledge.

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

24 Evidence Code § 1101(a) provides: “Except as provided in this section and in Sections 1102,  
25 1103, 1108, and 1109, evidence of a person’s character or a trait of his or her character (whether in  
26 the form of an opinion, evidence of reputation, or evidence of specific instances of his or her  
27 conduct) is inadmissible when offered to prove his or her conduct on a specified occasion.

28 Mr. Cotton and Mr. Hurtado’s speculation that Mr. Geraci may have been involved in the



1 alleged intimidation and threats alleged by Mr. Cotton and Mr. Hurtado is irrelevant in this case  
2 with the sole exception of attempting to besmirch Mr. Geraci's good character. As such, it should  
3 be excluded.

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

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

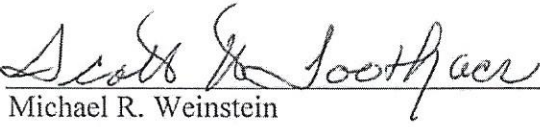
9 It is self-evident that any unsubstantiated speculation that Mr. Geraci was somehow involved  
10 in having Mr. Cotton and Mr. Hurtado threatened to try to force a settlement of this case is highly  
11 inflammatory and would result in great prejudice to Mr. Geraci. Admission of this evidence will  
12 irreparably harm Mr. Geraci's character with the jury and will likely result in a mistrial. The  
13 evidence should be excluded pursuant to Evidence Code Section 352.

14 **III. CONCLUSION**

15 For all the foregoing reasons, Mr. Geraci asks this Court to issue an order in limine that Mr.  
16 Cotton, Attorney Jacob Austin and all attorneys and witnesses be cautioned not to refer to Mr. Cotton  
17 and Mr. Hurtado's allegations that they were threatened by Sean Miller, Logan Stulmacher and  
18 Duane and their speculation that Mr. Geraci had anything to do with those alleged threats.

19  
20 FERRIS & BRITTON  
A Professional Corporation

21  
22 Dated: June 21, 2019

23 By:   
Michael R. Weinstein  
Scott H. Toothacre  
24 Attorney for Plaintiff and Cross-Defendant LARRY  
25 GERACI and Cross-Defendant REBECCA BERRY  
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1 property.” (Canna-Greed. Stay Awake. Stay Aware. My Story. P. 42 of 46, attached as Exhibit 12  
2 to NOL.)

3 When Mr. Cotton returned to the scene of the crime he met with San Diego Police  
4 Department, Detective Eric Pollom, who took down Mr. Cotton’s statement. Mr. Cotton explained  
5 the Geraci lawsuit to Detective Pollom including Cotton’s belief that Geraci was attempting to steal  
6 Mr. Cotton’s property. Mr. Cotton even gave Detective Pollom Mr. Geraci’s cell phone number  
7 and told him to compare the number to the get-away driver’s phone records to see if the driver had  
8 been in contact with Mr. Geraci. Later that day, the driver was arrested, and despite all of this  
9 information provided to the Detectives, the driver was released and never charged. No charges have  
10 ever been filed against anyone in connection with the burglary. Nevertheless, Mr. Cotton believes  
11 this action was part of some grand conspiracy to deprive him of his property, all organized and  
12 perpetuated by Mr. Geraci as the head of a vast criminal enterprise. Mr. Cotton’s deposition  
13 testimony was consistent with the Canna-Greed blog, in that he believes that Mr. Geraci had some  
14 kind of participation or instruction with regard to the robbery. (Cotton Depo. p. 250:16-18, true and  
15 correct excerpt are attached as Exhibit 13 to NOL.)

16 Contrary to Mr. Cotton’s irrational theory, Mr. Geraci has not even been interviewed by  
17 either the San Diego Police Department or the Chula Vista Police Department, each of whom  
18 responded to the 911 call. Mr. Geraci has not been detained, arrested and/or charged with any  
19 criminal conduct in relation to this incident.

## 20 **II. LEGAL ARGUMENT**

### 21 **A. Authority for Motion in Limine**

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

### 26 **B. Only Relevant Evidence is Admissible**

27 Evidence Code § 350 states that “(n)o evidence is admissible except relevant evidence.”  
28 Relevant evidence is defined by Evidence Code § 210 as “having any tendency in reason to prove

1 or disprove any disputed fact that is of consequence to the determination of the action.” (See *People*  
2 *v. Kelly* (1992) 1 Cal.4<sup>th</sup> 495, 523 – only relevant evidence is admissible; *People v. Haston* (1968)  
3 69 Cal.2d 233, 245 - in every case the possibility of severing relevant from irrelevant portions of  
4 evidence should be considered to protect against undue prejudice.) To the extent the evidence is  
5 claimed to be relevant for impeachment it is inadmissible evidence to attack or support the credibility  
6 of a witness. (Cal. Evid. Code § 788.)

7 **III. CONCLUSION**

8 Mr. Cotton’s irrational theory that Mr. Geraci was somehow connected to the armed robbery  
9 at 151 Farms is irrelevant, unsubstantiated and inflammatory, and it must be excluded at trial.

10  
11 FERRIS & BRITTON  
A Professional Corporation

12  
13 Dated: June 20, 2019

14 By: Scott H. Toothacre  
15 Michael R. Weinstein  
16 Scott H. Toothacre  
17 Attorney for Plaintiff/Cross-Defendant LARRY  
18 GERACI and Cross-Defendant REBECCA BERRY  
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