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FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

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

**PLAINTIFF/CROSS-DEFENDANTS'
EVIDENTIARY OBJECTIONS IN
OPPOSITION TO DEFENDANT/CROSS-
COMPLAINANT'S MOTION FOR
SUMMARY JUDGMENT OR,
ALTERNATIVELY, SUMMARY
ADJUDICATION**

[IMAGED FILE]

DATE: May 23, 2019

TIME: 9:00 a.m.

DEPT: C-73

Filed: March 21, 2017

Trial Date: June 28, 2019

Plaintiff and Cross-Defendants submit these evidentiary objections to the evidence submitted
by Defendants/Cross-Complainant in support of their motion for summary judgment or, alternatively,
summary adjudication.

PLAINTIFF/CROSS-DEFENDANTS' EVIDENTIARY OBJECTIONS

MATERIAL OBJECTED TO:	GROUNDS FOR OBJECTION:	RULING ON THE OBJECTION
Declaration of Jacob P. Austin in Support of Defendant/Cross-Complainant Darryl Cotton's Motion for Summary Adjudication and/or Summary Judgment	<u>Objections:</u> Supporting and opposing affidavits or declarations shall be made by a person on personal knowledge, shall set forth admissible evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavits or declarations. (CCP 437(d).)	Sustained: _____ Overruled: _____ _____ Judge Dated: May ____, 2019
Declaration of Jacob P. Austin ¶2: "2. I hereby incorporate by reference the facts stated in the foregoing to which this declaration is attached. I have personal knowledge of each of those facts."	<u>Objection:</u> Vague and ambiguous as to what "the facts stated in the foregoing" is referring to. There has been no affirmative showing that Jacob P. Austin is competent to testify to "the facts stated in the foregoing" or that he "has personal knowledge of each of those facts." (CCP 437(d).)	Sustained: _____ Overruled: _____ _____ Judge Dated: May ____, 2019
Declaration of Jacob P. Austin ¶3: "3. A true and correct copy of the Real Party in Interest Larry Geraci's Verified Answer to Petition For Writ of Mandate, is lodged as Exhibit 1."	<u>Objections:</u> Inadmissible and not evidence. The entirety of the allegations in the Verified Answer are not wholesale admissible evidence because not all the allegations are judicial admissions. The allegations in Geraci's Verified Answer to Petition For Writ of Mandate are not admissible evidence because they do not constitute judicial admissions. A judicial admission is ordinarily a factual allegation by one party that is <i>admitted</i> by the other party. (<i>Barsegian v. Kessler & Kessler</i> (2013) 215 Cal.App.4 th 446, 452.) A judicial admission is therefore	Sustained: _____ Overruled: _____ _____ Judge Dated: May ____, 2019

MATERIAL OBJECTED TO:	GROUNDS FOR OBJECTION:	RULING ON THE OBJECTION
	conclusive both as to the admitting party and as to that party's opponent. (4 Witkin, Cal. Procedure (5 th ed. 2008) Pleading, § 454, p.587.) Thus, if a factual allegation is treated as a judicial admission, then neither party may attempt to contradict it—the admitted fact is effectively conceded by both sides.	
<p>Declaration of Jacob P. Austin ¶4:</p> <p>"4. A true and correct copy of Copies of all email communications between Cotton and Larry Geraci is lodged as Exhibit 2."</p>	<p><u>Objections:</u> Insufficient Foundation- Evid. Code § 403; Lack of Personal Knowledge- Evid. Code § 702(a); Lack of Authentication of writing-Evid. Code § 1400.</p> <p>Declarations by attorney for moving party are sufficient <i>only</i> if the facts stated are matters of which the attorney would be presumed to have knowledge; e.g., matters occurring during the course of lawsuit. Otherwise, the declaration lacks the "personal knowledge" required on a motion for summary judgment. (See <i>Maltby v. Shook</i> (1955) 131 Cal.App.2d 349, 351-352; <i>DiCola v. Whit Bros. performance Products, Inc.</i> (2008) 158 Cal.App.4th 666, 681 – counsel's hearsay declaration properly disregarded.)</p> <p>There has been no affirmative showing that Jacob P. Austin is competent to testify that the exhibit is a true and correct copy of <i>all</i> email communications between Cotton and Larry Geraci. (CCP 437(d).)</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>_____ Judge</p> <p>Dated: May ____, 2019</p>

MATERIAL OBJECTED TO:	GROUNDS FOR OBJECTION:	RULING ON THE OBJECTION
<p>Declaration of Jacob P. Austin ¶5:</p> <p>"5. A true and correct copy of Copies of all text communications between Cotton and Larry Geraci is lodged as Exhibit 3."</p>	<p><u>Objections:</u> Insufficient Foundation-Evid. Code § 403; Lack of Personal Knowledge-Evid. Code § 702(a); Lack of Authentication of writing- Evid. Code § 1400.</p> <p>Declarations by attorney for moving party are sufficient <i>only</i> if the facts stated are matters of which the attorney would be presumed to have knowledge; e.g., matters occurring during the course of lawsuit. Otherwise, the declaration lacks the "personal knowledge" required on a motion for summary judgment. (See <i>Maltby v. Shook</i> (1955) 131 Cal.App.2d 349, 351-352; <i>DiCola v. Whit Bros. performance Products, Inc.</i> (2008) 158 Cal.App.4th 666, 681 – counsel's hearsay declaration properly disregarded.)</p> <p>There has been no affirmative showing that Jacob P. Austin is competent to testify that the exhibit is a true and correct copy of <i>all</i> text messages between Cotton and Larry Geraci. (CCP 437(d).)</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>_____ Judge</p> <p>Dated: May ____, 2019</p>
<p>Declaration of Jacob P. Austin ¶6:</p> <p>"6. A true and correct copy of Plaintiff Larry Geraci's Complaint filed March 21, 2017 is lodged as Exhibit 4."</p>	<p><u>Objection:</u> Not Admissible Evidence:</p> <p>The allegations in Geraci's unverified Complaint are not admissible evidence because they do not constitute judicial admissions. A judicial admission is ordinarily a factual allegation</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>_____ Judge</p> <p>Dated: May ____, 2019</p>

MATERIAL OBJECTED TO:	GROUNDS FOR OBJECTION:	RULING ON THE OBJECTION
	<p>by one party that is <i>admitted</i> by the other party. (<i>Barsegian v. Kessler & Kessler</i> (2013) 215 Cal.App.4th 446, 452.) A judicial admission is therefore conclusive both as to the admitting party and as to that party's opponent. (4 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 454, p.587.) Thus, if a factual allegation is treated as a judicial admission, then neither party may attempt to contradict it—the admitted fact is effectively conceded by both sides.</p> <p>Here, Cotton has <u>not</u> admitted the allegations of Geraci's Complaint; rather, he filed an Answer in the form of a <u>general denial</u> that denied all the allegations of that Complaint.</p>	
<p>Declaration of Jacob P. Austin ¶7:</p> <p>"7. A true and correct copy of Cotton's Verified Petition for Alternative Writ of Mandate is lodged as Exhibit 5."</p>	<p><u>Objection:</u> Not Admissible Evidence:</p> <p>A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) A Verified Petition for Alternative Writ of Mandate is not evidence.</p> <p>Parties cannot rely on verified pleadings as evidence in support of or in opposition to summary judgment. (<i>College Hospital, Inc. v. Superior Court</i> f(1994) 8</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>_____ Judge</p> <p>Dated: May ____, 2019</p>

MATERIAL OBJECTED TO:	GROUNDS FOR OBJECTION:	RULING ON THE OBJECTION
	<p>Cal.4th 704, 720, fn.7; <i>Parker v. Twentieth Century Fox-Film Corp.</i> (197) 3 Cal.3d 176, 181; <i>Coyne v. Krempels</i> (195) 36 Cal.2d 257, 262; <i>Orsetti v. City of Fremont</i> (1978) 80 Cal.App.3d, 961, 966; 2 Cal. Civil Procedure Before Trial (Cont.Ed.Bar 1993) § 43.13, p. 43-10; Weil & Brown, Cal. Practice Guide-Civil Procedure Before Trial (The Rutter Group 1994) ¶ 10:19, p. 10-6.) The basic purpose of summary judgment is to provide a means by which the court determines whether "the triable issues apparently raised by [the complaint and answer] are real or merely the product of adept pleading." (<i>Coyne v. Krempels, supra</i>, 36 Cal.2d at p. 262.) Hence, the moving party must demonstrate the presence or absence of a genuine triable issue by "affidavit" or other competent means. (§ 437c, subds. (b), (c) & (d).)</p> <p>Nor can the Court take judicial notice of the truth of the contents of that pleading. "...A court may take judicial notice of the existence of each document in a court file, but can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgment." (<i>Day v. Sharp</i> (1975) 50 Cal.App.3d 904, 914, citing 2 Jefferson, Cal. Evidence Benchbook (2d ed. 1982) Judicial Notice, § 47.2, p. 1757.)</p>	

MATERIAL OBJECTED TO:	GROUNDS FOR OBJECTION:	RULING ON THE OBJECTION
	<p>Lastly, the allegations in Cotton's Verified Petition are not judicial admissions. A judicial admission is ordinarily a factual allegation by one party that is admitted by the other party. (<i>Barsegian v. Kessler & Kessler</i> (2013) 215 Cal.App.4th 446, 452.) Here, Geraci has not admitted the allegations of Cotton's Verified Petition.</p>	
<p>Declaration of Jacob P. Austin ¶8:</p> <p>"8. A true and correct copy of Cotton's Cross-Complaint is lodged as Exhibit 6."</p>	<p><u>Objection:</u> Not Admissible Evidence:</p> <p>A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) Cotton's unverified Cross-Complaint is not admissible evidence.</p> <p>Parties cannot rely on verified [or unverified] pleadings as evidence in support of or in opposition to summary judgment. (<i>College Hospital, Inc. v. Superior Court</i> f(1994) 8 Cal.4th 704, 720, fn.7; <i>Parker v. Twentieth Century Fox-Film Corp.</i> (197) 3 Cal.3d 176, 181; <i>Coyne v. Krempels</i> (195) 36 Cal.2d 257, 262; <i>Orsetti v. City of Fremont</i> (1978) 80 Cal.App.3d, 961, 966; 2 Cal. Civil Procedure Before Trial (Cont.Ed.Bar 1993) § 43.13, p. 43-10; Weil & Brown, Cal. Practice Guide-Civil Procedure Before Trial (The Rutter Group 1994) ¶ 10:19, p. 10-6.) The basic purpose of</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>_____ Judge</p> <p>Dated: May ____, 2019</p>

MATERIAL OBJECTED TO:	GROUNDS FOR OBJECTION:	RULING ON THE OBJECTION
	<p>summary judgment is to provide a means by which the court determines whether "the triable issues apparently raised by [the complaint and answer] are real or merely the product of adept pleading." (<i>Coyne v. Krempels, supra</i>, 36 Cal.2d at p. 262.) Hence, the moving party must demonstrate the presence or absence of a genuine triable issue by "affidavit" or other competent means. (§ 437c, subs. (b), (c) & (d).)</p> <p>Nor can the Court take judicial notice of the truth of the contents of Cotton's Cross-Complaint. "...A court may take judicial notice of the existence of each document in a court file, but can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgment." (<i>Day v. Sharp</i> (1975) 50 Cal.App.3d 904, 914, citing 2 Jefferson, Cal. Evidence Benchbook (2d ed. 1982) Judicial Notice, § 47.2, p. 1757.)</p> <p>Lastly, the allegations in Cotton's unverified Cross-Complaint are not judicial admissions. A judicial admission is ordinarily a factual allegation by one party that is admitted by the other party. (<i>Barsegian v. Kessler & Kessler</i> (2013) 215 Cal.App.4th 446, 452.) Here, Geraci has not admitted the allegations of Cotton's Cross-Complaint.</p>	

MATERIAL OBJECTED TO:	GROUNDS FOR OBJECTION:	RULING ON THE OBJECTION
<p>Declaration of Jacob P. Austin ¶9:</p> <p>“9. A true and correct copy of Plaintiff Larry Geraci’s Answer to Cotton’s Cross-Complaint is lodged as Exhibit 7.”</p>	<p>Objection: Not Admissible Evidence:</p> <p>A motion for summary judgment “shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) Cotton’s unverified Cross-Complaint is not admissible evidence.</p> <p>Parties cannot rely on verified [or unverified] pleadings as evidence in support of or in opposition to summary judgment. (<i>College Hospital, Inc. v. Superior Court</i> f(1994) 8 Cal.4th 704, 720, fn.7; <i>Parker v. Twentieth Century Fox-Film Corp.</i> (197) 3 Cal.3d 176, 181; <i>Coyne v. Krempels</i> (195) 36 Cal.2d 257, 262; <i>Orsetti v. City of Fremont</i> (1978) 80 Cal.App.3d, 961, 966; 2 Cal. Civil Procedure Before Trial (Cont.Ed.Bar 1993) § 43.13, p. 43-10; Weil & Brown, Cal. Practice Guide-Civil Procedure Before Trial (The Rutter Group 1994) ¶ 10:19, p. 10-6.) The basic purpose of summary judgment is to provide a means by which the court determines whether “the triable issues apparently raised by [the complaint and answer] are real or merely the product of adept pleading.” (<i>Coyne v. Krempels, supra</i>, 36 Cal.2d at p. 262.) Hence, the moving party must demonstrate the presence or absence of a genuine triable issue by “affidavit” or other competent</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>_____ Judge</p> <p>Dated: May ____, 2019</p>

MATERIAL OBJECTED TO:	GROUNDS FOR OBJECTION:	RULING ON THE OBJECTION
	<p>means. (§ 437c, subds. (b), (c) & (d).)</p> <p>Nor can the Court take judicial notice of the truth of the contents of Geraci's Answer to Cotton's Cross-Complaint. "...A court may take judicial notice of the existence of each document in a court file, but can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgment." (<i>Day v. Sharp</i> (1975) 50 Cal.App.3d 904, 914, citing 2 Jefferson, Cal. Evidence Benchbook (2d ed. 1982) Judicial Notice, § 47.2, p. 1757.)</p> <p>Lastly, the allegations in Geraci's Answer to Cotton's unverified Cross-Complaint are not judicial admissions. A judicial admission is ordinarily a factual allegation by one party that is admitted by the other party. (<i>Barsegian v. Kessler & Kessler</i> (2013) 215 Cal.App.4th 446, 452.) Here, Geraci's Answer does not amount to a judicial admission.</p>	
<p>Declaration of Jacob P. Austin ¶12:</p> <p>"12. A true and correct copy of Demurrer by Cross-Defendant Larry Geraci to Second Amended Cross-Complaint by Darryl Cotton is lodged as Exhibit 10."</p>	<p><u>Objection:</u> Not Admissible Evidence:</p> <p>A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) Geraci's Demurrer to Cotton's Second</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>Judge _____</p> <p>Dated: May ____, 2019</p>

MATERIAL OBJECTED TO:	GROUNDS FOR OBJECTION:	RULING ON THE OBJECTION
	<p>Amended Cross-Complaint has no evidentiary value and is therefore not admissible evidence.</p> <p>Parties cannot rely on verified [or unverified] pleadings as evidence in support of or in opposition to summary judgment. (<i>College Hospital, Inc. v. Superior Court</i> f(1994) 8 Cal.4th 704, 720, fn.7; <i>Parker v. Twentieth Century Fox-Film Corp.</i> (197) 3 Cal.3d 176, 181; <i>Coyne v. Krempels</i> (195) 36 Cal.2d 257, 262; <i>Orsetti v. City of Fremont</i> (1978) 80 Cal.App.3d, 961, 966; 2 Cal. Civil Procedure Before Trial (Cont.Ed.Bar 1993) § 43.13, p. 43-10; Weil & Brown, Cal. Practice Guide-Civil Procedure Before Trial (The Rutter Group 1994) ¶ 10:19, p. 10-6.) The basic purpose of summary judgment is to provide a means by which the court determines whether “the triable issues apparently raised by [the complaint and answer] are real or merely the product of adept pleading.” (<i>Coyne v. Krempels, supra</i>, 36 Cal.2d at p. 262.) Hence, the moving party must demonstrate the presence or absence of a genuine triable issue by “affidavit” or other competent means. (§ 437c, subds. (b), (c) & (d).)</p> <p>Nor can the Court take judicial notice of the truth of the contents of Geraci’s Demurrer to Cotton’s Second Amended Cross-Complaint. “...A court may take judicial notice of the existence of</p>	

MATERIAL OBJECTED TO:	GROUNDS FOR OBJECTION:	RULING ON THE OBJECTION
	<p>each document in a court file, but can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgment.” (<i>Day v. Sharp</i> (1975) 50 Cal.App.3d 904, 914, citing 2 Jefferson, Cal. Evidence Benchbook (2d ed. 1982) Judicial Notice, § 47.2, p. 1757.)</p> <p>The argument of counsel is neither a declaration nor admissible as evidence in court. (<i>Saldana v. Globe-Weis Systems Co.</i> (1991) 233 Cal.App.3d 1505, 1518.)</p> <p>Lastly, the allegations in Geraci’s Demurrer to Cotton’s Second Amended Cross-Complaint are not judicial admissions. A judicial admission is ordinarily a factual allegation by one party that is admitted by the other party. (<i>Barsegian v. Kessler & Kessler</i> (2013) 215 Cal.App.4th 446, 452.) Geraci’s demurrer does not admit or deny any allegations- as the law requires, it merely assumes for purposes of demurrer the truth of the allegations of Cottons’ Second Amended Cross-Complaint.</p>	
<p>Declaration of Jacob P. Austin ¶13:</p> <p>“13. A true and correct copy of Cotton’s Opposition to Larry Geraci’s Demurrer to the Second Amended Cross-Complaint is lodged as</p>	<p><u>Objection:</u> Not Admissible Evidence:</p> <p>A motion for summary judgment “shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>_____ Judge</p>

1 MATERIAL OBJECTED 2 TO:	3 GROUNDS FOR OBJECTION:	4 RULING ON THE 5 OBJECTION
6 Exhibit 11.”	<p data-bbox="621 352 1060 636">7 shall or may be taken. (CCP § 8 437c, subd. (b)(1).) Geraci’s 9 Cotton’s Opposition to Larry 10 Geraci’s Demurrer to Cotton’s 11 Second Amended Cross- 12 Complaint has no evidentiary 13 value and is therefore not 14 admissible evidence.</p> <p data-bbox="621 674 1060 1797">15 Parties cannot rely on verified [or 16 unverified] pleadings as evidence 17 in support of or in opposition to 18 summary judgment. (<i>College</i> 19 <i>Hospital, Inc. v. Superior Court</i> 20 <i>f</i>(1994) 8 Cal.4th 704, 720, fn.7; 21 <i>Parker v. Twentieth Century Fox-</i> 22 <i>Film Corp.</i> (197) 3 Cal.3d 176, 23 181; <i>Coyne v. Krempels</i> (195) 36 24 Cal.2d 257, 262; <i>Orsetti v. City of</i> 25 <i>Fremont</i> (1978) 80 Cal.App.3d, 26 961, 966; 2 Cal. Civil Procedure 27 Before Trial (Cont.Ed.Bar 1993) § 28 43.13, p. 43-10; Weil & Brown, Cal. Practice Guide-Civil Procedure Before Trial (The Rutter Group 1994) ¶ 10:19, p. 10-6.) The basic purpose of summary judgment is to provide a means by which the court determines whether “the triable issues apparently raised by [the complaint and answer] are real or merely the product of adept pleading.” (<i>Coyne v. Krempels</i>, <i>supra</i>, 36 Cal.2d at p. 262.) Hence, the moving party must demonstrate the presence or absence of a genuine triable issue by “affidavit” or other competent means. (§ 437c, subds. (b), (c) & (d).)</p> <p data-bbox="621 1829 1060 1860">Nor can the Court take judicial</p>	Dated: May ____, 2019

MATERIAL OBJECTED TO:	GROUNDS FOR OBJECTION:	RULING ON THE OBJECTION
	<p>notice of the truth of the contents of Cotton's Opposition to Geraci's Demurrer to Cotton's Second Amended Cross-Complaint. "...A court may take judicial notice of the existence of each document in a court file, but can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgment." (<i>Day v. Sharp</i> (1975) 50 Cal.App.3d 904, 914, citing 2 Jefferson, Cal. Evidence Benchbook (2d ed. 1982) Judicial Notice, § 47.2, p. 1757.)</p> <p>The argument of counsel is neither a declaration nor admissible as evidence in court. (<i>Saldana v. Globe-Weis Systems Co.</i> (1991) 233 Cal.App.3d 1505, 1518.)</p> <p>Lastly, the allegations in Cotton's Opposition to Geraci's Demurrer to Cotton's Second Amended Cross-Complaint are not judicial admissions. A judicial admission is ordinarily a factual allegation by one party that is admitted by the other party. (<i>Barsegian v. Kessler & Kessler</i> (2013) 215 Cal.App.4th 446, 452.) Cotton's Opposition to Geraci's demurrer does not admit or deny any allegations.</p>	

MATERIAL OBJECTED TO:	GROUNDS FOR OBJECTION:	RULING ON THE OBJECTION
<p>Declaration of Jacob P. Austin ¶14:</p> <p>"14. A true and correct copy of Reply Memorandum of Points and Authorities in Support of Cross-Defendant Larry Geraci's Demurrer to Second Amended Cross-Complaint By Darryl Cotton is lodged as Exhibit 12."</p>	<p><u>Objection:</u> Not Admissible Evidence:</p> <p>A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) Larry Geraci's Reply Memorandum of Points and Authorities in Support of Cross-Defendant Larry Geraci's Demurrer to Second Amended Cross-Complaint By Darryl Cotton has no evidentiary value and is therefore not admissible evidence.</p> <p>Parties cannot rely on verified [or unverified] pleadings as evidence in support of or in opposition to summary judgment. (<i>College Hospital, Inc. v. Superior Court</i> f(1994) 8 Cal.4th 704, 720, fn.7; <i>Parker v. Twentieth Century Fox-Film Corp.</i> (197) 3 Cal.3d 176, 181; <i>Coyne v. Krempels</i> (195) 36 Cal.2d 257, 262; <i>Orsetti v. City of Fremont</i> (1978) 80 Cal.App.3d, 961, 966; 2 Cal. Civil Procedure Before Trial (Cont.Ed.Bar 1993) § 43.13, p. 43-10; Weil & Brown, Cal. Practice Guide-Civil Procedure Before Trial (The Rutter Group 1994) ¶ 10:19, p. 10-6.) The basic purpose of summary judgment is to provide a means by which the court determines whether "the triable issues apparently raised by [the complaint and answer] are real or merely the product of adept</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>_____ Judge</p> <p>Dated: May ____, 2019</p>

1 MATERIAL OBJECTED 2 TO:	3 GROUNDS FOR OBJECTION:	4 RULING ON THE 5 OBJECTION
	<p>6 pleading.” (<i>Coyne v. Krempels</i>, 7 <i>supra</i>, 36 Cal.2d at p. 262.) 8 Hence, the moving party must 9 demonstrate the presence or 10 absence of a genuine triable issue 11 by “affidavit” or other competent 12 means. (§ 437c, subds. (b), (c) & 13 (d).)</p> <p>14 Nor can the Court take judicial 15 notice of the truth of the contents 16 of Larry Geraci’s Reply 17 Memorandum of Points and 18 Authorities in Support of Cross- 19 Defendant Larry Geraci’s 20 Demurrer to Second Amended 21 Cross-Complaint By Darryl 22 Cotton. “...A court may take 23 judicial notice of the existence of 24 each document in a court file, but 25 can only take judicial notice of the 26 truth of facts asserted in 27 documents such as orders, 28 findings of fact and conclusions of law, and judgment.” (<i>Day v.</i> <i>Sharp</i> (1975) 50 Cal.App.3d 904, 914, citing 2 Jefferson, Cal. Evidence Benchbook (2d ed. 1982) Judicial Notice, § 47.2, p. 1757.)</p> <p>The argument of counsel is neither a declaration nor admissible as evidence in court. (<i>Saldana v.</i> <i>Globe-Weis Systems Co.</i> (1991) 233 Cal.App.3d 1505, 1518.)</p> <p>Lastly, the allegations in Geraci’s Reply Memorandum of Points and Authorities in Support of Cross- Defendant Larry Geraci’s Demurrer to Second Amended Cross-Complaint are not judicial</p>	

MATERIAL OBJECTED TO:	GROUNDS FOR OBJECTION:	RULING ON THE OBJECTION
	admissions. A judicial admission is ordinarily a factual allegation by one party that is admitted by the other party. (<i>Barsegian v. Kessler & Kessler</i> (2013) 215 Cal.App.4 th 446, 452.) Geraci's Reply in support of his demurrer does not admit or deny any allegations.	
Declaration of Jacob P. Austin ¶18: "18. A true and correct copy of Meet and Confer Email to Opposing Counsel dated January 9, 2019, is lodged as Exhibit 16."	<u>Objections:</u> Irrelevant- Evid. Code §§ 210, 350, and 351; Inadmissible Hearsay – Evid. Code § 1200 The argument of counsel is neither a declaration nor admissible as evidence in court. (<i>Saldana v. Globe-Weis Systems Co.</i> (1991) 233 Cal.App.3d 1505, 1518.)	Sustained: _____ Overruled: _____ _____ Judge Dated: May ____, 2019
Declaration of Jacob P. Austin ¶19: "19. A true and correct copy of Response to Meet and Confer Email from Mr. Scott Toothacre is lodged as Exhibit 17."	<u>Objections:</u> Irrelevant- Evid. Code §§ 210, 350, and 351; Inadmissible Hearsay – Evid. Code § 1200 The argument of counsel is neither a declaration nor admissible as evidence in court. (<i>Saldana v. Globe-Weis Systems Co.</i> (1991) 233 Cal.App.3d 1505, 1518.)	Sustained: _____ Overruled: _____ _____ Judge Dated: May ____, 2019
The Entirety of Exhibit 2 – Purported Emails Between Cotton and Geraci and Attachments Thereto	<u>Objections:</u> Insufficient Foundation-Evid. Code § 403; Lack of Personal Knowledge-Evid. Code § 702(a); Lack of Authentication of writing-Evid. Code § 1400; and Hearsay-to the extent they have not been authenticated- Evid. Code § 1200.	Sustained: _____ Overruled: _____ _____ Judge Dated: May ____, 2019

MATERIAL OBJECTED TO:	GROUNDS FOR OBJECTION:	RULING ON THE OBJECTION
<p>The Entirety of Exhibit 3 – Purported Text Messages Between Geraci and Cotton</p>	<p><u>Objections:</u> Lack of Personal Knowledge-Evid. Code § 702(a); Lack of Authentication of writing-Evid. Code § 1400; and Hearsay-to the extent they have not been authenticated- Evid. Code § 1200.</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>_____ Judge</p> <p>Dated: May ____, 2019</p>
<p>The Entirety of Exhibit 9- Purported Email from Attorney Weinstein- Portions of Email Appear to be Missing.</p>	<p><u>Objections:</u> Lack of Personal Knowledge-Evid. Code § 702(a); Lack of Authentication of writing-Evid. Code § 1400; and Hearsay – Evid. Code § 1200.</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>_____ Judge</p> <p>Dated: May ____, 2019</p>
<p>The Entirety of Exhibit 10 – Notice of Demurrer and Demurrer by Cross-Defendant Larry Geraci to Second Amended Cross-Complaint by Darryl Cotton, including the Memorandum of Points and Authorities and the Exhibits thereto.</p>	<p><u>Objections:</u> Irrelevant- Evid. Code §§ 210, 350, and 351; Lack of Authentication of writing-Evid. Code § 1400.</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>_____ Judge</p> <p>Dated: May ____, 2019</p>
<p>The Entirety of Exhibit 11- Darryl Cotton’s Opposition to Larry Geraci’s Demurrer to the Second Amended Cross-Complaint</p>	<p><u>Objections:</u> Irrelevant- Evid. Code §§ 210, 350, and 351; Lack of Authentication of writing-Evid. Code § 1400.</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>_____ Judge</p> <p>Dated: May ____, 2019</p>

MATERIAL OBJECTED TO:	GROUNDS FOR OBJECTION:	RULING ON THE OBJECTION
The Entirety of Exhibit 12 – Reply Memorandum of Points and Authorities in Support of Cross-Defendant Larry Geraci’s Cross-Complaint by Darryl Cotton	<u>Objections:</u> Irrelevant- Evid. Code §§ 210, 350, and 351; Lack of Authentication of writing-Evid. Code § 1400.	Sustained: _____ Overruled: _____ _____ Judge Dated: May ____, 2019

Dated: May 8, 2019

Respectfully submitted,
FERRIS & BRITTON,
A Professional Corporation

By: Scott H. Toothacre
Michael R. Weinstein
Scott H. Toothacre
Attorneys for Plaintiff/Cross-Defendant
LARRY GERACI and Cross-Defendant
REBECCA BERRY