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**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

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 OF  
HEARSAY STATEMENTS ALLEGED TO  
HAVE BEEN MADE AT MEETING WITH  
CORINA YOUNG, ATTORNEY MATT  
SHAPIRO AND JIM BARTELL – AND  
ANY EVIDENCE OR ARGUMENT  
REGARDING MR. COTTON'S  
CONSPIRACY THEORY**

[MIL NO. 5 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 and 352  
for orders precluding any evidence or reference to Corina Young's alleged conversation with Jim



1 Bartell and any reference to Corina Young allegedly relaying the context of that conversation to  
2 Darryl Cotton, Jacob Austin, or Joe Hurtado and/or any evidence or argument concerning Mr.  
3 Cotton's conspiracy theory.

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

7  
8 FERRIS & BRITTON  
A Professional Corporation

9  
10 Dated: June 20 2019

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

2 I. INTRODUCTION

3 By now the Court is well-aware that Mr. Cotton, Mr. Hurtado and Attorney Jacob Austin  
4 believe there is a vast criminal conspiracy between Mr. Geraci, Gina Austin, Michael Weinstein,  
5 Scott Toothacre, the City of San Diego and sometimes, the Court, to defraud Mr. Cotton of his  
6 property.

7 As proof of this alleged conspiracy, Mr. Hurtado, Cotton's litigation investor, testified in his  
8 deposition that Corina Young, Mr. Cotton, Attorney Austin and Mr. Hurtado attended a meeting at  
9 Mr. Hurtado's residence to discuss the potential of Ms. Young investing in Mr. Cotton's litigation  
10 against Mr. Geraci. Mr. Hurtado further testified that prior to Cornia Young's arrival at Mr.  
11 Hurtado's house for the meeting, Attorney Austin, Mr. Cotton and Mr. Hurtado were discussing  
12 "go[ing] after [Aaron] Magagna (competing CUP) and [Attorney Matthew] Shaprio (Corina  
13 Young's attorney) for being part of the *Geraci conspiracy*." (Hurtado Depo. 137:11-17, true and  
14 correct excerpts are attached as Exhibit 5 to NOL.) When Corina Young arrived at the meeting, as  
15 she entered she saw a picture of Mr. Magagna depicted on a computer screen. The three men told  
16 her that they were contemplating *adding him to the Cotton litigation as a co-conspirator*. Corina  
17 Young told them there must be some mistake and that Mr. Magagna was a "good guy". Allegedly,  
18 that is when Corina Young relayed a meeting she had had several months prior where her attorney  
19 Matthew Shapiro took her to meet Jim Bartell in Mr. Bartell's office. Mr. Cotton, Mr. Austin and  
20 Mr. Hurtado claim that Corina Young told them that during the meeting between Jim Bartell, Matt  
21 Shapiro and Corina Young, Jim Bartell stated: 1) he "owns" the Geraci CUP; 2) everyone [at the  
22 City] hates Darryl; and 3) that Jim Bartell was going to get either get Geraci's CUP "killed" or  
23 "denied". (Hurtado Depo. p. 137:18-140:7; 144:13-145:4, true and correct excerpts are attached as  
24 Exhibit 5 to NOL.)

25 Based on this inadmissible multiple-level hearsay conversation, Attorney Austin, Mr. Cotton  
26 and Mr. Hurtado believed they had their "smoking gun" demonstrating a conspiracy between Mr.  
27 Geraci, Attorney Gina Austin, Jim Bartell, and everyone else on the Geraci "team", including Mr.  
28 Magagna who was busy processing his own competing CUP Application on a property within 1000



1 feet of Mr. Cotton's property.

2       Allegedly, Corina Young also told Mr. Cotton, Attorney Austin and Mr. Hurtado that when  
3 Aaron Magagna somehow found out the substance of the meeting in Mr. Bartell's office, which had  
4 been recounted at the meeting at Mr. Hurtado's residence, Mr. Magagna offered Corina Young  
5 money to change her testimony because, according to Hurtado, "He acquired that – the CUP that  
6 should have been ours via fraud. So if her testimony proves that Bartell and Geraci were acting in  
7 bad faith and were not actually trying to get the CUP approved at 6176 and we can prove that  
8 Magagna offered her money, in other words, he joined the conspiracy, by state law, any CUP or  
9 marijuana-related application that's procured via fraud is automatically voided." (Hurtado Depo.  
10 145:12-23, true and correct excerpts are attached as Exhibit 5 to NOL.) It is Mr. Hurtado's belief  
11 that if Mr. Cotton can prove this conspiracy and that Mr. Magagna is a part of it, then Mr. Magagna's  
12 CUP will be null and void and that Mr. Cotton's CUP can then be resurrected and go forward.  
13 (Hurtado Depo. 145:9-146:10, true and correct excerpts are attached as Exhibit 5 to NOL.)

14       Mr. Geraci seeks a motion in limine to preclude any reference to any of these allegations, or  
15 any other similar allegations, although maybe not using the exact language set forth above, in front  
16 of the jury. In the absence of such an order, Mr. Geraci requests the Court conduct a hearing outside  
17 the presence of the jury to determine the question of admissibility on these allegations pursuant to  
18 Cal. Evid. Code § 402(b).

19 **II. Mr. Cotton's Operative Second-Amended Cross-Complaint Fails to Allege Conspiracy**

20       On or about August 25, 2017, Mr. Cotton filed his Second Amended Cross-Complaint in  
21 which he states five causes of action: 1) Breach of Contract; 2) Intentional Misrepresentation; 3)  
22 Negligent Misrepresentation; 4) False Promise; and 5) Declaratory Relief. The only two Cross-  
23 Defendants named in the Cross-Complaint are Larry Geraci and Rebecca Berry.

24       Although Mr. Cotton and his attorney Jacob Austin have vehemently argued and espoused a  
25 vast criminal conspiracy theory which is run by Mr. Geraci, neither the factual allegations, causes  
26 of action, nor the prayer for relief seek to impose joint and several liability based on a conspiracy  
27 theory. Inasmuch as evidence of a conspiracy is irrelevant to any claims advanced by Mr. Cotton,  
28 any evidence or argument related to Mr. Cotton's conspiracy theory should be excluded. This is



1 especially true with regard to the multi-level hearsay statements alleged to have been made by  
2 Corina Young.

3 **III. LEGAL ARGUMENT**

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

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

10 **B. The Evidence Is Inflammatory and Prejudicial and Should be Barred Under**  
11 **Cal. Evid. Code § 352**

12 California Evidence Code Section 352 provides: "The court in its discretion may exclude  
13 evidence if its probative value is substantially outweighed by the probability that its admission will  
14 (a) necessitate undue consumption of time or (b) create substantial damage of undue prejudice, of  
15 confusing the issues, or of misleading the jury. Cotton, Austin and Hurtado's irrational allegations  
16 of this vast criminal conspiracy, to the extent the theory can be understood, will take up an inordinate  
17 amount of time, hopelessly confuse the jury and will potentially result in undue prejudice to Mr.  
18 Geraci. This evidence should be barred.

19 **C. Alternatively, the Court Should Hold an Evidence Code § 402 Hearing Prior to**  
20 **Disclosure of this Evidence**

21 Under California Evidence Code § 310, the Court must decide preliminary questions of fact  
22 upon which the admissibility of evidence depends. Evidence Code § 402 prescribes certain  
23 procedures that must be observed by the court when making such preliminary determination.

24 In determining the admissibility of evidence, the trial court has broad discretion. Thus, it is  
25 within the court's discretion whether or not to decide admissibility questions under Evidence Code  
26 § 402(b) without the jury present. (*People v. Mattison* (1971) 4 Cal.3d 177, 187.)

27 Mr. Geraci respectfully requests the Court to conduct an Evidence Code § 402 hearing prior  
28 to admission of any testimony related to the conspiracy claims to the extent Mr. Cotton and his




1 attorney believe Corina Young's testimony is some sort of evidence of conspiracy. They should be  
2 required to demonstrate to the Court's satisfaction that they have actual proof of a conspiracy based  
3 on admissible evidence (not alleged hearsay statements) rather than irrational speculation,  
4 conjecture and surmise.

5 **IV. CONCLUSION**

6 Because these baseless allegations by Cotton, Austin and Hurtado are completely irrelevant  
7 to any issue in the case; because they are unsubstantiated by any evidence whatsoever, and because  
8 they are highly inflammatory and have the potential of resulting in grave prejudice against Mr.  
9 Geraci and his attorneys, the evidence must be excluded under Evidence Code § 352. Alternatively,  
10 Mr. Geraci respectfully requests a hearing outside the presence of the jury pursuant to Evidence  
11 Code § 402(b) to assess and determine the admissibility or non-admissibility of the subject evidence.  
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13 FERRIS & BRITTON  
14 A Professional Corporation

15 Dated: June 20 2019

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