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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

11 Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and
12 Cross-Defendant REBECCA BERRY

13 **SUPERIOR COURT OF CALIFORNIA**
14 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

15 LARRY GERACI, an individual,

16 Plaintiff,

17 v.

18 DARRYL COTTON, an individual; and DOES 1
19 through 10, inclusive,

20 Defendants.

21 DARRYL COTTON, an individual,

22 Cross-Complainant,

23 v.

24 LARRY GERACI, an individual, REBECCA
25 BERRY, an individual, and DOES 1
26 THROUGH 10, INCLUSIVE,

27 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 PERSONAL
ATTACKS ON COUNSEL FOR LARRY
GERACI AND REBECCA BERRY**

[MIL NO. 2 OF 15]

[IMAGED FILE]

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

28 **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, examination, or reference to Darryl Cotton, Jacob Austin, or Joe Hurtado's personal attacks against Michael R. Weinstein, Scott H. Toothacre and Attorney Gina

1 Austin.

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

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6 FERRIS & BRITTON
A Professional Corporation

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8 Dated: June 21, 2019

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

2 **I. INTRODUCTION**

3 As this Court is well-aware, Mr. Cotton, his attorney Jacob Austin, and his litigation investors
4 have repeatedly and routinely accused attorneys Weinstein, Toothacre and Austin of inter alia:

- 5 1) fabricating evidence;
- 6 2) that Toothacre has knowledge of Weinstein’s fabricating evidence;
- 7 3) misleading and deceiving the Court;
- 8 4) lying to the Court;
- 9 5) engaging in fraudulent conduct;
- 10 6) engaging in racketeering under the RICO statutes;
- 11 7) engaging in conspiracy to commit fraud;
- 12 8) engaging in a fraudulent scheme seeking to have Mr. Cotton’s attorneys waive
13 privilege with regard to interrogatories;
- 14 9) engaging in incredibly unethical conduct;
- 15 10) maintaining a malicious prosecution action; and
- 16 11) otherwise engaging in criminal conspiratorial misconduct for which Weinstein and
17 Toothacre will face criminal charges.

18 Mr. Hurtado, Mr. Cotton’s litigation investor, testified in deposition in this action that this
19 litigation is part of a fraudulent attempt to help a criminal enterprise fraudulently acquire Mr.
20 Cotton’s property. (Hurtado Depo. p. 167:1-7, true and correct excerpt attached as Exhibit 5 to NOL)
21 Mr. Hurtado testified further that that he believes Mr. Weinstein and Attorney Gina Austin are
22 “deplorable pieces of shit;” that they are “conniving mother fuckers;” and continued with “God, for
23 the record, I hope they fucking burn in hell.” (Hurtado Depo. p. 183:12-184:12 true and correct
24 excerpt attached as Exhibit 5 to NOL) Mr. Hurtado went on to testify that he feels an “...incredible
25 amount of rage and hate” for Weinstein, Toothacre and Gina Austin and will be reporting them to
26 the State Bar when this is all over. (Hurtado Depo. p. 150:17-24, true and correct excerpt attached
27 as Exhibit 5 to NOL) Mr. Hurtado has threatened that all of the co-conspirators will face criminal
28 charges for what they have done to him. Mr. Hurtado even went so far as to compare Mr. Toothacre

1 to "...Nazi guy: I'm just following orders". (Hurtado Depo. p. 186:23-25, true and correct excerpt
2 is attached as Exhibit 5 to NOL) (Please also refer to Mr. Hurtado's letter of May 30, 2019, a true
3 and correct copy of which is attached as Exhibit 6 to NOL.)

4 Jacob Austin, Mr. Cotton's attorney, has made similar allegations in pleadings filed in this
5 case. (i.e., Verified Petition for Writ of Mandate, p. 23, Verified Statement of Disqualification p.
6 3:25-4:4; 28:15-21; Defendant's Reply to Plaintiff's Opposition to Motion to Bind, p. 2:16-18, 2:20-
7 23, 3:18-20, 4:11-13, true and correct copies of examples of such statements in pleadings are
8 attached hereto as Exhibit 7 to NOL.) Attorney Austin has also repeated such statements in emails
9 sent to counsel in this case. (True and correct copies of examples of such emails from Mr. Austin
10 are attached as Exhibit 8 to NOL.)

11 And Mr. Cotton has made similar statements in his federal court filings (copies of those two
12 federal court complaints are attached as Exhibits 1 and 3 to NOL. He has also made such claims in
13 discovery responses. (True and correct copies of excerpts from such discovery responses are
14 attached as Exhibit 9 to NOL.)

15 Neither Mr. Cotton, Mr. Austin nor Mr. Hurtado have a scintilla of evidence to corroborate
16 or substantiate a single one of these scurrilous allegations – none. That is because no such evidence
17 exists as each and every allegation is false and completely without merit.

18 Mr. Geraci seeks a motion in limine to preclude evidence, examination, and argument or any
19 other reference to any of these allegations or assertions of these allegations using like or similar
20 language in front of the jury. Indeed, any personal attacks by an attorney on the character or motives
21 of the adverse party, his counsel or his witnesses would be misconduct. In the absence of such an
22 order, Mr. Geraci requests the Court conduct a hearing outside the presence of the jury to determine
23 the question of admissibility on these allegations pursuant to Cal. Evid. Code § 402(b).

24 **II. LEGAL ARGUMENT**

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

27 The court has the inherent power to grant a motion in limine to exclude "any kind of evidence
28 which could be objected to at trial, either as irrelevant or subject to discretionary exclusion as unduly

1 prejudicial.” (*Clemens v. American Warranty Corp.* (1987) 193 Cal.App.3d 444; *Peat, Marwick,*
2 *Mitchell & Co. v. Superior Court* (1988) 200 Cal.App.3d 272, 288).

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

5 California Evidence Code Section 352 provides: “The court in its discretion may exclude
6 evidence if its probative value is substantially outweighed by the probability that its admission will
7 (a) necessitate undue consumption of time or (b) create substantial damage of undue prejudice, of
8 confusing the issues, or of misleading the jury. Cotton, Austin and Hurtado’s allegations of
9 unethical conduct etc., as described above, are irrelevant to any issues in the case, are extremely
10 prejudicial, and should be barred.

11 “The law, like boxing, prohibits hitting below the belt. The basic rule forbids an attorney to
12 pander to the prejudice, passion or sympathy of the jury.” (*Martinez v. Department of Transportation*
13 (2015) 238 Cal.App.4th 559, 566.) “The rule also manifests itself by prohibiting irrelevant ad
14 hominem attacks.” (*Ibid.*) “Personal attacks on the character or motives of the adverse party, his
15 counsel or his witnesses are misconduct.” (*Stone v. Foster* (1980) 106 Cal.App.3d 334, 355.)
16 Similarly, repeated violations of pretrial in limine rulings, despite sustained objections is
17 misconduct. (*Martinez, Supra*, 238 Cal.App.4th at p. 567.) Simply put, attorneys are not to mount a
18 personal attack on the opposing party even by insinuation. (*Las Palmas Associates v. Las Palmas*
19 *Center Associates* (1991) 235 Cal.App.3d 1220, 1246.) Personal attacks on the character or motive
20 of the adverse party, his counsel or his witnesses are misconduct. (*Stone v. Foster* (1980) 106
21 Cal.App.3d 334, citing *Simmons v. Southern Pac. Transportation Co.* (1976) 62 Cal.App.3d 341,
22 351.) It was attorney misconduct in *Stone* – “calling the defendant “disgraceful” and “the lowest”;
23 *People v. Herring* (1993) 20 Cal.App.4th 1066, 1074-1075 [the prosecutor calling the criminal
24 defendant a “primal man in his most basic level,” “like a dog in heat,” and *accusing defense counsel*
25 *of fabricating a defense and instructing his client to commit perjury.*] Insinuation that a party has
26 a Nazi decals was particularly egregious attorney misconduct. [*Martinez v. State of California Dept.*
27 *of Trans.* (2018) 238 bCal.App.4th 559]

28 Attorney Austin’s conduct violates the California State Bar Civility Guidelines passed in

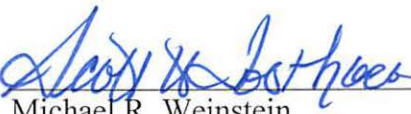
1 2009. Section 4(c) of the Civility Guidelines provides that “[a]n attorney should not disparage the
2 intelligence, integrity, ethics, morals or behavior of the court or other counsel, parties or participants
3 when those characteristics are not at issue”.

4 **III. CONCLUSION**

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

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12 FERRIS & BRITTON
A Professional Corporation

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14 Dated: June 21, 2019

15 By:  _____
Michael R. Weinstein
Scott H. Toothacre
16 Attorney for Plaintiff/Cross-Defendant LARRY
17 GERACI and Cross-Defendant REBECCA BERRY
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**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. 2 OF 15 TO
EXCLUDE PERSONAL ATTACKS ON
COUNSEL FOR LARRY GERACI AND
REBECCA BERRY**
[MIL NO. 2 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. 2 of 15 is
3 [GRANTED/GRANTED WITHOUT PREJUDICE/DENIED/DENIED WITHOUT PREJUDICE].
4 [Any evidence, examination, argument or other reference to Darryl Cotton, Jacob Austin, or Joe
5 Hurtado's personal attacks, as well as any personal attacks against Michael R. Weinstein, Scott H.
6 Toothacre and Attorney Gina Austin, is precluded, and all counsel are ordered to advise their clients
7 and witnesses of the Court's Order.]

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9 Dated: July __, 2019

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