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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

6 Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and  
7 Cross-Defendant REBECCA BERRY

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9 **SUPERIOR COURT OF CALIFORNIA**  
10 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

11 LARRY GERACI, an individual,

12 Plaintiff,

13 v.

14 DARRYL COTTON, an individual; and DOES 1  
15 through 10, inclusive,

16 Defendants.

17 DARRYL COTTON, an individual,

18 Cross-Complainant,

19 v.

20 LARRY GERACI, an individual, REBECCA  
21 BERRY, an individual, and DOES 1  
THROUGH 10, INCLUSIVE,

22 Cross-Defendants.

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

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

**PLAINTIFF/CROSS-DEFENDANTS'  
24 NOTICE OF MOTION AND MOTION IN  
LIMINE TO EXCLUDE COTTON'S AND  
25 HURTADO'S ALLEGATION THAT THE  
COURT IS BIASED**

26 [MIL NO. 3 OF 15]

27 [IMAGED FILE]

28 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 am, 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,

1 argument or any other reference to Cotton's and Hurtado's allegations that the Court is biased.

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 and Cross-Defendant LARRY  
13 GERACI and Cross-Defendant REBECCA BERRY  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Rather than taking the depositions of Plaintiff Larry Geraci (“Geraci”) and Cross-Defendant  
4 Gina Austin (“G. Austin”) to ascertain the facts and to discover their expected testimony, Darryl  
5 Cotton (“Cotton”) by and through his Attorney Jacob Austin, has concocted a nonsensical and  
6 outlandish theory that Geraci’s attorneys are involved in a conspiracy to deprive Cotton of his  
7 property. According to this theory, at times, Cotton has espoused his belief that this Court is  
8 somehow involved in the conspiracy, and at the very least the Court does not understand basic legal  
9 arguments and is biased in favor of Mr. Weinstein.

10 Under California law impugning the integrity of the Court is dealt with as direct contempt of  
11 Court. By way of the instant motion Geraci is not asking the Court to hold Mr. Cotton, Jacob Austin,  
12 and Mr. Hurtado in contempt of Court at this juncture. However, Mr. Geraci is asking the Court to  
13 admonish Mr. Cotton, Attorney Jacob Austin and Mr. Hurtado that any comment upon or insinuation  
14 that Court is biased is strictly forbidden in this trial in any way shape or form, and any violation of  
15 that order will be met with appropriate sanctions up to, and including contempt of Court.

16 **II. FACTUAL BASIS FOR MOTION**

17 On August 22, 2018, based upon two adverse rulings, Attorney Austin filed a Verified  
18 Petition for Writ of Mandate in which he expressed Mr. Cotton’s belief that Judge Wohlfeil was  
19 *actively conspiring with Mr. Geraci and Mr. Weinstein*. (True and correct copy is attached as  
20 Exhibit 7 to NOL, at p. 23) The Court of Appeal summarily denied the writ petition but,  
21 nevertheless, this Court’s integrity was impugned in a higher tribunal.

22 On or about September 12, 2018, Attorney Austin filed a motion pursuant to CCP § 170.1  
23 seeking to disqualify Judge Wohlfeil. In that motion, Attorney Austin alleged that Judge Wohlfeil  
24 defended Plaintiff’s Attorneys Michael Weinstein and Gina Austin. “Specifically, Judge Wohlfeil  
25 stated from the bench that he is personally acquainted with Weinstein and Mrs. Austin and that he  
26 does not believe they would act unethically by filing a meritless suit. Furthermore, Judge Wohlfeil  
27 stated on a separate occasion that he has known Weinstein for decades since early in their careers  
28 and that he ‘may have made’ the statement regarding his belief about Weinstein and Mrs. Austin’s

1 inability to be unethical.” (Verified Statement of Disqualification, p. 3:25-4:4, attached as Exhibit 7  
2 to NOL.) Austin goes on to state that Judge Wohlfeil is *using his position as an Officer of the*  
3 *Court to “protect” his “friend”* – Weinstein and/or Mrs. Austin – from a malicious prosecution  
4 action because he has a favorable bias towards a lawyer in the proceeding. (Verified Statement of  
5 Disqualification p. 28:15-21, attached as Exhibit 7 to NOL.) Finally, Attorney Austin states: “...as  
6 *more fully described below, there are numerous rulings that demonstrate Judge Wohlfeil does*  
7 *not have a clear understanding of the simplicity of this case and that he has taken procedurally*  
8 *improper actions* to the unjustified benefit of Plaintiff. (Verified Statement of Disqualification, p.  
9 16:7-11, attached as Exhibit 7 to NOL.)

10 On September 17, 2018, Judge Wohlfeil issued a detailed Order Striking Defendant’s  
11 Statement of Disqualification of Judge Joel R. Wohlfeil. (ROA #297) In that Order Judge Wohlfeil  
12 dispelled any notion that he had any bias one way or another towards any attorney in this case and  
13 that all of his rulings, decisions and statements in the case were made in the context of the factual  
14 and evidentiary issues presented, the court’s knowledge of the case, and its overall handling of the  
15 matters pending before it. (ROA #297, Order Striking Statement of Disqualification of Judge Joel  
16 R. Wohlfeil p. 5:15-17) In striking the motion, the Court noted “...the Statement of Disqualification  
17 is based solely on Defendant’s conclusions and interpretation of the Court’s rulings and statements.  
18 Thus, it lacks sufficient factual or evidentiary support and amounts to no more than mere speculation  
19 and conjecture, which likewise cannot form a legal basis for disqualification.” (Order Striking  
20 Statement of Disqualification p. 6:1-4; ROA #297)

21 On April 17, 2019, in spite of Judge Wohlfeil’s clearly expressed lack of bias in this matter,  
22 Mr. Hurtado (a licensed attorney in New York) testified: “*We’ve got a bad judge. That’s just the*  
23 *bottom line.*” (Hurtado Depo. p. 86:14-19, true and correct excerpt is attached as Exhibit 5 to NOL.)  
24 Mr. Hurtado continued “I still honestly believe that *Judge Wohlfeil has been incredibly remiss* in  
25 this action by trusting Weinstein to be an unethical (sic) individual.” (Hurtado Depo. p. 123:2-5,  
26 true and correct excerpt attached as Exhibit 5 to NOL.)

27 Not to be dissuaded by the Court’s statements that the Court has no bias one way or the other,  
28 on April 25, 2019, in response to Mr. Toothacre’s request that Attorney Austin submit on the

1 tentative ruling regarding the denial of his baseless motion to bind Mr. Geraci to interrogatory  
2 responses that had never been amended, Mr. Austin sent an email stating in part: “1. The ruling  
3 reflects that *Judge Wohlfeil is biased towards your client* to the prejudice of Mr. Cotton. I intend  
4 to immediately appeal the issue as it is case dispositive, forcing Mr. Cotton to continue to trial to  
5 defend against sham affirmative defenses. 2. I will be requesting a stay, *which Judge Wohlfeil will*  
6 *no doubt deny*, but we need to go through the process for a writ.” (A true and correct copy of  
7 Attorney Austin’s email is attached as Exhibit 10 to NOL.)

8 On May 2, 2019, Attorney Austin filed his Reply Brief in support of his Motion for Partial  
9 Adjudication (ROA #514). In the P’s&A’s, Attorney Austin again impugns the integrity of this  
10 Court. Specifically, Austin states: “Cotton notes that he does not anticipate that this Court will rule  
11 in his favor on their Motion and that he will be requesting a stay of the action so that he may file for  
12 an extraordinary writ with the Court of Appeals at the hearing on this motion. ¶ In full disclosure,  
13 Cotton also notes that he intends to shortly file a motion in a related federal action asking the federal  
14 court to stay this state action due to, *inter alia, favorable bias [by the Court] towards Weinstein.*”  
15 (ROA #514, Reply In Support of Partial Adjudication p. 5:5-10.)

16 On June 7, 2019, Joe Hurtado sent an accusatory email to Mr. Toothacre stating in part: “I  
17 look forward to the opportunity to explain to Judge Wohlfeil directly what *his biased view* of Mr.  
18 Weinstein has cost me personally.” (A true and correct copy of this email to Mr. Toothacre is  
19 attached as Exhibit 11 to NOL.)

20 The accusation against this Court by Attorney Jacob Austin, Darryl Cotton, and Mr. Cotton’s  
21 litigation investor Joe Hurtado’s are reckless, irresponsible and reprehensible. The accusations  
22 evidence Attorney Austin’s clear misunderstanding of the most basic legal principals involved in  
23 this case and as such, he concludes the rulings must be the result of the Court’s involvement in an  
24 outlandish Machiavellian scheme to defraud Mr. Cotton of his property. Absurd!<sup>1</sup>

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27 <sup>1</sup> Notably, Attorney Austin does not mention the numerous occasions in which this Court has ruled in his  
28 favor on demurrers, on discovery motions and on Geraci’s request for dismissal of the Cross-Complaint  
as a sanction for Cotton’s repeated failure to appear for his deposition. The reason Attorney Austin does  
not mention these rulings - favorable to his client - is because the rulings demonstrate that this Court is

1 **III. 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. Attorney Austin’s Accusations Against the Court Violate Rules of Professional**  
9 **Conduct Rule 8.2(a)**

10 California Rules of Professional Conduct, Rule 8.2(a) provides “A lawyer shall not make a  
11 statement of fact that the lawyer knows to be false or with reckless disregard as to its truth or falsity  
12 concerning the qualifications or integrity of a judge or judicial officer, or of a candidate for election  
13 or appointment to judicial office.” To maintain the fair and independent administration of justice,  
14 lawyers should defend judges and courts unjustly criticized. Lawyers also are obligated to maintain  
15 the respect due to the courts of justice and judicial officers. (See Bus. & Prof. Code, § 6068(b).)

16 **C. The Conduct In Question Violates the California State Bar Civility Guidelines**

17 Attorney Austin’s conduct also violates to the California State Bar Civility Guidelines passed  
18 in 2009. Section 4(c) of the Civility Guidelines provides that “[a]n attorney should not disparage  
19 the intelligence, integrity, ethics, morals or behavior of the court or other counsel, parties or  
20 participants when those characteristics are not at issue”. Austin’s reckless, unsubstantiated and  
21 inflammatory accusations clearly violate the California State Bar Civility Guidelines.

22 **D. The Accusations Leveled Against This Court Are Contemptuous And Clearly**  
23 **Should Not Be Before the Jury**

24 A direct contempt “is committed in the immediate view and presence of the court, or of the  
25 judge at chambers....” (Code Civ. Proc., § 1211, subd. (a).) It may be punished “summarily.” (*Ibid.*)

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unbiased and is addressing issues based on the authority cited, the factual evidence presented, and the arguments of counsel.

1 “[I]t is the settled law of this state that an attorney commits a direct contempt when he impugns the  
2 integrity of the court by statements made in open court either orally or in writing. [Citations.]  
3 Insolence to the judge in the form of insulting words or conduct in court has traditionally been  
4 recognized in the common law as constituting grounds for contempt. [Citation.]” (*In re Buckley*  
5 (1973) 10 Cal.3d 237, 243)

6 An attorney also commits a direct contempt by impugning the integrity of the court in a  
7 document filed with the court. “The California Supreme Court has long held that the inclusion of a  
8 contemptuous statement in a document filed in a court is a contempt committed in the immediate  
9 presence of the court and thus constitutes a direct contempt. [Citations.]” (*In re White* (2004) 121  
10 Cal.App.4<sup>th</sup> 14543, 1478, fn. 19.) In *Blodgett v. Superior Court* (1930) 210 Cal. 1, 9, the California  
11 Supreme Court held that the filing of points and authorities containing contemptuous statement  
12 constituted a direct contempt. “[T]he fact that the alleged contemptuous statements were contained  
13 in pleadings or other papers filed in court does not furnish any excuse or defense against the charge  
14 of contempt. It is well settled that contempt may be committed by incorporating impertinent,  
15 scandalous, insulting or contemptuous language reflecting on the integrity of the court in pleadings,  
16 motions, notice of motions, affidavits, and other papers filed in court. [Citations.]” (*Hume v.*  
17 *Superior Court* (1941) 17 Cal.2d 506, 515-514.)

18 “The judge of a court is well within his rights in protecting his own reputation from  
19 groundless attacks upon his judicial integrity and it is his bounden duty to protect the integrity of his  
20 court.’ [Citation.] ‘However willing he may be to forego the private injury, the obligation is upon  
21 him by his oath to maintain the respect due to the court over which he presides.’” (*In re Ciruolo*  
22 (1969) 70 Cal.2d 389, 394-395.)

23 This Court has been exceptionally tolerant of Mr. Austin and Mr. Cotton given their repeated  
24 false accusations made against this Court and against opposing counsel. The Court should not  
25 tolerate any further insolence from either Mr. Cotton, Mr. Austin or Mr. Hurtado.


### 26 **III. CONCLUSION**

27 For all the foregoing reasons, Mr. Geraci asks this Court to issue an order in limine that Mr.  
28 Cotton, Mr. Hurtado, Attorney Jacob Austin and all attorneys and witnesses be cautioned not to ask

1 questions regarding and/or elicit in any fashion testimony or evidence or make any comments or  
2 argument reflecting their views that the Court is biased and/or is somehow involved in a conspiracy  
3 with Geraci and his counsel to defraud Mr. Cotton of his property.

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5 FERRIS & BRITTON  
A Professional Corporation

6  
7 Dated: June 21, 2019

8 By:   
Michael R. Weinstein  
Scott H. Toothacre  
9 Attorney for Plaintiff and Cross-Defendant LARRY  
10 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.

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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. 3 OF 5 TO  
EXCLUDE COTTON'S AND HURTADO'S  
ALLEGATION THAT THE COURT IS  
BIASED**  
**[MIL NO. 3 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. 3 of 15 is  
3 [GRANTED/GRANTED WITHOUT PREJUDICE/DENIED/DENIED WITHOUT PREJUDICE].  
4 [Any evidence, examination, argument or other reference to Cotton's and Hurtado's allegations that  
5 the Court is biased, as well as any assertion that the Court is biased 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