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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

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

10 LARRY GERACI, an individual,

11 Plaintiff,

12 v.

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

15 Defendants.

16 DARRYL COTTON, an individual,

17 Cross-Complainant,

18 v.

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

21 Cross-Defendants.

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

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

**PLAINTIFF/CROSS-DEFENDANTS'
NOTICE OF MOTION AND MOTION IN
LIMINE TO EXCLUDE COTTON,
HURTADO, AND AUSTIN FROM
ESPOUSING THEIR OPINION THAT
THIS CASE IS FRIVOLOUS AND/OR A
MALICIOUS PROSECUTION CASE OR
WAS OTHERWISE FILED PURSUANT
TO A FRAUDULENT SCHEME TO
ACQUIRE AN MMCC BUSINESS**

[MIL NO. 4 OF 15]

[IMAGED FILE]

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

24 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:**

25 **PLEASE TAKE NOTICE** that on June 28, 2019 at 8:30 am, in Department C-73 of the San
26 Diego Superior Court, located at 330 West Broadway, San Diego, California, Plaintiff/Cross-
27 Defendant, LARRY GERACI, and Cross-Defendant, REBECCA BERRY, will move *in limine*
28 pursuant to Evid. Code §§ 210, 350 and 352 for orders precluding any evidence, examination,
argument or other reference to Cotton's, Hurtado's and Attorney Jacob Austin's allegations that Mr.


**PLAINTIFF/ CROSS-DEFENDANTS' NOTICE OF MOTION AND MOTION IN LIMINE TO EXCLUDE COTTON,
HURTADO, AND AUSTIN FROM ESPOUSING THEIR OPINION THAT THIS CASE IS FRIVOLOUS AND/OR A
MALICIOUS PROSECUTION CASE OR WAS OTHERWISE FILED PURSUANT TO A FRAUDULENT SCHEME TO
ACQUIRE AN MMCC BUSINESS [MIL NO. 4 OF 15]**

1 Geraci's case is frivolous and/or a malicious prosecution case, or was otherwise filed pursuant to a
2 fraudulent scheme to acquire an MMCC business.

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.

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7 FERRIS & BRITTON
A Professional Corporation

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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 Throughout this action, Mr. Cotton, his attorney Jacob Austin, and his litigation investor Mr.
4 Hurtado have continuously maintained that this case was motivated for some improper purpose and
5 has been maintained as a malicious prosecution action to the grave detriment of Mr. Cotton and Mr.
6 Hurtado. These unsubstantiated allegations are irrelevant, false and inflammatory and should be
7 excluded at trial of this matter.

8 **II. FACTS RELEVANT TO THIS MOTION**

9 Rather than taking the depositions of Plaintiff Larry Geraci (“Geraci”) and Cross-Defendant
10 Rebecca Berry (“Berry”) to ascertain their version of the facts, Darryl Cotton (“Cotton”) by and
11 through his Attorney Jacob Austin, have concocted a nonsensical and outlandish theory that Geraci’s
12 attorneys (Mr. Weinstein, Mr. Toothacre and Ms. Gina Austin) are involved in a conspiracy to
13 fraudulently deprive Cotton of his property by maintaining a malicious prosecution action. (ROA
14 #514, Reply Brief Motion For Partial Adjudication, p. 1:18-22)

15 In his most recent filing with the Court, Attorney Jacob Austin states: “Weinstein is feigning
16 ignorance so that he can later argue he was incompetent to mitigate his liability for maintaining a
17 malicious prosecution.” (ROA #514, Reply Brief Motion for Partial Adjudication, p. 2:6-7) He
18 continues: “Which, however, is not [Mr. Weinstein’s] primary concern now as he continues to seek
19 to misdirect this Court because he is more concerned with mitigating his financial liability then (sic)
20 with being held accountable to this Court at some later point in time.” (ROA #514, Reply Brief
21 Motion for Partial Adjudication, p. 3:11-13) And further: “...financial self-preservation is an easy
22 motive to understand for Weinstein’s unethical actions in maintained (sic) a malicious prosecution
23 action and obfuscating the facts so that this Court does not realize it.” (ROA #514, Reply Brief
24 Motion for Partial Adjudication, p. 4:24-27)

25 **III. LEGAL ARGUMENT**

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

28 The court has the inherent power to grant a motion in limine to exclude “any kind of evidence

1 which could be objected to at trial, either as irrelevant or subject to discretionary exclusion as unduly
2 prejudicial.” (*Clemens v. American Warranty Corp.* (1987) 193 Cal.App.3d 444; *Peat, Marwick,*
3 *Mitchell & Co. v. Superior Court* (1988) 200 Cal.App.3d 272, 288).

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

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

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

1 *California Dept. of Trans.* (2018) 238 bCal.App.4th 559]

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


3 Attorney Austin's conduct also violates to the California State Bar Civility Guidelines passed
4 in 2009. Section 4(c) of the Civility Guidelines provides that "[a]n attorney should not disparage
5 the intelligence, integrity, ethics, morals or behavior of the court *or other counsel, parties* or
6 participants when those characteristics are not at issue". Attorney Austin's conduct in this case and
7 his accusations leveled at this Court and opposing counsel is unprofessional and reprehensible.

8 **IV. CONCLUSION**

9 For all the foregoing reasons, Mr. Geraci asks this Court to issue an order in limine that Mr.
10 Cotton, Mr. Hurtado, Attorney Jacob Austin, and all attorneys and witnesses be cautioned not to ask
11 questions regarding and/or elicit in any fashion improper opinion testimony or evidence reflecting
12 their views that this case is frivolous, is a malicious prosecution and/or is being maintained for some
13 improper motive.

14 FERRIS & BRITTON
A Professional Corporation

15 Dated: June 20, 2019

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

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**ORDER [PROPOSED] RE
PLAINTIFF/CROSS-DEFENDANTS'
MOTION IN LIMINE NO. 4 OF 15 TO
EXCLUDE COTTON, HURTADO, AND
AUSTIN FROM ESPOUSING THEIR
OPINION THAT THIS CASE IS
FRIVOLOUS AND/OR A MALICIOUS
PROSECUTION CASE OR WAS
OTHERWISE FILED PURSUANT TO A
FRAUDULENT SCHEME TO ACQUIRE
AN MMCC BUSINESS**

**[MIL NO. 4 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. 4 of 15 is
3 [GRANTED/GRANTED WITHOUT PREJUDICE/DENIED/DENIED WITHOUT PREJUDICE].
4 [Any evidence, examination, argument or other reference to Cotton's, Hurtado's and Attorney Jacob
5 Austin's allegations that Mr. Geraci's case is frivolous and/or a malicious prosecution case, or was
6 otherwise filed pursuant to a fraudulent scheme to acquire an MMCC business, as well as any
7 assertion Mr. Geraci's case is frivolous, a malicious prosecution, or was filed as part of a fraudulent
8 scheme to acquire an MMCC business, is precluded, and all counsel are ordered to advise their
9 clients and witnesses of the Court's Order.]

10
11 Dated: July __, 2019

12 _____
13 HON. JOEL R. WOHLFEIL
14 Judge of the San Diego County Superior Court