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Superior Court of California,
County of San Diego
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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'
23 MOTION IN LIMINE TO EXCLUDE
24 REFERENCE TO MR. COTTON'S
25 ALLEGATIONS REGARDING
26 INTIMIDATION BY SEAN MILLER,
27 LOGAN STULMACHER AND AN
28 INDIVIDUAL NAMED DUANE**

[NO. 7 OF 15]

[IMAGED FILE]

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

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:

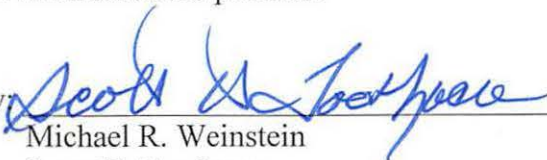
PLEASE TAKE NOTICE that on June 28, 2019 at 8:30 a.m. or as soon thereafter as the
matter may be heard in Department C-73 of the San Diego Superior Court, located at 330 West
Broadway, San Diego, California, Plaintiff/Cross-Defendant, LARRY GERACI, and Cross-
Defendant, REBECCA BERRY, will move *in limine* pursuant to Evid. Code §§ 210, 350, 352, 703,
and 1101(a) for orders precluding any evidence, examination, argument or other reference to Mr.
Cotton and Mr. Hurtado's allegations that Mr. Geraci is somehow connected to Sean Miller, Logan

1 Stulmacher and an individual known only as Duane, individuals whom they allege threatened Mr.
2 Cotton and Mr. Hurtado to force a settlement of the instant action.

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 **A. Sean Miller**

4 During his deposition Mr. Hurtado testified that he was attempting to hire a paralegal to help
5 Attorney Jacob Austin with this case. Mr. Hurtado found Sean Miller either off of Craigslist or a
6 paralegal referral service. Mr. Hurtado met with Mr. Miller and gave Mr. Miller the case file to read
7 to become familiar with this litigation. Mr. Hurtado testified that while reviewing the file, Mr. Miller
8 said "Oh, I know Larry Geraci." (Hurtado Depo. p. 88:7-89:15, true and correct excerpts are attached
9 as Exhibit 5 to NOL.) Allegedly Mr. Miller also told Mr. Hurtado either he was "out on parole" or
10 that he was a "convict." (Hurtado Depo. 89:16-21, a true and correct excerpt is attached hereto as
11 Exhibit 1.) Mr. Hurtado testified that Mr. Miller has been convicted of witness tampering and money
12 laundering. (Hurtado Depo. 92:22-23, a true and correct excerpt is attached hereto as Exhibit 1.)
13 Mr. Hurtado then threatened Mr. Miller that if he talked to Larry Geraci about their meeting that
14 Mr. Hurtado would report Mr. Miller to the State Bar. Mr. Miller said "I get it" and the two parted
15 ways amicably. (Hurtado Depo. p. 90:3-16, true and correct excerpts are attached as Exhibit 5 to
16 NOL.)

17 Mr. Hurtado further testified that two hours after the meeting, Mr. Miller called him and said
18 "I think it would be in your best interests if you contact Mr. Cotton, you know, and get him to settle."
19 Although this alleged statement seems fairly innocuous, Mr. Hurtado took it as a threat which
20 "scared the shit out of [him]." (Hurtado Depo. p. 90:17-91:9, true and correct excerpts are attached
21 as Exhibit 5 to NOL.) Mr. Hurtado specifically asked Mr. Miller if he had spoken to Mr. Geraci to
22 which he replied "no". (Hurtado Depo. 91:10-12, true and correct excerpts are attached as Exhibit
23 5 to NOL.) Nevertheless, Mr. Hurtado somehow concluded the "threat" from Mr. Miller was really
24 a threat coming from Mr. Geraci. Mr. Hurtado has no evidentiary support for this conclusion, it is
25 merely based on his irrational conjecture and speculation.

26 **B. Logan Stulmacher and Duane (last name unknown)**

27 According to Mr. Hurtado, Logan Stulmacher and an individual known only as Duane,
28 contacted Darryl Cotton ostensibly to discuss a business proposition. However, when they met with

1 Mr. Cotton, they insinuated that he should settle with Mr. Geraci. From this conversation Mr. Geraci
2 and Mr. Hurtado have concluded that Mr. Geraci sent Logan Stulmacher and Duane to intimidate
3 Mr. Cotton into settling with Mr. Geraci. (Hurtado Depo. 96:13-97:1, a true and correct excerpt is
4 attached as Exhibit 5 to NOL.) Specifically, the threat was “One was, like, a criminal element of,
5 like, physical intimidation. The other one was that Geraci and Bartell have all this influence with
6 the city, so they could have the police just show up and – I don’t want to speculate but make (sic)
7 things difficult for him.” (Hurtado Depo. 99:13-100:1, a true and correct excerpt is attached as
8 Exhibit 5 to NOL.)

9 Mr. Hurtado believes Logan threatened Mr. Cotton a second time, after Mr. Cotton filed his
10 federal lawsuit. Allegedly Logan returned to Mr. Cotton’s property and had a heated discussion
11 (which was videotaped) telling Mr. Cotton “Hey, keep me out of this; I don’t want to be a part of
12 this anymore.” (Hurtado Depo. 100:5-22, a true and correct excerpt is attached as Exhibit 5 to NOL.)

13 **C. Mr. Hurtado and Mr. Cotton’s Federal Complaint**

14 Based on the above-referenced alleged incidents, Mr. Cotton and Mr. Hurtado filed a
15 Complaint in the United States District Court Southern District of California Case No. ‘18CV2751
16 W AGS, alleging that Sean Miller (“Miller”) is an agent of Geraci and a violent convict out on parole
17 who was found guilty on two counts of committing wire fraud, in violation of 18 U.S.C. § 1343, two
18 counts of money laundering, in violation of 18 U.S.C. § 1957, and one count of witness tampering,
19 in violation of 18 U.S.C. § 1512(b)(3); *United States v. Miller*, 531 F.3d 340, 342 (6th Cir. 2008).
20 Miller threatened Hurtado and his family with the goal of having Hurtado use his influence with
21 Cotton to have him forcibly settle with Geraci. (Federal Complaint ¶ 21, a true and correct copy is
22 attached as Exhibit 3 to NOL.)

23 Mr. Hurtado and Mr. Cotton further alleged that “Geraci’s efforts included physical threats
24 and intimidation tactics that were not only aimed at Cotton, but also Cotton’s friends, employees
25 and his litigation investor Mr. Hurtado.” (Federal Complaint ¶23, 7:10-12, a true and correct copy
26 is attached as Exhibit 3 to NOL.)

27 On May 14, 2019, the Federal Court dismissed Mr. Hurtado and Mr. Cotton’s federal action
28 with prejudice. (A true and correct copy of the Federal Court Order is attached as Exhibit 4 to NOL.)

1 **II. 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. Mr. Cotton and Mr. Hurtado’s Irrational Speculation – That Individuals They**
9 **Contacted, Threatened Them as an Agent of Geraci Is Inadmissible Hearsay**

10 Clearly the statements alleged to have been made by Sean Miller, Logan Stulmacher and
11 Duane [last name unknown] are out of court statements offered for the truth of the matter asserted.
12 As such, they should be excluded as hearsay pursuant to Evidence Code § 1200 et seq. It is
13 anticipated that Mr. Cotton and Mr. Hurtado may claim that the statements were not made for the
14 truth of the matter stated, but rather, as to their respective states of mind. However, neither Mr.
15 Cotton’s nor Mr. Hurtado’s states of mind are in issue. To that extent, the hearsay statements are
16 irrelevant to any issue in the case and inadmissible.

17 **C. The Evidence is Not Made on Personal Knowledge – Evidence Code § 703**

18 Pursuant to Evidence Code Section 703, the testimony of a witness concerning a particular
19 matter is inadmissible unless he has personal knowledge of the matter. Here, neither Mr. Hurtado
20 nor Mr. Cotton have personal knowledge that Mr. Geraci had anything whatsoever to do with the
21 alleged threats made by Mr. Miller, Mr. Stulmacher or Duane. As such, the evidence is inadmissible
22 for lack of personal knowledge.

23 **D. The Evidence is Inadmissible Evidence of Character – Evidence Code § 1101(a)**

24 Evidence Code § 1101(a) provides: “Except as provided in this section and in Sections 1102,
25 1103, 1108, and 1109, evidence of a person’s character or a trait of his or her character (whether in
26 the form of an opinion, evidence of reputation, or evidence of specific instances of his or her
27 conduct) is inadmissible when offered to prove his or her conduct on a specified occasion.

28 Mr. Cotton and Mr. Hurtado’s speculation that Mr. Geraci may have been involved in the

1 alleged intimidation and threats alleged by Mr. Cotton and Mr. Hurtado is irrelevant in this case
2 with the sole exception of attempting to besmirch Mr. Geraci's good character. As such, it should
3 be excluded.

4 **E. The Evidence is More Prejudicial than Probative – Evidence Code § 352**

5 Evidence Code Section 352 provides: "The court in its discretion may exclude evidence if
6 its probative value is substantially outweighed by the probability that its admission will (a)
7 necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of
8 confusing the issues, or misleading the jury."

9 It is self-evident that any unsubstantiated speculation that Mr. Geraci was somehow involved
10 in having Mr. Cotton and Mr. Hurtado threatened to try to force a settlement of this case is highly
11 inflammatory and would result in great prejudice to Mr. Geraci. Admission of this evidence will
12 irreparably harm Mr. Geraci's character with the jury and will likely result in a mistrial. The
13 evidence should be excluded pursuant to Evidence Code Section 352.

14 **III. CONCLUSION**

15 For all the foregoing reasons, Mr. Geraci asks this Court to issue an order in limine that Mr.
16 Cotton, Attorney Jacob Austin and all attorneys and witnesses be cautioned not to refer to Mr. Cotton
17 and Mr. Hurtado's allegations that they were threatened by Sean Miller, Logan Stulmacher and
18 Duane and their speculation that Mr. Geraci had anything to do with those alleged threats.

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20 FERRIS & BRITTON
A Professional Corporation

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22 Dated: June 21, 2019

23 By: Scott H. Toothacre
Michael R. Weinstein
Scott H. Toothacre
24 Attorney for Plaintiff and Cross-Defendant LARRY
25 GERACI and Cross-Defendant REBECCA BERRY
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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION**

LARRY GERACI, an individual,

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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. 7 OF 15 TO
EXCLUDE REFERENCE TO MR.
COTTON'S ALLEGATIONS
REGARDING INTIMIDATION BY SEAN
MILLER, LOGAN STULMACHER AND
AN INDIVIDUAL NAMED DUANE**

[NO. 7 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. 7 of 15 is
3 [GRANTED/GRANTED WITHOUT PREJUDICE/DENIED/DENIED WITHOUT PREJUDICE].
4 [Any evidence, examination, argument or other reference to Mr. Cotton and Mr. Hurtado's
5 allegations that Mr. Geraci is somehow connected to Sean Miller, Logan Stulmacher and an
6 individual known only as Duane, individuals whom they allege threatened Mr. Cotton and Mr.
7 Hurtado to force a settlement of the instant action, is precluded, and all counsel are ordered to advise
8 their clients and witnesses of the Court's Order.]

9
10 Dated: July __, 2019

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