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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'
23 NOTICE OF MOTION AND MOTION IN
LIMINE TO EXCLUDE COTTON'S AND
24 HURTADO'S FINANCIAL CONDITIONS
25 RESULTING FROM THIS LITIGATION**

[MIL NO. 11 OF 15]

[IMAGED FILE]

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

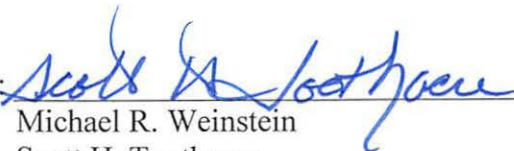
27 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:**

28 **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 Cotton's and Hurtado's financial
conditions allegedly resulting from this litigation.

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

4
5 FERRIS & BRITTON
A Professional Corporation

6
7 Dated: June 20, 2019

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

2 **I. INTRODUCTION**

3 Throughout this litigation, Mr. Cotton, his attorney Jacob Austin and his litigation investor,
4 Mr. Hurtado, have made repeated statements to the effect that this litigation is ruining Mr. Cotton
5 and Mr. Hurtado financially and that Mr. Cotton is in dire financial problems because of this lawsuit.
6 On August 23, 2018, Attorney Jacob Austin sent an email to Attorney Weinstein stating "...if [Mr.
7 Cotton] loses [this case], he will literally become destitute. This case has seriously harmed his
8 ability to provide for his family and loved ones. All he will be thinking about all day, every day for
9 the rest of his life is about how you, Mr. Toothacre and Mrs. Austin used the legal system to defraud
10 him of his Property and the CUP; he should be a multi-millionaire, instead, because of you, he will
11 be (his words) a "homeless bum." (A true and correct copy of that email is attached as Exhibit 15
12 to NOL.) In one email, Mr. Cotton states that he "...had to negotiate away millions to keep this
13 litigation financed." (A true and correct copy of that email is attached as Exhibit 16 to NOL.)

14 Attorney Jacob Austin sent an April 25, 2019 email stating: "Mr. Toothacre you are
15 knowingly maintaining a malicious prosecution case to the great financial and emotional damage of
16 Mr. Hurtado and Mr. Cotton and numerous other parties." (A true and correct copy of that email is
17 attached as Exhibit 10 to NOL) Mr. Hurtado blames Mr. Weinstein and Ms. Austin for his financial
18 situation, i.e., the \$50,000 he invested in this litigation and the \$500,000 he will obtain upon the sale
19 of Mr. Cotton's property, should Mr. Cotton prevail in this lawsuit. (Hurtado Depo, p. 63:23-65:1.
20 a true and correct excerpt is attached as Exhibit 5 to NOL.) Most recently (June 7, 2019), Mr.
21 Hurtado wrote an email to Mr. Toothacre stating "I look forward to the opportunity to explain to
22 Judge Wohlfeil directly what his biased view of Mr. Weinstein has cost me personally." (A true and
23 correct copy is attached as Exhibit 11 to NOL.)

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.

9 Attorneys cannot make appeals to the jury based on irrelevant financial aspects of the case
10 such as the hardship that would be visited on a defendant from a plaintiff’s verdict (*Hoffman v.*
11 *Brandt* (1966) 65 Cal.2d 549, 551-553 [defense counsel argument defendant might end up in a home
12 for the indigent was attorney misconduct]) or the hardship that would be visited on plaintiff from a
13 defense verdict (*Hart v. Wielt* (1970) 4 Cal.App.3d 224, 234 [Plaintiff’s counsel’s argument plaintiff
14 would be “a burden on the taxpayers” lest the jury find in her favor was attorney misconduct]).

15 This is the exact type of evidence and allegations that Mr. Cotton, Mr. Hurtado and Jacob
16 Austin have repeatedly referenced throughout this litigation, i.e., that Mr. Cotton will lose
17 everything as a result of this litigation, that he had to negotiate away millions because of this
18 litigation, and Mr. Hurtado’s blaming Michael Weinstein and Gina Austin for his financial situation
19 resulting from his allegations that Mr. Weinstein fabricated evidence and maintained a malicious
20 prosecution case. Such evidence should clearly be barred by Evidence Code § 352.

21 **III. CONCLUSION**

22 For all the foregoing reasons, Mr. Geraci asks this Court to issue an order in limine that Mr.
23 Cotton, Mr. Hurtado, Attorney Jacob Austin and all attorneys and witnesses be cautioned not to ask
24 questions regarding and/or elicit in any fashion the financial consequences of this litigation has had
25 on Mr. Cotton, Mr. Hurtado and any other of Mr. Cotton’s litigation investors.

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1 Such evidence is irrelevant to any issue in the case and would clearly be used in an attempt
2 to gain sympathy from the jury.
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4 FERRIS & BRITTON
5 A Professional Corporation

6 Dated: June 20, 2019

7 By: 
8 Michael R. Weinstein
9 Scott H. Toothacre
10 Attorney for Plaintiff and Cross-Defendant LARRY
11 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.
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through 10, inclusive,
Defendants.

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Cross-Complainant,
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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. 11 OF 15 TO
EXCLUDE COTTON'S AND HURTADO'S
FINANCIAL CONDITIONS RESULTING
FROM THIS LITIGATION**

**[MIL NO. 11 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. 11 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 financial
5 conditions allegedly resulting from this litigation, is precluded, and all counsel are ordered to advise
6 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