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10 Cross-Defendant REBECCA BERRY

**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

11 **SUPERIOR COURT OF CALIFORNIA**  
12 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

13 LARRY GERACI, an individual,

14 Plaintiff,

15 v.

16 DARRYL COTTON, an individual; and DOES 1  
17 through 10, inclusive,

18 Defendants.

19 DARRYL COTTON, an individual,

20 Cross-Complainant,

21 v.

22 LARRY GERACI, an individual, REBECCA  
23 BERRY, an individual, and DOES 1  
24 THROUGH 10, INCLUSIVE,

25 Cross-Defendants.

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

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

**PLAINTIFF/CROSS-DEFENDANTS'  
27 NOTICE OF MOTION AND MOTION IN  
28 LIMINE TO EXCLUDE LAY OPINION  
TESTIMONY FROM MR. COTTON  
AND/OR MR. HURTADO REGARDING  
THE CUP PROCESS**

[MIL NO. 14 OF 15]

[IMAGED FILE]

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

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

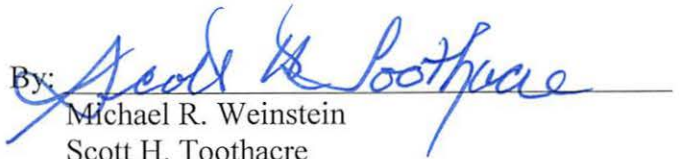
30 **PLEASE TAKE NOTICE** that on June 28, 2019 at 8:30 a.m. or as soon thereafter as the  
31 matter may be heard in Department C-73 of the San Diego Superior Court, located at 330 West  
32 Broadway, San Diego, California, Plaintiff/Cross-Defendant, LARRY GERACI, and Cross-  
33 Defendant, REBECCA BERRY, will move *in limine* pursuant to Evid. Code §§ 210, 350, 352, 703  
34 and 803 for orders precluding any evidence, examination, argument or other reference to Mr. Cotton

1 and Mr. Hurtado's lay opinions regarding the CUP process.

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

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6 FERRIS & BRITTON  
A Professional Corporation

7  
8 Dated: June 20, 2019

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

2 **I. INTRODUCTION**

3 In the Trial Readiness Conference Report, Mr. Cotton lists as issues in dispute:

4 (39) Whether the City of San Diego regulations governing the applications for Marijuana  
5 Outlet permits required disclosure of all parties with an interest in the property and the CUP being  
6 applied for.

7 (40) Whether pursuant to State and City regulations, Mr. Geraci's prior settlement  
8 agreements with the City of San Diego bar him from having an ownership interest in a business  
9 operated pursuant to a marijuana outlet CUP.

10 (55) Whether the fact that Aaron Magagna's competing CUP was granted prior to the CUP  
11 Application on the subject property, despite Plaintiff initiating the official process of approval 17  
12 months prior to the competing CUP, constitutes circumstantial evidence that Plaintiff was  
13 attempting to sabotage the CUP Application.

14 Furthermore, Defendant and Cross-Complainant Darryl Cotton and his litigation investor,  
15 Joe Hurtado have contended throughout this litigation that Mr. Geraci is disqualified from owning  
16 a marijuana dispensary because "Plaintiff has been named a defendant and sanctioned in at least  
17 three actions by the city for owning/managing illegal marijuana dispensaries.<sup>1</sup> (Verified Statement  
18 of Disqualification Pursuant to CCP § 170.1(a)(6)(A)(iii) and CCP § 170.1(A)(6)(B). p. 5:21-25  
19 (ROA #292). Cotton goes on to cite California Bus. & Prof. Code §§ 480(d), 26057(a) and (b), and  
20 §42.1501 of the San Diego Municipal Code regarding the requirements for licensure in an effort to  
21 demonstrate that Mr. Geraci would not legally meet the requirements for licensure. (*Ibid.*) Mr.  
22 Cotton contends that "[h]ad Plaintiff submitted the CUP Application under his own name, it would  
23 have been denied by the City pursuant to the applicable state and local laws and regulations  
24 referenced above." (*Id.* at p. 8:17-18.) Clearly, these legal interpretations of the Business &  
25 Professions Code and the San Diego Municipal Code and the applications of those code sections to  
26 the facts are legal issues for the judge and, possibly, testimony by an expert witness. Mr. Cotton

27 \_\_\_\_\_  
28 <sup>1</sup> This allegation is simply false. Mr. Geraci has never owned or managed illegal marijuana dispensaries.

1 has not designated any expert witnesses in this action. As such, he should be barred by a motion in  
2 limine from referencing these matters in front of the jury.

3 Even if Mr. Cotton had designated an expert to testify on these issues, what the laws mean,  
4 and the way in which the law should be applied to certain facts are questions of law and is not subject  
5 to expert opinion. [*Downer v. Bramet* (1984) 152 Cal.App.3d 837 – expert legal testimony on  
6 whether a property transfer was a gift was inadmissible; [*Communications Satellite Corp. v.*  
7 *Franchise Tax Board* (1984) 156 Cal.App.3d 726 – improper to allow expert interpretation of  
8 taxation statute; *Williams v. Coombs* (1986) 179 Cal.App.3d 626 – improper to admit expert opinion  
9 on the legal question of probable cause.]

10 Neither Mr. Cotton nor Mr. Hurtado have any special knowledge, skill, experience training  
11 or education which would qualify either of them as an expert on the legal requirements for MMCC  
12 licensure in San Diego. Even if they did have such special knowledge, skill, experience, training or  
13 education, expert testimony regarding the application of the laws to the facts of this case would be  
14 inadmissible. (*Ibid.*)

15 Mr. Cotton has also challenged the conduct of the City of San Diego in denying his request  
16 to withdraw Geraci's application for a CUP. (See Mr. Cotton's Issues in Dispute No. 71, Joint Trial  
17 Readiness Conference Report) DSD Project Manager Firouzeh Tirandazi (originally assigned to the  
18 Geraci CUP Application) testified that only the applicant for the CUP application is allowed to  
19 withdraw an application for a CUP. Thus, when Mr. Cotton attempted to withdraw the CUP he was  
20 denied. (Tirandazi Depo.p. 31:9-13, true and correct copies of excerpts are attached as Exhibit 18 to  
21 NOL.) Ms. Tirandazi was then questioned (by Defense Counsel) regarding the General Application  
22 for CUP section 4 which appears to contradict her statement that only the applicant can withdraw  
23 the application. (Tirandazi Depo. p. 32:19-33:4, true and correct copies of excerpts are attached as  
24 Exhibit 18 to NOL.) Ms. Tirandazi testified that the City of San Diego interprets that document to  
25 mean that whomever is given the right to process the application has the right to withdraw it.  
26 (Tirandazi Depo. p. 33:5-18, true and correct copies of excerpts are attached as Exhibit 18 to NOL.)

27 Mr. Cotton and Mr. Hurtado each disagree with Mr. Tirandazi's testimony and instead  
28 believe the City of San Diego has violated Mr. Cotton's Constitutional rights with regard to his

1 property and the CUP process. Mr. Hurtado testified that the City of San Diego has knowingly  
2 violated Mr. Cotton's rights and he doesn't know if that violation was part of a conspiracy or not.  
3 (Hurtado Depo. p. 112:20-25, true and correct copies of excerpts are attached as Exhibit 5 to NOL.)

4 Mr. Hurtado further testified: "I've read some of the regs and codes. I read the deposition  
5 with Firouzeh where the language specifically says that the applicant of a CUP, the owner, can  
6 cancel the CUP. They asked her, "Can you cancel the CUP?" And she said something like: Well,  
7 I don't interpret that way." (Hurtado Depo. 113:5-11, true and correct copy of excerpt attached  
8 hereto as Exhibit 2) Mr. Hurtado continued: "¶ I may not be a civil attorney, but I know that  
9 individuals don't get to just interpret statutes and regulations on their own. The language is explicit.  
10 A property owner can cancel a CUP application." (Hurtado Depo. p. 113:12-19, true and correct  
11 copies of excerpts are attached as Exhibit 5 to NOL.) "So Mr. Cotton requested that CUP application  
12 be canceled, and they didn't. When the city was asked about it, Firouzeh just said: Well, I don't  
13 interpret it that way." (Hurtado Depo. p. 113:16-19, true and correct copies of excerpts are attached  
14 as Exhibit 5 to NOL.)

15 Mr. Hurtado mischaracterizes Ms. Tirandazi's testimony to the extent he claims she is the  
16 individual who interprets the Municipal Code in that fashion. Instead, Ms. Tirandazi testified that  
17 it is the way the City is interpreting it. (Tirandazi Depo. p. 33:15-18, true and correct copies of  
18 excerpts are attached as Exhibit 18 to NOL)

19 **II. LEGAL ARGUMENT**

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

22 The court has the inherent power to grant a motion in limine to exclude "any kind of evidence  
23 which could be objected to at trial, either as irrelevant or subject to discretionary exclusion as unduly  
24 prejudicial." (*Clemens v. American Warranty Corp.* (1987) 193 Cal.App.3d 444; *Peat, Marwick,*  
25 *Mitchell & Co. v. Superior Court* (1988) 200 Cal.App.3d 272, 288).

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1           **B. Mr. Cotton’s and Mr. Hurtado’s Belief that the City of San Diego Knowingly**  
2           **Violated Mr. Cotton’s Constitutional Rights with Regard to His Property is**  
3           **Irrelevant to any Issue in the Case**

4           California Evidence Code Section 350 provides: “No evidence is admissible except relevant  
5 evidence.” Evidence Code 210 provides: “Relevant evidence” means evidence, including evidence  
6 relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove  
7 or disprove any disputed fact that is of consequence to the determination of the action.”

8           Whether or not Mr. Cotton and Mr. Hurtado believe that Mr. Geraci was not qualified to  
9 obtain a CUP under the Business and Professions Code and/or the Municipal Code is irrelevant to  
10 any issue in this case.

11           Whether or not the City of San Diego knowingly violated Mr. Cotton’s Constitutional rights  
12 with regard to his property is completely irrelevant to any issue in this case. The City of San Diego  
13 is not a defendant in this action and neither the Complaint nor the Second Amended Cross-  
14 Complaint asserts that the City knowingly violated Mr. Cotton’s Constitutional rights with regard  
15 to his property.

16           **C. The Testimony Would Be Inadmissible Lay Opinion Without Foundation**

17           Except for expert opinion testimony (Evid. Code § 801)<sup>2</sup> a witness’ testimony concerning a  
18 particular matter is inadmissible unless he or she has personal knowledge of that matter – i.e., the  
19 ability presently to recall a past perception or impression derived from exercise of his or her own  
20 senses. [Evid. Code § 702]

21           If a witness is not testifying as an expert, testimony in the form of an opinion is limited to  
22 opinions that are: (a) rationally based on the perception of the witness; and (b) helpful to a clear  
23 understanding of his testimony.” [Evid. Code § 800] In short, lay opinion is admissible only if based  
24 on matters personally observed by the witness. [*People v. McAlpin* (1991) 53 Cal.3d 1289, 1308.]  
25 Mr. Cotton and Mr. Hurtado’s testimony regarding the legalities of licensure for a CUP application  
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27 <sup>2</sup> Defendant/Cross-Complainant Cotton has not designated a legal expert to testify as to the legal requirements of licensure to  
28 apply for a CUP nor the legal requirements of approval or denial of a CUP. Neither Mr. Cotton nor Mr. Hurtado have any  
expertise with regard to the CUP process and do not qualify as expert witnesses in this regard.

1 is not based upon their personal knowledge. Neither has any special skill, training or experience  
2 with regard to CUP licensure. As such, their opinions in this regard would not be helpful to a clear  
3 understanding of the CUP licensure process.

4 **D. 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 Any unsubstantiated evidence that the City of San Diego, not a party to this action, knowingly  
10 violated Mr. Cotton’s Constitutional rights with regard to his property is completely irrelevant to  
11 any issue in this case and would only be offered to create sympathy for Mr. Cotton portraying him  
12 as a victim.

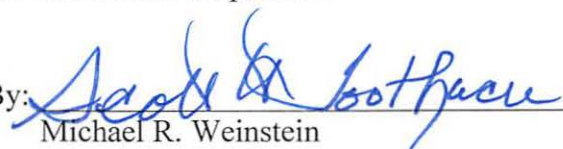
13 The evidence would also result in a trial within a trial on matters wholly unrelated to the  
14 instant action and should be excluded pursuant to Evidence Code Section 352.

15 **III. CONCLUSION**

16 For all the foregoing reasons, Mr. Geraci asks this Court to issue an order in limine that Mr.  
17 Cotton, Attorney Jacob Austin and all attorneys and witnesses be cautioned not to offer lay opinion  
18 evidence that the City of San Diego somehow knowingly violated Mr. Cotton’s rights with regard  
19 to his property; the City’s denial of his request to withdraw the CUP application on his property;  
20 and whether or not Mr. Geraci is legally able to obtain a CUP.

21  
22 FERRIS & BRITTON  
A Professional Corporation

23  
24 Dated: June 20, 2019

25 By:   
Michael R. Weinstein  
26 Scott H. Toothacre  
Attorney for Plaintiff and Cross-Defendant LARRY  
27 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. 14 OF 15 TO  
EXCLUDE LAY OPINION TESTIMONY  
FROM MR. COTTON AND/OR MR.  
HURTADO REGARDING THE CUP  
PROCESS**

**[MIL NO. 14 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. 14 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 lay  
5 opinions regarding the CUP process, is precluded, and all counsel are ordered to advise their clients  
6 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