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11 Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and
12 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

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
21 THROUGH 10, INCLUSIVE,

22 Cross-Defendants.

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

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

**PLAINTIFF/CROSS-DEFENDANTS'
NOTICE OF MOTION AND MOTION IN
LIMINE TO EXCLUDE EVIDENCE OF
COTTON'S ALLEGATIONS GERACI
CONSPIRED WITH MR. MAGAGNA ON
A COMPETING CUP APPLICATION
AND ALLEGATIONS THAT MAGAGNA
THREATENED A WITNESS ON BEHALF
OF MR. GERACI**

[MIL NO. 15 OF 15]

[IMAGED FILE]

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

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


24 **PLEASE TAKE NOTICE** that on June 28, 2019 at 8:30 a.m. or as soon thereafter as the
25 matter may be heard in Department C-73 of the San Diego Superior Court, located at 330 West
26 Broadway, San Diego, California, Plaintiff/Cross-Defendant, LARRY GERACI, and Cross-
27 Defendant, REBECCA BERRY, will move *in limine* pursuant to Evidence Code §§ 210, 350, 352,
28 702, 800 and 1200 *et seq.* for orders precluding any evidence, examination or reference to Mr.

1 Cotton's allegations that Mr. Geraci and Mr. Magagna conspired to have a competing CUP
2 application approved and the allegation that Mr. Magagna threatened a witness on Mr. Geraci's
3 behalf such that she refuses to testify in this matter.

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

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8 FERRIS & BRITTON
A Professional Corporation

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10 Dated: June 20, 2019

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

2 I. INTRODUCTION

3 In Mr. Cotton's Statement of the Nature of the case, in the Joint Trial Readiness Report, Mr.
4 Cotton alleges, inter-alia:

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6 *Mr. Geraci and his agents conspired to sabotage the CUP application on the*
7 *property to limit their liability to Mr. Cotton.* Mr. Cotton alleges this was done by
8 inactivity in the processing of the CUP application, by *conspiring with another party*
9 *to have a competing CUP granted and numerous threats by third parties who were*
10 *acting on behalf of Mr. Geraci."* (Joint Trial Readiness Report, p. 4:1-4, ROA #, bold
11 and italics added.)

12 ***

13 Furthermore, *Mr. Cotton alleges that the individual who was granted the CUP is a*
14 *co-conspirator of Mr. Geraci* and the City confirmed that *this individual has been*
15 *represented by Mr. Gearci's attorney (Gina Austin) in multiple other marijuana*
16 *applications.* (Joint Trial Readiness Report, p. 4:14-16, ROA #546, bold and italics
17 added.)

18
19 *Mr. Cotton further alleges the individual who acquired the CUP threatened a third-*
20 *party witness whose testimony would provide evidence he is a co-conspirator of Mr.*
21 *Geraci.* Said witness was lawfully subpoenaed, but unilaterally canceled her
22 deposition *via counsel who communicated that her client would provide written*
23 *testimony affirming that the individual that acquired the CUP attempted to bribe*
24 *and then threatened her.* Counsel for witness promised to provide witness'
25 testimony regarding the attempted bribery and threats on [], since then counsel for
26 Mr. Cotton has reached out [] times for the testimony. Counsel for witness has not
27 responded and *Mr. Cotton alleges that she has been bribed and/or threatened by Mr.*
28

1 *Geraci's co-conspirator into not providing her testimony before this court.* (Joint
2 Trial Readiness Conference Report, p. 4:16-24, ROA #546, bold italics added)

3 This evidence is objectionable on so many levels and is barred by so many rules of evidence
4 it is hard to even know where to begin the discussion of the inadmissibility of these baseless
5 allegations. Suffice it to say, the allegations are not made on personal knowledge (Evidence Code §
6 702) and thus consist of rank speculation and conjecture. The allegations are based upon multiple
7 layers of inadmissible hearsay from (1) an alleged witness to her attorney; (2) from that attorney
8 allegedly to Mr. Austin; (3) then from Mr. Austin to this court (each a clear violation of Evidence
9 Code §§ 1200, *et seq.*). To the extent there is any relevance (Evidence Code 210) to these baseless
10 allegations, the relevance is clearly outweighed by its prejudicial effect. (Evidence Code § 352.) To
11 the extent the witness is offering to provide written testimony, such a writing is also inadmissible
12 hearsay (Evidence Code § 1200 *et seq.*); and lacks authentication (Evidence Code §§ 403, 1400 and
13 1401.) Finally, the evidence is also inadmissible character evidence. (Evidence Code § 1101.)

14 If Mr. Cotton wanted the witness to appear at trial all he needed to do was issue a simple trial
15 subpoena compelling the witness' attendance. (CCP § 1987(a).) Then disobedience of a "duly
16 served" subpoena represents a form of contempt (CCP § 1209, subd. (a) (10).) Apparently, Mr.
17 Cotton failed to timely issue the witness a valid and enforceable trial subpoena.

18 **II. LEGAL ARGUMENT**

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

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

25 **B. To the Extent the Court Declines to Exclude the Evidence, Plaintiff Requests an** 26 **Hearing Pursuant to Evidence Code §§ 402(a), (b) and 403**

27 In the event the Court declines to exclude this evidence, Plaintiff respectfully requests a
28 hearing outside the presence of the jury so the court may determine the presence or absence of the


1 predicate facts and the admissibility of the proffered evidence pursuant to Evidence Code §§ 201,
2 402 and 403.

3 **III. CONCLUSION**

4 For all the foregoing reasons, Mr. Geraci asks this Court to issue an order in limine excluding
5 any evidence, examination or reference to Mr. Cotton's allegations that Mr. Geraci and Mr.
6 Magagna conspired to have a competing CUP application approved and that Mr. Magagna
7 threatened a witness on Mr. Geraci's behalf such that she refuses to testify in this matter.

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9 FERRIS & BRITTON
A Professional Corporation

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11 Dated: June 21, 2019

12 By: 
13 Michael R. Weinstein
14 Scott H. Toothacre
15 Attorney for Plaintiff and Cross-Defendant LARRY
16 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.

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. 15 OF 15 TO
EXCLUDE EVIDENCE OF COTTON'S
ALLEGATIONS GERACI CONSPIRED
WITH MR. MAGAGNA ON A
COMPETING CUP APPLICATION AND
ALLEGATIONS THAT MAGAGNA
THREATENED A WITNESS ON BEHALF
OF MR. GERACI**

[MIL NO. 15 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. 15 of 15 is
3 [GRANTED/GRANTED WITHOUT PREJUDICE/DENIED/DENIED WITHOUT PREJUDICE].
4 [Any evidence, examination, argument or other reference to Mr. Cotton's allegations that Mr. Geraci
5 and Mr. Magagna conspired to have a competing CUP application approved and the allegation that
6 Mr. Magagna threatened a witness on Mr. Geraci's behalf such that she refuses to testify in this
7 matter is precluded, and all counsel are ordered to advise their clients and witnesses of the Court's
8 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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