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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 THROUGH  
21 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 ANY EVIDENCE  
OF THE COTTON AND HURTADO  
FEDERAL COURT LAWSUITS**

**[MIL NO. 1 OF 15]**

**[IMAGED FILE]**

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

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


23 **PLEASE TAKE NOTICE** that on June 28, 2019 at 8:30 a.m. or as soon thereafter as the  
24 matter may be heard in Department C-73 of the San Diego Superior Court, located at 330 West  
25 Broadway, San Diego, California, Plaintiff/Cross-Defendant, LARRY GERACI, and Cross-  
26 Defendant, REBECCA BERRY, will move *in limine* pursuant to Evid. Code §§ 210, 350 and 352  
27 for orders precluding any evidence, examination or reference to Darryl Cotton's lawsuit filed in the  
28 USDC Case No. 3:18-cv-00325-GPC-MDD, and Darryl Cotton and Joe Hurtado's lawsuit filed in

1 the USDC Case No. 3:18-cv-02751-GPC-MDD.

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

5  
6 FERRIS & BRITTON  
A Professional Corporation

7  
8 Dated: June 20 2019

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

2 **I. INTRODUCTION**

3 On or about August 25, 2017, Mr. Cotton, through his attorneys David S. Demian and Adam  
4 C. Witt of Finch, Thornton and Baird, filed his operative Second Amended Cross-Complaint in this  
5 action alleging 5 causes of action as follows: 1) Breach of Contract; 2) Intentional  
6 Misrepresentation; 3) Negligent Misrepresentation; 4) False Promise, and 5) Declaratory Relief.  
7 Mr. Cotton's Second Amended Cross-Complaint makes no allegations related to a vast criminal  
8 enterprise headed by Larry Geraci, and makes no reference to any alleged conspiracy or racketeering  
9 by Mr. Geraci, Ms. Berry, their counsel or anyone else.

10 Thereafter, on February 9, 2018, and on December 6, 2018, respectively, Mr. Cotton filed  
11 two federal court lawsuits naming the Plaintiff/Cross-Defendants and their counsel in the instant  
12 action and Mr. Hurtado was joined as an additional Plaintiff in the second of those federal court  
13 lawsuits. Both federal court complaints are replete with vitriolic accusations against Mr. Geraci and  
14 Ms. Berry based upon unfounded, wild, and outlandish theories of a vast criminal conspiracy run by  
15 Mr. Geraci. The fact that these ridiculous complaints have been filed, and the baseless,  
16 inflammatory contents of those federal court complaints<sup>1</sup> must be excluded in the instant State Case.  
17 If these matters come before the jury, it would certainly be grounds for a mistrial.

18 These matters are wholly irrelevant to the instant action in that the Second Amended  
19 Complaint makes no assertions with regard to conspiracies, nor has Mr. Cotton sought joint-and-  
20 several liability based upon a conspiracy theory. As such, these accusations would be made only in  
21 an attempt to prejudice the jury against Mr. Geraci, Ms. Berry and their counsel.

22 **II. THE FEDERAL COMPLAINTS**

23 **Cotton's First Federal Court Complaint**

24 On February 9, 2018, Mr. Cotton, proceeding in pro per, filed a federal Complaint in the  
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26 <sup>1</sup> After the initial federal court lawsuit, the judge therein stayed the action *sua sponte*; it is currently stayed pending the outcome  
27 of the instant state court action. In the second federal court lawsuit, the judge granted motions to dismiss and dismissed Mr.  
28 Cotton and Mr. Hurtado's complaint with prejudice.

1 United States District Court Southern District of California, Case No. 3:18-cv-00325-GPC-MDD.  
2 Named as Defendants in that Complaint were Larry Geraci, Rebecca Berry, Gina Austin, Austin  
3 Legal Group, Michael Weinstein, Scott H Toothacre, Ferris & Britton, and the City of San Diego.  
4 In that Complaint Mr. Cotton requested the federal court review the evidence and rulings of the State  
5 Court in the instant action. A true and correct copy of Mr. Cotton's federal court Complaint is  
6 attached hereto to Plaintiff/Cross-Defendants Notice of Lodgment in Support of Motions in Limine  
7 Nos. 1-15 ("NOL") as Exhibit 1 to NOL.

8 Mr. Cotton's federal Complaint asserts 20 causes of action as follows:

- 9 1) 42 U.S.C. SEC. 1983:4<sup>th</sup> Amend. Unlawful Seizure;
- 10 2) 42 U.S.C. SEC. 1983: 14<sup>th</sup> Amend. Due Process Violations;
- 11 3) Breach of Contract;
- 12 4) False Promise;
- 13 5) Breach of Implied Covenant of Good Faith and Fair Dealing;
- 14 6) Breach of Fiduciary Duty;
- 15 7) Fraud in the Inducement;
- 16 8) Fraud/Fraudulent Misrepresentation;
- 17 9) Trespass;
- 18 10) Slander of Title;
- 19 11) False Documents Liability;
- 20 12) Unjust Enrichment;
- 21 13) Intentional Interference With Prospective Economic Relations;
- 22 14) Negligent Interference with Prospective Economic Relations;
- 23 15) Intentional Infliction of Emotional Distress;
- 24 16) Negligent Infliction of Emotional Distress;
- 25 17) Conspiracy;
- 26 18) RICO;
- 27 19) Declaratory Relief; and
- 28 20) Injunctive Relief.

20 Along with the Complaint, Mr. Cotton requested the Federal Court stay the instant State  
21 Court action. The case was assigned to the Honorable Gonzalo P. Curiel. Judge Curiel denied the  
22 request to stay the State Court action. Instead, acting *sua sponte*, Judge Curiel stayed the Federal  
23 Court action pending resolution of the instant State Court action, noting that Mr. Cotton was "clearly  
24 forum shopping by asking [the federal] Court to review the evidence and rulings of the state court..."  
25 (A true and correct copy of Judge Curiel's Order is attached to the NOL as Exhibit 2 to NOL.)

26 **Cotton Second Federal Complaint (with Hurtado as Co-Plaintiff)**

27 Not to be dissuaded by Judge Curiel's comments regarding Mr. Cotton's attempts at forum  
28 shopping, on December 6, 2018, Attorney Jacob Austin filed a second Federal Court Complaint on

1 behalf of Mr. Cotton (and on behalf of Joseph Hurtado) in the United States District Court Southern  
2 District of California, Case Number 3:18-cv-02751-GPC-MDD. (A true and correct copy of Mr.  
3 Cotton's second Federal Court Complaint is attached as Exhibit 3 to NOL)

4 The named Plaintiffs in this second Federal Court Complaint are Darryl Cotton and Joe  
5 Hurtado (Mr. Cotton's litigation investor in the instant State Court action). The named Defendants  
6 are Larry Geraci, Rebecca Berry (Plaintiff and Cross-Defendants in the instant State Court action),  
7 Michael R. Weinstein, Scott H. Toothacre, Ferris & Britton APC (attorneys for Geraci and Berry in  
8 the instant state court action), Gina M. Austin, Austin Legal Group APC (a land use attorney retained  
9 by Geraci to provide advice regarding the Conditional Use Permit process), Sean Miller (an  
10 unknown individual whom Joe Hurtado claims threatened him and his family on behalf of Larry  
11 Geraci), Finch Thornton & Baird, David Demian and Adam Witt (Cotton's first attorneys in the  
12 instant State Court action).

13 Cotton and Hurtado seek over \$5,000,000.00 in damages based on 5 causes of action as  
14 follows: 1) Fraud; 2) Abuse of Process; 3) RICO; 4) Civil Conspiracy; and 5) Legal Malpractice.

15 The gravamen of Cotton and Hurtado's fraud claim seems to be that Geraci filed the instant  
16 litigation stating that the November 2, 2016 agreement for the purchase of Cotton's property was  
17 the final agreement and that Geraci knows this statement to be false. (See second Federal Court  
18 Complaint, Exhibit 3 to NOL, at p. 11:26-12:6.)

19 The gravamen of Cotton and Hurtado's abuse of process claim is that Geraci, with the help  
20 of others, filed a frivolous lawsuit, filed a lis pendens on the property, filed motions, declarations,  
21 responsive pleadings, taken depositions, and generally maintained the lawsuit knowing it lacked  
22 probable cause at its filing and, as a result of Geraci's judicial admissions, was barred by the parol  
23 evidence rule and the statute of frauds. Further it is alleged that Geraci and his cohorts used this  
24 legal procedure to interfere in a contractual relationship and force the sale of the property to Geraci.  
25 (See second Federal Court Complaint, NOL Exhibit 3, at p. 12:13-18.)

26 The gravamen of Cotton and Hurtado's third cause of action for violations of the Racketeer  
27 Influenced and Corrupt Organizations Act (RICO), appears to be based on allegations that Geraci is  
28 the head of a vast criminal enterprise dealing in illegal marijuana operations who is attempting to

1 acquire a prohibited interest in a Marijuana Outlet via a proxy. Cotton and Hurtado allege that the  
2 goal of Geraci and his agent is to circumvent the applicable regulatory scheme (for obtaining a CUP  
3 for an MMCC) and thereby continue to run their criminal enterprise under the façade of a lawful  
4 and legitimate business. (See second Federal Court Complaint, NOL Exhibit 3, paras. 52 and 53 at  
5 p. 12:27-13:2.)

6 The gravamen of Cotton and Hurtado’s civil conspiracy cause of action is that Defendants  
7 conspired to fraudulently deprive Plaintiffs of their interest in the Property and to unlawfully coerce  
8 and intimidate them into having Cotton settle the Geraci Litigation. It is alleged that all the named  
9 Defendants knew that Geraci did not have a lawful claim to the Property, yet he and they agreed,  
10 and took action, to effectuate the fraudulent scheme premised on the false allegation that the  
11 November Document was the final integrated agreement for the Property and in furtherance of the  
12 conspiracy, to unlawfully intimidate Plaintiffs.

13 The gravamen of Mr. Cotton and Mr. Hurtado’s legal malpractice cause of action is that Mr.  
14 Cotton’s first attorneys in the instant State Court action, Finch, Thornton & Baird, by and through  
15 Attorneys Demian and Witt, dismissed viable causes of action without discussing the strategy with  
16 Mr. Cotton beforehand.

17 On May 14, 2019, the Federal Court dismissed this second federal Complaint with prejudice,  
18 again noting that Mr. Cotton was forum shopping. (A true and correct copy of Judge Curiel’s Order  
19 dismissing the second Federal Complaint with prejudice is attached at NOL Exhibit 4)

20 **III. LEGAL ARGUMENT**

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

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

27 **B. The Evidence is Irrelevant to Any Issue in the Instant State Case**

28 Mr. Cotton’s operative Second Amended Cross-Complaint does not contain any allegations

1 related to the formation or operation of a conspiracy. “The pleadings are supposed to define the  
2 issues to be tried.” (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter  
3 Group 2012) ¶ 6:8, p. 6-2.)

4 It should be noted that Mr. Cotton’s original Cross-Complaint filed in this action contained  
5 some conspiracy allegations, albeit in a much narrower context than is being alleged in the Federal  
6 Court action. However, “[i]t is well established that an amendatory pleading supersedes the original  
7 one, which ceases to perform any function as a pleading.” (*Foreman & Clark Corp. v. Fallon*,  
8 (1971) 3 Cal.3d 875, 884, quoting *Meyer v. State Board of Equalization* (1954) 42 Cal.2d 376, 384.)  
9 Thus, an amended complaint supersedes all prior complaints. (*Grell v. Laci Le Beau Corp.* (1999)  
10 73 Cal.App.4<sup>th</sup> 1300, 1307; *Lee v. Bank of America* (1994) 27 Cal.App.4<sup>th</sup> 197, 215; 1 Weil &  
11 Brown, Cal. Practice Guide: Civil Procedure before Trial (The Rutter Group 2009) ¶ 6:704, p. 6-  
12 177.) The amended complaint furnishes the sole basis for the cause of action, and the original  
13 complaint ceases to have any effect either as a pleading or as a basis for judgment. (*Anmaco, Inc. v.*  
14 *Bohlken* (1993) 123 Cal.App.4<sup>th</sup> 891, 901.)” As such, any evidence, examination, or argument or  
15 other reference to an alleged clandestine criminal conspiracy is not at issue in the pleadings and thus  
16 is wholly irrelevant and must be barred.

17 **C. The Evidence Is Inflammatory and Prejudicial and Should be Barred Under**  
18 **Cal. Evid. Code § 352**

19 California Evidence Code Section 352 provides: “The court in its discretion may exclude  
20 evidence if its probative value is substantially outweighed by the probability that its admission will  
21 (a) necessitate undue consumption of time or (b) create substantial damage of undue prejudice, of  
22 confusing the issues, or of misleading the jury. Clearly, Mr. Cotton and Mr. Hurtado’s Federal  
23 Complaints and the scurrilous allegations contained therein would create a substantial danger of  
24 undue prejudice, confusing the issues and of misleading the jury. If such evidence were admitted it  
25 would result in a multitude of mini-trials on evidence wholly unrelated to the instant action.

26 **IV. CONCLUSION**

27 Because the pleadings frame the issues in the case and Mr. Cotton’s Second Amended Cross-  
28 Complaint does not plead a conspiracy, any evidence, including the two Federal lawsuits, and of

1 any alleged conspiracy is irrelevant. Such evidence would also unduly confuse the jury, be unduly  
2 time-consuming and result in prejudice to Mr. Geraci's and Ms. Berry's character and reputation,  
3 and the evidence should be excluded.

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5 FERRIS & BRITTON  
A Professional Corporation

6  
7 Dated: June 20, 2019

8 By: Scott H. Toothacre  
Michael R. Weinstein  
Scott H. Toothacre  
9 Attorney for Plaintiff/Cross-Defendant LARRY  
10 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. 1 OF 15 TO  
EXCLUDE ANY EVIDENCE OF THE  
COTTON AND HURTADO FEDERAL  
COURT LAWSUITS**

**[MIL NO. 1 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. 1 of 15 is  
3 [GRANTED/GRANTED WITHOUT PREJUDICE/DENIED/DENIED WITHOUT PREJUDICE].  
4 [Any evidence, examination, argument or other reference to the Cotton and Hurtado Federal Court  
5 Lawsuits, is precluded, and all counsel are ordered to advise their clients and witnesses of the Court's  
6 Order.]

7  
8 Dated: July \_\_, 2019

\_\_\_\_\_  
9 HON. JOEL R. WOHLFEIL  
Judge of the San Diego County Superior Court