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Attorney for Defendant/Cross-Complainant DARRYL COTTON

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

LARRY GERACI, an individual,
Plaintiff,
vs.
DARRYL COTTON, an individual; and
DOES 1 through 10, inclusive,
Defendants.

Case No. 37-2017-00010073-CU-BC-CTL
**DEFENDANT/CROSS-COMPLAINANT
DARRYL COTTON'S OPPOSITION TO
PLAINTIFF/CROSS-DEFENDANT'S MOTION
IN LIMINE NO. 4 TO EXCLUDE COTTON,
HURTADO, AND AUSTIN FROM ESPOUSING
THEIR OPINION THAT THIS CASE IS VERY
FRIVOLOUS AND/OR A MALICIOUS
PROSECUTION CASE OR WAS OTHERWISE
FILED PURSUANT TO A FRAUDULENT
SCHEME TO ACQUIRE AN MMCC BUSINESS**

AND RELATED CROSS-ACTION.

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

Defendant/Cross-complainant Darryl Cotton ("Cotton), submits the following opposition to Plaintiff/Cross-defendant's motion in limine to exclude Cotton, Hurtado, and Austin from espousing their opinion that this case is frivolous and/or a malicious prosecution case or was otherwise filed pursuant to a fraudulent scheme to acquire an MMCC business.

INTRODUCTION

Plaintiff/Cross-defendants seeks to exclude Cotton, Hurtado, and Austin from espousing their opinion that this case is very frivolous and/or a malicious prosecution case or was otherwise filed

1 pursuant to a fraudulent scheme to acquire an MMCC business. Plaintiff/Cross-defendant's motion
2 should be denied because it is highly prejudicial to defense theory of the case and is overbroad.

3 ARGUMENT

4 **I. GINA AUSTIN IS A MATERIAL WITNESS AND HER CREDIBILITY IS AT ISSUE** 5 **AND COTTON'S DEFENSE THEORY IS BASED ON GERACI'S SCHEME TO DEPRIVE** 6 **HIM OF HIS PROPERTY, TO WHICH MS. AUSTIN ASSISTED.**

7 Gina Austin was Mr. Geraci's attorney for the processing of the CUP on his property. She is a
8 material witness in this action. Cotton has maintained that she has assisted Geraci in attempting to
9 acquire a MMCC business unlawfully by not disclosing his interest in the application though legally
10 required to do so, and furthermore, Cotton anticipates that Ms. Austin will testify that that was an
11 oversight or a mistake, however other individuals with prior sanctions for marijuana related activities
12 have also obtained CUP approval based on a similar tactic. It is clear evidence of a modus operandi.
13 Also relevant is that she spoke to Mr. Cotton's litigation investor and told him directly that she was
14 working on the final agreement between the parties yet made representations to the court that there
15 was a final sale agreement. Mr. Hurtado has provided this court sworn declarations which directly
16 address these facts.

17 Cal. Evid. Code 760 provides:

18 Except as otherwise provided by statute, the court or jury may consider in determining
19 the credibility of a witness any matter that has any tendency in reason to prove or
20 disprove the truthfulness of his testimony at the hearing, including but not limited to
any of the following:

- 21 (a) His demeanor while testifying and the manner in which he testifies.
- 22 (b) The character of his testimony.
- 23 (c) The extent of his capacity to perceive, to recollect, or to communicate any matter
about which he testifies.
- 24 (d) The extent of his opportunity to perceive any matter about which he testifies.
- 25 (e) His character for honesty or veracity or their opposites.
- 26 (f) The existence or nonexistence of a bias, interest, or other motive.
- 27 (g) A statement previously made by him that is consistent with his testimony at the
hearing.
- 28 (h) A statement made by him that is inconsistent with any part of his testimony at the
hearing.
- (i) The existence or nonexistence of any fact testified to by him.
- (j) His attitude toward the action in which he testifies or toward the giving of testimony.
- (k) His admission of untruthfulness.

1 “All relevant evidence is admissible, including evidence bearing on the issue of witness
2 credibility ([Evid. Code, §§ 210](#), 351), and the oral testimony of witnesses supplies valuable evidence
3 relevant to credibility,” *Elkins v. Superior Court*, 41 Cal. 4th 1337, 1356-57 (Cal. 2007).

4 ...parties have the right to testify in their own behalf (*Guardianship of Waite* (1939) [14](#)
5 [Cal.2d 727, 730](#) [citation omitted], and a party's opportunity to call witnesses to testify and
6 to proffer admissible evidence is central to having his or her day in court. (*Kelly v. New*
7 *West FederalSavings* (1996) [49 Cal.App.4th 659, 677](#) [[Citation](#) omitted]; see *Spector v.*
8 *Superior Court* (1961) [55 Cal.2d 839, 843, 844](#) [citation omitted].

9 *Elkins v. Superior Court*, 41 Cal. 4th 1337, 1357 (Cal. 2007)

10 **II. A WITNESS MAY TESTIFY TO ANY FACT THAT IS RELEVANT; GERACI’S**
11 **REQUEST IS OVERBROAD.**

12 Counsel for Cotton concedes that any testimony by Cotton or Hurtado (and to any witness) is
13 admissible if it is relevant and not barred by any other rule of evidence. In this case testimony
14 surrounding the “scheme” is relevant and admissible. For one it goes directly to the theory of the case
15 that Geraci never intended to honor his commitments to Cotton because Geraci and Austin had a
16 scheme to avoid disclosing his interest and intended from the outset to not honor their November 2,
17 2016 agreement, which Cotton contends was a joint venture agreement. If this is in fact proven, then
18 this action is frivolous and/or malicious.

19 Counsel also concedes that he will not make any disparaging remarks to current counsel,
20 however this request to cut off the legs of the defense theory and is overbroad, and highly prejudicial
21 to Cotton’s case.

22 **CONCLUSION**

23 For the foregoing reasons, the Court should deny Plaintiff/Cross-defendant’s motion in limine
24 to exclude Cotton, Hurtado, and Austin from espousing their opinion that this case is frivolous and/or a
25 malicious prosecution case or was otherwise filed pursuant to a fraudulent scheme to acquire an MMCC
26 business.
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DATED: June 26, 2019

Respectfully submitted,

Jacob Austin
Attorney for Defendant/Cross-
Complainant