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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. 5 TO EXCLUDE TESTIMONY
OF HEARSAY STATEMENTS ALLEGED TO
HAVE BEEN MADE AT MEETING WITH
CORINA YOUNG, ATTORNEY MATT
SHAPIRO AND JIM BARTELL – AND ANY
EVIDENCE OR ARGUMENT REGARDING
MR. COTTON'S CONSPIRACY THEORY**

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 testimony of hearsay statements alleged to have been made at meeting with Corina Young. Attorney Matt Shapiro and Jim Bartell – and any evidence or argument regarding Mr. Cotton's conspiracy theory.

INTRODUCTION

Plaintiff/Cross-defendants seeks to exclude testimony of hearsay statements alleged to have been made at meeting with Corina Young, attorney Matt Shapiro and Jim Bartell – and any evidence

1 of argument regarding Mr. Cotton’s conspiracy theory.

2 Plaintiff/Cross-defendant’s motion should be denied for several reasons. First, Corina Young’s
3 testimony regarding statements made by Jim Bartell is admissible as an admission of an agent of a
4 party opponent. Furthermore, evidence that Geraci’s agent made statements that he would actively be
5 attempting to avoid meeting the condition precedent to the contract is not prejudicial and is highly
6 probative.

7 **ARGUMENT**

8 **I. STATEMENTS MADE BY JIM BARTELL ARE ADMISSABLE AS ADMISSIONS**
9 **BY AN AGENT OF A PARTY OPPONENT.**

10 To prove that a statement made by an agent of a party opponent is admissible a party must
11 make a three-part showing. The offering party must demonstrate (1) the existence of an employment
12 or agency relationship "independent of the declarant's statement offered as evidence;" (2) that the
13 statement was "made during the existence of the declarant's `agency or employment" and (3) that the
14 statement concerns a matter within the scope of declarant's employment or agency relationship. Boren
15 v. Sable, 887 F.2d 1032, 1038 (10th Cir. 1989). I will now discuss each requirement in detail.

16 Bartell was hired by Geraci to help lobby the City to approve the marijuana dispensary CUP on
17 the property. Clearly as a lobbyist for Geraci he is engaged as a principal – agent relationship.
18 Second, the statement was made while the CUP on the property was still pending approval, so
19 therefore the statement was made during the existence of the agency relationship. The statement that
20 he [Bartell] “own the CUP and is having it denied because everyone hates Darryl” is directly a
21 statement that concerns a matter within the scope of the declarant employee or agency relationship.

22 **II. PROVING THAT BARTELL MADE STATEMENTS THAT HE WAS GOING TO**
23 **STOP THE CONDITION PRECEDENT OF THE CONTRACT DENIED IS NOT**
24 **PREJUDICIAL.**

25 Here it is not disputed that a condition precedent of a CUP permit was required before the contract
26 would finalize. Here the defense theory is that Geraci conspired to have the CUP denied or otherwise
27 removed once he realized that he would not win at jury trial. *Arguendo*, if Geraci lost a jury trial and
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1 there was a permit for a marijuana outlet he would owe Cotton the full purchase price and the other
2 terms included in the JVA. If the CUP was denied, or in other words the condition precedent could
3 not be met, that theoretically if Geraci lost, he would not be liable to Geraci for any amount because
4 despite winning the case Geraci will claim that recovery is barred because he has somehow believed
5 they are only responsible for the deposit arguably either 10k or 50k depending on who wins the jury
6 trial.

7 Additionally, Geraci has not articulated how this testimony is prejudicial to their case. Geraci
8 repeatedly forgets that though conspiracy is not a cause of action in the cross complaint, it is also a
9 valid defense to his claims and are therefore admissible.

10 **CONCLUSION**

11 For the foregoing reasons, the Court should deny Plaintiff/Cross-defendant's motion in limine
12 to exclude testimony of hearsay statements alleged to have been made at meeting with Corina Young.
13 Attorney Matt Shapiro and Jim Bartell – and any evidence or argument regarding Mr. Cotton's
14 conspiracy theory.

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17 DATED: June 26, 2019

Respectfully submitted,

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21 Jacob Austin
22 Attorney for Defendant/Cross-
23 Complainant
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