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8 Attorney for Defendant/Cross-Complainant DARRYL COTTON

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

11 LARRY GERACI, an individual,
12 Plaintiff,

13 vs.

14 DARRYL COTTON, an individual; and
15 DOES 1 through 10, inclusive,
16 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. 9 TO EXCLUDE TESTIMONY**
) **THAT MR. GERACI'S PRIOR SETTLEMENT**
) **AGREEMENTS BAR HIM FROM OBTAINING**
) **A CUP OR OWNING A BUSINESS**
) **OPERATING A DISPENSARY PURSUANT TO**
) **A CUP**

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18 AND RELATED CROSS-ACTION.

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

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22 Defendant/Cross-complainant Darryl Cotton ("Cotton), submits the following opposition to
23 Plaintiff/Cross-defendant's motion in limine to exclude testimony that Mr. Geraci's prior settlement
24 agreements bar him from obtaining a CUP or owning a business operation a dispensary pursuant to a
25 CUP.

26 **INTRODUCTION**

27 Plaintiff/Cross-defendants seeks to exclude testimony that Mr. Geraci's prior settlement
28 agreements bar him from obtaining a CUP or owning a business operating a dispensary pursuant to a

1 CUP.

2 Plaintiff/Cross-defendant’s motion should be denied for several reasons. But mainly that it is
3 an attempt to circumvent the fact that Geraci is barred
4

5 **ARGUMENT**

6 **I. GERACI’S PRIOR SETTLEMENTS WITH THE CITY REGARDING**
7 **UNLICENSED MARIJUANA DISPENSARIES IS RELEVANT.**

8 Evidence is relevant if it tends to prove or disprove a material fact. In this case Mr. Cotton has filed a
9 cross complaint alleging false promise. One of the undisputed promises made in the November
10 Document which Geraci claims is the full integrated agreement. That document states that Cotton will
11 agree to sell the property to Geraci on approval of a “Marijuana Dispensary. (CUP for a Dispensary)”
12 This language is ambiguous however it is Cotton’s contention that because of the various disclosure
13 laws with not only the City for the CUP but also with the State for final approval Mr. Geraci knew he
14 would never be able to meet this condition without utilizing a proxy to do so. Therefore in this context
15 the fact that Mr. Geraci was sanctioned is relevant. Additionally, it is material that Mr. Geraci never
16 disclosed these facts to Cotton and it is his contention that this was part of his scheme to deprive him of
17 his property.

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

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

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

26 The testimony of witnesses given on *direct* examination is afforded significant weight at
27 trial in ascertaining their credibility; cross-examination does not provide the sole evidence
28 relevant to the weight to be accorded their testimony. "In a contested hearing, the precise
words and demeanor of a witness during direct as well as cross-examination bears on the
credibility and weight the trier of fact accords the witness's testimony. Moreover,

1 observation of a witness on direct is important to the planning and execution of effective
2 cross-examination." (*Denny H. v. Superior Court* (2005) [131 Cal.App.4th 1501, 1513-1514](#) [[33 Cal.Rptr.3d 89](#)].)

3 *Elkins v. Superior Court*, 41 Cal. 4th 1337, 1358 (Cal. 2007)

4 Cal.Evid.Code780

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

8 (a) His demeanor while testifying and the manner in which he testifies.

9 (b) The character of his testimony.

10 (c) The extent of his capacity to perceive, to recollect, or to communicate any matter about which he
11 testifies.

12 (d) The extent of his opportunity to perceive any matter about which he testifies.

13 (e) His character for honesty or veracity or their opposites.

14 (f) The existence or nonexistence of a bias, interest, or other motive.

15 (g) A statement previously made by him that is consistent with his testimony at the hearing.

16 (h) A statement made by him that is inconsistent with any part of his testimony at the hearing.

17 (i) The existence or nonexistence of any fact testified to by him.

18 (j) His attitude toward the action in which he testifies or toward the giving of testimony.

19 (k) His admission of untruthfulness.
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22 II. THE COURT CAN TAKE JUDICIAL NOTICE OF THE DISPOSITION OF THE 23 PRIOR CASES.

24 Mr. Geraci wishes to exclude evidence regarding his previously being sanctioned for an illegal
25 dispensary on his property. Mr. Geraci attempts to couch this issue as one that does not bar his ability
26 to obtain a marijuana dispensary and that he was simply a "property owner." However, there are three
27 separate properties involved with three separate illegal dispensaries, regardless of the CUP application
28 he would never have been able to obtain the final license he need from the State to operate a dispensary.

1 They are not hearsay and even if the orders were hearsay as they would be used not for the matter
2 asserted, that he operated illegal dispensaries, but rather to explain his subsequent action, not
3 appropriately disclosing his interest and using his secretary as a proxy for the application.

4 **CONCLUSION**

5 For the foregoing reasons, the Court should deny Plaintiff/Cross-defendant's motion in limine
6 to exclude testimony that Mr. Geraci's prior settlement agreements bar him from obtaining a CUP or
7 owning a business operation a dispensary pursuant to a CUP.

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11 DATED: June 26, 2019

Respectfully submitted,

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13 _____
14 Jacob Austin
15 Attorney for Defendant/Cross-
16 Complainant
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DATED: June 26, 2019

Respectfully submitted,

Jacob Austin
Attorney for Defendant/Cross-
Complainant