

1 Kimberly S. Oberrecht [C.S.B. No. 190794]
Nathaniel J. Michels [C.S.B. No. 241767]
2 **HORTON, OBERRECHT, KIRKPATRICK & MARTHA**
101 W. Broadway, Suite 600
3 San Diego, California 92101
(619) 232-1183 * (619) 696-5719 [facsimile]
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Clerk of the Superior Court

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By: R. Cersosimo, Clerk

5 Attorneys for Defendant CITY OF LEMON GROVE
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**
10 **CENTRAL JUDICIAL DISTRICT**

11 CHRISTOPHER WILLIAMS,

12 Plaintiff,

13 vs.

14 DAVID ARAMBULA; CITY OF LEMON
GROVE; and DOES 1 through 1,000,

15 Defendants.
16

) CASE NO.: 37-2018-00023369-CU-PO-
CTL

) [Complaint Filed: May 11, 2018]

) Judge: Hon. Richard S. Whitney
Dept: C-68

) **DEFENDANTS' MOTION IN LIMINE,**
) **RE: EXCLUDING EVIDENCE OF**
) **ALLEGATIONS AND DAMAGES NOT**
) **PLED WITHIN COMPLAINT**

) [MIL No. 1 of 22]

) Trial Date: December 13, 2019
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20 I.

21 **INTRODUCTION - PLAINTIFF'S ALLEGATIONS**

22 Plaintiff's Complaint and the allegations therein are straightforward. [A true and correct
23 copy of Plaintiff's Complaint is attached to the Declaration of NJM in support of this MIL as
24 "Exhibit A"].

25 Plaintiff alleges that prior to July 15, 2017 (the date of the incident which this lawsuit is
26 based), Plaintiff submitted one or more applications to Defendant City of Lemon Grove for
27 permission to operate a medical marijuana dispensary. [Exhibit A at 2:8-10]. Plaintiff alleges an
28 application was pending approval. [Exhibit A at 2:10-11]. Plaintiff claims Defendant David

1 Arambula contacted Plaintiff on July 15, 2017 and invited Plaintiff to Defendant Arambula's home
2 to discuss the status of the applications and to share information on the topic. [Exhibit A at 2:12-14].
3 It is alleged Defendant Arambula began drinking, and after it became apparent Defendant Arambula
4 was not prepared to discuss Plaintiff's applications, Plaintiff decided to leave. [Exhibit A at 2:15
5 and 2:20-21]. Plaintiff went to the front of Defendant Arambula's home to schedule an Uber so as
6 to be picked up, and while Plaintiff was looking down at his phone, Plaintiff was unprovokingly
7 attacked by Defendant Arambula. [Exhibit A at 2:21-24]. As a result, Plaintiff was injured.
8 [Exhibit A at 2:24-25]. Based upon the above claimed facts, Plaintiff has brought Causes of Action
9 of Assault and Battery (First Cause of Action), Intentional Infliction of Emotional Distress (Second
10 Cause of Action), and Negligence (Third Cause of Action). [Exhibit A at 3:13, 3:23, and 4:8].

11 Noticeably, Plaintiff did not make any allegations that pertain in an manner to any defendant
12 retaliating against Plaintiff, nor are there any allegations pertaining to Plaintiff sustaining a loss of
13 income and/or business opportunity with respect to medical marijuana dispensaries.

14 II.

15 **PLAINTIFF WILL LIKELY TRY TO INTRODUCE EVIDENCE** 16 **OF LOSS OF INCOME AND/OR A BUSINESS OPPORTUNITY** 17 **PERTAINING TO MEDICAL MARIJUANA DISPENSARIES;** 18 **TO LOSING A CONDOMINIUM;** 19 **TO LOSING A MERCEDES**

20 During deposition, Plaintiff testified he is out "millions" due to the subject incident. [Exhibit
21 B to Decl. of NJM (portions of deposition testimony of Plaintiff) at 331:25 as an example]. Plaintiff
22 testified his belief is the City of Lemon Grove retaliated against Plaintiff by denying appeals Plaintiff
23 had filed to get medical marijuana dispensaries approved. [Exhibit B at 335:4-6]. Plaintiff further
24 testified there was a long list of people "willing to do business" and "write me checks that after the
25 incident were not as willing." [Exhibit B at 335:10-13].¹

26 ¹ It is to be noted Plaintiff recently (on October 16, 2019) filed another lawsuit [Case No. 37-2019-
27 00055136-CU-MC-CTL] against the City of Lemon Grove, the City Council for the City of Lemon Grove, and the
28 City's development departments. This more recent lawsuit contains allegations and damages (not alleged within the
Complaint in this action) pertaining to appeal decisions with medical marijuana dispensaries that did not go in
Plaintiff's favor. [A true and correct copy of Case No. 37-2019-00055136-CU-MC-CTL is attached to the
Declaration of NJM as "Exhibit D"].

1 Plaintiff's significant other, Kathleen McLean, also testified during deposition that she and
2 Plaintiff were retaliated against by the City of Lemon Grove with respect to approval of medical
3 marijuana dispensaries. [Exhibit C to Decl. of NJM (portions of deposition testimony of Kathleen
4 McLean) at 159:8 - 162:20 as an example].

5 Additionally, Ms. McLean testified they (she and Plaintiff) lost a condominium because of
6 the subject incident (Exhibit C at 210:1-6) as well as a Mercedes vehicle that was being financed
7 (Exhibit C at 210:18 - 211:8).

8 III.

9 **LEGAL AUTHORITY - PLAINTIFF WAS REQUIRED TO PLEAD FACTS** 10 **WITH DETAILED ALLEGATIONS AND CAUSATION OF DAMAGES**

11 A plaintiff's complaint frames and limits the issues for trial. Committee on Children's TV,
12 Inc. v. General Foods Corp. (1983) 35 Cal.3d 197, 211-12; Fuentas v. Tucker (1947) 31 Cal.2d 1,
13 4. The complaint gives the defendant fair notice of the basis of the plaintiff's claims, thus enabling
14 the defendant to prepare a defense. Perkins v. Superior Ct. (1981) 117 Cal.App.3d 1, 6.

15 A complaint must contain a "statement of the facts constituting the cause of action, in
16 ordinary and concise language." Prakashpalan v. Engstrom, Lipscomb & Lack (2014) 223
17 Cal.App.4th 1105, 1120, *citing* Code Civ. Proc., § 425.10, subd. (a)(1). The facts to be pleaded are
18 those upon which liability depends - facts constituting the cause of action, or "ultimate facts."
19 Prakashpalan v. Engstrom, Lipscomb & Lack (2014) 223 Cal.App.4th 1105, 1120, *citing* Doe v.
20 City of Los Angeles (2007) 42 Cal.4th at p. 550. Such facts must be plausible. Prakashpalan v.
21 Engstrom, Lipscomb & Lack (2014) 223 Cal.App.4th 1105, 1120. A complaint must allege the
22 ultimate facts necessary to the statement of an actionable claim. Id.

23 "In negligence cases, although negligence may be pleaded in general terms, if the pleaded
24 facts of negligence and injury do not naturally give rise to an inference of causation, the plaintiff
25 must plead specific facts explaining how the conduct caused or contributed to the plaintiff's injury."
26 Prakashpalan v. Engstrom, Lipscomb & Lack (2014) 223 Cal.App.4th 1105, 1120, *citing* Bockrath
27 v. Aldrich Chemical Co. (1999) 21 Cal.4th 71, 78.

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IV.

**ANY EVIDENCE OF DAMAGES NOT ALLEGED WITHIN THE COMPLAINT
(INCLUDING FINANCIAL LOSS PERTAINING TO MEDICAL MARIJUANA
DISPENSARIES; LOSS OF A CONDOMINIUM; AND LOSS OF
A MERCEDES VEHICLE) SHOULD BE EXCLUDED**

- A. **Plaintiff did not plead any facts within the Complaint alleging the incident caused financial loss pertaining to medical marijuana dispensaries; loss of a condominium; nor the loss of a Mercedes vehicle**

Plaintiff's Complaint is completely devoid of any allegations explaining how the conduct by Defendants caused or contributed to Plaintiff being financially harmed pertaining to medical marijuana dispensaries and/or the loss of a condominium and/or the loss of a Mercedes vehicle. Moreover, Plaintiff's allegations within the Complaint do not make any reference nor overture to any Defendant retaliating against Plaintiff in any manner. As such, any and all types of evidence (including demonstrative, video, documentary, and/or testimony) with respect to Plaintiff being financially harmed pertaining to medical marijuana dispensaries and/or the loss of a condominium and/or the loss of a Mercedes vehicle should be excluded.

- B. **Any testimony of any claimed value of financial loss pertaining to medical marijuana dispensaries, the loss of a condominium, or the loss of a Mercedes vehicle would require expert testimony and would also be speculative**

Plaintiff did not designate nor retain any financial expert to provide an opinion with respect to any claimed value of financial loss pertaining to medical marijuana dispensaries, the loss of a condominium, or the loss of a Mercedes vehicle. Neither Plaintiff nor his significant other, Kathleen McLean, have any expertise or training with respect to financial valuation in such areas. Neither Plaintiff nor Kathleen McLean are qualified to offer financial valuation testimony.

A lay witness's testimony is limited to the facts of which the witness has personal knowledge and that the witness may not give a personal opinion about those facts. Bowman v Wyatt (2010) 186 Cal.App.4th 286, 330. While a lay witness is competent to testify as to facts the witness has personally observed, this does not necessarily make admissible the witness's inferences drawn from those facts. In re Automobile Antitrust Cases I & II (2016) 1 Cal.App.5th 127, 145. See People v Jones (2017) 3 Cal.5th 602 (when lay witness offers opinion that goes beyond facts witness personally observed, this opinion is inadmissible).

1 Moreover, for Plaintiff or Kathleen McLean (who are lay witnesses) to offer any financial
2 valuation opinion testimony would be complete speculation. Expert opinion needs to have a
3 foundation. An expert's opinion based on speculation or conjecture is inadmissible. P&D
4 Consultants, Inc. v City of Carlsbad (2010) 190 Cal.App.4th 1332, 1348-1349 [judge properly
5 excluded expert's opinion on damages that lacked any reasonable basis]; Brown v Ransweiler (2009)
6 171 Cal.App.4th 516, 529–532 [judge properly excludes expert's opinion based on conjecture rather
7 than on actual evidence]. In this situation, even if Plaintiff or Kathleen McLean had an expertise
8 (which they do not have) with respect to the valuation of financial loss pertaining to medical
9 marijuana dispensaries, the loss of a condominium, or the loss of a Mercedes vehicle, such opinion
10 testimony would lack proper foundation and would be completely speculative.

11 **C. Any testimony of any claimed value of financial loss pertaining to medical**
12 **marijuana dispensaries, the loss of a condominium, or the loss of a Mercedes**
13 **vehicle is irrelevant and would unduly consume time, confuse the issues, and**
14 **mislead the jury**

15 Evidence Code §350 states:

16 “No evidence is admissible except relevant evidence.”

17 Relevant evidence is defined in Evidence Code §210 as:

18 “Relevant evidence” means evidence. . . having any tendency in
19 reason to **prove or disprove any disputed fact** that is of
20 consequence to the determination of the action.

21 This case is entirely about claimed injuries and damages arising from a physical altercation
22 between Plaintiff and Mr. Arambula. The City of Lemon Grove is involved solely because Plaintiff
23 is asserting Mr. Arambula's conduct arose from and was directly related to Mr. Arambula's
24 performance of official duties. *See* Cal. Gov't Code §815.3(b).

25 As referenced above, the Complaint is completely devoid of any allegations explaining how
26 the conduct by Defendants caused or contributed to Plaintiff being financially harmed pertaining to
27 medical marijuana dispensaries and/or the loss of a condominium and/or the loss of a Mercedes
28 vehicle. As such, any evidence with respect to the above is irrelevant. Moreover, even if evidence
pertaining to financial loss relating to medical marijuana dispensaries and/or the loss of a

1 condominium and/or the loss of a Mercedes vehicle was somehow relevant (which it is not), such
2 evidence would only cause the jury to be misled and/or confused. Furthermore, such evidence would
3 waste the Court's and jury's time.

4 V.

5 CONCLUSION

6 Plaintiff did not make any allegations that pertain in an manner to any defendant retaliating
7 against Plaintiff resulting in Plaintiff sustaining a loss of income and/or business opportunity with
8 respect to medical marijuana dispensaries. Nor did Plaintiff make any allegations pertaining to the
9 loss of a condominium or the loss of a Mercedes vehicle. California law mandates that a Plaintiff
10 must plead specific enough facts explaining how a defendant's conduct caused or contributed to a
11 plaintiff's claimed injury and/or damage. Moreover, testimony evidence with respect to the above
12 would necessitate expert opinion and would require Plaintiff and/or Ms. McLean to speculate with
13 respect to the same. Furthermore, any evidence with respect to the above would unnecessarily waste
14 time, confuse the issues, and mislead the jury.


15 As such, it is respectfully requested that any evidence (including demonstrative, video,
16 documentary, and/or testimony) which pertains to allegations and/or damages not pled within the
17 Complaint be excluded. This includes, but is not limited to, any claimed value of financial loss
18 pertaining to medical marijuana dispensaries, the loss of a condominium, or the loss of a Mercedes
19 vehicle.

20 Respectfully submitted.

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22 Dated: December 5, 2019

HORTON, OBERRECHT, KIRKPATRICK & MARTHA

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24 By:


25 Kimberly S. Oberrecht,
26 Nathaniel J. Michels,
27 Attorneys for Defendant CITY OF LEMON GROVE
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