

ORIGINAL

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By: R. Cersosimo, Clerk

Attorneys for Defendant DAVID ARAMBULA

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO – HALL OF JUSTICE

11 CHRISTOPHER WILLIAMS,

12 Plaintiff,

13 v.

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

17 Defendants.

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 TO
PRECLUDE PLAINTIFF FROM
PRESENTING PHOTOGRAPHIC AND
DEMONSTRATIVE EVIDENCE
DEPICTING THE TOPS OF PLAINTIFF'S
HANDS; DECLARATION OF EMILY M.
STRAUB**

[Defense MIL No. 7 of 22]

Trial Date: December 13, 2019

21 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

22 PLEASE TAKE NOTICE that Defendant David Arambula hereby moves the Court, on
23 behalf of the defense, for an order precluding Plaintiff Christopher Williams and his counsel of
24 record from presenting photographic evidence of the tops of plaintiff's hands and demonstrative
25 evidence depicting same.

26 This motion is based on the supporting memorandum of points and authorities, the
27 declaration of Emily M. Straub, the pleadings and papers on file in this action, and upon such
28 argument and evidence as may be presented prior to or at the hearing of this matter.

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1 **I. INTRODUCTION**

2 It is anticipated plaintiff and his counsel of record will attempt to the present the jury with
3 photographic and other demonstrative evidence depicting the tops of plaintiff's hands following the
4 subject physical altercation. The photographs do not depict an alleged injury suffered by plaintiff.
5 Plaintiff contends the photographs show a lack of injury/bruising to plaintiff's hands, which supports
6 his claim he did not punch Mr. Arambula during the physical altercation. Plaintiff and his counsel
7 should be precluded from presenting the jury with these photographs and any demonstrative
8 evidence using these photographs, because the photographs cannot be definitively authenticated and
9 are otherwise unduly prejudicial.

10 **II. AUTHORITY FOR MOTION**

11 A motion *in limine* is the appropriate method "to preclude the presentation of evidence
12 deemed inadmissible and prejudicial by the moving party." (*Blanks v. Seyfarth Shaw, LLP* (2009)
13 171 Cal.App.4th 336, 375.) The important purpose served by such motion is "to avoid the
14 obviously futile attempt to "unring the bell" in the event a motion to strike is granted in the
15 proceedings before the jury." (*Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d 325, 337.)

16 **III. THE PHOTOGRAPHS AT ISSUE**

17 Plaintiff's partner, Kathleen McLean, produced a hard copy of various black and white
18 photographs at the time of her deposition. The photographs depict various portions of plaintiff's
19 body. Pertinent for purposes of this motion are two photographs of the tops of plaintiff's hands,
20 which Ms. McLean testified she took at approximately 8 a.m. or 9 a.m. on July 15, 2017,
21 approximately eight to nine hours after the subject physical altercation. (*See* photographs attached
22 as Exhibits 3 and 4 to Declaration of Emily M. Straub ("Straub Decl."); *see* transcript excerpts
23 from March 27, 2019 deposition of Kathleen McLean attached as Exhibit 6 to Straub Decl. at
24 157:10-158:12.) Approximately two weeks following Ms. McLean's deposition, plaintiff's
25 counsel electronically served electronic color photographs represented to be the original version
26 of the black and white paper photographs Ms. McLean produced at her deposition. (*See* Straub
27 Decl. at ¶¶ 4, 8; *See* Exhibits 1 and 5 to Straub Decl.) The metadata for these photographs does
28 not provide the date on which these photographs were taken. (*See* Exhibit 2 to Straub Decl.)

1 **IV. THE COURT SHOULD EXCLUDE THE EVIDENCE PURSUANT TO EVIDENCE**
2 **CODE SECTION 1401**

3 Per Evidence Code § 1401(a), “[a]uthentication of a writing, including a photograph, is
4 required before it may be received in evidence.” (*People v. Goldsmith* (2014) 59 Cal.4th 258, 266.)
5 The party seeking to introduce a photograph into evidence bears the burden of authentication.
6 (*People v. Goldsmith* (2014) 59 Cal.4th 258, 266-267.)

7 Here, it is anticipated plaintiff will attempt to use Ms. McLean to authenticate the
8 photographs of the tops of plaintiff’s hands. But neither Ms. McLean nor plaintiff has provided any
9 other means to authenticate the photographs. At first, Ms. McLean produced the photographs at her
10 deposition as black and white prints. Plaintiff’s counsel later provided defendants with what is
11 claimed to be the original electronic version of the photographs. Interestingly, the electronic version
12 shows no date stamp or other metadata that would permit the defense to ascertain when the
13 photographs were taken or by whom. As such, the photographs cannot be definitively authenticated,
14 they are unreliable, and should therefore be excluded from trial regardless of format.

15 **V. THE COURT SHOULD EXCLUDE THE EVIDENCE UNDER EVIDENCE CODE**
16 **SECTION 352**

17 Pursuant to Evidence Code Section 352, the trial court has broad discretion to “exclude
18 evidence if its probative value is substantially outweighed by the probability that its admission
19 will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice,
20 of confusing the issues, or of misleading the jury.” (*People v. Holford* (2012) 203 Cal.App.4th
21 155, 167.) Evidence Code section 352 is designed to avoid evidence that “uniquely tends to evoke
22 an emotional bias against [a party] . . . and which has very little effect on the issues.” (*People v.*
23 *Karis* (1988) 46 Cal.3d 612, 638.) CACI 5000 instructs jurors: “You must not let bias, sympathy,
24 prejudice, or public opinion influence your decision.”

25 Plaintiff does not need the hand photographs to explain the subject physical altercation, or
26 his injury symptoms. The only purposes for presenting demonstrative and other photographic
27 evidence of plaintiff’s hands to the jurors would be to improperly (a) mislead them, (b) inflame
28 them, and/or (c) invoke sympathy for plaintiff. Such result would unduly prejudice the defense.

1 Furthermore, the electronic color photographs cannot be authenticated, as discussed above, and
2 therefore have no probative value. The black and white prints of the photographs otherwise lack
3 probative value because they are black and white and do not therefore provide an accurate
4 presentation of what the surface of plaintiff's hands actually looks like. Moreover, only expert
5 testimony could be used to opine about what plaintiff alleges – that the photographs prove plaintiff
6 did not punch Mr. Arambula. But, plaintiff cannot provide any expert opinions at trial because he
7 did not designate any retained or non-retained experts. Accordingly, the jury should not be exposed
8 to the subject photographs or demonstrative evidence depicting those photographs.

9 **VI. CONCLUSION**

10 For all of the foregoing reasons, Mr. Arambula respectfully requests the Court grant this
11 motion and issue and order precluding plaintiff and his counsel from presenting the subject
12 photographs of plaintiff's hands and demonstrative evidence utilizing those photographs.

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15 Dated: December 5, 2019

TYSON & MENDES

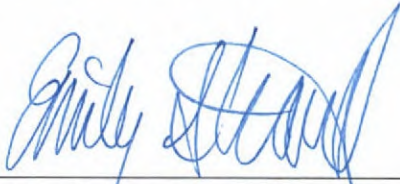
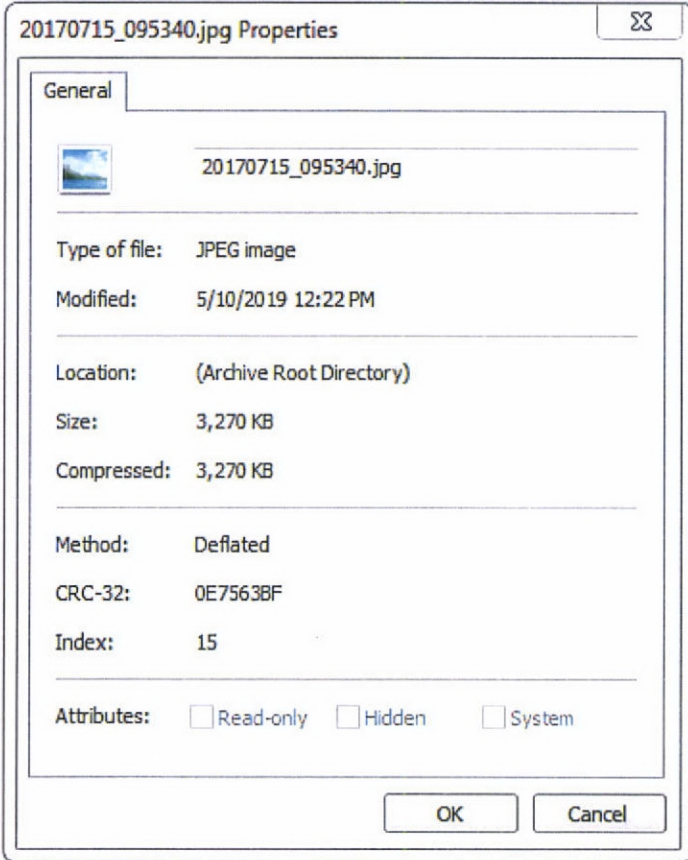
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18 By: 
19 _____
20 Jessica G. Heppenstall, Esq.
21 Emily M. Straub, Esq.
22 Attorneys for Defendant DAVID ARAMBULA
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EXHIBIT 1



EXHIBIT 2



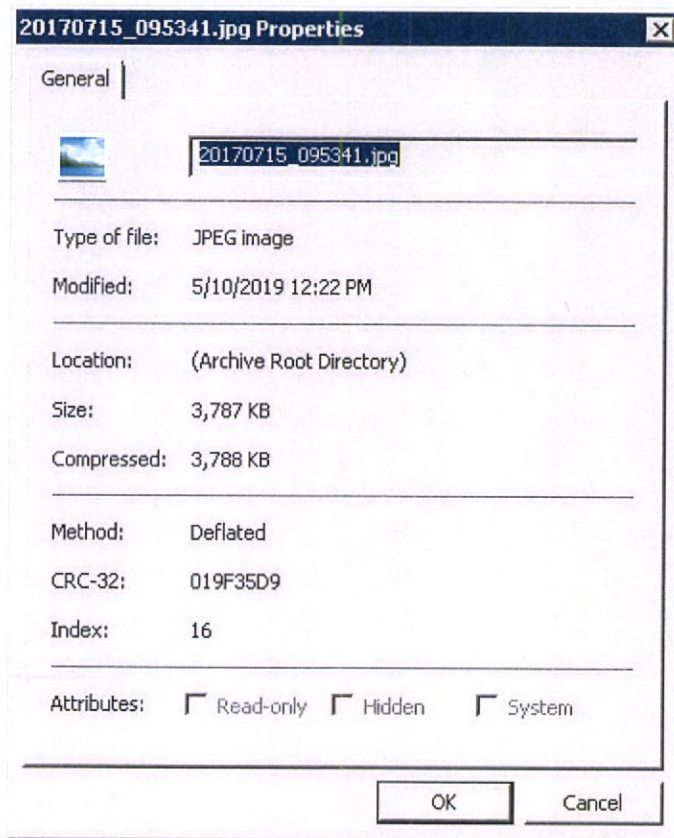


EXHIBIT 3



K. McKeon
EXHIBIT NO. B-2D
3-27-19
L. Barrón, CSR

EXHIBIT 4



K. McLean
EXHIBIT NO. B-21
3-27-19
L. Barrón, CSR

EXHIBIT 5

