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By: R. Cersosimo, Clerk

Attorneys for Defendant DAVID ARAMBULA

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

CHRISTOPHER WILLIAMS,

Plaintiff,

v.

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

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'S USE OF THE "REPTILE THEORY"

[MIL No. 9 of 22]

Trial Date: December 13, 2019

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

PLEASE TAKE NOTICE that Defendant David Arambula hereby moves the Court, on behalf of the defense, for an order precluding Plaintiff Christopher Williams and his counsel of record from (a) introducing evidence and argument based on the "Reptile Theory" during trial, and (b) implementing the "Reptile Theory" into the questioning of prospective jurors during *voir dire*.

This motion is based on the supporting memorandum of points and authorities, the pleadings and papers on file in this action, and upon such 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 Christopher Williams and his counsel will attempt to introduce
3 evidence and argument based on the “Reptile Theory” to confuse, mislead, and inflame the jury into
4 awarding an inflated damages award. Such tactic is legally improper, and it will be unduly
5 prejudicial to the defendants. As such, the Court should issue an order precluding plaintiff and his
6 counsel of record from introducing evidence and argument based on the “Reptile Theory” at any
7 time during trial.

8 **II. AUTHORITY FOR MOTION**

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

14 **III. USE OF THE REPTILE THEORY SHOULD BE PROHIBITED AS A MATTER**
15 **OF LAW**

16 **A. Introduction to the “Reptile Theory”**

17 In 2009, David Ball and Don C. Keenan co-authored *Reptile: The 2009 Manual of the*
18 *Plaintiff’s Revolution* (“*Reptile*”). *Reptile* is based on a concept by neuroscientist Paul MacLean
19 that people are driven by the “triune” or “reptilian” portion of their brains. (*Reptile*, p. 13.) This
20 portion of the brain is referred to as “reptilian” in the book because its function is allegedly identical
21 to the brain of reptiles, in that it houses basic life functions, such as breathing, balance, hunger, and
22 the fundamental life force: survival. (*Id.* at pp. 13, 17.) The book posits the survival instinct extends
23 beyond an individual’s survival and has the larger purpose of allowing for the survival of the human
24 species. (*Id.* at p. 17.)

25 The authors of the *Reptile* manual explain the trial goal of a plaintiff’s attorney should be to
26 get a juror’s brain into “reptilian” survival mode. (*Reptile*, p. 18.) The major axiom of *Reptile* is
27 “when the Reptile [shorthand for the reptilian portion of the brain] sees a survival danger, she
28 protects her genes by impelling the juror to protect herself and the community.” (*Id.* at 19.)

1 In the chapter entitled *Safety Rules and the Reptile*, the authors explain every case needs an
2 “umbrella rule” to trigger everyone’s reptilian survival instincts. (*Reptile, supra*, at p. 55.) The
3 authors define the umbrella rule for almost every case as follows: “A driver [or physician, company,
4 policeman, lawyer, accounting firm, etc.] is not allowed to needlessly endanger the public. (*Id.*)

5 In a subsection of the chapter entitled *The Reptile and the Standard of Care*, the authors
6 explain how to use the above “umbrella rule” as a starting point for avoiding expert testimony
7 regarding the actual and proper standard of care, as follows:

8 The Reptile is not fooled by defense standard-of-care claims. Jurors
9 are, but not Reptiles. When there are two or more ways to achieve
10 exactly the same result, the Reptile allows – demands! – only one level
11 of care: the safest.

12 (*Id.* at 44.)

13 It is anticipated plaintiff and his counsel will attempt to question prospective jurors, and
14 present evidence or argument at trial, based on the “Reptile Theory.” Such tactic would improperly
15 misdirect the jury’s attention from the *actual* standard of care applicable to plaintiff’s negligence
16 claim, to what would have been the *safest* possible action under the circumstances at issue in the
17 lawsuit.

18 **B. The “Reptile Theory” Impermissibly Departs from the Standard of Care**

19 To establish negligence, a plaintiff must show the defendant failed to use reasonable care to
20 prevent harm to himself or others. (CACI 401.) The applicable standard of care dictates “[a] person
21 is negligent if he or she does something that a reasonably careful person would not do in the same
22 situation or fails to do something that a reasonably careful person would do in the same situation.”
23 (*Id.*) The “Reptile Theory,” however, is designed to redefine and heighten the standard of care in a
24 negligence-based cause of action by effectively turning it into a strict liability standard. Under the
25 “Reptile Theory,” the *only* standard of care available is the “safest possible choice.” (*Reptile, supra*,
26 at p. 63.) There is no variance allowed for what other reasonably careful people would do under
27 similar circumstances as required in a negligence case. Instead, the “Reptile Theory” is designed to
28 create strict liability whenever a defendant does not make what plaintiff contends, with the benefit

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1 of hindsight, would have been the “safest possible choice,” without regard for other acceptable
2 choices. (*Reptile*, p. 63.)

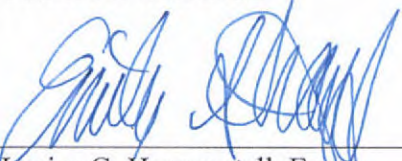
3 Negligence actions are not based on strict liability and must not be converted into strict
4 liability actions. (*See Valentine v. Baxter Healthcare Corp.* (1999) 68 Cal.App.4th 1467, 1484
5 [“Strict liability is not concerned with the standard of due care or the reasonableness of a
6 [defendant’s] conduct”].) Questions such as whether a defendant needlessly endangered a plaintiff,
7 while seemingly innocuous, are actually designed as the first step in improperly transforming a
8 negligence-based claim into one of strict liability. Rather than holding the plaintiff to the burden of
9 proof required by California law, the “Reptile Theory” is the plaintiff’s attempt to lessen plaintiff’s
10 burden to that of proving merely that defendants did not act in a manner which hindsight reveals
11 may have been the “safest” way possible. This manipulation of the standard of care to create strict
12 liability for negligence actions is contrary to California law, and should be precluded from *voire dire*
13 and trial.

14 **IV. CONCLUSION**

15 For all of the foregoing reasons, Mr. Arambula respectfully requests the Court grant this
16 motion and issue and order precluding plaintiff and his counsel from (a) introducing evidence and
17 argument based on the “Reptile Theory” during trial, and (b) implementing the “Reptile Theory”
18 into the questioning of prospective jurors during *voir dire*.

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20 Dated: December 5, 2019

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