

1 Kimberly S. Oberrecht [C.S.B. No. 190794]
2 Heidi K. Williams [C.S.B. No. 297428]
3 **HORTON, OBERRECHT, KIRKPATRICK & MARTHA**
4 225 Broadway, Suite 2200
5 San Diego, California 92101
6 (619) 232-1183 * (619) 696-5719 [facsimile]

2018 DEC 27 PM 1:24

FILED
Clerk of the Superior Court

DEC 27 2018

By: Anthony Shirley, Deputy

Attorneys for Defendant CITY OF LEMON GROVE

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)
15 GROVE; and DOES 1 through 1,000,)

16 Defendants.)

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

REPLY TO PLAINTIFF'S
OPPOSITION TO DEFENDANT
CITY OF LEMON GROVE'S
MOTION TO COMPEL

IMAGED FILED

Action Filed: May 11, 2018
Trial Date: None Set

17
18 **I.**

19 **INTRODUCTION**

20 Plaintiff Christopher Williams has never affirmed he complied with the Civil Discovery Act
21 requirement to conduct a "reasonable inquiry" to comply with defendant City of Lemon Grove's
22 request for relevant photographs. Instead, he contends he would have to issue a subpoena to his
23 long-time significant other to obtain these photographs because they are not legally married. This
24 disingenuous argument is merely litigation gamesmanship that should not be tolerated by this court.

25 Mr. Williams and Ms. McLean, who took the photographs at issue, live together and hold
26 themselves out to the world as a married couple. Mr. Williams has not disclosed any discord in the
27 relationship or any credible reason he cannot obtain the photographs if he simply asked for them.
28 For these reasons and those presented in the original motion, defendant City of Lemon Grove seeks

1 an order to compel and sanctions for misuse of the discovery process.

2 **II.**

3 **PLAINTIFF IS REQUIRED TO MAKE A REASONABLE INQUIRY TO**
4 **OBTAIN AND PRODUCE RESPONSIVE DOCUMENTS**

5 Plaintiff Christopher Williams' ("Plaintiff") argument that the photographs are not within
6 his possession, custody, or control is not credible given the longstanding relationship he has had
7 with Ms. McLean. Even so, if Plaintiff cannot produce non-privileged documents that are
8 responsive to defendant City of Lemon Grove's ("City") request for production, he must still affirm
9 he made a reasonable inquiry to comply with the request. Plaintiff has failed to affirm he made any
10 such inquiry. Given this, he is not in compliance with the Civil Discovery Act and the instant
11 motion should be granted in its entirety.

12 When answering a request for production, if a party cannot produce requested items, the
13 party must "affirm that a diligent search and a reasonable inquiry has been made in an effort to
14 comply with [the] demand." CAL. CODE CIV. P. § 2031.230.

15 Plaintiff contends he is not in possession, custody, or control of responsive photographs
16 merely because his significant other, Kathleen McLean, took them. Pl. Opp. 2:11-12. He goes to
17 great lengths to draw a line based on their non-marital status. However, marital status alone is not
18 dispositive on whether an individual has possession, custody, or control of an item. Plaintiff has
19 not cited any legal authority to support such a claim.

20 The photographs at issue in this motion are kept within Plaintiff's household. Plaintiff and
21 Ms. McLean hold themselves out to the world as spouses. Plaintiff admits they reside together. Pl.
22 Opp. Declaration of Plaintiff ("Decl. Pl.") ¶ 2. On July 15, 2017, Ms. McLean told a law
23 enforcement officer that she and Plaintiff had been married for 14 years. Declaration of H. Williams
24 ("Decl. H. Williams") ¶ 4. Ms. McLean is listed as Plaintiff's "wife" and next of kin in Plaintiff's
25 hospital records. Decl. H. Williams ¶ 5. Even if they are not legally married, Plaintiff and Ms.
26 McLean have clearly merged their lives for years. Plaintiff's own counsel believed the couple were
27 married until some time after the instant motion was filed. These facts indicate Plaintiff could easily
28 obtain the other 32 photographs despite his non-marital status by making a simple request to Ms.

1 McLean.

2 Plaintiff has not stated any reason he cannot obtain the photographs from Ms. McLean with
3 a simple request. He has not disclosed any discord between himself and Ms. McLean. Plaintiff
4 admits Ms. McLean provided four photographs to him. Decl. Pl. ¶ 2. He also admits Ms. McLean
5 “told [Plaintiff] she took a total of 36 photographs.” Decl. Pl. ¶ 2. This indicates the couple had
6 a conversation of some kind about the requested documents. Presumably, if Plaintiff asked for all
7 36 photographs and Ms. McLean refused to provide them, Plaintiff would report this to the court.
8 He has not declared Ms. McLean is refusing to give him the photographs. This omission indicates
9 Plaintiff never asked for these documents, as required by Code.

10 Plaintiff argues he can only obtain the photographs by subpoena, which makes them “equally
11 available” to the City. This is demonstrably not true because Plaintiff obtained four photographs
12 without a subpoena already.

13 Plaintiff cites *Ryan v. Superior Court* (1960) 186 Cal.App.2d 813, 819, to support his
14 contention that the “Civil Discovery Act does not require a party to prepare his opponent’s case.”
15 Pl. Opp. 2:20-21. The *Ryan* case is inapposite to this matter. In *Ryan*, the moving party sought to
16 compel plaintiff to answer detailed interrogatories, which would have required significant time and
17 expense. Some of the interrogatories required a comparison of two documents already available to
18 the moving party. This comparison could be done by the moving party as well.

19 Unlike the opposing party in *Ryan*, Plaintiff is not burdened with any significant impact on
20 his time or finances if forced to comply with the City’s request. The City does not have equal access
21 to the photographs and is not seeking to compel Plaintiff to create any work product from them. In
22 a time where photographs can be instantly shared via text message or e-mail, it is almost no burden
23 to ask a longtime partner to provide a copy of photographs. Plaintiff’s reliance on *Ryan* should be
24 disregarded.

25 Given the foregoing, Plaintiff is not substantially justified in withholding the requested
26 photographs. If Plaintiff’s relationship is close enough with Ms. McLean to facilitate a subpoena
27 without serving her, it must be close enough that Plaintiff could obtain the requested photographs
28 by making a simple request that she share them. Plaintiff has not provided any credible reason he

1 is unable to comply with the demand. Accordingly, the City's motion to compel should be granted
2 in its entirety.

3 **III.**

4 **CONCLUSION**

5 Plaintiff has not made a reasonable inquiry to comply with defendant City of Lemon Grove's
6 demand for production. His ongoing refusal to produce relevant photographs, or to even affirm he
7 made a reasonable inquiry for them, is a misuse of the discovery process. Accordingly, the City of
8 Lemon Grove respectfully requests the Court grant its motion to compel and the request for
9 sanctions in full.

10
11 Dated: December 27, 2018

HORTON, OBERRECHT, KIRKPATRICK &
MARTHA

12
13 By: 

14 Kimberly S. Oberrecht,
15 Heidi K. Williams,
16 Attorneys for Defendant CITY OF LEMON
17 GROVE
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12 Plaintiff,

13 vs.

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

16 Defendants.

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

DECLARATION OF HEIDI K.
WILLIAMS IN SUPPORT OF
DEFENDANT CITY OF LEMON
GROVE'S REPLY TO PLAINTIFF'S
OPPOSITION TO MOTION TO
COMPEL AND REQUEST FOR
SANCTIONS

Date: January 4, 2019

Time: 10:00 a.m.

Dept.: 68

IMAGED FILED

Action Filed: May 11, 2018

Trial Date: None Set

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22 I, Heidi K. Williams, declare as follows:

23 1. I am an attorney licensed to practice law before all the courts in the State of
24 California. I am an associate attorney at Horton, Oberrecht, Kirkpatrick & Martha, counsel of
25 record in the above-referenced case for defendant CITY OF LEMON GROVE ("City"). I am
26 familiar with all the matters asserted herein and if called to testify, would and could testify
27 competently from my own personal knowledge.

28 2. This firm propounded initial written discovery on plaintiff CHRISTOPHER

1 WILLIAMS ("Plaintiff"). This first set of discovery included Form Interrogatories, Set One and
2 Requests for Production, Set One.

3 3. According to the proof of service, Plaintiff served his responses to the City's first set
4 of discovery on August 14, 2018.

5 4. Plaintiff produced some documents with his Responses to City's Request for
6 Production of Documents, Set One. This production included a redacted copy of an incident report
7 prepared by San Diego County Sheriff's Department personnel pertaining to the incident at issue
8 in this case. The report includes a summary of a statement provided by Kathleen McLean to the
9 reporting officer. Ms. McLean was with Plaintiff at the hospital in the early morning hours of July
10 15, 2017. The officer included the following in her report: "Mclean [sic] said she has been married
11 to Williams for 14 years. Mclean [sic] and Williams reside together at [address] in the City of San
12 Diego."

13 5. Plaintiff also produced a partial set of redacted medical records pertaining to his visit
14 to the emergency room on July 15, 2017. In a section entitled "Next of Kin," Kathleen McLean is
15 listed as Plaintiff's wife. Her contact information, including phone number, are listed in this section
16 as well.

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18 DATE: 12/27/2018

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20 By: 
21 Heidi K. Williams,
22 Declarant
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15 Defendants.)
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CASE NO.: 37-2018-00023369-CU-
PO-CTL

DECLARATION OF PROOF OF
SERVICE

IMAGED FILED

17
18 I am employed in the County of San Diego, State of California. I am over the age of
19 eighteen years and am not a party to the within entitled action; my business address is 225
Broadway, Suite 2200, San Diego, California 92101.

20 On December 27, 2018, I served the following documents:

- 21 1) REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT CITY OF LEMON GROVE'S
22 MOTION TO COMPEL; and
23 2) DECLARATION OF HEIDI K. WILLIAMS IN SUPPORT OF DEFENDANT CITY OF
24 LEMON GROVE'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO COMPEL
AND REQUEST FOR SANCTIONS

25 on all interested parties in this action by placing the true copies thereof to be delivered as listed
below:

26 Cory J. Briggs, Esq.
Anthony N. Kim, Esq.
27 BRIGGS LAW CORPORATION
99 "C" Street, Suite 111
28 Upland, CA 91786
Tel: (909) 949-7115; Fax: (909) 949-7121

Attorney for Plaintiff CHRISTOPHER
WILLIAMS

DECLARATION OF PROOF OF SERVICE

1 Susan L. Oliver, Esq.
2 Emily M. Straub, Esq.
3 TYSON & MENDES
4 5661 La Jolla Blvd.
5 La Jolla, CA 92037
6 Tel: (858) 459-4400
7 *Attorneys for Defendant DAVID*
8 *ARAMBULA*

9 **BY MAIL:** I enclosed the documents in a sealed envelope or package addressed to the
10 persons listed on the attached service list. I placed the envelope for collection and mailing,
11 following our ordinary business practices. I am readily familiar with this business's practice for
12 collecting and processing correspondence for mailing. On the same day that correspondence is
13 placed for collection and mailing, it is deposited in the ordinary course of business with the United
14 States Postal Service, in a sealed envelope with postage fully prepaid. I am employed in the county
15 where the mailing occurred. The envelope or package was placed in the mail at San Diego,
16 California.


17 **BY FAX TRANSMISSION:** Based on an agreement of the parties to accept service by fax
18 transmission, I faxed the documents to the persons listed on the attached service list. No error was
19 reported by the fax machine that I used. A copy of the record of the fax transmission will be
20 maintained with the original document in this office.

21 **BY ELECTRONIC MAIL:** I caused the above-listed document(s) to be transmitted by
22 electronic transmission, addressed to all parties appearing on the attached service list for the above-
23 entitled case. The service transmission was reported as complete and a copy of the email receipt
24 will be maintained with the original document in this office.

25 **BY OVERNIGHT DELIVERY:** I enclosed the documents in an envelope or package
26 provided by an overnight delivery carrier and addressed to the persons at the addresses in the
27 attached service list. I placed the envelope or package for collection and overnight delivery at an
28 office or a regularly utilized drop box of the overnight delivery carrier.

PERSONAL SERVICE VIA MESSENGER SERVICE : I served the documents by
placing them in an envelope or package addressed to the persons in the attached service list and
providing them to a professional messenger service for service.

I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct. Executed on **December 27, 2018.**

19 
20 _____
Glenda Austin