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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  
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18  
19

) **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 ALLEGED  
DAMAGES DUE TO DISAPPROVAL  
OF MEDICAL MARIJUANA  
DISPENSARIES**

) [MIL No. 2 of 22]

) Trial Date: December 13, 2019

20 **I.**

21 **ANTICIPATION OF WHAT PLAINTIFF MAY CLAIM AS DAMAGES**

22 As pointed out within Defendants' Motion in Limine No. 1, though Plaintiff's Complaint  
23 makes no allegations nor overtures pertaining to loss of income and/or a lost business opportunity  
24 with respect to medical marijuana dispensaries (and therefore is not at issue in this lawsuit), it is  
25 anticipated that during trial Plaintiff will try to testify he is out "millions" because in Plaintiff's mind  
26 Defendant City of Lemon Grove retaliated against Plaintiff by refusing to approve medical marijuana  
27 dispensaries.

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1 All testimony or any other purported evidence with respect to loss of income and/or a lost  
2 business opportunity due to medical marijuana dispensaries not being approved must not be allowed  
3 into evidence at trial because the approval and/or disapproval of medical marijuana dispensaries is  
4 a discretionary decision for which Defendant City of Lemon Grove, its members of City Council  
5 (including but not limited to Defendant David Arambula), and its other employees, are immune from  
6 liability.

7 **II.**

8 **THE CITY AND ITS EMPLOYEES HAVE IMMUNITY FOR DISCRETIONARY ACTS**  
9 **TAKEN AS TO PLAINTIFF'S MEDICAL MARIJUANA DISPENSARIES**

10 The law is clear that Defendants City of Lemon Grove and Mr. Arambula have immunity for  
11 discretionary acts taken as to the approval and/or disapproval of Plaintiff's medical marijuana  
12 dispensary applications.

13 "Except as otherwise provided by statute, a public employee is not liable for an injury  
14 resulting from his act or omission where the act or omission was the result of the exercise of the  
15 discretion vested in him, whether or not such discretion be abused." Government Code §820.2.  
16 "[P]ublic employees' tort immunity for legislative decision-making applies even when that decision-  
17 making is also alleged to involve the making of misrepresentations motivated by 'actual fraud,  
18 corruption or actual malice.'" Freeny v. City of San Buenaventura (2013) 216 Cal.App.4th 1333,  
19 1337. If a public employee or employees are immune for a discretionary act, so is the governmental  
20 entity. See Freeny v. City of San Buenaventura (2013) 216 Cal.App.4th 1333, 1346 ("[T]he City  
21 Council defendants are themselves immune. Because they are immune, so is the City.").

22 In Freeny v. City of San Buenaventura (2013) 216 Cal.App.4th 1333, developers brought an  
23 action against a city and five city council members and sought tort damages for fraud,  
24 misrepresentation, and elder abuse. The lower court sustained a demurrer without leave to amend,  
25 and the developers appealed. The Court of Appeal affirmed, noting "the Act [referring to the  
26 Government Claims Act, §810 et. seq.] confers immunity upon public employees for failing to adopt  
27 an enactment (§821); and for denying or refusing to issue permits and approvals." Freeny at 1341  
28 (internal quotes and brackets omitted). Based upon the above law, the Court of Appeal held, "The

1 City Council defendants in this case are accordingly immune from tort damages under the Act. They  
2 are public employees (§ 811.4), and they are being sued for their discretionary legislative decision  
3 not to grant plaintiffs' application for building permits and variances." Id. (internal quotes omitted).

4 **III.**

5 **CONCLUSION**


6 During trial, it is anticipated Plaintiff may try to present evidence of loss of income and/or  
7 a lost business opportunity because medical marijuana dispensary applications were not  
8 approved. However, Plaintiff cannot show any act denying Plaintiff's applications was not a  
9 discretionary act and not immune from liability. Accordingly, evidence with respect to claimed  
10 losses arising from discretionary acts is not at issue in this litigation and is irrelevant. Evidence  
11 with respect to the same should therefore be excluded.

12 Respectfully submitted.

13  
14 Dated: December 5, 2019

HORTON, OBERRECHT, KIRKPATRICK & MARTHA

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