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**FILED**  
Clerk of the Superior Court

DEC - 6 2019

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 FROM PRESENTING EVIDENCE AND MENTION OF DORINNA HIRSCH'S TEMPORARY RESTRAINING ORDER CASE; DECLARATION OF EMILY M. STRAUB**

*[Defense MIL No. 5 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 and his counsel of record from presenting the jury with documentary evidence, testimonial evidence, and mention of Dorinna Hirsch's temporary restraining order case against David Arambula.

This motion is based on the supporting memorandum of points and authorities, the declaration of Emily M. Straub, 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.

FILED

1 **I. INTRODUCTION**

2 It is anticipated plaintiff and his counsel will attempt to present the jury with court records,  
3 testimony, and mention of non-party Dorinna Hirsch’s temporary restraining order (“TRO”) case  
4 against David Arambula. This should not be permitted because the TRO case is not relevant to the  
5 claims in the above-captioned lawsuit; evidence of this case cannot be used to prove Mr. Arambula  
6 committed assault or battery; and such evidence is otherwise excludable on all bases provided by  
7 Evidence Code § 352.

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 obviously  
12 futile attempt to ‘unring the bell’ in the event a motion to strike is granted in the proceedings before  
13 the jury.” (*Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d 325, 337.)

14 **III. THE TRO CASE**

15 On May 3, 2017, Ms. Hirsch filed for, and automatically received, a TRO against Mr.  
16 Arambula. Following an evidentiary hearing on July 6, 2017, the Court denied Ms. Hirsch’s request  
17 for a permanent restraining order with prejudice, and dissolved the TRO. (*See* Declaration of Emily  
18 M. Straub at Exhibit 1 – July 6, 2017 Minute Order.) The defense requests the Court take judicial  
19 notice of the pleadings and records on file in *Hirsch v. Arambula*, San Diego County Superior Court  
20 Case No. 37-2017-00015930-CU-HR-CTL.

21 **IV. TRO CASE EVIDENCE SHOULD BE EXCLUDED BECAUSE IT IS NOT**  
22 **RELEVANT**

23 Evidence Code § 350 states: “No evidence is admissible except relevant evidence.”  
24 Evidence is relevant if it has a “tendency in reason to prove or disprove any disputed fact that is of  
25 consequence to the determination of the action.” (Evid. Code § 210; *People v. Nelson* (2008) 43  
26 Cal.4th 1242, 1266; *Donlen v. Fort Motor Co.* (2013) 217 Cal.App.4th 138, 148; *D.Z. v. Los*  
27 *Angeles Unified School Dist.* (2019) 35 Cal.App.5th 210, 229.) The test of relevance is whether the

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1 evidence tends, “logically, naturally and by reasonable inference” to establish material facts such  
2 as identity, intent or motive. (*People v. Wilson* (2006) 38 Cal.4th 1237, 1245.)

3 The TRO case filings and findings are not relevant to this case, because there is nothing  
4 plaintiff could conceivably use such documents or information for to establish any material facts of  
5 consequence. The TRO case has absolutely no bearing on the claims in this case. Plaintiff and his  
6 counsel should therefore be precluded from introducing any documentary evidence, testimony  
7 evidence, and mention of the TRO case.

8 **V. MS. HIRSCH’S TRO CASE ALLEGATIONS CANNOT BE USED TO PROVE MR.**  
9 **ARAMBULA COMMITTED ASSAULT OR BATTERY**

10 Evidence of defendant’s prior conduct cannot be used to prove the defendant subsequently  
11 engaged in, or had the propensity to engage in, other conduct. (Evid. Code § 1101(a); *People v.*  
12 *Jackson* (2016) 1 Cal.5th 269, 299 (“Evidence Code section 1101, subdivision (a) sets forth the  
13 “strongly entrenched” rule that propensity evidence is not admissible to prove a defendant’s conduct  
14 on a specific occasion.”); *Holdgrafer v. Unocal Corp.* (2008) 160 Cal.App.4th 907, 928  
15 (“[E]vidence of a defendant’s prior bad acts or bad character is generally inadmissible to prove a  
16 propensity or disposition to engage in conduct on a specified occasion.”).)

17 While plaintiff would like to use the TRO case allegations to convince the jury Mr.  
18 Arambula had the propensity to commit, and did commit, assault and battery, the law prohibits him  
19 from doing so. This is yet another reason why the motion should be granted.

20 **VI. EVIDENCE REGARDING THE TRO CASE SHOULD BE EXCLUDED UNDER**  
21 **EVIDENCE CODE SECTION 352**

22 Evidence Code § 352 states:

23 The court in its discretion may exclude evidence if its probative value is  
24 substantially outweighed by the probability that its admission will  
25 (a) necessitate undue consumption of time or (b) create substantial danger  
of undue prejudice, of confusing the issues, or of misleading the jury.

26 In weighing “prejudice” against the probative value of the evidence, the court looks to  
27 whether the evidence is likely to inflame the jury’s passions (*People v. Hendrix* (2013) 214

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1 Cal.App.4th 216, 246,) or whether the evidence tends to evoke an emotional bias (*People v. Daniels*  
2 (2009) 176 Cal.App.4th 304, 317.) The California Supreme Court instructs:

3 [E]vidence should be excluded as unduly prejudicial when it is of such  
4 nature as to inflame the emotions of the jury, motivating them to use  
5 the information, not to logically evaluate the point upon which it is  
6 relevant, but to reward or punish one side because of the jurors'  
emotional reaction. In such a circumstance, the evidence is unduly  
prejudicial because of the substantial likelihood the jury will use it for  
an illegitimate purpose.

7 *People v. Scott* (2011) 52 Cal.4th 452, 491.

8 Here, as discussed *supra*, the TRO case is not relevant to the claims in this lawsuit. As such,  
9 any evidence concerning this subject has no probative value. Furthermore, presentation of evidence  
10 regarding, or mention of, the TRO case would necessarily (a) result in an undue consumption of  
11 time, and (b) create a substantial danger of undue prejudice, of confusing the issues, and of  
12 misleading the jury. And, importantly, exposing the jury to this information could improperly lead  
13 the jury to believe Mr. Arambula is a “loaded gun” with little to no control over his emotions. Such  
14 preconception could influence a determination it is more likely than not Mr. Arambula committed  
15 assault and/or battery. Plaintiff must be precluded from tainting the jurors’ minds in this regard.

16 **VII. CONCLUSION**

17 For the foregoing reasons, Mr. Arambula respectfully requests the Court grant this motion  
18 and issue and order precluding plaintiff and his counsel from presenting any evidence, testimony,  
19 and comment regarding the TRO case.

20  
21 Dated: December 5, 2019

TYSON & MENDES

22  
23 By: \_\_\_\_\_

Jessica G. Heppenstall, Esq.

Emily M. Straub, Esq.

Attorneys for Defendant DAVID ARAMBULA

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**DECLARATION OF EMILY M. STRAUB**

I, Emily M. Straub, Esq., declare as follows:

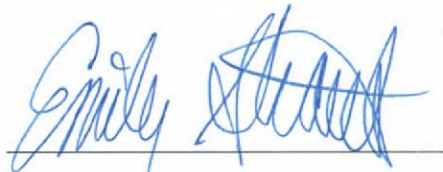
1. I am an attorney at law duly licensed to practice in all courts of the State of California.

2. I am a counsel of record for Defendant David Arambula, and offer this declaration in support of the corresponding motion *in limine*.

3. The following facts are based on my own personal knowledge, and if called upon I could and would testify competently thereto.

4. Attached hereto as Exhibit 1 is a true and correct copy of the July 6, 2017 Minute Order in San Diego County Superior Court, Case No. 37-2017-00015930-CU-HR-CTL, denying Dorinna Hirsch's request for a restraining order against Mr. Arambula, with prejudice.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct and that this declaration was executed this 5<sup>th</sup> day of December, 2019, at La Jolla, California.



Emily M. Straub



# **EXHIBIT 1**

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL

**MINUTE ORDER**

DATE: 07/06/2017                      TIME: 10:00:00 AM              DEPT: C-62

JUDICIAL OFFICER PRESIDING: Ronald L. Styn  
CLERK: Kim Mulligan  
REPORTER/ERM: Not Reported  
BAILIFF/COURT ATTENDANT: A. Riego, J. Pedroza

CASE NO: 37-2017-00015930-CU-HR-CTL CASE INIT.DATE: 05/03/2017  
CASE TITLE: Dorinna Hirsch vs David Arambula [IMAGED]  
CASE CATEGORY: Civil - Unlimited      CASE TYPE: Harassment

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**EVENT TYPE:** Hearing on Restraining Order

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**APPEARANCES**

Jennifer T Irvine, counsel, present for Petitioner(s).  
Dorinna Hirsch, Petitioner is present.  
BRIAN MCCARTHY, counsel, present for Respondent(s).  
David Arambula, Respondent is present.

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Hearing on Restraining Order reassigned from Dept. 64 to Dept. 62.  
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10:10 am The court hears brief opening statements from counsel.

10:16 am Witnesses are sworn and examined as noted below. Miscellaneous exhibits on behalf of the Petitioner and on behalf of the Respondent are shown to the court during the examinations.

10:16 am THOMAS SLATTERY is sworn and examined by Attorney Irvine on behalf of Petitioner.

10:37 am Cross-examination of witness commences by Attorney McCarthy on behalf of Respondent.

10:56 am Court is in recess.

11:10 am Court reconvenes.

11:10 am THOMAS SLATTERY, previously sworn, resumes the stand for further Cross-examination by Attorney McCarthy on behalf of Respondent.

11:15 am Re-direct examination of witness commences by Attorney Irvine on behalf of Petitioner.



11:19 am The witness is excused.

11:21 am ALETA REESE is sworn and examined by Attorney Irvine on behalf of Petitioner.

11:27 am Cross- examination of witness commences by Attorney McCarthy on behalf of Respondent.

11:30 am The witness is excused.

11:30 am Court is in recess.

11:35 am Court reconvenes. Court and counsel confer regarding production of documents and subpoena issues.

11:38 am DORINNA HIRSCH is sworn and examined by Attorney Irvine on behalf of Petitioner.

11:58 am Court is in recess.

1:31 pm Court reconvenes.

1:31 pm DORINNA HIRSCH, previously sworn, resumes the stand for further Direct examination by Attorney Irvine on behalf of Petitioner.

2:07 pm Cross- examination of witness commences by Attorney McCarthy on behalf of Respondent.

3:09 pm The witness is excused.

3:09 pm Court is in recess.

3:20 pm Court reconvenes.

3:20 pm DAVID ARAMBULA is sworn and examined by Attorney Irvine on behalf of Petitioner.

3:33 pm Cross- examination of witness commences by Attorney McCarthy on behalf of Respondent.

3:38 pm The Court examines the witness.

3:43 pm Re-direct examination of witness commences by Attorney Irvine on behalf of Petitioner.

3:44 pm Re-cross examination of witness commences by Attorney McCarthy on behalf of Respondent.

3:45 pm The witness is excused.

3:45 pm Attorney Irvine presents closing argument on behalf of Petitioner.

3:56 pm Attorney McCarthy presents closing argument on behalf of Respondent.

4:04 pm No rebuttal argument.

4:05 pm The Court discusses evidentiary findings with counsel.

Restraining order as requested is denied with prejudice in its entirety.

The Court orders Temporary Restraining Order dissolved.

4:14 pm Attorney McCarthy makes a Motion for Attorney's Fees on behalf of Respondent. Following oral argument the Court denies the motion.

Exhibits released to submitting party counsel.

4:15 pm Court is adjourned in this matter.

IT IS SO ORDERED.



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Judge Ronald L. Styn