

ORIGINAL

Jessica G. Heppenstall, Esq. (Bar No. 259489)
Emily M. Straub, Esq. (Bar No. 259141)
TYSON & MENDES
5661 La Jolla Boulevard
La Jolla, CA 92037
Telephone: (858) 459-4400

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 USING DEPOSITION VIDEO AND TESTIMONY DURING OPENING STATEMENTS

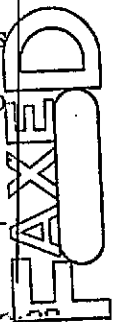
[MIL No. 12 of 22]

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 using (a) deposition video, and (b) demonstrative exhibits depicting deposition testimony during opening statements.

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.



1 **I. INTRODUCTION**

2 It is anticipated plaintiff and his counsel will attempt to present the jury with video clips of
3 deposition testimony and/or demonstrative exhibits depicting deposition testimony during opening
4 statements. The problem: plaintiff will call these same witnesses to testify during his case-in-chief.
5 Such tactic is prohibited on both procedural and evidentiary bases. Plaintiff should be precluded
6 from presenting the jury with deposition testimony during opening statements, regardless of
7 format.

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 DEPOSITION VIDEO AND TESTIMONY DURING OPENING**
15 **STATEMENTS IS IMPROPER AS A MATTER OF LAW**

16 Use of visual aids during opening statement is not a matter of right. Such use, if any, is
17 subject to the broad discretion of the Court. (*People v. Green* (1956) 47 Cal.2d 209, 215
18 (disapproved on other grounds in *People v. Morse* (1964) 60 Cal.2d 631, 648-649.) And,
19 importantly, an opening statement is not evidence. (*Winfred D. v. Michelin North America, Inc.*
20 (2008) 165 Cal.App.4th 1011, 1028; *Rufo v. Simpson* (2001) 86 Cal.App.4th 573, 600-604; CACI
21 101, 106, 5002.) For this reason, a party cannot use demonstrative exhibits/videos containing
22 deposition testimony that she does not plan on later introducing into evidence during her case-in-
23 chief. (*See generally* Code Civ. Proc. § 2025.620 (listing permissible grounds for introduction of
24 deposition transcript testimony and video recording of deposition testimony); *cf. People v. Fauber*
25 (1992) 2 Cal.4th 792, 826-827.)

26 To date, many of the depositions in this case have been video-taped. It is anticipated
27 Plaintiff will attempt to use video clips of and/or demonstrative exhibits containing deposition
28 testimony by non-party and party witnesses during his opening statement. This is improper and

1 should not be tolerated because plaintiff will not seek to later introduce such items into evidence;
2 he will instead call the witnesses to testify before the jury. Use of deposition video clips and
3 testimony during opening statement should otherwise be disallowed because they would confuse
4 and mislead the jury. Accordingly, the Court should preclude plaintiff and his counsel from
5 showing the jury deposition video clips and demonstrative exhibits containing deposition
6 testimony during opening statements.

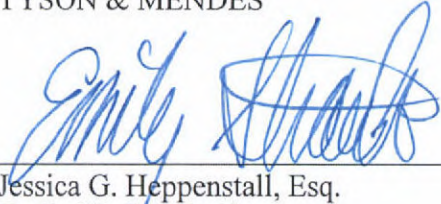
7 **IV. CONCLUSION**

8 For all of the foregoing reasons, Mr. Arambula respectfully requests the Court grant this
9 motion and issue and order precluding plaintiff and his counsel from using (a) deposition video, and
10 (b) demonstrative exhibits depicting deposition testimony during opening statements.

11
12
13 Dated: December 5, 2019

TYSON & MENDES

14
15
16 By: _____


17 Jessica G. Heppenstall, Esq.
18 Emily M. Straub, Esq.
19 Attorneys for Defendant DAVID ARAMBULA
20
21
22
23
24
25
26
27
28