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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 FROM
QUESTIONING DEFENSE EXPERTS
DURING HIS CASE-IN-CHIEF;
DECLARATION OF EMILY M. STRAUB**

[MIL No. 13 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 questioning defense experts during plaintiff's case-in-chief.

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 and his counsel will attempt to call Mr. Arambula's and the City
3 of Lemon Grove's retained and non-retained experts during plaintiff's case-in-chief. Such tactic is
4 improper as a matter of law because plaintiff has neither designated any of his own experts
5 (retained or non-retained) nor noticed the depositions of any defense experts. (Declaration of
6 Emily M. Straub ("Straub Decl.") at ¶¶ 4-9.) Such tactic will otherwise unduly prejudice
7 defendants, because it would permit plaintiff to attack and undermine the opinions of defense
8 experts before defendants are able to present their experts' full opinions. Plaintiff must therefore
9 be precluded from calling defendants' experts to testify during his case-in-chief.

10 II. AUTHORITY FOR MOTION

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

16 III. PLAINTIFF CANNOT SATISFY ANY OF THE CONDITIONS NECESSARY TO
17 CALL DEFENDANTS' EXPERTS TO TESTIFY AT TRIAL

18 The California Code of Civil Procedure instructs:

19 A party may call as a witness at trial an expert not previously designated by
20 that party if either of the following conditions is satisfied:

21 (a) That expert has been designated by another party and has thereafter been
22 deposed under Article 3 (commencing with Section 2034.410).

23 (b) That expert is called as a witness to impeach the testimony of an expert
24 witness offered by any other party at the trial. This impeachment may
25 include testimony to the falsity or nonexistence of any fact used as the
foundation for any opinion by any other party's expert witness, but may not
include testimony that contradicts the opinion.

26 (Code Civ. Proc. § 2034.310 (emphasis added).)

27 In this case, plaintiff has not satisfied either of the above-noted conditions. Plaintiff has no
28 legal basis to call defendants' experts during trial under subdivision (a) of Code of Civil Procedure

1 § 2034.310, because plaintiff never deposed defendants' experts, or even noticed their
2 depositions for that matter. (*C.f., Unzueta v. Akopyan* (2019) WL 6113823 *11-12; Straub Decl.
3 at ¶¶ 4-9.) Plaintiff has no legal basis to call defendants' experts under subdivision (b) either. Why?
4 There is no expert testimony plaintiff could possibly use to impeach the testimony of another
5 expert during his case-in-chief -- plaintiff did not retain any expert witnesses. (*See generally,*
6 *Tesoro del Valley Master Homeowners Assn. v. Griffin* (2011) 200 Cal.App.4th 619, 641; Straub
7 Decl. at ¶¶ 4-7.) Indeed, plaintiff has no ability to call any witnesses to provide expert opinion
8 testimony during trial. (Code Civ. Proc. §§ and 2034.280, 2034.300 and 2034.230; *Fairfax v.*
9 *Lords* (2006) 138 Cal.App.4th 1019, 1021, 1025; *Kalaba v. Gray* (2002) 95 Cal.App.4th 1416,
10 1422-1423.) As such, plaintiff should be precluded from calling defendants' experts to testify
11 during his case-in-chief.

12 **IV. DEFENDANTS WILL BE UNDULY PREJUDICED IF PLAINTIFF IS**
13 **PERMITTED TO CALL DEFENSE EXPERTS DURING HIS CASE-IN-CHIEF**

14 This Court has the inherent authority to exclude evidence where "its probative value is
15 substantially outweighed by the probability its admission will . . . create substantial danger of . . .
16 confusing the issues, or misleading the jury." (Evid. Code § 352; *see also, Mozzetti v. City of*
17 *Brisbane* (1977) 67 Cal.App.3d 565, 578 [it is well recognized that the trial court is vested with
18 wide discretion to exclude evidence under section 352].)

19 To allow plaintiff to introduce the opinions of defense experts in his case-in-chief when he
20 has not designated any experts of his own would confuse and mislead the jury. More specifically,
21 the jury would be led to believe plaintiff can present expert opinions when the law prohibits him
22 from doing so, as discussed in the immediately preceding section of this brief.

23 Furthermore, plaintiff already has the advantage of being the first party to present evidence
24 to the jury. (Code Civ. Proc. § 607.) Consequently, defendants will be unduly prejudiced if plaintiff
25 is permitted to examine defendants' experts during his case-in-chief. Plaintiff would undoubtedly
26 use such opportunity to preemptively attack and attempt to undermine the opinions of defendants'
27 experts. This would unduly prejudice defendants because the jury would be permitted to form their
28 own thoughts/opinions about the defense experts in a vacuum, and before defendants are capable

1 of presenting the jury with their experts' full opinions, as well as the bases for those opinions. This
2 factor creates an undue risk of the jurors' minds already being closed to the defendants' experts'
3 opinions prior to the defendants' case-in-chief. Plaintiff must therefore be precluded from calling
4 defense experts to testify during his case-in-chief.

5 **V. CONCLUSION**

6 For all of the foregoing reasons, Mr. Arambula respectfully requests the Court grant this
7 motion and issue and order precluding plaintiff and his counsel from questioning defense experts
8 during plaintiff's case in chief.

9
10 Dated: December 5, 2019

TYSON & MENDES

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13 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. I drafted a demand for exchange of expert witness information and caused this document to be served on counsel for all parties on September 23, 2019.

5. In accordance with Code of Civil Procedure § 2034.220, the deadline for initial expert witness designations was October 24, 2019.

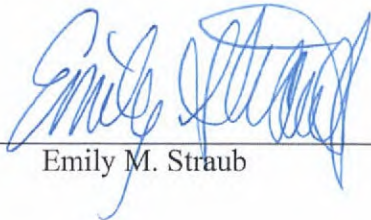
6. I drafted Mr. Arambula’s initial exchange of expert witness designations and caused this document to be served on counsel for all parties on October 24, 2019.

7. I did not receive service of initial expert witness designations from counsel for Plaintiff Christopher Williams.

8. I did receive service of initial expert witness designations from counsel for Defendant City of Lemon Grove.

9. I did not receive service of any notices of deposition of defense experts from counsel for plaintiff prior or subsequent to the expert discovery cutoff of November 28, 2019.

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 5th day of December, 2019, at La Jolla, California.



Emily M. Straub