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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 USING LAY WITNESSES TO PROVIDE EXPERT OPINIONS

[MIL No. 14 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 lay witnesses to provide expert opinion testimony at trial.

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 of record will attempt to use lay witness to present
3 expert opinion testimony regarding the following subject matters because plaintiff never designated
4 any experts: the cause and nature of plaintiff's injuries, plaintiff's future medical care needs,
5 plaintiff's business plan projections, and plaintiff's alleged loss of business profits and revenue. This
6 is improper as a matter of law, and it should not be permitted.

7 **II. AUTHORITY FOR MOTION**

8 A motion *in limine* is the appropriate method "to preclude the presentation of evidence
9 deemed inadmissible and prejudicial by the moving party." (*Blanks v. Seyfarth Shaw, LLP* (2009)
10 171 Cal.App.4th 336, 375.) The important purpose served by such motion is "to avoid the
11 obviously futile attempt to "unring the bell" in the event a motion to strike is granted in the
12 proceedings before the jury." (*Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d 325, 337.)

13 **III. THE LAW PROHIBITS PLAINTIFF FROM USING LAY WITNESSES TO**
14 **OFFER EXPERT OPINIONS**

15 The scope of lay witness opinion testimony is limited to non-expert subject matters that are
16 "(a) rationally based on the perception of the witness; and (b) helpful to a clear understanding of his
17 testimony." (Evid. Code § 800.) Furthermore, a lay witness may only offer opinion testimony "about
18 facts he has personally observed." (*Manny v. Housing Authority of Richmond* (1947) 79 Cal.App.2d
19 453, 459.) A lay witness may not opine about "a subject that is sufficiently beyond common
20 experience that the opinion of an expert would assist the trier of fact." (Evid. Code § 801, subd. (a).)
21 Stated differently: "If the fact sought to be proved is one within the general knowledge of laymen,
22 expert testimony is not required; otherwise the fact can be **proved only by the opinions of experts.**"
23 (*Truman v. Vargas* (1969) 275 Cal.App.2d 976, 982 (emphasis added).) Of those subject matters
24 requiring expert opinion testimony, noteworthy for purposes of this motion are: (a) the diagnoses
25 and causes of plaintiff's physical, emotional, and psychological injuries¹; (b) the alleged lost profits

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27 ¹ *People v. Moore* (2002) 96 Cal.App.4th 1105, 1117; *Jones v. Ortho Pharmaceutical Corp.* (1985)
28 163 Cal.App.3d 396, 402-403; *Pacific Employers Ins. Co. v. Industrial Accident Commission* (1941)
47 Cal.App.2d 494, 500

1 and revenue of a prospective business²; and (c) and any other conclusions reached, and assumptions
2 relied on, in formulating the business plan for plaintiff's prospective dispensaries.

3 Here, plaintiff is advancing a variety of physical, emotional, and psychological injury claims,
4 claims of future care, and business valuation and loss claims. Such claims unquestionably require
5 expert opinion testimony. These topics go well beyond the scope of common knowledge of the
6 everyday layman. Plaintiff did not designate any expert witnesses in this case. Plaintiff cannot, as a
7 matter of law, bootstrap his injury or damage claims to testimony of lay witnesses to provide the
8 expert opinions he needs.

9 **IV. CONCLUSION**

10 For all of the foregoing reasons, Mr. Arambula respectfully requests the Court grant this
11 motion and issue and order precluding plaintiff and his counsel using lay witnesses to provide expert
12 opinion testimony at trial.

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14 Dated: December 5, 2019

TYSON & MENDES

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16 By: 

17 Jessica G. Heppenstall, Esq.

Emily M. Straub, Esq.

18 Attorneys for Defendant DAVID ARAMBULA

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27 ² *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747; *Grupe v.*
Glick (1945) 26 Cal.2d 680; *Kids' Universe v. In2Labs* (2002) 95 Cal.App.4th 870