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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 ANY EXPERT OPINIONS DURING TRIAL; DECLARATION OF EMILY M. STRAUB

[MIL No. 16 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 presenting any expert opinions during trial.

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.

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1 **I. INTRODUCTION**

2 It is anticipated plaintiff and his counsel will attempt to present the jury with expert
3 opinions. The problem? **Plaintiff did not designate any experts.** (Declaration of Emily M. Straub
4 (“Straub Decl.”) at ¶¶ 4-9.) The Court must therefore preclude plaintiff from presenting the jury
5 with *any* expert opinions, whether they be from plaintiff’s retained experts, non-retained medical
6 providers, and/or defense experts.

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. PLAINTIFF CANNOT OFFER ANY EXPERT OPINIONS BECAUSE HE DID**
14 **NOT DESIGNATE ANY EXPERTS**

15 A party who fails to timely designate any retained or non-retained experts waives his ability
16 to offer expert opinions at trial. (Code Civ. Proc. §§ 2034.230, 2034.280 and 2034.30; *Fairfax v.*
17 *Lords* (2006) 138 Cal.App.4th 1019, 1021, 1025; *Kalaba v. Gray* (2002) 95 Cal.App.4th 1416,
18 1422-1423.) Such opinions must be excluded from evidence as a matter of law. (*Id.*)

19 Here, it is anticipated plaintiff will attempt to offer expert opinions at trial concerning his
20 claims of liability and damages, as well as his business plan model and forecasts. It is further
21 anticipated plaintiff will seek to introduce expert opinion testimony of not only plaintiff’s own
22 retained experts, but also non-retained expert medical providers and defense experts. But plaintiff
23 did not designate any expert witnesses. (Straub Decl. at ¶¶ 4-7.) He therefore waived his ability to
24 offer expert opinions opinions at trial. Consequently, plaintiff should be precluded from presenting
25 any expert opinions at trial.

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1 **IV. PLAINTIFF CANNOT SATISFY ANY OF THE CONDITIONS NECESSARY TO**
2 **CALL THE DEFENDANTS' EXPERTS TO TESTIFY AT TRIAL**

3 The California Code of Civil Procedure instructs:

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

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

8 (b) That expert is called as a witness to impeach the testimony of an expert
9 witness offered by any other party at the trial. This impeachment may
10 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.

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

12 In this case, plaintiff has not satisfied either of the above-noted conditions. Plaintiff has no
13 legal basis to call the defendants' experts during trial under subdivision (a) of Code of Civil
14 Procedure § 2034.310, because **plaintiff never deposed defendants' experts, or even noticed**
15 **their depositions.** (C.f., *Unzueta v. Akopyan* (2019) WL 6113823 *11-12; Straub Decl. at ¶¶ 4-9.)
16 Plaintiff has no legal basis to call the defendants' experts under subdivision (b) either. Why? There
17 is no expert testimony plaintiff could possibly use to impeach the testimony of another expert ---
18 **plaintiff did not retain any expert witnesses.** (See generally, *Tesoro del Valley Master*
19 *Homeowners Assn. v. Griffin* (2011) 200 Cal.App.4th 619, 641; Straub Decl. at ¶¶ 4-7.) Indeed, as
20 discussed at length in the immediately preceding section of this brief, **plaintiff has no ability to**
21 **call any witnesses to provided expert opinion testimony during trial.** (Code Civ. Proc. §§
22 2034.230 and 2034.280; *Fairfax v. Lords* (2006) 138 Cal.App.4th 1019, 1021, 1025; *Kalaba v.*
23 *Gray* (2002) 95 Cal.App.4th 1416, 1422-1423.) As such, plaintiff should be precluded from calling
24 defendants' experts to testify at any time during trial.

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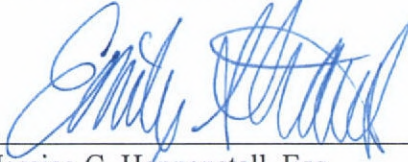
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1 **V. CONCLUSION**

2 For all of the foregoing reasons, Mr. Arambula respectfully requests the Court grant this
3 motion and issue and order precluding plaintiff and his counsel from presenting any expert opinions
4 during trial.

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6 Dated: December 5, 2019

TYSON & MENDES

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9 By: 
10 Jessica G. Heppenstall, Esq.
11 Emily M. Straub, Esq.
12 Attorneys for Defendant DAVID ARAMBULA
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