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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 EXCLUDE THE DEPOSITION TESTIMONY OF MATT MENDOZA; DECLARATION OF EMILY M. STRAUB

[MIL No. 19 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 from presenting the jury with the deposition testimony of Matthew Mendoza, and any demonstrative evidence containing excerpts of the deposition testimony of Mr. Mendoza.

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 will seek to present the jury with the deposition testimony of
3 former councilmember of City Council for the City of Lemon Grove, Matthew Mendoza. It is
4 further anticipated plaintiff will seek to present the jury with demonstrative evidence depicting
5 excerpts of this deposition testimony. Mr. Mendoza has no personal knowledge of the physical
6 altercation at issue in the litigation or the meeting preceding the physical altercation. As such, a
7 presentation of Mr. Mendoza's deposition testimony to the jury would result in an undue
8 consumption of time that would only confuse and mislead the jury. The Court should therefore
9 preclude plaintiff from presenting the jury with the deposition testimony of Mr. Mendoza, and any
10 demonstrative evidence containing excerpts of this testimony.

11 **II. AUTHORITY FOR MOTION**

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

17 **III. THE TESTIMONY SHOULD BE EXCLUDED BECAUSE MR. MENDOZA LACKS**
18 **PERSONAL KNOWLEDGE OF THE EVENTS AT ISSUE**

19 The testimony of any non-expert witness "concerning a particular matter is inadmissible
20 unless he has personal knowledge of the matter." (Evid. Code § 702, subd. (a).) "To testify, a witness
21 must have personal knowledge of the subject of the testimony, based on the capacity to perceive and
22 recollect." (*People v. Montoya* (2007) 149 Cal.App.4th 1139, 1150.) Absent personal knowledge, a
23 witness cannot provide competent testimony. (*Alvarez v. State of California* (1999) 79 Cal.App.4th
24 720, 727.)

25 The deposition testimony of Mr. Mendoza makes clear he has no personal knowledge of
26 (a) the physical altercation between plaintiff and Mr. Arambula, or (b) the meeting at Mr.
27 Arambula's home that preceded the physical altercation. (See Declaration of Emily M. Straub at
28 Exhibit 1 – transcript excerpts from deposition of Matthew Mendoza, at 13:15-14:6.) Everything he

1 has learned about these topics comes from reading news articles. (*Id.* at 13:15-14:6, 30:11-13.) He
2 has otherwise never spoken with Mr. Arambula or anyone else who was at Mr. Arambula’s home
3 about the aforementioned events, but even if he did, he would still lack personal knowledge about
4 the incident. (*Id.* at 15:5-17:14.) Accordingly, Mr. Mendoza is not competent to testify about any
5 happenings at issue in this case. His testimony is therefore inadmissible.

6 **IV. THE TESTIMONY SHOULD BE EXCLUDED PURSUANT TO EVIDENCE CODE**

7 **SECTION 352**

8 Evidence should be excluded “if its probative value is substantially outweighed by the
9 probability that its admission will (a) necessitate undue consumption of time or (b) create substantial
10 danger of undue prejudice, of confusing the issues, or of misleading the jury.” (Evid. Code § 352.)
11 Trial courts have “broad discretion” under *Evidence Code* §352 to weigh the probative value of
12 evidence against their prejudicial impact. (*People v. Holford* (2012) 203 Cal.App.4th 155, 167.) The
13 trial judge is in the best position to balance the competing interests under Section 352. (*Akers v.*
14 *Miller* (1998) 68 Cal.App.4th 1143, 1147.)

15 Mr. Mendoza’s deposition testimony has no probative value because he has no personal
16 knowledge of the matters at issue, as discussed *supra*. Mr. Mendoza’s testimony would otherwise
17 confuse and mislead the jury into thinking his testimony is pertinent to the issues in the case, when
18 it is not. Good cause therefore exists to prevent the jury from being exposed to this testimony.

19 **V. CONCLUSION**

20 For the foregoing reasons, Mr. Arambula respectfully requests the Court grant this motion
21 and issue and order precluding plaintiff from presenting the jury with the deposition testimony of
22 Mr. Mendoza, and any demonstrative evidence containing excerpts of this testimony.

23 Dated: December 5, 2019

TYSON & MENDES

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25
26 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 transcript excerpts from the deposition of Matthew Mendoza on November 18, 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

EXHIBIT 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO-HALL OF JUSTICE

CHRISTOPHER WILLIAMS,)	Case No.
)	37-2018-00023369
Plaintiff,)	CU-PO-CTL
)	
v.)	
)	
DAVID ARAMBULA, CITY OF)	
LEMON GROVE, and DOES 1)	
through 1,000,)	
)	
Defendants.)	

DEPOSITION OF MATTHEW MENDOZA
San Diego, California
November 18, 2019

REPORTED BY: BOBBIE HIBBLER, CSR NO. 12475

1 A. Yes, I do.

2 Q. Are you aware that the basis for the
3 lawsuit is an attack against Mr. Williams?

4 A. I believe that's the basis of the suit,
5 yes.

6 Q. Are you aware that Mr. Williams
7 submitted a tort claim to the City of Lemon Grove
8 for the attack?

9 A. I believe I heard that a few months ago.

10 Q. Have you ever seen the tort claim?

11 A. No, I have not.

12 Q. Do you know whether you ever voted to
13 accept or reject the tort claim?

14 A. I can't recall.

15 Q. When did you first find out about the
16 attack on my client?

17 MS. SEGAL: Objection. Assumes facts
18 not in evidence.

19 MR. MICHELS: Join.

20 BY MR. BRIGGS:

21 Q. You can answer.

22 THE WITNESS: Should I go ahead and
23 answer?

24 MR. MICHELS: Yes.

25 A. The first time I heard about the

1 incident was in the newspaper.

2 BY MR. BRIGGS:

3 Q. Was that in 2017 or 2018?

4 A. If I remember it happened in July of
5 2017. So it would have to be in March, I think,
6 of 2018.

7 Q. Okay. Do you recall which newspaper you
8 read about the incident in?

9 A. I think I saw it in the UT -- either the
10 UT or the East County. I was over at my father's
11 house, I forget where it was, and somebody showed
12 it to me.

13 Q. So --

14 A. The reason I say that is because I don't
15 get the paper.

16 MR. MICHELS: Mr. Mendoza, can you just
17 make sure to speak up and into the phone the
18 entire time just because the court reporter is
19 having and I am -- we're all having a little bit
20 of difficulty hearing you at the end of sentences.

21 THE WITNESS: I'll speak a little
22 louder, I'm sorry.

23 MR. MICHELS: Perfect.

24 BY MR. BRIGGS:

25 Q. I think I heard you say that you believe

1 you learned about the incident either by reading
2 the Union Tribune or East County Magazine in March
3 of 2018; correct?

4 A. Correct.

5 Q. Have you ever spoken to David Arambula
6 about the incident?

7 A. No.

8 Q. Have you ever spoken to anybody about
9 the incident other than a reporter?

10 MR. MICHELS: I'll object just to the
11 extent it calls for a attorney-client privilege.
12 Also, to the extent that it's seeking information
13 learned in a closed session pursuant to Government
14 Code 54963. But you can answer the question.

15 A. Well, they brought it up in closed
16 session. And it was vague about what was said
17 because it was only hearsay because of what we
18 knew about the newspaper.) (But that's when we --
19 not much to talk about because we couldn't really
20 say anything because one thing I wasn't there.)
21 And, of course, I talked to other people outside
22 of the City.) (People would ask me about things and
23 stuff like that.)

24 BY MR. BRIGGS:

25 Q. Who has asked you about it outside of

(1) (the City?)

(2) (A.) (Well, conversation like what was going
(3) on with that.) (And I would just tell people I
(4) don't know anything about it except for what I
(5) read in the various newspapers.) (When I say
(6) people, people either on the street -- I would
(7) have a monthly meeting with the citizens of Lemon
(8) Grove.) (They kind of hit me up about it.) (But I
(9) just tell them whatever I read in the newspaper,
(10) that's all I know.)

(11) (Q.) (Outside of a closed session meeting at
(12) the City Council, have you had any conversations
(13) with anybody about the incident between
(14) Mr. Arambula and my client, not including a
(15) reporter?)

(16) (A.) (People talk like in conversations is
(17) that what -- can you be more specific?)

(18) (Q.) (Sure.) (Have you ever talked to an
(19) investigator about the incident?)

(20) (A.) (No.) (Nobody has asked me any kind of
(21) investigation about that.)

(22) (Q.) (You've not talked to my client,
(23) Mr. Williams; correct?)

(24) (A.) (Correct.)

(25) (Q.) (And you've never spoken to Mr. Arambula)

(1) about the incident; correct?

(2) A.) Correct.

(3) Q.) Have you ever spoken to Racquel Vasquez

(4) about the incident?

(5) A.) No.

(6) Q.) Have you ever spoken to Jerry Jones

(7) about the incident?

(8) A.) No.

(9) Q.) Have you ever spoken to Jennifer Mendoza

(10) about the incident?

(11) A.) No.

(12) Q.) Have you ever spoken to the City Manager

(13) of Lemon Grove about the incident?

(14) A.) No.

15 Q. What's your understanding of the
16 incident?

17 A. I understand from what I read in various
18 newspapers that there was a gathering at David
19 Arambula's, Councilman Arambula's house. And I
20 guess there was drinks involved and they talked
21 about various topics I guess. And they got on
22 to -- from what I read in the newspaper that they
23 wanted to talk about if I remember right to try to
24 get a permit from the City to have a medical
25 marijuana business. And it arise along the lines

1 that Mr. Arambula started the fight?

2 MS. SEGAL: Same objections.

3 A. I don't remember anybody telling me that
4 because it was only from what I understand from
5 the papers two people there.

6 BY MR. BRIGGS:

7 Q. I'm not asking about what you read in
8 the papers. I want to know whether anybody has
9 ever told you who started the fight?

10 A. Nobody.

11 Q. Do you know anything about the fight
12 other than what you read in the newspaper?

13 A. No.

14 Q. In the second half of the fourth
15 paragraph you wrote "And dumping it on the City."
16 Do you see that?

17 A. Yes.

18 Q. What did you mean by dumping it on the
19 City?

20 MS. SEGAL: Same objections as before.
21 Irrelevant. Not reasonably calculated to lead to
22 admissible evidence. Calls for speculation. And
23 the document speaks for itself.

24 MR. MICHELS: I'll join. Go ahead.

25 A. Like I said, through my eyes if that

1 Declaration Under Penalty of Perjury

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4 I, MATTHEW MENDOZA, the witness herein,
5 declare under penalty of perjury that I have read
6 the foregoing in its entirety; and that the
7 testimony contained therein, as corrected by me,
8 is a true and accurate transcription of my
9 testimony elicited at said time and place.

10

11 Executed this ____ day of ____ 20__, at

12 _____,

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(city)

(state)

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MATTHEW MENDOZA

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1 STATE OF CALIFORNIA
2 COUNTY OF SAN DIEGO

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4 I, BOBBIE HIBBLER, a Certified Shorthand
5 Reporter for the State of California, CSR No.
6 12475, do hereby certify: That the proceedings
7 were taken before me at the time and place herein
8 named; that the said proceedings were reported by
9 me in shorthand and transcribed through computer-
10 aided transcription, under my direction; and that
11 the foregoing is a true record of the testimony
12 elicited at proceedings had at said proceedings to
13 the best of my ability.

14 I do further certify that I am a
15 disinterested person and am in no way connected
16 with or related to any of the parties in this
17 action or to their respective counsel.

18 In witness whereof, I have hereunto set my
19 hand this 21st day of November, 2019.

20
21
22 Bobbie Hibbler
23 Bobbie Hibbler, CSR No. 12475
24
25