

ORIGINAL

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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 TESTIMONY, INQUIRY, AND COMMENT CONCERNING PLAINTIFF'S WEALTH AND ABILITY TO AFFORD MEDICAL TREATMENT AND PSYCHOLOGICAL THERAPY; DECLARATION OF EMILY M. STRAUB

[MIL No. 22 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 testimony, inquiry, and comment concerning plaintiff's wealth and ability to afford medical treatment and psychological therapy.

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 and his counsel will attempt to present testimony, inquiry, and
3 comment concerning plaintiff's inability to afford medical treatment and psychological therapy
4 for his alleged injuries in this lawsuit. Plaintiff's ability or inability to afford such treatment is
5 irrelevant, it has no probative value, and it would confuse and mislead the jury. Plaintiff and his
6 counsel should therefore be precluded from presenting any testimony, inquiry, or comment
7 concerning this subject matter.

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. EVIDENCE OF PLAINTIFF'S WEALTH SHOULD BE EXCLUDED BECAUSE IT**
15 **IS NOT RELEVANT**

16 A plaintiff's wealth is not relevant to any matters to be decided by the jury. (CACI 117.) No
17 evidence is admissible except relevant evidence." (Evid. Code § 350.) Relevant evidence is evidence
18 "having any tendency in reason to prove or disprove any disputed fact as a consequence to the
19 determination of the action." (Evid. Code, § 210.) Evidence should be excluded where it is not
20 relevant to matters at issue. (*People v. Kelly* (1992) 1 Cal. 4th 495, 523.)

21 Throughout the course of plaintiff's deposition, plaintiff repeatedly testified he did not obtain
22 medical treatment or psychological therapy because (a) he does not have insurance, and (b) cannot
23 otherwise afford such treatment or therapy. (*See* Declaration of Emily M. Straub at Exhibits 1 and
24 2.) While no mention of insurance may be made during trial,¹ defendants anticipate plaintiff will
25 testify about his inability to afford treatment and therapy as a means to justify his failure to mitigate
26 damages, and otherwise inappropriately influence the jury. Defendants further anticipate plaintiff's

27 _____
28 ¹ Per San Diego County Local Rules, rule 2.1.18, a motion in limine excluding evidence and mention
of insurance is automatically deemed granted, and many not separately be filed by any party.

1 counsel will attempt to question witnesses, and comment, about plaintiff's inability to afford such
2 care. Whether plaintiff can or cannot afford care is not relevant to any issues to be decided by the
3 jury. The only issues in this case for the jury to determine are liability, causation, and damages.
4 Accordingly, plaintiff and his counsel should be precluded from presenting testimony, inquiry, and
5 comment regarding plaintiff's ability to afford medical treatment and/or psychological therapy.

6 **IV. EVIDENCE OF PLAINTIFF'S WEALTH SHOULD BE EXCLUDED PURSUANT**
7 **TO EVIDENCE CODE SECTION 352**

8 Evidence Code § 352 states:

9 The court in its discretion may exclude evidence if its probative value is
10 substantially outweighed by the probability that its admission will
11 (a) necessitate undue consumption of time or (b) create substantial danger
of undue prejudice, of confusing the issues, or of misleading the jury.

12 In weighing "prejudice" against the probative value of the evidence, the court looks to
13 whether the evidence is likely to inflame the jury's passions (*People v. Hendrix* (2013) 214
14 Cal.App.4th 216, 246,) or whether the evidence tends to evoke an emotional bias (*People v. Daniels*
15 (2009) 176 Cal.App.4th 304, 317.) The California Supreme Court noted:

16
17 In other words, evidence should be excluded as unduly prejudicial
18 when it is of such nature as to inflame the emotions of the jury,
19 motivating them to use the information, not to logically evaluate the
20 point upon which it is relevant, but to reward or punish one side
because of the jurors' emotional reaction. In such a circumstance, the
evidence is unduly prejudicial because of the substantial likelihood
the jury will use it for an illegitimate purpose.

21 *People v. Scott* (2011) 52 Cal.4th 452, 491.

22 Importantly, in an action for damages, a showing of poverty of the plaintiff is highly
23 prejudicial and if such evidence is deliberately introduced, it may constitute reversible error. (*Hart*
24 *v. Wielt* (1970) 4 Cal.App.3d 224, 234.) A deliberate attempt by counsel to appeal to social or
25 economic prejudices of the jury, including the wealth or poverty of the litigants, is misconduct where
26 the asserted wealth or poverty is not relevant to the issues of the case. (*Hoffman v. Brandt* (1966) 65
27 Cal.2d 549, 552-553.)

28 ///

1 Here, as discussed *supra*, plaintiff's ability to afford medical treatment and psychological
2 therapy is not relevant to the claims in this lawsuit. As such, any evidence concerning this subject
3 has no probative value. The only purposes this evidence would serve would be to: (a) improperly
4 appeal to the economic prejudices of the jury; (b) improperly influence juror feelings of sympathy
5 for plaintiff; (c) improperly encourage a higher damages award; (d) improperly sway the jury to give
6 plaintiff a pass on failing to mitigate his damages; and, as a result of all of the aforementioned
7 purposes; (e) unduly prejudice the defense. The Court cannot not allow this to happen.

8 **V. CONCLUSION**

9 For the foregoing reasons, Mr. Arambula respectfully requests the Court grant this motion
10 and issue and order precluding plaintiff and his counsel from presenting any evidence, inquiry, and
11 comment regarding plaintiff's inability to afford medical treatment and psychological therapy.

12
13 Dated: December 5, 2019

TYSON & MENDES

14
15
16 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.

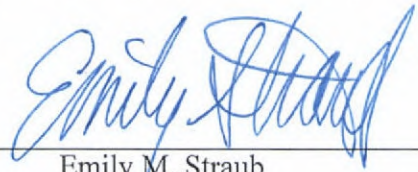
2. I am a counsel of record for Defendants David Arambula, and offer this declaration in support of the corresponding motion *in limine*.

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 first volume of plaintiff's deposition on January 8, 2019.

5. Attached hereto as Exhibit 2 is a true and correct copy of transcript excerpts from the second volume of plaintiff's deposition on September 24, 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
)	CU-PO-CTL
Plaintiff,)	
)	
v.)	
)	
DAVID ARAMBULA, CITY OF)	
LEMON GROVE, and DOES 1)	
through 1,000,)	
)	
Defendants.)	

VIDEOTAPED DEPOSITION OF CHRISTOPHER WILLIAMS
San Diego, California
January 8, 2019
VOLUME 1

REPORTED BY: BOBBIE HIBBLER, CSR NO. 12475

1 Q. So Joe took out your stitches. When
2 you're at Alvarado Hospital did anyone recommend
3 to you that you should follow up with a primary
4 care physician?

5 A. Yeah.

6 Q. Who made that recommendation?

7 A. The doctor.

8 Q. Okay.

9 A. Or the nurse. I don't know exactly
10 which one. One of them.

11 Q. Did you follow up with a primary care
12 physician?

13 A. No, I didn't.

14 Q. Did you have a primary care physician at
15 that time?

16 A. No. I don't have insurance.

17 Q. That wasn't my question.

18 A. Oh, sorry.

19 Q. Did you have a primary care physician at
20 the time?

21 A. No.

22 Q. Do you currently have a primary care
23 physician?

24 A. No.

25 Q. So you get that recommendation about the

1 how often do you on a average month experience
2 pain in your rib cage?

3 A. Again, if I'm just sitting here like
4 right now I would be lying if I'm like oh I'm
5 hurting. But, you know, I make a awkward move on
6 the golf course or try to do something, I hit the
7 ground wrong, you know, rotate my body wrong, I
8 can still feel it. But, no it's not a -- it's
9 nowhere near the pain where if I'm just sitting
10 here now I'm like oh my rib.

11 Q. What about if you're laughing, does that
12 cause you any pain currently?

13 A. No. It was. But, you know, not right
14 now.

15 Q. When did the pain associated with
16 laughing stop?

17 A. Like basically once it was pretty much
18 healed up.

19 Q. Have you received any x-rays since your
20 initial medical treatment at the Alvarado Hospital
21 of your rib cage?

22 A. I don't have insurance.

23 Q. That wasn't my question. I asked if you
24 received any x-rays of your rib cage following the
25 incident since, you know, your initial medical

1 it. Sometimes it's cold water that makes me feel
2 better. Sometimes it's a little warmer water and
3 drink the water. I won't stare at the TV. I will
4 shut the eyes real quick. I won't look at my cell
5 phone screen and just give it a break.

6 Q. How about the pain meds that you took in
7 the beginning, did that help with your head pain
8 at all?

9 A. I'm sure at the beginning it definitely
10 helped. It probably helped. You know, it was
11 strong opioids, so it probably helped with any
12 type of pain that I was feeling.

13 Q. What about the marijuana joints that you
14 were smoking, did that help alleviate any of the
15 pain associated with your --

16 A. I believe so.

17 Q. -- head contusions? Did you received
18 any kind of medical treatment for the symptoms
19 that you associate with these head contusions
20 other than what we've talked about at the Alvarado
21 Hospital?

22 A. No, ma'am. I don't have insurance.

23 Q. You indicate that you are currently are
24 experiencing headaches. When did these headaches
25 first start?

1 comes to the sunlight. It's usually right at the
2 beginning of the morning.

3 Q. So it sounds like it's symptomatic
4 depends on what you're doing. Is that currently
5 the situation?

6 A. Yes, ma'am.

7 Q. Has the duration of these headaches
8 lessened at all from the time of the incident to
9 now?

10 A. Yes. I believe because I found remedies
11 that I think help me, you know, like closing my
12 eyes and drinking warm or cold water definitely
13 works.

14 Q. Is that -- those remedies something you
15 received from the advice of a medical
16 professional?

17 A. No. I don't have insurance. It's
18 Google.

19 Q. Google. Is it your testimony that the
20 duration of your headaches has lessened since the
21 date of the incident?

22 A. Yes, ma'am. It has.

23 Q. How long on average do your headaches
24 last? More than a minute?

25 A. Well, it's hard to say. Depends on the

1 intensity. But, again, now that I believe that
2 I've found something that works, you know, if I
3 feel that fogginess, if I feel the headache pain,
4 then I immediately put the book down, put the
5 screen down, turn the TV off, close my eyes, go
6 get some water.

7 Q. Have you ever had a migraine in your
8 life, if you know?

9 A. Never.

10 Q. Have you -- okay. And you haven't
11 treated with anyone for your headaches since the
12 incident, have you?

13 A. No.

14 Q. Is there a reason why?

15 A. I don't have insurance.

16 Q. Okay. Is that the only reason?

17 A. Yeah. If I had insurance I would be
18 checking it out. I would be doing what I can do
19 with this here and my cranium and all of it.

20 Q. We'll talk about the insurance
21 situation. So other than the rib, the contusions
22 on your head and the symptoms associated with
23 that, what other injuries would you attribute to
24 Mr. Arambula from this physical altercation?

25 A. The scars.

1 the feelings of being uncomfortable in certain
2 settings, you know. So I believe that there's
3 some psychological.

4 Q. Anything we haven't discussed already?

5 A. Not that I can say off hand.

6 Q. Is there a reason why you haven't sought
7 medical treatment for those symptoms?

8 A. It would cost me too much money. I
9 don't have insurance.

10 Q. And you didn't have insurance on the
11 date of the incident; right?

12 A. No, ma'am.

13 Q. So we talked about that. What worries
14 you most about your recovery from your injuries?

15 A. That I'll never fully be recovered.

16 Q. Is there any injuries in particular that
17 you feel that way about? Is it all of them or --

18 A. No. My biggest concern is the contusion
19 or indentation. Again, I'm not a doctor so I
20 don't know what they would call or diagnose it.
21 The sensitivity to the lights, the lack of ability
22 to stare at my screen for, you know -- I was able
23 to do that before. And I'm a businessman, I do a
24 lot with the screen and a computer. So does that
25 answer?

1 A. No. Never. I have no intent to use
2 them, but I need them there just in case.

3 Q. Okay. Let's move to past medical
4 treatment. Other than what we talked about with
5 your visit to Alvarado Hospital, prior to today
6 have you treated with any other medical providers
7 for any of your injuries that you attribute to the
8 physical altercation with Mr. Arambula?

9 A. No.

10 Q. Do you have any plans for future medical
11 treatment for any of those injuries?

12 A. I would like to get them checked out at
13 some point.

14 Q. But you don't have any specific
15 appointments set up or doctors in mind that you
16 want to treat with at this time?

17 A. I don't have any specific appointments
18 or doctors in mind. No, ma'am.

19 Q. Now you indicated you didn't have health
20 insurance when you went to Alvarado Hospital;
21 correct?

22 A. Yes, ma'am.

23 Q. Why did you not have insurance at that
24 time, health insurance to be specific?

25 A. I wasn't paying for any.

1 STATE OF CALIFORNIA

2 COUNTY OF SAN DIEGO

3

4 I, Bobbie Hibbler, Certified Shorthand
Reporter, in and for the State of California,
5 Certificate No. 12475, do hereby certify:

6 That the witness in the foregoing
deposition was by me first duly sworn to testify
7 to the truth, the whole truth, and nothing but the
truth in the foregoing cause; that the deposition
8 was then reported by me in shorthand and
transcribed, through computer-aided transcription,
9 under my direction; and that the above and
foregoing transcript, is a true record of the
10 testimony elicited and proceedings had at said
deposition.

11

I do further certify that I am a
12 disinterested person and am in no way interested
in the outcome of this action or connection with
13 or related to any of the parties in this action or
to their respective counsel.

14

15 In witness whereof, I have hereunto
set my hand this _____ day of _____ 20__.

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19 Bobbie Hibbler, CSR No. 12475

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Christopher Williams, 1/8/2019

1 Declaration Under Penalty of Perjury

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3
4 I, CHRISTOPHER WILLIAMS, 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 15 day of Feb 2019, at
12 San Diego, CA
13 (city) (state)

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18
19 CHRISTOPHER WILLIAMS

C E R T I F I C A T E

I, the undersigned, do hereby certify that I have read the foregoing deposition and that, to the best of my knowledge, said deposition is true and accurate (with the exception of the following changes listed below).

PAGE LINE
No. No.

211 10 I cannot recall if I was kicked

222 4. One forearm over the other

234 24. Kathleen's parents and sisters
were not at my home when I arrived, they
had already left to the hotel. The family was
at my home when I left for the meeting and
at my home in the morning when I woke up.

~~235 [REDACTED]~~
~~236 [REDACTED]~~
239 8. Jill went back to the hotel. Kathleen and
Mac were the only two awake

254 20. Joanna Cary

**Please turn to back of transcript and
sign the Penalty of Perjury page.**

EXHIBIT 2

1 Q. Yeah.

2 A. Have I looked up any doctors regarding
3 any of my physical ailments thinking about going
4 or have I scheduled, because I have definitely
5 thought about and looked up potential doctors, but
6 I have no -- nothing on my calendar. So I just
7 want to make sure I'm answering your question
8 correctly.

9 Q. Let's just answer the second way first.
10 Do you have anything on your schedule?

11 A. I do not have anything scheduled on my
12 calendar.

13 Q. Okay. Do you plan on making a phone
14 call to anybody in the next, I don't know, week or
15 two about scheduling with a medical provider to
16 get something on your calendar?

17 A. In the next week or two, I probably do
18 not have. I'm not going to most likely make any
19 appointments.

20 Q. Do you have an estimate as to whether
21 you think you might make an appointment as you sit
22 here right now?

23 A. I do not because it takes money.

24 Q. Okay. Is the reason why you're not
25 seeking help with your vision and/or the other

1 medical -- strike that.

2 Is the reason you're not seeking
3 consultation with an optometrist or a
4 ophthalmologist because of money?

5 A. That is part of the reason, yes.

6 Q. Is there any other reason?

7 A. I mean, if they'd take me for free I'd
8 go any day.

9 Q. Sure. Same question with the pain in
10 your side and your shoulders, is the reason why
11 you haven't sought treatment with anybody is that
12 because it's a money issue, you don't have money?

13 A. Yeah. I don't have insurance, yes.

14 Q. And you don't have a huge wad of cash in
15 your bank account that you can just go pay
16 someone; correct?

17 A. All my money is invested in Lemon Grove
18 and stuff like this. So this is -- this is my
19 main priority, so no.

20 Q. Okay. You talked about -- we've gone
21 over as you sit here right now the physical
22 symptoms you've got; correct?

23 A. Yes. We have went over physical
24 symptoms that I had, yes.

25 Q. Okay. Then you talked about you had

1 psychologist prior to trial?

2 A. No.

3 Q. Do you currently plan to undergo a
4 psychiatric evaluation by a psychiatrist prior to
5 trial?

6 A. No. Unless they do it for free, no.

7 Q. Okay. Well, that's an interesting
8 thought. Have you ever considered treating with a
9 medical professional on a lien basis in connection
10 with this litigation?

11 A. On a lien basis?

12 Q. Uh-huh (affirmative response).

13 A. Have I considered that?

14 Q. Yes.

15 A. No. I didn't know you could do that.

16 Q. Okay. Well, now that you know that
17 there is the possibility of treating or at least
18 if you were to find someone who could treat on a
19 lien basis, would you do that prior to trial?

20 MR. BRIGGS: I'm going to object and
21 instruct him not to answer because that would get
22 into trial strategy. And it's a conversation he
23 needs to have with his lawyer.

24 MS. STRAUB: Not if it hasn't been a
25 conversation that you two have had. It's not

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Declaration Under Penalty of Perjury

I, CHRISTOPHER WILLIAMS, the witness herein,
declare under penalty of perjury that I have read
the foregoing in its entirety; and that the
testimony contained therein, as corrected by me,
is a true and accurate transcription of my
testimony elicited at said time and place.

Executed this ____ day of ____ 20__, at

_____.

(City)

(state)

CHRISTOPHER WILLIAMS

Christopher Williams, Volume 2 9/24/2019

1 STATE OF CALIFORNIA

2 COUNTY OF SAN DIEGO

3

4 I, Bobbie Hibbler, Certified Shorthand
Reporter, in and for the State of California,
5 Certificate No. 12475, do hereby certify:

6 That the witness in the foregoing
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in the outcome of this action or connection with
13 or related to any of the parties in this action or
to their respective counsel.

14

15 In witness whereof, I have hereunto
set my hand this _____ day of _____ 20__.

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Bobbie Hibbler, CSR No. 12475

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