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County of San Diego

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO – HALL OF JUSTICE

10 CHRISTOPHER WILLIAMS,

11 Plaintiff,

12 vs.

13 DAVID ARAMBULA; CITY OF LEMON
14 GROVE; and DOES 1 through 1,000,,

15 Defendants.

) CASE NO. 37-2018-00023363-CU-PO-CTL

) **PLAINTIFF'S BRIEF IN OPPOSITION**
) **TO DEFENDANT CITY OF LEMON**
) **GROVE'S MOTION FOR SUMMARY**
) **JUDGMENT AND/OR ADJUDICATION**
) **OF ISSUES**

) Action Filed: March 01, 2017
) Department: C-68 (Whitney)

) Hearing Date: February 8, 2019
) Hearing Time: 10:30 a.m.

17 _____
18
19 Plaintiff CHRISTOPHER WILLIAMS respectfully submits this brief in opposition to Defendant
20 CITY OF LEMON GROVE's motion for summary judgment and/or summary adjudication of issues.

21 Date: January 25, 2019.

Respectfully submitted,

22 BRIGGS LAW CORPORATION

23
24 By: _____

Cory J. Briggs

25 Attorneys for Plaintiff Christopher Williams
26
27
28

1 I. INTRODUCTION

2 The motion by Defendant CITY OF LEMON GROVE (“CITY”) should be denied because it
3 essentially centers around one disputed fact: the purpose of the meeting held between Lemon Grove
4 City Mayor Racquel Vasquez, Lemon Grove City Councilmember David Arambula, and Plaintiff at
5 Arambula’s home to discuss Plaintiff’s applications for city permits to operate medical-marijuana
6 dispensaries.

7 What really happened? Mayor Vasquez, whose personal work schedule makes attending CITY
8 business meetings during normal business hours an inconvenience, and Arambula, who enjoys the
9 convenience, informality, and later hours of hosting CITY business meetings at his home, invited
10 Plaintiff to his home on the night of July 14, 2017, to discuss Plaintiff’s pending applications.
11 Eventually Arambula lost his temper and everyone else in attendance decided to leave. Unprovoked,
12 Arambula committed assault and battery against Plaintiff as he was trying to leave.

13 CITY paints the scene of the incident as a social event and claims that the incident at issue
14 occurred outside the scope of Arambula’s employment in an obvious attempt to rid itself of liability for
15 the serious injuries he inflicted on Plaintiff. The facts show CITY’s version to be false. For this reason
16 and others, the motion should be denied and the case should proceed to trial.

17 II. STANDARD OF REVIEW FOR SUMMARY JUDGMENT/ADJUDICATION

18 A motion for summary judgment shall not be granted unless all the papers submitted by the
19 moving party show that there is no triable issue as to any material fact *and* that the moving party is
20 entitled to judgment as a matter of law. CODE OF CIV. PROC. § 437c(c); *Zavala v. Arce*, 58 Cal. App.
21 4th 915, 925-926 (1997). A triable issue of material fact is present if a reasonable trier of fact, in
22 looking at the evidence presented, could find the underlying fact in favor of the party opposing the
23 motion. *Aguilar v. Atlantic Richfield Co.*, 25 Cal. 4th 826, 850 (2001). For purposes of summary
24 adjudication, if a fact is not set forth in the separate statement, it does not exist. *United Comm’y*
25 *Church v. Garcin*, 231 Cal. App. 3d 327, 337 (1991) (superseded on other grounds as noted in *City of*
26 *Pasadena v. Superior Ct.*, 228 Cal. App. 4th 1228, 1238 n. 4 (2014)).

27 In a similar vein, a party may move for summary adjudication as to one or more causes of action
28 if, as pertinent here, the party contends that there is no merit thereto. CODE OF CIV. PROC. § 437c(f).

1 A defendant moving for summary adjudication has the burden of showing that a cause of action lacks
2 merit by showing that one or more elements of the cause of action cannot be established, or that there
3 is a complete defense to that cause of action. *Id.*, § 437c(p)(2). Once the defendant has met that
4 burden, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists
5 as to that cause of action or a defense thereto. *Id.*

6 A party who asks the Court to act in his or her favor bears both the burden of persuasion and
7 the burden of production. “From commencement to conclusion, the party moving for summary
8 judgment bears the *burden of persuasion* that there is no triable issue of material fact and that he is
9 entitled to judgment as a matter of law.” *Aguilar, supra*, 25 Cal. 4th at 850 (emphasis added). Further,
10 “[t]he party moving for summary judgment bears an initial *burden of production* to make a prima facie
11 showing of the nonexistence of any triable issue of material fact.” *Id.* (emphasis added).

12 Only admissible evidence may be used as a basis for a motion for summary judgment or
13 adjudication. Because of the drastic nature of summary judgment and adjudication, even the lack of
14 objections to otherwise inadmissible evidence will not supply the missing elements of proof. *Rincon*
15 *v. Burbank Unified Sch. Dist.*, 178 Cal. App. 3d 949, 954 (1986). The moving party must make a strong
16 showing, and the supporting declarations will be strictly construed; this rule applies even when the non-
17 moving party makes no counter-showing. *Id.* at 955. Accordingly, declarations must be based on
18 personal knowledge, set forth admissible evidence, and demonstrate competence to testify. CODE OF
19 CIV. PROC. § 437c(d).

20 III. ARGUMENT & ANALYSIS

21 This motion must be denied because CITY has not met its burden of persuasion. Material facts
22 are in dispute, and the evidence before the Court shows that CITY is not entitled as a matter of law to
23 summary judgment or adjudication. In addition, facts essential to this opposition may exist but have
24 not yet been obtained, thus independently warranting a denial of this motion. Each of these points is
25 further developed below.

26 A. Evidence Justifying Opposition May Exist

27 This motion should be denied – or at the very least postponed – because “essential evidence *may*
28 exist but cannot, for reasons stated [in the undersigned’s accompanying declaration], then be presented”

1 to this Court.” CODE OF CIV. PROC. § 437c(h) (emphasis added). Plaintiff so moves now. If CITY’s
2 motion is not denied, then at a minimum the Court should grant Plaintiff’s motion for a continuance
3 because “such continuances are to be *liberally granted*.” *Frazer v. Seely*, 95 Cal. App. 4th 627, 634
4 (2002) (emphasis added).

5 There is evidence that may help Plaintiff. First, there is evidence from Lemon Grove City
6 Councilmember Jerry Jones, who told a newspaper reporter: “I am concerned that David [Arambula]
7 and [Mayor] Racquel [Vasquez] put themselves in a situation that led to this level of violence.” Briggs
8 Decl., ¶ 4; Ex. 4. Plaintiff served CITY with a deposition notice for Jones, but CITY objected and
9 refused to produce him. *Id.*, ¶¶ 5 & 6; Exs. 5 & 6. The motion should be denied for that reason alone,
10 as Jones appears to have evidence that suggests Arambula and Mayor Vasquez were at fault or at least
11 were meeting with Plaintiff within the scope of their service as CITY officials.

12 In addition, Plaintiff recently served a subpoena on the insurance-company investigator who
13 looked into Plaintiff’s tort claim. Briggs Decl., ¶ 7. The subpoena would have been issued sooner, but
14 CITY took until January 4, 2019, to provide the contact information for the investigator and then
15 provided only a post-office box. *Id.* In light of other pressing obligations for Plaintiff and other clients,
16 my staff was unable to find the physical address for service until January 21, 2019. *Id.* The subpoena
17 was issued and sent out for service immediately upon discovering the physical address. *Id.* The
18 investigation will show whether CITY understood the full extent of what Plaintiff was claiming – such
19 as intentional infliction of emotional distress – and whether CITY uncovered any other evidence to
20 prove that Arambula, CITY, or both are liable to Plaintiff.

21 What’s more, the testimony of Taisha Brown is likely to bolster Plaintiff’s contention that
22 members of the Lemon Grove City Council routinely met at private residences to conduct CITY
23 business. Briggs Decl., ¶ 8. Since she is the person who scheduled the meeting on Plaintiff’s behalf,
24 she is the best witness to testify about what Arambula and/or Mayor Vasquez said when setting up the
25 meeting. CITY’s counsel notified the undersigned yesterday that Brown’s deposition will not occur
26 until the week of February 25, 2019. *Id.*

27 For all these reasons, the Court should either deny this motion outright or continue it until Jones
28 and Brown can be deposed.

1 **B. Defendant's Material Facts Are Disputed**

2 As detailed in Plaintiff's Separate Statement of Disputed and Additional Facts ("SSDAF"),
3 almost all facts concerning the night of July 14, 2017, and into the early morning of July 15, 2017,
4 when Plaintiff was attacked by Arambula, are in dispute. *See* SSDAF nos. 6,9,10,14-17,20-22.

5 Contrary to CITY's claims that the attack occurred at a purely social event, Plaintiff was at
6 Arambula's home by invitation to discuss official CITY business. *See id.*, nos. 6, 10. On the night of
7 July 14, 2017, Arambula and Mayor Vasquez met with Plaintiff to discuss his pending application for
8 a permit to operate a medical-marijuana dispensary. *Id.* The meeting pertaining to CITY business
9 ended when Arambula threw a glass at the wall. *See id.*, no. 31. He attacked Plaintiff as Plaintiff was
10 trying to leave. Had it not been for Plaintiff's pending permit application, there would have been no
11 reason for Plaintiff to be at Arambula's house. *See id.*, nos. 6, 10. There is no evidence that Plaintiff
12 was friends with Arambula or Mayor Vasquez.

13 Arambula has admitted to holding meetings pertaining to CITY business in the comfort of his
14 own home in the afternoons or evenings for reasons of convenience. *See id.*, no. 27. This is not
15 surprising. Mayor Vasquez often holds meetings away from City Hall because her full-time job
16 elsewhere makes attending meetings at City Hall inconvenient. *See id.*, no. 28. City Manager Lydia
17 Romero confirmed that meetings pertaining to CITY business have been held outside of Lemon Grove
18 City Hall "[o]n multiple occasions." *Id.*

19 CITY has not been able to show that there is any formal process or method to organize or track
20 the nature or purpose of meetings that take place outside City Hall. There is no evidence that CITY
21 ever took any action to prevent its representatives from holding meetings outside of City Hall. While
22 CITY may attempt to describe the meeting with Plaintiff as a purely social event based on factors such
23 as location and time, CITY's practices and Arambula's own admission of hosting meetings at home
24 prove the opposite. Further, there is no evidence that Plaintiff had ever spent time with arambula or
25 Mayor Vasquez in a purely social setting.

26 It strains credulity to think that a constituent with pending applications was randomly welcomed
27 to a private social event – without only one other person in attendance – hosted by two elected public
28 officials.

1 **C. Defendant Is Not Entitled to a Ruling in Its Favor as a Matter of Law**

2 CITY contends that it is immune, per the California Tort Claims Act, from liability for injuries
3 caused to Plaintiff by Arambula. CITY further contends that Plaintiff's tort claim did not properly
4 describe the causes of action brought forth in this lawsuit. CITY is twice wrong.

5 **1. Plaintiff Was Attacked During the Scope of Arambula's Employment,**
6 **Making Defendant Vicariously Liable for Arambula's Action**

7 The California Tort Claims Act provides that public employees are liable for their acts and
8 omissions to the same extent as a private person and that public-entity employers are vicariously liable
9 for employees' negligent acts within the scope of their employment to the same extent as private
10 employers. GOV'T CODE § 815.2. If determined that the act arose from and was directly related to the
11 elected official's performance of his or her official duties, the public entity shall be liable for the
12 judgment as provided by law. GOV'T CODE § 815.3(b). As Mayor Vasquez's own calendar and the
13 City Manager's own testimony prove, CITY has allowed officials to conduct meetings pertaining to
14 official business outside City Hall as a part of the usual course of conduct. *See* SSDAF no. 28. When
15 Mayor Vasquez and Arambula met with Plaintiff on the evening of July 14, 2017, to discuss his permit
16 applications, they were doing so within the scope of their employment as elected officials. Because
17 CITY's representatives were acting within the scope of their employment, CITY is vicariously liable
18 under the Government Code for Arambula's conduct during the meeting. But for the pendency of
19 Plaintiff's permit applications, he would have never been at Arambula's house that night with
20 Arambula and Mayor Vasquez.

21 **2. Plaintiff Substantially Complied with Requirements of the California Tort**
22 **Claims Act when Presenting His Timely Claim to Defendant**

23 CITY's motion incorrectly asserts that the tort claim presented by Plaintiff lists injuries for
24 assault and battery only and not for any other cause of action. The claim lacks merit because Plaintiff
25 was only required to set forth the facts he knew, not the legal theories.

26 First and foremost, Plaintiff used *CITY's own claim form* to provide the requested information.
27 On this form, where instructed to provide (with Plaintiff's emphasis) a "general description of the
28 indebtedness, obligation, injury, damage or loss incurred *so far as it may be known at the time* of the

1 presentation of the claim,” Plaintiff did exactly that: he told them as much as he as a lay person knew.¹
2 He described the injuries he suffered as physical injuries that required medical treatment, substantial
3 medical bills, pain and suffering and lost work.² Nowhere did CITY ask for a “theory of liability” or
4 for a label to be put on a “cause of action.”

5 Even if Plaintiff did not complete the claim form perfectly, he substantially complied with the
6 requirements for properly submitting a tort claim. Courts have held that defects in submitted tort claims
7 are not fatal so long as there is substantial compliance with the statutory requirements of the claim-
8 filing requirements. *Perez v. Golden Empire Transit Dist.* Cal. App. 4th 1228, 1234 (2012). A claim
9 has substantially complied with the requirements when sufficient information is disclosed to meet the
10 purpose of the requirement: to provide a public entity notice sufficient for the entity to investigate and
11 evaluate the claims submitted, and if appropriate, settle them.³ *City of San Jose v. Superior Ct.*, 12
12 Cal.3d 447, 455 (1974). The requirement “should not be applied to snare the unwary where its purpose
13 is satisfied, and the claim ***need not contain the detail and specificity required of the pleading***, but need
14 only fairly describe what the entity is alleged to have done.” *Garber v. City of Clovis*, 698 F.Supp.2d
15 1204, 1216 (E.D. Cal. 2010) (internal citation omitted).

16 CITY asserts that Plaintiff is not entitled to damages for intentional infliction of emotional
17 distress because this cause of action was not listed in his tort claim. Plaintiff specifically lists his “pain
18 and suffering” as an injury in the tort claim, allowing CITY to properly investigate this injury. Plaintiff
19 had no obligation to list any potential legal theories arising from the injuries and damages known and
20 listed at time the claim was presented.

21 Further, Plaintiff’s tort claim specifically details that he was invited to Arambula’s home to
22 discuss Plaintiff’s application for permit to operate medical-marijuana dispensaries. Read as a whole,
23 the tort claim describes in detail the circumstances pertaining to CITY business meeting that gave rise
24

25 ¹ Though he listed legal counsel on the form, the form was completed and signed by Plaintiff. SSDAF
no. 35.

26 ² This description met the requirement described under Government Code Section 910(d) (with
27 Plaintiff’s emphasis): “A general description of the indebtedness, obligation, injury, damage or loss
incurred ***so far as it may be known at the time*** of presentation of the claim.”

28 ³ Evidence about what CITY understood Plaintiff’s claim to be is likely to be contained in the
insurance investigator’s files, which is why Plaintiff has issued a subpoena.

1 to the claim of injuries listed due to the attack on Plaintiff within Arambula's scope of employment.
2 Plaintiff provided ample information to conduct a proper investigation as to CITY's vicarious liability
3 and misdeeds that led to the injuries he suffered. Plaintiff should not be barred from recovering
4 damages from CITY for intentional infliction of emotional distress or any other theory of liability
5 because those theories of recovery are well within the facts laid out in the claim form.

6 **3. City Council Members Are Not Immune from Decisions that Caused**
7 **Plaintiff's Loss of Future Income**

8 CITY contends that, under discretionary immunity, Arambula is immune from liability based
9 on lost earnings and CITY is immune by extension. However, discretionary immunity under
10 Government Code Section 820.2 is not a catch-all that allows public officials to make decisions at every
11 level without consequence, and the doctrine is not limitless. Even if an employee exercises discretion
12 in deciding to act, there is no immunity when injury results from the negligent performance of the act.
13 *Martinez v. City of Los Angeles*, 141 F.3d 1373, 1379 (9th Cir. 1998) (internal citation omitted). While
14 discretionary immunity does provide immunity to a public employee for an injury resulting from his
15 act or omission that resulted from the exercise of discretion, a "discretionary act" requires a conscious
16 balancing of risks and advantages when making basic policy decisions and does not protect operational
17 decisions or ministerial decisions that implement policies. *Steinle v. City and County of San Francisco*,
18 230 F.Supp.3d 994, 1020 (N.D. Cal. 2017) (internal citation omitted). ***Arambula never had the***
19 ***discretion to attack Plaintiff*** or to continue to inflict injury on him afterward.

20 Soon after Plaintiff's meeting with Mayor Vasquez and Arambula regarding his pending
21 applications on the night of July 14, 2017, the Lemon Grove City Council voted to deny the
22 applications. See SSDAF no. 34. Arambula never properly disclosed the events of the meeting a few
23 days earlier and did not recuse himself. *Id.* His participation only exacerbated the harm he began to
24 inflict a few days earlier. Two of Plaintiff's applications were denied as a result of Arambula's decision
25 to keep colleagues in the dark about what had occurred during his meeting with Plaintiff as well as
26 Arambula's decision to partake in a vote directly related to Plaintiff despite clearly being violent and
27 hostile toward him. *Id.* The actions Arambula took relating to Plaintiff's applications were illegal and
28 not discretionary.

PROOF OF SERVICE

1. My name is Monica Manriquez. I am over the age of eighteen. I am employed in the State of California, County of San Diego.

2. My business _____ residence address is Briggs Law Corporation, 4891 Pacific Highway, Suite 104, San Diego, CA 92110.

3. On January 25, 2019, I served _____ an original copy a true and correct copy of the following documents: Plaintiff's Brief in Opposition to Defendant City of Lemon Grove's Motion for Summary Judgment and/or Adjudication of Issues

4. I served the documents on the person(s) identified on the attached mailing/service list as follows:

by personal service. I personally delivered the documents to the person(s) at the address(es) indicated on the list.

by U.S. mail. I sealed the documents in an envelope or package addressed to the person(s) at the address(es) indicated on the list, with first-class postage fully prepaid, and then I

deposited the envelope/package with the U.S. Postal Service

placed the envelope/package in a box for outgoing mail in accordance with my office's ordinary practices for collecting and processing outgoing mail, with which I am readily familiar. On the same day that mail is placed in the box for outgoing mail, it is deposited in the ordinary course of business with the U.S. Postal Service.

I am a resident of or employed in the county where the mailing occurred. The mailing occurred in the city of San Diego, California.

by overnight delivery. I sealed the documents in an envelope/package provided by an overnight-delivery service and addressed to the person(s) at the address(es) indicated on the list, and then I placed the envelope/package for collection and overnight delivery in the service's box regularly utilized for receiving items for overnight delivery or at the service's office where such items are accepted for overnight delivery.

by facsimile transmission. Based on an agreement of the parties or a court order, I sent the documents to the person(s) at the fax number(s) shown on the list. Afterward, the fax machine from which the documents were sent reported that they were sent successfully.

by e-mail delivery. Based on the parties' agreement or a court order or rule, I sent the documents to the person(s) at the e-mail address(es) shown on the list. I did not receive, within a reasonable period of time afterward, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws _____ of the United States of the State of California that the foregoing is true and correct.

Date: January 25, 2019

Signature: 

SERVICE LIST

Christopher Williams vs. Lemon Grove

Superior Court of the State of California Case No. 37-2018-00023369-CU-PO-CTL

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