

1 BRIGGS LAW CORPORATION [FILE: 1939.00]
2 Cory J. Briggs (State Bar no. 176284)
3 Anthony N. Kim (State Bar no. 283353)
4 99 East "C" Street, Suite 111
5 Upland, CA 91786
6 Telephone: 909-949-7115

7 Attorneys for Plaintiff Christopher Williams

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
06/27/2019 at 05:23:00 PM
Clerk of the Superior Court
By Vanessa Bahena, Deputy Clerk

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. 37-2018-00023369-CU-PO-CTL

**PLAINTIFF'S OPENING BRIEF IN
SUPPORT OF MOTION TO COMPEL
DEPOSITION ATTENDANCE OF MATT
MENDOZA; DECLARATIONS OF
CHRISTOPHER WILLIAMS AND CORY
J. BRIGGS; SUPPORTING EXHIBITS**

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

Hearing Date: October 25, 2019
Hearing Time: 10:30 a.m.

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18 Plaintiff Christopher Williams ("Plaintiff") respectfully submits this opening brief in support
19 of his motion to compel Defendant City of Lemon Grove ("City") to produce Matt Mendoza for an oral
20 deposition and for monetary sanctions against City and its counsel of record in this lawsuit.

21 **I. INTRODUCTION**

22 As the Court knows, Plaintiff filed this lawsuit because he was brutally attacked by Defendant
23 David Arambula during a City-related business meeting at his (Arambula's) home in July 2017.
24 Plaintiff has sued Arambula and City for damages.

25 On April 17, 2019, Plaintiff served a Notice of Deposition on Matt Mendoza – scheduled for
26 May 14, 2019 – by first-class mail. *See* Briggs Decl. Ex. 1. On April 23, 2019, City submitted a formal
27 objection, stating that Mr. Mendoza will not appear at the deposition for two reasons: the date was
28 inconvenient, and Mr. Mendoza cannot be subject to deposition. *See* Briggs Decl. Ex. 2.

1 On May 16, 2019, Plaintiff's counsel made a good-faith effort to meet and confer by sending
2 a detailed response letter to City's counsel agreeing to schedule the deposition on a mutually agreeable
3 date and time and thoroughly explaining why Plaintiff has the right to depose Mr. Mendoza. *See* Briggs
4 Decl. Ex. 3. City's counsel, however, still maintains the position that Mr. Mendoza cannot be subject
5 to deposition. *See* Briggs Decl. Ex. 4.

6 Significantly, City did not object to the deposition of its mayor, Racquel Vasquez. *See* Briggs
7 Decl., ¶ 5. She testified that she has had multiple City-related meetings away from City Hall on private
8 property. *Id.* Given that Plaintiff was attacked by Defendant Arambula at his (Arambula's) personal
9 residence during a City-related meeting, whether City officials have a practice of conducting City-
10 related meetings on private property is relevant to City's liability for the attack.

11 Plaintiff's deposition of Mr. Mendoza is within the scope of discovery and will provide factual
12 information material to this lawsuit. Plaintiff has already been informed that Mr. Mendoza may have
13 factual information pertinent to this case. *See* Williams Decl., ¶ 2. The deposition is necessary for
14 Plaintiff to collect facts and effectively bring this lawsuit to trial. City's objections constitute a refusal
15 to substantively respond to Plaintiff's discovery in violation of Code of Civil Procedure Section
16 2031.010 *et. seq.* Consequently, Plaintiff asks this Court to compel City to produce Mr. Mendoza for
17 an oral deposition on a mutually agreeable time and date.

18 II. ARGUMENT & ANALYSIS

19 A. Matt Mendoza May Be Deposed

20 City erroneously claims that Mr. Mendoza is not subject to being deposed for two reasons. First,
21 City contends that as an elected council member he is a top government executive who cannot be
22 deposed. Second, City makes a blanket, unsupported assertion that he has no direct factual information
23 pertaining to any material issues in the lawsuit (other than the fact that he was not physically present
24 when Defendant Arambula attacked Plaintiff). Neither reason has merit.

25 The general rule in California is that agency heads and other top government executives are not
26 subject to deposition absent compelling reasons. *Westly v. Superior Ct.*, 125 Cal. App. 4th 907, 910
27 (2004). They are normally not subject to depositions because they typically have little to no knowledge
28 of the facts related to a lawsuit; as such, having to sit for deposition in every lawsuit would impose on
their time and the exigencies of everyday business and be contrary to the public interest. *Id.* at 911.

1 However, *this rule is not without exception*. When a government official has direct factual information
2 pertaining to material issues in the action, not available through any other source, the government
3 official may be deposed. *Id.* (citing *Nagle v. Superior Ct.*, 28 Cal. App. 4th 1465, 1468 (1994)).

4 Mr. Mendoza has not been noticed for deposition because of his role as a member of the Lemon
5 Grove City Council. Rather, in this lawsuit there are numerous material issues in dispute regarding
6 Defendant Arambula's attack on Plaintiff. Arambula attacked Plaintiff at a City-related business
7 meeting held at Arambula's home. Furthermore, Arambula and Mr. Mendoza discussed the attack
8 outside an official City meeting and without legal counsel. *See Williams Decl.*, ¶ 2. Plaintiff is entitled
9 to know what they discussed during their non-privileged conversations. In addition, Plaintiff is entitled
10 to know whether Mr. Mendoza ever conducts official City business in locations other than City Hall
11 because such meetings bolster Plaintiff's contention that the meeting at Arambula's residence was
12 standard operating procedure for Lemon Grove officials and that City is liable for Arambula's violence.

13 Significantly, City produced Mayor Vasquez for an oral deposition, during which she testified
14 about her conversations with Defendant Arambula about the attack (she denied having any) and about
15 her City-related meetings on private property (she admitted to having many). *See Briggs Decl.*, ¶ 5.
16 ***The fact that City allowed Mayor Vasquez to be deposed but will not allow Mr. Mendoza to be***
17 ***deposed is a really good indication that he has information that will prove highly valuable to***
18 ***Plaintiff's case.***

19 When material issues are in dispute, parties can obtain evidence through means of proper
20 discovery, including taking oral deposition of a percipient witness, that is reasonably calculated to lead
21 to the discovery of admissible evidence. *See Greyhound Corp. v. Superior Ct.*, 56 Cal.2d 355, 376
22 (1961). Mr. Mendoza, as Arambula's colleague, can provide factual information pertaining to these
23 issues in dispute. Mr. Mendoza has had direct personal communications and interactions with
24 Arambula about the attack on Plaintiff. *See Williams Decl.*, ¶ 2. Mr. Mendoza would also know
25 whether he has had any City-related meetings on private property, away from City Hall or other
26 government offices. ***Nobody else would know what he discussed with Arambula or whether he has***
27 ***conducted any official City meetings at private premises.*** Only Mr. Mendoza can testify to his
28 conversations, interactions, and observations with Arambula or to where he holds meetings.

1 Given the direct factual information Mr. Mendoza can provide to aid in discovery in this lawsuit,
2 the exception to the rule protecting government officials from being subject to deposition should apply.
3 Accordingly, this Court should compel City to produce Mr. Mendoza per Plaintiff's notice of
4 deposition, at a date and time convenient to the parties.

5 **B. Monetary Sanctions Should Be Imposed on City for Misuse of the Discovery**
6 **Process**

7 This Court should impose sanctions against City and its attorneys of record for their misuse of
8 the discovery process. A party misuses the discovery process by making, without substantial
9 justification, an unmeritorious objection to discovery. CODE CIV. PROC. §2023.010(h). The refusals
10 to produce Mr. Mendoza amounts to sanctionable conduct because he has discoverable information
11 unique to him. *Id.*, § 2023.030. The prevailing party on a motion to compel is entitled to monetary
12 sanctions unless the Court finds that the objecting party acted with substantial justification or that other
13 circumstances make the imposition of the sanction unjust. *Id.*, § 2025.480(j). With Mr. Mendoza have
14 unique information, City and its lawyers lacked substantial justification in trying to hide him from a
15 deposition (unlike Mayor Vasquez, who was deposed without objection).

16 Accordingly, Plaintiff requests sanctions in the amount of \$6,679.90. *See* Briggs Decl. ¶ 6.

17 **III. CONCLUSION**

18 For the foregoing reasons, Plaintiff respectfully requests that the Court grant this motion.

19
20 Date: June 27, 2019.

Respectfully submitted,

BRIGGS LAW CORPORATION

21
22
23 By: Cory J. Briggs

Cory J. Briggs

Attorneys for Plaintiff Christopher Williams

**PLAINTIFF'S OPENING BRIEF IN SUPPORT OF MOTION TO COMPEL
DEPOSITION ATTENDANCE OF MATT MENDOZA**

Declaration of Christopher Williams

**PLAINTIFF'S OPENING BRIEF IN SUPPORT OF MOTION TO COMPEL
DEPOSITION ATTENDANCE OF MATT MENDOZA**

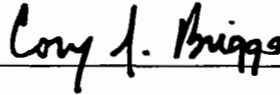
Declaration of Cory J. Briggs

1 papers, preparing a reply brief, and preparing for and attending the motion hearing. The filing fee
2 for this motion is \$60.00, and OneLegal will charge \$9.95 to process the opening papers and another
3 \$9.95 to process the reply papers.

4 I declare under penalty of perjury under the laws of the State of California that the foregoing
5 is true and correct.

6 Date: June 27, 2019.

7 By:



Cory J. Briggs

**PLAINTIFF'S OPENING BRIEF IN SUPPORT OF MOTION TO COMPEL
DEPOSITION ATTENDANCE OF MATT MENDOZA**

Exhibit 1

1 BRIGGS LAW CORPORATION [FILE: 1939.00]
Cory J. Briggs (State Bar no. 176284)
2 Anthony N. Kim (State Bar no. 283353)
99 East "C" Street, Suite 111
3 Upland, CA 91786
Telephone: 909-949-7115

4 Attorneys for Plaintiff Christopher Williams
5
6
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO – HALL OF JUSTICE
10

11 CHRISTOPHER WILLIAMS,

12 Plaintiff,

13 vs.

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

15 Defendants.
16

CASE NO. 37-2018-00023369-CU-PO-CTL

**NOTICE OF DEPOSITION OF
MATTHEW MENDOZA**

Date: May 14, 2019

Time: 10:00 A.M.

Place: Briggs Law Corporation
4891 Pacific Highway, Suite 104
San Diego, CA 92110

17 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

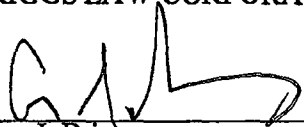
18 PLEASE TAKE NOTICE that on the date and at the time and the place indicated in the
19 caption above, Plaintiff Christopher Williams shall take the deposition of Defendant City of Lemon
20 Grove-affiliated witness Matt Mendoza. The deposition shall take place before a certified shorthand
21 reporter and shall continue from day to day until complete (including Saturdays and Sundays but not
22 legal holidays). If the deponent requires an interpreter and will not be providing one, notice of this fact
23 should be given to the party noticing the deposition at least ten days prior to the deposition. (Parking
24 is available in a "BLC" or "Visitor" labeled space or on the street.)
25

26 Date: April 16, 2019

Respectfully submitted,

BRIGGS LAW CORPORATION

27
28 By:


Cory J. Briggs

Attorneys for Plaintiff Christopher Williams

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 April 17, 2019, I served _____ an original copy a true and correct copy of the following documents: Notice of Deposition of Matthew Mendoza

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.

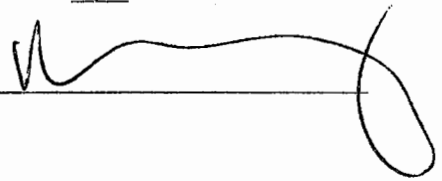
_____ *by overnight delivery*. I sealed the documents in an envelope/package provided by an overnight-delivery service and addressed to the person(s) at the address(es) indicated on the list, and then I placed the envelope/package for collection and overnight delivery in the service's box regularly utilized 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: April 17, 2019

Signature: 

SERVICE LIST

Christopher Williams vs. Lemon Grove

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

Kimberly S. Oberrecht
Heidi K. Williams
HORTON, OBERRECHT, KIRKPATRICK
& MARTHA
101 W. Broadway, Suite 600
San Diego, California 92101
Telephone: (619) 232-1183
koberrecht@hortonfirm.com

*Attorneys for Defendant CITY OF LEMON
GROVE*

Susan L. Oliver, Esq.
Emily M. Straub, Esq.
TYSON & MENDES
5661 La Jolla Boulevard
La Jolla, CA 92037
Telephone: (858) 459-4400
Soliver@tysonmendes.com
estraub@tysonmendes.com

Attorneys for Defendant DAVID ARAMBULA

**PLAINTIFF'S OPENING BRIEF IN SUPPORT OF MOTION TO COMPEL
DEPOSITION ATTENDANCE OF MATT MENDOZA**

Exhibit 2

1 Kimberly S. Oberrecht [C.S.B. No. 190794]
Heidi K. Williams [C.S.B. No. 297428]
2 **HORTON, OBERRECHT, KIRKPATRICK & MARTHA**
101 W. Broadway, Suite 600
3 San Diego, California 92101
(619) 232-1183 * (619) 696-5719 [facsimile]
4

5 Attorneys for Defendant CITY OF LEMON GROVE
6
7
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF SAN DIEGO**
11 **CENTRAL JUDICIAL DISTRICT**

12 CHRISTOPHER WILLIAMS,

13 Plaintiff,

14 vs.

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

16 Defendants.
17
18

CASE NO.: 37-2018-00023369-CU-
PO-CTL

DEFENDANT CITY OF LEMON
GROVE'S OBJECTIONS TO
PLAINTIFF'S NOTICE OF
DEPOSITION OF MATT MENDOZA

DATE: 5/14/19
TIME: 10:00 AM
LOCATION: Briggs Law Corp.
4891 Pacific Highway, Ste. 104
San Diego, CA

19 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

20 **PLEASE TAKE NOTICE** that Defendant City of Lemon Grove hereby objects to
21 Plaintiff's Notice of Deposition of Matthew Mendoza set to take place at the above-mentioned date,
22 time, and location. Counsel for the City of Lemon Grove is not available at the date and time
23 unilaterally selected by the noticing party. Additionally, the deponent serves as an elected City
24 Council member for the City of Lemon Grove. Given this, the deponent is not subject to deposition
25 "absent compelling reasons." *Westly v. Superior Court* (2004) 125 Cal.App.4th 907, 910 (citations
26 omitted). Mr. Mendoza does not have any personal knowledge of the incident at issue in this case.
27 For these reasons, Mr. Mendoza will not be produced for deposition.
28

**DEFENDANT CITY OF LEMON GROVE'S OBJECTIONS TO PLAINTIFF'S NOTICE OF
DEPOSITION OF MATT MENDOZA**

1 Dated: April 23, 2019

HORTON, OBERRECHT, KIRKPATRICK &
MARTHA

2
3 By: 

4 Kimberly S. Oberrecht,
5 Heidi K. Williams,
6 Attorneys for Defendant CITY OF LEMON
7 GROVE
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DEFENDANT CITY OF LEMON GROVE'S OBJECTIONS TO PLAINTIFF'S NOTICE OF
DEPOSITION OF MATT MENDOZA

1 Kimberly S. Oberrecht [C.S.B. No. 190794]
2 Heidi K. Williams [C.S.B. No. 297428]
3 **HORTON, OBERRECHT, KIRKPATRICK & MARTHA**
4 101 W. Broadway, Suite 600
5 San Diego, California 92101
6 (619) 232-1183 * (619) 696-5719 [facsimile]

7
8
9 Attorneys for Defendant CITY OF LEMON GROVE

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF SAN DIEGO**
12 **CENTRAL JUDICIAL DISTRICT**

13 CHRISTOPHER WILLIAMS,

14 Plaintiff,

15 vs.

16 DAVID ARAMBULA; CITY OF LEMON
17 GROVE; and DOES 1 through 1,000,

18 Defendants.

19) CASE NO.: 37-2018-00023369-CU-
20) PO-CTL

21) **PROOF OF SERVICE**

22) *IMAGED FILED*

23 I am employed in the County of San Diego, State of California. I am over the age of eighteen years
24 and am not a party to the within entitled action; my business address is 101 W. Broadway, Suite
25 600, San Diego, California 92101.

26 On April 23, 2019, I served the following documents:

27 **DEFENDANT CITY OF LEMON GROVE'S OBJECTIONS TO PLAINTIFF'S NOTICE OF**
28 **DEPOSITION OF MATT MENDOZA**

on all interested parties in this action by placing the true copies thereof to be delivered as listed
below:

29 Cory J. Briggs, Esq.
30 Anthony N. Kim, Esq.
31 BRIGGS LAW CORPORATION
32 99 "C" Street, Suite 111
33 Upland, CA 91786
34 Tel: (909) 949-7115; Fax: (909) 949-7121
35 *Attorney for Plaintiff CHRISTOPHER*
36 *WILLIAMS*

37 Susan L. Oliver, Esq.
38 Emily M. Straub, Esq.
39 TYSON & MENDES
40 5661 La Jolla Blvd.
41 La Jolla, CA 92037
42 Tel: (858) 459-4400
43 *Attorneys for Defendant DAVID ARAMBULA*

44 **DECLARATION OF PROOF OF SERVICE**

1 **BY MAIL:** I enclosed the documents in a sealed envelope or package addressed to the
2 persons listed on the attached service list. I placed the envelope for collection and mailing, following
3 our ordinary business practices. I am readily familiar with this business's practice for collecting and
4 processing correspondence for mailing. On the same day that correspondence is placed for collection
and mailing, it is deposited in the ordinary course of business with the United States Postal Service,
in a sealed envelope with postage fully prepaid. I am employed in the county where the mailing
occurred. The envelope or package was placed in the mail at San Diego, California.

5 **BY FAX TRANSMISSION:** Based on an agreement of the parties to accept service by fax
6 transmission, I faxed the documents to the persons listed on the attached service list. No error was
7 reported by the fax machine that I used. A copy of the record of the fax transmission will be
maintained with the original document in this office.

8 **BY ELECTRONIC MAIL:** I caused the above-listed document(s) to be transmitted by
9 electronic transmission, addressed to all parties appearing on the attached service list for the above-
entitled case. The service transmission was reported as complete and a copy of the email receipt will
be maintained with the original document in this office.

10 **BY OVERNIGHT DELIVERY:** I enclosed the documents in an envelope or package
11 provided by an overnight delivery carrier and addressed to the persons at the addresses in the
attached service list. I placed the envelope or package for collection and overnight delivery at an
12 office or a regularly utilized drop box of the overnight delivery carrier.

13 **PERSONAL SERVICE VIA MESSENGER SERVICE :** I served the documents by
14 placing them in an envelope or package addressed to the persons in the attached service list and
providing them to a professional messenger service for service.

15 I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct. Executed on April 23, 2019.

16 
17 Shelly Rosati
18 Shelly Rosati

19
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DECLARATION OF PROOF OF SERVICE

**PLAINTIFF'S OPENING BRIEF IN SUPPORT OF MOTION TO COMPEL
DEPOSITION ATTENDANCE OF MATT MENDOZA**

Exhibit 3

BRIGGS LAW CORPORATION

San Diego Office:
4891 Pacific Highway, Suite 104
San Diego, CA 92110

Telephone: 619-497-0021

Please respond to: Inland Empire Office

Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786

Telephone: 909-949-7115
Facsimile: 909-949-7121

BLC File(s): 1939.00

16 May 2019

Kimberly S. Oberrecht & Heidi K. Williams
Horton, Oberrecht, Kirkpatrick & Martha
101 W. Broadway, Suite 600
San Diego CA 92101

Re: Christopher Williams vs. David Arambula et al., San Diego Superior Court
Case no. 37-2018-00023369-CU-PO-CTL

Dear Counsel:

I am writing in an attempt to meet and confer on the objections to the notice of deposition my client served for City of Lemon Grove Councilmember Matt Mendoza. My client served the deposition notice by mail on April 17, 2019. Your client served objections by mail on April 23, 2019. According to your letter, the objections are that counsel for the City of Lemon Grove is not available at the date and time selected by noticing party and that there is no compelling reason to justify the deposition.

With regard to the date and time of deposition, I am happy to collectively decide upon a date and time agreeable to all parties and their respective counsel.

As for the substantive objection, it states that Mr. Mendoza as an elected councilmember is a top governmental executive and is not subject to deposition absent compelling reason, citing *Westly v. Superior Court*, 125 Cal. App. 4th 907, 910 (2004). It is true that, generally speaking, governmental officials are normally not subject to depositions involving matters on which they have **no personal knowledge**. *Westly* explains that this general rule is based on the recognition that an official's time and the exigencies of everyday business would be impeded and that it would be contrary to the public interest if made to provide an oral deposition in every lawsuit, given the fact that ordinarily such an individual has little or no knowledge of the facts of the case. *Id.* at 911 (citing *Nagle v. Superior Ct.*, 28 Cal. App. 4th 1465, 1468 (1994)). However, an exception exists if the official has factual information relevant to the case. *Westly* makes clear that "an exception to the general rule exists when the official has direct personal factual information pertaining to material issues in the action and the deposing party shows the information to be gained from the deposition is not available through any other source." *Id.*

Mr. Mendoza has not been noticed for deposition simply because of his role as a member of the City Council. Rather, his deposition has been noticed because he is a percipient witness who



may have direct personal factual information pertaining to material issues in this action based on his conversations and interactions with and observations of David Arambula. While he may not have been present at the business meeting at Mr. Arambula's home, Mr. Mendoza had direct personal communications and interactions with Mr. Arambula and potential witnesses prior to the meeting, and has had communications and interactions with Mr. Arambula and potential witnesses since the meeting. Only Mr. Mendoza can testify to his conversations, interactions, and observations. Furthermore, Mr. Mendoza's testimony is clearly within the scope of permissible discovery as he can testify to the violent propensity of Mr. Arambula and to information concerning City related business meetings.

If the City of Lemon Grove is concerned about privileged matters in response to specific questions, objections can be asserted at the deposition on a question-by-question basis. Because of Mr. Mendoza's knowledge and interactions with Mr. Arambula and other potential witnesses, however, it is erroneous to assert that his testimony would be outside the scope of permissible discovery under the Civil Discovery Act.

Please contact me no later than May 23, 2019, to schedule this deposition. We will work to select a mutually agreeable date and time. If the deposition is not scheduled by then, my client will have no choice but to file a motion to compel and to seek sanctions. If you believe our meet-and-confer efforts would be more productive in person or by phone, please contact me to schedule one or the other.

Sincerely,

BRIGGS LAW CORPORATION

Cory J. Briggs



**PLAINTIFF'S OPENING BRIEF IN SUPPORT OF MOTION TO COMPEL
DEPOSITION ATTENDANCE OF MATT MENDOZA**

Exhibit 4

PARTNERS

Luther W. Horton
Kimberly S. Oberrecht
Cheryl A. Kirkpatrick
Richard H. Martha
Erin E. Schroeder
Michael D. Marchesini
Fang-Chung Li
Sharla N. Hilburn
Peter C.L. Chen

PARALEGALS

Tina Hill
Adrian Ziegler
Elvia Ramos
Kate Figi
Robert Lazak
Christine Flores
Joseph Bribeaux

HORTON, OBERRECHT,
KIRKPATRICK & MARTHA

ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION
101 W. BROADWAY, SUITE 600
SAN DIEGO, CALIFORNIA 92101
TELEPHONE (619) 232-1183
FACSIMILE (619) 696-5719

ASSOCIATES

Karen L. Bilotti
Nathaniel J. Michels
Charles I. Karlin
Jonathan M. Berger
Eydith J. Kaufman
Julie E. Corriveau
Virginia Lopez
Danielle C. Hicks
Dawn C. Nelms
Alice S. Li
Jeremy R. Cronin
Carolyn A. Mush
Heidi K. Williams
Elise M. Czelusniak
Caroline G. Massey
Kimberly I. Marcus
Danielle K. Lesure-Sopheak
Trevor C. Donovan
Crystal A. Dumbleton
Cheyenne J. Page
Ashley Chin
Kaylee N. Riddle

May 23, 2019

VIA E-MAIL & US MAIL

Cory J. Briggs, Esq.
Anthony N. Kim, Esq.
BRIGGS LAW CORPORATION
99 "C" Street, Suite 111
Upland, CA 91786

Re: Chris Williams vs. City of Lemon Grove

Our Client : City of Lemon Grove
Jurisdiction : San Diego Superior Court, Central
Court Case No. : 37-2018-00023369-CU-PO-CTL
Our File No. : 01-142-5343

Dear Mr. Briggs:

I am writing in response to your meet and confer letter dated May 16, 2019 pertaining to Plaintiff Christopher Williams' ("Plaintiff") attempt to depose elected City Council member Matt Mendoza. As you know, the City of Lemon Grove timely objected to the deposition notice. The four topics of discovery identified in your meet and confer letter are not material to the issues in this case and/or are not solely available from Mr. Mendoza. Given this, the arguments presented in your letter do not alter the City's position that Mr. Mendoza cannot be compelled to attend a deposition in this matter.

Plaintiff raises four possible topics of information he hopes to learn from Mr. Mendoza:
1) communications and interactions with Mr. Arambula before the alleged meeting at issue in this case; 2) communications and interactions with Mr. Arambula after the alleged meeting at issue in this case; 3) information concerning City-related business meetings; and, 4) Mr.

Cory J. Briggs, Esq.
Re: Chris Williams vs. City of Lemon Grove
May 23, 2019
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Arambula's alleged propensity for violence. None of these topics can be used to set aside the general rule that protects elected officials from improper litigation conduct in this instance.

It is well-settled that elected officials are protected from harassing litigation conduct such as compulsory attendance at unnecessary depositions. "The general rule in California and federal court is that agency heads and other top governmental executives are not subject to deposition absent compelling reasons." *Westly v. Superior Court* (2004) 125 Cal.App.4th 907, 910 ("*Westly*") (citations omitted). "An exception to the rule exists *only* when the official has direct personal factual information pertaining to material issues in the action and the deposing party shows the information to be gained from the deposition is not available through any other source." *Westly* at 911 (italicized emphasis in original, underline emphasis added). Plaintiff cannot meet the burden of establishing both criteria for the exception apply in this case.

**Mr. Mendoza Lacks Any "Direct Personal Factual Information"
About The Incident or Alleged Business Meeting**

Plaintiff admits Mr. Mendoza lacks personal knowledge of the alleged meeting of Plaintiff and defendant David Arambula on July 14, 2017. Given this, he must also admit that Mr. Mendoza lacks personal knowledge of any altercation that occurred around midnight later that night. These are the primary issues in the instant case. Mr. Mendoza simply does not possess the requisite personal knowledge to be compelled to attend a deposition.

**Plaintiff Failed to Identify Any Information Material To Issues
In The Case That May Be Learned From Mr. Mendoza**

None of the topics identified by Plaintiff as intended subjects of Mr. Mendoza's deposition are material to whether the incident occurred or whether the incident arose from the performance of Mr. Arambula's official duties.

Plaintiff first contends Mr. Mendoza has personal knowledge of "direct personal communications and interactions with Mr. Arambula and potential witnesses prior to the meeting." As described, this rationale amounts to nothing more than an impermissible fishing expedition. As co-members of the City of Lemon Grove City Council, Mr. Arambula and Mr. Mendoza had extensive communication during Council meetings on many topics of City business. None of those "communications and interactions" have any bearing on the issues in this case. There is no evidence these gentlemen had other interactions. Plaintiff has failed to specify material information Mr. Mendoza possessed prior to the meeting. In fact, none of the witnesses deposed so far have testified that Mr. Mendoza had any prior knowledge of the alleged meeting Plaintiff arranged through unofficial channels.

Second, Plaintiff also contends Mr. Mendoza has personal knowledge of "communications and interactions with Mr. Arambula and potential witnesses since the meeting." Like the prior topic, this is speculative, overly broad, and not material to issues to be decided in the case. This too is merely an improper fishing expedition. After-the-fact interactions, if any, have no bearing on the circumstances of the alleged meeting or the altercation.

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Third, Plaintiff contends Mr. Mendoza has information pertaining to City-related business meetings. In addition to being an overly broad topic, this information is not material to whether the events described by the percipient witnesses, who have all been deposed already, amount to a "meeting." According to the Court, that conclusion is to be drawn by triers of fact. Mr. Mendoza lacks personal knowledge of the alleged events and cannot add any pertinent information to assist a jury.

Finally, Plaintiff contends Mr. Mendoza "can testify to the violent propensity of Mr. Arambula." There is no evidence Mr. Arambula has a violent disposition, in general. Regardless, that is not a proper subject of discovery. In fact, the California Evidence Code bars a party from drawing a propensity inference to prove a specific instance of conduct. "[E]vidence of a person's character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, and evidence of specific instances of his or her conduct) is inadmissible when offered to prove his or her conduct on a specific occasion." CAL. EVID. CODE § 1101(a). Given this restriction, this proposed topic for deposition is not "reasonably calculated to lead to the discovery of admissible evidence," as required by section 2017.010 of the California Code of Civil Procedure. Stated another way, it is not material to the issues to be decided.

For these reasons, the information Plaintiff speculates he can obtain from Mr. Mendoza is not material to the case. Accordingly, Plaintiff cannot establish that the general rule precluding deposition of an elected official should be set aside.

Plaintiff Failed to Identify Any Information That Is Not Available From Any Other Source

Even if Mr. Mendoza indirectly possesses some sort of information that can be characterized as material to the issues to be decided in this case, Plaintiff has not adequately shown that Mr. Mendoza is the only source of that information. Accordingly, the exception to the general rule barring depositions of elected officials does not apply.

Any "communications" or "interactions" Mr. Arambula had with Mr. Mendoza, even if material, were equally known to Mr. Arambula. Given this, Plaintiff cannot establish information to be gained is "not available from any other source," as required to set aside the general rule. Accordingly, the exception to the rule does not apply to these topics.

Additionally, Plaintiff already raised the issue of City business meetings in several depositions taken in this case. Mr. Mendoza's testimony, even if he has information on this topic, would be cumulative to the other depositions. Given the numerous other sources of information on City-related business meetings, the exception to the rule does not apply to this topic.

Finally, if relevant in any way, *arguendo*, Plaintiff has failed to establish Mr. Mendoza is the only source of information pertaining to Mr. Arambula's character. In fact, Plaintiff has already asked multiple deposition witnesses about this topic. He is not entitled to march a parade of elected officials through unnecessary depositions in an attempt to gather inadmissible information on a party's supposed propensity for violence.

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Plaintiff Has No Basis To Seek Sanctions In A Motion To Compel Deposition

Plaintiff threatens to seek sanctions with his motion to compel Mr. Mendoza's deposition. The City is not aware of any basis for such a request.

"Making or opposing, unsuccessfully and without substantial justification, a motion to compel" discovery is a misuse of the discovery process. CAL. CODE CIV. P. § 2023.010(h). The Court shall impose sanctions authorized for misuses of the discovery process unless "it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." CAL. CODE CIV. P. § 2023.030(a).

The City's objection to the deposition of one of its elected officials, who is entirely uninvolved in the subject of the litigation, is justified. Plaintiff notes in his meet and confer letter that the general rule barring deposition of elected officials serves an important purpose. "[I]t would be contrary to the public interest if [elected officials were] made to provide an oral deposition in every lawsuit" when they have little or no knowledge of the case. The City contends Mr. Mendoza has little or no knowledge of any material issue in this case. Given this, the City's objection is made with substantial justification. We urge you to reconsider the threat of seeking sanctions if Plaintiff decides to file a motion to compel.

For the reasons addressed above, and those presented in our original objection and meet and confer correspondence, the City maintains the position that Mr. Mendoza cannot be compelled to attend a deposition in this matter. Please direct any further correspondence on this to Nate Michels in our office.

Sincerely,



Heidi K. Williams

HKW:sr
Cc: Emily Straub

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 June 27, 2019, I served _____ an original copy a true and correct copy of the following documents: Plaintiff's Opening Brief in Support of Motion to Compel Deposition Attendance of Matt Mendoza; Declarations of Christopher Williams and Cory J. Briggs; Supporting Exhibits

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: June 27, 2019

Signature: 

SERVICE LIST

Christopher Williams vs. Lemon Grove

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

Kimberly S. Oberrecht
Heidi K. Williams
HORTON, OBERRECHT, KIRKPATRICK
& MARTHA
101 W. Broadway, Suite 600
San Diego, California 92101
Telephone: (619) 232-1183
koberrecht@hortonfirm.com

*Attorneys for Defendant CITY OF LEMON
GROVE*

Susan L. Oliver, Esq.
Emily M. Straub, Esq.
TYSON & MENDES
5661 La Jolla Boulevard
La Jolla, CA 92037
Telephone: (858) 459-4400
Soliver@tysonmendes.com
estraub@tysonmendes.com

Attorneys for Defendant DAVID ARAMBULA