

1 Jose DeCastro  
1258 Franklin St.  
2 Santa Monica, CA 90404  
310-963-2445  
3 iamalaskan@gmail.com  
In Pro Per  
4  
5  
6  
7

Electronically FILED by  
Superior Court of California,  
County of Los Angeles  
8/18/2023 3:04 PM  
David W. Slayton,  
Executive Officer/Clerk of Court,  
By K. Scurlock, Deputy Clerk

8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF LOS ANGELES**  
10

11 JOSE DECASTRO ) Case No.: 23SMCV00538  
12 )  
13 ) **PLAINTIFF’S NOTICE OF HEARING ON**  
14 ) **DEMURRER; PLAINTIFF’S DEMURRER**  
15 ) **TO DEFENDANT PIERATTINI’S**  
16 ) **ANSWER; DECLARATION OF MEET AND**  
17 ) **CONFER;**  
18 )  
19 ) Judge: Hone. H. Jay Ford III  
20 )  
21 ) Date: December 5, 2023  
22 ) Time: 8:30 am  
23 ) Department: O  
24 ) **RES ID: 859942082335**  
25 )

---

18 **NOTICE OF HEARING ON DEMURRER**

19 NOTICE IS HEREBY GIVEN that Plaintiff Jose DeCastro (“Plaintiff”)’s Demurrer, which is  
20 set forth below, to Defendant Michael Pierattini (“Defendant”)’s Answer (“Answer”) filed on July  
21 31, 2023, has been set for hearing on December 5, 2023, at 8:30 am, or as soon thereafter as the  
22 matter may be heard, in the courtroom of Department O of the above-entitled court, located at Santa  
23 Monica Courthouse, 1725 Main Street, Room 102, Santa Monica, California.

24 Plaintiff demurs to the Answer on each of the grounds set forth below. The Demurrer is based  
25

---

1 on this Notice of Hearing on Demurrer, on the supporting Memorandum of Points and Authorities,  
2 and Declaration of Meet and Confer served and filed concurrently and incorporated here, records in  
3 this action, on the oral argument of counsel, if any, and on such other and further evidence as the  
4 Court might deem proper.

5 **PLAINTIFF’S DEMURRER TO ANSWER OF DEFENDANT MICHAEL PIERATTINI**

6 **Demurrer to all Affirmative Defenses and the prayer for relief in the Answer,**

7 1. Plaintiff’s Demurrer was technically due August 14, 2023. However, Plaintiff files this  
8 demurrer late due to a failure to substantially meet and confer that was not the fault of Plaintiff,  
9 qualifying for a 30 day extension under Code of Civil Procedure § 430.21(a)(2). Additionally,  
10 Plaintiff requests that this Court rule on the demurrer, in its discretion, in the interest of justice and  
11 because it does not prejudice any party.

12 2. Plaintiff demurs under Code of Civil Procedure § 430.20(a) because the answer contains no  
13 new matter constituting an affirmative defense, pleads inappropriate negative defenses, and includes  
14 a prayer for affirmative relief.

15 Plaintiff prays that Plaintiff’s Demurrer be sustained with leave to amend.

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **A. Reason for untimeliness.** Defendant filed his Answer on July 31, 2023.

18 August 2, 2023, Plaintiff emailed Defendant’s counsel, raising issues with the answer and  
19 asking if he would amend it and if he could jump on the phone about it (**Exhibit 1**).

20 August 2, 2023, Defendant counsel emailed asking for “authority” for Plaintiff’s listed  
21 problems.

22 August 2, 2023, Plaintiff cited those authorities by email (**Exhibit 2**).

23 Plaintiff followed up August 4, 7, 8, 12, and 15, 2023 without response. Parties were unable to  
24 meet and confer, due to no fault of Plaintiff, supported by the attached Declaration.

25 Courts in this district have exercised their discretion to rule on late demurrers in the interest of

1 justice where there is no evidence that a late demurrer would adversely affect a party's rights.  
2 *Bakhtiar v. Cvs Pharm.*, 2023 Cal. Super. LEXIS 3857, \*10. Additionally, ruling on the demurrer  
3 will allow Defendant opportunity to amend their Answer without requesting leave, which is in the  
4 interest of justice.

5 However, Plaintiff files this demurrer late due to a failure to substantially meet and confer that  
6 was not the fault of Plaintiff, qualifying for a 30 day extension under Code of Civil Procedure §  
7 430.21(a)(2). Additionally, this Court's reservation system was giving me errors from August 16 –  
8 August 18, 2023 (**Exhibit 3**). When I first contacted the clerk on August 16, 2023 the clerk said to  
9 contact my EFSP to resolve the issue. The EFSP said that the clerk was incorrect and to contact the  
10 clerk and ask to be transferred to the e-filing clerk. I finally got ahold of the e-filing clerk on August  
11 18, 2023 and they opened up some slots.

12 **B. The general demurrer to the answer should be sustained because the answer contains**  
13 **no new matter constituting an affirmative defense.**

14 **Objection by Demurrer.** A party against whom an answer has been filed may object to it by  
15 demurrer on the ground that it fails to state facts sufficient to constitute a defense when the ground of  
16 objection appears on the face of the answer [or from any matter of which the court is required to or  
17 may take judicial notice] (Code Civ. Proc. §§ 430.20(a), 430.30(a)).

18 **Affirmative defenses must be pled with facts.** *Quantification Settlement Agreement Cases*,  
19 201 Cal. App. 4th 758, 812-13, 134 Cal. Rptr. 3d 274, 319 (2011); *Peregrine Funding, Inc. v.*  
20 *Sheppard Mullin Richter & Hampton LLP*, 133 Cal. App. 4th 658, 676, 35 Cal. Rptr. 3d 31, 44  
21 (2005).

22 Here, none of Defendant's affirmative defenses are pled with facts and they should all be  
23 denied. Additionally, Defendant denies having to prove affirmative defenses at Answer, 2:14-16. An  
24 affirmative defense is a defense that must be proved by the Defendant.

25 **C. Negative defenses.** Defendant's first affirmative defense (Answer, ¶2) is a failure to state a

1 claim argument. In California, that argument is a general demurrer and not appropriate for an  
2 answer. *Pino v. Laurel Square Owners Ass'n*, 2023 Cal. Super. LEXIS 45151, \*5-6.

3 **D. Affirmative relief.** Defendant's tenth affirmative defense (Answer, ¶11) is a request for  
4 affirmative relief, which is not allowed in an answer under CCP §431.30(c).

5 Defendant's prayer for relief (Answer, 6:10-12) also contains requests for affirmative relief,  
6 which are not allowed in an answer under CCP §431.30(c).

7 **CONCLUSION**

8 Based on the foregoing, Plaintiff respectfully requests that this Court sustain Defendant's  
9 Demurrer with leave to amend.

10 DATED: August 16, 2023

Respectfully submitted,

11 /s/ Jose DeCastro

12 Jose DeCastro

In Pro Per

13 **CERTIFICATE OF SERVICE**

14 On this day, Plaintiff has sent copies to the only participating defendants by email to Paul  
15 Katrinak, attorney for Defendant at [katrinaklaw@gmail.com](mailto:katrinaklaw@gmail.com).

16 DATED: August 16, 2023

Respectfully submitted,

17 /s/ Jose DeCastro

18 Jose DeCastro

19 In Pro Per



# **EXHIBIT 1**



Chille DeCastro <chille@situationcreator.com>

---

**Re: Plaintiff's first set of requests for production attached. Due in 30 days!**

---

Chille DeCastro <chille@situationcreator.com>  
To: Paul Katrinak <katrinaklaw@gmail.com>

Wed, Aug 2, 2023 at 9:12 AM

Mr. Katrinak,

I don't believe that anything was due yesterday. I served Mr. Pierattini my first set of RFPs on June 30.



I have several problems with your answer. I hope that you can amend it without my having to file a demurrer. First off, it says that it was emailed to me, but it wasn't. Can you please email it to me to correct that.

- 1) Only affirmative defenses are appropriate for an answer, so how do you deny having to prove any of them?
- 2) 1st defense. Failure to state a claim is a general demurrer in California and not appropriate for an answer.
- 3) 10th defense. Affirmative relief is not allowed in an answer in California and offsets are included.
- 4) Prayer. Again, you list statutory damages and "further relief", which are affirmative relief.
- 5) The majority of your defenses are conclusions of law, lacking ANY facts.

Let me know if you can address these and if you want to jump on a call.

JD

# **EXHIBIT 2**





Chille DeCastro <chille@situationcreator.com>

---

**Re: Plaintiff's first set of requests for production attached. Due in 30 days!**

---

Chille DeCastro <chille@situationcreator.com>  
To: Paul Katrinak <katrinaklaw@gmail.com>

Wed, Aug 2, 2023 at 6:04 PM

[REDACTED]

It seems like Mr. Pierattini didn't send you the email that I sent him where I explain the issue that you describe where the complaint barely mentions him. I'm suing a criminal organization. I've named Mr. Pierattini in the few torts that I could attribute to him so far. I've since remembered that some of the other torts can be attributed to him as well, but he's already named on those torts as John Doe. He is very likely to be involved in additional incidents in the complaint and he is named as a John Doe in those incidents.

You are correct on the due date of the discovery. I thought it was extended by three days for electronic service. I was going to accidentally give him an extra day.

Read my case management statement for the status of service of the named defendants. It hasn't changed.

I received the answer by email. Thank you.

Proving affirmative defenses: Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP, 133 Cal. App. 4th 658, 676, 35 Cal. Rptr. 3d 31, 44 (2005)

Affirmative relief: CCP §431.30(c)

Affirmative defenses must be pled with facts: Quantification Settlement Agreement Cases, 201 Cal. App. 4th 758, 812-13, 134 Cal. Rptr. 3d 274, 319 (2011)

# EXHIBIT 3



## Journal Technologies Court Portal

[Home](#) [My Account](#) [e-Filing](#) [My Previous Filings](#) [Court Reservations](#) [Contact Us](#)

[Jose DeCastro](#) [Logout](#)

### Make a Reservation

Issue TS00006: No slots found for Demurrer - without Motion to Strike in Santa Monica Courthouse Department O for 12 months. Please contact the department clerk for further direction.

JOSE DECASTRO vs KATHERINE PETER

Case Number: 23SMCV00538 Case Type: Civil Unlimited Category: Defamation (slander/libel)

Date Filed: 2023-02-06 Location: Santa Monica Courthouse - Department O

#### Reservation Type

[HELP](#)

Select the type of reservation you wish to make. This reservation type selected **cannot be changed** once you submit your reservation. If a change is required, you must cancel your reservation and schedule a new reservation with the new reservation type. [More Info](#)



## Make a Reservation

JOSE DECASTRO vs KATHERINE PETER

Case Number: 23SMCV00538 Case Type: Civil Unlimited Category: Defamation (slander/libel)

Date Filed: 2023-02-06 Location: Santa Monica Courthouse - Department O

### Reservation

Case Name: JOSE DECASTRO vs KATHERINE PETER	Case Number: 23SMCV00538
Type: Demurrer - without Motion to Strike	Status: RESERVED
Filing Party: Jose Decastro (Plaintiff)	Location: Santa Monica Courthouse - Department O
Date/Time: 12/05/2023 8:30 AM	Number of Motions: 1
Reservation ID: 859942082335	Confirmation Code: CR-GIVTWSYRGM62WQSX3

### Fees

Description	Fee	Qty	Amount
Demurrer - without Motion to Strike	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
<b>TOTAL</b>			<b>\$61.65</b>

### Payment

Amount: \$61.65	Type: Visa
Account Number: XXXX6443	Authorization: 306947
Payment Date: 1969-12-31	

[Print Receipt](#)

[+ Reserve Another Hearing](#)

[View My Reservations](#)