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In Pro Per

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

JOSE DECASTRO Plaintiff, vs. KATHERINE PETER, et al. Defendants.	Case No.: 23SMCV00538 **PLAINTIFF'S NOTICE OF HEARING ON DEMURRER; PLAINTIFF'S DEMURRER TO DEFENDANT PIERATTINI'S AMENDED ANSWER; DECLARATION OF MEET AND CONFER; (TELEPHONE APPEARANCE)** Judge: Hone. H. Jay Ford III Date: June 4, 2024 Time: 8:30 am Department: O **RES ID: 774528882558**

NOTICE OF HEARING ON DEMURRER

NOTICE IS HEREBY GIVEN that Plaintiff Jose DeCastro ("Plaintiff")'s Demurrer, which is set forth below, to Defendant Michael Pierattini ("Pierattini")'s Amended Answer ("Answer") filed on January 2, 2024, has been set for hearing on June 4, 2024, at 8:30 am, or as soon thereafter as the matter may be heard, in the courtroom of Department O of the above-entitled court, located at Santa Monica Courthouse, 1725 Main Street, Room 102, Santa Monica, California.

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

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

PLAINTIFF'S DEMURRER TO DEFENDANT PIERATTINI'S AMENDED ANSWER

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

1. Plaintiff's Demurrer was technically due January 15, 2024. However, Plaintiff files this demurrer late due to a failure to substantially meet and confer that was not the fault of Plaintiff, qualifying for a 30 day extension under Code of Civil Procedure § 430.21(a)(2). Additionally, Pierattini's counsel never served Plaintiff with his second answer that was filed January 2, 2024. Finally, Plaintiff requests that this Court rule on the demurrer, in its discretion, in the interest of justice and because it does not prejudice any party.

2. Plaintiff demurs under Code of Civil Procedure § 430.20(a) because the answer contains no new matter constituting an affirmative defense and includes a prayer for affirmative relief.

3. Eseentially Pierattini has refiled the same answer that this court previously found did not meet pleading standards. Pierattini filed an answer with "affirmative defenses" but without sufficient facts to put Plaintiff on notice to any affirmative defenses. Plaintiff filed a demurrer, which was sustained by this court. Pierattini amended the answer by adding random jabs at Plaintiff's character and legal conclusions. As a result, Pierattini's amended answer also fails to give notice to Plaintiff, and was filed for no reason other than to harass Plaintiff.

4. Plaintiff prays that Plaintiff's Demurrer be sustained with leave for Defendant to amend.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Reason for untimeliness. On December 5, 2023, this court gave Pierattini 20 days to amend his complaint, making it due on December 26, 2023. Plaintiff checked the record for approximately a week and stopped looking. Pierattini surprisingly filed his amended answer on

January 2, 2024 and did not properly serve Plaintiff with the amended answer.

January 9, 2024, Plaintiff discovered that the amended answer was filed while looking at the record after sending timely objections to Pierattini's discovery requests.

January 10, 2024, Plaintiff emailed Defendant's counsel, raising issues with the answer and asking if he would amend it and if he could jump on the phone about it (**Exhibit 1**). Pierattini's counsel said that he couldn't meet until January 16, 2024 (**Exhibit 2**).

January 16, 2024, Pierattini's counsel emailed an hour before our scheduled call that he couldn't take the call due to an emergency (**Exhibit 3**). Plaintiff left several voicemails for Pierattini's counsel over the next week.

January 23,2024, Plaintiff emailed Pierattini's counsel with the basic issues regarding the amended answer, that they have only added legal conclusions and that the law is the same as I cited in my first demurrer. (**Exhibit 4**).

January 24, 2024, Pierattini's counsel said in an email "Again, I asked you to explain how I did not plead facts to support the affirmative defenses in writing. You have not explained your position at all, nor provided any legal authority for your position. That does not meet the requirement of meeting and conferring and I will seek sanctions from the judge for your failure to meet and confer." Ironically, after he failed to meet and confer. (**Exhibit 5**).

January 24, 2024, Plaintiff emailed Pierattini's counsel in verbose to try to make him happy and offer him until January 31 before I file my demurrer so that he can amend his answer. (**Exhibit 6**).

January 25, 2024, Pierattini's counsel files 300 pages of motions to compel, without first meeting to confer, without first scheduling an IDC, completely misunderstanding the difference between a mailing address and a residence, and including discovery responses marked confidential, violating the protective order in this action.

January 26, 2024, Pierattini's counsel only responds back to write that his delay tactics have

been successful, and that it's too late for Plaintiff to file a demurrer. Pierattini's counsel is still unfamiliar with Code of Civil Procedure § 430.21(a)(2). (**Exhibt 7**).

Parties were unable to meet and confer, due to no fault of Plaintiff, supported by the attached Declaration.

Notice also that 1) Pierattini's counsel doesn't mention discovery at all during our emails, which Plaintiff had hoped to discuss with him on the phone; 2) He never mentions the alleged "letter" that he claims to have sent to Plaintiff regarding any discovery objections; 3) He has failed to provide discovery responses.

Courts in this district have exercised their discretion to rule on late demurrers in the interest of justice where there is no evidence that a late demurrer would adversely affect a party's rights. *Bakhtiar v. Cvs Pharm*., 2023 Cal. Super. LEXIS 3857, *10. Additionally, ruling on the demurrer will allow Defendant opportunity to amend their Answer without requesting leave, which is in the interest of justice.

However, Plaintiff files this demurrer late due to a failure to substantially meet and confer that was not the fault of Plaintiff, qualifying for a 30 day extension under Code of Civil Procedure § 430.21(a)(2).

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

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

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); *Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP*, 133 Cal. App. 4th 658, 676, 35 Cal. Rptr. 3d 31, 44

(2005).

Here, none of Defendant's affirmative defenses (Answer, 2:13 – 9:1) are pled with facts and they should all be denied. Additionally, Defendant denies having to prove affirmative defenses at Answer, 2:14-16. An affirmative defense is a defense that must be proved by the Defendant.

C. Affirmative relief. Defendant's tenth affirmative defense (Answer, ¶7) is a request for affirmative relief, which is not allowed in an answer under CCP §431.30(c).

Defendant's prayer for relief (Answer, 8:27-28) also contains requests for affirmative relief, which are not allowed in an answer under CCP §431.30(c).

CONCLUSION

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

DATED: January 31, 2024

Respectfully submitted,

/s/ Jose DeCastro
Jose DeCastro
In Pro Per

CERTIFICATE OF SERVICE

On this day, Plaintiff has sent copies to the only participating defendants by email to Paul Katrinak, attorney for Defendant at katrinaklaw@gmail.com.

DATED: Janurary 31, 2024

Respectfully submitted,

/s/ Jose DeCastro
Jose DeCastro
In Pro Per

DECLARATION OF MEET AND CONFER BY JOSE DECASTRO

Defendant filed his late Amended Answer on January 2, 2023 and did not notice Plaintiff.

January 10, 2024, Plaintiff emailed Defendant's counsel, raising issues with the answer and asking if he would amend it and if he could jump on the phone about it (Exhibit 1). Pierattini's counsel said that he couldn't meet until January 16, 2024 (Exhibit 2).

January 16, 2024, Pierattini's counsel emailed an hour before our scheduled call that he couldn't take the call due to an emergency (Exhibit 3). Plaintiff left several voicemails for Pierattini's counsel over the next week.

January 23,2024, Plaintiff emailed Pierattini's counsel with the basic issues regarding the amended answer, that they have only added legal conclusions and that the law is the same as I cited in my first demurrer. (Exhibit 4).

January 24, 2024, Pierattini's counsel said in an email "Again, I asked you to explain how I did not plead facts to support the affirmative defenses in writing. You have not explained your position at all, nor provided any legal authority for your position. That does not meet the requirement of meeting and conferring and I will seek sanctions from the judge for your failure to meet and confer." Ironically, after he failed to meet and confer. (Exhibit 5).

January 24, 2024, Plaintiff emailed Pierattini's counsel in verbose to try to make him happy and offer him until January 31 before I file my demurrer so that he can amend his answer. (Exhibit 6).

January 26, 2024, Pierattini's counsel only responds back to write that his delay tactics have been successful, and that it's too late for Plaintiff to file a demurrer. Pierattini's counsel is still unfamiliar with Code of Civil Procedure § 430.21(a)(2). (Exhibt 7).

I declare under penalty of perjury under the laws of the State of California that the foregoing is

true and correct. Executed this 31st day of January, 2024.

/s/ Jose DeCastro

EXHIBIT 1

Meet and Confer on Plaintiff's Second Motion to Strike Pierattini's Answer

1 message

Chille DeCastro <chille@situationcreator.com> Wed, Jan 10, 2024 at 2:45 PM
To: Paul Katrinak <pkatrinak@kernanlaw.net>

Mr. Katrinak,

Would you be willing to schedule a call to discuss the latest answer that you filed for Mr. Pierattini?

My biggest issue with it is that I had stated that it was missing facts sufficient to put me on notice for the affirmative defenses. The affirmative defenses continue to do that with conclusory statements instead of factual ones.

Respectfully,
Chille DeCastro

EXHIBIT 2

Gmail Chille DeCastro <chille@situationcreator.com>

Re: Meet and Confer on Plaintiff's Second Motion to Strike Pierattini's Answer

1 message

Paul Katrinak <katrinaklaw@gmail.com> Wed, Jan 10, 2024 at 7:28 PM
To: Chille DeCastro <chille@situationcreator.com>

Dear Mr. DeCastro,

As I have repeatedly said, I have no idea what the basis is of your claims against Mr. Pierattini. I have alleged as many facts as I can based on your absurdly ambiguous complaint. I find it astounding that you sent this email in light of the fact that you have not responded to any discovery or provided any documents to support any claim against Mr. Pierattini.

That being said, I can meet and confer on Tuesday January 16, 2023. I am unavailable for a call until then.

Very Truly Yours,

Paul Katrinak

On Wed, Jan 10, 2024 at 2:45 PM Chille DeCastro <chille@situationcreator.com> wrote:

> Mr. Katrinak,
>
> Would you be willing to schedule a call to discuss the latest answer that you filed for Mr. Pierattini?
>
> My biggest issue with it is that I had stated that it was missing facts sufficient to put me on notice for the affirmative defenses. The affirmative defenses continue to do that with conclusory statements instead of factual ones.
>
> Respectfully,
> Chille DeCastro

--
Paul Katrinak
Law Offices of R. Paul Katrinak
9663 Santa Monica Blvd., 458
Beverly Hills, California 90210
Tel: (310) 990-4348
Fax: (310) 921-5398

EXHIBIT 3

Re: Meet and Confer on Plaintiff's Second Motion to Strike Pierattini's Answer

1 message

Paul Katrinak <katrinaklaw@gmail.com> Tue, Jan 16, 2024 at 12:45 PM
To: Chille DeCastro <chille@situationcreator.com>

Dear Mr. DeCastro,

I unfortunately have an emergency matter that I have to deal with. Can we push the call to tomorrow at 2:00 p.m.

Thanks.

Very Truly Yours,

Paul Katrinak

On Thu, Jan 11, 2024 at 7:25 PM Paul Katrinak <katrinaklaw@gmail.com> wrote:

> Yes.
>
> On Thu, Jan 11, 2024 at 1:44 PM Chille DeCastro <chille@situationcreator.com> wrote:
>
> > Mr. Katrinak,
> >
> > Thank you for finding the time in your schedule.
> >
> > Can I call you at 2p on 1/16?
> >
> > -JD
> >
> > On Wed, Jan 10, 2024 at 7:28 PM Paul Katrinak <katrinaklaw@gmail.com> wrote:
> >
> > > Dear Mr. DeCastro,
> > >
> > > As I have repeatedly said, I have no idea what the basis is of your claims against Mr. Pierattini. I have alleged as many facts as I can based on your absurdly ambiguous complaint. I find it astounding that you sent this email in light of the fact that you have not responded to any discovery or provided any documents to support any claim against Mr. Pierattini.
> > >
> > > That being said, I can meet and confer on Tuesday January 16, 2023. I am unavailable for a call until then.
> > >
> > > Very Truly Yours,
> > >
> > > Paul Katrinak
> > >
> > > On Wed, Jan 10, 2024 at 2:45 PM Chille DeCastro <chille@situationcreator.com> wrote:
> > >
> > > > Mr. Katrinak,
> > > >
> > > > Would you be willing to schedule a call to discuss the latest answer that you filed for Mr. Pierattini?
> > > >
> > > > My biggest issue with it is that I had stated that it was missing facts sufficient to put me on notice for the affirmative defenses. The affirmative defenses continue to do that with conclusory statements instead of factual ones.
> > > >
> > > > Respectfully,
> > > > Chille DeCastro
> > > >
> > > >
> > > --
> > > Paul Katrinak
> > > Law Offices of R. Paul Katrinak

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EXHIBIT 4

Re: Meet and confer on your demurrer

1 message

Chille DeCastro <chille@situationcreator.com> Tue, Jan 23, 2024 at 10:51 PM
To: Paul Katrinak <katrinaklaw@gmail.com>

Mr. Katrinak,

I'm not talking about the general denials. Your denials where you just say "I didn't do it", then you don't need to be specific. Where you say "Maybe I did it, but I'm not liable because of fact A and fact B", also known as affirmative defenses, those defenses must be argued with specificity. You need to say what facts A and B are. You can't just say "Chille has unclean hands" or "Plaintiff has a long history of filing frivolous complaints". As I'm sure you're aware, those are conclusory statements. Are you letting Pierattini write these?

The law is still the same as I cited in my first motion to strike your first answer.

I will be filing another motion to strike this Friday.

On Wed, Jan 17, 2024 at 10:15 AM Paul Katrinak <katrinaklaw@gmail.com> wrote:

> Dear Mr. DeCastro,
>
> I went back over the answer and I believe that I have factually plead what I need to other than things that are not new matters.
>
> In particular, I do not see how the affirmative defenses are new matters.
>
> A general denial is effective to controvert all material allegations of an unverified complaint. (CCP § 431.30, subd.(d).)
>
> Generally, a defendant bears the burden of proving “new matter” and, as such, the underlying facts must be specifically pleaded in the answer. (California Academy of Sciences v. County of Fresno (1987) 192 Cal.App.3d 1436, 1442.)
>
> The phrase “new matter” refers to something relied on by a defendant which is not put in issue by the plaintiff. (Walsh v. West Valley Mission Community College District (1998) 66 Cal.App.4th 1532, 1546.) The basic consideration is whether the matters of defense are responsive to the essential allegations of the complaint, i.e., whether they are contradicting elements of plaintiff’s cause of action or whether they tender a new issue, in which case the burden of proof is upon the defendant as to the allegation constituting such new matter. (Cahil Bros., Inc. v. Clementina Co. (1962) 208 Cal.App.2d 367, 385.)
>
> A defense which negates an essential allegation in the complaint does not constitute a new matter, and therefore, need not be specifically pled by the defendant. (Statefarm Mutual Auto. Ins. Co. v. Superior Court (1991) 228 Cal.App.3d 721, 725.)
>
> Each of the defenses negate an essential element of Plaintiff’s claims and are therefore not “new matter” that require fact pleading.
>
> Please explain in detail how you disagree with cases that I can read.

In light of the history in this case, we feel that we need to meet and confer in writing. Please send me your positions as to the defects in the Answer.

Very Truly Yours,

Paul Katrinak

--
Paul Katrinak
Law Offices of R. Paul Katrinak
9663 Santa Monica Blvd., 458
Beverly Hills, California 90210
Tel: (310) 990-4348
Fax: (310) 921-5398

EXHIBIT 5

Gmail Chille DeCastro <chille@situationcreator.com>

Re: Meet and confer on your demurrer

1 message

Paul Katrinak <katrinaklaw@gmail.com> Wed, Jan 24, 2024 at 8:07 PM
To: Chille DeCastro <chille@situationcreator.com>

Dear Mr. DeCastro,

Again, I asked you to explain how I did not plead facts to support the affirmative defenses in writing. You have not explained your position at all, nor provided any legal authority for your position. That does not meet the requirement of meeting and conferring and I will seek sanctions from the judge for your failure to meet and confer.

There is no basis to file a demurrer to the amended answer. Explain your position with authorities.

Very Truly Yours,

Paul Katrinak

On Tue, Jan 23, 2024 at 10:51 PM Chille DeCastro <chille@situationcreator.com> wrote:

> Mr. Katrinak,
>
> I'm not talking about the general denials. Your denials where you just say "I didn't do it", then you don't need to be specific. Where you say "Maybe I did it, but I'm not liable because of fact A and fact B", also known as affirmative defenses, those defenses must be argued with specificity. You need to say what facts A and B are. You can't just say "Chille has unclean hands" or "Plaintiff has a long history of filing frivolous complaints". As I'm sure you're aware, those are conclusory statements. Are you letting Pierattini write these?
>
> The law is still the same as I cited in my first motion to strike your first answer.
>
> I will be filing another motion to strike this Friday.
>
> On Wed, Jan 17, 2024 at 10:15 AM Paul Katrinak <katrinaklaw@gmail.com> wrote:
>
> > Dear Mr. DeCastro,
> >
> > I went back over the answer and I believe that I have factually plead what I need to other than things that are not new matters.
> >
> > In particular, I do not see how the affirmative defenses are new matters.
> >
> > A general denial is effective to controvert all material allegations of an unverified complaint. (CCP § 431.30, subd.(d).)
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> > Generally, a defendant bears the burden of proving “new matter” and, as such, the underlying facts must be specifically pleaded in the answer. (California Academy of Sciences v. County of Fresno (1987) 192 Cal.App.3d 1436, 1442.)
> >
> > The phrase “new matter” refers to something relied on by a defendant which is not put in issue by the plaintiff. (Walsh v. West Valley Mission Community College District (1998) 66 Cal.App.4th 1532, 1546.) The basic consideration is whether the matters of defense are responsive to the essential allegations of the complaint, i.e., whether they are contradicting elements of plaintiff’s cause of action or whether they tender a new issue, in which case the burden of proof is upon the defendant as to the allegation constituting such new matter. (Cahil Bros., Inc. v. Clementina Co. (1962) 208 Cal.App.2d 367, 385.)

A defense which negates an essential allegation in the complaint does not constitute a new matter, and therefore, need not be specifically pled by the defendant. (Statefarm Mutual Auto. Ins. Co. v. Superior Court (1991) 228 Cal.App.3d 721, 725.)

Each of the defenses negate an essential element of Plaintiff's claims and are therefore not "new matter" that require fact pleading.

Please explain in detail how you disagree with cases that I can read.

In light of the history in this case, we feel that we need to meet and confer in writing. Please send me your positions as to the defects in the Answer.

Very Truly Yours,

Paul Katrinak

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EXHIBIT 6

Gmail

Chille DeCastro <chille@situationcreator.com>

Re: Meet and confer on your demurrer

1 message

Chille DeCastro <chille@situationcreator.com> Thu, Jan 25, 2024 at 12:08 PM
To: Paul Katrinak <katrinaklaw@gmail.com>

Mr. Katrinak,

As I said in my example. You actually plead "Plaintiff has a long history of filing frivolous complaints". That is not a fact. That is a legal conclusion. There are no facts in any of your affirmative defenses.

I did point you to the legal authority from my previous demurrer, as it hasn't changed. However, let me copy and paste that for you. I'll modify the references to match the amended complaint.

-- begin --

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

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

Additionally, Defendant denies having to prove affirmative defenses at Answer, 2:14-16. An affirmative defense is a defense that must be proved by the Defendant.

Defendant's tenth affirmative defense (Answer, ¶7) is a request for affirmative relief, which is not allowed in an answer under CCP §431.30(c).
Defendant's prayer for relief (Answer, 8:27-28) also contains requests for affirmative relief, which are not allowed in an answer under CCP §431.30(c).

-- end --

The only thing you won in my previous demurrer was that the judge is letting you plead your negative defense of failure to state a claim. Everything else needs to be corrected.

I can wait until after Friday, but please let me know by when you would be able to amend your complaint, before January 31.

Here are all of your conclusory statements lacking any facts:

3. As a second separate and distinct affirmative defense, Defendant alleges that
Plaintiff has failed to exercise reasonable care and diligence to avoid loss and minimize Plaintiff's alleged damages. In addition, Plaintiff's Complaint is virtually entirely directed
to conduct that the other Defendants were allegedly responsible for and not Defendant.

4. As a third separate and distinct affirmative defense, Defendant alleges that
Plaintiff is barred from pursuing his claims because of his unclean hands and wrongful conduct. Plaintiff has a long history of filing frivolous complaints and attempting to use the legal system for improper purposes to get innocent defendants, such as Defendant, to incur substantial unnecessary attorney's fees. In addition, Plaintiff has a long history of making false and frivolous claims and false allegations against people in order to harass and intimidate them, such as Defendant.

5. As a fourth separate and distinct affirmative defense, Defendant alleges that any
damages suffered as alleged in the First Amended Complaint, if any, was solely the fault of Plaintiff. Based on the allegations of the Complaint and Plaintiff's false narrative about his

alleged history, any alleged damages are the fault of Plaintiff. Plaintiff has a history of making false claims about himself and other people. Additionally, there are basically no facts alleged in Plaintiff's Complaint about any alleged conduct by Defendant that would have caused Plaintiff any damages. All of the conduct alleged by Plaintiff and forming the basis of Plaintiff's Complaint consists of allegations of conduct performed by other individuals and Defendants other than Defendant.

6. As a fifth separate and distinct affirmative defense, Defendant alleges he is not liable for the damages claimed in the First Amended Complaint by Plaintiff and that other persons or entities are solely responsible for Plaintiff's alleged damages. The Complaint describes alleged conduct by other individuals and other Defendants, not alleged conduct by Defendant. The failure of Plaintiff to allege the names and information of the defendants who allegedly defamed him, allegedly stalked him, allegedly harassed him and allegedly assaulted him is a misjoinder of Defendant.

7. As a sixth separate and distinct affirmative defense, Defendant is informed and believes and based thereon alleges that Defendant's liability, if any, is subject to offset of any amounts allegedly due to Plaintiff. Plaintiff has engaged in harassing conduct of Defendant and forced Defendant to file a TRO concerning Plaintiff's harassing conduct. Based on the harassment of Defendant by Plaintiff, Defendant is entitled to an offset.

8. As a seventh separate and distinct affirmative defense, any alleged conduct by Defendant was protected by the First Amendment. While Plaintiff's First Amended Complaint is difficult to follow, it does appear that Plaintiff is taking issue with statements allegedly made by Defendant on the internet and in an interview. These statements allegedly made by Defendant would be protected by the First Amendment and are not actionable.

9. As an eighth separate and distinct affirmative defense, any alleged statements by Defendant about Plaintiff were protected opinion. While Plaintiff's First Amended Complaint is difficult to follow, it does appear that Plaintiff is taking issue with statements allegedly made by Defendant on the internet and in an interview. These statements allegedly made by Defendant would be protected opinion of Defendant. Since the statements are protected opinion, they would not be actionable.

10. As a ninth separate and distinct affirmative defense, any alleged statements by Defendant about Plaintiff were true. While Plaintiff's First Amended Complaint is difficult to follow, it does appear that Plaintiff is taking issue with statements allegedly made by Defendant on the internet and in an interview. These statements allegedly made by Defendant would be protected opinion of Defendant, and to the extent any statements are not considered opinion, the statements would be true. The alleged statements are protected opinion and, to the extent they are not considered protected opinion, they are true and would not be actionable.

11. As a tenth separate and distinct affirmative defense, Defendant alleges that Plaintiff suffered no damages based on the allegations of Plaintiff's First Amended Complaint. While Plaintiff's First Amended Complaint is difficult to follow, it does appear that Plaintiff is taking issue with statements allegedly made by Defendant on the internet and in an interview. Defendant has no information, nor facts that Plaintiff suffered any damages. In addition, as the statements are fully protected, Defendant cannot be liable for any alleged damages by Plaintiff.

12. As an eleventh separate and distinct affirmative defense, any claims alleged by Plaintiff in the First Amended Complaint are barred by immunity arising out of the Communications Decency Act of 1996 (47 U.S.C. § 230) ("CDA"). While Plaintiff's First Amended Complaint is difficult to follow, it does appear that Plaintiff is taking issue with statements allegedly made by Defendant on the internet and in an interview. These statements allegedly made by Defendant would be protected since they were posted on the internet by the CDA.

13. As a twelfth, separate and distinct affirmative defense, Defendants allege that Plaintiff's First Amended Complaint fails to state a cause of action sufficient for the imposition of punitive damages in any sum against Defendants. While Plaintiff's First Amended Complaint is difficult to follow, it does appear that Plaintiff is taking issue with statements allegedly made by Defendant on the internet and in an interview. These statements allegedly made by Defendant would be protected opinion of Defendant, protected as true, protected by the First Amendment and protected by the CDA. Since the statements are not actionable, they certainly would not establish a claim for punitive damages.

14. As a thirteenth, separate and distinct affirmative defense, Defendants allege that Plaintiff is barred from pursuing his claim for punitive damages, because Defendant did not act with malice, oppression or fraud. While Plaintiff's First Amended Complaint is difficult to follow, it does appear that Plaintiff is taking issue with statements allegedly made by Defendant on the internet and in an interview. These statements allegedly made by Defendant would be protected opinion of Defendant, protected as true, protected by the First Amendment and protected by the CDA. Since the statements are not actionable, they certainly would not establish a claim for punitive damages.

15. As a fourteenth, separate and distinct affirmative defense, Plaintiff's First Amended Complaint for punitive damages is barred by the Due Process and Equal Protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution, as well as by the Due Process, Equal Protection, and excessive fines provisions of the California Constitution. While Plaintiff's First Amended Complaint is difficult to follow, it does appear that Plaintiff is taking issue with statements allegedly made by Defendant on the internet and in an interview. These statements allegedly made by Defendant would be protected opinion of Defendant, protected as true, protected by the First Amendment and protected by the CDA. Since the statements are not actionable, they certainly would not establish a claim for punitive damages. Additionally, in the context of the allegations against Defendant, punitive damages would be unconstitutional.

16. As a fourteenth, separate and distinct affirmative defense, Defendant alleges that Plaintiff's First Amended Complaint is subject to defenses yet unknown to Defendant at this time. Defendant will amend the answer to allege each additional affirmative defense when the nature of such defense becomes known to Defendant. While Plaintiff's First Amended Complaint is difficult to follow, it does appear that Plaintiff is taking issue with statements allegedly made by Defendant on the internet and in an interview. These statements allegedly made by Defendant would be protected opinion of Defendant, protected as true, protected by the First Amendment and protected by the CDA.

On Wed, Jan 24, 2024 at 8:07 PM Paul Katrinak <katrinaklaw@gmail.com> wrote:

> Dear Mr. DeCastro,
>
> Again, I asked you to explain how I did not plead facts to support the affirmative defenses in writing. You have not explained your position at all, nor provided any legal authority for your position. That does not meet the requirement of meeting and conferring and I will seek sanctions from the judge for your failure to meet and confer.
>
> There is no basis to file a demurrer to the amended answer. Explain your position with authorities.
>
> Very Truly Yours,
>
> Paul Katrinak
>
> On Tue, Jan 23, 2024 at 10:51 PM Chille DeCastro <chille@situationcreator.com> wrote:
>
> > Mr. Katrinak,
> >
> > I'm not talking about the general denials. Your denials where you just say "I didn't do it", then you don't need to be specific. Where you say "Maybe I did it, but I'm not liable because of fact A and fact B", also known as affirmative defenses, those defenses must be argued with specificity. You need to say what facts A and B are. You can't just say "Chille has unclean hands" or "Plaintiff has a long history of filing frivolous complaints". As I'm sure you're aware, those are conclusory statements. Are you letting Pierattini write these?
> >
> > The law is still the same as I cited in my first motion to strike your first answer.
> >
> > I will be filing another motion to strike this Friday.
> >
> > On Wed, Jan 17, 2024 at 10:15 AM Paul Katrinak <katrinaklaw@gmail.com> wrote:
> >
> > > Dear Mr. DeCastro,
> > >
> > > I went back over the answer and I believe that I have factually plead what I need to other than things that are not new matters.
> > >
> > > In particular, I do not see how the affirmative defenses are new matters.

A general denial is effective to controvert all material allegations of an unverified complaint. (CCP § 431.30, subd.(d).)

Generally, a defendant bears the burden of proving "new matter" and, as such, the underlying facts must be specifically pleaded in the answer. (California Academy of Sciences v. County of Fresno (1987) 192 Cal.App.3d 1436, 1442.)

The phrase "new matter" refers to something relied on by a defendant which is not put in issue by the plaintiff. (Walsh v. West Valley Mission Community College District (1998) 66 Cal.App.4th 1532, 1546.) The basic consideration is whether the matters of defense are responsive to the essential allegations of the complaint, i.e., whether they are contradicting elements of plaintiff's cause of action or whether they tender a new issue, in which case the burden of proof is upon the defendant as to the allegation constituting such new matter. (Cahil Bros., Inc. v. Clementina Co. (1962) 208 Cal.App.2d 367, 385.)

A defense which negates an essential allegation in the complaint does not constitute a new matter, and therefore, need not be specifically pled by the defendant. (Statefarm Mutual Auto. Ins. Co. v. Superior Court (1991) 228 Cal.App.3d 721, 725.)

Each of the defenses negate an essential element of Plaintiff's claims and are therefore not "new matter" that require fact pleading.

Please explain in detail how you disagree with cases that I can read.

In light of the history in this case, we feel that we need to meet and confer in writing. Please send me your positions as to the defects in the Answer.

Very Truly Yours,

Paul Katrinak

--
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have received this communication in error, please notify us immediately by telephone and delete the original message. Thank you.

EXHIBIT 7

Gmail Chille DeCastro <chille@situationcreator.com>

Re: Meet and confer on your demurrer

1 message

Paul Katrinak <katrinaklaw@gmail.com> Fri, Jan 26, 2024 at 10:07 AM
To: Chille DeCastro <chille@situationcreator.com>

Dear Mr. DeCastro,

I just looked and the time expired for you to file another demurrer. Your deadline expired on January 14, 2024. CCP Section 430.40(b), You cannot file another frivolous demurrer. In any event you have not provided any legal authority for you position. You keep referring to "my complaint." I represent a defendant in a frivolous lawsuit and I filed an answer. Maybe that is where the confusion lies.

You keep asking for additional facts and I do not understand what more facts I can say. 99% of your Complaint is targeted to other defendants. I keep asking you when you will serve them and you ignore me. I keep asking you for the basis of any liability of Mr. Pieranttini and you ignore me. I served discovery to ascertain any potential liability of Mr. Pieranttini and you refused to respond. I have given you as many facts as I can.

The last demurrer that you served went into my junk mail. I thought the issue was resolved and did not check my junk mail. That will not happen again.

I trust this resolves the issue. If it does not, let me know.

Very Truly Yours,

Paul Katrinak

On Thu, Jan 25, 2024 at 12:08 PM Chille DeCastro <chille@situationcreator.com> wrote:

> Mr. Katrinak,
>
> As I said in my example. You actually plead "Plaintiff has a long history of filing frivolous complaints". That is not a fact. That is a legal conclusion. There are no facts in any of your affirmative defenses.
>
> I did point you to the legal authority from my previous demurrer, as it hasn't changed. However, let me copy and paste that for you. I'll modify the references to match the amended complaint.
>
> -- begin --
>
> A party against whom an answer has been filed may object to it by demurrer on the ground that it fails to state facts sufficient to constitute a defense when the ground of
> objection appears on the face of the answer [or from any matter of which the court is required to or may take judicial notice] (Code Civ. Proc. §§ 430.20(a), 430.30(a)).
>
> 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); *Peregrine Funding, Inc. v.*
> *Sheppard Mullin Richter & Hampton LLP*, 133 Cal. App. 4th 658, 676, 35 Cal. Rptr. 3d 31, 44 (2005).
>
> Additionally, Defendant denies having to prove affirmative defenses at Answer, 2:14-16. An affirmative defense is a defense that must be proved by the Defendant.
>
> Defendant's tenth affirmative defense (Answer, ¶7) is a request for affirmative relief, which is not allowed in an answer under CCP §431.30(c).
> Defendant's prayer for relief (Answer, 8:27-28) also contains requests for affirmative relief, which are not allowed in an answer under CCP §431.30(c).
>
> -- end --
>
> The only thing you won in my previous demurrer was that the judge is letting you plead your negative defense of failure to state a claim. Everything else needs to be corrected.

I can wait until after Friday, but please let me know by when you would be able to amend your complaint, before January 31.

Here are all of your conclusory statements lacking any facts:

3. As a second separate and distinct affirmative defense, Defendant alleges that Plaintiff has failed to exercise reasonable care and diligence to avoid loss and minimize Plaintiff's alleged damages. In addition, Plaintiff's Complaint is virtually entirely directed to conduct that the other Defendants were allegedly responsible for and not Defendant.

4. As a third separate and distinct affirmative defense, Defendant alleges that Plaintiff is barred from pursuing his claims because of his unclean hands and wrongful conduct. Plaintiff has a long history of filing frivolous complaints and attempting to use the legal system for improper purposes to get innocent defendants, such as Defendant, to incur substantial unnecessary attorney's fees. In addition, Plaintiff has a long history of making false and frivolous claims and false allegations against people in order to harass and intimidate them, such as Defendant.

5. As a fourth separate and distinct affirmative defense, Defendant alleges that any damages suffered as alleged in the First Amended Complaint, if any, was solely the fault of Plaintiff. Based on the allegations of the Complaint and Plaintiff's false narrative about his alleged history, any alleged damages are the fault of Plaintiff. Plaintiff has a history of making false claims about himself and other people. Additionally, there are basically no facts alleged in Plaintiff's Complaint about any alleged conduct by Defendant that would have caused Plaintiff any damages. All of the conduct alleged by Plaintiff and forming the basis of Plaintiff's Complaint consists of allegations of conduct performed by other individuals and Defendants other than Defendant.

6. As a fifth separate and distinct affirmative defense, Defendant alleges he is not liable for the damages claimed in the First Amended Complaint by Plaintiff and that other persons or entities are solely responsible for Plaintiff's alleged damages. The Complaint describes alleged conduct by other individuals and other Defendants, not alleged conduct by Defendant. The failure of Plaintiff to allege the names and information of the defendants who allegedly defamed him, allegedly stalked him, allegedly harassed him and allegedly assaulted him is a misjoinder of Defendant.

7. As a sixth separate and distinct affirmative defense, Defendant is informed and believes and based thereon alleges that Defendant's liability, if any, is subject to offset of any amounts allegedly due to Plaintiff. Plaintiff has engaged in harassing conduct of Defendant and forced Defendant to file a TRO concerning Plaintiff's harassing conduct. Based on the harassment of Defendant by Plaintiff, Defendant is entitled to an offset.

8. As a seventh separate and distinct affirmative defense, any alleged conduct by Defendant was protected by the First Amendment. While Plaintiff's First Amended Complaint is difficult to follow, it does appear that Plaintiff is taking issue with statements allegedly made by Defendant on the internet and in an interview. These statements allegedly made by Defendant would be protected by the First Amendment and are not actionable.

9. As an eighth separate and distinct affirmative defense, any alleged statements by Defendant about Plaintiff were protected opinion. While Plaintiff's First Amended Complaint is difficult to follow, it does appear that Plaintiff is taking issue with statements allegedly made by Defendant on the internet and in an interview. These statements allegedly made by Defendant would be protected opinion of Defendant. Since the statements are protected opinion, they would not be actionable.

10. As a ninth separate and distinct affirmative defense, any alleged statements by Defendant about Plaintiff were true. While Plaintiff's First Amended Complaint is difficult to follow, it does appear that Plaintiff is taking issue with statements allegedly made by Defendant on the internet and in an interview. These statements allegedly made by Defendant would be protected opinion of Defendant, and to the extent any statements are not considered opinion, the statements would be true. The alleged statements are protected opinion and, to the extent they are not considered protected opinion, they are true and would not be actionable.

11. As a tenth separate and distinct affirmative defense, Defendant alleges that Plaintiff suffered no damages based on the allegations of Plaintiff's First Amended Complaint. While Plaintiff's First Amended Complaint is difficult to follow, it does appear that Plaintiff is taking issue with statements allegedly made by Defendant on the internet and in an interview. Defendant has no information, nor facts that Plaintiff suffered any damages. In addition, as the statements are fully protected, Defendant cannot be liable for any alleged damages by Plaintiff.

12. As an eleventh separate and distinct affirmative defense, any claims alleged by Plaintiff in the First Amended Complaint are barred by immunity arising out of the Communications Decency Act of 1996 (47 U.S.C. § 230) ("CDA"). While Plaintiff's First Amended Complaint is difficult to follow, it does appear that Plaintiff is taking issue with statements allegedly made by Defendant on the internet and in an interview. These statements allegedly made by Defendant would be protected since they were posted on the internet by the CDA.

13. As a twelfth, separate and distinct affirmative defense, Defendants allege that Plaintiff's First Amended Complaint fails to state a cause of action sufficient for the imposition of punitive damages in any sum against Defendants. While Plaintiff's First Amended Complaint is difficult to follow, it does appear that Plaintiff is taking issue with statements allegedly made by Defendant on the internet and in an interview. These statements allegedly made by Defendant would be protected opinion of Defendant, protected as true, protected by the First Amendment and protected by the CDA. Since the statements are not actionable, they certainly would not establish a claim for punitive damages.

14. As a thirteenth, separate and distinct affirmative defense, Defendants allege that Plaintiff is barred from pursuing his claim for punitive damages, because Defendant did not act with malice, oppression or fraud. While Plaintiff's First Amended Complaint is difficult to follow, it does appear that Plaintiff is taking issue with statements allegedly made by Defendant on the internet and in an interview. These statements allegedly made by Defendant would be protected opinion of Defendant, protected as true, protected by the First Amendment and protected by the CDA. Since the statements are not actionable, they certainly would not establish a claim for punitive damages.

15. As a fourteenth, separate and distinct affirmative defense, Plaintiff's First Amended Complaint for punitive damages is barred by the Due Process and Equal Protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution, as well as by the Due Process, Equal Protection, and excessive fines provisions of the California Constitution. While Plaintiff's First Amended Complaint is difficult to follow, it does appear that Plaintiff is taking issue with statements allegedly made by Defendant on the internet and in an interview. These statements allegedly made by Defendant would be protected opinion of Defendant, protected as true, protected by the First Amendment and protected by the CDA. Since the statements are not actionable, they certainly would not establish a claim for punitive damages. Additionally, in the context of the allegations against Defendant, punitive damages would be unconstitutional.

16. As a fourteenth, separate and distinct affirmative defense, Defendant alleges that Plaintiff's First Amended Complaint is subject to defenses yet unknown to Defendant at this time. Defendant will amend the answer to allege each additional affirmative defense when the nature of such defense becomes known to Defendant. While Plaintiff's First Amended Complaint is difficult to follow, it does appear that Plaintiff is taking issue with statements allegedly made by Defendant on the internet and in an interview. These statements allegedly made by Defendant would be protected opinion of Defendant, protected as true, protected by the First Amendment and protected by the CDA.

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>
> There is no basis to file a demurrer to the amended answer. Explain your position with authorities.
>
> Very Truly Yours,

Paul Katrinak

On Tue, Jan 23, 2024 at 10:51 PM Chille DeCastro <chille@situationcreator.com> wrote:

Mr. Katrinak,

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The law is still the same as I cited in my first motion to strike your first answer.

I will be filing another motion to strike this Friday.

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I went back over the answer and I believe that I have factually plead what I need to other than things that are not new matters.

In particular, I do not see how the affirmative defenses are new matters.

A general denial is effective to controvert all material allegations of an unverified complaint. (CCP § 431.30, subd.(d).)

Generally, a defendant bears the burden of proving “new matter” and, as such, the underlying facts must be specifically pleaded in the answer. (California Academy of Sciences v. County of Fresno (1987) 192 Cal.App.3d 1436, 1442.)

The phrase “new matter” refers to something relied on by a defendant which is not put in issue by the plaintiff. (Walsh v. West Valley Mission Community College District (1998) 66 Cal.App.4th 1532, 1546.) The basic consideration is whether the matters of defense are responsive to the essential allegations of the complaint, i.e., whether they are contradicting elements of plaintiff’s cause of action or whether they tender a new issue, in which case the burden of proof is upon the defendant as to the allegation constituting such new matter. (Cahil Bros., Inc. v. Clementina Co. (1962) 208 Cal.App.2d 367, 385.)

A defense which negates an essential allegation in the complaint does not constitute a new matter, and therefore, need not be specifically pled by the defendant. (Statefarm Mutual Auto. Ins. Co. v. Superior Court (1991) 228 Cal.App.3d 721, 725.)

Each of the defenses negate an essential element of Plaintiff’s claims and are therefore not “new matter” that require fact pleading.

Please explain in detail how you disagree with cases that I can read.

In light of the history in this case, we feel that we need to meet and confer in writing. Please send me your positions as to the defects in the Answer.

Very Truly Yours,

Paul Katrinak

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Make a Reservation

Success! Your Reservation Number is **774528882558**.

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:	06/04/2024 8:30 AM
Number of Motions:	1
Reservation ID:	774528882558
Confirmation Code:	CR-TIPCEFKNHVXT3OJQN

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
TOTAL			**$61.65**