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Electronically FILED by  
Superior Court of California,  
County of Los Angeles  
3/21/2024 12:13 PM  
David W. Slayton,  
Executive Officer/Clerk of Court,  
By M. Elder, Deputy Clerk

Attorneys for Defendant  
Michael Pierattini

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF LOS ANGELES

9 JOSE DECASTRO,

10 Plaintiff,

11 v.

12 KATHERINE PETER; DANIEL CLEMENT;  
13 MICHAEL PIERATTINI; DAVID OMO JR.;  
14 and DOES 1 TO 30, inclusive,

15 Defendants.

) Case No. 23SMCV00538

) Assigned for all purposes to the Honorable  
H. Jay Ford, Dept. O

) **DEFENDANT PIERATTINI'S**  
) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES IN OPPOSITION TO**  
) **PLAINTIFF'S EX PARTE MOTION FOR**  
) **RECONSIDERATION OF THIS COURT'S**  
) **ORDER GRANTING DEFENDANT**  
) **PIERATTINI'S MOTION TO COMPEL**  
) **RESPONSES AND FOR SANCTIONS;**  
) **REQUEST FOR SANCTIONS IN THE**  
) **AMOUNT OF \$2,700.00 AGAINST**  
) **PLAINTIFF**

16 \_\_\_\_\_ )  
17 )  
18 Date: March 22, 2024  
19 Time: 8:30 a.m.  
20 Dept: O

21 [Declaration of R. Paul Katrinak filed  
22 concurrently]

LAW OFFICES OF R. PAUL KATRINAK  
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1 **I. INTRODUCTION**

2 Plaintiff Jose DeCastro’s (“Plaintiff”) Ex Parte Motion to Reconsider is frivolous on its  
3 face and further evidences Plaintiff’s outrageous conduct. There is no basis for this Ex Parte  
4 Motion for Reconsideration and Plaintiff has not presented any new facts or law warranting  
5 reconsideration. All Plaintiff is doing is rearguing what he argued at the hearing. Plaintiff  
6 makes this plain in the introduction of his Ex Parte Motion, in which he unambiguously  
7 proclaims that “[a]lthough all of this information was filed in Plaintiff’s opposition,” (Motion,  
8 p. 3, ll. 6-8). The Court should deny Plaintiff’s Ex Parte Motion in its entirety and issue  
9 sanctions.

10 Plaintiff’s allegations in the introduction are false in some respects and entirely based  
11 on Plaintiff’s imagination in other respects. Defendant Michael Pierattini (“Mr. Pierattini”) is  
12 not a member or even associated with “Masshole Troll Mafia.” This is a complete fabrication  
13 by Plaintiff as evidenced by Plaintiff producing no evidence to support this absurd allegation,  
14 nor responding to any discovery at all in this case. Plaintiff filed this frivolous lawsuit yet  
15 repeatedly attempts to make it sound like Mr. Pierattini somehow commenced this litigation.  
16 Rest assured, Mr. Pierattini wants nothing to do with Plaintiff and does not want to waste his  
17 time “harassing” or doing anything to Plaintiff.

18 Concerning Plaintiff’s absurd discovery allegations, they have no basis in fact and,  
19 frankly, Plaintiff is lying about the discovery issues:

- 20 • Mr. Pierattini fully responded to Plaintiff’s Requests for Production of  
21 Documents pursuant to the California Code of Civil Procedure on **August 1,**  
22 **2023.**
- 23 • The discovery served was necessary as Plaintiff refuses to provide any evidence  
24 or information that Mr. Pierattini did anything to Plaintiff.
- 25 • The Court has ordered that Mr. Pierattini narrow the requests, which counsel for  
26 Mr. Pierattini will do, but has had no time to do so due to the barrage of emails  
27 and frivolous filings by Plaintiff.

28 (See Katrinak Declaration).

1 Plaintiff touts his knowledge of the law. Regardless, in representing himself here, he is  
2 held to the same standard as if represented by counsel. That is particularly true here where a  
3 pro per Plaintiff has an intimate knowledge of the law and files frivolous document after  
4 frivolous document seeking to drive up fees. Here, there was no reasonable basis to file this Ex  
5 Parte Motion for Reconsideration. It is not fair for the Mr. Pierattini, a man who lives paycheck  
6 to paycheck, to pay attorney's fees for this nonsense. There is going to be an unnecessary  
7 reconsideration of every single action in this case, unless some modicum of attorney's fees is  
8 issued (as required by CCP § 1008).

9 Plaintiff has sued multiple times for harassment and has lost. He brings one frivolous  
10 lawsuit after another. The fact that he has no evidence to support his claim is not surprising.  
11 This is a tactic by Plaintiff to cause his innocent victims to expend tens of thousands of dollars  
12 defending against his frivolous lawsuits.

13 As opposed to complying with the Court's Order, Plaintiff has been bombarding  
14 counsel for Mr. Pierattini with emails making frivolous demands and threatening frivolous  
15 motions, such as this Ex Parte Motion. This conduct is completely improper and evidences a  
16 complete disregard of the Court and California law. In sum, as Plaintiff has presented no new  
17 facts or law warranting reconsideration, Plaintiff' Ex Parte Motion should be denied and Mr.  
18 Pierattini respectfully requests that the Court issue sanctions for this frivolous Ex Parte Motion  
19 in the amount of \$2,700.00 to compensate Mr. Pierattini for a portion of the attorney's fees that  
20 he has incurred.

21 **II. PLAINTIFF HAS FAILED TO PRESENT NEW FACTS OR LAW AS REQUIRED**  
22 **BY CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1008 MANDATING**  
23 **DENIAL OF PLAINTIFF'S MOTION**

24 As explained in Brown & Weil, The Rutter Group California Practice Guide: Civil  
25 Procedure Before Trial § 9:324, a Motion for Reconsideration requires a very specific  
26 showing:

- 26 c. [9:324] **Motion for reconsideration:** Under the conditions described below,  
27 the losing party may make a motion before the same judge to reconsider and  
28 enter a different order (CCP § 1008(a)). Such motion must be:
- brought before the same judge that made the order (§ 9:324.3);
  - “made within 10 days after service upon the party of notice of entry of the order” (§ 9:325);

- based on “new or different facts, circumstances or law” than those before the court at the time of the original ruling (§ 9:328);
- supported by declaration stating the previous order, by which judge it was made, and the new or different facts, circumstances or law claimed to exist (§ 9:331); and
- made and decided before entry of judgment (§ 9:332.1)

Here, Plaintiff has submitted no new facts or law warranting reconsideration. In fact, Plaintiff admits on page 3 of his Ex Parte Motion that there are no new facts and law supporting the Ex Parte Motion and that “[a]ll of this information [contained in the application] was filed in Plaintiff’s opposition“ to Mr. Pierattini’s Motion to Compel. (Motion, p. 3, ll. 6 – 8.) There are simply no new facts or evidence presented by Plaintiff requiring that the Court deny Plaintiff’s Ex Parte Motion.

### **III. THIS COURT DID NOT LACK JURISDICTION TO AWARD SANCTIONS**

Plaintiff’s assertion that the Court somehow lacked jurisdiction to award sanctions with regard to Mr. Pierattini’s Motion to Compel Responses to his form interrogatories is simply untrue. Plaintiff claims that he “did not oppose a motion to compel responses, per the plain language of the statute.” The statute cited by Plaintiff is unambiguous:

The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes **or opposes** a motion to compel a response to interrogatories, 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. Civ. Proc. Code § 2030.290(c) (emphasis added).

In response to Mr. Pierattini’s Motion to Compel Responses to his form interrogatories (and various other motions), Plaintiff filed a document titled “Plaintiff’s **Memorandum In Opposition To Defendant Michael Pierattini’s Motions To Compel And For Sanctions**” (emphasis added). Based on this title alone, it is plain that Plaintiff did in fact oppose Mr. Pierattini’s Motion to Compel. Additionally, the very first line of Plaintiff’s opposition brief states “I Plaintiff Jose DeCastro (“Plaintiff” or “I”) **oppose** Defendant Michael Pierattini (“Pierattini”)’s multiple motions to compel and for monetary sanctions.” Plainly, Plaintiff opposed Mr. Pierattini’s motions to compel, lost, and was properly sanctioned.

Plaintiff’s additional argument that the Court “did not provide an actual hearing for the sanctions” is simply untrue. Both parties had an opportunity to be heard at the hearing. The fact

1 that Plaintiff was not satisfied with the result of the hearing does not mean that he did not have an  
2 opportunity to be heard and is entitled to reconsideration.

3 **IV. THE COURT DID NOT ABUSE ITS DISCRETION IN AWARDING SANCTIONS**

4 Plaintiff's various arguments for how the Court allegedly abused its discretion in awarding  
5 sanctions are little more than a list incorrect statements with no basis in fact or law. First, the Court  
6 properly found that Plaintiff did not have a substantial justification under Cal. Code Civ. Proc. §§  
7 2023.030(a) and 2030.290(c) for his failure to respond to Mr. Pierattini's form interrogatories.  
8 Plaintiff's claims that he was too "overwhelmed" to respond, that he did "not intentionally" refuse  
9 to respond, and that he would need a new protective order before responding were all previously  
10 heard by the Court and were all properly rejected.

11 Second, the Court properly found that Plaintiff's failure to respond was not the result of  
12 mistake, inadvertence, or excusable neglect under Cal. Code Civ. Proc. § 2030.290(b). Plaintiff's  
13 claim that he "overlooked" the form interrogatories was previously heard by the Court and was  
14 properly rejected.

15 Third, any arguments regarding reasonable expenses and each party's meet and confer  
16 efforts and obligations were previously heard by the Court and were all properly considered when  
17 the Court decided on and calculated the award of sanctions.

18 Plaintiff's arguments regarding the Court's alleged abuse of discretion are incorrect, have  
19 no basis in fact or law, and are not applicable to this type of motion. The Court relied on substantial  
20 evidence presented by both parties in making its decision, and all of the arguments relied on by  
21 Plaintiff were already heard and decided on by the Court.

22 **V. FACTUAL FINDINGS ARE UNNECESSARY**

23 Plaintiff is not entitled to factual findings, and such findings are not required here. The case  
24 Plaintiff cites actually supports Mr. Pierattini's side of this argument. It states:

25 *Mattco Forge, Inc. v. Arthur Young & Co.* (1990) 223 Cal.App.3d 1429, 273  
26 Cal.Rptr. 262 is dispositive. There the court construed the similar provisions of  
27 Code of Civil Procedure section 2031, subdivision (e)(6) and noted that there is  
28 no need for written findings where the party opposing the motion for sanctions  
was unsuccessful. (223 Cal.App.3d at p. 1438, 273 Cal.Rptr. 262.) However,  
where the trial court determines that the one subject to the sanctions acted with  
substantial justification, the Court of Appeal implies that findings might be

1 necessary since the sanctions are no longer mandatory. (Ibid.) In the absence of  
2 such a determination, findings are not required.

3 *Estate of Ruchti* (1993) 12 Cal.App.4th 1593, 1603.

4 Here, the Court did **not** find that Plaintiff acted with substantial justification in refusing to  
5 respond to Mr. Pierattini's Form Interrogatories. How could it? Plaintiff did not respond at all and  
6 blew off the form interrogatories. Therefore, Plaintiff is not entitled to a factual finding, and a  
7 factual finding is not required here.

8 **VI. SANCTIONS IN THE AMOUNT OF \$ 2,700.00 ARE WARRANTED UNDER**  
9 **CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1008(d)**

10 California Code of Civil Procedure § 1008(d) provides as follows:

11 A violation of this section may be punished as a contempt and with sanctions as  
12 allowed by Section 128.7. In addition, an order made contrary to this section may  
13 be revoked by the judge or commissioner who made it, or vacated by a judge of  
14 the court in which the action or proceeding is pending.

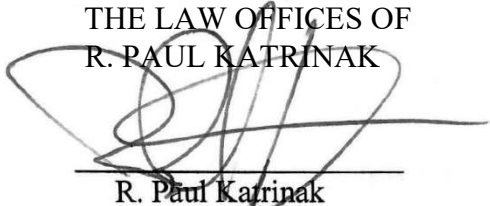
15 Here, there is simply no justification for Plaintiff's frivolous Ex Parte Motion for  
16 Reconsideration. In fact, Plaintiff on page 3 of his Ex Parte Motion admits that there are no new  
17 facts or law contained in the Ex Parte Motion. (Motion, p. 3, ll. 7-9). Counsel for Mr. Pierattini  
18 incurred no less than \$2,700.00 in attorney's fees opposing Plaintiff's frivolous Ex Parte Motion.  
19 Therefore, sanctions in the amount of \$2,700.00 are appropriate.

20 **VII. CONCLUSION**

21 For the foregoing reasons, Mr. Pierattini respectfully requests that the Court deny Plaintiff's  
22 Ex Parte Motion and award sanctions in the amount of \$2,700.00 against Plaintiff.

23 DATED: March 21, 2024

24 THE LAW OFFICES OF  
25 R. PAUL KATRINAK

26   
27 R. Paul Katrinak  
28 Attorneys for Defendant  
Michael Pierattini

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA  
3 COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles, State of California; I am over the age of  
5 18 and not a party to the within action; my business address is 9663 Santa Monica Boulevard,  
6 Suite 458, Beverly Hills, California 90210.

7 On March 21, 2024, I served the foregoing document(s) described as:

8 **DEFENDANT PIERATTINI'S MEMORANDUM OF POINTS AND**  
9 **AUTHORITIES IN OPPOSITION TO PLAINTIFF'S EX PARTE MOTION**  
10 **FOR RECONSIDERATION OF THIS COURT'S ORDER GRANTING**  
11 **DEFENDANT PIERATTINI'S MOTION TO COMPEL RESPONSES AND FOR**  
12 **SANCTIONS; REQUEST FOR SANCTIONS IN THE AMOUNT OF \$2,700.00**  
13 **AGAINST PLAINTIFF**

14 on the interested parties to this action addressed as follows:

15 Jose DeCastro  
16 1258 Franklin Street  
17 Santa Monica, CA 90404  
18 [chille@situationcreator.com](mailto:chille@situationcreator.com)  
19 [iamalaskan@gmail.com](mailto:iamalaskan@gmail.com)

20 (BY MAIL) I deposited such envelope in the mail at Los Angeles, California.  
21 The envelope was mailed with postage thereon fully prepaid and addressed to the person  
22 above.

23 (BY PERSONAL SERVICE) by causing a true and correct copy of the above  
24 documents to be hand delivered in sealed envelope(s) with all fees fully paid to the person(s) at  
25 the address(es) set forth above.

26 X (BY EMAIL) I caused such documents to be delivered via electronic mail to the  
27 email address for counsel indicated above.

28 Executed March 21, 2024, at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States that the above is  
true and correct.

  
R. Paul Katrinak