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David W. Slayton,
Executive Officer/Clerk of Court,
By A. Mejia, Deputy Clerk

5 Attorneys for Defendant
Michael Pierattini

6
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.;
and DOES 1 TO 30, inclusive,

14 Defendants.

) Case No. 23SMCV00538

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

)
) **DEFENDANT MICHAEL PIERATTINI'S**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN OPPOSITION TO**
) **PLAINTIFF'S DEMURRER TO THE**
) **AMENDED ANSWER**

15 Date: May 16, 2024
16 Time: 8:30 a.m.
Dept: O

17 [Declaration of R. Paul Katrinak filed
18 concurrently]

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1 **I. INTRODUCTION**

2 Plaintiff's Demurrer to Answer is yet another frivolous pleading in a long line of frivolous
3 motions by Plaintiff. Defendant Michael Pierattini ("Mr. Pierattini") lives paycheck to paycheck
4 and cannot afford the attorney's fees generated by this battery of frivolous motions. It is Plaintiff's
5 intent to harass Mr. Pierattini and to bury Mr. Pierattini with unnecessary attorney's fees. This is
6 evidenced by the fact that Mr. Pierattini is barely mentioned in Plaintiff's fantastical First
7 Amended Complaint ("FAC").

8 The sordid history of this case is that counsel for Mr. Pierattini has been asking for over
9 eight months for the basis of liability for Mr. Pierattini. As noted above, Mr. Pierattini is barely
10 mentioned in Plaintiff's frivolous FAC. Plaintiff has completely ignored counsel for Mr.
11 Pierattini's requests, forcing counsel for Mr. Pierattini to propound written discovery on Plaintiff,
12 which he did. In response to rudimentary preliminary discovery, Plaintiff objected to everything,
13 failed to provide any facts supporting his claims, failed to produce a single document to support his
14 case, and failed to appear for his deposition. After sending lengthy meet and confer letters to obtain
15 compliance from Plaintiff, Plaintiff ignored counsel for Mr. Pierattini's meet and confer letters,
16 forcing the filing of multiple Motions to Compel.

17 It is the epitome of hypocrisy that Plaintiff improperly complains about an alleged lack of
18 facts plead in the affirmative defenses in Mr. Pierattini's answer, when Plaintiff has provided no
19 evidence to support his fantastical allegations. There is simply no basis for liability for Mr.
20 Pierattini as evidenced by lack of facts in Plaintiff's FAC alleged against Mr. Pierattini.

21 Concerning Plaintiff's untimely Demurrer to Mr. Pierattini's Amended Answer, it should
22 be overruled for the following reasons as follows:

- 23 • The Demurrer is procedurally defective as it merely contains points and authorities
24 and no Demurrer as required.
 - 25 • The Demurrer is untimely.
 - 26 • The Amended Answer is properly plead.
 - 27 • Plaintiff failed to meet and confer.
- 28

1 Therefore, Mr. Pierattini respectfully requests that the Court overrule Plaintiff’s Demurrer
2 in its entirety.

3 **II. PLAINTIFF’S FRIVOLOUS DEMURRER IS PROCEDURALLY DEFECTIVE**

4 California Rule of Court Rule 3.1320(a) states as follows:

5 **(a) Grounds Separately stated**

6 Each ground of demurrer must be in a separate paragraph and must state whether
7 it applies to the entire complaint, cross-complaint or answer, or to specified
8 causes of action or defenses.

9 California Code of Civil Procedure Section 430.060 states as follows:

10 A demurrer shall distinctly specify the grounds upon which any of the objections
11 to the complaint, cross-complaint, or answer are taken. Unless it does so, it may
12 be disregarded. (Emphasis added).

13 Here, Plaintiff’s Demurrer violates both California Rule of Court Rule 3.1320(a) and
14 California Code of Civil Procedure Section 430.060. As the Court is well aware, a demurrer is an
15 objection to a complaint or answer. A procedurally proper demurrer contains a separate pleading
16 that constitutes the objections to each affirmative defense. Here, as Plaintiff did not specify in a
17 separate paragraph each objection to each affirmative defense, Plaintiff’s demurrer should be
18 overruled as it is procedurally defective.

19 **III. PLAINTIFF’S FRIVOLOUS DEMURRER WAS FILED LATE IN VIOLATION OF**
20 **THE COURT’S RULES AND SHOULD THEREFORE BE STRUCK BY THE**
21 **COURT**

22 Mr. Pierattini timely filed and served his Amended Answer on January 2, 2024. (Declaration
23 of R. Paul Katrinak (“Katrinak Decl.”) ¶ 2, Ex. “A”.) Based on this filing date, Plaintiff had 10 court
24 days to file a demurrer to Mr. Pierattini’s Amended Answer. Cal. Civ. Proc. Code § 430.40(b).
25 Because there was a court holiday on January 15, Plaintiff’s Demurrer was due no later than January
26 17, 2024. Even with this clearly delineated deadline, Plaintiff filed his frivolous Demurrer two
27 weeks later, on January 31, 2024. (Katrinak Decl. ¶ 8, Ex. “G”.) Plaintiff filed his Demurrer late
28 even after being notified by counsel for Mr. Pierattini that the deadline had passed. (Katrinak Decl.
¶ 7, Ex. “F”.)

 Plaintiff repeatedly cites to “Code of Civil Procedure § 430.21(a)(2),” to claim that he
qualifies for a 30-day extension on the demurrer filing deadline, but this citation is improper as there

1 is no Code sections numbered as such. Cal. Civ. Proc. Code § 430.41(a)(2) outlines the meet and
2 confer requirements before filing a demurrer, and clearly states:

3 If the parties are not able to meet and confer at least 5 days before the date the
4 responsive pleading is due, the demurring party shall be granted an automatic 30-
5 day extension of time within which to file a responsive pleading, **by filing and**
6 **serving, on or before the date on which a demurrer would be due,** a
7 declaration stating under penalty of perjury that a good faith attempt to meet and
8 confer was made and explaining the reasons why the parties could not meet and
9 confer.

10 *Ibid.* (emphasis added). As has been the case throughout this litigation, Plaintiff has failed to follow
11 the procedural rules of the Court to fit his own needs. Plaintiff neither filed nor served a declaration
12 “on or before” January 17, 2024, the date on which a demurrer was due. Therefore, he did not meet
13 the requirements for a 30-day extension on the deadline, and his Demurrer filed on January 31 was
14 improperly filed 2 weeks late.

15 Plaintiff has made plain that he has little understanding of or respect for this Court’s
16 deadlines and procedures. When discussing the filing of Mr. Pierattini’s Amended Answer, Plaintiff
17 states that he “checked the record for approximately a week and stopped looking.” (Demurrer, 2:24-
18 25.) Plaintiff also falsely claims that Mr. Pierattini’s Amended Answer was due on December 26,
19 2023, and that he was not served with the Amended Answer when it was filed. The December 26,
20 2023, deadline to submit the Amended Answer was pushed back several days for various reasons.
21 First, Mr. Pierattini had 5 additional calendar days to file his Amended Answer because the notice
22 of the Court’s Order requiring an Amended Answer was served on counsel for Mr. Pierattini by
23 mail. Cal. Civ. Proc. Code § 1005(b). Second, because these additional 5 calendar days moved the
24 deadline to the weekend (Sunday, December 31, 2023), the deadline was moved to the next day,
25 which was Monday, January 1, 2024. Third, because January 1, 2024 was a court holiday, the
26 deadline again shifted to the next day. Therefore, Mr. Pierattini’s Amended Answer was due by
27 January 2, 2024, not December 26, 2023, as Plaintiff incorrectly claims, and Mr. Pierattini’s
28 Amended Answer was properly filed and served on that day. (Katrinak Decl. ¶ 2, Ex. “A”.)
Plainly, Plaintiff’s failure to check his email is not an excuse for his behavior. Plaintiff’s
blatant disregard for the Court’s rules and procedures has been on full display throughout this
case and has consistently harassed and prejudiced Mr. Pierattini who still does not understand

1 the basis for Plaintiff’s claims against him. Plaintiff’s late filing of his Demurrer was done in
2 bad faith, was frivolous, and was intended to cause unnecessary delay and needlessly increase
3 the cost of litigation to Mr. Pierattini.

4 **IV. A DEMURRER TO AN ANSWER ADMITS ALL FACTS ALLEGED IN THE**
5 **ANSWER AND MUST CONSIDER THE FAC**

6 In most respects, the demurrer to an answer is governed by the same rules as a demurrer to a
7 complaint. Code of Civil Procedure § 430.060. For instance, for purposes of ruling on demurrer,
8 testing the sufficiency of an answer, the demurrer admits all the facts in the answer, including
9 denials. *Miller and Lux v. San Joaquin Light and Power Corp.* (1932) 120 Cal. App. 589, 600.
10 Another similarity is that the demurrer is limited to the pleading(s) and to any judicially noticed
11 facts. *Weil v. Barthel* (1955) 45 Cal. 2d 835, 837.

12 There are some special considerations however when ruling on a demurrer to an answer. The
13 court must consider the complaint, as well as the answer in the demurrer. “The determination of the
14 sufficiency of the answer requires an examination of the complaint because the adequacy is with
15 reference to the complaint it purports to answer.” *South Shore Land Company v. Petersen* (1964)
16 226 Cal. App.2d 725, 733 (emphasis added). In this regard, in addition to the demurrer admitting the
17 facts of the answer, the demurrer also “eliminates all allegations of the complaint denied by the
18 answer.” *South Shore, supra.*, at 733. Further, when ruling on a demurrer, each defense must be
19 considered separately without regard to any other defense. And, “a defendant is entitled to plead
20 inconsistent defenses.” *South Shore, supra.*, at 734.

21 Here, Plaintiff’s fantastical FAC makes numerous allegations against unknown persons. Mr.
22 Pierattini is barely mentioned. Plaintiff keeps requesting that more facts be alleged by Mr. Pierattini,
23 however, based on the FAC and the complete lack of any discovery responses from Plaintiff, Mr.
24 Pierattini has alleged as many facts as he possibly can. Therefore, taking into consideration the
25 nature of the FAC, Plaintiff’s Demurrer should be overruled.

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28 ///

1 **V. THE AFFIRMATIVE DEFENSES ARE NOT “NEW MATTER” REQUIRING**
2 **FACTUAL PLEADING**

3 A general denial is effective to controvert all material allegations of an unverified complaint.
4 Code Civ. Proc. § 431.30, subd.(d). Generally, a defendant bears the burden of proving “new
5 matter” and, as such, the underlying facts must be specifically pleaded in the answer. *California*
6 *Academy of Sciences v. County of Fresno* (1987) 192 Cal.App.3d 1436, 1442.

7 The phrase “new matter” refers to something relied on by a defendant which is not put in
8 issue by the plaintiff. *Walsh v. West Valley Mission Community College District* (1998) 66
9 Cal.App.4th 1532, 1546. The basic consideration is whether the matters of defense are responsive to
10 the essential allegations of the complaint, i.e., whether they are contradicting elements of plaintiff’s
11 cause of action or whether they tender a new issue, in which case the burden of proof is upon the
12 defendant as to the allegation constituting such new matter. *Cahil Bros., Inc. v. Clementina Co.*
13 (1962) 208 Cal.App.2d 367, 385.

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

17 Each of the defenses negate an essential element of Plaintiff’s claims and are therefore not
18 “new matter” that require additional fact pleading. “New matter” would for example be an
19 affirmative defense of fraud. Nonetheless, Mr. Pierattini provided as many facts as he presently has
20 available in his Amended Answer. Mr. Pierattini is barely mentioned in Plaintiff’s fantastical
21 Complaint and frankly has no idea why he is being targeted and harassed by Plaintiff with this
22 frivolous lawsuit.

23 **VI. PLAINTIFF FAILED TO PROPERLY MEET AND CONFER IN GOOD FAITH**
24 **PRIOR TO FILING HIS FRIVOLOUS DEMURRER**

25 Plaintiff bases his assertion that he qualified for an extension on an alleged “failure to
26 substantially meet and confer that was not the fault of Plaintiff.” (Demurrer, 4:14-16.) However, the
27 failure to meet and confer was completely the fault of Plaintiff. Although counsel for Mr. Pierattini
28 did have to cancel a scheduled meet and confer phone call with Plaintiff due to an unforeseen
emergency, counsel for Mr. Pierattini still made multiple attempts to meet and confer with Plaintiff

1 in writing. (Katrinak Decl. ¶¶ 4-6, Exs. “C,” “D,” and “E”.) These written meet and confer attempts
2 laid out the legal basis for Mr. Pierattini’s position regarding the Amended Answer, and requested
3 that Plaintiff explain in detail how he disagreed with the case law that counsel for Mr. Pierattini had
4 provided. (Katrinak Decl. ¶¶ 5-6, Exs. “D” and “E”.) Plaintiff repeatedly refused to do so, thereby
5 failing to fulfill his obligation to meet and confer in good faith prior to filing his Demurrer.

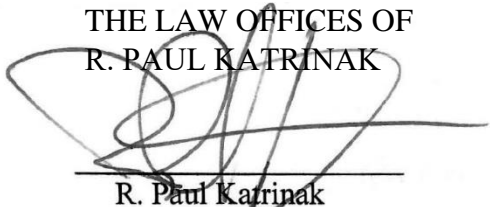
6 Plaintiff has attached a document titled “Declaration of Meet and Confer by Jose DeCastro”
7 to his frivolous Demurrer in an attempt to frame his repeated stonewalling as a fulfillment of his
8 meet and confer obligations. (Demurrer, 6-7.) Plaintiff states that he “left several voicemails for
9 Pierattini’s counsel over the next week.” (Demurrer, 3:8-9.) Counsel for Mr. Pierattini did not
10 receive any voicemails from Plaintiff. In addition, counsel for Mr. Pierattini had an emergency to
11 attend to, but conveniently Plaintiff omits the fact that counsel for Mr. Pierattini’s meet and confer
12 email on January 17, 2024, stated that all future meet and confer efforts had to be in writing given
13 the history of the case. (Katrinak Decl. ¶ 5, Ex. “D”.) Plaintiff admits that he sent an unresponsive
14 email on January 23, 2024, well beyond the deadlines to meet and confer and to file a demurrer.
15 This erratic behavior did not fulfill the requirement of Cal. Civ. Proc. Code § 430.41 for Plaintiff to
16 meet and confer in good faith prior to filing his frivolous Demurrer. Additionally, Plaintiff’s actions
17 were done in bad faith, were frivolous, and were intended to cause unnecessary delay and needlessly
18 increase the cost of litigation to Mr. Pierattini.

19 **VII. CONCLUSION**

20 For the foregoing reasons, Mr. Pierattini respectfully requests that the Court overrule
21 Plaintiff’s Demurrer.

22
23 DATED: May 3, 2024

THE LAW OFFICES OF
R. PAUL KATRINAK



R. Paul Katrinak
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 May 3, 2024, I served the foregoing document(s) described as:

8 **DEFENDANT MICHAEL PIERATTINI'S MEMORANDUM OF POINTS AND
9 AUTHORITIES IN OPPOSITION TO PLAINTIFF'S DEMURRER TO THE
10 AMENDED ANSWER**

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

12 Jose DeCastro
13 3909 S Maryland Pkwy, Ste. 314
14 Las Vegas, NV 89119
15 chille@situationcreator.com

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

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

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

24 Executed May 3, 2024, at Los Angeles, California.

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

27 
28 R. Paul Katrinak