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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOSE DECASTRO, Plaintiff, v. KATHERINE PETER; DANIEL CLEMENT; MICHAEL PIERATTINI; DAVID OMO JR.; and DOES 1 TO 30, inclusive, Defendants.	Case No. 23SMCV00538 Assigned for all purposes to the Honorable H. Jay Ford, Dept. O **DEFENDANT MICHAEL PIERATTINI'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL RESPONSES TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS TO MICHAEL PIERATTINI, SET TWO AND REQUEST FOR MONETARY SANCTIONS AGAINST PLAINTIFF IN THE AMOUNT OF $4,500.00** Date: May 16, 2024 Time: 8:30 a.m. Dept: O [Declaration of R. Paul Katrinak filed concurrently] **RES ID: 310786113364**

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I. INTRODUCTION

Plaintiff Jose DeCastro's ("Plaintiff") Motion to Compel Responses to Plaintiff's Request For Production of Documents to Michael Pierattini, Set Two, and Request For Monetary Sanctions (the "Motion") is frivolous on its face and further evidences Plaintiff's outrageous and sanctionable conduct. The Requests at issue seek attorney/client privileged information and are plainly not subject to discovery. In addition, they are not reasonably calculated to lead to the discovery of admissible evidence. Frankly, the Requests at issue are completely objectionable and absurd.

There is no legal or factual basis for this Motion and Plaintiff has blatantly lied in his Motion regarding the circumstances surrounding the discovery requests at issue. For some strange reason, Plaintiff has fixated on a single line in an email sent by Defendant Michael Pierattini's ("Mr. Pierattini") counsel. Plaintiff is outrageously claiming that that single line constituted Mr. Pierattini's response to Plaintiff's frivolous second set of requests for production of documents, which is simply not true."

Plaintiff's allegations in the introduction are false in some respects and entirely based on Plaintiff's imagination in other respects. Mr. Pierattini is not a member, agent, or even associated with "Masshole Troll Mafia," and is certainly not "taking on DeCastro for their benefit." Plaintiff filed this frivolous lawsuit yet repeatedly attempts to make it sound like Mr. Pierattini somehow commenced this litigation.

Additionally, Plaintiff reserved and filed a "Motion to Compel Responses" when he was supposed to file a "Motion to Compel Further Responses" in order to avoid the heightened requirement that come with such a motion. Plaintiff has completely failed to satisfy his meet and confer obligations, and has also failed to submit his motion with the required separate statement explaining why further responses should be compelled. Although Plaintiff's Motion must fail on these procedural grounds alone, Plaintiff's Motion (when analyzed as a motion to compel *further* discovery) also fails substantively, as further discussed herein.

Plaintiff is merely copying Mr. Pierattini's Motions to Compel and flipping them. Plaintiff must have thought it was too much work to prepare and file a separate statement. To the demise of Plaintiff's frivolous Motion, the failure to include a separate statement mandates the denial of

Plaintiff's Motion. Additionally, Mr. Pierattini timely and properly served his responses to Plaintiff's frivolous Requests. There is simply no legal basis to order the production of the attorney-client privileged documents at issue concerning Request for Production No. 1. In addition, Mr. Pierattini fully responded to the remaining three Requests that no documents exist in compliance with the California Code of Civil Procedure. There was simply no justification to file this frivolous and sanctionable Motion to Compel.

Plaintiff touts his knowledge of the law and, in representing himself here, he is held to the same standard as if represented by counsel. That is particularly true where a pro per Plaintiff has an intimate knowledge of the law and files frivolous document after frivolous document seeking to drive up fees. It is not fair for the Mr. Pierattini, a man who lives paycheck to paycheck, to pay attorney's fees for this nonsense. Plaintiff has been burying counsel for Mr. Pierattini with frivolous motion after frivolous motion. Mr. Pierattini cannot afford the attorney's fees that Plaintiff is running up. This is Plaintiff's admitted tactic to harass people with frivolous litigation and run up attorney's fees. This conduct must not be condoned by the Court. Sanctions in this matter are plainly warranted. Therefore, Mr. Pierattini respectfully requests that the Court deny Plaintiff's Motion in its entirety and issue sanctions in the amount of $4,500.00 against Plaintiff for his outrageous and contemptible conduct.

II. PLAINTIFF'S HAS FILED THE WRONG TYPE OF MOTION BASED ON THE FACT THAT DEFENDANT PIERATTINI SERVED TIMELY RESPONSES TO THE DISCOVERY REQUESTS AT ISSUE

Defendant Pierattini provided proper and timely responses to Plaintiff's frivolous discovery requests. Therefore, Plaintiff's reservation and filling for a "Motion to Compel Responses" is improper. Instead, Plaintiff was required to file a "Motion to Compel *Further* Responses," and to file the supporting documentation that is required for such a motion. Brown & Weil, The Rutter Group California Practice Guide: Civil Procedure Before Trial, § 8:1482 *et seq.* explains this distinction:

> **[8:1482] Enforcing Demand:**
> A motion to compel is the procedure to enforce compliance with a CCP § 2031.010 demand:
> • Where no response at all has been made, the motion is to compel a response (CCP § 2031.300, *see ¶ 8:1483*);

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> • Where responses have been made but they are not satisfactory to the demanding party, the motion is to compel further responses (CCP § 2031.310, *see* ¶ *8:1490*); and
> • Where an agreement to comply has been made, but compliance is not forthcoming, the motion is to compel compliance (CCP § 2031.320, *see* ¶ *8:1503*).
> …
> b. [8:1490] **Where response UNSATISFACTORY—motion to compel further response:** Where a response has been made, but the demanding party is not satisfied with it, the remedy is a motion to compel further responses. [CCP § 2031.310]
> This motion can be utilized to attack a response containing:
> • Objections; or
> • An agreement to comply that is incomplete; or
> • A statement of inability to comply that is incomplete or evasive. [CCP § 2031.310(a)]

Here, the content of Plaintiff's Motion (which was directly copied from Mr. Pierattini's previous motions to compel further responses and which is therefore not tailored to the actual issues at hand) indicates that he is making an argument for *further* discovery responses. However, Plaintiff has reserved and filed a "Motion to Compel Responses," which is not the proper type of motion. This was likely done to in an attempt to avoid having to do the extra work required for a motion to compel further responses. Specifically, and as further discussed below, Plaintiff has not satisfied the meet and confer requirement for a motion to compel further discovery, nor has he filed the required separate statement with his motion.

III. PLAINTIFF'S FAILURE TO SUBMIT A SEPARATE STATEMENT MANDATES THE DENIAL OF PLAINTIFF'S MOTION

Pursuant to the California Rules of Court, Plaintiff must file a separate statement in support of his Motion. Specifically, "any motion involving the content of a discovery request or responses to such a request shall be accompanied by a separate statement." California Rules of Court, Rule 3.1345(a). Motions that require a separate statement include motions to "compel further [discovery] responses" and for "issue or evidentiary sanctions." Cal. Rules of Court, Rule 3.1345(a).

Here, Plaintiff failed to file a separate statement in support of his Motion. Plaintiff's failure to submit a separate statement explaining why further responses to his frivolous discovery requests are necessary is a fatal defect to his Motion mandating dismissal. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 409 fn. 14.

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IV. PLAINTIFF'S MOTION IS SIMPLY A MODIFIED COPY OF SIMILAR MOTIONS PREVIOUSLY FILED BY MR. PIERATTINI, AND IS THEREFOR REPLETE WITH INAPPLICABLE AND INCOHERENT LEGAL ANALYSIS

The frivolity of the Motion is heightened here because Plaintiff did not even draft his own Motion, but instead filed a nearly word-for-word copy of Mr. Pierattini's previously filed motions to compel. Plaintiff's Motion even has the same formatting as Mr. Pierattini's prior motions. Plaintiff did the exact same thing with "his" meet and confer letter as discussed below.

Plaintiff clearly did not put in much time or effort to alter the document he was copying from, as his Motion contains various unintelligible sentences and even makes arguments against objections that Mr. Pierattini did not even make. For example, Plaintiff's Motion contains the following incoherent "argument":

> Pierattini's further objections that each Request is objectionable because "[i]t seeks proprietary information that is a trade secret or Absolutely not. Your requests are completely objectionable and frankly absurd" are without merit and improper. Since Plaintiff's Requests do not suggest or imply that Pierattini must produce documents containing any alleged "trade secrets" or other confidential information, this objection is unnecessary and baseless. Additionally, a protective order is in place, so this objection is moot. On the contrary, these Requests seek documents that support Pierattini's allegations against Plaintiff. If Pierattini refuses to provide such supporting documents during the discovery period, then he must dismiss his case against Plaintiff based on a complete lack of evidence. It is not Plaintiff's job to build Pierattini's case for him while Pierattini lobs outrageous allegations at Plaintiff.

(Motion, p. 9, ll. 11-20.) It appears that rather than writing his own Motion applicable to the issues at hand, Plaintiff attempted to use the "find and replace" function in his word processing software to modify Mr. Pierattini's old motions. This was clearly not a successful editing procedure, as the Motion Plaintiff filed is packed with these garbled paragraphs.

Aside from the fact that this "argument" is unintelligible, Mr. Pierattini never made an objection as to proprietary information and trade secrets, as this excerpt implies. The Motion contains similar paragraphs referring to other objections never made by Mr. Pierattini, including objections regarding inaccessible ESI (Motion, p. 9, ll. 21-25) and vagueness and ambiguity (Motion, p. 10, ll. 7-13). These lack of any coherent or relevant legal argument in Plaintiff's Motion makes it nearly impossible for Mr. Pierattini to properly respond in this Opposition brief, and the fact that Mr. Pierattini must waste time arguing against this incomprehensible mess of a Motion is yet another example of Plaintiff's complete disdain for the Court.

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V. PLAINTIFF HAS NOT MET AND CONFERRED IN GOOD FAITH

A motion to compel further responses to an inspection demand "shall be accompanied by a meet and confer declaration under Section 2016.040." Code Civ. Proc. § 2031.310(b)(2). "A meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion." *Id.* § 2016.040.

Here, Plaintiff has not provided a meet and confer declaration as required by § 2031.310(b)(2). Instead, Plaintiff has appended a nonsensical and unsupported "declaration" to his Motion which states:

> I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Further, where an attorney preparing a motion typically is not a declaring party, requiring a separate declaration from the party, I am a pro se party and an included declaration is therefore proper and there is no code saying otherwise.

(Motion, p. 15, ll. 11-15.) This "declaration" does not "state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion" and is therefore insufficient.

Furthermore, as described in the Declaration of R. Paul Katrinak, Plaintiff completely failed to meet his burden to meet and confer in good faith with Mr. Pierattini prior to filing his frivolous Motion. The only mention of meeting and conferring in Plaintiff's Motion is that he sent a meet and confer letter on March 11, 2024, and that this letter was "ignored" by counsel for Mr. Pierattini (which is completely false). (Motion, p. 4, ll. 21-23.) Plaintiff's Motion then misstates the procedural history of this case:

> Here, as described above, I attested to my meet and confer efforts with Plaintiff in writing. My meet and confer efforts were substantially more than what Pierattini engaged in when this Court granted his motion for sanctions.

(Motion, p. 13, ll. 1-4.)

As an initial matter, counsel for Mr. Pierattini did not "ignore" Plaintiff's meet and confer letter. Plaintiff gave counsel for Mr. Pierattini until Friday, March 15, 2024 to respond to his meet and confer letter, and counsel for Mr. Pierattini emailed Plaintiff a responsive letter on that day at 2:10 P.M. Apparently, Plaintiff had set an arbitrary deadline of 12:00 p.m. for such a response, which counsel for Mr. Pierattini inadvertently overlooked. Still, in his email containing the

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responsive letter, counsel for Mr. Pierattini requested that Plaintiff immediately withdraw his Motion if it was filed because Plaintiff was not meeting and conferring in good faith. Even so, Plaintiff ignored the email, as well as the meet and confer letter contained therein, and kept his frivolous Motion on calendar even though there was simply no urgency to compel the improperly requested discovery. (Declaration of R. Paul Katrinak ("Katrinak Decl."), ¶ 3, Ex. "B".)

Furthermore, just like the Motion at issue here, "Plaintiff's" meet and confer letter was just a copy of the meet and confer letter counsel for Mr. Pierattini sent to Plaintiff on January 12, 2024. Plaintiff did not try to hide the fact that "his" letter was just a modified copy of the letter counsel for Mr. Pierattini previously sent him. Plaintiff referred to himself in "his" letter as "my client," and "we." Plaintiff left in sentences such as "the attorney-client privilege does not apply to you as an In Pro Per party," "You are the plaintiff," and "You must have some basis to be suing my client." Just like the underlying Motion, Plaintiff left in entire legal arguments that were completely inapplicable to the responses Mr. Pierattini provided to Plaintiff's requests for production. Plaintiff even kept the *exact* same formatting and structure in the meet and confer letter. This copied letter was not a proper attempt to meet and confer, and was just another attempt to waste time and run up Mr. Pierattini's legal fees. In "Plaintiff's" letter, he did not address the specific objections he took issue with, making it impossible for the parties to properly meet and confer on the objections. (Katrinak Decl., ¶ 4, Ex. "C".)

Overall, Plaintiff has grossly failed to fulfill his burden to meet and confer prior to filing his frivolous Motion. Therefore, the Motion must be denied.

VI. MR. PIERATTINI'S REPONSES TO THE DISCOVERY REQUESTS AT ISSUE WERE TIMELY AND PROPER

In his Motion, Plaintiff falsely claims that "Plaintiff has received no substantive responses to any of the Requests. Instead, Pierattini has "responded" to Mr. Plaintiff's Requests with a single line in an email." (Motion, p. 2-3, ll. 25; 1-2.) This assertion by Plaintiff is a blatant lie, as Mr. Pierattini fully and timely responded to Plaintiff's Requests for Production of Documents, Set Two, pursuant to the California Code of Civil Procedure on March 8, 2024. Plaintiff conveniently omits these responses from his exhibits and fails to address them at all. Instead, Plaintiff has fixated on a

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single line from an email sent to him by Mr. Pierattini's counsel which stated "[a]bsolutely not. Your requests are completely objectionable and frankly absurd," which he has quoted in his Motion nine times. Of course, this was not Mr. Pierattini's "complete and only timely response" as Plaintiff attempts to argue.

A response to requests for production is due 30 days after service of the requests. Cal Code Civ Proc § 2031.260(a). Service of the requests by email extends the deadline to respond by two calendar days. Code Civ. Proc. § 1010.6(a)(3)(B). Plaintiff served the requests at issue on February 5, 2024 by email. Therefore, based on the 30-day response deadline plus two additional days based on email service, the deadline to serve a timely response was on March 8, 2024. Mr. Pierattini's responses and objections were served on March 8, 2024. Therefore, the responses were timely. (Katrinak Decl., ¶ 2, Ex. "A".)

Mr. Pierattini's responses were also proper. As noted in Brown & Weil, California Practice Guide: Civil Procedure Before Trial (2023 update) (and in "your" letter) the response must be as follows:

> **Content:** The party to whom the CCP § 2031.010 demand is directed must respond separately to each item in the demand by one of the following:
> • **Agreement to comply:** A statement that the party will comply by the date set for inspection with the particular demand for inspection, testing, etc.; or
> • **Representation of inability to comply:** A statement that the party lacks the ability to comply with the particular demand; or
> • **Objections:** An objection to all or part of the demand. [CCP § 2031.210(a)]

Civ. Pro. Before Trial, § 8:1469. Mr. Pierattini provided specific responses to each of Plaintiff's requests. While these responses were provided subject to certain objections, specific responses were still provided to each request.

A. Mr. Pierattini's Response to Request for Production No. 1 Was Proper Because Plaintiff Was Blatantly Requesting Communications Protected by the Attorney-Client Privilege

Mr. Pierattini's response to Plaintiff's request for "All COMMUNICATIONS between YOU and Your attorney(s) regarding the scheduling or planning of the 'Deposition of Plaintiff Jose DeCastro' scheduled for January 25, 2023" was proper. So far as such communications may exist, any communication between Mr. Pierattini and his counsel regarding the scheduling or planning of a deposition would be protected, as such communications are the textbook definition of

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confidential communication between client and lawyer protected by the attorney-client privilege as defined by Cal. Evid. Code §§ 950 et seq. Put another way, Plaintiff is requesting communications which, by definition, are privileged.

When asserting claims of privilege or attorney work product protection, the objecting party must provide "sufficient factual information" to enable other parties to evaluate the merits of the claim. *Lopez v. Watchtower Bible & Tract Soc. Of New York, Inc.* (2016) 246 Cal.App.4th 566, 596-597. Here, Plaintiff has been provided with sufficient factual information to evaluate the merits of the privilege claim. Frankly, *any* communication responsive to this request would be protected by the privilege, making a privilege log unnecessary. A California Appeals court neatly summarized the extent of the privilege:

> "The attorney-client privilege, one of the oldest recognized, allows a client to refuse to disclose, and to prevent others from disclosing, confidential communications with an attorney. (Evid. Code, § 954.) The 'fundamental purpose behind the privilege is to safeguard the confidential relationship between clients and their attorneys **so as to promote full and open discussion of the facts and tactics surrounding individual legal matters**.' (*Mitchell v. Superior Court* (1984) 37 Cal.3d 591, 599 [208 Cal.Rptr. 886, 691 P.2d 642].) The privilege is absolute ...." (*People v. Bell* (2019) 7 Cal.5th 70, 96, 246 Cal.Rptr.3d 527, 439 P.3d 1102.) It "prevents disclosure of the communication regardless of its relevance, necessity or other circumstances peculiar to the case." (*Kerner v. Superior Court* (2012) 206 Cal.App.4th 84, 111, 141 Cal.Rptr.3d 504.)

Carroll v. Commission on Teacher Credentialing (2020) 56 Cal.App.5th 365, 380 (emphasis added). Plaintiff's request for obviously privileged information was improper, and Mr. Pierattini properly objected to it.

B. Mr. Pierattini's Responses to Requests for Production No. 2-4 Were Proper Because Mr. Pierattini Does Not Have Any Documents Responsive to Those Requests

Mr. Pierattini's responses to the other three requests were specific and complete. While these responses were provided subject to certain objections, specific responses were still provided to each request. The fact is that there are no documents responsive to these three requests. Plaintiff's dissatisfaction with this response because it does not fit his fantastical narrative of some great conspiracy against him does not change the fact that documents responsive to this request simply do not exist.

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VII. PLAINTIFF HAS FAILED TO SHOW THAT GOOD CAUSE EXISTS FOR COMPELLING FURTHER RESPONSES

As discussed in Section V above, Plaintiff's Motion is just a modified copy of Mr. Pierattini's previously filed motions to compel. In the case of Plaintiff's argument regarding the issue of "good cause," are unintelligible and illogical. Plaintiff's "good cause" argument states as follows:

> Here, each and every one of Plaintiff's Requests is supported by good cause and specifically tailored to obtain documents that are essential to supporting Plaintiff's defenses against Pierattini's frivolous claims against him. Plainly, Plaintiff still does not fully understand Pierattini's allegations against him, as Pierattini's meandering motions to compel of over 300 pages are difficult to follow. A crucial purpose of Plaintiff's discovery requests is to understand exactly what Pierattini's allegations against Plaintiff are, and what support, if any, Pierattini has for these allegations.
>
> **Request Nos. 1 and 2** seek documents concerning communications between Pierattini and his counsel regarding the scheduling or planning of the "Deposition of Jose DeCastro". Documents concerning these communications are essential to Plaintiff's defense against Pierattini's claims against him because they would show that Pierattini and his counsel have filed this litigation without proper legal or factual basis in order to harass Plaintiff.
>
> **Request Nos. 3 and 4** seek documents concerning Pierattini's claims for damages, including reputational damages. These documents are essential to Plaintiff's defense against Pierattini's claims against him because they would show that Pierattini did not suffer any damages as a result of Plaintiff's alleged conduct.

This "argument" is especially strange given the fact that Mr. Pierattini is a defendant and has no claims against Plaintiff. Additionally, Mr. Pierattini's previously filed motions to compel have nothing to do with the Motion at issue here, and certainly do not constitute "allegations" against Plaintiff. Of course, this confusion stems from the fact that Plaintiff did not write his own Motion, but just took Mr. Pierattini's old motions and changed a few words without any consideration for the inapplicability of those legal arguments to the issues here. The fact is that Plaintiff's discovery requests were frivolous to begin with, and Plaintiff's Motion is a nonsensical waste of this Court's time and resources.

VIII. SANCTIONS IN THE AMOUNT OF $ 4,500.00 SHOULD BE ISSUED BECAUSE MR. PIERATTINI SHOULD NOT HAVE BEEN REQUIRED TO OPPOSE THIS FRIVOLOUS MOTION SINCE HIS DISCOVERY RESPONSES WERE IN COMPLIANCE WITH THE CALIFORNIA CODE OF CIVIL PROCEDURE

The court "shall" impose a monetary sanction against the losing party on a motion to compel *unless* it finds that the party acted "with substantial justification" or other circumstances render

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sanctions "unjust." Code. Civ. Proc. § 2031.310(h).

Plaintiff has demonstrated that his agenda is to harass Mr. Pierattini and his counsel with frivolous motions and run up Mr. Pierattini's attorney's fees. Plaintiff is attempting to run up these costs while minimizing the work on his end by blatantly copying Mr. Pierattini's motions with no regard for the inapplicability of the copied legal arguments to the issues at hand. Code Civ. Proc. § 2023.030 states:

> To the extent authorized by the chapter governing any particular discovery method or any other provision of this title, the court, after notice to any affected party, person, or attorney, and after opportunity for hearing may impose…sanctions against anyone engaging in conduct that is a misuse of the discovery process…

Monetary sanctions should be imposed against Plaintiff for the costs of opposing this Motion in the amount of $4,500.00. (See Katrinak Decl., ¶¶ 5-6.) This Motion is patently frivolous. Plaintiff conceded that Mr. Pierattini responded to his discovery requests. Plaintiff failed to meet and confer in good faith. Plaintiff filed the wrong type of motion and did not submit the required separate statement. Plaintiff has not shown good cause for compelling further responses, nor has he provided any legal or factual support for his assertion that Mr. Pierattini's objections are meritless. Plaintiff is abusing the discovery process to run up Mr. Pierattini's legal fees, and is wasting the Court's time and resources. Therefore, sanctions are warranted against Plaintiff.

IX. CONCLUSION

For the foregoing reasons, Mr. Pierattini respectfully requests that the Court deny Plaintiff's Motion and award sanctions in the amount of $4,500.00 against Plaintiff.

DATED: May 3, 2024

THE LAW OFFICES OF
R. PAUL KATRINAK

By: R. Paul Katrinak
Attorneys for Defendant
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PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

On May 3, 2024, I served the foregoing document(s) described as:

DEFENDANT MICHAEL PIERATTINI'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL RESPONSES TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS TO MICHAEL PIERATTINI, SET TWO AND REQUEST FOR MONETARY SANCTIONS

on the interested parties to this action addressed as follows:

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

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

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

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

Executed May 3, 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