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2 LAW OFFICES OF R. PAUL KATRINAK
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Electronically FILED by
Superior Court of California,
County of Los Angeles
3/15/2024 12:53 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By A. Mejia, 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)
11 Plaintiff,)
12)
13 v.)
14 KATHERINE PETER; DANIEL CLEMENT;)
15 MICHAEL PIERATTINI; DAVID OMO JR.;)
16 and DOES 1 TO 30, inclusive,)
17 Defendants.)

Case No. 23SMCV00538
Assigned for all purposes to the Honorable
H. Jay Ford III, Dept. O
**DEFENDANT MICHAEL PIERATTINI'S
NOTICE OF MOTION AND MOTION
FOR SANCTIONS NOT LESS THAN
\$10,410.00 AGAINST PLAINTIFF;
MEMORANDUM OF POINTS AND
AUTHORITIES**
Date: May 7, 2024
Time: 8:30 a.m.
Dept: O

[Declaration of R. Paul Katrinak and [Proposed]
Order filed concurrently]

RES ID: 087441865392

LAW OFFICES OF R. PAUL KATRINAK
9663 Santa Monica Blvd., Suite 458
Beverly Hills, California 90210
(310) 990-4348

1 TO PLAINTIFF AND THE HONORABLE COURT IN THIS MATTER:

2 PLEASE TAKE NOTICE than on May 7, 2024 at 8:30 a.m. in Department O of the
3 above-entitled court located at 1725 Main Street, Santa Monica, California 90401, Defendant
4 Michael Pierattini (Mr. Pierattini) will and hereby does move this Court for an order imposing
5 monetary sanctions in the amount of \$10,410.00 against Plaintiff Jose DeCastro (“Plaintiff”).
6 Plaintiff’s Demurrer to Mr. Pierattini’s Answer is untimely and Plaintiff failed to meet and
7 confer in good faith prior to filing his demurrer.

8 This Motion will be based on the grounds that Plaintiff violated the requirements of
9 Code of Civil Procedure Section 128.7(b)(1)-(b)(3). Specifically, Plaintiff filed his Demurer in
10 the above-titled action against Mr. Pierattini solely for the improper purpose of harassing Mr.
11 Pierattini and his counsel, outrageously increasing the attorney’s fees being incurred by Mr.
12 Pierattini. The Demurrer is without merit such that sanctions are in order.

13 Additionally, as Plaintiff’s Demurrer is not warranted, Mr. Pierattini seeks sanctions
14 under Cal. Civ. Proc. Code § 128.7 to recover attorney’s fees for dealing with this frivolous
15 Demurrer. Alternatively, Mr. Pierattini seeks sanctions under Cal. Civ. Proc. Code § 128.5 due
16 to the frivolity of Plaintiff’s Demurrer.

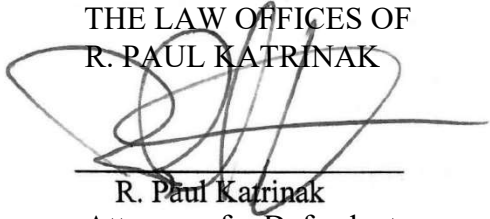
17 Mr. Pierattini has fully complied with the “safe harbor” provisions of Code of Civil
18 Procedure Section 128.7(c) by serving a copy of this Motion on Plaintiff at least 21 days before
19 filing it with this Court. (Declaration of R. Paul Katrinak (“Katrinak Decl.”) ¶ 9, Ex. “H”.)

20 This Motion is based on this Notice, the attached Memorandum of Points of Authorities,
21 the Declaration of R. Paul Katrinak, the [Proposed] Order, and all exhibits and attachments
22 hereto, as well as all files, documents, and materials available to this Court, and all further
23 evidence and arguments presented on this matter both in reply and at this hearing of the
24 motion.

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1 DATED: February 20, 2024

THE LAW OFFICES OF
R. PAUL KATRINAK



R. Paul Katrinak
Attorneys for Defendant
Michael Pierattini

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jose DeCastro (“Plaintiff”) has made clear that he has two strategies in this case – delay as much as possible and make Defendant Michael Pierattini (“Mr. Pierattini”) incur unnecessary and excess attorney’s fees. This fact was made abundantly clear by Plaintiff’s filing of his frivolous and meandering Demurrer, which was filled with false statements and unrelated grievances concerning the discovery process. By this Motion, Mr. Pierattini seeks monetary sanctions against Plaintiff for improperly and in bad faith filling his Demurrer to Mr. Pierattini’s Amended Answer in this action. Plaintiff has already admitted that his Demurrer was untimely without providing a valid reason for the untimeliness of the Demurrer. Additionally, Plaintiff has failed to meet his obligation to meet and confer with counsel for Mr. Pierattini in good faith prior to filing his Demurrer.

Once again, counsel for Mr. Pierattini emphasizes the fact that he has no idea of the basis of alleged liability for Mr. Pierattini. Plaintiff’s meandering Complaint takes issue with the conduct of several people other than Mr. Pierattini. It is the epitome of absurdity that Plaintiff is demanding more non-existent facts for affirmative defenses, when Plaintiff has refused to respond to discovery and provide any legal basis for any liability of Mr. Pierattini.

Plaintiff’s sole purpose in filing and maintaining his Demurrer and this frivolous lawsuit is to harass and burden Mr. Pierattini, and needlessly increase the attorney’s fees incurred in this litigation. This conduct is sanctionable under Code of Civil Procedure § 128.7(b). Plaintiff bringing the instant Demurrer is not warranted by existing law, nor does Defendant seek to amend the current law. Thus, the filing of this Demurrer violates Cal. Civ. Proc. Code § 128.7(b)(2). Finally, as a result of Plaintiff’s frivolous filing of this Demurrer and the bad faith conduct by Plaintiff, Mr. Pierattini is forced to incur significant legal fees to attack the frivolous pleading.

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1 **II. THIS COURT SHOULD AWARD MONETARY SANCTIONS AGAINST**
2 **PLAINTIFF**

3 Cal. Civ. Proc. Code § 128.7 provides that, by preparing a paper to a court, the filing party is
4 “certifying that to the best of [their] knowledge, information, and belief, formed after an inquiry
5 reasonable under the circumstances” that:

- 6 (1) the pleading is “not being presented primarily for an improper purpose, such
7 as to harass or cause unnecessary delay or needless increase in the cost of
8 litigation;
9 (2) the “claims, defenses, and other legal contentions therein are warranted by
10 existing law or by a nonfrivolous argument for the extension, modification, or
11 reversal of existing law;” and
12 (3) the “allegations and other factual contentions have evidentiary support or, if
13 specifically so identified, are likely to have evidentiary support after a reasonable
14 opportunity for further investigation or discovery.”

15 Cal. Civ. Proc. Code §128.7(b)(1)-(3). In addition, Cal. Civ. Proc. Code § 128.7(c) authorizes a
16 court to impose monetary sanctions against an attorney and/or party who has violated § 128.7(b).
17 Cal. Civ. Proc. Code §128.7(c). This certification is designed to create an affirmative duty of
18 investigation as to both law and fact, and thus deter frivolous actions and costly meritless
19 maneuvers. *See Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S.
20 533, 550 (1991) (interpreting Federal Rule of Civil Procedure 11).¹

21 An objective test is applied to determine whether the certification requirement is violated, i.e.
22 whether the paper filed is frivolous, legally unreasonable, or without factual foundation. “The actual
23 belief standard requires more than a hunch, a speculative belief, or wishful thinking; it requires a
24 well-founded belief. We measure the truth-finding inquiry’s reasonableness under an objective
25 standard and apply this standard both to attorneys and their clients.” *Bockrath v. Aldrich Chem. Co.*,
26 21 Cal. 4th 71, 82 (1999). As will be demonstrated below, Plaintiff’s Demurrer fails to meet Section
27 128.7’s certification requirements, warranting monetary sanctions against Plaintiff.

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¹ Since Section 128.7 was adopted to apply Federal Rule of Civil Procedure 11, and since the wording of Section 128.7(b)(2) and (c) is almost identical to that found in FRCP Rule 11(b)(2) and (c), federal case law construing Rule 11 is persuasive authority with regard to the meaning of Section 128.7. *Guillemin v. Stein*, 104 Cal.App.4th 156, 167 (2002).

1 **III. PLAINTIFF’S FRIVOLOUS DEMURRER WAS FILED LATE IN VIOLATION OF**
2 **THE COURT’S RULES AND SHOULD THEREFORE BE STRUCK BY THE**
3 **COURT**

4 Mr. Pierattini timely filed and served his Amended Answer on January 2, 2024. (Declaration
5 of R. Paul Katrinak (“Katrinak Decl.”) ¶ 2, Ex. “A”.) Based on this filing date, Plaintiff had 10 court
6 days to file a demurrer to Mr. Pierattini’s Amended Answer. Cal. Civ. Proc. Code § 430.40(b).
7 Because there was a court holiday on January 15, Plaintiff’s Demurrer was due no later than January
8 17, 2024. Even with this clearly delineated deadline, Plaintiff filed his frivolous Demurrer two
9 weeks later, on January 31, 2024. (Katrinak Decl. ¶ 8, Ex. “G”.) Plaintiff filed his Demurrer late
10 even after being notified by counsel for Mr. Pierattini that the deadline had passed. (Katrinak Decl.
11 ¶ 7, Ex. “F”.)

12 Plaintiff repeatedly cites to “Code of Civil Procedure § 430.21(a)(2),” to claim that he
13 qualifies for a 30-day extension on the demurrer filing deadline, but this citation is improper as there
14 is no Code sections numbered as such. Cal. Civ. Proc. Code § 430.41(a)(2) outlines the meet and
15 confer requirements before filing a demurrer, and clearly states:

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

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

24 Plaintiff has made plain that he has little understanding of or respect for this Court’s
25 deadlines and procedures. When discussing the filing of Mr. Pierattini’s Amended Answer, Plaintiff
26 states that he “checked the record for approximately a week and stopped looking.” (Demurrer, 2:24-
27 25.) Plaintiff also falsely claims that Mr. Pierattini’s Amended Answer was due on December 26,
28 2023, and that he was not served with the Amended Answer when it was filed. The December 26,

1 2023, deadline to submit the Amended Answer was pushed back several days for various reasons.
2 First, Mr. Pierattini had 5 additional calendar days to file his Amended Answer because the notice
3 of the Court’s Order requiring an Amended Answer was served on counsel for Mr. Pierattini by
4 mail. Cal. Civ. Proc. Code § 1005(b). Second, because these additional 5 calendar days moved the
5 deadline to the weekend (Sunday, December 31, 2023), the deadline was moved to the next day,
6 which was Monday, January 1, 2024. Third, because January 1, 2024 was a court holiday, the
7 deadline again shifted to the next day. Therefore, Mr. Pierattini’s Amended Answer was due by
8 January 2, 2024, not December 26, 2023, as Plaintiff incorrectly claims, and Mr. Pierattini’s
9 Amended Answer was properly filed and served on that day. (Katrinak Decl. ¶ 2, Ex. “A”.)

10 Plainly, Plaintiff’s failure to check his email is not an excuse for his behavior. Plaintiff’s
11 blatant disregard for the Court’s rules and procedures has been on full display throughout this case
12 and has consistently harassed and prejudiced Mr. Pierattini who still does not understand the basis
13 for Plaintiff’s claims against him. Plaintiff’s late filing of his Demurrer was done in bad faith, was
14 frivolous, and was intended to cause unnecessary delay and needlessly increase the cost of litigation
15 to Mr. Pierattini. Therefore, sanctions should be granted against Plaintiff. Cal. Civ. Proc. Code §§
16 128.5 & 128.7.

17 **IV. PLAINTIFF FAILED TO PROPERLY MEET AND CONFER IN GOOD FAITH**
18 **PRIOR TO FILING HIS FRIVOLOUS DEMURRER**

19 Plaintiff bases his assertion that he qualified for an extension on an alleged “failure to
20 substantially meet and confer that was not the fault of Plaintiff.” (Demurrer, 4:14-16.) However, the
21 failure to meet and confer was completely the fault of Plaintiff. Although counsel for Mr. Pierattini
22 did have to cancel a scheduled meet and confer phone call with Plaintiff due to an unforeseen
23 emergency, counsel for Mr. Pierattini still made multiple attempts to meet and confer with Plaintiff
24 in writing. (Katrinak Decl. ¶¶ 4-6, Exs. “C,” “D,” and “E”.) These written meet and confer attempts
25 laid out the legal basis for Mr. Pierattini’s position regarding the Amended Answer, and requested
26 that Plaintiff explain in detail how he disagreed with the case law that counsel for Mr. Pierattini had
27 provided. (Katrinak Decl. ¶¶ 5-6, Exs. “D” and “E”.) Plaintiff repeatedly refused to do so, thereby
28 failing to fulfill his obligation to meet and confer in good faith prior to filing his Demurrer.

1 Plaintiff has attached a document titled “Declaration of Meet and Confer by Jose DeCastro”
2 to his frivolous Demurrer in an attempt to frame his repeated stonewalling as a fulfillment of his
3 meet and confer obligations. (Demurrer, 6-7.) Plaintiff states that he “left several voicemails for
4 Pierattini’s counsel over the next week.” (Demurrer, 3:8-9.) Counsel for Mr. Pierattini did not
5 receive any voicemails from Plaintiff. In addition, counsel for Mr. Pierattini had an emergency to
6 attend to, but conveniently Plaintiff omits the fact that counsel for Mr. Pierattini’s meet and confer
7 email on January 17, 2024, stated that all future meet and confer efforts had to be in writing given
8 the history of the case. (Katrinak Decl. ¶ 5, Ex. “D”.) Plaintiff admits that he sent an unresponsive
9 email on January 23, 2024, well beyond the deadlines to meet and confer and to file a demurrer.
10 This erratic behavior did not fulfill the requirement of Cal. Civ. Proc. Code § 430.41 for Plaintiff to
11 meet and confer in good faith prior to filing his frivolous Demurrer. Additionally, Plaintiff’s actions
12 were done in bad faith, were frivolous, and were intended to cause unnecessary delay and needlessly
13 increase the cost of litigation to Mr. Pierattini. Therefore, sanctions should be granted against
14 Plaintiff. Cal. Civ. Proc. Code §§ 128.5 & 128.7.

15 **V. THIS COURT SHOULD DETER THESE BAD-FAITH TACTICS**

16 Plaintiff has in bad faith filed his Demurrer against Mr. Pierattini for reasons he has made
17 plain. This is precisely the type of case where Plaintiff, in bad faith, is attempting to use the Court to
18 harass Mr. Pierattini and his counsel regardless of the merits by ignoring the Court’s rules and
19 needlessly increasing the costs of litigation. Thus, Mr. Pierattini requests that the Court hold
20 Plaintiff monetarily responsible for his wrongful conduct. *Bockrath v. Aldrich Chem. Co.*, 21 Cal.
21 4th at 82; and *Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. at
22 550.

23 **VI. SANCTIONS ARE WARRANTED AGAINST PLAINTIFF**

24 A party presenting a paper, claim, defense, contention, allegation, pleading, motion or other
25 similar document to the court makes an implied certification as to its legal and factual merit, and is
26 subject to sanctions for violation of this certification. *Murphy v. Yale Materials Handling Corp.*
27 (1997) 54 Cal.App.4th 619, 623.
28

1 If, after notice and a reasonable opportunity to respond, the Court determines that Section
2 128.7, Subdivision (b) of the Code, has been violated, then the Court may impose an appropriate
3 sanction on the attorneys, law firm, and/or parties that have violated the Code Section or are
4 responsible for the violation. In determining what sanctions should be ordered, the court shall
5 consider whether a party seeking sanctions has exercised due diligence. Cal. Civ. Proc. Code
6 § 128.7(c). As set forth in the accompanying Declaration of R. Paul Katrinak, counsel for Mr.
7 Pierattini has been diligent in making this Motion and served the Motion on Plaintiff pursuant to the
8 Code. (Katrinak Decl. ¶ 9, Ex. “H”.) Plaintiff refused to withdraw his Demurrer within the 21-day
9 safe harbor period. Cal. Civ. Proc. Code § 128.7(c)(1). As a result, this Court may impose sanctions
10 that consist of, or include, directives of a non-monetary nature, an order to pay a penalty into court,
11 and/or an order directing payment to the movant of some or all of the reasonable attorneys’ fees and
12 costs incurred in connection with filing the Motion. Cal. Civ. Proc. Code § 128.7(c), (d); *see also*
13 Weil & Brown, *Cal. Practice Guide: Civil Procedure Before Trial* (The Rutter Group 2015)
14 ¶ 9:1216 (“‘Directives of a nonmonetary nature’ may include . . . striking the offending pleading.”).

15 Mr. Pierattini respectfully requests that the Court impose monetary and non-monetary
16 sanctions against Plaintiff including dismissal of his Demurrer, with prejudice, and the payment of
17 Mr. Pierattini’s attorneys’ fees and costs incurred in connection with bringing this Motion for
18 Sanctions. Plaintiff has seriously abused the legal system by filing his Demurrer after the deadline
19 and without meeting and conferring in good faith.

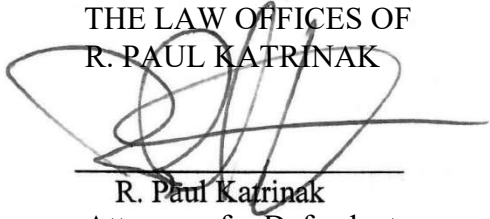
20 Despite having the opportunity to withdraw the Demurrer during the safe harbor period,
21 Plaintiff chose to proceed with his baseless Demurrer. Mr. Pierattini’s counsel anticipates a total of
22 no less than 23.0 hours working on this Motion, opposing Plaintiff’s frivolous Demurrer, working
23 on the reply, and attending the hearing. (Katrinak Decl. ¶ 10.) Thus, based on a reasonable hourly
24 rate, Plaintiff should be held liable in an amount of no less than \$10,410.00 and the Demurrer
25 should be dismissed with prejudice. (Katrinak Decl. ¶¶ 10, 11.)

26 **VII. CONCLUSION**

27 For the foregoing reasons, Mr. Pierattini respectfully requests the Court sanction Plaintiff for
28 this improper conduct in the amount of \$10,410.00.

1 DATED: February 20, 2024

THE LAW OFFICES OF
R. PAUL KATRINAK



R. Paul Katrinak
Attorneys for Defendant
Michael Pierattini

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LAW OFFICES OF R. PAUL KATRINAK
9663 Santa Monica Blvd., Suite 458
Beverly Hills, California 90210
(310) 990-4348

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 February 20, 2024, I served the foregoing document(s) described as:

8 **DEFENDANT MICHAEL PIERATTINI'S NOTICE OF MOTION AND
9 MOTION FOR SANCTIONS NOT LESS THAN \$10,410.00 AGAINST
10 PLAINTIFF; MEMORANDUM OF POINTS AND AUTHORITIES**

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

12 Jose DeCastro
13 1258 Franklin Street
14 Santa Monica, CA 90404
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 February 20, 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

LAW OFFICES OF R. PAUL KATRINAK
9663 Santa Monica Blvd., Suite 458
Beverly Hills, California 90210
(310) 990-4348



Make a Reservation

JOSE DECASTRO vs KATHERINE PETER

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

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

Reservation

Case Name:
JOSE DECASTRO vs KATHERINE PETER

Case Number:
23SMCV00538

Type:
Motion for Sanctions

Status:
RESERVED

Filing Party:
Michael Pierattini (Defendant)

Location:
Santa Monica Courthouse - Department O

Date/Time:
05/07/2024 8:30 AM

Number of Motions:
1

Reservation ID:
087441865392

Confirmation Code:
CR-UKFTVFGO6TAVEFFUW

Fees

Description	Fee	Qty	Amount
Motion for Sanctions	0.00	1	0.00
TOTAL			\$0.00

Payment

Amount:
\$0.00

Type:
NOFEE

Account Number:
n/a

Authorization:
n/a

Payment Date:
1969-12-31

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