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Electronically FILED by  
Superior Court of California,  
County of Los Angeles  
3/19/2024 8:13 AM  
David W. Slayton,  
Executive Officer/Clerk of Court,  
By M. Elder, Deputy Clerk

8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF LOS ANGELES**  
10

11 JOSE DECASTRO

12 Plaintiff,

13 vs.

14 KATHERINE PETER, et al.

15 Defendants.

) Case No.: 23SMCV00538  
)  
) **PLAINTIFF’S *EX PARTE* MOTION FOR**  
) **CLARIFICATION; MOTION TO**  
) **RECONSIDER MOTION FOR SANCTIONS**  
) **OR IN THE ALTERNATIVE FOR**  
) **FACTUAL FINDINGS;**  
)  
) **Telephone Appearance (please email me info)**  
)  
) Judge: Hone. H. Jay Ford III  
)  
) Ex Parte Hearing:  
) Date: March 22, 2024  
) Time: 8:30 am  
) Department: O

19  
20 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

21 PLEASE TAKE NOTICE that on March 22, 2024, at 8:30 AM, or as soon thereafter as the  
22 matter may be heard in Department O of the above-entitled court, located at 1725 Main Street Santa  
23 Monica, CA 90401, Plaintiff Jose DeCastro (“Plaintiff”, “me” or “I”) will appear *ex parte* to present  
24 his motion to this Court for clarification of its tentative ruling of March 7, 2024. Plaintiff will further  
25

1 moves this Court pursuant to Cal. Code Civ. Proc. § 1008 to reconsider its oral orders made on  
2 March 7, 2024 or in the alternative to make factual findings on the record.

3 In my previous *ex parte* hearing request, I requested the clerk to notify me of when it would be  
4 scheduled and provide me with a link to appear remotely. That didn't happen. Please continue the  
5 hearing if this doesn't happen unless the Court is ready to grant this motion. I will be in trial from  
6 March 19 – 21, 2024. I may be in jail if I lose, but otherwise am available March 22, 2024.

7 This Motion is based upon this Notice, the attached Memorandum of Points and Authorities in  
8 support thereof, the included Declaration of Jose DeCastro, and all pleadings, records, and papers on  
9 file herein, as well as such other oral arguments as may be presented at the hearing on this Motion.

## 10 MEMORANDUM OF POINTS AND AUTHORITIES

### 11 I. INTRODUCTION

12 Pierattini, as a member and officer of Masshole Troll Mafia, has led and engaged in harassment  
13 and defamation actions against Plaintiff. Pierattini refused to cease and desist and begged me to sue  
14 him and now we're in discovery.

15 Although Pierattini refused to materially respond to Plaintiff's request for production of  
16 documents, and while Plaintiff was super patient with Pierattini, agreeing to a protective order and  
17 allowing additional time to respond, Pierattini has engaged in recreational litigation in return.

18 Pierattini sent over 406 discovery requests and a subpoena for a deposition. For that deposition,  
19 Pierattini did not follow this court's guidelines on working with the other party's schedule. Instead,  
20 he intentionally scheduled a deposition more than 150 miles away from where Plaintiff resides, and  
21 more than 150 miles away from a trial that Pierattini knew that Plaintiff was to be at that same week.

22 The 406 discovery requests were overly broad, duplicative, and without merit as recognized by  
23 this court (Minutes of the March 7, 2024 hearing).

24 While Plaintiff responded with timely objections to the majority of the discovery requests and  
25 deposition, provided verified answers to the RFA, and attempted to meet and confer to request

1 additional time to provide responses, Pierattini canceled the meet and confer and instead filed 699  
2 pages of motions seeking sanctions. If Pierattini would have met and conferred, the fact Plaintiff  
3 overlooked the form interrogatories probably would have come up. Additionally, Pierattini has  
4 violated the protective order, refuses to admit that he did, and so it can be inferred that he will  
5 continue to do so, leaving Plaintiff in an impossible position as far as providing further discovery.

6 Although all of this information was filed in Plaintiff's opposition, this Court surprised  
7 Plaintiff with a tentative ruling, did not provide an actual sanctions hearing to Plaintiff, and  
8 somehow found facts or applied the law in clear error.

## 9 **II. FACTUAL AND PROCEDURAL BACKGROUND**

10 On January 25, 2024, Pierattini filed his 599 pages of motions for sanctions and motions to  
11 compel with five different hearings. Pierattini scheduled one of these hearings when he knew that I  
12 was not available and then refused to voluntarily reschedule, which is a sanctionable offense. This  
13 caused Plaintiff to make an *ex parte* application to reschedule the hearing, which was granted.  
14 Oddly, the hearing was *ex parte* without *my* appearance because the clerk did not provide me with a  
15 hearing date or remote appearance link as I requested. The sanctions motions were all consolidated  
16 to be held March 7, 2024.

17 On March 7, 2024, Plaintiff arrived at court and was given a tentative ruling. This court does  
18 not normally engage in tentative rulings, and there are no local rules on them. Not only was Plaintiff  
19 not prepared to argue against the tentative ruling, but Plaintiff was not allowed to at the hearing.  
20 Although Pierattini's counsel apparently did not object to the tentative ruling, he was allowed to  
21 argue at length about it. When Plaintiff wished to speak, he was told that the Court only had about  
22 five minutes but was only allowed two minutes to speak at which time I was only able to cover one  
23 of my substantial justifications for not yet complying, where I attempted to address my inability to  
24 respond due to Pierattini breaking the protective order and releasing confidential information. What  
25 this Court instead heard was that I was having a hard time responding because I didn't have an

1 attorney.

2 At no time did I say that I wasn't going to provide responses to Pierattini's discovery. It was  
3 my intent to ask for additional time to respond, which I had allowed Pierattini. This did not happen  
4 because Pierattini refused to meet and confer.

5 Plaintiff can not respond without a protective order that is enforced by this Court.

6 This Court kept saying that I did not respond correctly to the form interrogatories, when  
7 Plaintiff did not respond **AT ALL** to Pierattini's form interrogatories.

8 In this Court's ruling that Pierattini's requests were excessive, and my admission that I  
9 overlooked the form interrogatories, there are no other facts to say that I did not have good cause and  
10 substantial justification.

11 This Court also mentioned the possibility of allowing Plaintiff to provide initial disclosures  
12 instead of responding to Pierattini's discovery requests. I was not allowed to respond, but I would  
13 like to do that. It seems like it was granted by your making the tentative ruling as a whole.

14 This Court made it clear in the hearing and said that it "could" order sanctions for Pierattini not  
15 meeting and conferring. The rule is "shall", not "could". Pierattini did not meet and confer as  
16 required under Cal. Code. Civ. Proc. § 2020.020, but this Court failed to issue sanctions against  
17 Pierattini, as required under the rule.

18 **III. THIS COURT LACKED JURISDICTION TO AWARD SANCTIONS**

19 This Court cannot issue sanctions under Cal. Code Civ. Proc. § 2030.290(c) because I did not  
20 oppose a motion to compel responses, per the plain language of the rule. My request was for the  
21 "Court to order an extension of discovery deadlines and a meet and confer."

22 This Court did not provide an actual hearing for the sanctions under Cal. Code Civ. Proc. §  
23 2023.030 because I was not materially allowed to be heard at the hearing.

24 **IV. THIS COURT ABUSED ITS DISCRETION IN AWARDING SANCTIONS**

25 This Court should have found, given the facts, that Plaintiff had substantial justification under

1 Cal. Code Civ. Proc. §§ 2023.030(a) and 2030.290(c) for failure to respond to the form  
2 interrogatories due to being overwhelmed with frivolous discovery requests, causing one to be  
3 overlooked. Especially whereby default Gmail only shows the first three attachments of an email,  
4 and this was the fourth. Additionally, this Court should have found substantial justification in that  
5 Plaintiff was attempting to extend the deadline for responses and not intentionally refusing to  
6 respond. Finally, that Plaintiff has substantial justification for failing to respond due to Pierattini  
7 violating the protection order and Plaintiff will need a new one before responding.

8 This Court should have found that Plaintiff's failure to serve a timely response was the result  
9 of mistake, inadvertance, or excusable neglect under Cal. Code Civ. Proc. § 2030.290(a)(2) based on  
10 his declaration of overlooking the form interrogatories, especially where Plaintiff timely filed  
11 objections to all of the discovery requests where objection was reasonable except for the form  
12 interrogatories, making it clear that Plaintiff didn't just fail to respond, but completely overlooked  
13 them. Pierattini provided no opposing evidence.

14 This Court should have found that Pierattini's expenses under Cal. Code Civ. Proc. §  
15 2023.030(a) were not reasonable because the problem could have been resolved by a meet and  
16 confer, which Pierattini intentionally avoided, and Pierattini was otherwise obligated to provide an  
17 extension of time. *Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 431.

18 The findings that this Court made are not supported by substantial evidence and will not be  
19 relied on in an extraordinary writ. *Tucker v. Pacific Bell Mobile Services* (2010) 186 Cal.App.4th  
20 1548, 1562.

## 21 **V. FACTUAL FINDINGS AUTHORIZED**

22 If a party subject to monetary sanctions desires written findings, he or she is not precluded  
23 from requesting them from the trial court (*Estate of Ruchti* (1993) 12 Cal. App. 4th 1593, 1604, 16  
24 Cal. Rptr. 2d 151 (noting that unsuccessful party failed to request findings from the trial court, and  
25 thus waived any entitlement to successfully raise the issue on appeal)).

1 Here, Plaintiff requests a recording of its factual findings related to substantial justification,  
2 mistake, inadvertence, excusable neglect, objections to motions to compel, notice, material right to a  
3 hearing, and whether Pierattini's meet and confer requirements were met.

4 **VI. MOTION TO RECONSIDER SHALL BE GRANTED IF REQUIREMENTS MET**

5 This Court may correct errors in an interim ruling under Cal. Code Civ. Proc. § 1008(h).

6 Any party affected by an order made on application and refused in whole or in part, or granted,  
7 or granted conditionally, or on terms, may, within 10 days after service upon the party of written  
8 notice of entry of the order and based on new or different facts, circumstances, or law, make  
9 application to the same judge who made the order to reconsider the matter and modify, amend, or  
10 revoke the prior order (Code Civ. Proc. § 1008(a); see also *Graham v. Hansen* (1982) 128 Cal. App.  
11 3d 965, 970, 180 Cal. Rptr. 604.

12 An order denying a motion for reconsideration is interpreted as a determination that the  
13 application for reconsideration does not meet the requirements of Code Civ. Proc. § 1008(a). If the  
14 requirements have been met to the satisfaction of the court but the court is not persuaded the earlier  
15 ruling was erroneous, the proper course is to grant reconsideration and to reaffirm the earlier ruling  
16 *Corns v. Miller* (1986) 181 Cal. App. 3d 195, 226.

17 **VII. CONCLUSION**

18 For the foregoing reasons, Plaintiff respectfully requests:

19 1) That this Motion be granted and that this Court reconsider its motion for Sanctions, due to  
20 its obvious error which is recorded in the transcript and the tentative ruling.

21 2) That in the alternative, recording of its factual findings related to substantial justification,  
22 mistake, inadvertence, excusable neglect, objections to motions to compel, notice, material right to a  
23 hearing, and whether Pierattini's meet and confer requirements were met.

24 3) Motion for clarification on whether Plaintiff will be allowed to proceed with initial  
25 disclosures instead of other discovery.

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**DECLARATION OF JOSE DECASTRO**

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.

DATED: March 18, 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: March 18, 2024  
Respectfully submitted,  
/s/ Jose DeCastro  
Jose DeCastro  
In Pro Per