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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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| JOSE DECASTRO,<br><br>Plaintiff,<br><br>v.<br><br>KATHERINE PETER; DANIEL CLEMENT; MICHAEL PIERATTINI; DAVID OMO JR.; and DOES 1 TO 30, inclusive,<br><br>Defendants. | Case No. 23SMCV00538<br><br>Assigned for all purposes to the Honorable H. Jay Ford, Dept. O<br><br>**DEFENDANT'S REPLY IN SUPPPORT OF MOTION FOR TERMINATING SANCTIONS FOR REPEATED DISCOVERY ABUSE AND VIOLATIONS OF COURT ORDERS AGAINST PLAINTIFF AND SANCTIONS AGAINST PLAINTIFF AND HIS COUNSEL**<br><br>Date: February 21, 2025<br>Time: 8:30 a.m.<br>Dept: O<br><br>[Separate Statements filed concurrently]<br><br>**RES ID: 350468364861** |

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## I. SUMMARY OF REPLY

The discovery situation in this case is simply outrageous and terminating sanctions, along with monetary sanctions against Plaintiff and his counsel, are plainly warranted. In the case at hand the Court has issued monetary sanctions against Plaintiff totaling $10,695.00, which remain unpaid. Notwithstanding being repeatedly sanctioned, Plaintiff's conduct and discovery abuse has not changed. Tellingly after over one-year, multiple motions, and multiple Court Orders, Plaintiff has not produced a single document or proper responses to Court Ordered written discovery (all while having a lawyer for the last 6 months). There is simply no excuse. Terminating Sanctions and monetary sanctions against Plaintiff and his counsel are plainly warranted.

Among the Court Orders violated by Plaintiff there was a Court Order for Plaintiff to respond to standard written discovery and he simply did not comply with the Court Order. Plaintiff ignored it. Literally on the night before the hearing on the Motion for Terminating Sanctions Plaintiff "served" grossly deficient responses to some of the Court Ordered discovery. Plaintiff only answered four out of thirty-nine Form Interrogatories. Plaintiff did not admit or deny a single Request for Admission. Plaintiff did not properly respond to any of the Requests for Production of Documents. Plaintiff has not produced a single document after over a year. Plaintiff did not properly respond to the vast majority of Special Interrogatories.[1] Plaintiff is in complete contempt of multiple Court Orders, including the failure to pay over $10,000.00 in sanctions. It is patently obvious that further orders to comply, and further sanctions, will fall on deaf ears. The only remedy, which is appropriate, is terminating sanctions.

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[1] Concerning Plaintiff's deposition, as evidenced by the grossly deficient discovery responses and the failure to produce a single document, plainly Plaintiff's deposition would be a complete waste of time. Plaintiff is just making stuff up and refusing to provide any evidence or legitimate discovery. This is not a car accident case. The remaining claim involves intellectual property requiring written discovery responses to properly depose Plaintiff.

## II. TIMELINE OF THE DISCOVERY ABUSE, THE GAMESMAN-SHIP AND MULTIPLE VIOLATIONS OF COURT ORDERS THAT HAS TAKEN PLACE OVER THE PAST YEAR

By the time of this motion, this discovery will be well over a year old and nothing, not one thing, has gotten done because it is one game after another by Plaintiff.

**February 6, 2023** - The complaint was filed by Plaintiff. Mr. Pierattini filed a demurrer on April 21, 2023; and then answered on July 31, 2023.

**January 25, 2024** - Mr. Pierattini filed a motion to compel further responses to request for admission.

**January 25, 2024** - Mr. Pierattini filed a motion to compel further responses to special interrogatories because there were essentially no answers.

**January 25, 2024** - Mr. Pierattini filed a motion to compel further responses to form interrogatories because there were essentially no answers.

**January 25, 2024** - Mr. Pierattini filed a motion to compel further responses to document requests because there was no real response and no document production.

**March 7, 2024** - The Court granted Mr. Pierattini's Motion to Compel Form Interrogatory responses, issued sanctions in the amount of $1,635.00, ordered Plaintiff to respond within 30 days and continued the other Motions to Compel until May 2, 2024.

**March 15, 2024** - Instead of responding to the discovery, Plaintiff filed a frivolous Motion to Compel the Production of Documents against Mr. Pierattini.

**March 27, 2024** - Instead of responding to all the discovery, Plaintiff filed an ex parte motion for reconsideration of the motion sanctioning him for not complying with discovery, which was denied by the Court.

**April 8, 2024** - Instead of responding to discovery, Plaintiff filed a Motion for Reconsideration of the sanctions order on the Motion to Compel Form Interrogatories.

**May 2, 2024** - The Court granted Mr. Pierattini's Motions to Compel Requests for Admission, Special Interrogatories, Requests for Production and Plaintiff's deposition. The written responses and production of documents was ordered to occur within 30 days. Court deferred ruling on the location of the deposition pending Plaintiff providing his address to the Court and continued the hearing on the Motion to Compel the Deposition concerning locations and sanctions.

**June 18, 2024** - The Court denied Plaintiff's frivolous motion to compel and awarded sanctions in the amount of $4,500. In other words, instead of responding to the written discovery that was served on him in December, Plaintiff filed a frivolous motion to compel for which he was sanctioned yet again. Plaintiff did not care because he consistently ignores the Court Orders and does not pay the Court Ordered sanctions.

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**July 30, 2024** - The Court denied Plaintiff's frivolous Motion for Reconsideration, granted Mr. Pierattini's Motion to Compel the deposition of Plaintiff and issued sanctions in the amount of $4,560.00.

**September 5, 2024** - the Court denied Mr. Pierattini's Motion for Summary Judgment on the right of publicity claim because Mr. Pierattini did not have the discovery needed to attack the one claim for which summary judgment was denied. In fact, Plaintiff's argument was, in opposition to summary judgment, that Defendant did not have the discovery responses to show that Plaintiff had no evidence to support his case.

**January 22, 2024 – 8:00 p.m.** – The night before the original hearing on the Motion for Terminating Sanctions, Plaintiff served "responses" to the discovery ordered by the Court on May 2, 2024. Plaintiff did not produce a single document. Plaintiff refused to answer the vast majority of the discovery ordered by the Court.

## III. THE TIMELINE SHOWS THAT THE ONLY APPROPRIATE REMEDY IS TERMINATING SANCTIONS

This timeline is really important. This shows why issuing terminating sanctions is the appropriate remedy. This basic written discovery has been outstanding for over one year.

We are now a year after this discovery and gamesmanship with every court rule that has been applied to this case having been violated. But, more importantly, there is no conceivable way to explain a year of delay after delay, and every conceivable rule being broken to our client. There is only one conclusion when someone has done this many things wrong, and they have plainly not complied with not one but four different court orders. The dismissal of the Complaint is the only fair remedy for this pattern of conduct.

## IV. SERVING GROSSLY DEFICIENT RESPONSES THE NIGHT BEFORE THE HEARING DOES NOT RELIEVE THE NEED FOR SANCTIONS HERE

The Court in *Sianiko Healthcare Consultants, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App. 4th 390 addressed the virtually identical situation as the case at hand. In that case, the plaintiff served discovery, which defendants failed to respond to in a timely manner. *Id.* at 397 – 398. The plaintiff then filed a motion to compel responses to form interrogatories. *Id.* After the motion was filed, defendants served inadequate responses and requested the hearing come off-calendar. *Id.* The Court still granted the motion, and ordered sanctions, even though inadequate responses were served prior to the hearing. *Id.* Defendant appealed claiming the trial court did not have jurisdiction to issue an order compelling a

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response. The court of Court of Appeal rejected that appeal. It affirmed the trial court pointing out the following:

> "To accept Klugman's [counsel for defendants] interpretation would remove an important incentive for parties to respond to discovery in a timely fashion. Under Klugman's theory, a party to whom interrogatories were directed could wait until the hearing on a section 2030.290 motion was imminent, then serve a set of evasive and incomplete responses, and thereby unilaterally deprive the trial court of authority to hear the motion. Even though the responding party had waived all objections to the discovery, the burden would shift to the propounding party, first to meet and confer, and then to demonstrate the impropriety of the responding party's responses. The statutory language does not suggest such a result."

*Id.* at 407. The Court added that even where responses are served:

> "…the trial court retains the authority to hear the motion. (See Cal. Rules of Court, rule 3.1030(a) ["The court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though ... the requested discovery was provided to the moving party after the motion was filed"].)"

*Id.* at 408 – 409. The Appellate Court then explained that the trial court can look at the new responses and make a ruling on those. *Id.*

Here, the Court Order required a response seven months ago. The serving of these defective responses, of course, does not take the Motion off-calendar. The responses, as noted, in the accompanying separate statements are absurdly deficient and blatantly violate the Court's order. Plaintiff has had an attorney for over five months and none of the responses are in compliance with the California discovery statutes. Here, given the history of this case, the Court should issue terminating and monetary sanctions. We served this discovery almost a year ago and still do not have close to proper responses despite a Court Order and multiple motions.

## V. THE RESPONSES ARE STILL IN BLATANT VIOLATION OF THE COURT ORDERS

Defendant has submitted Separate Statements in support of this Reply that is intended to explain in detail Plaintiff's grossly deficient discovery responses.

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**A. Plaintiff's Court Ordered Form Interrogatory Responses**

Plaintiff abjectly failed to respond to the Form Interrogatories ordered by the Court. Plaintiff only responded to four Form Interrogatories out of thirty-nine. The Form Interrogatories he responded to concern whether he was convicted of a felony, whether he speaks English ("Yup, English"), whether he can read English ("English is a good language") and that he does not drink or do drugs. Some of his "responses" state that he will not provide information "out of fear of disclosure," which is not a valid excuse especially in light of the Protective Order in place. His "answers" reek of contempt for the Court and the Court's Order. He refused to respond to any of the other Form Interrogatories. This absurdity must end. Terminating sanctions should issue.

**B. Plaintiff's Court Ordered Requests for Admission Responses**

Plaintiff did not admit or deny a single Request for Admission, again evidencing contempt for the Court and California law. The Requests for Admissions should be deemed admitted. Plaintiff does not admit or deny them. Plaintiff's responses make no sense. It is a diatribe that does not answer the Request.

These ask to admit or deny. Not one answer by Plaintiff and his lawyers admits or denies the Request for Admissions asked. Plaintiff repeatedly fabricates, without any factual basis, that Mr. Pierattini is in a conspiracy. That is a conclusion. There are no facts to state that, for example, that Mr. Pierattini went onto his front porch and left a bag full of dog feces. Mr. Pierattini was not even in the same state at the time this allegedly happened.

Plaintiff knows he is going to lose the lawsuit. Plaintiff says, for example, in response to number 26, "I'm going to file another lawsuit against him after this one. I will never stop." This has nothing to do with the Request for Admission that Plaintiff should admit it. Mr. Pierattini did not leave a bag of dog feces on his porch. Plaintiff goes into some nonsense conspiracy without any evidence that Mr. Pierattini did anything.

But one key to this is, for example, number 75. Mr. Pierattini has a motion for summary judgment pending, because there was no use of the likeness to make money. Instead of admitting that Plaintiff had no evidence, or instead of denying it and then responding in a 17.1

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response showing monies made, Plaintiff states that Michael Pierattini had an "intent to stock [sic], harassed, defame, and to use my likeness". Plaintiff does not give any factual examples or state any date when this allegedly took place. Plaintiff has no evidence of any kind. So, Plaintiff needs to either admit or deny this. This is not an answer to the question and it should be admitted so that Mr. Pierattini can go forward with the motion for summary judgment.

The same is true of number 76, which seeks to get information of any alleged commercial benefit. Plaintiff needs to admit or deny this. Plaintiff makes it conclusion without any foundation or evidence that Mr. Pierattini " made thousands and thousands of dollars by using my like to make money. it's documented."

There's no evidence of any kind to support this statement. There's no basis to make of this claim. Plaintiff needed to admit or deny it, and when Plaintiff denied it, he needed to explain the 17.1 interrogatory so it could be examined.

**C. Plaintiff's Court Ordered Requests for Production of Documents Responses**

Plaintiff's "responses" are again absurd. A handful of the Requests Plaintiff states that some documents will be produced. Not a single document has been produced. Additionally, the responses also fail to comply with CCP § 2031.220 which states:

> "A statement that the party to whom a demand for inspection, copying, testing, or sampling has been directed will comply with the particular demand shall state that the production, inspection, copying, testing, or sampling, and related activity demanded, will be allowed either in whole or in part, and that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production."

There is no such indication in the responses that the production is partial or complete as required.

We are now over one year after this discovery was served and not a single document has been produced or a code compliant response. It is game after game. Plaintiff does not care that there was a Court Order to respond. Plaintiff has made plain his contempt of the Court and California law. Terminating sanctions are plainly warranted.

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**D. Plaintiff's Court Ordered Special Interrogatory Responses**

Again, Plaintiff's Special Interrogatory responses are grossly deficient. Plaintiff did not even bother answering many Interrogatories as evidenced in the accompanying Separate Statement. Additionally, the "responses" provided consist of diatribes. Plaintiff refused to identify witnesses. Plaintiff refused to identify documents. Enough is enough. Terminating sanctions should issue.

## VI. TERMINATING SANCTIONS ARE THE ONLY APPROPRIATE SANCTION HERE

As pointed out in the moving papers, in determining the specific sanction(s) to be imposed, the court may consider, among other things, the existence of the pattern of conduct here and the months of stonewalling discovery. *See, e.g., Do It Urself Moving & Storage, Inc. v. Brown, Leifer, Slatkin & Berns* (1992) 7 Cal.App.4th 27, 35–36, superseded by statute on other grounds as stated in *Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573; *Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545; *see also Manzetti v. Superior Court* (1993) 21 Cal.App.4th 373, 379. The Court may also consider, among other things, the time that has elapsed since the service of the discovery. *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796. The Court may also consider whether the answering party acted in good faith and with reasonable diligence. *Id.*

Here, yet again Plaintiff is in complete contempt of the Court's orders. Plaintiff's "responses" are non-responses and not a single document has been produced. The Court has repeatedly sanctioned Plaintiff for misconduct and discovery abuses to no avail. This has gone on for over a year and on the eve of the hearing on this Motion Plaintiff served "responses" not in compliance with the California Code of Civil Procedure that are frankly a joke. Monetary sanctions have not deterred Plaintiff's discovery abuses and failure to cooperate in the discovery process. Enough is enough. Terminating sanctions should issue and Plaintiff's case should be dismissed.

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## VII. THE FAILURE TO PAY SANCTIONS, COMBINED WITH OTHER VIOLATIONS OF COURT ORDERS, COMPELS TERMINATING SANCTIONS

As explained in Brown & Weil, California Practice Guide: Civil Procedure Before Trial, Sections 8:2276 (TRG 2024 update):

> (c) [**8:2276**] **Compare—"doomsday" sanctions for failure to pay earlier monetary sanctions:** As mentioned earlier (¶ 8:2257), "doomsday" sanctions (dismissal or default) cannot be imposed against a client solely because of the *attorney's* failure to pay monetary sanctions.
>
> Nor is it proper to dismiss or impose a default sanction because the party has not paid sanctions previously ordered. [*Newland v. Sup.Ct. (Sugasawara)* (1995) 40 CA4th 608, 615, 47 CR2d 24, 28—"a terminating sanction issued solely because of a failure to pay a monetary discovery sanction is never justified"]
>
> But "doomsday" sanctions may be appropriate where, in addition to nonpayment of monetary sanctions, the client has violated *other* discovery orders. [See *Stein v. Hassen* (1973) 34 CA3d 294, 302-303, 109 CR 321, 327; *Williams v. Travelers Ins. Co.* (1975) 49 CA3d 805, 810, 123 CR 83, 86; *Creed-21 v. City of Wildomar* (2017) 18 CA5th 690, 702-703, 226 CR3d 532, 541-542—trial court justified in imposing sanctions (the equivalent of terminating sanctions) where prior orders re depositions and payment of money sanctions not obeyed and further monetary sanctions would not be effective]

Here, Plaintiff has shown utter contempt for the Court's Orders and has violated every discovery Order of the Court. In addition, to violating these discovery orders, Plaintiff has failed to pay any of the monetary sanctions ordered by the Court to deter Plaintiff's outrageous discovery abuse. Plainly, further monetary sanctions would be ineffective. The only appropriate sanction here is terminating sanctions.

## VIII. ALTERNATIVE, EVIDENTIARY SANCTIONS

We understand Court's reluctance to issue terminating sanctions, so there is an alternative sanction that can be imposed in this case if the Court is not inclined to issue terminating sanctions. Monetary sanctions against Plaintiff and his counsel in the amount of $4,560.00, plus evidentiary sanctions for Requests for Admission not answered by Plaintiff be deemed admitted, that Plaintiff cannot produce any documents or facts other than the limited facts identified by Plaintiff in his discovery responses.

This discovery was propounding in December of 2023. The Court ordered it responded to by June 2024. There has to be some penalty for violating the Court's Order. Monetary

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sanctions are plainly ineffective. If the Court orders $4,500 or $45,000 it does not matter. He is not going to pay it anyway and he will not change his contemptuous behavior, the only fair action if the Court is not going to dismiss his Complaint is to limit him to his discovery responses and deem the requests for Admissions admitted.

## IX. CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court issue terminating sanctions, including dismissing Plaintiff's Complaint, along with monetary sanctions in the amount of $4,560.00 against Plaintiff and his counsel.

DATED: January 31, 2025

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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 January 31, 2025, I served the foregoing document(s) described as:

**DEFENDANT'S REPLY IN SUPPPORT OF MOTION FOR TERMINATING SANCTIONS FOR REPEATED DISCOVERY ABUSE AND VIOLATIONS OF COURT ORDERS AGAINST PLAINTIFF AND SANCTIONS AGAINST PLAINTIFF AND HIS COUNSEL**

on the interested parties to this action addressed as follows:

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(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 January 31, 2025, 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