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County of Los Angeles  
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David W. Slayton,  
Executive Officer/Clerk of Court,  
By J. Hernandez, Deputy Clerk

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

) **OBJECTION TO AND REQUEST TO**  
) **VACATE/STRIKE PLAINTIFF'S**  
) **BELATED ATTEMPT TO DISMISS**  
) **WITHOUT PREJUDICE AS A TACTICAL**  
) **PLOY TO AVOID THIS MOTION AND**  
) **THE SECOND MOTION FOR SUMMARY**  
) **JUDGMENT THAT IS SET FOR MAY 29,**  
) **2025**

) Date: April 23, 2025

) Time: 8:30 a.m.

) Dept: O

1       **I. INTRODUCTION AND SUMMARY AS TO WHY THE DISMISSAL**  
2       **WITHOUT PREJUDICE SHOULD BE VACATED/STRICKEN AND AN**  
3       **ORDER DISMISSING THE CASE WITH PREJUDICE SHOULD BE**  
4       **ENTERED**

5       The law regarding a plaintiff's right to dismiss an action "without" prejudice has  
6       changed substantially in the last twenty plus years. While former law held that plaintiffs had  
7       the "absolute right" to dismiss "without prejudice" at any time before "commencement of  
8       trial," this is no longer the case. A line of recent appellate cases provides that the Court will not  
9       allow plaintiff to dismiss "without prejudice" where to do so would thwart the Court's prior  
10      orders, where such dismissal would allow plaintiff to not only engage in but escape any  
11      consequence of deliberate discovery abuse, and where such dismissal would produce an  
12      inequity – namely plaintiff's ability to refile an action which plaintiff could not support, which  
13      would permit plaintiff to engage in forum shopping and recreational litigation such as in the  
14      case at hand.. Plaintiff willfully violated the Court's prior Orders compelling the production of  
15      additional discovery, and further engaged in deliberate obstruction of discovery.

16      On April 15, 2025, Plaintiff filed multiple documents that are improper. Plaintiff seeks  
17      to dismiss moving party without prejudice. Plaintiff also seeks to go pro per.

18      On April 17, 2025, the clerk purportedly entered the dismissal. We seek to correct the  
19      dismissal to make it a dismissal WITH prejudice.

20      If the court would like this as a formal noticed motion to vacate/strike Plaintiff's  
21      request for dismissal without prejudice and enter it as a dismissal with prejudice, we are happy  
22      to file the motion. In any case, we ask that the request for dismissal filed by Plaintiff be  
23      vacated/stricken, or that it be vacated/stricken as to Defendant Michael Pierattini ("Mr.  
24      Pierattini") who has two dispositive motions pending.

25      The attempt at a voluntary dismissal here without prejudice has to be some type of  
26      record in terms of gamesmanship. After over a year in refusing to respond to discovery,  
27      Plaintiff seeks to dismiss the one remaining cause of action without prejudice one week before  
28      the hearing on the continued hearing on the Motion for Terminating Sanctions. The hearing  
29      was continued to give Plaintiff the opportunity to file and serve the declaration referenced in  
30      his opposition to the Motion for Terminating Sanctions. (See Katrinak Declaration). Instead of

1 filing and serving the declaration, Plaintiff decided to yet again employ gamesmanship to avoid  
2 the consequences of his contempt of the Court's Orders. The law below holds that this type of  
3 tactical ploy is not permitted. As noted in the procedural history section, Plaintiff flagrantly  
4 violated court orders requiring him to respond to discovery.

5 Ultimately, Plaintiff produced no evidence in opposition to the Motion for Summary  
6 Judgment or adjudication, and summary adjudication was granted on all but one cause of  
7 action. That remaining cause of action for violation of California Civic Code Section 3344 and  
8 California common law Right of Publicity is facing its own Motion for Summary Judgment to  
9 be heard on May 29, 2025. Plaintiff knows he has no evidence to avoid this Motion and  
10 instead is attempting to dismiss his case without prejudice in the face of the Motion for  
11 Summary Judgment and this Motion for Terminating Sanctions.

12 It is not our position, but Plaintiff's own admission that this is a tactical ploy. If the  
13 Court reviews Plaintiff's Opposition to this Motion for Terminating Sanctions, Plaintiff  
14 explained that he would just file another lawsuit to endlessly harass Mr. Pierattini. In the  
15 Response to the Requests for Admission attached to his Opposition to the Motion for  
16 Terminating Sanctions, Plaintiff states:

17 "The truth will come out. I will not stop suing Michael Pertini, or going after him  
18 through legal process until the truth comes out. I may not be given due process right  
19 now, I may not have been given the proper consideration, however, I will eventually  
one day. I'm going to file another lawsuit against him after this one. I will never stop."

20 (Opposition to the Motion for Terminating Sanctions p. 35 of the document, Exhibit 3,  
21 Plaintiff's Supplemental Response to Request for Admission No. 26).

22 Only a dismissal with prejudice will stop this miscarriage of justice. If he files another  
23 frivolous lawsuit the only way to stop it is a dismissal of this matter WITH prejudice.

## 24 **II. FACTUAL HISTORY**

25 Plaintiff filed this lawsuit against Mr. Pierattini and several other defendants alleging  
26 eight causes of action. The FAC, which meanders and is difficult to follow, contains vague  
27 allegations against Mr. Pierattini that are few and far between. Although nearly none of the  
28 allegations in the FAC are directed at Mr. Pierattini, Plaintiff asserts all eight of his causes of

1 action against him. Mr. Pierattini lives in the State of Washington and is far removed from the  
2 fanciful allegations in Plaintiff's FAC. Almost none of what Plaintiff alleges in his FAC has  
3 any connection to Mr. Pierattini whatsoever. The only mentions of Mr. Pierattini in the FAC  
4 are as follows:

5 12. Plaintiff is informed and believes, and on that basis alleges, that **Defendant**  
6 **Michael Pierattini ("Pierattini")** is an individual residing in the State of Washington,  
7 County of Pierce. Pierattini is an agent of Peter. Pierattini has hidden behind a false  
8 identity for many years, running a troll channel on YouTube named "Blue Bacon",  
where he harasses people, including Plaintiff, behind a false identity pretending to be a  
private investigator and military police officer.

9 ...  
10 20. The title of the article constitutes libel per se and statements in the video made  
11 by Peter and **Pierattini** constitute slander per se in that they use inaccurate documents  
12 acquired from BeenVerified (in violation of their Terms of Service, partly because of  
known accuracy issues), a consumer information service, presented as judicial record,  
to assert as factual that Plaintiff was convicted of a crime that he in fact did not commit.  
Such statements damaged Plaintiff as a natural consequence of the words, and amount  
to libel per se and slander per se.

13 ...  
14 56. .... **Pierattini** has been sending me harassing emails, forged to look like they're  
from a court, two to three times a day since at least November 2022.

15 (FAC, ¶¶ 12, 20, 56 [emphasis added].) These are the only alleged "facts" in Plaintiff's FAC as to  
16 claims against Mr. Pierattini. All of Plaintiff's speculation and conclusions arise from these "facts"  
17 which are non-actionable. None of these alleged "facts" meet the elements of the eight frivolous  
18 causes of action asserted in Plaintiff's FAC. Additionally, there is no evidence that Plaintiff  
suffered any damages concerning anything Mr. Pierattini allegedly did.

19 As the Court knows, Plaintiff has treated the discovery process with complete disdain,  
20 refusing to provide any evidence to support his frivolous claims against Mr. Pierattini. In an  
21 attempt to understand what exactly Plaintiff's claims against him actually are, Mr. Pierattini  
22 propounded standard discovery requests to Plaintiff. Rather than properly responding to Mr.  
23 Pierattini's discovery requests, Plaintiff chose to engage in gamesmanship and refused to provide  
24 any information or documents. Plaintiff has already been sanctioned for his conduct during  
25 discovery.

26 Aside from his outright refusal to engage in discovery, Plaintiff has made plain the true  
27 intentions behind this litigation, which are to make this case as expensive as possible for Mr.  
28 Pierattini by running up Mr. Pierattini's attorney's fees, for entertainment purposes in connection

1 with his YouTube channel, and to ruin Mr. Pierattini professionally. Plaintiff has bombarded Mr.  
2 Pierattini's counsel with emails regarding meritless motions and absurd stipulation requests, has  
3 filed frivolous motions with the Court, and has screamed at Mr. Pierattini's counsel and Judge Ford  
4 in court hearings. Plaintiff even refused to provide his address until ordered to do so by the Court.

5 Plaintiff's harassment of Mr. Pierattini, as well as his mockery of the Court and its  
6 proceedings, must come to an end. Plainly, Plaintiff has provided no evidence to support his  
7 outlandish claims against Mr. Pierattini and continues to refuse to engage in discovery. The fact is  
8 that there is no evidence for Plaintiff's claims, and Mr. Pierattini therefore respectfully requests  
9 that the Court vacate/strike Plaintiff's 11<sup>th</sup> hour attempt to dismiss Mr. Pierattini without prejudice  
10 and enter an order that Mr. Pierattini is dismissed WITH prejudice from this frivolous action to put  
11 an end to this waste of time, money, and court resources.

### 12 **III. PROCEDURAL HISTORY**

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

- 15 1. The complaint was filed by Plaintiff on February 6, 2023. Mr. Pierattini filed a  
16 demurrer on April 21, 2023; and then answered on July 31, 2023.
- 17 2. On January 25, 2024, Mr. Pierattini filed a motion to compel further responses  
18 to request for admission.
- 19 3. On January 25, 2024, Mr. Pierattini filed a motion to compel further responses  
20 to special interrogatories because there were essentially no answers.
- 21 4. On January 25, 2024, Mr. Pierattini filed a motion to compel further responses  
22 to form interrogatories because there were essentially no answers.
- 23 5. On January 25, 2024, Mr. Pierattini filed a motion to compel further responses  
24 to document requests because there was no real response and no document  
25 production.
- 26 6. On March 7, 2024, the Court granted Mr. Pierattini's Motion to Compel Form  
27 Interrogatory responses, issued sanctions in the amount of \$1,635.00, ordered  
28 Plaintiff to respond within 30 days and continued the other Motions to Compel  
until May 2, 2024.
7. On March 15, 2024, instead of responding to the discovery, Plaintiff filed a  
frivolous Motion to Compel the Production of Documents against Mr. Pierattini.
8. On 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.

- 1 9. On April 8, 2024, instead of responding to discovery, Plaintiff filed a Motion  
2 for Reconsideration of the sanctions order on the Motion to Compel Form  
3 Interrogatories.
- 4 10. On May 2, 2024, the Court granted Mr. Pierattini's Motions to Compel  
5 Requests for Admission, Special Interrogatories, Requests for Production and  
6 Plaintiff's deposition. The written responses and production of documents was  
7 ordered to occur within 30 days. Court deferred ruling on the location of the  
8 deposition pending Plaintiff providing his address to the Court and continued  
9 the hearing on the Motion to Compel the Deposition concerning locations and  
10 sanctions.
- 11 11. On June 18, 2024, this Court denied Plaintiff's frivolous motion to compel and  
12 awarded sanctions in the amount of \$4,500. In other words, instead of  
13 responding to the written discovery that was served on him in December,  
14 Plaintiff filed a frivolous motion to compel for which he was sanctioned yet  
15 again. Plaintiff did not care because he consistently ignores the Court Orders  
16 and does not pay the Court Ordered sanctions.
- 17 12. On July 30, 2024, the Court denied Plaintiff's frivolous Motion for  
18 Reconsideration, granted Mr. Pierattini's Motion to Compel the deposition of  
19 Plaintiff and issued sanctions in the amount of \$4,560.00.
- 20 13. On September 5, 2024, the Court granted Mr. Pierattini's Motion for Summary  
21 Judgment on all causes of action except the Eighth Cause of action for Violation  
22 of the Right of Publicity. The Court denied Mr. Pierattini's Motion for  
23 Summary Judgment on the right of publicity claim because Mr. Pierattini did  
24 not have the discovery needed to attack the one claim for which summary  
25 judgment was denied. In fact, Plaintiff's argument was, in opposition to  
26 summary judgment, that Defendant did not have the discovery responses to  
27 show that Plaintiff had no evidence to support his case.

28 Everything is a delay tactic. This discovery is from December of 2023. To date,  
Plaintiff has not complied with one Court Order. Plaintiff is simply flouting the Court's  
Orders.

IV. **SUMMARY OF THE LAW PERTAINING TO THIS OBJECTION AND  
REQUEST TO VACATE/STRIKE THE 11<sup>TH</sup> HOUR REQUEST FOR  
DISMISSAL WITHOUT PREJUDICE**

California Law holds that in circumstances found in this case, where Plaintiff's  
voluntary dismissal would effectively thwart prior Court orders, Plaintiff forfeits the right to  
dismiss without prejudice. To be certain, Plaintiff retains the right to dismiss, but the dismissal  
is "with" prejudice rather than "without" prejudice. As such, the Court is empowered to vacate  
Plaintiff's dismissal "without" prejudice, and to enter the appropriate dismissal "with"  
prejudice."

Traditionally, it has been the parties right to dismiss an action without prejudice at any time before “the actual commencement of trial ...” CCP 581(b)(1). However, recent cases like *Hartbrodt v. Burke* (1996) 42 CA4th 1168, 175, place limits on a plaintiff’s ability to do so. In *Hartbrodt*, a trial court discovery order required plaintiff to produce a tape to defendant within thirty days. Plaintiff disobeyed the order and refused to turn over the tape. Defendants moved for terminating sanctions, asking the court to dismiss the case with prejudice as a sanction under the discovery statutes. Before the hearing on the motion, plaintiff requested a dismissal without prejudice. The trial court rejected the request and granted the defense motion for a dismissal with prejudice as a terminating sanction. The appellate court affirmed. The bulk of the appellate court’s opinion addressed discovery issues. As to the matter of voluntary dismissal, the appellate court concluded that allowing plaintiff to dismiss without prejudice would defeat the trial court’s power to enforce its discovery orders. The appellate court held:

***Rejection of Voluntary Dismissal***

In one last effort to salvage his case, appellant attempted to voluntarily dismiss his case without prejudice and thereby deny to respondents the finality obtained by imposition of the terminating sanction. This tactic would simply defeat the trial court’s power to enforce its discovery orders.

In *M & R Properties v. Thomson* (1992) 11 Cal.App.4th 899, 14 Cal.Rptr.2d 579, the plaintiffs failed to bring the action to trial within five years and the defendants filed a motion to dismiss pursuant to Code of Civil Procedure section 583.310 which, if granted, would be a determination on the merits. The day prior to the hearing on the motion, the plaintiffs filed a request for a dismissal without prejudice. On the defendant's motion, the trial court vacated the plaintiffs' voluntary dismissal and granted the defense motion to dismiss for failure to bring the action to trial in five years. The plaintiffs appealed but the appellate court affirmed, holding that a plaintiff cannot defeat a defendant's right to obtain a determination on the merits by simply filing a voluntary dismissal when statutory authority entitles the defense to a final judgment. It follows that appellant cannot defeat respondents' motion for a terminating discovery sanction by filing a voluntary dismissal. The trial court properly rejected appellant's voluntary dismissal without prejudice.”

*Id* at 175-176. The court held that, under the circumstances, plaintiff could not dismiss without prejudice, and rejected the plaintiff’s attempt to voluntarily dismiss, despite the fact that the dismissal was entered prior to any ruling on the motion. The court reasoned that such dismissal

1 would amount to a “tactic” that “would simply defeat the trial court’s power to enforce its  
2 discovery orders.” *Id* at 175.

3 It is important to note that in *Hartbrodt*, plaintiff had not been previously sanctioned –  
4 i.e., terminating sanctions were not the necessary result of defendant’s motion, given the clear  
5 preference in law for escalating sanctions (monetary sanctions, evidence preclusion, issue  
6 sanctions), and against “ultimate” sanctions. Thus, it could not be said that dismissal of the  
7 action was a “forgone conclusion” as a result of defendant’s motion. Yet, despite the fact that it  
8 was far from certain that defendant’s motion would result in dismissal, the court held that to  
9 allow a voluntary dismissal, without prejudice, which would allow plaintiff to refile a baseless  
10 action, would defeat the trial court’s power to enforce its discovery orders.

11 The court cited *M & R Properties v. Thompson* (1992) 11 CA 4th 899, with approval  
12 that, “[O]n the defendant’s motion, the trial court *vacated the plaintiffs’ voluntary dismissal*  
13 and granted the defense motion to dismiss ... *Id* at 176. (Emphasis added).

14 Similarly, in *Mary Morgan, Inc. v. Melzark* (1996) 49 Cal.App.4th 765, the appellate  
15 court rejected plaintiff’s attempt to dismiss without prejudice prior to a final ruling on  
16 defendant’s summary judgment motion. The court noted that “[t]he right of a plaintiff to  
17 voluntarily dismiss an action before commencement of trial is not absolute.” [citations  
18 omitted]. *Id* at 769.

19 The rule is premised on equity and fairness, as pointed out by the court:

20 Logic and fairness dictate that the right of a plaintiff to voluntarily dismiss an  
21 action before commencement of trial is restricted not only by statutory  
22 limitations and judicial constructions of the phrase “commencement of trial”; it  
23 is also limited by dismissal procedure’s conjunction with other judicial  
24 procedures. The interrelationship between various provisions of the Code of  
25 Civil Procedure must be considered when interpreting any one provision so that  
26 statutory harmony is achieved, [citations omitted].

24 *Id.* at 771; *See also, Cravens v. State Board of Equalization* (1997) 52 Cal.App.4th 253,  
25 257.

26 Additionally, as explained in the leading treatise on California Procedure, this type of  
27 tactical ploy is not permitted. It states:

28 “[11:25.10] **Compare—dismissal as tactic to avoid imminent adverse ruling on  
dispositive motion:** Several cases hold plaintiff’s right to dismiss the action without



prejudice may be cut off where a dispositive motion is pending, before any ruling thereon, if the dismissal appears to be a tactical ploy. [*Hartbrodt v. Burke* (1996) 42 CA4th 168, 175, 49 CR2d 562, 567 (request for dismissal without prejudice filed day before hearing on motion for terminating sanction in discovery dispute); *Cravens v. State Bd. of Equalization* (1997) 52 CA4th 253, 257, 60 CR2d 436, 438 (same, after expiration of time to file opposition to motion for summary judgment); see also *Mary Morgan, Inc. v. Melzark* (1996) 49 CA4th 765, 770, 57 CR2d 4, 7—voluntary dismissal not permitted after summary judgment hearing commenced and was continued to permit discovery]”.

Brown & Weil, *California Practice Guide: Civil Procedure Before Trial*, The Rutter Group, “Voluntary Dismissal”, Section 11:25.10 (2025 update). Here, each of these cases apply.

There is a hearing tomorrow for a Motion for Terminating Sanctions, so the *Hartbrodt* case is directly on point. Moreover, there is a Motion for Summary Judgment pending and Plaintiff knows that he has no evidence to support an opposition, so the *Mary Morgan* case also applies to block this attempt. See, for example, *Cravens v. State Bd. of Equalization* (1997) 52 CA4th 253, 257, 60 CR2d 436, 438 (where, as here, summary judgment is inevitable the plaintiff should not be permitted to dismiss without prejudice).

**V. ANALYSIS OF THE LAW APPLIED HERE SHOWS THIS REQUEST FOR DISMISSAL SHOULD BE REJECTED OR STRICKEN**

After over a year of ignoring discovery orders, Plaintiff sought a tactical ploy to avoid the adverse ruling on the Motion for Terminating Sanctions.

Here, as in *Hartbrodt*, defendant disobeyed the Court orders and refused to provide further discovery responses. Thereafter, Mr. Pierattini moved for terminating sanctions, asking the Court to dismiss the case with prejudice as a sanction under the discovery statutes. Before the hearing on the motion, Plaintiff requested a dismissal without prejudice which was entered on April 17, 2025.

Plaintiff is admittedly requesting a dismissal without prejudice as a tactic because he has no evidence to avoid this summary judgment. Plaintiff has stated that he plans on filing subsequent actions against Mr. Pierattini. As such, Plaintiff is solely requesting this dismissal without prejudice to avoid the court’s orders and summary judgment to continue his harassing recreational litigation.

1           Allowing Plaintiff to dismiss without prejudice would defeat the trial court's power to  
2 enforce its discovery orders. Accordingly, the Court should vacate/strike Plaintiff's dismissal  
3 without prejudice, and enter the appropriate dismissal with prejudice of Mr. Pierattini.

4           **VI.    CONCLUSION**

5           For the foregoing reasons, Mr. Pierattini respectfully requests that the Court  
6 vacate/strike Plaintiff's Request for Dismissal without prejudice of Mr. Pierattini and the Court  
7 enter an order dismissing the Complaint against Mr. Pierattini with prejudice.

8 DATED: April 22, 2025

THE LAW OFFICES OF  
R. PAUL KATRINAK



R. Paul Katrinak  
Attorneys for Defendant  
Michael Pierattini

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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 450, Beverly Hills, California 90210.

On April 22, 2025, I served the foregoing document(s) described as:

**OBJECTION TO AND REQUEST TO VACATE/STRIKE PLAINTIFF'S  
BELATED ATTEMPT TO DISMISS *WITHOUT* PREJUDICE AS A TACTICAL  
PLOY TO AVOID THIS MOTION AND THE SECOND MOTION FOR  
SUMMARY JUDGMENT THAT IS SET FOR MAY 29, 2025**

on the interested parties to this action addressed as follows:

Jose DeCastro  
1258 Franklin Street  
Santa Monica, CA 90404  
[chille@situationcreator.com](mailto: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 April 22, 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