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Superior Court of California,
County of Los Angeles
5/01/2025 10:24 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By A. Ilieva, 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

**NOTICE OF MOTION AND MOTION TO
VACATE/STRIKE PLAINTIFF'S
REQUEST FOR DISMISSAL WITHOUT
PREJUDICE**

Date: May 29, 2025
Time: 8:30 A.M.
Dept: O

[Declaration of R. Paul Katrinak filed
concurrently]

RES ID: 214453703668

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:


2 PLEASE TAKE NOTICE THAT on May 29, 2025 at 8:30 a.m. or as soon thereafter as
3 counsel may be heard, in Department O of the above-entitled court located at 1725 Main St.,
4 Santa Monica, California 90401, Defendant Michael Pierattini will and hereby does move for
5 an order to vacate/strike Plaintiff's Request for Dismissal Without Prejudice.

6 This Motion to vacate/strike is made on the grounds that Plaintiff willfully disobeyed
7 multiple orders of the Court, and further misused and abused the discovery process. On the eve
8 of Defendant's Motion for Terminating Sanctions, Plaintiff filed a Request for Dismissal
9 Without Prejudice in violation of California law. The law is without dispute that a Plaintiff
10 loses the right to dismiss a case without prejudice in the face of a Motion for Terminating
11 Sanctions or on the eve of a Motion for Summary Judgment. Plaintiff has threatened to
12 continue filing meritless lawsuits against Mr. Pierattini and this conduct has to stop.
13 Therefore, Mr. Pierattini respectfully requests that the Court vacate/strike Plaintiff's dismissal
14 without prejudice and enter a dismissal of Plaintiff's case with prejudice to end this relentless
15 frivolous litigation by Plaintiff against Mr. Pierattini.

16 This Motion will be based upon this Notice, the accompanying Memorandum of Points
17 and Authorities, the Separate Statement, the attached Declaration of R. Paul Katrinak in
18 support thereof, the Court's file in this action, and such other matters as may be presented prior
19 to or at the hearing of the motion.

20 DATED: May 1, 2025

21 THE LAW OFFICES OF
22 R. PAUL KATRINAK

23 
24 R. Paul Katrinak
25 Attorneys for Defendant
26 Michael Pierattini
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

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

On April 17, 2025, the clerk purportedly entered the dismissal. We seek to correct the dismissal to make it a dismissal WITH prejudice. By way of this Motion, Defendant Michael Pierattini ("Mr. Pierattini") respectfully requests that the dismissal filed by Plaintiff be vacated/stricken, or that it be vacated/stricken as to Mr. Pierattini who has two dispositive motions pending.

The attempt at a voluntary dismissal here without prejudice has to be some type of record in terms of gamesmanship. After over a year in refusing to respond to discovery, Plaintiff seeks to dismiss the one remaining cause of action without prejudice one week before the hearing on the continued hearing on the Motion for Terminating Sanctions. The hearing was continued to give Plaintiff the opportunity to file and serve the declaration referenced in his opposition to the Motion for Terminating Sanctions. (See Katrinak Declaration). Instead of filing and serving the declaration, Plaintiff decided to yet again employ gamesmanship to avoid the consequences of his contempt of the Court's Orders. The law below holds that this type of

1 tactical ploy is not permitted. As noted in the procedural history section, Plaintiff flagrantly
2 violated court orders requiring him to respond to discovery.

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

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

15 "The truth will come out. I will not stop suing Michael Pertini, or going after him
16 through legal process until the truth comes out. I may not be given due process right
17 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."

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

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

22 **II. FACTUAL HISTORY**

23 Plaintiff filed this lawsuit against Mr. Pierattini and several other defendants alleging
24 eight causes of action. The FAC, which meanders and is difficult to follow, contains vague
25 allegations against Mr. Pierattini that are few and far between. Although nearly none of the
26 allegations in the FAC are directed at Mr. Pierattini, Plaintiff asserts all eight of his causes of
27 action against him. Mr. Pierattini lives in the State of Washington and is far removed from the
28 fanciful allegations in Plaintiff's FAC. Almost none of what Plaintiff alleges in his FAC has

any connection to Mr. Pierattini whatsoever. The only mentions of Mr. Pierattini in the FAC are as follows:

12. Plaintiff is informed and believes, and on that basis alleges, that **Defendant Michael Pierattini (“Pierattini”)** is an individual residing in the State of Washington, County of Pierce. Pierattini is an agent of Peter. Pierattini has hidden behind a false 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.

20. The title of the article constitutes libel per se and statements in the video made by Peter and **Pierattini** constitute slander per se in that they use inaccurate documents 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.

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.

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

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

Aside from his outright refusal to engage in discovery, Plaintiff has made plain the true intentions behind this litigation, which is to make this case as expensive as possible for Mr. Pierattini by running up Mr. Pierattini’s attorney’s fees for entertainment purposes in connection with his YouTube channel, and to ruin Mr. Pierattini professionally. Plaintiff has bombarded Mr. Pierattini’s counsel with emails regarding meritless motions and absurd stipulation requests, has

1 filed frivolous motions with the Court, and has screamed at Mr. Pierattini's counsel and Judge Ford
2 in court hearings. Plaintiff even refused to provide his address until ordered to do so by the Court.

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

10 **III. PROCEDURAL HISTORY**

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

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

1 10. On May 2, 2024, the Court granted Mr. Pierattini's Motions to Compel
2 Requests for Admission, Special Interrogatories, Requests for Production and
3 Plaintiff's deposition. The written responses and production of documents was
4 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.

5 11. On June 18, 2024, this Court denied Plaintiff's frivolous motion to compel and
6 awarded sanctions in the amount of \$4,500. In other words, instead of
7 responding to the written discovery that was served on him in December,
8 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.

9 12. On July 30, 2024, the Court denied Plaintiff's frivolous Motion for
10 Reconsideration, granted Mr. Pierattini's Motion to Compel the deposition of
Plaintiff and issued sanctions in the amount of \$4,560.00.

11 13. On September 5, 2024, the Court granted Mr. Pierattini's Motion for Summary
12 Judgment on all causes of action except the Eighth Cause of action for Violation
13 of the Right of Publicity. The Court denied Mr. Pierattini's Motion for
14 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.

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

18 **IV. SUMMARY OF THE LAW PERTAINING TO THIS OBJECTION AND**
19 **REQUEST TO VACATE/STRIKE THE 11TH HOUR REQUEST FOR**
20 **DISMISSAL WITHOUT PREJUDICE**

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

26 Traditionally, it has been the parties right to dismiss an action without prejudice at any
27 time before "the actual commencement of trial ..." CCP 581(b)(1). However, recent cases like
28 *Hartbrodt v. Burke* (1996) 42 CA4th 1168, 175, place limits on a plaintiff's ability to do so. In

1 *Hartbrodt*, a trial court discovery order required plaintiff to produce a tape to defendant within
2 thirty days. Plaintiff disobeyed the order and refused to turn over the tape. Defendants moved
3 for terminating sanctions, asking the court to dismiss the case with prejudice as a sanction
4 under the discovery statutes. Before the hearing on the motion, plaintiff requested a dismissal
5 without prejudice. The trial court rejected the request and granted the defense motion for a
6 dismissal with prejudice as a terminating sanction. The appellate court affirmed. The bulk of
7 the appellate court's opinion addressed discovery issues. As to the matter of voluntary
8 dismissal, the appellate court concluded that allowing plaintiff to dismiss without prejudice
9 would defeat the trial court's power to enforce its discovery orders. The appellate court held:

10 ***Rejection of Voluntary Dismissal***

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

14 In *M & R Properties v. Thomson* (1992) 11 Cal.App.4th 899, 14 Cal.Rptr.2d 579, the
15 plaintiffs failed to bring the action to trial within five years and the defendants filed a
16 motion to dismiss pursuant to Code of Civil Procedure section 583.310 which, if
17 granted, would be a determination on the merits. The day prior to the hearing on the
18 motion, the plaintiffs filed a request for a dismissal without prejudice. On the
19 defendant's motion, the trial court vacated the plaintiffs' voluntary dismissal and
20 granted the defense motion to dismiss for failure to bring the action to trial in five
21 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."

22 *Id* at 175-176. The court held that, under the circumstances, plaintiff could not dismiss without
23 prejudice, and rejected the plaintiff's attempt to voluntarily dismiss, despite the fact that the
24 dismissal was entered prior to any ruling on the motion. The court reasoned that such dismissal
25 would amount to a "tactic" that "would simply defeat the trial court's power to enforce its
26 discovery orders." *Id* at 175.

27 It is important to note that in *Hartbrodt*, plaintiff had not been previously sanctioned –
28 i.e., terminating sanctions were not the necessary result of defendant's motion, given the clear

1 preference in law for escalating sanctions (monetary sanctions, evidence preclusion, issue
2 sanctions), and against “ultimate” sanctions. Thus, it could not be said that dismissal of the
3 action was a “forgone conclusion” as a result of defendant’s motion. Yet, despite the fact that it
4 was far from certain that defendant’s motion would result in dismissal, the court held that to
5 allow a voluntary dismissal, without prejudice, which would allow plaintiff to refile a baseless
6 action, would defeat the trial court’s power to enforce its discovery orders.

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

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

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

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

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

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

27 “[11:25.10] **Compare—dismissal as tactic to avoid imminent adverse ruling on**
28 **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. Concurrent with the hearing on this Motion is a hearing on 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. **ANAYLSIS OF THE LAW APPLIED HERE SHOWS THIS REQUEST FOR DISMISSAL SHOULD BE REJECTED OR STRIKEN**

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.

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

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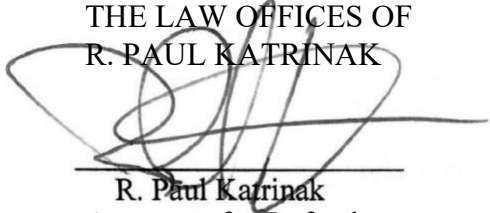
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1 **VI. CONCLUSION**

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

5
6 DATED: May 1, 2025

7 THE LAW OFFICES OF
8 R. PAUL KATRINAK

9 
10 R. Paul Katrinak
11 Attorneys for Defendant
12 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 458, Beverly Hills, California 90210.

On May 1, 2025, I served the foregoing document(s) described as:

**NOTICE OF MOTION AND MOTION TO VACATE/STRIKE PLAINTIFF'S
REQUEST FOR DISMISSAL WITHOUT PREJUDICE**

on the interested parties to this action addressed as follows:

Jose DeCastro
1258 Franklin Street
Santa Monica, CA 90404
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 1, 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



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 to Vacate (or Strike Request for Dismissal Without Prejudice)	Status: RESERVED
Filing Party: Michael Pierattini (Defendant)	Location: Santa Monica Courthouse - Department O
Date/Time: 05/29/2025 8:30 AM	Number of Motions: 1
Reservation ID: 214453703668	Confirmation Code: CR-7RFBYJPXIJJMFT9WA

Fees

Description	Fee	Qty	Amount
Motion to Vacate (name extension)	0.00	1	0.00
TOTAL			\$0.00

Payment

Amount: \$0.00	Type: NOFEE
Account Number: n/a	Authorization: n/a
Payment Date: n/a	

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