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Attorneys for Defendant  
Michael Pierattini

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

**DEFENDANT’S REPLY IN RESPONSE  
TO OPPOSITION TO MOTION TO  
VACATE/STRIKE PLAINTIFF’S  
REQUEST FOR DISMISSAL WITHOUT  
PREJUDICE**

Date: May 29, 2025  
Time: 8:30 a.m.  
Dept: O

1 **I. SUMMARY OF REPLY**

2 The discovery situation in this case is simply outrageous and terminating sanctions are  
3 plainly warranted. In the case at hand the Court has issued monetary sanctions against Plaintiff  
4 totaling \$10,695.00, which remain unpaid. Notwithstanding being repeatedly sanctioned,  
5 Plaintiff's conduct and discovery abuse has not changed. Tellingly after over one-year,  
6 multiple motions, and multiple Court Orders, Plaintiff has not provided proper responses to  
7 Court Ordered written discovery (all while having a lawyer for the last 6 months). There is  
8 simply no excuse. Defendant Michael Pierattini ("Mr. Pierattini") respectfully requests that  
9 Plaintiff's Request for Dismissal Without Prejudice be vacated/striken and that Plaintiff's case  
10 be dismissed with prejudice.

11 **The Court has given the Plaintiff multiple chances**

12 At the February 25, 2025, hearing on the Motion for Terminating Sanctions, the Court  
13 stated that there is a declaration referenced by Mr. DeCastro. So the Court continued the  
14 motion for sanctions again to have the declaration filed with the court and served on  
15 Defendant's counsel so that Defendant's counsel could respond to that declaration.

16 The declaration was never filed nor was it served. (See Katrinak Declaration).  
17 Realizing that the case was going to be dismissed and he had no evidence, Plaintiff attempted  
18 to dismiss without prejudice while the Motion for Summary Judgment and the Motion for  
19 Terminating Sanctions were pending.

20 **Plaintiff stated that he would keep coming after Mr. Pierattini**

21 In the Response to the Requests for Admission attached to his Opposition to the Motion  
22 for Terminating Sanctions, Plaintiff states:

23 "The truth will come out. I will not stop suing Michael Pertini, or going after him  
24 through legal process until the truth comes out. I may not be given due process right  
25 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."

26 (Opposition to the Motion for Terminating Sanctions p. 35 of the document, Exhibit 3,  
27 Plaintiff's Supplemental Response to Request for Admission No. 26).  
28

**The discovery which Plaintiff refused to answer (in violation of court orders)**

The discovery which Plaintiff refused to answer went to the heart of the issues in the motion for summary judgment that is currently being heard concurrently with the motion for terminating sanctions. The one remaining cause of action, which that summary judgment seeks to end, was for violation of the right of the right of publicity. In the supplemental responses, the Plaintiff refused to identify any witnesses to support his claims for violation of the right of publicity. Here is the Interrogatory and the Response requiring Plaintiff identify witnesses.

**SPECIAL INTERROGATORY NO. 23:** IDENTIFY all WITNESSES that support YOUR eighth cause of action for “right to publicity torts” against PIERATTINI.

**SUPPLEMENTAL RESPONSE TO SPECIAL INTERROGATORY NO. 23:**

Again, I cannot identify witnesses here for fear that they will be stocked, harassed, their Google ratings will be downgraded for their business.

**There is a protective order in the case, and this refusal to comply with the Court’s Order is disingenuous**

The refusal to produce witnesses is particularly disingenuous because there is a Protective Order in place that Plaintiff jointly requested. The simple fact is that he had no evidence and had no witnesses to oppose the Motion for Summary Judgment. Left with nothing to oppose the Motion for Summary Judgment, Plaintiff just refused to identify any witnesses and manufactured an excuse that plainly fails in the face of the Protective Order. Plaintiff then made the tactical move to try to dismiss the case without prejudice so that he could start over again and continue harassing Mr. Pierattini as he promised in his papers. That result is patently unfair and Mr. Pierattini respectfully requests that the Court vacate Plaintiff’s Dismissal Without Prejudice and enter an order dismissing Plaintiff’s case with prejudice.

## 1 **II. PROCEDURAL HISTORY**

2 The procedural history in this case is particularly important to Mr. Pierattini's Motion.  
3 This discovery at issue was served in 2023. Now, 18 months later, Mr. Pierattini still does not  
4 have responses to the discovery at issue in the Motion for Terminating Sanction. Plaintiff  
5 fabricates a claim that he was unlawfully jailed for four months. He was able to do videos  
6 from jail so he could certainly have complied. But, that is disingenuous as well. That gives no  
7 explanation why he did not comply with discovery or Court Orders for the other 14 months  
8 that he was not in jail.

9 This case is well over a year old and nothing, not one thing, has gotten done because it  
10 is one game after another by Plaintiff and multiple violations of Court Orders by Plaintiff. The  
11 timeline of the case is informative and is as follows:.

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

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

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

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

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

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

27 **March 15, 2024** - Instead of responding to the discovery, Plaintiff filed a  
28 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.

1 **May 2, 2024** - The Court granted Mr. Pierattini's Motions to Compel Requests  
2 for Admission, Special Interrogatories, Requests for Production and Plaintiff's  
3 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.

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

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

10 **September 5, 2024** - the Court denied Mr. Pierattini's Motion for Summary  
11 Judgment on the right of publicity claim because Mr. Pierattini did not have the  
12 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.

13 **January 22, 2025 – 8:00 p.m.** – The night before the original hearing on the  
14 Motion for Terminating Sanctions, Plaintiff served "responses" to the discovery  
ordered by the Court on May 2, 2024. Plaintiff refused to answer the vast  
majority of the discovery ordered by the Court.

15 **January 22, 2025** – Defendant Michael Pierattini filed a Motion for Summary  
16 Judgment on the remaining cause of action in Plaintiff's Complaint.

17 **January 23, 2025** – Due to the fact that Plaintiff served discovery responses the  
18 night before the hearing, the Court continued the Motion for Terminating  
Sanctions to February 25, 2025.

19 **February 25, 2025** – At the continued hearing on the Motion for Terminating  
20 Sanctions, the Court identified a declaration that was referenced in Plaintiff's  
21 Opposition that was not filed with the Court and not served on Defendant's  
22 counsel. The Court continued the hearing on the Motion for Terminating  
Sanctions to April 23, 2025 to give Plaintiff the opportunity to file and serve the  
referenced declaration.

23 **Plaintiff did not file and serve his Declaration as Ordered by the Court**

24 **April 15, 2025** – Instead of filing his declaration, Plaintiff filed a Request for  
25 Dismissal Without Prejudice in the face of the hearing on the Motion for  
Terminating Sanctions and the Motion for Summary Judgment

26 **April 17, 2025** – The clerk entered the Request for Dismissal Without  
Prejudice.

27 **April 23, 2025** – The Court conducted a hearing on Defendant's Motion for  
28 Terminating Sanctions. The Court continued the hearing to provide time for a

Motion to Vacate/Strike the Request for Dismissal Without Prejudice in order to give the parties time to brief the issue.

**III. PLAINTIFF IS IN VIOLATION OF NO LESS THAN FIVE COURT ORDERS**

Plaintiff is in violation following five court orders:

- The Order on the Motion to Compel Plaintiff's Responses to Defendant's Special Interrogatories has not been complied with;
- The Order on the Motion to Compel Plaintiff's Responses to Defendant's Form Interrogatories has not been complied with;
- The Order on the Motion to Compel Plaintiff's Responses to Defendant's Requests for Production of Documents has not been complied with;
- The Order on the Motion to Compel Plaintiff's Responses to Defendant's Requests for Admission has not been complied with; and
- The Order on Plaintiff's Reconsideration of Sanctions and he has not paid the original sanctions or the sanction for that motion.

As pointed out in the introduction and the Separate Statement in Reply to the Motion for Terminating Sanctions. Plaintiff's discovery responses are in contempt of the Court's orders. Additionally, Plaintiff has stated under penalty of perjury that he will keep coming after Mr. Pierattini and Plaintiff will continue abusing the judicial system to do so. This conduct should not be condoned by the Court by permitting Plaintiff to dismiss his case without prejudice.

**IV. PLAINTIFF'S REQUEST FOR DISMISSAL WITHOUT PREJUDICE SHOULD BE VACATED/STRICKEN**

As pointed out in the moving papers, *Hartbrodt v. Burke* (1996) 42 CA4th 1168, 175, is directly on point. In affirming a trial court's rejection of a request for dismissal without prejudice, the court of appeal 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 (*See also, M & R Properties v. Thompson* (1992) 11 Cal.App. 4th 899, (the trial court vacated Plaintiff's voluntary dismissal without prejudice and dismissed with prejudice); *Mary Morgan, Inc. v. Melzark* (1996) 49 Cal.App.4th 765 (court rejected plaintiff's attempt to dismiss without prejudice prior to final ruling on defendant's motion for summary judgment).

Moreover, as pointed out in the moving papers, as explained in the leading treatise on California Procedure, this type of tactical ploy is not permitted. It states:

"[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).

Each of these cases are directly on point with the current situation. Plaintiff filed his Request for Dismissal Without Prejudice in the face of a Motion for Terminating Sanctions and a pending Motion for Summary Judgment. Plaintiff simply cannot do so and rob Mr. Pierattini of the finality of the granting of his Motion for Terminating Sanctions and, if necessary, his Motion for Summary Judgment. Therefore, Mr. Pierattini respectfully requests that the Court vacate/strike Plaintiff's Dismissal Without Prejudice and enter an order dismissing Plaintiff's Complaint against Mr. Pierattini with prejudice.

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1 **V. CONCLUSION**

2 For the foregoing reasons, Defendant respectfully requests that the Court grant the  
3 Motion to Vacate/Strike the Request for Dismissal Without Prejudice and grant the Motion for  
4 Terminating Sanctions.

5 DATED: May 21, 2025

THE LAW OFFICES OF  
R. PAUL KATRINAK

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8 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 458, Beverly Hills, California 90210.

On May 21, 2025, I served the foregoing document(s) described as:

**DEFENDANT'S REPLY IN SUPPORT OF MOTION TO VACATE/STRIKE  
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 21, 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