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5/22/2024 1:58 PM
David W. Slayton,
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7 Attorneys for Defendant
8 Michael Pierattini

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES

12 JOSE DECASTRO,)
13)
14 Plaintiff,)
15)
16 v.)
17)
18 KATHERINE PETER; DANIEL CLEMENT;)
19 MICHAEL PIERATTINI; DAVID OMO JR.;)
20 and DOES 1 TO 30, inclusive,)
21)
22 Defendants.)

23 Case No. 23SMCV00538
24)
25 Assigned for all purposes to the Honorable
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DECLARATION OF R. PAUL KATRINAK

I, R. Paul Katrinak, declare as follows:

1. I am an attorney duly licensed to practice law before all courts of the State of California. My law firm is counsel for Defendant Michael Pierattini (“Mr. Pierattini”) in this action. The following facts are within my personal knowledge and, if called as a witness herein, I can and will competently testify thereto.

2. I appeared at the hearing on May 16, 2024, on Mr. Pierattini's Motion for 128.7 sanctions, Plaintiff's demurrer, and Plaintiff's Motion to Compel/for Sanctions. There was no appearance by Defendant. At the hearing, the Court adopted its tentative ruling as the final order of the Court and ordered me to prepare a Notice and proposed order attaching the Court's Minute Order. Attached hereto as Exhibit "A" is a true and correct copy of the Court's Tentative Ruling.

3. On Friday, May 17, 2024, I attempted to retrieve the Minute Order, but it was not available.

4. On Monday, May 20, 2024, I was finally able to retrieve the Minute Order. The Minute Order inadvertently did not include the Court's complete Tentative Ruling. Attached hereto as Exhibit "B" is a true and correct copy of the Court's May 16, 2024 Minute Order.

5. On Tuesday, May 21, 2024, I contacted the Court Clerk regarding the error and she advised me that I had to proceed ex parte.

6. Unfortunately, due to the manner in which Defendant is litigating this case, I would like to avoid any potential issues. Therefore, Mr. Pierattini is moving Ex Parte for the Court to amend its Minute Order Nunc Pro Tunc.

7. On May 22, 2024, I gave Defendant Ex Parte Notice by email of this Ex Parte application. Attached hereto as Exhibit "C" is a true and correct copy of my email.

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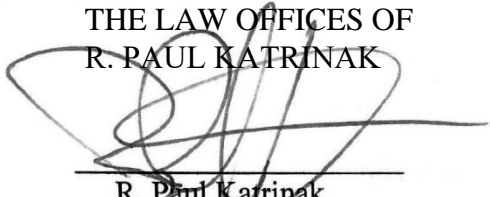
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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 DATED: May 22, 2024

THE LAW OFFICES OF
R. PAUL KATRINAK



R. Paul Katrinak
Attorneys for Defendant, Michael Pierattini

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EXHIBIT A

Case Number: 23SMCV00538 **Hearing Date:** May 16, 2024 **Dept:** 0

Case Name: DeCastro v. Peter, et al.

Case No.:	23SMCV00538	Complaint Filed:	3-14-23
Hearing Date:	5-16-24	Discovery C/O:	1-24-25
Calendar No.:	11	Discover Motion C/O:	2-10-25
POS:	OK	Trial Date:	2-24-25

SUBJECT: MOTION TO COMPEL RESPONSES TO RFPs (SET TWO)

MOVING PARTY: Plaintiff Jose DeCastro

RESP. PARTY: Defendant Michael Pierattini

TENTATIVE RULING

Plaintiff Jose DeCastro's Motion to Compel Responses to RFPs (Set Two) is DENIED.

DeCastro's motion was reserved as a Motion for Sanctions. DeCastro's motion is not a Motion for Sanctions but a Motion to Compel Further Responses to RFPs pursuant to CCP §2031.310.

DeCastro failed to submit a mandatory CRC Rule 3.1345 Separate Statement. DeCastro's failure to include a separate statement is not fatal, however, given that Pierattini submits a copy of his responses to the RFPs and there are only four RFPs at issue. (Katrinak Dec., Ex. A.)

DeCastro's Motion is not supported by a meet and confer declaration. DeCastro merely verifies the points and authorities. DeCastro fails to cite any authority allowing him to rely on a verified memo of points and authorities in lieu of the meet and confer declaration required under CCP §§2016.040 and 2030.310(b). (See CCP §2015.5 (listing "declaration" and "verification" separately).

Moreover, Plaintiff fails to establish good cause for further responses. The burden is on the moving party seeking to compel further responses to RFPs to show both relevance to the subject matter and specific facts justifying discovery. (*Glenfed Develop. Corp. v. Superior Court* (1997) 53 Cal.App.4th 1113, 1117.) Once good cause is established by the moving party, the burden then shifts to the responding party to justify any objections made to document disclosure. (*Hartbrodt v. Burke* (1996, 2nd Dist.) 42 Cal.App.4th 168, 172-174.)

Plaintiff contends the RFPs are intended to solicit information for defenses to Pierattini's cross-complaint against him. The RFPs in dispute seek documents regarding the "Deposition of Jose

DeCastro” scheduled for January 25, 2023, including the scheduling and planning of the deposition, receipts for payments for the deposition and receipts for refunds in connection with the deposition. (Motion, Ex. 1.) None of these RFPs are tied to the cross-complaint or any of the substantive issues raised by either the complaint or the cross-complaint.

Plaintiff’s motion is therefore denied for failure to provide a proper meet and confer declaration and failure to demonstrate good cause for further responses. As the prevailing party, Defendant Pierattini is entitled to sanctions pursuant to CCP §2031.310(h). Defendant requests sanctions in the amount of \$4500 (10 hours @ \$450/hr). The amount requested is reasonable.

Plaintiff’s Motion to Compel Further Responses is DENIED. Plaintiff is ordered to pay sanctions to defendant in the amount of \$4,500 within 60 days.

Case Name: DeCastro v. Peter, et al.

Case No.:	23SMCV00538	Complaint Filed:	3-14-23
Hearing Date:	5-16-24	Discovery C/O:	1-24-25
Calendar No.:	11	Discover Motion C/O:	2-10-25
POS:	OK	Trial Date:	2-24-25

SUBJECT: (1) DEMURRER TO AMENDED ANSWER
(2) MOTION FOR SANCTIONS PURSUANT TO CCP §128.7

MOVING PARTY: (1) Plaintiff Jose DeCastro
(2) Defendant Michael Pierattini

RESP. PARTY: (1) Defendant Michael Pierattini
(2) None .

TENTATIVE RULING

Plaintiff Jose De Castro’s Demurrer to Pierattini’s Amended Answer is OVERRULED. Defendant Pierattini’s Motion for Sanctions pursuant to CCP §128.7 is DENIED.

I. Demurrer to Answer—OVERRIDE

A. Untimeliness is mere irregularity

Plaintiff DeCastro admits that his demurrer was untimely filed but claims it was due to his inability to meet and confer. A demurrer to an answer must be filed within 10 days after service of the answer. (CCP §430.40.) An automatic 30-day extension is granted if the parties are unable to meet and confer at least 5 days before the demurrer is due, if a declaration under penalty of perjury attesting to a good faith attempt to meet and confer is filed. (CCP §430.41.) DeCastro did not file a CCP §430.41(a)(2) declaration and he is therefore not entitled to a 30-day extension.

However, if a demurrer is presented late, the court may in its discretion strike it from the files, or it may deny the request to strike and hear the demurrer. Delay is only an irregularity. (5 Witkin, *Cal. Proc.* (6th ed. 2024), Pleadings, §979.) “Even assuming for argument's sake that the demurrer was filed late, the trial court nevertheless had discretion to entertain it. There is no absolute right to have a pleading stricken for lack of timeliness in filing where no question of jurisdiction is involved, and where, as here, the late filing was a mere irregularity; the granting or denial of the motion is a matter which lies within the discretion of the court.” (*McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 281–282.)

Plaintiff's demurrer to the answer was due on January 16, 2024, 10 days plus two court days after the amended answer was filed and served by email on January 2, 2024. Plaintiff's demurrer was filed 15 days later on January 31, 2024. The delay of 15 days was a mere irregularity and it would be an abuse of discretion to strike or refuse to hear the demurrer based on such untimeliness.

B. Amended Answer sufficiently states facts to constitute a defense

“A party against whom an answer has been filed may object, by demurrer as provided in Section 430.30, to the answer upon any one or more of the following grounds:

- (a) The answer does not state facts sufficient to constitute a defense.
- (b) The answer is uncertain. As used in this subdivision, “uncertain” includes ambiguous and unintelligible.” (CCP §430.20.)

An answer fails to raise any material issue or state a defense where it expressly or substantially admits or does not sufficiently deny all the material allegations of the complaint and sets up no new matter that is sufficient to bar or defeat the action. (*Adjustment Corp. v. Hollywood Hardware & Paint Co.* (1939) 35 Cal.App.2d 566, 569-570.) Demurrer to an answer must be overruled if any defense to the complaint is properly alleged. (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 733–734 (demurrer to answer properly overruled based on sufficiently pled general denial)(“if one of the

defenses or counterclaims is free from the objections urged by demurrer, then a demurrer to the entire answer must be overruled”).

“An affirmative defense must be pleaded in the same manner as if the facts were set forth in a complaint. In other words, the general requirement of stating the ultimate facts applies and, where particularity in pleading is necessary in a complaint, it is equally necessary in an affirmative defense involving the issue.” (5 Witkin, *Cal. Proc.* (6th ed. 2024) Plead, § 1122; see also *Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 873, 879-880 (demurrer to answer asks whether the answer raises a defense to the plaintiff’s stated cause of action).) Pleadings are meant “to inform ... adversaries of the nature of the cause which they state against them with sufficient particularity to advise them of the issue they will be required to meet at the trial of the action.” (*Lewis v. Fahn* (1952) 113 Cal.App.2d 95, 100.) Facts that establish a complete discharge of defendant’s previously accrued liability must be specially pleaded. (5 Witkin, *Cal. Proc.*, *supra*, §1122.)

Defendant Pierattini’s Amended Answer sets forth a general denial. A demurrer can only be sustained to the answer if there are no facts to constitute a defense. General denial of each and every allegation in Plaintiff’s complaint is a defense to the action.

In addition, based on a review of the affirmative defenses asserted, sufficient ultimate facts are alleged to state each of the affirmative defenses. (5 Witkin, *Cal. Proc.*, *supra*, Pleadings, §§392 and 1122.) Evidentiary facts are not required. (5 Witkin, *Cal. Proc.*, *supra*, Pleadings, §§392 and 1122.) Of the affirmative defenses alleged, only the statute of limitations defense is subject to the additional requirement that the particular statute of limitations be alleged. Pierattini does that. (Amended Answer, ¶7, 6th Affirmative Defense.)

Pierattini’s 10th affirmative defense for offset is also not an improper request for affirmative relief. Offset is properly raised in the answer. (CCP §431.70 (“Where cross-demands for money have existed between persons at any point in time when neither demand was barred by the statute of limitations, and an action is thereafter commenced by one such person, the other person may assert in the answer the defense of payment in that the two demands are compensated so far as they equal each other, notwithstanding that an independent action asserting the person’s claim would at the time of filing the answer be barred by the statute of limitations.”))

Demurrer to Defendant Pierattini’s Amended Answer is overruled.

II. Motion for CCP §128.7 Sanctions—DENY

A. Applicable Law

“By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met: (1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. (3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.” (CCP §128.7(b).)

“Under section 128.7, a court may impose sanctions if it concludes a pleading was filed for an improper purpose or was indisputably without merit, either legally or factually. [¶] A claim is factually frivolous if it is ‘not well grounded in fact’ and is legally frivolous if it is ‘not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.’ In either case, to obtain sanctions, the moving party must show the party's conduct in asserting the claim was objectively unreasonable. A claim is objectively unreasonable if any reasonable attorney would agree that it is totally and completely without merit.” (*Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 189 (CCP 128.7 sanctions properly imposed where it was obvious that plaintiffs' claims were barred by res judicata, judicial admissions and judicial estoppel).)

An action that is not legally or factually frivolous cannot be presented for an improper purpose. “Having concluded that the claims presented in the second amended complaint were nonfrivolous, we must also conclude that they were not presented for an improper purpose.” (*Ponce v. Wells Fargo Bank* (2018) 21 Cal.App.5th 253, 265.)

B. Pierattini fails to establish a violation of CCP §128.7 warranting sanctions

Defendant Pierattini moves for CCP §128.7 sanctions in the amount of \$10,410 against Plaintiff for filing his demurrer to Pierattini's Amended Answer. Pierattini argues Plaintiff violated the requirements of CCP §128.7(b)(1)-(b)(3), because (1) he filed a demurrer to the Amended Answer knowing that it was untimely and no extension applied under CCP §430.41; (2) he maintained he had an extension under CCP §430.41 when he did not; (3) he was responsible for his own inability to meet

and confer before filing the demurrer. Based on these reasons, Defendant maintains the demurrer was frivolous and filed in bad faith.

As discussed above, untimeliness of a demurrer is a mere irregularity and the Court always has discretion to hear an untimely demurrer. Here, the demurrer was only untimely by approximately two weeks and it would have been an abuse of discretion to strike it on grounds of untimeliness. As such, Plaintiff's filing of an untimely demurrer does not violate CCP §128.7(b)(1)-(3).

Plaintiff's baseless assertion that he was entitled to a 30-day extension under CCP §430.41 is not grounds to impose CCP §128.7 sanctions. Again, the untimeliness of the demurrer would not have prevented the Court from hearing the merits of the demurrer. At worst, Plaintiff misrepresentation of his right to an extension was immaterial.

Plaintiff's failure to satisfy the meet and confer requirement also does not violate CCP §128.7(b)(1)-(3). Plaintiff attempted to meet and confer and exchanged several emails with Defendant regarding his objections to the Amended Answer. (Demurrer, DeCastro Dec., 6:4-24.) Moreover, based on the emails exchanged between the parties, they sufficiently met and conferred on the substance of Plaintiff's objections and were at an impasse. Although CCP §430.41(a) requires that the meet and confer take place by telephone, video conference or in person, the parties satisfied the substantive purpose of the meet and confer requirement. Plaintiff's filing of the demurrer despite the parties' failure to meet and confer in person, by telephone or video conference does not amount to a violation of CCP §128.7 given the circumstances.

Moreover, ordinarily, the only consequence for failing to meet and confer prior to filing a demurrer is to continue the demurrer so that the parties can meet and confer. Failure to meet and confer is not grounds to sustain or overrule the demurrer. (CCP §430.41(a)(4).)

Defendant Pierattini's Motion for Sanctions pursuant to CCP §128.7 is denied.

EXHIBIT B

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department O

23SMCV00538

JOSE DECASTRO vs KATHERINE PETER

May 16, 2024

8:30 AM

Judge: Honorable H. Jay Ford III
Judicial Assistant: Kimberly Deckard
Courtroom Assistant: Amy Elder

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): Michael Pierattini (via LACC)

NATURE OF PROCEEDINGS: Hearing on Motion to Compel Responses to Plaintiff's Request for Production of Documents to Michael Pierattini, Set Two and Request for Monetary Sanctions; Hearing on Demurrer - without Motion to Strike to Defendant Pierattini's Amended Answer; Hearing on Motion for Sanctions Not Less Than \$10,410.00 Against Plaintiff

The Court's tentative ruling is posted on the court website for parties to review

The matter is called for hearing.

There are no appearances by or for the Plaintiff.

The Defendant submit to the Courts tentative ruling.

The Court adopts the tentative ruling of the Court as the Final Order of the Court as Follows:

The Motion for Sanctions Not Less Than \$10,410.00 Against Plaintiff filed by Michael Pierattini on 03/15/2024 and Motion to Compel Responses to Plaintiff's Request for Production of Documents to Michael Pierattini, Set Two and Request for Monetary Sanctions filed by Jose Decastro on 03/15/2024 are Denied.

The Demurrer - without Motion to Strike to Defendant Pierrattini's Amended Answer filed by Jose Decastro on 01/31/2024 is Overruled. and Denied.

MOVING PARTY: (1) Plaintiff Jose DeCastro
(2) Defendant Michael Pierattini
RESP. PARTY: (1) Defendant Michael Pierattini
(2) None .

TENTATIVE RULING

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department O

23SMCV00538

JOSE DECASTRO vs KATHERINE PETER

May 16, 2024

8:30 AM

Judge: Honorable H. Jay Ford III
Judicial Assistant: Kimberly Deckard
Courtroom Assistant: Amy Elder

CSR: None
ERM: None
Deputy Sheriff: None

Plaintiff Jose De Castro's Demurrer to Pierattini's Amended Answer is **OVERRULED**.
Defendant Pierattini's Motion for Sanctions pursuant to CCP §128.7 is **DENIED**.

I. Demurrer to Answer—OVERRULE

A. Untimeliness is mere irregularity

Plaintiff DeCastro admits that his demurrer was untimely filed but claims it was due to his inability to meet and confer. A demurrer to an answer must be filed within 10 days after service of the answer. (CCP §430.40.) An automatic 30-day extension is granted if the parties are unable to meet and confer at least 5 days before the demurrer is due, if a declaration under penalty of perjury attesting to a good faith attempt to meet and confer is filed. (CCP §430.41.) DeCastro did not file a CCP §430.41(a)(2) declaration and he is therefore not entitled to a 30-day extension.

However, if a demurrer is presented late, the court may in its discretion strike it from the files, or it may deny the request to strike and hear the demurrer. Delay is only an irregularity. (5 Witkin, *Cal. Proc.* (6th ed. 2024), Pleadings, §979.) "Even assuming for argument's sake that the demurrer was filed late, the trial court nevertheless had discretion to entertain it. There is no absolute right to have a pleading stricken for lack of timeliness in filing where no question of jurisdiction is involved, and where, as here, the late filing was a mere irregularity; the granting or denial of the motion is a matter which lies within the discretion of the court." (*McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 281–282.)

Plaintiff's demurrer to the answer was due on January 16, 2024, 10 days plus two court days after the amended answer was filed and served by email on January 2, 2024. Plaintiff's demurrer was filed 15 days later on January 31, 2024. The delay of 15 days was a mere irregularity and it would be an abuse of discretion to strike or refuse to hear the demurrer based on such untimeliness.

B. Amended Answer sufficiently states facts to constitute a defense

"A party against whom an answer has been filed may object, by demurrer as provided in Section 430.30, to the answer upon any one or more of the following grounds:

- (a) The answer does not state facts sufficient to constitute a defense.
- (b) The answer is uncertain. As used in this subdivision, "uncertain" includes ambiguous and unintelligible." (CCP §430.20.)

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CSR: None
ERM: None
Deputy Sheriff: None

An answer fails to raise any material issue or state a defense where it expressly or substantially admits or does not sufficiently deny all the material allegations of the complaint and sets up no new matter that is sufficient to bar or defeat the action. (*Adjustment Corp. v. Hollywood Hardware & Paint Co.* (1939) 35 Cal.App.2d 566, 569-570.) Demurrer to an answer must be overruled if any defense to the complaint is properly alleged. (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 733–734 (demurrer to answer properly overruled based on sufficiently pled general denial) (“if one of the defenses or counterclaims is free from the objections urged by demurrer, then a demurrer to the entire answer must be overruled”).

“An affirmative defense must be pleaded in the same manner as if the facts were set forth in a complaint. In other words, the general requirement of stating the ultimate facts applies and, where particularity in pleading is necessary in a complaint, it is equally necessary in an affirmative defense involving the issue.” (5 Witkin, *Cal. Proc.* (6th ed. 2024) Plead, § 1122; *see also Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 873, 879-880 (demurrer to answer asks whether the answer raises a defense to the plaintiff’s stated cause of action).) Pleadings are meant “to inform ... adversaries of the nature of the cause which they state against them with sufficient particularity to advise them of the issue they will be required to meet at the trial of the action.” (*Lewis v. Fahn* (1952) 113 Cal.App.2d 95, 100.) Facts that establish a complete discharge of defendant’s previously accrued liability must be specially pleaded. (5 Witkin, *Cal. Proc.*, *supra*, §1122.)

Defendant Pierattini’s Amended Answer sets forth a general denial. A demurrer can only be sustained to the answer if there are no facts to constitute a defense. General denial of each and every allegation in Plaintiff’s complaint is a defense to the action.

In addition, based on a review of the affirmative defenses asserted, sufficient ultimate facts are alleged to state each of the affirmative defenses. (5 Witkin, *Cal. Proc.*, *supra*, Pleadings, §§392 and 1122.) Evidentiary facts are not required. (5 Witkin, *Cal. Proc.*, *supra*, Pleadings, §§392 and 1122.) Of the affirmative defenses alleged, only the statute of limitations defense is subject to the additional requirement that the particular statute of limitations be alleged. Pierattini does that. (Amended Answer, ¶7, 6th Affirmative Defense.)

Pierattini’s 10th affirmative defense for offset is also not an improper request for affirmative relief. Offset is properly raised in the answer. (CCP §431.70 (“Where cross-demands for money have existed between persons at any point in time when neither demand was barred by the statute of limitations, and an action is thereafter commenced by one such person, the other person may assert in the answer the defense of payment in that the two demands are compensated so far as they equal each other, notwithstanding that an independent action

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CSR: None
ERM: None
Deputy Sheriff: None

asserting the person's claim would at the time of filing the answer be barred by the statute of limitations.”))

Demurrer to Defendant Pierattini’s Amended Answer is overruled.

II. Motion for CCP §128.7 Sanctions—DENY

A. Applicable Law

“By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met: (1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. (3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.” (CCP §128.7(b).)

“Under section 128.7, a court may impose sanctions if it concludes a pleading was filed for an improper purpose or was indisputably without merit, either legally or factually. [¶] A claim is factually frivolous if it is ‘not well grounded in fact’ and is legally frivolous if it is ‘not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.’ In either case, to obtain sanctions, the moving party must show the party's conduct in asserting the claim was objectively unreasonable. A claim is objectively unreasonable if any reasonable attorney would agree that it is totally and completely without merit.” (*Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 189 (CCP 128.7 sanctions properly imposed where it was obvious that plaintiffs’ claims were barred by res judicata, judicial admissions and judicial estoppel).)

An action that is not legally or factually frivolous cannot be presented for an improper purpose. “Having concluded that the claims presented in the second amended complaint were nonfrivolous, we must also conclude that they were not presented for an improper purpose.” (*Ponce v. Wells Fargo Bank* (2018) 21 Cal.App.5th 253, 265.)

B. Pierattini fails to establish a violation of CCP §128.7 warranting sanctions

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8:30 AM

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CSR: None
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Defendant Pierattini moves for CCP §128.7 sanctions in the amount of \$10,410 against Plaintiff for filing his demurrer to Pierattini's Amended Answer. Pierattini argues Plaintiff violated the requirements of CCP §128.7(b)(1)-(b)(3), because (1) he filed a demurrer to the Amended Answer knowing that it was untimely and no extension applied under CCP §430.41; (2) he maintained he had an extension under CCP §430.41 when he did not; (3) he was responsible for his own inability to meet and confer before filing the demurrer. Based on these reasons, Defendant maintains the demurrer was frivolous and filed in bad faith.

As discussed above, untimeliness of a demurrer is a mere irregularity and the Court always has discretion to hear an untimely demurrer. Here, the demurrer was only untimely by approximately two weeks and it would have been an abuse of discretion to strike it on grounds of untimeliness. As such, Plaintiff's filing of an untimely demurrer does not violate CCP §128.7(b)(1)-(3).

Plaintiff's baseless assertion that he was entitled to a 30-day extension under CCP §430.41 is not grounds to impose CCP §128.7 sanctions. Again, the untimeliness of the demurrer would not have prevented the Court from hearing the merits of the demurrer. At worst, Plaintiff misrepresentation of his right to an extension was immaterial.

Plaintiff's failure to satisfy the meet and confer requirement also does not violate CCP §128.7(b)(1)-(3). Plaintiff attempted to meet and confer and exchanged several emails with Defendant regarding his objections to the Amended Answer. (Demurrer, DeCastro Dec., 6:4-24.) Moreover, based on the emails exchanged between the parties, they sufficiently met and conferred on the substance of Plaintiff's objections and were at an impasse. Although CCP §430.41(a) requires that the meet and confer take place by telephone, video conference or in person, the parties satisfied the substantive purpose of the meet and confer requirement. Plaintiff's filing of the demurrer despite the parties' failure to meet and confer in person, by telephone or video conference does not amount to a violation of CCP §128.7 given the circumstances.

Moreover, ordinarily, the only consequence for failing to meet and confer prior to filing a demurrer is to continue the demurrer so that the parties can meet and confer. Failure to meet and confer is not grounds to sustain or overrule the demurrer. (CCP §430.41(a)(4).)

Defendant Pierattini's Motion for Sanctions pursuant to CCP §128.7 is denied.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department O

23SMCV00538

JOSE DECASTRO vs KATHERINE PETER

May 16, 2024

8:30 AM

Judge: Honorable H. Jay Ford III
Judicial Assistant: Kimberly Deckard
Courtroom Assistant: Amy Elder

CSR: None
ERM: None
Deputy Sheriff: None

The Court orders sanctions against Jose Decastro in the sum of \$4,500 payable to Law Offices of R. Paul Katrinack by 07/15/2024 .

Defendant is to submit their proposed order to the court prior to next court hearing.

Defendant is to give notice.

EXHIBIT C



Paul Katrinak <katrinaklaw@gmail.com>

Ex Parte Notice

1 message

Paul Katrinak <katrinaklaw@gmail.com>
To: Chille DeCastro <chille@situationcreator.com>

Wed, May 22, 2024 at 12:12 PM

Dear Mr. DeCastro,

I retrieved the Court's Order on the May 16, 2024 hearing on our respective Motions. The Court adopted the tentative ruling as the final order of the Court, but inadvertently did not include the entire tentative ruling the Minute Order. Due to this oversight, I will be proceeding on May 24, 2024 at 8:30 a.m. in Department O of the Los Angeles Superior Court located at 1725 Main Street, Santa Monica, California 90404 for an Order Amending Nunc Pro Tunc the Court's Order of May 16, 2024.

Please advise if you will be opposing this application.

Very Truly Yours,

Paul Katrinak

--

Paul Katrinak
Law Offices of R. Paul Katrinak
9663 Santa Monica Blvd., 458
Beverly Hills, California 90210
Tel: (310) 990-4348
Fax: (310) 921-5398

The information contained in this e-mail is intended only for the personal and confidential use of the designated recipient(s) named above. This message may be an attorney-client communication and, as such, is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that you have received this communication in error, and that any review, dissemination, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and delete the original message. Thank you.

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA
3 COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles, State of California; I am over the age of
5 18 and not a party to the within action; my business address is 9663 Santa Monica Boulevard,
6 Suite 458, Beverly Hills, California 90210.

7 On May 22, 2024, I served the foregoing document(s) described as:

8 **DECLARATION OF R. PAUL KATRINAK IN SUPPORT OF DEFENDANT
9 MICHAEL PIERATTINI'S EX PARTE APPLICATION TO AMEND NUNC
10 PRO TUNC THE COURTS ORDER OF MAY 16, 2024**

11 on the interested parties to this action addressed as follows:

12 Jose DeCastro
13 1258 Franklin Street
14 Santa Monica, CA 90404
15 chille@situationcreator.com

16 (BY MAIL) I deposited such envelope in the mail at Los Angeles, California.
17 The envelope was mailed with postage thereon fully prepaid and addressed to the person
18 above.

19 (BY PERSONAL SERVICE) by causing a true and correct copy of the above
20 documents to be hand delivered in sealed envelope(s) with all fees fully paid to the person(s) at
21 the address(es) set forth above.

22 X (BY EMAIL) I caused such documents to be delivered via electronic mail to the
23 email address for counsel indicated above.

24 Executed May 22, 2024, at Los Angeles, California.

25 I declare under penalty of perjury under the laws of the United States that the above is
26 true and correct.

27 
28 R. Paul Katrinak

LAW OFFICES OF R. PAUL KATRINAK
9663 Santa Monica Blvd., Suite 458
Beverly Hills, California 90210
(310) 990-4348