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8 Defendant in pro per
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**Superior Court of the State of California
County of Orange – Central Justice Center**

People of the State of California,
Plaintiff,
vs.
Cody Jay Brownstein,
Defendant.

Case No. 30-2024-01403673-CU-JR-CJC

**Memorandum of Points and
Authorities in Reply to Plaintiff's
Opposition to Defendant's
Demurrer**

Hearing date and time:
August 2, 2024 / 8:30 a.m.

Department: C65

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I. Introduction

First, Defendant urges the Court to exercise its discretion to refuse to consider Plaintiff's late-filed opposition, which possibly was never validly served.

Second, if the Court is convinced that a demurrer is impermissible in this action, Defendant urges the Court to consider his demurrer instead as a motion for judgment as a matter of law under the Court's inherent power. Note that in Defendant's notice of demurrer, he expressly states: "Alternatively, Defendant will, and by this notice does, move the Court to exercise its inherent power to enter judgment for Defendant as a matter of law." (Demurrer 2.)

Third, Defendant urges the Court to deny any request by Plaintiff for a continuance of the hearing.

II. Argument

A. The Court Should Exercise Its Discretion to Refuse to Consider Plaintiff’s Late-Filed (and Possibly Never-Served) Opposition.

Under Code of Civil Procedure section 1005(b), oppositions are to be filed at least 9 court days before the hearing. Code Civ. Proc. § 1005(b). See also Cal. R. Ct. 3.1320(c). 9 court days before the hearing on Defendant's demurrer was July 22, 2024, over a week ago.

The Court can exercise discretion to refuse to consider Plaintiff's (extremely) late-filed opposition. *See Cal. R. Ct. 3.1300(d)*. Plaintiff didn't file its opposition until July 30, 2024, or 3 days before the hearing on Defendant's demurrer.

Although Defendant was provided a copy of Plaintiff's opposition by email, Defendant never consented to electronic service. *See* Code Civ. Proc. § 1010.6(c)(2)-(3). As far as Defendant is aware, Plaintiff's opposition was never validly served. (Plaintiff didn't provide Defendant with a proof of service.) If Plaintiff's opposition wasn't validly served, the Court should refuse to consider the opposition on this additional ground.

B. The Court Should Alternatively Consider Defendant's Demurrer as a Motion for Judgment As a Matter of Law Under the Court's Inherent Power.

As pointed out in the introduction to this reply memorandum, Defendant gave notice that in the alternative, he's asking the Court to exercise its inherent power to treat his demurrer as a motion for judgment as a matter of law. In its opposition, Plaintiff doesn't address this at all.

1 In Defendant's demurrer, he cites to *Cottle v. Super. Ct.*, 3 Cal. App. 4th
2 1367 (1992). In that case, the Court of Appeals held that courts have broad and
3 inherent powers to control litigation. *Cottle*, 3 Cal. App. 4th at 1376-78. The Court
4 is also likely aware that in criminal actions, nonstatutory motions to dismiss are
5 recognized as appropriate to present issues of a constitutional nature. *See, e.g.*,
6 *People v. Duncan*, 78 Cal. App. 4th 765, 772, 93 Cal. Rptr. 2d 173, 177-78 (2000).
7 (Defendant is aware the present action is a civil action.) Plaintiff can't seriously
8 argue that it's prejudiced by knowing Defendant's arguments and the authorities
9 he's relying on a month before the hearing.

10 **C. The Court Shouldn't Continue the Hearing on Defendant's**
11 **Demurrer Since Plaintiff Intentionally Didn't Address the Merits.**

12 There's no reason the Court should continue the hearing on Defendant's
13 demurrer for any length of time. Defendant informed Plaintiff way back in June
14 that he planned on filing a demurrer. (Demurrer 7, ¶ 4.) Defendant timely served
15 his demurrer on July 3, 2024. (Demurrer, Proof of Service.) Plaintiff provides no
16 reason for waiting until 3 days before the hearing on Defendant's demurrer to file
17 an opposition that doesn't address the merits of Defendant's demurrer. Plaintiff
18 doesn't even even allude to how it would "address the demurrer on its merits
19 through supplemental briefing." (Opposition 2.)

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21 **III. Conclusion**

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23 In summary: (1) Plaintiff's opposition shouldn't be considered given that it
24 was filed late, only 3 days before the hearing on Defendant's demurrer, and the
25 opposition seemingly wasn't even validly served; (2) Defendant's demurrer can be
26 treated as a motion for judgment under the Court's inherent powers, a point
27 Plaintiff doesn't address in its opposition; and (3) Plaintiff's request for a
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1 continuance should be denied, given that it's solely Plaintiff's fault that it doesn't
2 address Defendant's demurrer on the merits.

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4 Dated: July 30, 2024

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C. Brownstein

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Cody Jay Brownstein,
8 Defendant in pro per

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PROOF OF SERVICE

I, Akram Musleh, am over the age of 18 years and am not a party to this cause. My business address is 12405 Venice Boulevard #403, Los Angeles, California 90066.

On July 30, 2024, I served the parties listed below with the documents listed below by enclosing and sealing a copy of the documents in a separate envelope for each party, postage fully prepaid, then depositing the envelopes in a mailbox regularly maintained by the United States Postal Service at Aliso Viejo, California.

Documents:

Memorandum of Points and Authorities in Reply to Plaintiff's Opposition to Defendant's Demurrer

Parties:

Ray Gennawey, Deputy District Attorney
Todd Spitzer, District Attorney
County of Orange, State of California
PO Box 808
Santa Ana CA 92702

Attorneys for Plaintiff,
People of the State of California

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

Dated: July 30, 2024

/s/ _____
Akram Musleh