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SACRAMENTO COURTS
DEPT. #53 #54

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

-o0o-

GLENN HAGELE,

Plaintiff,

v.

BRENT HANSON, and DOES 1 through 20,

Defendants.

) Case No. 06AS00839

)
) **DEFENDANT BRENT HANSON'S**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **DEFENDANT'S MOTION TO DISMISS**

) **DATE: JULY 21, 2011**

) **TIME: 2:00 P.M.**

) **DEPT: 53**

Date Action Filed: March 2, 2006

COMES NOW, Defendant, BRENT HANSON, by and through his attorneys, Caulfield, Davies, & Donahue, LLP, and submits his Memorandum of Points and Authorities in Support of Defendant's Motion to Dismiss Plaintiff's Complaint, as follows:

I.

INTRODUCTION

This is an action for defamation, arising from the alleged publication on the Internet of a letter Defendant, Brent Hanson, received from ACE Recovery Services in 2005, pertaining to alleged unpaid debts of Plaintiff, Glenn Hagele. Plaintiff alleges that the alleged defamation occurred on or about May 2005, and continued for some period thereafter. On March 2, 2006,

1 Plaintiff Hagele filed the instant action against Defendant Hanson, alleging a single cause of action
2 for defamation/libel under California Civil Code §45. As of March 2, 2011, more than five years
3 elapsed without the matter having been brought to trial. Accordingly, pursuant to the discretionary
4 standard set forth in Code of Civil Procedure §583.420(a)(2)(A), and the mandatory standard set
5 forth in Code of Civil Procedure §583.310, Defendant Brent Hanson moves to have the action
6 dismissed in its entirety.
7

8 II.

9 STATEMENT OF FACTS

10 This is an action for defamation, arising from an alleged internet publication of a document
11 Plaintiff contends amounts to libel pursuant to California Civil Code §45. Plaintiff alleges that
12 Defendant Brent Hanson sued Plaintiff in the Circuit Court of Cook County, Illinois, in January of
13 2003, and that Hanson's Complaint in that matter was dismissed on June 27, 2003. Plaintiff further
14 alleges that on or about May 2005, Defendant Hanson published, on various websites under his
15 control, a letter from "ACE Recovery Services", which purports to offer help in collecting on an
16 outstanding judgment debt owed by Plaintiff Hagele arising from the Cook County case.
17

18 Plaintiff filed his Summons and Complaint in Sacramento County Superior Court on March
19 2, 2006. On or about November 3, 2006, Plaintiff filed a First Amended Complaint wherein he
20 added a second cause of action for invasion of privacy.
21

22 Plaintiff was initially represented in this matter by K. Greg Peterson, Esq. of the Law Offices
23 of K. Greg Peterson. On February 20, 2007, David P. Foos, Esq., of Beyer, Pongratz & Rosen, PLC,
24 substituted in for Attorney Peterson. Attorney Foos withdrew from his representation of Plaintiff in
25 January, 2009, and Plaintiff has been proceeding *in pro per* since that time.
26

27 There has been no good faith attempt, indeed no attempt whatsoever, by Plaintiff or his prior
28 counsel to bring this case to trial over the last five years. Based on the foregoing, and as set forth

1 more fully below, Defendant respectfully requests that the Court dismiss this action pursuant to the
2 discretionary 3 year dismissal statute set forth at C.C.P. §583.420(a)(2)(A), and the mandatory 5
3 year dismissal statute set forth at C.C.P. § 583.310.

4
5 **III.**

6 **THE COURT SHOULD GRANT DEFENDANT'S MOTION**
7 **AND DISMISS PLAINTIFF'S COMPLAINT**

8 **A. Pursuant to C.C.P. §583.410, Plaintiff's Complaint Against Defendant Brent**
9 **Hanson should be dismissed pursuant to the discretion of the Court for**
10 **Plaintiff's failure to bring the action to trial within three years from the**
11 **date the Complaint was filed.**

12 Code of Civil Procedure §583.410 provides, in pertinent part:

13 (a) The court may in its discretion dismiss an action for delay in prosecution
14 pursuant to this article on its own motion or on the motion of the
15 defendant if to do so appears to the court appropriate under the
16 circumstances of the case.

17 This discretionary standard is set forth in C.C.P. §583.420, which provides:

18 (a) The court may not dismiss an action pursuant to this article for delay in
19 prosecution except after one of the following conditions has occurred:

20 * * *

21 (2) The action is not brought to trial within the following times.

22 (A) Three years after the action is commenced against the defendant unless
23 otherwise prescribed by rule under subparagraph (B)

24 It is within the sound discretion of the court to dismiss Plaintiff's Complaint against Defendant Brent
25 Hanson for Plaintiff's failure to bring this matter to trial within three years after the Complaint is
26 filed. (see C.C.P. §583.420(a)(2)(A).) "A trial court's ruling on a motion to dismiss...will be disturbed
27 only upon a showing of a manifest abuse of discretion." (See *Lauriton v. Carnation Co.* (1989) 215
28 Cal.App.3d 161, 164. Here, a review of the Court's file will reveal that Plaintiff has done nothing
whatsoever to attempt to have the matter tried within the three year period. Rather than attempting to
obtain a trial date after completing discovery, Plaintiff instead has used this lawsuit as a forum to harass
Defendant Hanson and his attorneys, including serving literally hundreds of interrogatories, and

Requests for Production, moving to have the undersigned's law firm recused from the case, and filing many motions having virtually nothing to do with the actual merits of the case (See Declaration of Michael E. Myers). Having squandered his opportunity to have the matter tried within three years, this Court should exercise its discretion and dismiss the case in its entirety pursuant to C.C.P. §583.420(a)(2)(A).

B. Plaintiff's Complaint should be dismissed because Plaintiff has failed to bring the case to trial within five years.

California Code of Civil Procedure, §583.310 provides in pertinent part, "An action shall be brought to trial within five years after the action is commenced against the defendant." Here, Plaintiff Glenn Hagele filed his Complaint against Defendant Hanson on March 2, 2006. (See Exhibit "A" to the Declaration of Michael E. Myers) Absent any tolling of the statute, the five year period within which Plaintiff was required to bring the action to trial has elapsed. Pursuant to Code of Civil Procedure §583.360, dismissal under this statute is mandatory:

- (a) An action shall be dismissed by the court on its own motion or on motion of the defendant, after notice to the parties, if the action is not brought to trial within the time prescribed in this article.
- (b) The requirements of this article are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute.

In the instant matter, Plaintiff has flatly failed to do anything to bring this matter to trial within the statutory time frame. There is no legally viable argument that the applicable period was tolled. Plaintiff has failed to exercise the diligence necessary to bring the case to trial and, pursuant to the mandatory provisions of C.C.P. §583.360, the action must be dismissed.

The time to bring a new case to trial cannot be extended, excused, or excepted to, except as provided in C.C.P. §§583.330, 583.340, and 583.350, none which are applicable herein. As no statutory exception is applicable, Plaintiff was required to bring his case to trial within 5 years of the filing of his complaint. It was, at all times, possible to bring this action to trial within the five year

1 period following the filing of Plaintiff's Complaint against Defendant Hanson. Accordingly,
2 dismissal of this action is mandatory.

3
4 **IV.**

5 **CONCLUSION**

6 Plaintiff has had ample opportunity to bring this matter to trial within the three and five year
7 periods set forth in C.C.P. §§ 583.420(a)(2)(A) and 583.310, respectively. He has done precisely
8 nothing over the last five years to bring the matter to trial, and nothing that has transpired during the
9 pendency of this case warrants any tolling of the two time periods applicable herein. Having failed to
10 bring the matter to trial within five years, this Court should dismiss the case pursuant to the
11 discretionary standard set forth in C.C.P. § 583.420(a)(2)(A), and the mandatory standard set forth in
12 C.C.P. §583.310.

13
14 Respectfully submitted.

15
16 Dated: May 23, 2011

CAULFIELD DAVIES & DONAHUE, LLP

17
18 By: 

MICHAEL E. MYERS

Attorneys for defendant, BRENT HANSON

1 **RE: Hagele v. Hanson, et al.**
2 **Sacramento County Superior Court Case No. 06AS00839**

3 **CERTIFICATE OF SERVICE**

4 I am a citizen of the United States, over 18 years of age, employed in the County of
5 Sacramento, and not a party to the within action. My business address is 1 Natoma Street, Folsom,
6 California 95630.

7 On May 24, 2011, I served the within, **MEMORANDUM OF POINTS AND
8 AUTHORITIES IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT**, on
9 the following parties in said action by placing a true copy thereof enclosed in a sealed envelope
10 addressed as follows:

11 **Plaintiff In Pro Per**

12 Glenn Hagele
13 8543 Everglade Drive
14 Sacramento, CA 95826
15 (916) 650-1241

16 [X] (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the
17 United States mail at Folsom, California. I am familiar with my firm's practice whereby the
18 mail is given the appropriate postage and is placed in a designated area to be deposited in a
19 U.S. mail box in Folsom, California in the ordinary course of business.

20 [] (BY FACSIMILE/TELECOPIER/MAIL) I personally sent to the addressee's telecopier
21 number (noted above) a true copy of the above-described documents. On this same date, I
22 caused a true copy to be placed in the U.S. mail at Folsom, California.

23 [] (BY FEDERAL EXPRESS MAIL) I caused such envelope marked for overnight delivery to be
24 placed in the Federal Express Depository in Folsom, California.

25 I declare under penalty of perjury under the laws of the State of California that the foregoing
26 is true and correct and executed on May 24, 2011, at Folsom, California.

27 
28 MICHELLE BOWERS