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6 and Kristen Holstrom
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF RIVERSIDE
11

12 DALLAS PETTEYS, an individual

13 Plaintiff,

14 vs.

15 HOLSTROM, BLOCK AND PARKE, A
Professional Law Corporation; and
16 KRISTEN HOLSTROM, an individual

17 Defendants.
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Case No. RIC 1606346
Judge: Honorable Gloria C. Trask

**DEFENDANTS' NOTICE OF MOTION AND
MOTION FOR SANCTIONS AGAINST
PLAINTIFF DALLAS PETTEYS AND HIS
ATTORNEY J. SCOTT BENNETT
PURSUANT TO CODE OF CIVIL
PROCEDURE SECTION 128.7**

[Filed Concurrently with
1. Declaration of Kristen Holstrom;
2. Declaration of Jennifer Batten;
3. Declaration of Jerry R. Dagrella; and,
4. Request for Judicial Notice.]

Hearing:
Date: October 6, 2016
Time: 8:30 a.m.
Dept.: 1

Action Filed: May 23, 2016
Trial Date: None set

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 6, 2016, at 8:30 a.m., or as soon as thereafter as the matter may be heard in Department 1 of the above-entitled Court, located at 4050 Main Street, Riverside, California 92501, Defendants Holstrom, Block & Parke, APLC and Kristen Holstrom (“Defendants”) will and hereby do move this Court to impose monetary and non-monetary sanctions, including striking the complaint and dismissing the action and assessing reasonable attorneys’ fees and costs, jointly and severally, against Plaintiff Dallas Petteys (“Plaintiff”) and his attorney J. Scott Bennett and Law Offices of J. Scott Bennett, in the amount of \$24,617.00 as well as such other sum and/or sanction as the court may find just and reasonable.

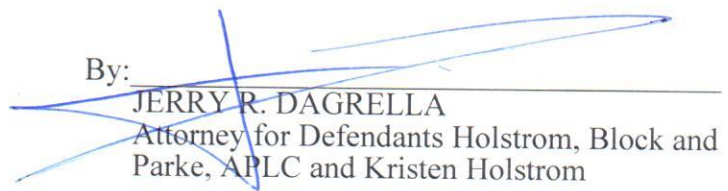
This Motion is made pursuant to *Code of Civil Procedure* section 128.7 on the ground that the Complaint is without factual or legal merit and was filed primarily for an improper purpose to harass Defendants.

This Motion will be based upon this Notice, Memorandum of Points and Authorities, the declarations of Kristen Holstrom, Jennifer Batten and Jerry R. Dagrella, Request for Judicial Notice, and the pleadings and records on file in this action, and upon such further documents and evidence as may be presented at the hearing of this motion.

Dated: August 17, 2016

DAGRELLA LAW FIRM, PLC

By:


JERRY R. DAGRELLA
Attorney for Defendants Holstrom, Block and Parke, APLC and Kristen Holstrom

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Plaintiff Dallas Petteys (“Plaintiff”) alleges in a Form Complaint for “Defamation” that
4 Attorney Kristen Holstrom of Holstrom, Block & Parke (“Defendants”) wrote a defamatory letter
5 about him to Attorney Guy Herreman in a pending family court action. That letter addressed a
6 violation of a Stipulation and Order that prohibited Attorney Herreman’s client from permitting a
7 minor child from being with Plaintiff unsupervised due to the fact that Plaintiff has nine sexual
8 misconduct convictions, including for indecent exposure to a child under the age of 14. There
9 was nothing defamatory in that letter; in fact, Plaintiff’s sexual misconduct convictions are a
10 matter of public record. Further, *the law is abundantly clear that the letter is protected by the*
11 *litigation privilege under Civil Code §47, which absolutely immunizes an attorney from liability*
12 *for communications made in judicial proceedings.*

13 This frivolous action was filed by Attorney Herreman’s officemate, Attorney J. Scott
14 Bennett, in an apparent attempt to interfere with Defendants’ representation of their client in the
15 family court action. This case presents the perfect example of the type of abuse of the judicial
16 system that *Code of Civil Procedure* section 128.7 was designed to prevent.

17 **II. FACTUAL SUMMARY**

18 Defendants are attorneys of record for Stacy Wilkinson (“Stacy”) in a pending divorce
19 case against her husband, Robert Petteys (“Robert”). (Holstrom Decl., ¶2.) Plaintiff is Robert’s
20 father. (Complaint, p. 4.) Plaintiff has nine sexual misconduct convictions. (Request for Judicial
21 Notice (“RJN”), Exs. “1”-“5”.) He was ordered to obtain a psycho-sexual evaluation from a state
22 certified evaluator and is quoted in a Bremerton Police Department Incident Report as stating
23 “I’m sick, I need help, I get a sexual thrill by having people see me naked.” (*Id.*, Exs. “2”-“3”).
24 His convictions include indecent exposure to a minor child under the age of 14. (*Id.*, Ex. “5”).
25 Plaintiff’s step-daughter, Jennifer Batten, alleges that Plaintiff regularly exposed himself to her
26 and raped her when she was a child. (Batten Decl., ¶¶7-9.)

27 In light of Plaintiff’s past history, the family court entered a Stipulation and Order
28 prohibiting Robert from allowing his and Stacy’s minor child to be left alone with Plaintiff for

1 any period of time. (RJN, Ex. "6".) However, Robert violated the Stipulation and Order and
2 permitted Plaintiff to be alone with the minor child. Out of great concern for the minor child's
3 safety—and in the course of representing their client, who is the minor child's mother—
4 Defendants sent a letter to Attorney Herreman reminding him of the grave safety concerns
5 surrounding Plaintiff having contact with the minor child without supervision. (Holstrom Decl.,
6 ¶¶6-7.) In the letter, Defendants reminded Attorney Herreman of Plaintiff's history of sexual
7 misconduct. (*Ibid.*) That letter is the sole basis for this lawsuit. (Complaint, p. 4.) Specifically,
8 Plaintiff takes issue with one sentence in the letter that states he is a "pedophile"—a statement
9 corroborated by Plaintiff's own sexual misconduct convictions, which include a conviction for
10 indecent exposure to a minor child, and further corroborated by the rape allegations made by
11 Plaintiff's step-daughter.

12 The family court judge was not pleased to learn that the minor child was left alone with
13 Plaintiff in violation of the Stipulation and Order. As a consequence, the family court judge
14 issued a new order prohibiting Plaintiff from having any contact with the child whatsoever,
15 whether supervised or not, and also prohibiting Robert from having any further visitation with the
16 child pending further proceedings. (Holstrom Decl., ¶8.)

17 **III. LEGAL ANALYSIS**

18 *Code of Civil Procedure* section 128.7 authorizes a court to strike a complaint and award
19 sanctions if the complaint is not warranted by existing law or is presented for an improper
20 purpose, such as harassment. (*C.C.P.* §128.7(b)(1)-(3) and §128.7(d); *Peake v. Underwood*
21 (2014) 227 Cal.App.4th 428.) ***The types of conduct sanctionable under section 128.7 include***
22 ***filing a complaint for defamation to which the defendant has a complete defense of the***
23 ***absolute litigation privilege.*** (*Laborde v. Aronson* (2001) 92 Cal.App.4th 459, 463-465 [litigation
24 privilege of *Civil Code* §47 established complete defense to defamation claim and subjected
25 plaintiff and his attorney to §128.7 sanctions].)¹

26
27 ¹ The statute provides for a 21-day period during which Plaintiff and his attorney may avoid sanctions by dismissing
28 the complaint outright. (*C.C.P.* §128.7(c)(1).) Defendants have complied with the safe harbor provision by serving
their motion 21 days prior to filing same with the court. If this motion is filed, that means Plaintiff failed to dismiss
the action within the 21-day safe harbor period.

1 A. **The Complaint Is Not Warranted By Existing Law Since Civil Code §47**
2 **Absolutely Bars Plaintiff's Complaint**

3 To prevail on his claim for defamation, Plaintiff must prove that Defendants made a
4 statement to a third party that was not protected by statutory privilege, not truthful and injured his
5 reputation. (*Civil Code* §45.) Plaintiff cannot prove any of these elements, let alone all three.

6 Crucially, the statement, which was made in a letter between attorneys in a pending court
7 case, is protected by the litigation privilege under *Civil Code* §47, which absolutely immunizes an
8 attorney from liability for communications made in judicial proceedings. (Holstrom Decl., ¶¶6-
9 7.) The Complaint admits that “[t]he letter was written and published to Guy Herreman regarding
10 his client Robert Petteys family law case.” (Complaint, p. 4.) Thus, there is no dispute that the
11 subject matter of the letter is within the scope of a pending judicial matter. As such, the litigation
12 privilege of *Civil Code* section 47 provides an absolute defense to Plaintiff s Complaint. (See
13 *O’Neil v. Cunningham* (1981) 118 Cal.App.3d 466, 472-77 [attorney’s letter sent in the course of
14 judicial proceeding that allegedly defamed his client was privileged]; *Jacob B v. County of Shasta*
15 (2007) 40 Cal.4th 948 [litigation privilege applies to a letter in a family law proceeding which
16 described uncle as a child molester].) Because the litigation privilege is absolute, the contents of
17 the letter are protected regardless of malice. (*Saropn v. Burkett* (1962) 57 Cal. 2d 706, 708.)

18 ***In an analogous case, the court in Laborde v. Aronson (2001) 92 Cal.App.4th 459 held***
19 ***a cause of action for defamation against an attorney was barred by the litigation privilege and***
20 ***awarded sanctions under Code of Civil Procedure section 128.7 for the improper filing of a***
21 ***complaint to which Civil Code section 47 established a complete defense. So it is here.*** Plaintiff
22 has improperly filed a complaint to which Defendants have a complete defense of the absolute
23 litigation privilege. As in *Laborde*, Plaintiff and his attorney have engaged in conduct that is
24 sanctionable under section 128.7.

25 The analysis could and should end here. However, it is notable to point out that not only is
26 the statement in the letter protected by absolute privilege, but the statement to opposing counsel
27 referencing Plaintiff as a pedophile is truthful and does nothing to injure his reputation. The term
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1 pedophile is commonly defined as "an adult who is sexually attracted to young children."²
2 Plaintiff has been convicted nine times of sexual misconduct crimes, including for indecent
3 exposure to a child under the age of 14. (RJN, Exs. "1"- "5".) He was ordered to obtain a psycho-
4 sexual evaluation from a state certified evaluator and is quoted in a Bremerton Police Department
5 Incident Report as stating "I'm sick, I need help, I get a sexual thrill by having people see me
6 naked." (*Id.*, Exs. "2"- "3".) Further, Jennifer Batten has stepped forward and attested to the fact
7 that Plaintiff regularly exposed himself to her and raped her when she was a child. (Batten Decl.,
8 ¶¶7-9.) Thus, the evidence most certainly supports the statement that Plaintiff has a sexual
9 attraction to children. Moreover, the statement did not harm Plaintiff. The statement was
10 published in a single letter to Attorney Herreman in the context of litigation. (Holstrom Decl.,
11 ¶¶6-7.) At the time that the letter was sent, there was already a Stipulation and Order prohibiting
12 Plaintiff from being around the minor child without supervision. (*Ibid.*) Thus, the effect of the
13 sentence in the letter did not expose Plaintiff to anything. Rather, Plaintiff's substantial history of
14 criminal convictions and forcing himself on victims caused safety concerns which necessitated
15 protections being put in place in the context of the pending family law case.

16 **B. The Complaint Was Filed For the Purpose of Harassment**

17 Plaintiff's attorney works in the same law office as Attorney Herreman, the opposing
18 counsel in the family court action. The Summons and Complaint in this action were mailed to
19 Defendants in an envelope marked from "Herreman Law Firm". In one section of the court
20 pleadings, Robert Petteys—Attorney Herreman's client, and the opposing party in the family court
21 action—is listed as the actual plaintiff here instead of Dallas Petteys. (Complaint, p. 1, ¶1.) In
22 summary, Defendants were served with this lawsuit in the middle of their representation of a
23 client in a contested family court action and this lawsuit was filed by the officemate of the
24 opposing counsel in that contested family court action. The letter at issue in this lawsuit was only
25 published to Attorney Herreman, who was fully aware of the existence of the Stipulation and
26 Order and the reasons for it. The only individuals who could have republished the letter to
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28 ² See <http://www.dictionary.com/browse/pedophile?s=t> and <http://www.merriam-webster.com/dictionary/pedophile>.

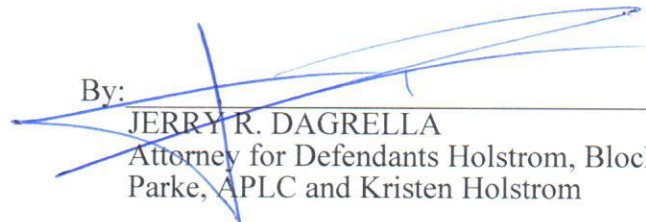
1 Plaintiff are Attorney Herreman, his client or his officemate who is coincidentally Plaintiff's
2 attorney in this action. A reasonable inference can be made that this lawsuit was intended to
3 create a potential conflict of interest and interfere with Defendants' representation of their client in
4 the family court action.

5 **IV. CONCLUSION**

6 As set forth supra, Plaintiff and his attorney have pursued a frivolous lawsuit against
7 Defendants, which has caused them to incur unnecessary fees and costs. Defendants request
8 monetary sanctions in the amount of \$24,617.00 and nonmonetary sanctions in the form of
9 striking the complaint and dismissing this unmeritorious action. (See Dagrella Decl, ¶2.)

10 Dated: August 17, 2016

DAGRELLA LAW FIRM, PLC

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12 By: 
13 JERRY R. DAGRELLA
14 Attorney for Defendants Holstrom, Block and
15 Parke, APLC and Kristen Holstrom
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