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CHRISTOPHER BARNES, ESQ. (State Bar No.206186)
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MEGHAN E. GEORGE, ESQ. (State Bar No. 274525)

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Attorneys for Plaintiff **John C. Torjesen**

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

JOHN C. TORJESEN, an individual,

Plaintiff,

vs.

HARRY MANSDORF, individually and as
Trustee of the Mansdorf Family, JAMIE
GONZALES, an individual, ROBERT
MULLEN, an individual, PAUL ORLOFF, an
individual, and DOES 1 through 100, inclusive,

Defendants

Case No. BC425880

[Assigned for all purposes to the
Hon. Elizabeth Allen White, Dept. 48]

**PLAINTIFF JOHN C. TORJESEN'S
EX PARTE APPLICATION
REQUESTING THE COURT
RECONSIDER ITS RULING
ALLOWING GONZALEZ TO
DISMISS HIS THIRD PARTY CLAIM;
DECLARATION OF CHRISTOPHER
BARNES; PROPOSED ORDER**

DATE: April 15, 2013

TIME: 8:30 a.m.

DEPT: 48

EX PARTE APPLICATION

Plaintiff JOHN C. TORJESEN, ESQ., through his counsel, hereby applies for the Court's
sua sponte reconsideration of its April 9, 2013 ruling dismissing Jaime Gonzalez's Third Party

1 Claim.

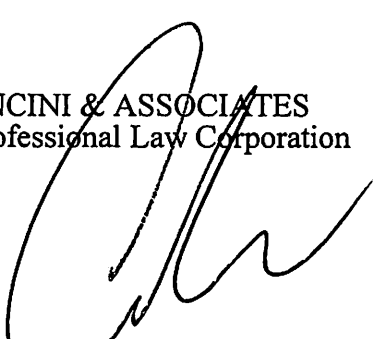
2 In accordance with California Rules of Court, Rule 3.1202(a), the name, address, and
3 telephone number of the parties known to the applicant are as follows:

4 Jaime Gonzalez
5 811 N. Alta Dr.
6 Beverly Hills, CA 90210
7 Tel.: (213) 399-7779

8 Finally, this application is based upon the Memorandum of Points and Authorities,
9 Declaration of Christopher Barnes, Esq., and such other evidence as may be brought to the Court's
10 attention at or before the hearing on this matter.

11 Dated: April 10, 2012

MANCINI & ASSOCIATES
A Professional Law Corporation

By: 

CHRISTOPHER BARNES
Attorneys for Plaintiff
JOHN C. TORJESEN, ESQ.

1 MEMORANDUM OF POINTS AND AUTHORITIES

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3 I.

4 THIS COURT MAY *SUA SPONTE* RECONSIDER ITS PRIOR RULING PURSUANT TO
5 THE CALIFORNIA CODE OF CIVIL PROCEDURE ("CCP") §1008(a) AND (c)

6 C.C.P. §1008(a) provides in pertinent part:

7 When an application for an order has been made to a judge, or to a
8 court, and refused in whole or in part, or granted, or conditionally
9 granted, or on terms, any party affected by the order may, with in
10 10 days after service upon the party of written notice of entry of the
11 order and **based upon new or different facts, circumstances, or
law**, make an application to the same judge or court that made the
order, to reconsider the mater and modify, amend, or revoke the
prior order.

12 Similarly, C.C.P. §1008(c) provides that:

13 If a court at any time determines that there has been a change of
14 law that warrants it to reconsider a prior order it entered, it **may
do so on its own motion** and enter a different order.

15 Although parties may move for reconsideration as directed pursuant to C.C.P. §1008, it
16 does not limit the court's ability to reconsider its prior orders in order to correct any errors. Le
17 Francois v. Goel (2005) 35 Cal.4th 1094, 1007. Further, **the court must act on its own motion,**
18 **either as the result of its own second thought or in response to a party's request.** Id at 1108.
19 Thus, in spite of the fact that a motion to reconsider is filed in violation of the 10-day rule
20 pursuant to C.C.P. §1008¹, **the court has inherent power to correct its own errors when they**
21 **are called to the court's attention** by way of an improperly filed motion. Marriage of Barthold
22 (2008) 158 Cal.4th 1301, 1308.

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25 ¹ "In our view, the California Constitution requires that any case in which a trial judge
26 reconsiders an erroneous order, and enters a new order that is substantively correct, the resulting
27 ruling must be affirmed regardless of any procedural error committed along the way." Marriage
of Barthold (2008)158 Cal.4th 1301, 1313.

1 II.

2 **A THIRD PARTY CANNOT DISMISS A THIRD PARTY CLAIM**
3 **WITHOUT THE CONSENT OF THE CREDITOR**

4 Code of Civil Procedure § 720.370. Dismissal of petition or proceedings:

5 **If the petition for a hearing was made by the third person,**
6 **neither the petition nor the proceedings pursuant thereto may**
7 **be dismissed without the consent of the creditor.** If the petition
8 for a hearing was made by the creditor, neither the petition nor the
9 proceedings pursuant thereto may be dismissed without the consent
10 of the third person.

11 On April 3, 2013, Mr. Gonzalez, by and through his attorney of record, Elaine Ettingoff,
12 Esq., filed the declaration of Linda Mansdorf in opposition to Plaintiff's Petition to Invalidate his
13 alleged Third Party Claim. In response, on April 4, 2012, Plaintiff's Counsel filed and served a
14 Reply, advising the Court that Ms. Ettingoff failed to contest Plaintiff's motion in any substantive
15 way, thereby conceding the points raised in the motion. On April 8, 2013, Mr. Gonzalez,
16 anticipating the ruling of this Court, terminated his attorney and substituted into this case in pro
17 per. Further, Mr. Gonzalez filed and served a document purporting to be a dismissal of his Third
18 Party Claim. Mr. Gonzalez appeared before this Court on April 9, 2013, and indicated that his
19 third party claim had been dismissed. This information was new to Mr. Barnes, attorney for Mr.
20 Torjesen, as Mr. Barnes was out of his office on April 8, 2013, and did not receive the purported
21 dismissal or substitution, and was ignorant of their existence or filing until the Court
22 acknowledged that it had received them and that they were file stamped April 8, 2013. Mr.
23 Gonzalez represented that he filed a dismissal of the Third Party Claim on April 8, 2013, and the
24 Court acknowledged receipt of the dismissal, and over the objection of Plaintiff's Counsel,
25 dismissed the Third Party Claim. This Court should not have dismissed the Third Party Claim
26 without Mr. Torjesen's (Creditor) consent. This information was not available to Mr. Torjesen or
27 his attorney at the time of the hearing as Plaintiff counsel was unaware that Gonzalez had

1 attempted to dismiss his Third Party Claim until the Court so informed him that the dismissal was
2 filed.

3 **III.**

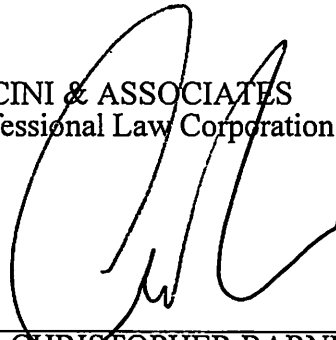
4 **CONCLUSION**

5 Based upon the clear requirements of Code of Civil Procedure § 720.370, a third party
6 claimant cannot dismiss a third party claim prior to a ruling without the consent of the creditor.
7 Since Mr. Gonzalez did not have the consent of Mr. Torjesen to dismiss the third party claim prior
8 to a ruling, the motion must be reinstated, and the Court must formally rule on the matter.

9 Since there was no opposition to Plaintiff's petition, Plaintiff requests the Court sign Mr.
10 Torjesen's prior proposed order.

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12 Dated: April 10, 2013

MANCINI & ASSOCIATES
A Professional Law Corporation

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16 By: 
CHRISTOPHER BARNES
Attorneys for Plaintiff
JOHN C. TORJESEN, ESQ.

1 **DECLARATION OF CHRISTOPHER BARNES**

2 I, CHRISTOPHER BARNES, declare as follows:

3 1. I am an attorney at law licensed to practice before all courts in the State of
4 California and am an partner in the law firm of Mancini & Associates, attorneys of record for
5 Plaintiff herein. All statements herein are of my own personal knowledge except where stated
6 upon information and belief and of those things I believe them to be true.

7 2. On April 3, 2013, Mr. Gonzalez, by and through his attorney of record, Elaine
8 Ettingoff, Esq., filed the declaration of Linda Mansdorf in opposition to Plaintiff's Petition to
9 Invalidate his alleged Third Party Claim.

10 3. In response, on April 4, 2012, I filed and served a Reply, advising the Court that
11 Ms. Ettingoff failed to contest Plaintiff's motion in any substantive way, thereby conceding the
12 points raised in the motion.

13 4. On April 8, 2013, Mr. Gonzalez, anticipating the ruling of this Court, terminated
14 his attorney and substituted into this case in pro per.

15 5. Further, Mr. Gonzalez filed and served a document purporting to be a dismissal of
16 his Third Party Claim.

17 6. Mr. Gonzalez appeared before this Court on April 9, 2013, and indicated that his
18 third party claim had been dismissed. This information was new to me, attorney for Mr. Torjesen,
19 as I was out of his office on April 8, 2013, and did not receive the purported dismissal or
20 substitution, and was ignorant of their existence or filing until the Court acknowledged that it had
21 received them and that they were file stamped April 8, 2013.

22 7. Mr. Gonzalez represented that he filed a dismissal of the Third Party Claim on
23 April 8, 2013, and the Court acknowledged receipt of the dismissal, and over my objection,
24 dismissed the Third Party Claim.

25 8. This Court should not have dismissed the Third Party Claim without Mr.
26 Torjesen's (Creditor) consent.

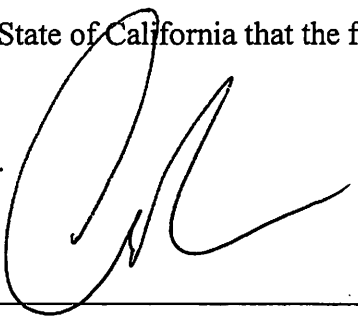
27 9. This information was not available to Mr. Torjesen or me at the time of the hearing
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1 as I was unaware that Gonzalez had attempted to dismiss his Third Party Claim until the Court so
2 informed him that the dismissal was filed.

3 10. **EX PARTE NOTICE:** On April 10, 2013, I advised Mr. Gonzalez by
4 overnight mail that I would appear before this Court on an Ex Parte basis to request the relief
5 stated.

6 I swear under penalty of perjury under the laws of the State of California that the forgoing
7 is true and correct.

8 Executed April 10, 2013, at Sherman Oaks, California.

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12 CHRISTOPHER BARNES
13 Declarant
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MARCUS A. MANCINI, ESQ. (State Bar No.146905)
CHRISTOPHER BARNES, ESQ. (State Bar No.206186)

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15303 Ventura Boulevard, Suite 600
Sherman Oaks, CA 91403

Phone: (818) 783-5757
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Attorneys for Plaintiff **John C. Torjesen**

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

JOHN C. TORJESEN, an individual,

Plaintiff,

vs.

HARRY MANSDORF, individually and as
Trustee of the Mansdorf Family, JAMIE
GONZALES, an individual, ROBERT
MULLEN, an individual, PAUL ORLOFF, an
individual, and DOES 1 through 100, inclusive,

Defendants

Case No. BC425880

[Assigned for all purposes to the
Hon. Elizabeth Allen White, Dept. 48]

**[PROPOSED] ORDER AFTER EX
PARTE TO RECONSIDER COURT'S
RULING DISMISSING THE THIRD
PARTY CLAIM OF JAIME
GONZALEZ**

DATE: April 15, 2013
TIME: 8:30 a.m.
DEPT: 48

GOOD CAUSE HAVING BEEN SHOWN:

IT IS ORDERED:

The Court *sua sponte* reconsiders its April 9, 2013 ruling dismissing the Third Party Claim
of Jaime Gonzalez.

Mr. Gonzalez's Third Party Claim cannot be dismissed by Mr. Gonzales absent the consent
of the creditor, John C. Torjesen. Since Mr. Torjesen did not consent to the dismissal, the matter
could not be dismissed by Gonzalez.

Therefore, the Court retracts its order dismissing the Third Party Claim, and will issue a

1 ruling on Mr. Torjesen's Petition to Invalidate the Third Party Claim of Jaime Gonzalez.

2 **IT IS SO ORDERED.**

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4 DATED: _____

5 Hon. Elizabeth Allen White
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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss.

4
5 I am employed in the County of Los Angeles, State of California. I am over the
6 age of 18 and not a party to the within action. My business address is 15303 Ventura Boulevard,
7 Suite 600, Sherman Oaks, California 91403.

8
9 On April 11, 2013, I served the foregoing document described as PLAINTIFF
10 JOHN C. TORJESEN'S EX PARTE APPLICATION REQUESTING THE COURT
11 RECONSIDER ITS RULING ALLOWING GONZALEZ TO DISMISS HIS THIRD
12 PARTY CLAIM; DECLARATION OF CHRISTOPHER BARNES; PROPOSED ORDER
13 on the interested party or parties in this action by placing a true copy thereof enclosed in a sealed
14 envelope addressed as follows:

15 Paul Orloff, Esq.
16 ORLOFF & ASSOCIATES APC
17 8402 Florence Avenue, Suite B1
Downey, CA 90240

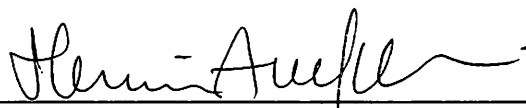
18 Jaime De Jesus Gonzalez
19 811 N. Alta Drive
20 Beverly Hills, CA 90201

21 SENT VIA FEDERAL EXPRESS, OVERNIGHT DELIVERY

22 I caused such envelope with postage thereon fully prepaid to be placed in the
23 United States mail at Sherman Oaks, California.

24
25 Executed on April 11, 2013, at Sherman Oaks, California.

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

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HERMINA AVAKIAN