

1 Marcio Sousa Sales  
2 Plaintiff, Pro Se  
3 160 W Camino Real, 102  
4 Boca Raton, FL 33432  
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7 **IN THE CIRCUIT OF THE 15TH JUDICIAL CIRCUIT IN AND**  
8 **FOR PALM BEACH COUTY, FLORIDA**

9 )  
10 )  
11 )  
12 **MARCIO SOUSA SALES,**

13 Plaintiff(s),

14 )  
15 **vs.**

16 )  
17 **ANTONIO DE ANDRADE,**

18 Defendant(s).  
19 )  
20 )  
21 )

Case No.: 50-2025-CA-000969-XXXXA-MB

**PLAINTIFF'S MOTION TO VACATE  
ORDER OF DISMISSAL AND  
REINSTATE CASE DUE TO VIOLATION  
OF DUE PROCESS, PENDING APPEAL,  
AND FAILURE TO RULE ON FILED  
MOTIONS**

22 **COMES NOW**, the Plaintiff, Marcio Sousa Sales, pro se, and respectfully moves this  
23 Honorable Court to vacate its Order dismissing the above-captioned matter, and in  
24 support thereof states the following:  
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**PLAINTIFF'S MOTION TO VACATE ORDER OF DISMISSAL AND  
REINSTATE CASE DUE TO VIOLATION OF DUE PROCESS, PENDING APPEAL, AND FAILURE TO RULE  
ON FILED MOTIONS**

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3 **I. PROCEDURAL BACKGROUND**  
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6 Plaintiff initiated this action following a small claims case in which he was wrongly  
7 sued in lieu of his son's LLC and where a judgment was entered against the wrong  
8 individual.

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10 Plaintiff timely filed multiple motions, including a comprehensive Second Amended  
11 Complaint, an objection to Defendant's Motion to Dismiss, and a written objection to  
12 Defendant's attempts to schedule a hearing.

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14 These motions remain fully briefed and legally ripe for ruling but were never addressed  
15 on the record prior to the May 14, 2025 hearing.

16 Defendant's counsel, despite knowing that the case involves pro se litigant rights and  
17 an active appellate case, continued efforts to obtain dismissal via procedural tactics,  
18 bypassing the need for judicial engagement with the merits.

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20 Plaintiff is a working-class litigant employed in the transportation sector, and at the  
21 time of the hearing was out of state attending a funeral and unable to appear due to  
22 active employment and financial limitations.

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24 Plaintiff had previously filed a Notice of Objection to the Hearing, which was ignored.  
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## II. LEGAL ARGUMENTS

### A. Dismissal Without Ruling on Pending Motions Violates Due Process

The Court dismissed this matter without addressing motions that were fully briefed and submitted in good faith. *Goldome Credit Corp. v. Edwards, 644 So. 2d 57 (Fla. 4th DCA 1994)*: It is reversible error to dismiss a case while ignoring pending substantive motions. *Moakley v. Smallwood, 826 So. 2d 221 (Fla. 2002)*: Courts must maintain the integrity of their proceedings and not permit dismissal while procedural issues remain unresolved.

### B. The Existence of a Pending Appeal Requires Judicial Restraint

The original small claims judgment that gave rise to this case is under appeal. This case is collateral and complementary to that action.

*Florida Power & Light Co. v. Glazer, 671 So. 2d 211 (Fla. 3d DCA 1996)*: Trial courts should avoid actions that interfere with appellate jurisdiction or frustrate its resolution.

*State v. Spradley, 985 So. 2d 1247 (Fla. 2008)*: Independent actions are permitted to proceed even while appeals are pending if based on fraud or fundamental error.

1 **C. Dismissal Without Merit Ruling Violates Art. I, § 21, Fla. Constitution**

2 Access to the courts must not be denied by technicalities or judicial oversight,  
3 especially for pro se litigants. *Houston v. Caldwell, 359 So. 2d 858 (Fla. 1978):*  
4

5 Dismissal is a drastic remedy and should only occur when absolutely necessary.

6 *Logue v. Book, 297 So. 3d 605 (Fla. 3d DCA 2020):* When the law is on the side of  
7 the plaintiff, the Court must allow a hearing on the merits.  
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10 **D. Plaintiff Is Entitled to Limited Assistance as a Pro Se Litigant**

11 Plaintiff, a non-native English speaker, has received procedural and translation  
12 assistance from a non-attorney. This is entirely permitted and does not constitute  
13 unauthorized practice of law. *Haines v. Kerner, 404 U.S. 519 (1972):* Courts must  
14  
15 liberally construe pro se filings.  
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17 *Jacobsen v. Filler, 790 F.2d 1362 (9th Cir. 1986):* Limited clerical or translation  
18 assistance does not constitute representation.  
19

20 *Florida Bar v. Brumbaugh, 355 So. 2d 1186 (Fla. 1978):* Clerical or form-completion  
21 help does not violate legal ethics if it does not cross into legal advice.  
22

23 **E. Sanctions and Tactics Used by Defendant's Counsel Should Be Rejected**

24 Counsel for Defendant is repeatedly trying to gain a procedural advantage, ignore  
25 constitutional violations, and misuse §57.105 as a threat.  
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1 **Rosenberg v. Gaballa, 1 So. 3d 1149 (Fla. 4th DCA 2009):** Improper use of §57.105  
2 against pro se litigants may itself be sanctionable. **Stockslager v. Stockslager, 275 So.**  
3 **3d 819 (Fla. 5th DCA 2019):** The law protects against tactics that intimidate pro se  
4 litigants or misuse procedure to avoid judicial review. **Topps v. State, 865 So. 2d 1253**  
5 **(Fla. 2004):** The doctrine of finality must give way when constitutional rights are  
6 threatened or violated.  
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### 9 10 **III. PRAYER FOR RELIEF**

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12 **WHEREFORE,** Plaintiff respectfully requests that this Honorable Court:

13 Vacate the Order of Dismissal entered on May 14, 2025;

14 Reinstatement this case immediately;

15 Stay any further proceedings until the appeal is resolved;

16 Rule on all pending motions on their merits;

17 Clarify that Plaintiff's limited procedural assistance was lawful and appropriate;

18 Reject any attempt by Defendant to suppress valid claims through procedural abuse;

19 Award costs and fees against Defendant's counsel for bad faith under Moakley and Fla.

20 Stat. §57.105(3);

21 Grant any such further relief as justice and due process require.  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this May 14, 2025, I filed the PLAINTIFF'S MOTION TO  
VACATE ORDER OF DISMISSAL AND

REINSTATE CASE DUE TO VIOLATION OF DUE PROCESS, PENDING  
APPEAL, AND FAILURE TO RULE ON FILED MOTIONS with the Clerk of the  
Court using the United States Certified Postal service system, which will send  
notification of such filing to the following defendant indicated below.

Additionally, I certify that I served a copy of the foregoing document via E-mail to  
Seth R Keller attorney for Andrade.

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