

Keller | Gibson

KellerGibson, PLLC

3800 Inverrary Blvd.
Suite 400D
Lauderhill, FL 33319
Telephone: 954-237-8093
Facsimile: 954-637-6855
seth@kellergibson.com

April 14, 2025

Sent by email to: unionmoving@hotmail.com and info@legalhelp4y.com

Sent by USPS First class mail, and by certified mail, return receipt requested to:

Marcio Sousa Sales
22187 Aquila Street
Boca Raton, FL 33528

Case No. 50-2025-CA-000969-XXXXA-MB
Case Name: Marcio Sousa Sales V. Antonio De Andrade

Re: Formal demand pursuant to Fla. Stat. § 57.105 to dismiss your amended complaint with prejudice.

Dear Mr. Sales,

As you know, this Law Firm represents Antonio De Andrade in the matter referenced above. From when you filed your initial complaint, up through now, our client's position has not changed. Therefore, for your review, and pursuant to Fla. Stat. § 57.105, we have the enclosed motion entitled "Defendant Antonio De Andrade's Motion for Sanctions for Raising Claims Unsupported in Law and Fact Directed to Plaintiff's Amended Complaint", which we will file if your case is not dismissed with prejudice within 21 days.

This letter and the attached motion are also directed to your proposed second amended complaint, filed on or around March 24, 2025, which may become legally operative if the court grants leave to amend.

We welcome you to contact our office at the number above should you wish to further discuss an amicable resolution or any aspect of this matter.

Very Truly Yours,



SETH R. KELLER, ESQ.

Enclosures: As stated herein

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 50-2025-CA-000969-XXA-MB

MARCIO SOUSA SALES,

Plaintiff,

v.

ANTONIO DE ANDRADE,

Defendant.

**DEFENDANT ANTONIO DE ANDRADE'S MOTION FOR SANCTIONS
FOR RAISING CLAIMS UNSUPPORTED IN LAW AND FACT DIRECTED
TO PLAINTIFF'S AMENDED COMPLAINT**

COMES NOW, DEFENDANT ANTONIO DE ANDRADE (hereinafter "Andrade"), by and through the undersigned counsel, and under Fla. Stat. § 57.105, and respectfully moves for sanctions against PLAINTIFF MARCIO SOUSA SALES ("Sales") for raising claims in his Amended Complaint, unsupported in law and fact, and in support states the following:

1. Fla. Stat. § 57.105(1) provides:

(1) Upon the court's initiative or motion of any party, *the court shall award a reasonable attorney's fee*, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:

(a) Was not supported by the material facts necessary to establish the claim; or

(b) Would not be supported by the application of then-existing law to those material facts.

2. Plaintiff's Amended complaint, has identical facts and identical parties with the underlying small claims action, case no. 50-2023-SC-011007-XXXX-SB. The instant case is a continuation of case no. 50-2023-SC-011007-XXXX-SB.
3. On February 14, 2024, Final Judgment on the merits was issued in case no. 50-2023-SC-011007-XXXX-SB against Sales, and in favor of Andrade. The same issues as in the instant case were fully litigated and Sales had ample opportunity to present his case.
4. Despite multiple post judgments motions and an appeal, the Final Judgment in favor of Andrade stands.
5. Pursuant to the well settled legal principals of res judicata and collateral estoppel, Sales should have never filed the amended complaint (on any subsequent amended complaint), because the dispute has already been judicially decided.
6. All Counts of Sale's amended complaint must be dismissed with prejudice for failure to state a cause of action, and pursuant to the principals of res judicata and collateral estoppel.
7. At this point, the correct avenue to contest the final judgment in the underlying action of 50-2023-SC-011007-XXXX-SB is through the appeals process, not through filing a new case.
8. For the reasons above, Plaintiff Sales should be appropriately sanctioned by paying all Defendant Andrade's reasonable attorney's fees and costs related to (i) Defending this baseless lawsuit. (ii) for having to pursue this Motion for Sanctions, and (iii) pre-judgment interest.
9. Plaintiff filed a second amended complaint on or around March 24, 2025, which is presently inoperative pursuant to Fla. R. Civ. P. 1.190 which provides that "A party may amend a pleading once as a matter of course at any time before a responsive pleading is served.." and "Otherwise a party may amend a pleading only by leave of court or by written consent of the adverse party." Plaintiff has not received leave of court, nor the consent of the adverse party.

However, if the court grants Plaintiff's request to file a Second Amended Complaint, then this motion is directed toward Plaintiff's Second Amended Complaint.

WHEREFORE, the Defendant ANTONIO DE ANDRADE, respectfully requests that this honorable court dismiss the amended complaint filed by Plaintiff MARCIO SOUSA SALES with prejudice, dismiss any subsequent amended complains with prejudice, and award sanctions in the forms of attorney's fees and costs to Defendant pursuant to § 57.105, Florida Statutes, and for such other and further relief as this court deems just and proper.

FLA. STAT. § 57.105 CERTIFICATE

Under Fla. Stat. § 57.105(4), I hereby certify that on this 14th day of April 2025 I served foregoing by USPS First class mail, and by certified mail, return receipt requested, upon Plaintiff, Marcio Sousa Sales, at 22187 Aquila Street, Boca Raton, FL 33528, and by email, unionmoving@hotmail.com, info@legalhelp4u.com. a copy of the foregoing before filing the Motion. *Defendant gives Plaintiff and their counsel (if any) 21 days to withdraw the Amended Complaint.*

Respectfully Submitted,

Keller Gibson, PLLC
3800 Inverrary Blvd., Ste 400-D
Lauderhill, FL 33319
Office: 954-999-5769
Fax: 954-206-0144
Primary E-Mail Address: seth@kellergibson.com.

By: /s/ Seth R Keller
Seth R. Keller
FL BAR NO. 91751