Electronically Filed by Superior Court of California, County of Orange, 01/28/2022 09:24:00 PM.
JCCP 5167 - ROA # 311 - DAVID H. YAMASAKI, Clerk of the Court By Olga Lopez, Deputy Clerk.

GERMAIN D. LABAT (SBN 203907)
germain.labat@gmlaw.com
PUNEET BHULLAR (SBN 329733)
puneet.bhullar@gmlaw.com
GREENSPOON MARDER LLP
1875 Century Park East, Suite 1900
Los Angeles, California 90067
Telephone: (323) 880-4520
Facsimile: (954) 771-9264

JAMES J. McGUIRE (New York SBN 2106664)
(Admitted Pro Hac Vice)
james.mcguire@gmlaw.com
MICHAEL MARRON (New York SBN 5146352)
(Pro Hac Vice Application Forthcoming)
michael.marron@gmlaw.com
GREENSPOON MARDER LLP
590 Madison Avenue, Suite 1800
New York, New York 10022
Telephone: (212) 524-5040
Facsimile: (212) 524-5050

Counsel to Defendant
Polymer80, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

FRANCISCO GUDINO CARDENAS, an individual; and

TROY MCFADYEN, in his Individual Capacity, and as Heir at Law and Successor in Interest to MICHELLE MCFADYEN, Deceased, ET AL.

Plaintiffs,

vs.

GHOST GUNNER INC., d/b/a GHOSTGUNNER.NET; DEFENSE DISTRIBUTED d/b/a GHOSTGUNNER.NET; CODY WILSON d/b/a GHOSTGUNNER.NET; BLACKHAWK MANUFACTURING GROUP INC., d/b/a 80PERCENTARMS.COM; RYAN BEEZLEY and BOB BEEZLEY d/b/a RBTACTICALTOOLING.COM; GHOST AMERICA LLC, d/b/a GHOSTGUNS.COM; GHOST GUNS LLC, d/b/a GRID DEFENSE and GHOSTRIFLES.COM; JUDGGERNAUT TACTICAL INC. d/b/a JTACTICAL.COM; MFY

Case No. JCCP 5167

[*Coordinated Cases CIVDS 1935422, date filed 11/14/2019, and 30-2019-01111797-CU-PO-CJC, date filed 11/14/2019*]

[Assigned for all purposes to Honorable William Claster, Department CX 104]

Filing Date: March 22, 2021
Trial Date: Not Yet Set

REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN FURTHER SUPPORT OF MOTION OF POLYMER80, INC. FOR DISMISSAL, ATTORNEYS' FEES, AND OTHER SANCTIONS, PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 128.7

RES. ID: 73664942
Date: February 4, 2022
Time: 9:00 a.m.

TECHNICAL SOLUTIONS LLC, d/b/a 5DTACTICAL.COM; TACTICAL GEAR HEADS LLC, d/b/a 80-LOWER.COM; AR-15LOWERRECEIVERS.COM and 80LOWERJIG.COM; JAMES TROMBLEE, JR., d/b/a USPATRIOTARMORY.COM; INDUSTRY ARMAMENT INC., d/b/a AMERICANWEAPONSCOMPONENTS.COM; THUNDER GUNS LLC, d/b/a THUNDERTACTICAL.COM; POLYMER80, INC.; and DOES 2 through 100, inclusive, Defendants.	Dept: CX104 Honorable William Claster

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT 1

ARGUMENT 2

I. Even Though They Are Largely Irrelevant To This Motion, Plaintiffs' Attempts To Discredit Polymer80's Submissions Are Wholly Specious. 2

II. Plaintiffs Still Have Not Shown That They Made Any Reasonable Inquiry, Or Possess Any Facts Or Allegations, Concerning Neal's [Non] Use Of A Polymer80 Product During His Ugly Rampage..5

III. Plaintiffs' Request For Sanctions Is Utterly Reflexive, Substantively Groundless, And Procedurally Defective. 9

CONCLUSION 10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page(s)

Cases

Abner Realty, Inc. v. Adm'r of Gen. Servs. Admin.,
1998 WL 410958 (S.D.N.Y. July 22, 1998) 7

Bockrath v. Aldrich Chem. Co.,
21 Cal.4th 71 (1999) 9

Bucur v. Ahmad,
244 Cal. App. 4th 175 (2016) 8

Carlston v. Shenson,
47 Cal. App. 2d 52 (1941) 7

Chapman & Cole v. Itel Container Int'l B.V.,
865 F.2d 676 (5th Cir. 1989) 7

Christian v. Mattel, Inc.,
286 F.3d 1118 (9th Cir. 2002) 6

CPF Vaseo Assoc., LLC v. Gray,
29 Cal. App. 5th 997 (2018) 10

Lak v. Lak,
50 Cal. App. 5th 581 (2020) 7

Peake v. Underwood,
227 Cal. App. 4th 428 (2014) 2

People v. Esquivel„
2019 WL 2592630 (Cal. Ct. App. June 25, 2019) 7, 8

Shek v. Children Hosp. Research Ctr. in Oakland,
No. 12-cv-04517, ECF No. 66 (N.D. Cal. Dec. 13, 2012) 6

Sindell v. Abbott Labs.,
26 Cal.3d 588 (1980) 2, 6

Terran v. Kaplan,
109 F.3d 1428 (9th Cir. 1997) 6

Statutes

Cal. Civ. Proc. Code § 128.7(b) 1

Other Authorities

1 Witkin, Cal. Evid. 5th Hearsay § 145 (2021) 7

Defendant Polymer80, Inc. ("Polymer80" or "Company") respectfully submits this Reply Memorandum of Points and Authorities in further support of its motion ("Motion"), pursuant to California Code of Civil Procedure Section 128.7, seeking dismissal of this action, attorneys' fees, and other sanctions against plaintiffs and their counsel. For all of the reasons set forth below and in the remainder of the record herein, this Motion is meritorious, and the Court should entirely grant it.

PRELIMINARY STATEMENT

The most salient aspect of plaintiffs' belated Memorandum Of Points And Authorities In Opposition To Polymer80, Inc. [SIC] Motion For Dismissal, Attorneys' Fees, And Other Sanctions ("Opposition")[1] is that which it does not and cannot say; to wit, plaintiffs, *still and to this day*, nowhere contend with any specificity that they have *ever* undertaken *any* "inquiry reasonable under the circumstances" to determine that the Company belongs in this lawsuit. Cal. Civ. Proc. Code § 128.7(b). For that reason alone, the Court should dismiss this suit and issue sanctions against plaintiffs and their counsel.

Plaintiffs' Opposition appears to misapprehend the nature of this Motion, treating it as a summary judgment application and so spending much time endeavoring to discredit Polymer80's submissions. To be sure, all of those efforts fail completely, as the Company can easily demonstrate that it received *all* of the pertinent Photographs[2] from the Tehama County Sheriff's Office through a Public Records Act request, and that its expert, Richard Vasquez, can identify from those Photographs that the guns depicted therein were made from some sort of metal, not polymer. As such, those guns cannot be and are not Polymer80 products. Yet, that reality is beside the point. At bottom, plaintiffs do not and cannot argue that they have had any good-faith basis for maintaining this action against the Company other than their continued invocation of a "market share liability" canard. Opposition at 1, 4, 13-15. Notably, however, plaintiffs do not dispute that even under that flawed and misguided theory, liability

[1] Plaintiffs' Opposition was dated, filed, and served on January 25, 2022, instead of the required date of January 24, 2022 which was set pursuant to a stipulated Court Order negotiated over several weeks between counsel to Polymer80 and to plaintiff. The Court, thus, has the authority to strike the Opposition. Polymer80, nevertheless, submits this Reply Memorandum of Points and Authorities, because it wishes to, and respectfully also believes that it should, prevail upon this Motion on its merits.

[2] Capitalized terms not defined herein have the same meaning as set forth in defendant's initial Motion.

cannot lie against Polymer 80, since "the Company has 'demonstrate[d] that it could not have made the product which caused [plaintiffs'] injuries.'" Motion at 14 (quoting *Sindell v. Abbott Labs.*, 26 Cal.3d 588, 612 (1980)). Plaintiffs have been on notice since at least August 2021 -- that is, for over five months -- that Polymer80 did not make or distribute the guns used by Neal. Nonetheless, plaintiffs cannot, and do not even attempt to, articulate a *single* reasonable basis for the proposition that the Company did, in truth, do so. The reason is simple and patent. Those guns unquestionably have no connection to Polymer80. As such, plaintiffs' intransigence in continuing to promulgate this action against the Company illuminates the "legally and factually frivolous" nature of the case against Polymer80. *Peake v. Underwood*, 227 Cal. App. 4th 428, 439 (2014). Consequently, the Court should sanction plaintiffs and their counsel.

ARGUMENT

I. Even Though They Are Largely Irrelevant To This Motion, Plaintiffs' Attempts To Discredit Polymer80's Submissions Are Wholly Specious.

Plaintiffs' entire position concerning "the original provenance of the photographs" is baseless. Opposition at 7-9. The origin of the Photographs is not a mystery, as plaintiffs' counsel either knows or should have known. On September 2, 2020, attorney Sean A. Brady, Esq. of Michel & Associates, P.C., then counsel to the Company, sent a letter to the Tehama County Sheriff's Office "constitute[ing] a request under the Public Record Act, California Government Code Section 6250, *et seq.*" *See* Exhibit E ("Public Record Request") to the Reply Declaration of Germain D. Labat, Esq., dated January 28, 2022 ("Labat Reply Decl."). That Request sought the following from that Sheriff's Department:

> 1. Any writing that constitutes a report, or otherwise contains facts, concerning the November 13 and 14, 2017 shootings reportedly perpetrated by Kevin Neal; and
>
> 2. Any writing that constitutes or contains an image of, or describes, the firearm believed to be used in the November 13 and 14, 2017 shootings reportedly perpetrated by Kevin Neal.

Id.

On or about January 28, 2021, Stacey I. Ogg, Legal Secretary of the Office of County Counsel, County of Tehama, sent to Ms. Laura Palmerin of Michel & Associates, P.C. a letter, entitled "Re: September 2, 2020 Public Records Request," stating: "[E]nclosed please find the USB with copies of

1 the photographs you have requested." *See* Labat Decl. Ex. A; Labat Reply Decl. ¶¶ 4-5. Employees from
2 Michel & Associates, P.C., which now represents several other defendants in this case, forwarded these
3 materials to undersigned current counsel to Polymer80, making crystalline that the Photographs depicted
4 in Exhibit A were received in response to the Public Records Request. Labat Reply Decl. ¶ 5.

5 Therefore, there can be no legitimate reason to doubt the veracity or comprehensiveness of the
6 Photographs. Counsel from Michel & Associates, P.C. requested "any" images depicting the firearms
7 used by Neal and received in response the (approximately) 69 Photographs. *See id.* ¶¶ 3-5. As a result,
8 plaintiffs' supposed "foundational issue" of whether "Ms. Palmerin s[ought] all known law enforcement
9 photographs of the Tehama shooting crime scenes," and whether "the photographs . . . depict every
10 weapon used in the Tehama massacre" evaporates into thin air. Opposition at 8. Plaintiffs' counsel's
11 feigned confusion surrounding the Photographs, however, does raise an important question. Why, in the
12 over four years since the underlying incident, have plaintiffs or their counsel not undertaken their own
13 investigation and served their own Public Records Act request on the Tehama County Sheriff's
14 Department? Might it be that they wanted to preserve their ignorance so as to "credibly" sue the entire
15 firearms parts industry?

16 In a similar vein, plaintiffs are fundamentally mistaken in seeking to undermine Mr. Vasquez's
17 testimony about the firearms in the Photographs. Plaintiffs concede that Mr. Vasquez "appears to have
18 a credible background in weapons" but complain that he "does not purport to have expertise in" the
19 "visual analysis of . . . photographs." Opposition at 9-10 (internal quotation marks omitted). They
20 correspondingly aver that "Mr. Vasquez appears to be just guessing what material is depicted, perhaps
21 based on his real-life assessment of how polymer-based weapons and metal-based weapons appear in-
22 person, but not based on any stated expertise in photographic evidence." *Id.* at 10. Plaintiffs are sorely
23 mistaken. "During [Mr. Vasquez's] tenure at ATF" he had "to review hundreds if not thousands of
24 photographs to make a preliminary if not conclusive evaluation of firearms" because he "could not visit
25 every office when firearms needed identification." *See* Reply Declaration of Richard Vasquez, dated
26 January 27, 2022, ("Vasquez Reply Declaration"), a copy of which is annexed to the Labat Reply
27 Declaration as Exhibit F, ¶ 5. Through his visits to firearms manufacturers, "extensive knowledge of
28 firearms," and his "knowledge and experience . . . [a]s a machinist and a welder and an instructor of

machining and welding methods," Mr. Vasquez "ha[s] the knowledge and experience to determine what is plastic and what is metal" and "can attest to . . . what wear marks on an aluminum receiver look like and what wear marks on a polymer receiver look like." *Id.* ¶¶ 5-6. Mr. Vasquez has explained that he has concluded that the firearms in the Photographs "are made of aluminum," because the wear marks are "shiny and indicate a different makeup from the finish that was applied on the surface of the firearm," whereas "[w]ear marks on a polymer receiver are the same color as the exterior of the receiver since the polymer firearm does not require a finish to be applied. *Id.* ¶ 7. Plainly, Mr. Vasquez has a sound basis for standing by his "bottom line" determination that the guns captured in the Photographs could not have been made from Company products.

Plaintiffs' other lamentations regarding Mr. Vasquez's analysis are equally evanescent and meritless. For instance, plaintiffs criticize the fact that some of the photos "simply show . . . gun parts *in situ*" or do not "offer a clear, unobscured view of most of the weapons" and therefore assail his conclusion regarding the lack of "P80 markings" as "pure conjecture based solely on the limited angles of the weapons." Opposition at 9-11. This analysis is extraordinary, and extraordinarily dubious. Despite a total of 69 Photographs of the same guns at all angles, plaintiffs are effectively positing that the Tehama County Sheriff's Office elected to only partially photograph certain guns. Of course, plaintiffs have absolutely no foundation for such nonsense and, more significantly, cannot point to any portion of any of the 69 Photographs depicting a "P80" or "Polymer80" marking, those that Mr. Daniel Lee McCalmon, a senior and longstanding Company executive, has testified are put on every Company product. *See* Motion at 7. Even worse, plaintiffs try to contort Mr. Vasquez's words but in doing so actually highlight his signal contribution to the debate before the Court. To be specific, plaintiffs assert, in a contrived "gotcha" gambit, that "Mr. Vasquez outright concedes that aside from a Bushmaster rifle and a Glock handgun, 'the remainder of the rifles [depicted in the photos] were not identifiable via markings.'" Opposition at 10 (emphasis in original). That is precisely Mr. Vasquez's and the Company's key point. Because the guns are not "identifiable via markings," they do not have "P80" or "Polymer80" markings on them and so cannot be Company products. Once again, Mr. Vasquez's cogent and common sense reasoning stands unrefuted.

Moreover, Mr. McCalmon's testimony further buttresses Mr. Vasquez's analysis. *See* Reply Declaration of Daniel Lee McCalmon, dated January 28, 2022, ("McCalmon Reply Declaration"), a copy of which is annexed to the Labat Reply Declaration as Exhibit G. In response to plaintiffs' aspersions that he "does not discuss any weapons expertise he might have," Mr. McCalmon has explained that he has "spent over eight years working in the firearms industry and accordingly h[as] acquired significant knowledge regarding firearms and their components." McCalmon Reply Decl. ¶ 2. Just as Mr. Vasquez has testified that Neal's guns were and are made of aluminum, Mr. McCalmon has discerned from the Photographs that the guns depicted therein "have an anodized finish, which reveals that they are made of aluminum, and not polymer, because polymer cannot be anodized (or it would melt)." *Id.* ¶ 4. Mr. McCalmon has also asserted that the items in the Photographs are not Company products because he "h[as] spent the past eight plus years working tirelessly to understand the Company's products, their aesthetic design, and the Polymer80 markings that go on those products. There are significant aesthetic differences in our products' magazine wells, as well as the trigger guards, as compared to the weapons in the photographs." *Id.* ¶ 3. Plaintiffs have *zero* rebuttal to Mr. McCalmon's expertise in the aesthetics of the Company's products other than their tired mantra that "the photographs are . . . incomplete and poorly lit." Opposition at 11-12. And, we ask the Court not to underestimate the dispositive fact that plaintiffs have not proffered any affirmative and contrary allegations or evidence of their own, which, as demonstrated next, elucidates that they have improperly maintained this suit against Polymer80 in derogation of their ethical obligations.

II. Plaintiffs Still Have Not Shown That They Made Any Reasonable Inquiry, Or Possess Any Facts Or Allegations, Concerning Neal's [Non] Use Of A Polymer80 Product During His Ugly Rampage.

The core conceit of the Opposition is the mistaken notion that plaintiffs can be forgiven for their lack of reasonable investigation, due diligence, and good-faith basis for suing Polymer80 owing to their, politely put, creative theory of "market share liability." *See* Opposition at 13-15. To this end, plaintiffs brandish the strawman contention that "P80's aversion to the market share theory of liability is not grounds for sanctions." *Id.* at 14 (capitalization altered). Just as that it is not Polymer80's actual position, plaintiffs' own stated stance is not actually the law. Even accepting plaintiffs' strained market share

theory, a plaintiff cannot maintain a suit thereunder, where a targeted defendant "demonstrates it could not have made the product which caused plaintiff's injuries." *Sindell v. Abbott Labs.*, 26 Cal.3d 588, 612 (1980). *See* Motion at 14. Plaintiffs do not dispute this uncontroversial legal principle anywhere in their Opposition. Consequently, to properly maintain a market share liability action against Polymer80, plaintiffs, to fulfill their ethical duties, must have undertaken a reasonable prior investigation and come up with *some* rational, good-faith basis for believing that Polymer80 is unable to demonstrate that its products were not part of Neal's gun. *See, e.g.*, Motion at 9-10. This, plaintiffs certainly have not done.

Indeed, in the face of the Company's substantial evidentiary submissions, all that plaintiffs can muster is supposition and conjecture to the effect that maybe there were other pictures of other guns involved, or perhaps Neal painted over the P80 insignia. *See* Opposition at 8, 11. Such sophistry is not enough, even if not already interred by what is set forth above. ***Simply stated, nowhere in the McFadyen Complaint's 46 pages, the Cardenas Complaint's 38 pages, or the Opposition's 15 pages, do plaintiffs present or suggest any reasonable investigation that they undertook or even one good-faith allegation that they can support regarding Polymer80's ability to establish its lack of connection to Neal's gun.*** Dismissal and sanctions are appropriate in these premises.

To be sure, as explicated in the Company's Motion -- and, tellingly, not refuted by plaintiffs[3] -- Courts *will* award sanctions in situations where, as here, a plaintiff's counsel neglects to pursue a reasonable investigation that would have revealed that a particular party should not have been sued in the first place. *See* Motion at 13. For instance, the Ninth Circuit has upheld sanctions against a plaintiff's attorney for filing a copyright case concerning dolls "without factual foundation," where "he would have been able to discover the copyright information simply by examining the doll heads." *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1129 (9th Cir. 2002). Numerous other decisions to the same effect are extant as well. *See, e.g.*, *Terran v. Kaplan*, 109 F.3d 1428, 1434-35 & n.7 (9th Cir. 1997) (upholding award of

[3] The Opposition also does not even attempt to distinguish the case law in Polymer80's Motion explaining that Courts will sanction a plaintiff for unreasonably suing the wrong party, where that plaintiff should have known not to do so. *See* Motion at 13. For example, in *Shek v. Children Hospital Research Center in Oakland*, No. 12-cv-04517, ECF No. 66 at 3-4 (N.D. Cal. Dec. 13, 2012), a case in which plaintiff "knowingly persisted in serving process against Mr. Joseph L. Robinson, the wrong defendant" and thereby "forced Mr. Robinson to needlessly incur litigation-related expenses and stress," the Court held that "[t]he failure of plaintiff to discontinue the action against Mr. Robinson, after knowing that he was not the intended defendant, violated Rule 11 of the FRCP."

Rule 11 sanctions where plaintiff alleged mental and emotional stress but his counsel never spoke with the relevant medical doctor or reviewed his medical records); *Chapman & Cole v. Itel Container Int'l B.V.*, 865 F.2d 676, 683-84 & n.11 (5th Cir. 1989) (upholding Rule 11 sanctions because plaintiff's counsel "filed the complaint based on unverified hearsay" and "rumors" and counsel "admitted that she did not ask [a witness] about the names, dates, places, or circumstances underlying the rumors that he had heard" and "thus failed to explore readily available avenues of inquiry and on that basis alone could be sanctioned for filing a factually frivolous appeal"); *Abner Realty, Inc. v. Adm'r of Gen. Servs. Admin.*, 1998 WL 410958, at *4-5 (S.D.N.Y. July 22, 1998) (imposing Rule 11 sanctions where plaintiff "could easily have determined who owned title to [a] New Jersey building by accessing the LEXIS/NEXIS database, the Internet, or by obtaining a copy of the current deed to the property from the Registrar of Deeds in East Orange for a modest fee.").

Here, plaintiffs' counsel, to our knowledge, did not even lodge a rudimentary Public Records Act request and cannot point to a solitary step that they *did* take to investigate Polymer80's role in the sad events giving rise to this proceeding. By their own admission, plaintiffs and/or their counsel did not deign to "respond in writing" to Company counsel's August 27 Letters, insofar as "P80 had only requested a written response to 'confirm' a dismissal that Plaintiffs were not going to make." Opposition at 4. What reasonable person, let alone lawyer, would think that the August 27 Letters somehow absolved him or her of a duty to follow up by conducting a reasonable investigation, pursuant to California Code of Civil Procedure Section 128.7, into the allegations that they presented to the Court?

In a similar vein, plaintiffs also seem to believe they can ignore the Company's submissions as supposedly "inadmissible, unreliable, and self-serving . . . and, as such, Plaintiffs have no obligation to rely on such submissions." Opposition at 12-13. Nevertheless, in support of this stance, plaintiffs cite but three authorities, which merely address the inadmissibility of evidence. *See id.* (citing 1 Witkin, Cal. Evid. 5th Hearsay § 145 (2021); *Carlston v. Shenson*, 47 Cal. App. 2d 52, 56 (1941); *Lak v. Lak*, 50 Cal. App. 5th 581 (2020)).[4] None holds that, in the context of Code Section 128.7 duties, a plaintiff may

[4] Plaintiffs elsewhere cite *People v. Esquivel*, 2019 WL 2592630 (Cal. Ct. App. June 25, 2019), for the similar notion that "Plaintiffs need not accept P80's paid (Vasquez) and self-interested (McCalmon) testimony wholesale." Opposition at 9, 12. *Esquivel* is an unpublished, non-citable opinion standing for the inapposite proposition that "[t]he court hearing claims of ineffective assistance is not required to accept defendant's

1 ignore the opposing party's evidence just because it is not (purportedly) currently in admissible form.
2 Even if plaintiffs do not wish to "accept . . . [the] declarations as true," Opposition at 12, their
3 professional obligation to continue investigating persists. As they correctly recognize, "a plaintiff's
4 attorney cannot 'just cling tenaciously to the investigation he had done at the outset of the litigation and
5 bury his head in the sand.'" *Id.* at 12 (quoting *Bucur v. Ahmad,* 244 Cal. App. 4th 175, 190 (2016)).
6 Unfortunately, that is exactly what plaintiffs' counsel continues to do in this matter.

7 The remainder of the Opposition's consists of little else than red herrings and gross
8 misstatements that seek to distract the Court from plaintiffs' failure to tender anything of substance on
9 the central issues at bar. Plaintiffs disingenuously claim that the Company "asserts that Plaintiffs
10 somehow violated Section 128.7 by pleadings [SIC] certain allegations 'on information and belief.'" *Id.*
11 at 14 (quoting Motion at 4). We respectfully ask the Court to look at Page 4 of the Motion; suffice to
12 say, that assertion is not set forth there. Plaintiffs also mischaracterize the Motion as saying that
13 "Plaintiffs were required to add allegations specific to P80 in their Complaints when identifying P80 as
14 a Doe defendant." *Id.* Polymer80 fully recognizes that, in general, allegations may be pleaded upon
15 information and belief, and that a plaintiff may add a party as a Doe defendant without concomitantly
16 "modify[ing] the existing complaint in any fashion." *Id.* Even so, the fact is that, *in these circumstances*,
17 plaintiffs' use of these mechanisms vividly underscores that they do not have a scintilla of proof or a
18 good-faith basis to aver that the Company was or is connected to Neal's gun and wrongdoing.

19 At bottom, plaintiffs have pursued the blunderbuss strategy of suing every gun component
20 manufacturer indiscriminately and sorting them out later. And, they take no pains to hide their conduct.
21 Their Complaints allege that defendants "in aggregate, were responsible for manufacturing and/or
22 selling a substantial percentage of all 'ghost gun' parts/kits . . . which entered into California leading up
23 to and during November 2017." *Cardenas* Compl. ¶ 89; *McFadyen* Compl. ¶ 105. Moreover, plaintiffs
24 proudly announce that they "make the majority of their allegations as against all Defendants
25 and . . . there is not a specific allegation about only P80." Opposition at 14. In actuality, the California
26 Supreme Court has expressly disapproved of exactly such a strategy, as follows:
27
28 unsupported, self-serving claims," and it also does not discuss Code Section 128.7 obligations. 2019 WL 2592630, at *14.

> [I]t is sharp practice to implead defendants in a products liability suit alleging long-term exposure to multiple toxins unless, after a reasonable inquiry, the plaintiff actually believes that evidence has been or is likely to be found raising a reasonable medical probability that each defendant's product was a substantial factor in causing the harm . . . .
>
> * * *
>
> A cancer-afflicted plaintiff suing every manufacturer of an airborne substance found in the Los Angeles basin probably would be exposed to sanctions for the suit, even if certain defendants eventually were found to have made a product that was a substantial factor in the onset of the plaintiff's cancer.

Bockrath v. Aldrich Chem. Co., 21 Cal.4th 71, 82-83 (1999).

In the end, Polymer80 is exactly the type of defendant which should be awarded these sanctions, given that, for all of the reasons set forth above, plaintiffs have not even attempted to articulate a good-faith belief, or reasonable inquiry undertaken, as to the Company's demonstrable lack of connection to Neal's gun and heinous acts.

III. Plaintiffs' Request For Sanctions Is Utterly Reflexive, Substantively Groundless, And Procedurally Defective.

All in all, for the same reasons that plaintiffs should be sanctioned, Polymer80 cannot be, given the palpably good-faith basis for this Motion. Plaintiffs fail to inform the Court that counsel to the Company repeatedly and for weeks offered, in substance, to withdraw the instant application, toll the statute of limitations, and informally furnish additional information to plaintiffs, in return for dismissal of this case without prejudice, thus according plaintiffs the ability to reinstitute the action, should the requisite evidence actually exist. *See* Labat Reply Decl. Ex. H. Plaintiffs' counsel never accepted this proposal. Otherwise put, the continued existence of this Motion is a problem of plaintiffs' (and their counsel's) own making.

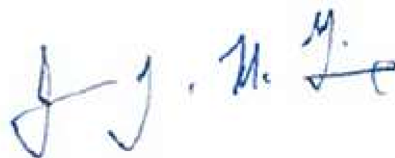
In any event, the Court should not entertain plaintiffs' knee-jerk, half-hearted plea for sanctions against Polymer80 for the elementary reason that the request is procedurally defective. As explained above, plaintiffs' Opposition was impermissibly filed on January 25, 2022, a day later than the Court-ordered deadline. *See, supra,* Footnote 1. Even if the Court decides not to completely strike the Opposition for this reason, the Court still should decline to countenance plaintiffs' sanctions application.

“Strict compliance with [Code Civ. Proc. Section 128.7’s] notice provisions serves its remedial purpose and underscores the seriousness of a motion for sanctions. As one court aptly put it, [c]lose is good enough in horseshoes and hand grenades, but not in the context of the sanctions statute.” *CPF Vaseo Assoc., LLC v. Gray*, 29 Cal. App. 5th 997, 1007 (2018) (alteration in original) (citations and internal quotation marks omitted). Accordingly, this Court should not levy sanctions based upon an untimely and procedurally defective request, especially where, as here, the parties seeking those sanctions have provided no precedential support for such penalties.

CONCLUSION

For all of the foregoing reasons and those arising from the remainder of the record of the Actions, the Court should grant the instant Motion pursuant to California Code of Civil Procedure Section 128.7, dismiss the Complaints against Polymer80 with prejudice, award the Company its attorneys’ fees and costs, and grant such other and further relief to Polymer80 as the Court may deem just and proper.

Dated: January 28, 2022 GREENSPOON MARDER LLP



By:__________________________
James J. McGuire