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JUGGERNAUT TACTICAL INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE - CIVIL COMPLEX CENTER

Hon. William D. Claster, Coordination Trial Judge

Coordination Proceeding Special Title (Rule 3.550))	Case No. JCCP 5167
GHOST GUNNER FIREARMS CASES)	SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE
Included actions:)	CASE NO. 30-2019-01111797
Cardenas v. Ghost Gunner, Inc. dba GhoseGunner.net, et al.)	SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO CASE NO. CIVDS193452
McFadyen, et al. v. Ghost Gunner, Inc. dba GhostGunner.net, et al.)	DEFENDANT JUGGERNAUT TACTICAL, INC.'S REPLY IN SUPPORT OF ITS MOTION FOR SANCTIONS PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 128.7
)	Res ID: 73828153
)	Date: October 14, 2022
)	Time: 9:00 a.m.
)	Dept.: CX104

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs fail to dispute any of the factual points that form the basis of Juggernaut
4 Tactical's Motion for Sanctions. Rather, they attempt to avoid the imposition of sanctions by
5 presenting arguments based purely on speculation. Plaintiffs call into question the legitimacy of
6 the evidence inspection that was organized by counsel for Tehama County and the Tehama
7 County Sheriff's Office ("TCSO"), and argue they have the right to "test" Juggernaut Tactical's
8 evidence, without presenting any factual basis to doubt it. In other words, Plaintiffs impliedly
9 concede they have no factual support for their claims against Juggernaut Tactical, but believe it
10 is appropriate to prosecute their claims anyway based merely on their skepticism of the
11 information known to them. Plaintiffs' counsel have a duty to only submit legal claims supported
12 by evidence and, if not supported by evidence, to specifically identify the allegations as *likely* to
13 have evidentiary support after a reasonable opportunity for investigation. CCP § 128.7(b)(3). By
14 continuing to pursue their claims on the sole basis of skepticism and conjecture, Plaintiffs'
15 counsel has failed to meet the requirements of Section 128.7 of the California Code of Civil
16 Procedure, and sanctions are warranted.

17 Juggernaut Tactical presented incontrovertible proof that it did not manufacture the parts
18 used to assemble the rifles that were misused to cause Plaintiffs' damages. (Schilsky Decl., at
19 Ex. A, Report of Michael Shain ("Shain Report")). Plaintiffs, being aware of this evidence, and
20 being incapable of disputing it, have an obligation to cease the prosecution of their claims against
21 Juggernaut Tactical. Plaintiffs' opposition is a superficial attempt at misdirection. They cannot
22 dispute the facts presented with evidence, so they call into question the truth and validity of the
23 evidence itself. Plaintiffs' position is inconsistent with Section 128.7. Juggernaut Tactical
24 respectfully requests that it be dismissed from this case as a sanction against Plaintiffs and their
25 counsel for their continued prosecution of claims that they know have no evidentiary support,
26 together with an award of costs incurred for making this motion to be imposed against Plaintiffs'
27 counsel, and such other relief the Court deems appropriate.

28 5351096

1 **II. ARGUMENT**

2 Plaintiffs have not – and cannot – contest the factual findings of Juggernaut Tactical’s
3 expert, Michael Shain. (Schilsky Decl., at Ex. A, Shain Report). The Shain Report is indisputable
4 and conclusive that Juggernaut Tactical did not manufacture the parts at issue. Faced with this,
5 Plaintiffs present arguments based on doubt and suspicion, and demonstrate that their claims
6 against Juggernaut Tactical have no evidentiary basis whatsoever. It is clear Plaintiffs and their
7 counsel have not made any “inquiry reasonable under the circumstances,” CCP § 128.7(b)(3),
8 that would support their allegations, and each of Plaintiffs’ points in opposition are misguided
9 and inadequate. Juggernaut Tactical has met its burden of establishing that sanctions are
10 warranted, and Plaintiffs have not presented a single justifiable basis why Juggernaut Tactical is
11 a defendant in this case or why sanctions should not be imposed.

12 **A. THE EVIDENCE INSPECTION WAS LEGITIMATE, AND ALL RELEVANT**
13 **FIREARMS AND PARTS WERE PRODUCED AND INSPECTED**

14 Plaintiffs’ first argument is intended to cast doubt on the legitimacy of the evidence
15 inspection attended by the parties. This argument is not grounded in reality, and borders on
16 conspiracy theory. The parties attended the evidence inspection after extensive conversations
17 and negotiations with counsel for Tehama County. Prior to the inspection, and again during the
18 inspection, it was affirmatively confirmed that the inspection included “all guns recovered from
19 the shooter whether used or not” (Supp. Schilsky Decl. at ¶3, Ex. A, Correspondence from
20 Counsel for Tehama County). There is simply no basis to doubt this representation short of
21 paranoia. Plaintiffs’ counsel participated in discussions with counsel for the County, and never
22 once was the validity or completeness of the inspection called into question. To the contrary, the
23 inspection was a complete evidence inspection of all of the recovered parts and firearms from the
24 incident. Plaintiffs and their counsel have no reasonable basis to doubt this – but even if they
25 doubt it, such doubt is not a proper basis to sue Juggernaut Tactical.

26 Plaintiffs argue that the parties do not know how the evidence was collected, “whether
27 there is reason to believe that other weapons may be in possession of other law enforcement
28 agencies,” and that “it cannot be ignored that there is a potential for bias and concealment of bad

5351096

1 facts.” (Pltfs’ Opp. at 6-7). But Plaintiffs provide no factual support for their unfounded
2 skepticism and aspersions. Plaintiffs’ counsel attended the evidence inspection with their expert.
3 Yet, glaringly missing from Plaintiffs’ opposition is any support from their expert even
4 attempting to contradict the Shain Report. Because they have no facts to support their claims
5 against Juggernaut Tactical, Plaintiffs merely cast doubt on the available evidence. Plaintiffs’
6 Mere suspicion and speculation does not meet the requirements of Section 128.7 of the California
7 Code of Civil Procedure, and cannot save Plaintiffs or their counsel from the imposition of
8 sanctions in the face of indisputable evidence that Juggernaut Tactical did not manufacture the
9 parts at issue. (Schilsky Decl., at Ex. A, Shain Report).¹

10 **B. PLAINTIFFS HAVE NO REASON TO DISPUTE JUGGERNAUT TACTICAL’S**
11 **EVIDENCE ABSENT EVIDENCE TO THE CONTRARY**

12 Plaintiffs next argue that they are entitled to “test” Juggernaut Tactical’s evidence, which
13 they dismiss as “self-serving.” Plaintiffs, however, have no evidentiary basis whatsoever to doubt
14 the sworn statement of Mr. King or the facts set forth in Mr. Shain’s report. (Schilsky Decl., at
15 Ex. A, Shain Report; King Decl.). It is Plaintiffs’ counsel’s obligation pursuant to Section 128.7
16 to “conduct a reasonable inquiry,” and to take into account the adverse party’s evidence. *Peake*
17 *v. Underwood*, 227 Cal.App.4th 428, 441 (2014). Plaintiffs’ opposition confirms that they have
18 failed to fulfill their obligations.

19 Plaintiffs misunderstand the requirements of Section 128.7. By prosecuting claims
20 against Juggernaut Tactical, Plaintiffs’ counsel have falsely certified that their factual contentions
21 have evidentiary support or are likely to have evidentiary support after a reasonable opportunity
22 for further investigation. CCP § 128.7(b)(3). The relevant issue, therefore, concerns the existence
23 or likely existence of “evidentiary support.” Tellingly, Plaintiffs have not set forth any
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25 ¹ Plaintiffs’ argument relies upon multiple layers of speculation. Their argument depends on the
26 potential existence of other firearms – of which there is no evidence – as well as the additional assumption
27 that, if other firearms are found to exist, then they also happen to be unserialized “ghost guns,” that also
28 happen to include parts manufactured by Juggernaut Tactical. This is not only conjecture, but conjecture
within conjecture within conjecture. Claims premised on such grounds fall far short of meeting the
requirements of Section 128.7.

1 evidentiary support for their claims against Juggernaut Tactical (because none exists), nor have
2 they demonstrated – or even argued – that their claims are *likely* to have evidentiary support.
3 Instead, Plaintiffs merely argue they are entitled to “test” the evidence for credibility. (Pltfs’ Opp.
4 at 7). Simply put, they are absolutely not entitled to do any such thing because they have failed
5 to meet their fundamental obligation pursuant to Section 128.7.² It is improper to pursue claims
6 on the sole basis of doubt, conjecture, and skepticism as Plaintiffs and their counsel are doing in
7 this case. Accordingly, Plaintiffs continued prosecution of claims against Juggernaut Tactical
8 warrants sanctions, including Juggernaut Tactical’s dismissal from this lawsuit.³

9 **C. PLAINTIFFS’ COUNSELS’ FAILURE TO MEET THEIR OBLIGATIONS UNDER**
10 **SECTION 128.7 WARRANTS SANCTIONS**

11 Plaintiffs acknowledge and concede that they are required to have an evidentiary basis
12 for their claims or must identify those claims that are likely to have evidentiary support upon
13 further investigation. (Pltfs’ Opp. at 8). They incorrectly argue, however, that they have met this
14 requirement as they have not presented any evidentiary basis for their claims against Juggernaut
15

16
17 ² Plaintiffs argue, for example, that they should be entitled to inspect Juggernaut Tactical’s
18 products. Juggernaut Tactical’s website is available to the public, and its products can be viewed or
19 purchased online. Plaintiffs should have performed this “reasonable inquiry,” and investigated the
20 viability of their claims *before* filing their Amended Complaint. This is their obligation under CCP §
21 128.7. In any event, Plaintiffs have no basis to doubt the information provided by Mr. King in his sworn
statement. And, pursuant to Section 128.7, without evidentiary support for their claims or a reasonable
22 basis to believe evidentiary support exists, they were obligated not to name Juggernaut Tactical as a
23 defendant, and they are now obligated to dismiss it immediately.

24 ³ It is improper to disregard Juggernaut Tactical’s evidence, including Mr. King’s sworn statement,
25 on the basis that it is purportedly “self-serving.” Pursuant to Section 2015.5 of the California Code of
26 Civil Procedure, any matter that may be supported by a sworn statement may be properly supported by a
27 declaration under penalty of perjury. California law explicitly designates a declaration as competent
28 evidence in support of summary judgment. Cal. Civ. Proc. Code § 437c; *see also Aguilar v. Atl. Richfield*
Co., 25 Cal. 4th 826, 843, 24 P.3d 493, 505 (2001) (“moving party must support the motion with evidence
including affidavits, declarations. . .”). Declarations are routinely accepted as evidence in California. *See*
Keniston v. Am. Nat. Ins. Co., 31 Cal. App. 3d 803, 811 (Ct. App. 1973) (declaration accepted in support
of summary judgment); *Cruz v. Fagor Am., Inc.*, 146 Cal. App. 4th 488, 498 (2007) (declaration accepted
as evidence of proper service of process). Pursuant to Section 128.7, Plaintiffs have an obligation to
consider the evidence presented to them. *Peake*, 227 Cal.App.4th at 441. The issue, as set forth above, is
whether Plaintiffs have any evidentiary support for their claim or any basis to believe evidentiary support
is likely to be obtained. They do not.

1 Tactical or identified how their claims are likely to have evidentiary support upon further
2 investigation. Plaintiffs' arguments are based solely on their unsupported disbelief of the
3 available evidence. Nowhere in Section 128.7 does it indicate that it is proper to prosecute claims
4 based on suspicion and speculation in the face of uncontradicted exculpatory evidence.

5 Plaintiffs argue that sanctions are not warranted because this case is in its early stages,
6 and they have not acted in bad faith. To the contrary, this case was first filed nearly three years
7 ago, and the parties attended a joint physical evidence inspection of all of the firearms and parts
8 that are at issue. Putting aside that Plaintiffs were obligated to perform a reasonable inquiry
9 *before* filing their Original Complaints in November 2019, they have now had three years to
10 develop any evidentiary support for their claims against Juggernaut Tactical. Yet, all they have
11 is conjecture, while Juggernaut Tactical has presented incontrovertible evidence that they are
12 obligated to consider. Plaintiffs are not entitled to prosecute claims based solely on their rejection
13 of the legitimacy of the evidence known to them. This is not what Section 128.7 requires. The
14 standard for violating the certification requirement is an objective standard requiring a well-
15 founded belief supported by evidence. *Bockrath v. Aldrich Chemical Co.*, 21 Cal.4th 71, 82
16 (1999). Under any objective measure, Plaintiffs' counsel have failed to meet their obligation.

17 Plaintiffs twice reference in their opposition that counsel for Juggernaut Tactical did not
18 request a meet and confer prior to filing the Motion for Sanctions, (Pltfs' Opp. at 2; 4), but that
19 was precisely the purpose of sending two separate courtesy letters over the course of two months
20 to counsel for Plaintiffs. Plaintiffs have multiple attorneys, and surely any one of them could
21 have responded to either the letter of June 20, 2022, or the letter of July 18, 2022, before the
22 Motion for Sanctions was filed on August 17, 2022. As indicated in Plaintiffs' opposition,
23 counsel for Juggernaut Tactical and counsel for Plaintiffs have since met and conferred about the
24 Motion for Sanctions, and further discussions are intended to take place. Until Juggernaut
25 Tactical is voluntarily dismissed from this lawsuit, however, Plaintiffs and their counsel remain
26 in violation of CCP § 128.7. Thus, while counsel for Juggernaut Tactical continues willing to
27 meet and confer in good faith, the only appropriate and acceptable result is Juggernaut Tactical's
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dismissal from this lawsuit. Should Juggernaut Tactical not be dismissed voluntarily, sanctions are warranted pursuant to CCP § 128.7 for all of the reasons previously discussed.

Juggernaut Tactical does not fault Plaintiffs themselves for their counsels' continuing violation of CCP § 128.7. Plaintiffs are not attorneys, and it is not their duty to be aware of the consequences of pursuing baseless claims in the face of uncontradicted exculpatory evidence. It is incumbent on counsel for Plaintiffs, however, to know and meet their obligations under CCP § 128.7. Accordingly, Juggernaut Tactical would waive its right for monetary sanctions against Plaintiffs, but maintains its request that it be dismissed from this case, and that Plaintiffs' counsel be ordered to reimburse the costs incurred in making this Motion.

III. CONCLUSION

For all of the foregoing reasons and those set forth Juggernaut Tactical's moving memorandum, and in the supplemental declaration filed concurrently herewith, the Court should grant the instant motion for sanctions pursuant to California Code of Civil Procedure Section 128.7, dismiss Plaintiffs' Amended Complaint against Juggernaut Tactical, issue an award of attorneys' fees and costs to be paid by Plaintiffs' counsel, and grant such other and further penalty as the Court may deem just and proper to preserve proper use of the litigation process as has been abused by Plaintiffs and their counsel in this matter.

Date: September 30, 2022

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1 **Re: Ghost Gunner Firearms Cases**
2 **Orange County Superior Court Case No. JCCP 5167**

3 **PROOF OF SERVICE – CCP §1013(a)(3)**

4 STATE OF CALIFORNIA/COUNTY OF Los Angeles

5 I am a citizen of the United States and an employee in the County of Los Angeles. I am
6 over the age of eighteen (18) years and not a party to the within action. My business address is
7 EDLIN GALLAGHER HUIE + BLUM LLP, 515 S. Flower Street, Suite 1020, Los Angeles,
8 California 90071.

9 On the date set forth below, I served the within:

10 **DEFENDANT JUGGERNAUT TACTICAL, INC.'S REPLY IN SUPPORT OF ITS**
11 **MOTION FOR SANCTIONS PURSUANT TO CALIFORNIA CODE OF CIVIL**
12 **PROCEDURE SECTION 128.7**

13 on the following parties:

14 SEE ATTACHED SERVICE LIST

15 **BY PERSONAL SERVICE:** I caused a copy of said documents to be hand
16 delivered to the interested party at the address set forth above.

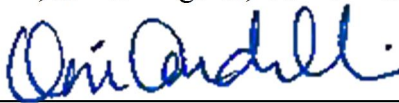
17 X **BY ELECTRONIC MAIL:** Based upon stipulation and agreement of the parties for
18 service by electronic transmission, I caused said document(s) to be sent to the persons
19 at the electronic mail address listed above. I did not receive within a reasonable
20 amount of time after the transmission, any electronic message or other indication that
21 the transmission was not successful.

22 **BY MAIL:** I caused such envelope to be deposited in the mail at Los Angeles,
23 California. I am readily familiar with the firm's practice for collection and processing
24 of correspondence for mailing. It is deposited with the U.S. Postal Service on that
25 same day in the ordinary course of business.

26 **BY FEDERAL EXPRESS:** I caused such envelope to be deposited in the appropriate
27 Federal Express envelope, to the Federal Express office located at 515 S. Flower
28 Street, Suite 1020, Los Angeles, California 90071, to be delivered by the next business
day. I am readily familiar with the firm's practice for collection and processing of
correspondence for transmittal by Federal Express. It is deposited with Federal
Express on that same day in the ordinary course of business.

 BY FACSIMILE: I caused said documents to be sent via facsimile to the interested
party at the facsimile number set forth below.

I declare under penalty of perjury that the foregoing is true and correct and that this
document is executed on September 30, 2022, at Los Angeles, California.



DESIREE CAUDILLO

SERVICE LIST

Ghost Gunner Firearms Cases

Our Clients: Juggernaut Tactical Inc.

Orange County Superior Court Case No. JCCP 5167 (30-2019-01111797)

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