SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 10/03/2025 TIME: 10:30 AM DEPT: C-70

JUDICIAL OFFICER: CAROLYN M. CAIETTI
CLERK: Albert Zarzoso
REPORTER/ERM: Darla Kmety CSR# 12956
BAILIFF/COURT ATTENDANT:

CASE NO: **37-2022-00045024-CU-PA-CTL** CASE INIT.DATE: 11/08/2022
CASE TITLE: **Tovar vs AMERICAN AUTOMATIC FIRE SUPPRESSION INC [IMAGED]**
CASE CATEGORY: Civil CASE TYPE: (U)PI/PD/WD Auto: Personal Injury (Auto)

HEARING TYPE: Motion Hearing
MOVING PARTY:

APPEARANCES
Daniel J Hanecak, Attorney for Plaintiff Victoria Tovar, present in person.
EDWARD R LEONARD, Attorney for Defendant(s), present in person.
Kianna Woods, attorney, present in person.
Robert Olson, attorney for Michael Dorazio, Defendant, present in person.

The Court hears argument of counsel.

The Court CONFIRMS the tentative ruling as follows:

Plaintiff Victoria Tovar's "OSC: Re Sanctions" Against Tyson & Mendes LLP, Attorney Edward Leonard and Attorney Kianna Woods is **DENIED**.

Procedurally, the Court is not convinced there is compliance with the 21-day safe harbor period required under C.C.P. section 128.7(c)(1). As explained in *Primo Hospitality Group, Inc. v. Haney* (2019) 37 Cal.App.5th 165, 173–174, a party seeking sanctions under section 128.7 follows a two-step procedure. First, the moving party serves notice of the motion for sanctions on the offending party. (*Ibid.*) Service of the motion starts a safe harbor period during which the motion cannot be filed with the court. (*Ibid.*) If the challenged paper, claim, defense, contention, allegation or denial is not withdrawn or corrected within a prescribed number of days, the second step is to file or present the motion for sanctions to the court. (*Ibid.*) Strict compliance with the safe-harbor provision is required; substantial compliance is not enough. (See, *Cromwell v. Cummings* (1998) 65 Cal.App.4th Supp. 10, 15 [application of the doctrine of substantial compliance would be inconsistent with the plain language of the safe harbor provision].)

Here, this matter originated from Plaintiff's Ex Parte Application for an Order Shortening Time to Have Heard Her Motion for Protective Order; Request for Order to Show Cause Hearing and Sanctions. (ROA 102.) After hearing from the parties, the Court granted the ex parte as to the order shortening time on a "Motion for Order to Show Cause Re: Sanctions," set this hearing on October 3, 2025 (and before the

Trial Readiness Conference on October 10) and set a briefing schedule. (ROA 107 – Minute Order dated July 31, 2025; ROA 108 - Order After Hearing filed July 31, 2025.)

On August 20, 2025, Plaintiff filed a memorandum in support of "OSC Re Sanctions" and a supporting declaration, and without a notice of motion. (ROA 126.) Defendants opposed (ROA 143-146) and Plaintiff replied (ROA 148.) Only in the memorandum did Plaintiff raise C.C.P. section 128.7(b). The original ex parte and Order After Hearing do not reference C.C.P. section 128.7.

The record does not reflect service of a stand-alone motion, a 21-day safe harbor period for Defendants to have an opportunity to withdraw and/or correct the filings with the Court, and then the filing of a motion with notice describing the specific conduct the party allegedly violated.

Even if this string of events can be construed as an OSC by the Court on its own motion, the 21-day safe harbor period is still required. C.C.P. section 128.7(c)(2) states, "[o]n its own motion, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b), unless, within 21 days of service of the order to show cause, the challenged paper, claim, defense, contention, allegation, or denial is withdrawn or appropriately corrected."

Here, and first, the order as proposed by Plaintiff does not sufficiently state the specific conduct that appears to violate subdivision (b). Second, the record does not reflect a proof of service of this order at ROA 108, precluding the Court from confirming whether Defendants received 21 days to withdraw or correct their filings. (*Interstate Specialty Marketing, Inc. v. ICRA Sapphire, Inc.* (2013) 217 Cal.App.4th 708, 716 ["The text of the statute in subdivision (c)(2) plainly provides for a 21–day safe harbor that begins to run from the *service of notice* of the OSC hearing at which sanctions under section 128.7 might be imposed."].)

For these reasons, the order to show cause (or motion) is **DENIED**.

Notwithstanding the denial on procedural grounds, the Court is deeply troubled by the conduct of Defense counsel. Defendants admitted to submitting authority that was miscited, non-existent or inapposite. (ROA 143 – Opp., at p. 4:7-9.) A California Court of Appeal recently published an opinion warning counsel about using fake legal authority generated by Artificial Intelligence ("AI") sources. (*Noland v. Land of the Free, L.P.* (Sept. 12, 2025) ___Cal.App.5th ___, 2025 WL 2629868.) "Simply stated, no brief, pleading, motion, or any other paper filed in any court should contain *any* citations-whether provided by generative AI or any other source – that the attorney responsible for submitting the pleading has not personally read and verified." (*Id*., at * 1 [original emphasis] (further ruling the party's citation to fabricated legal authorities violated "a basic duty counsel owed to his client and the court").)

Attorney Edward Leonard, a supervising attorney, acknowledged his failure to properly supervise his associate attorney, Kianna Woods. (ROA 145 – Declaration of Edward Leonard, at ¶ 8.) Notably, Attorney Woods scarcely, at best, acknowledged "any alleged misconduct or deficiencies in representation were attributable to [her] individual actions" but without any explanation or offer of apology. (ROA 146 – Declaration of Kianna Woods, at ¶ 5.)

One of Defendants' most recent motions contain both citations to cases that do not appear to exist and factual misrepresentations. On July 23, 2025, Defendants filed a motion to compel an independent medical examination of Plaintiff. (ROA 100 – Motion to Compel IME.) There is a citation to a case that does not exist (e.g., *id*., at p. 6:15-18) and a citation that does not stand for the premise asserted (e.g., *id*., at p. 6:1-3.)

In addition, Attorney Woods' supporting declaration contained misrepresentations to the Court. As indicated in the ruling on the motion, Attorney Woods maintained she attempted to meet and confer with Plaintiff's counsel regarding the scheduling of the IME. In opposition, Plaintiff maintained there was no communication from Attorney Woods during the applicable time frame other than to acknowledge receipt of an email. Defendants did not reply. (See, ROA 125 – Minute Order dated Aug. 15, 2025 [IME Ruling].) The motion also maintained the demand was made on July 11, 2025 (ROA 100, Decl. of Woods, ¶5), and Plaintiff failed to respond within the period required by C.C.P. section 2032.230. This could not be accurate. The Court found the proof of service of the demand for IME showed it was not served until eleven days later, July 22, 2025, the day before the motion was filed and the 20-day period to object had not expired. This discrepancy (made under oath) was not addressed in Defendants' reply as well. (*Ibid*.)

Defendants also cite to a Notice of Errata filed in relation to the IME motion as having cured any false citations or misrepresentations. (ROA 104 – Notice of Errata.) While the Notice of Errata removed citations to two of the cases cited, it more so "corrected" other citations to repealed statutes. It also minimized the citations to "clerical errors" that did not alter the substance of the legal argument presented. (Notice of Errata, at ¶ 9.) A stark contrast to the position taken by Defendants now.

Despite Attorney Leonard and Olson's acceptance of responsibility, Defendants and their counsel still attempt to shift blame on Plaintiff, which is inappropriate and not persuasive. Plaintiff's theory of the case, "tenor," correspondence etc. plainly did not cause Defendants to submit to the Court miscited authority, fake case citations and factual misrepresentations. For the record, while the Court accepts the apologies it made, it does not approve of Defendants and their counsel's course of conduct admitted to in this matter.

All of this conduct is contrary to the rules of professional responsibility and is the type of conduct that erodes trust in the legal profession. One of the attorneys is a member of the respected ABOTA organization which prides itself on "civility, integrity and professionalism" as well as to protect the independence of the judiciary and the rule of law. This conduct runs afoul of this noble standard that frankly all attorneys and those in the legal profession should practice each day.

This is hopefully an experience that will never be repeated by the attorneys involved in this matter, let alone others in the profession.

Concluding Orders

For these reasons, the motion is **DENIED**. Sanctions will not be imposed.

If the tentative ruling is confirmed without modification, the minute order will be the Court's final ruling on the motion. Plaintiff is ordered to serve written notice of this ruling on all appearing parties, including Attorneys Edward Leonard, Robert Olson and Kianna Woods (at the State Bar registered address) by October 7, 2025.

Carolyn M. Caietti

Judge Carolyn M. Caietti