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7 The People of the State of California

8 [No Fee, per Cal. Gov't. Code § 6103]

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

12
13 THE PEOPLE OF THE STATE OF CALIFORNIA,

14 Plaintiff,

15 vs.

16 POLYMER80, INC., a Nevada corporation;
17 DAVID BORGES, an individual; LORAN
18 KELLEY, an individual,

19 Defendants.

CASE NO.: 21STCV06257

[Assigned for all purposes to the Honorable Daniel S. Murphy; Dept. 32]

NOTICE OF MOTION AND MOTION TO COMPEL FURTHER VERIFIED RESPONSES TO THE PEOPLE OF THE STATE OF CALIFORNIA'S SPECIAL INTERROGATORIES AND REQUESTS FOR PRODUCTION TO DEFENDANTS, AND FOR A TRIAL CONTINUANCE AND MONETARY SANCTIONS

[Separate Statement and Declarations of Michael J. Bostrom, Duane R. Lyons, and Andrew M. Brayton filed concurrently herewith, and Proposed Order lodged concurrently herewith]

Hearing Date: April 8, 2022
Time: 8:30 a.m.
Department: 32
Reservation ID: 190439114363

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26 Complaint Filed: February 17, 2021

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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on April 8, 2022 at 8:30 a.m., or as soon thereafter as this
3 matter may be heard, in Department 32 of the Superior Court of California for the County of Los
4 Angeles, Central District, Stanley Mosk Courthouse, 111 N. Hill Street, Los Angeles, CA 90012,
5 Plaintiff the People of the State of California will and hereby does move this Court, pursuant to
6 California Code of Civil Procedure section 2030.300(a)(1) & (3), for an order compelling
7 Defendants Polymer80, Inc., David Borges, and Loran Kelley to provide within 7 calendar days of
8 this Court's ruling:

- 9 1. Verified responses to all of the People's discovery requests;
- 10 2. Complete and straightforward responses, under oath, to the People's Special
11 Interrogatory Nos. 3, 4, 6, 7, 10, 11, 13, 15, 16, 20, 22, and 23; and
- 12 3. Provide documents in response to the People's Requests for Production of
13 Documents, First Set, Nos. 3 through 10, and 12 through 34.¹

14 The People additionally move this Court for a continuance of trial pursuant to California
15 Rule of Court 3.1332, as well as for sanctions in the amount of \$15,000 against Defendants as a
16 result of their discovery misconduct, pursuant to Rule 2.30 and C.C.P. § 2023.010.

17 Good cause justifies the discovery and other relief sought by this Motion. This Motion is
18 made on the grounds that the information sought by the Special Interrogatories and Requests for
19 Production is relevant to the subject matter of the action and is likely to lead to the discovery of
20 admissible evidence, and on the further grounds that Defendants have refused to provide
21 "complete and straightforward" responses to these written discovery requests, C.C.P. §
22 2030.220(a), to produce responsive documents, C.C.P. § 2031.310, or to verify their responses.
23 C.C.P. § 2031.250. The request for a continuance of trial is made on the grounds that Defendants'
24 unjustified delay has made it impossible for the People to prepare adequately for a June 7 trial.

25 _____
26 ¹ At the February 16, 2022, hearing on Defendants' bifurcation motion, the Court ordered
27 Defendants immediately upon a finding of liability to produce information regarding the
28 Individual Defendants' personal worth, which is the subject of Plaintiff's Request for Production
No. 11. Brayton Decl. ¶ 1.

1 Sanctions are warranted because Defendants have failed to respond or to submit to an authorized
2 method of discovery, have made, without substantial justification, unmeritorious objections to
3 discovery requests, and have given evasive responses to discovery requests. C.C.P. §§ 2023.010
4 (d), (e), (f).

5 Counsel have met and conferred in a reasonable and good faith attempt to resolve the
6 issues raised by this Motion and were not able to do so. Accordingly, the People request that the
7 Court enter an order compelling Defendants to serve verified responses to all of the People’s
8 discovery requests, complete responses to Special Interrogatory Nos. 3, 4, 6, 7, 10, 11, 13, 15, 16,
9 20, 22, 23, and to produce all non-privileged documents in their possession, custody, or control
10 responsive to the People’s Request for Production of Documents Nos. 3 through 10, and 12
11 through 34 within 7 days of the Court’s Order. The People further request that the Court discuss
12 and grant an appropriate continuance of trial at the hearing, as Defendants’ delay tactics have
13 prevented the People from timely preparing for trial. Finally, the People request \$15,000 in
14 sanctions against Defendants.

15 This Motion is based upon this Notice of Motion and Motion, the attached Memorandum
16 of Points and Authorities, the Declaration of Michael J. Bostrom and attached exhibits filed
17 concurrently herewith, the Declaration of Duane R. Lyons, the Declaration of Andrew M. Brayton,
18 the Separate Statement in support of this Motion, all records and pleadings on file with the Court
19 in this matter, all other matters of which the Court may take judicial notice, and all further
20 evidence and argument that may be presented at or before the hearing on this Motion.

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1 DATED: February 22, 2022
2 Michael N. Feuer, City Attorney
3 Michael J. Bostrom, Assistant City Attorney
4 Christopher S. Munsey, Deputy City Attorney
OFFICE OF THE LOS ANGELES CITY
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Respectfully submitted,
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Robert M. Schwartz
Duane R. Lyons
Jennifer W. Stone
Andrew M. Brayton

By /s/ Michael J. Bostrom
Michael J. Bostrom
Attorneys for Plaintiff, The People
of the State of California

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11:39 pm, available at <https://losangeles.cbslocal.com/2022/01/13/lapd-la-county-sheriff-homicides-up-2021/> 1

1 **INTRODUCTION**

2 Defendants Polymer80, Inc., David Borges, and Loran Kelley’s conduct throughout this
3 case has been geared to delaying its resolution and denying the People the ability to prove their
4 claims. Just as with Defendants’ serial filing of pleading or stay motions, all of which they have
5 lost, Defendants have dragged their feet in responding to the People’s discovery requests. Over
6 one year has passed since the People filed their Complaint. Over six months have passed since the
7 People served their first set of Requests for Production of Documents, Special Interrogatories, and
8 Form Interrogatories. By improperly refusing to respond to any of these requests while their
9 motions were pending, failing to come prepared to every meet and confer, and now stalling to run
10 out the clock on trial preparation, Defendants have dragged the discovery process out to make it
11 impossible for the People to be ready for trial on June 7.

12 To date, Defendants have replied to only a handful of Interrogatories, and have yet to
13 produce even a single page of discovery that was not already produced to the federal government
14 last year. As the People have made clear in their Complaint and in their oppositions to each of
15 Defendants’ repetitive motions, the claims asserted in this case are targeted at addressing an urgent
16 threat to public safety. According to recent statistics released by the Los Angeles Police
17 Department, 1,499 people were shot in the City of Los Angeles in 2021, up from 1,337 in 2020,
18 and the total number of guns recovered by the LAPD jumped from 6,536 in 2020 to 8,661 in
19 2021.² And as cited in the People’s Opposition to Defendants’ Motion for Bifurcation, the number
20 of untraceable “ghost guns” saw a similar leap from 813 recovered in 2020 to 1,921 in 2021 **and**
21 ***Defendants supplied 90% of them.***³

22 The People now respectfully request that the Court compel Defendants to produce all
23 documents and information requested within 7 days of the date of its Order, grant a continuance of
24 trial, and impose sanctions on Defendants in the amount of \$15,000.

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26 ² *LAPD, LA County Sheriff Find Homicides Up Again In 2021*, CBS Los Angeles, Jan. 13, 2022
11:39 pm, available at <https://losangeles.cbslocal.com/2022/01/13/lapd-la-county-sheriff-homicides-up-2021/>.

27 ³ *Id.*

1 **BACKGROUND**

2 On February 17, 2021, Plaintiff sued Defendants for violations of California’s Unfair
3 Competition Law (“UCL”) and public nuisance statute based on their sales of Buy Build Shoot
4 kits, frame kits, and receiver kits. These kits provide the purchaser with everything they need to
5 manufacture a firearm or a completed frame or receiver in violation of state law. Complaint at
6 ¶ 40 n.26. Plaintiff seeks an injunction prohibiting Defendants from continuing to violate
7 California’s UCL and public nuisance statute, monetary relief in the form of statutory penalties,
8 and the creation of an abatement fund, in addition to costs and any other relief that the Court may
9 deem proper. *Id.*, Prayer for Relief, ¶¶ 1–4.

10 On June 17, 2021, Defendants filed their Answer, asserting a general denial and 36
11 affirmative defenses. The People served their first set of discovery requests less than two months
12 later, on August 6. Bostrom Decl. ¶ 2, Exhs. 1-3. On August 30, when replacement counsel for
13 Defendants requested a four-week extension of the discovery response deadline to October 8,
14 2021, the People extended that professional courtesy. *Id.* ¶ 3.

15 Instead of providing those discovery responses and documents, on September 23,
16 Defendants moved for Judicial Abstention and Dismissal or, in the Alternative, for a Stay. When
17 Defendants finally served their unverified discovery responses on October 8, they produced no
18 documents and provided no substantive responses to the People’s Interrogatories. Instead,
19 Defendants asserted a jumble of boilerplate objections, and refused to provide any documents or
20 information, or even to “determine whether” information or documents “responsive to” the request
21 at issue “exist[],” on the basis that they were waiting on entry of a protective order and a decision
22 on their Motion for Judicial Abstention—which would not be heard for over a month. *Id.* ¶¶ 4-5,
23 Exhs. 4-6.

24 Over the next few months, the parties met and conferred several times to clarify their
25 positions, making little progress. Lyons Decl. ¶ 1; Bostrom Decl. ¶ 15, Exh. 15. Even after the
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1 Court denied Defendants’ Judicial Abstention Motion and entered the protective order,⁴
2 Defendants continued to delay production. They finally served supplemental responses to the
3 People’s requests for production and special interrogatories on December 10, 2021. Bostrom
4 Decl. ¶ 6, Exhs. 7-8. In response to a number of the People’s requests, Defendants granted
5 themselves a stay of all discovery by refusing to provide information or documents “because of
6 Defendants’ present intention to move to bifurcate the liability and remedy phases” of the case.⁵
7 Bostrom Decl. ¶ 6, Exhs. 7-8. And in response to five out of the People’s 34 requests for
8 production, Defendants agreed to produce documents subject to the request “being limited to a
9 reasonable set of custodians,” but proposed no such custodians. *Id.* ¶ 6, Exh. 7; Supplemental
10 Responses to Request for Production Nos. 8, 10, 27, 31, 34.

11 Finally, on January 6, 2022—five months after service of the Plaintiff’s discovery
12 requests—Defendants began producing documents in response to the People’s requests for
13 production of documents Nos. 1 and 2, which consisted of documents that Defendants had already
14 gathered and produced to other government agencies. *Id.* ¶ 9. On January 12, Defendants stated
15 their intention to complete their production of documents as to Plaintiff’s other requests by the end
16 of January. *Id.* ¶ 10, Exh. 10. That was another broken promise. As of the date of this filing,
17 Defendants have not even started any such production. Only on February 3, and only after
18 repeated requests from the People, did Defendants even propose a list of custodians for the
19 remaining requests, but no search terms. *Id.* ¶ 14, Exh. 14. The People in turn proposed a revised
20 set of custodians and a list of search terms, which Defendants have continued to “evaluate.” *Id.* ¶
21 15, Exh. 15.

22 Defendants’ approach to the People’s Form Interrogatory No. 15.1 is emblematic of their
23 dilatory behavior. Defendants initially provided a frivolous response (objecting on the basis that

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25 ⁴ Even though the People’s proposed protective order was based on this Court’s standard form,
26 and despite the fact that the People provided Defendants with a draft of the order in April 2021,
27 Defendants managed to drag out the process until mid-December. Bostrom Decl. ¶ 1.

28 ⁵ Despite stating this “intention” on December 10, Defendants delayed nearly another month
before filing the bifurcation motion on January 5, 2022.

1 the interrogatory was “premature” and refusing to provide any information), Bostrom Decl. ¶¶ 4-5,
2 Exh. 6, stood behind that objection when the People challenged it, *id.* ¶ 13, Exh. 13, failed to meet
3 their own proposed timeline after conceding that they needed to amend the response, and instead
4 attempted to forestall a Motion to Compel by serving unverified supplemental responses on the
5 Saturday night of a holiday weekend before the deadline for the People’s motion. Bostrom Decl. ¶
6 16, Exh. 16. As of the date of this filing, Defendants have produced to the People only the same
7 documents they produced to the federal government (as the People requested in Request for
8 Production Nos. 1 and 2), and still have not begun producing documents responsive to the
9 People’s remaining requests.⁶ Defendants have also refused to produce any information in
10 response to straightforward Interrogatories, and failed to provide verifications from all Defendants
11 for any discovery responses. To address these deficiencies and other outstanding disagreements
12 on specific requests, and with trial set for June 7, the People have no choice but to bring this
13 Motion to Compel Further Responses, for a Trial Continuance, and for Sanctions.⁷

14 **ARGUMENT**

15 **I. DEFENDANTS SHOULD BE COMPELLED TO PROVIDE COMPLETE**
16 **DISCOVERY RESPONSES**

17 The right to discovery is to be construed liberally “so that parties may ascertain the
18 strength of their case and at trial the truth may be determined.” *Williams v. Superior Ct.*, 3 Cal.
19 5th 531, 538 (2017); *see also Stewart v. Colonial W. Agency, Inc.*, 87 Cal. App. 4th 1006, 1013
20 (2001) (discovery is permitted where it “might reasonably assist a party in evaluating the case,
21 preparing for trial, or facilitating settlement.”). Any doubts are resolved in favor of permitting
22 discovery. *Glenfed Dev. Corp. v. Superior Court*, 53 Cal. App. 4th 1113, 1119 (1997).

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26 ⁶ Defendants have also asserted significant privilege objections but have not, to date, produced a
privilege log supporting those objections.

27 ⁷ Defendants agreed to the People’s requested extension deadline of February 22 to file this
28 Motion. Bostrom Decl. ¶ 17, Exh. 17.

1 **A. Defendants Should Be Compelled to Verify All Responses**

2 To date, Defendants’ have provided a mix of verified and unverified discovery responses.
3 The randomness with which Defendants have approached this most basic and fundamental
4 discovery obligation is representative of their attitude towards the rules thus far: no Defendant
5 verified the Supplemental Responses to the People’s Special Interrogatories and only Polymer80
6 verified its Second Supplemental Responses to the People’s Special Interrogatories; no Defendant
7 verified their Supplemental Responses to the People’s Requests for Production; and no Defendant
8 verified their Second Supplemental responses to the People’s Form Interrogatories, just served on
9 February 19. Bostrom Decl. ¶¶ 6, 11-12, 16, Exhs. 7-8, 11-12, 16. Thus, as a matter of law, the
10 People have received no responses as to the majority of their discovery requests, including no
11 responses to their form interrogatories from Defendant David Borges and no responses from
12 Defendant Loran Kelley whatsoever. *See* Cal. Civ. Proc. Code §§ 2030.210, 2031.250; *Appleton*
13 *v. Superior Ct.*, 206 Cal. App. 3d 632, 636 (Ct. App. 1988) (“Unsworn responses are tantamount
14 to no responses at all.”). The People respectfully request that all Defendants be compelled to
15 comply with this requirement within 7 days.

16 **B. Defendants’ Objections to the People’s Special Interrogatories Are Without**
17 **Merit, and Defendants Should Be Compelled to Answer Them**

18 **1. Defendants Have, Without Explanation or Justification, Unreasonably**
19 **Delayed Their Responses**

20 Over six months have passed since the People served their Special Interrogatories. After
21 indicating that they would do so, as of the date of this filing, Defendants have still failed to
22 provide responses to Nos. 3, 4, 6, 7, and 10. Defendants at first (improperly) delayed doing so
23 until the Court’s entry of a protective order and during the pendency of their Abstention Motion.
24 *See Mattco Forge v. Arthur Young & Co.*, 223 Cal. App. 3d 1429, 1436, n.3 (1990) (noting that it
25 is sanctionable to refuse to provide discovery because a potentially dispositive motion is pending).
26 They further delayed in responding to Nos. 4 and 7 during the pendency of their Motion for
27 Bifurcation. Even worse, even though both the Abstention Motion and Motion for Bifurcation
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1 have been denied, Defendants have still not produced the requested information. They should be
2 compelled to provide it within 7 days.

3 **2. Defendants’ Objections to Specific Interrogatories Are Without Merit**

4 Defendants have also objected to Special Interrogatory Nos. 11, 15, 16, 20, 22, and 23 on
5 illegitimate grounds. “On receipt of a response to interrogatories, the propounding party may
6 move for an order compelling a further response if the propounding party deems that ... [a]n
7 answer to a particular interrogatory is evasive or incomplete” or if “[a]n objection to an
8 interrogatory is without merit.” Cal. Civ. Proc. Code § 2030.300(a)(1) & (3). “While the party
9 propounding interrogatories may have the burden of filing a motion to compel if it finds the
10 answers it receives unsatisfactory, the burden of justifying any objection and failure to respond
11 remains at all times with the part resisting an interrogatory.” *Williams*, 3 Cal. 5th at, 541.

12 In Special Interrogatory No. 11, the People asked Defendants to “state the dollar amount of
13 their total annual profit from sales and shipments of frame or receiver kits to customers,
14 distributors, and retailers in California for each year from the date of registration of the website
15 through present.” In response, Defendants have refused to provide any information. They claim
16 that the term “profit” is “vague, ambiguous, overbroad, and unduly burdensome.” That’s game-
17 playing. Defendants are a business and its co-owners. They know what the word “profit” means.
18 *See Cooper v. San Bernardino Sheriff*, 2017 WL 10511570, at *5 (C.D. Cal. July 5, 2017)
19 (“[W]here an interrogatory has been objected to as vague and ambiguous, a party must exercise
20 reason and common sense to attribute ordinary definitions to terms and phrases utilized[]”). The
21 word “profit” is reasonably understood as a net gain, calculated by subtracting costs from
22 revenues. Defendants have not explained the basis for their confusion or why this information
23 cannot be provided by reference to a balance sheet. They should be compelled to do so.

24 Defendants objected to Special Interrogatory Nos. 20, 22, and 23, on the basis that these
25 Interrogatories call for a legal conclusion. They do not:

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- 1 • **No. 20:** State whether you believe any frame or receiver kit, once completed and
2 assembled, meets the California Unsafe Handgun Act’s chamber load indicator,
3 magazine disconnect mechanism, and micro stamping requirements, and why.⁸
- 4 • **No. 22:** State whether any frame or receiver kit contains 3.7 ounces of stainless
5 steel embedded within the plastic or a unique serial number engraved or
6 permanently affixed pursuant to Section 923 of Title 18 of the United States code,
7 consistent with Cal. Penal Code § 291 80(b)(2)(B), and if so, which one(s).⁹
- 8 • **No. 23:** State whether you believe the Buy Build Shoot kit contains a combination
9 of parts from which a firearm can be assembled, and if not, state why not.

10 Each of these interrogatories seeks Defendants’ contentions regarding “the application of
11 law to fact.” Cal. Code Civ. Proc. § 2030.010(b). In No. 20, the People do not seek Defendants’
12 understanding of the California Unsafe Handgun Act, but their own understanding of their own
13 products. No. 22 seeks a simple confirmation as to whether the kits contain 3.7 ounces of stainless
14 steel embedded within the plastic, or an engraved unique serial number. And No. 23 goes to
15 Defendants’ positions regarding their own products.

16 In response to Special Interrogatory Nos. 15 and 16, Defendants failed to provide a
17 responsive answer. No. 15 asks Defendants to “[n]ame all third-party sellers and vendors through
18 which [they] sell [their] products in and into California, including but not limited to internet sellers
19 and vendors and brick and mortar sellers and vendors.” Rather than do this, Defendants said only:
20 “Third-party distributors may enter into an independent contractor/distributor agreement with

21 ⁸ On December 27, the People clarified that the term “‘completed’ means finished and
22 operational as a firearm. The definition is the same regardless of who is assembling the firearm,
23 and the interrogatory is intended to capture whether you believe any frame or receiver kit, once
24 completed, can satisfy the listed requirements, and if so, which kit(s) and why.” Bostrom Decl. ¶
25 9, Exh. 9.

26 ⁹ On January 26, the People agreed to remove all statutory references from this request. Bostrom
27 Decl. ¶ 13, Exh. 13. The People also clarified, on December 27, that the request was intended to
28 ask “1) do any of the frame kits have 3.7 ounces of stainless steel embedded within the plastic
within the unfinished frame or within any other part, and if so, which ones, and 2) do the frame or
receiver kits have a serial number affixed to the unfinished frame or receiver or any other part, and
if so, which kits.” *Id.* at ¶ 8, Exh. 9.

1 Polymer80. All such distributors are independent, separate entities and Polymer80 has no control
2 over the distributors, all of which are responsible for their own policies and practices.” That is an
3 evasion. Defendants should be ordered to provide this information.

4 Interrogatory No. 16 similarly seeks a description of “all of [Defendants’] formal or
5 informal policies, procedures or protocols relating to verifying information, including name, age,
6 address, criminal history, or any other information, of customers who order products through the
7 website.” Defendants responded: “The products sold through Polymer80’s website do not require
8 Polymer80 to verify information. Nevertheless, customers must agree to certain terms and
9 conditions prior to sale, and to provide a valid credit card number.” That is not a complete
10 response.

11 **C. Defendants Should Be Compelled to Respond to the People’s Requests for**
12 **Production in Full**

13 **1. Defendants Have Inexplicably and Without Justification Failed to**
14 **Produce Documents**

15 As with the Special Interrogatories, Defendants dodged their document production
16 obligations, first by citing to the Abstention Motion and protective order,¹⁰ and then without
17 explanation after the Motion had been decided and the Order entered. To date, the People have
18 received only some of the documents responsive to the People’s requests. These were the same
19 documents that Defendants had already gathered and produced to the federal government,
20 produced in response to Request Nos. 1 and 2 only. Despite Defendants’ representation that they
21 intended to complete their additional document production by the end of January, the People still
22 have not received a single additional document. Bostrom Decl. ¶ 18. Nor have Defendants
23 identified or supported any burden associated with their obligation to comply with the People’s

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25 ¹⁰ “It is inappropriate to refuse to produce documents until a protective order is in place at some
26 hypothetical, unspecified future date. If Defendant believes a protective order is necessary and
27 Plaintiff will not agree to one, it is incumbent on Defendant to ‘promptly’ bring a noticed motion
28 for protective order (see Code of Civil Procedure section 2031.060), rather than simply refusing to
produce documents until such time as a protective order may be in place.” *Jarrett v.*
MedeFinance, Inc., No. RG09460368, 2010 WL 1515631 (Cal. Super. Mar. 12, 2010).

1 requests. *See West Pico Furniture Co. v. Superior Court*, 6 Cal.2d 407, 417 (1961); *Williams v.*
2 *Superior Court*, 3 Cal.5th 531, 549-550 (2017) (party asserting undue burden and expense
3 objection has “the burden of supplying supporting evidence”).

4 Further, Defendants have not even attempted to meet their discovery obligations by
5 gathering, reviewing, and producing the additional documents in a reasonable timeframe. On
6 February 3, Defendants reversed their position in their responses, and for the first time stated their
7 intention to limit their search for documents to a small set of custodians as to all remaining
8 requests (other than Nos. 1 and 2), and not (as stated in their responses) to only a small subset of
9 requests. Bostrom Decl. ¶ 14, Exh. 14. On the same day, and only after the People’s repeated
10 requests, Defendants for the first time proposed a list of custodians. *Id.* Defendants are no closer
11 to producing these documents than they were at the beginning of the year.¹¹ Their dilatory
12 conduct is inexcusable and has served only to delay the People’s ability to prosecute this case.
13 The People respectfully request that the Court compel Defendants’ to produce documents
14 responsive to these remaining requests within 7 days of its ruling on this Motion.

15 **2. Defendants’ Objections to Request for Production Nos. 13 and 18 Are**
16 **Without Merit**

17 The parties are also at an impasse as to two document requests. No. 13 seeks “All
18 documents and communications sent to, shared with, or received from any law enforcement or
19 other governmental agency relating to any unfinished frame or receiver kit.” Defendants will not
20 produce these documents unless the request is limited to California agencies, which the People
21 cannot agree to. This request goes to Defendants’ knowledge of their compliance with the law,
22 whether, as alleged in the Complaint, Defendants misleadingly touted that its kits had been
23 classified as non-firearms by regulators and hid from law enforcement or government agencies
24 (such as ATF) the fact that they were selling unfinished frames and receivers as parts of kits,
25 Complaint at ¶¶ 70-75, as well as the harm being caused by their products. This information need

26 ¹¹ Notably, when the People’s counsel asked during meet and confer discussions whether
27 Defendants’ potentially responsive documents had been gathered, Defendants’ counsel refused to
28 answer citing purported “work product.” Lyons Decl. ¶ 2.

1 not have come from California law enforcement to be relevant to these issues, particularly as it
2 relates to communications with a federal agency, such as the ATF.

3 No. 18 seeks “All communications with customers or potential customers relating to the
4 safety of or injury or harm resulting from use of operable firearms assembled from any of
5 [Defendants’] products.” The People clarified in their December 27, 2021, correspondence that
6 the purpose of this request “was to learn whether Defendants were put on notice that their kits and
7 products were used to create firearms that were being used to commit crimes or to otherwise harm
8 people,” and that, in other words, the request sought “communications with anyone who put
9 defendants on notice that their kits and parts were ultimately used to commit harm.” Bostrom
10 Decl. ¶ 8, Exh. 9. Defendants now contend that, as of January 12, 2022, they do not understand
11 the meaning of “harm” or “put on notice.” *Id.* ¶ 10, Exh. 10. The People discharged their meet
12 and confer obligations through their previous clarification. Just as with the term “profit,”
13 Defendants cannot reasonably assert that the terms “harm” and “put on notice” fall outside the
14 bounds of a common understanding. Defendants should be compelled to provide responsive
15 documents.

16 **II. DEFENDANTS’ CONDUCT NECESSITATES A TRIAL CONTINUANCE**

17 Defendants’ refusal to provide discovery responses over the last six plus months has made
18 it impossible for the People to prepare for a June 7 trial. As noted, the People await document
19 discovery for 32 Requests for Production, as well as Interrogatory responses. All of these will
20 need to be reviewed in preparation for depositions and may reveal a need for further discovery.
21 Without the vast majority of the key documents and other discovery responses, the People remain
22 unable to determine who to depose and in what logical order, much less schedule any
23 depositions—and those decisions and scheduling can only take place once the Defendants’ have
24 met their obligations in response to the People’s discovery requests and the People have had a
25 reasonable time to review that discovery. And as Defendants have noted to the Court, once fact
26 discovery is complete, the parties will need time for expert discovery as well. The People will be
27 prepared to discuss and consider an appropriate extension of the trial date at the hearing.

1 **III. DEFENDANTS SHOULD BE SANCTIONED FOR THEIR UNJUSTIFIED DELAY**

2 California Code of Civil Procedure section 2023.030 authorizes the Court to “impose a
3 monetary sanction ordering that one engaging in the misuse of the discovery process, or any
4 attorney advising that conduct, or both pay the reasonable expenses, including attorney’s fees,
5 incurred by anyone as a result of that conduct.” C.C.P. § 2023.030 (a); *Cornerstone Realty*
6 *Advisors, LLC v. Summit Healthcare Reit, Inc.*, 56 Cal. App. 5th 771, 790 (2020), as modified
7 (Nov. 4, 2020), as modified (Nov. 20, 2020), review denied (Feb. 10, 2021). “Misuses of the
8 discovery process include, but are not limited to ... [f]ailing to respond or to submit to an
9 authorized method of discovery; [m]aking, without substantial justification, an unmeritorious
10 objection to discovery” and; “[m]aking an evasive response to discovery.” C.C.P. §§ 2023.010
11 (d), (e), (f). “There is no requirement that misuse of the discovery process must be willful for a
12 monetary sanction to be imposed.” *Clement v. Alegre*, 177 Cal. App. 4th 1277, 1286 (2009)
13 (quoting Cal. Civil Discovery Practice (Cont.Ed.Bar 4th ed. May 2009 update) § 15.94, p. 1440)
14 (internal quotations omitted). Moreover, owing to the lack of verifications, the People have as a
15 matter of law thus far received no responses to their Special Interrogatories from Defendant David
16 Borges, and no discovery responses from Defendant Loran Kelley.

17 Defendants have failed to respond to the People’s authorized method of discovery by
18 refusing to substantially complete document production or answer all interrogatories within the
19 over six-month window between service of the requests and the filing of this Motion. There is no
20 legitimate excuse for this delay. Defendants improperly delayed responding whatsoever during
21 the pendency of their Abstention Motion and before entry of the protective order, and further
22 delayed as to certain responses during the pendency of their Motion for Bifurcation. *See Mattco*
23 *Forge*, 223 Cal. App. 3d at 1436, n.3. These responses were at the same time evasive and without
24 substantial justification. *Clement*, 177 Cal. App. at 1287 (a response may be both evasive and
25 without substantial justification, warranting sanctions). The People continue to await responses
26 and production of documents in response to requests that Defendants have not even objected to.
27 Defendants have not attempted to rationalize this delay.

1 The People seek \$15,000 in sanctions against all three Defendants. This amount is more
2 than justified. The expenses incurred drafting this Motion to Compel and accompanying
3 documents alone exceed the amount that the People now request—setting aside the hours that will
4 go into the People’s reply brief and the time they will spend preparing to argue this Motion, and
5 the hours spent drafting correspondence to Defendants in an effort to procure responses, in
6 meeting and conferring on the same.¹² See Lyons Decl. ¶¶ 3-4. Because Defendants have misused
7 the discovery process, this monetary sanction is warranted.

8 **CONCLUSION**

9 For the foregoing reasons, Defendants should be compelled to provide verified responses
10 to all of the People’s discovery requests, and complete responses to the People’s Special
11 Interrogatory Nos. 3, 4, 6, 7, 10, 11, 13, 15, 16, 20, 22, 23 and all Requests for Production of
12 Documents, within 7 days of the date of this Court’s Order. The People also respectfully request
13 that the Court grant a trial continuance and impose sanctions in the amount of \$15,000 against
14 Defendants.

15 DATED: February 22, 2022

Respectfully submitted,

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17 Michael J. Bostrom, Assistant City Attorney
18 Christopher S. Munsey, Deputy City Attorney
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By /s/ Michael J. Bostrom
Michael J. Bostrom
Attorneys for Plaintiff, The People
of the State of California

24 _____
25 ¹² Although they are representing the People in a pro bono capacity, counsel have nonetheless
26 been harmed by Defendants’ unjustified tactics during discovery. “[F]ees or monetary sanctions
27 in the form of fees may be ordered where the award does not result in disparate treatment between
28 litigants. And this is true whether or not a party actually ‘incurs’ additional fees as a result of the
opposing party’s conduct as is the case here where the party is represented by a lawyer who does
not charge a fee.” *Do v. Superior Court*, 109 Cal. App. 4th 1210, 1218 (2003).

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PROOF OF SERVICE

I am employed at the law firm of Quinn Emanuel Urquhart & Sullivan, LLP in the County of Los Angeles, State of California. I am over 18 years old and not a party to the within action. My business address is 865 South Figueroa Street, 10th Floor, Los Angeles, California 90017.

On February 22, 2022, I served a true and correct copy of the document described as NOTICE OF MOTION AND MOTION TO COMPEL FURTHER RESPONSES TO PLAINTIFF THE PEOPLE OF THE STATE OF CALIFORNIA’S SPECIAL INTERROGATORIES AND REQUESTS FOR PRODUCTION TO DEFENDANTS, AND FOR A TRIAL CONTINUANCE AND MONETARY SANCTIONS on the parties in this action via e-mail to the attached service list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 22, 2022.

/s/ Jennifer W. Stone
Jennifer W. Stone

SERVICE LIST

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Court Reservation Receipt

Reservation	
Reservation ID: 190439114363	Status: RESERVED
Reservation Type: Motion to Compel Further Discovery Responses	Number of Motions: 1
Case Number: 21STCV06257	Case Title: THE PEOPLE OF THE STATE OF CALIFORNIA vs POLYMER80, INC., A NEVADA CORPORATION, et al.
Filing Party: The People of the State of California (Plaintiff)	Location: Stanley Mosk Courthouse - Department 32
Date/Time: April 8th 2022, 8:30AM	Confirmation Code: CR-HBALUHJRBKJEFRBRQ

Fees			
Description	Fee	Qty	Amount
Motion to Compel Further Discovery Responses *** Fees Exempted by Gov Code 6103.1 ***	60.00	1	0.00
TOTAL			\$0.00

Payment	
Amount: \$0.00	Type: GOVT_EXEMPT

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