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CITY OF PHILADELPHIA	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
Plaintiff	:	
	:	No. 230702394
v.	:	
	:	
TANNER OPERATIONS, ET AL.	:	
	:	
Defendants	:	

SUPPLEMENTAL RESPONSE TO MOTION TO IMPOSE SANCTIONS FOR SPOLIATION OF EVIDENCE AND FOR AN ORDER TO SHOW CAUSE

Defendant, Frank's Gun Shop & Shooting Range LLC ("Frank's") files this supplemental response to the city of Philadelphia's (the "City") Motion to Impose Sanctions for Spoliation and for an Order to Show Cause to address the misrepresentations made in the City's Notice to the Court filed April 8, 2025.

Remarkably, instead of withdrawing its specious Motion for Sanctions, under the guise of correcting the record for the Court, the City has doubled down on its vile misrepresentations about the conduct of undersigned counsel. This supplement response addresses the material misrepresentations made in the City's recent filing.

1. **The alleged purposefully delayed in producing the documents.** The City claims that "Frank's has, for many months, been in direct violation of this Court's

September 26, 2024 Order." Notice, 4. This is misleading. Frank's presumes the "many months" the City references are the months between October 26, 2024, the date the Court denied the Motion for Reconsideration, and March 4, 2025, the date the Court lifted the stay, which would be a delay of approximately 5 months and 1 week. But that 5 month, 1 week period includes the 3 month period during which the case was stayed because of Frank's bankruptcy. It further includes the several weeks the City delayed Frank's offer to produce documents by refusing to allow Frank's to become a party to the Confidentiality Agreement and Protective Order, only relenting after Frank's was forced to file a motion to compel. And, it includes the weeks during which undersigned counsel was mistaken about whether copies of documents existed. Thus, Frank's has not purposefully delayed production.

2. **Undersigned counsel's statements about the ATF**. The City next indicts undersigned counsel for a series of representations made to the City and the Court regarding the ATF's possession of Frank's documents. Notice, 10. The problem for the City is that each statement is true. ATF seized the documents from Frank's and the ATF maintains the documents.

It is true that when undersigned counsel made these statements, he was mistaken about copies of certain documents existing. Those copies were made before the ATF instructed Frank's that no documents could be removed from its former place of business. However, any suggestion by the City that undersigned counsel knew about the copies and intentionally withheld disclosing that he had copies is where the City's grand conspiracy claim collapses.

When undersigned counsel first alerted the City that the ATF had seized all documents in early November 2024, the ATF had already concluded Frank's committed numerous federal firearms violations and had already revoked Frank's FFL. Frank's was broke non-existent entity barreling towards bankruptcy. Thus, undersigned counsel had nothing to gain by committing a fraud on the Court to shield his defunct and penniless client. But, as the City would have the Court believe, undersigned counsel at grave personal risk, nonetheless conspired with his broke, non-existent client and counsel for co-defendant to shield his nonexistent entity client liability – and *he did it all for free to boot*![1] In sum, Frank's and undersigned counsel had nothing to gain by not disclosing the existence of copies. The ATF already killed Frank's, undersigned counsel did not need to protect the corpse execution by the City.

3. **The alleged missing documents**. The City next complains that the documents Frank's has produced only "cover 14 of [the 26] people," for which it sought records and therefore counsel must be sanctioned. Notice, 6. The City should hardly be shocked that the production does not include transactions records for certain individuals. As set forth in the main portion of its response to the Motion for Sanctions, Frank's has produced to the City the ATF's findings of fact and conclusions of law. Among the violations that the ATF found was that on no less than 100 occasions Frank's failed to keep firearms records as required by federal law, including at least 28 occasions where Frank's failed to obtain and complete ATF Form 4473 and

[1] Undersigned counsel has not been paid by Frank's since September 2024 and it is doubtful if he ever will get paid.

other required forms. Thus, that documents might not exist is consistent with one of the reasons the ATF took action against Frank's. But to suggest undersigned counsel is responsible for those missing documents is ridiculous.

4. **Undersigned counsel "improper" litigation tactics**. The City "invites" the Court to sanction undersigned counsel for his "improper litigation tactics." Notice, 11. But the City has not moved for sanctions based on "improper litigation tactics." Rather, it moved for sanctions on the now debunked claim that undersigned counsel destroyed evidence. Still, the City cites no rule or statute that empowers the Court to sanction counsel for "improper litigation tactics." And it cites no case that defines what constitutes sanctionable "improper litigation tactics."

In all events, the City's complained of conduct is not sanctionable. The "improper litigation tactics" that the City complains about are sharp elbowed emails exchanged between counsel in defense of his client. Some of the emails are an expression of the frustration with the City's pursuit of Frank's, an entity the City admits is non-existent, while steadfastly refusing to identify for undersigned counsel what claims or controversies exist for the Court to resolve. Other express anger at the City's false claims that undersigned counsel had destroyed evidence. But there is simply no basis for the Court to sanction an attorney for sending strongly worded emails that do contain opposing counsel opposing counsel preferred tone. Otherwise, the Court would be inundated with Motion for Sanctions based on "improper litigation tactics" anytime an email was sent that an attorney did not like.

CONCLUSION

The City has regretfully turned this litigation into a personal vendetta against undersigned counsel. Undersigned counsel and Frank's respectfully request the Court to deny the City's motion.

Respectfully submitted,

Dated: April 8, 2025

By: */s/Walter S. Zimolong*
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Frank's Gun Shop & Shooting Range, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, in accordance with Pa.R.Civ.P. 205.4(g)(1)(ii), the foregoing paper was electronically filed with the Philadelphia County Court of Common Pleas electronic filing system website and is available for review on the Philadelphia County Court of Common Pleas electronic filing system's website, which filing constitutes proper service upon counsel of record.

Dated: April 8, 2025 *<u>/s/ Walter S. Zimolong</u>*