

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	5:15-cv-02387-SVW-KK	Date	January 7, 2019
Title	<i>Securities and Exchange Commission v. Robert Yang et al.</i>		

Present: The Honorable STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz

N/A

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiff:

Attorneys Present for Defendants:

N/A

N/A

**Proceedings:** IN CHAMBERS ORDER DECLINING TO SANCTION DEFENDANTS' COUNSEL [246]

On December 10, 2018, the Court held a hearing on Plaintiff Securities and Exchange Commission's motion for an order for monetary remedies against Defendants Robert Yang and Claudia Kano and Relief Defendants Yanrob's Medical, Inc., HealthPro Capital Partners, LLC, and Suncor Care, Inc. *See* Dkt. 228. At the hearing, the Court ordered Defendants' counsel to show cause as to why Defendants' counsel should not be sanctioned for filing a frivolous opposition to Plaintiff's motion for monetary remedies. Dkt. 246. On December 21, 2018, Defendants' counsel filed a response to the Court's Order to Show Cause. Dkt. 250.

In his response, Defendants' counsel apologizes for imprecision in his opposition and for leading the Court to believe that he was challenging the allegations in the First Amended Complaint, which were admitted as true for purposes of Plaintiff's motion for monetary remedies based on stipulations for judgment signed by Defendants. *See* Dkts. 84-90. Defendants' counsel asserts that he attempted in good faith to present arguments and raise evidence not inconsistent with the allegations in the First Amended Complaint. Defendants' counsel asserts that the motivation for his arguments in the opposition were to present to the Court mitigating factors that may incline the Court to reduce the amount of disgorgement and civil penalties Plaintiff sought to impose against Defendants. Defendants' counsel notes that the degree of scienter of the defendants is a factor courts consider when determining the appropriateness of injunctive relief. *See SEC v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980). Defendants' counsel points to language in the First Amended Complaint which allegedly gives Defendants' counsel the ability to argue that his clients were merely negligent in their actions instead of acting with scienter. Thus, Defendants'

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counsel asserts that there was no intent to refute the allegations in the First Amended Complaint that Defendants misappropriated funds for personal use, but merely to draw the Court’s attention to evidence that Defendants’ mental state in engaging in such misappropriation was less egregious than Plaintiff suggested.

On December 28, 2018, Plaintiff filed a reply to Defendants’ counsel’s response. Dkt. 253. Plaintiff argues that, regardless of Defendants’ counsel’s intent not to contradict any allegations in the First Amended Complaint, Defendants’ opposition repeatedly contradicts the explicit allegations in the First Amended Complaint to which Defendants stipulated as true. Plaintiff denies that the First Amended Complaint leaves room for Defendants’ counsel to argue a reduced degree of scienter, because liability under Section 10(b) of the Exchange Act and Rule 10b-5 as established by the First Amended Complaint necessarily requires Defendants to have acted with scienter. Plaintiff believes that sanctions are appropriate for Defendants’ frivolous opposition, and Plaintiff suggests that the Court strike Defendants’ opposition as an appropriate measure of sanctions.

Although the Court is inclined to believe that the arguments raised in Defendants’ opposition to Plaintiff’s motion for monetary remedies are frivolous and would ordinarily be sanctionable, the Court declines to impose any sanctions here. The reasons articulated by Defendants’ counsel for the arguments raised in the opposition are sufficient to prevent the Court from concluding that Defendants’ counsel made those arguments on a bad faith basis contrary to the express allegations in the First Amended Complaint. It is true that bad faith is not required to impose sanctions under Rule 11. *See Zaldivar v. City of Los Angeles*, 780 F.2d 823, 831 (9th Cir. 1986). But the Court also acknowledges that, because the Court issued an Order to Show Cause regarding sanctions *sua sponte*, there is no “safe harbor” period in which Defendants’ counsel is given an opportunity to correct the sanctionable defects in the opposition, and therefore a higher standard typically applies. *See United Nat’l Ins. Co. v. R&D Latex Corp.*, 242 F.3d 1102, 1116 (9th Cir. 2001) (noting that “*sua sponte* sanctions will ordinarily be imposed only in situations that are akin to a contempt of court”) (internal quotation marks and emphasis removed). Because Defendants’ counsel did not have an opportunity to remedy the frivolous arguments made in the opposition to Plaintiff’s motion for monetary remedies, the Court declines to impose sanctions at this time.

IT IS SO ORDERED.

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