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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 DWIGHT BANKS,

12 Plaintiff,

13 v.

14 WHAMBO! ENTERPRISES, LLC dba  
15 BAGBY BEER COMPANY;  
16 GALLEISKY PROPERTY  
MANAGEMENT, LLC,

17 Defendants.  
18  
19

Case No.: 20-cv-1674-LAB (DEB)

**ORDER IMPOSING SANCTIONS  
ON MICHAEL A. TAIBI, ESQ.**

20 **I. INTRODUCTION**

21 On April 19, 2021, the Magistrate Judge Daniel E. Butcher held a hearing on two  
22 Orders to Show Cause directed to Plaintiff Dwight Banks and three Orders to Show Cause  
23 directed to Plaintiff's attorney Michael A. Taibi. Dkt. Nos. 11, 16, 21, 28, 31. Prior to the  
24 hearing, Banks and Taibi submitted briefing, declarations, and evidence responding to the  
25 Orders. *See* Dkt. Nos. 12, 19, 26, 27.

26 Upon consideration of the information before the Court, the Court sanctions Taibi  
27 \$500 for the conduct at issue in the December 7, 2020 Order to Show Cause. The Court  
28 also sanctions Taibi \$1,000 for the conduct at issue in the December 22, 2020 Order to

1 Show Cause, reaffirms its referral of Taibi to the Standing Committee on Discipline, and  
2 expands the referral to include Taibi’s representations to the Court. The Court does not  
3 impose sanctions in connection with the March 23, 2021 Order to Show Cause but  
4 reaffirms the March 23, 2021 referral to the Standing Committee on Discipline.

## 5 II. PROCEDURAL BACKGROUND

### 6 A. Prior Orders to Show Cause and Sanctions Imposed Against Taibi and 7 his Clients

8 Prior to this case, judges in this District have issued Orders to Show Cause and  
9 imposed either monetary or terminating sanctions in at least six Americans with  
10 Disabilities Act (“ADA”) cases filed by Taibi. These other Orders to Show Cause provide  
11 important background to the issues here.

12 In *Mason v. Ivanov*, No. 18-cv-946-JAH (BGS), District Judge John A. Houston  
13 issued two Orders to Show Cause. In the first Order to Show Cause, Judge Houston  
14 expressed concern over representations made in the in forma pauperis (“IFP”) applications  
15 of Taibi’s clients. *Id.*, Dkt. No. 11. Judge Houston noted “[m]ost IFP applications  
16 [submitted by Taibi’s clients] have been granted, but when a Court has challenged the  
17 statements in an IFP application, or denied the application entirely, the filing fee is paid  
18 within days.” *Id.* at 2. Taibi paid the \$400 filing fee seven days after Judge Houston issued  
19 the Order to Show Cause. *Id.*, Dkt. No. 12. In the second Order to Show Cause, Judge  
20 Houston expressed “concerns relating to Plaintiff’s involvement in this action . . . .” *Id.*,  
21 Dkt. No. 18 at 1. Judge Houston ultimately dismissed the case for failure to comply with  
22 the Court’s orders. *Id.*, Dkt. No. 25.

23 In *Jackson v. Dang*, 18-cv-1380-CAB (WVG), District Judge Cathy Ann  
24 Bencivengo issued two Orders to Show Cause. The first arose out of Taibi’s failure to  
25 timely serve the summons. *Id.*, Dkt. No. 8. The second questioned representations made in  
26 the IFP application of Taibi’s client. *Id.*, Dkt. No. 9. Judge Bencivengo set the matter for a  
27 hearing and ordered Taibi’s client to personally appear. *Id.*, Dkt. No. 18. Taibi then  
28 withdrew the IFP application and paid the \$400 filing fee. Dkt. Nos. 19, 20. Judge

1 Bencivengo dismissed the case with prejudice after Taibi’s client failed to appear at two  
2 Order to Show Cause hearings. *Id.*, Dkt. No. 24.

3 In *Gay v. Berumen*, No. 18-cv-2661-CAB (BLM), Judge Bencivengo issued an  
4 Order to Show Cause questioning representations in the IFP Application of Taibi’s client.  
5 *Id.*, Dkt. No. 6. Taibi then withdrew his client’s IFP application, paid the \$400 filing fee,  
6 and filed an Ex Parte Motion to Vacate the Order to Show Cause Hearing. *Id.*, Dkt. Nos.  
7 10, 11, 12. Judge Bencivengo denied the Ex Parte Motion and dismissed the case with  
8 prejudice after Taibi’s client failed to appear at three Order to Show Cause hearings. *Id.*,  
9 Dkt. Nos. 13, 20.

10 In *Jackson v. Juanita’s Taco Shop, Inc.*, No. 18-cv-2679-H (LL), Magistrate Judge  
11 Linda Lopez issued an Order to Show Cause and sanctioned Taibi \$200 because, among  
12 other things, he failed to meet and confer and ignored defense counsel’s efforts to schedule  
13 the meet and confer. *Id.*, Dkt. No. 19 at 3. Judge Lopez issued a second Order to Show  
14 Cause (after Taibi’s client did not appear at the Early Neutral Evaluation Conference  
15 (“ENE”)) and a third (after the parties still had not met and conferred) but imposed no  
16 additional sanctions. *Id.*, Dkt. Nos. 31, 32, 36.

17 In *Gay v. Mariscos El Pulpo II, Inc.*, No. 19-cv-0256-WQH (KSC), Magistrate Judge  
18 Karen S. Crawford issued two Orders to Show Cause and sanctioned Taibi \$683 (\$483 to  
19 defense counsel and \$200 to the Court) because he failed to timely appear at an ENE and  
20 failed to appear at all for the subsequent Order to Show Cause hearing. *Id.*, Dkt. No. 29.  
21 Judge Crawford also found Taibi misrepresented facts in responding to her Order to Show  
22 Cause. *Id.* at 3 n.1.

23 In *Mason v. Tic Bayside Inn, LLC*, No. 19-cv-0392-W (LL), Judge Lopez issued two  
24 Orders to Show Cause directed to Taibi. The first arose out of Taibi’s failure to comply  
25 with Judge Lopez’s ENE Order. *Id.*, Dkt. No. 10. Judge Lopez declined to impose sanctions  
26 at that time. *Id.*, Dkt. No. 13. Ten days later, however, Judge Lopez issued a second Order  
27 to Show Cause after Taibi’s client did not appear at the ENE. *Id.*, Dkt. No. 17. Judge Lopez  
28 sanctioned both Taibi and his client \$500 and stated that “[a]lthough the Parties represent

1 they have settled the case, the Court continues to have concerns relating to Plaintiff's  
2 involvement in this case." *Id.*, Dkt. No. 21 at 3 (taking judicial notice of *Mason v. Ivanov*,  
3 *supra*).

4 **B. The Three Orders to Show Cause Issued in this Case**

5 On August 27, 2020, Taibi filed this case on behalf of Banks. Dkt. No. 1. The  
6 Complaint alleges certain aspects of Defendant Whambo! Enterprises LLC's restaurant in  
7 Oceanside, California failed to comply with the ADA. *Id.*

8 On September 23, 2020, Defendants answered the Complaint (Dkt. No. 4), and the  
9 Court issued a Notice and Order Setting Early Neutral Evaluation Conference for  
10 November 12, 2020 (Dkt. No. 5, the "ENE Order").

11 The Court's three Orders to Show Cause arise out of Banks and Taibi's failures to  
12 comply with the Court's ENE Order and subsequent orders relating to rescheduled ENEs.

13 **1. Taibi's Failure to Meet and Confer (December 7, 2020 Order to**  
14 **Show Cause)**

15 The Court's ENE Order directed the parties to meet and confer prior to the ENE as  
16 follows:

17 No later than **October 22, 2020**, counsel for the parties must meet and confer  
18 in person at the subject premises regarding settlement of the alleged ADA  
19 violations and Plaintiff's demand for damages, costs, and attorneys' fees.  
20 Counsel must attend this meeting in person and with authority to negotiate a  
settlement at this meeting.

21 *Id.* at 4. The ENE Order provided instructions for the parties to follow if they could  
22 not safely meet and confer in person because of COVID-19:

23 If counsel are unable to safely meet and confer in person due to circumstances  
24 relating to the COVID-19 public emergency, counsel must jointly call  
25 Chambers prior to this deadline to explain the reason(s) they cannot meet at  
26 the subject premises and how they propose to accomplish the objectives of the  
in-person requirement by videoconference or other means.

27 *Id.* at 4 n.5.  
28

1 On November 9, 2020, after learning counsel had not complied with the ENE  
2 Order's meet and confer requirement and that Banks was unavailable on  
3 November 12, 2020, the Court reset both the meet and confer deadline and the ENE date.  
4 Dkt. No. 7 at 1–2. Counsel, however, did not meet and confer at the premises by the new  
5 deadline. Defense counsel represented that he emailed Taibi three times (on November 10,  
6 13, and 19, 2020) to schedule the meet and confer, but Taibi did not respond to any of the  
7 emails. Dkt. No. 9 at 4.

8 On December 7, 2020, after learning about Taibi's failure to cooperate in scheduling  
9 a meet and confer at the subject premises, the Court issued an Order to Show Cause  
10 directing Taibi to "SHOW CAUSE why sanctions should not be imposed against him for  
11 failing to timely participate in the on-site meeting . . . ." Dkt. No. 11 at 2. The Court also  
12 granted Plaintiff's ex parte application to continue the ENE and reset it for  
13 December 18, 2020. Dkt. No. 10.

14 On December 15, 2020, Taibi filed a Supplemental Brief Regarding Meet and  
15 Confer Sanctions responding to the December 7, 2020 Order to Show Cause. Dkt. No. 12.  
16 Taibi explained the meet and confer did not take place because COVID-19 made it unsafe  
17 to do so. *Id.* at 3–4. Taibi also stated he conferred with defense counsel on  
18 December 4, 2020 and met in person at the premises at issue on December 14, 2020. *Id.*  
19 at 2–4.

## 20 **2. Banks' Failures to Attend the ENE Conferences (December 22,** 21 **2020 and March 23, 2021 Orders to Show Cause)**

22 The ENE Order required the parties to attend and participate in the ENE. Dkt. No. 5  
23 at 2. The Court twice continued the November 12, 2020 ENE (once over Defendants'  
24 objection) based on Taibi's representation that Banks was recovering from a physical  
25 attack and could not participate. Dkt. No. 7 (continuing ENE from November 12, 2020 to  
26 December 8, 2020), Dkt. No. 10 (continuing ENE from December 8, 2020 to December  
27 18, 2020). Less than seventeen hours before the December 18, 2020 ENE, Taibi filed an  
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1 “Ex Parte Application and Order Requesting to Continue Early Neutral Evaluation  
2 Conference Scheduled for December 18, 2020,” asserting Banks was

3 admitted [to] Palomar Hospital on or about November 4, 2020 upon being  
4 transferred from Villa Rancho Bernardo Rehabilitation Center ... due to an  
5 injury that he received while in the care of Villa Rancho Bernardo Rehab  
6 Center. The injury was a severe blow to the head. He is still under the care for  
the injury and unable to attend....

7 Dkt. No. 13 at 2. The Court denied the Ex Parte Motion (Dkt. No. 14) and proceeded with  
8 the ENE (Dkt. No. 15). Taibi attended and participated in the ENE, but Banks did not. Dkt.  
9 No. 16 at 2. At the conclusion of the ENE, the Court reset the ENE to February 2, 2021,  
10 and continued the hearing on the December 7, 2020 Order to Show Cause to that same  
11 date. Dkt. No. 15.

12 On December 22, 2020, the Court issued an Order to Show Cause directing Banks  
13 and Taibi to “SHOW CAUSE why sanctions should not be imposed for Plaintiff’s failure  
14 to participate in the [December 18, 2020] ENE Conference.” Dkt. No. 16 at 2. The Court  
15 set the matter for a hearing on February 2, 2021, following the continued ENE Conference  
16 on that same date. *Id.* Taibi filed a responsive declaration explaining:

17 On February 19, 2021, Plaintiff’s counsel received a complete copy of the  
18 Plaintiff’s medical records during his stay at [Villa Rancho Bernardo  
19 Rehabilitation Center] that began on October 15, 2020 until his conditional  
20 release on January 22, 2021. Plaintiff is still under a physician’s care and  
21 requires continuous rehabilitative therapy regularly as well as medication.  
22 Plaintiff’s counsel has approximately 200-pages of additional documentation  
available to the Court upon request regarding the daily status and condition of  
the Plaintiff during his stay at [Villa Rancho Bernardo Rehabilitation Center].

23 Dkt. No. 19 at 4. Taibi also lodged a second declaration and eight pages of Banks’ medical  
24 records.<sup>1</sup>

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26  
27 <sup>1</sup> The lodged declaration and medical records are attached as Exhibit 1 to this Order.  
28 Because of the sensitive nature of these records, the Court directs the Clerk’s Office to file  
Exhibit 1 under seal.

1 At Taibi’s request, the Court reset the February 2, 2020 ENE to February 26, 2021.  
2 Dkt. No. 20. Taibi appeared at the February 26, 2021 ENE, but Banks did not. *Id.* Taibi  
3 represented he did not know Banks’ whereabouts or why he did not appear. The ENE  
4 proceeded without Banks, and Taibi committed to a resolution in which he agreed to  
5 dismiss Banks’ case in exchange for a mutual waiver of costs and fees. Dkt. No. 20.  
6 Pursuant to this agreement, the parties filed a Joint Motion to Dismiss on March 23, 2021.  
7 Dkt. No. 23.

8 On March 23, 2021, the Court issued an Order: (1) continuing the hearings on the  
9 December 7 and 22, 2021 Orders to Show Cause; (2) ordering Banks to show cause why  
10 the Court should not impose sanctions for his failure to appear at the February 26, 2021  
11 ENE; and (3) referring Taibi to the Standing Committee on Discipline to investigate the  
12 conduct described in the Order, including Taibi’s filing of three additional cases on Banks’  
13 behalf while Taibi and Banks were not in communication because of Banks’ alleged head  
14 injury. Dkt. No. 21. On April 7, 2021, Taibi and Banks each filed a Declaration responding  
15 to the March 23, 2021 Order to Show Cause. Dkt Nos. 26 and 27.

16 **3. The April 19, 2021 Hearing on the Orders to Show Cause**

17 On April 19, 2021, Magistrate Judge Butcher held a telephonic hearing on the three  
18 pending Orders to Show Cause. Taibi, Banks, and Mary Allain (counsel for Defendants)  
19 appeared. Dkt. No. 28; *see also* Dkt. No. 31 (Transcript).

20 Regarding the December 7, 2020 Order to Show Cause (concerning Taibi’s failure  
21 to meet and confer at the premises), Taibi cited COVID-19 concerns as “the driving force  
22 behind not actually getting together on site.” Dkt. No. 31 at 5. Taibi denied that the Court’s  
23 ENE Order required counsel to contact chambers if they were unable to safely meet and  
24 confer because of the COVID-19 pandemic. *Id.* at 6; *but see* Dkt. 5 at 4 n.5 (“If counsel are  
25 unable to safely meet and confer in person due to . . . the COVID-19 public emergency,  
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1 counsel must jointly call Chambers prior to this deadline to explain the reason(s) they  
2 cannot meet and confer at the subject premises and how they propose to accomplish the  
3 objectives of the in-person requirement . . . .”).

4       Regarding the December 22, 2020 Order to Show Cause (concerning Banks’ failure  
5 to appear at the December 18, 2020 ENE), Banks reported he was recovering from a head  
6 injury at a rehabilitation facility. Dkt. No. 31 at 7–10. Banks said he “gave [Taibi] full  
7 authority to do what he can to win the case or dismiss the case.” *Id.* at 10. Taibi agreed  
8 Banks had “given me authority to file complaints for him; that he’s brought claims to me;  
9 he’s given me the authority to settle cases as well, if it’s possible.” *Id.* at 11. Taibi and  
10 Banks stated they had no direct contact while Banks was at the rehabilitation facility (from  
11 October 2020 to January 22, 2021) but communicated through third parties and a courier.<sup>2</sup>  
12 *Id.* at 10–15. When asked whether he could have participated in the December 18, 2020  
13 ENE by phone, Banks responded he “was under strict care” and “[w]as constantly on  
14 medication” that made him sleepy. *Id.* at 15–16.

15       Regarding the March 23, 2021 Order to Show Cause (concerning Banks’ failure to  
16 appear at the February 26, 2021 ENE), Taibi explained he sent Banks a notice of that  
17 hearing through a courier. *Id.* at 17–18. Banks agreed he received notice but “didn’t  
18 recognize the date” because his “mind was in and out.” *Id.* at 17.

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23  
24 <sup>2</sup> At the April 19, 2021 hearing, Taibi represented that while Banks was a patient at Villa  
25 Rancho Bernardo Rehabilitation Center, they communicated through other persons and  
26 Altares-Carter, a courier service. Dkt. No. 31 at 18. A search of the California Secretary of  
27 State’s database reflects, however, that Altares-Carter, LLC was suspended on  
28 <https://businesssearch.sos.ca.gov/> (fill out fields to conduct a business search for  
“Altares-Carter, LLC”) (last visited June 4, 2021).

1 Following the April 19, 2021 hearing, and in response to the Court’s Order (Dkt. No.  
2 30), Taibi lodged Banks’ Villa Rancho Bernardo Rehabilitation Center medical records.<sup>3</sup>

3 **III. DISCUSSION**

4 The Court may sanction a party or its attorney if the party “(A) fails to appear at a  
5 scheduling or other pretrial conference; (B) is substantially unprepared to participate . . . in  
6 the conference; or (C) fails to obey a scheduling or other pretrial order.” Fed. R. Civ. P.  
7 16(f)(1). When Rule 16(f)(1) is triggered, the Court has broad discretion in fashioning an  
8 appropriate sanction. *See, e.g., Off. Airline Guides, Inc. v. Goss*, 6 F.3d 1385, 1397 (9th  
9 Cir. 1993) (affirming imposition of monetary sanction under Rule 16(f) for party’s failure  
10 to comply with order to appear for settlement conference). Additionally, the Local Rules  
11 of this Court state “[s]anctions may be appropriate for an unexcused failure to attend [an  
12 ENE conference].” CivLR 16.1(c)(1)(c).

13 **A. December 7, 2020 Order to Show Cause**

14 The Court sanctions Taibi \$500 for the conduct at issue in the December 7, 2020  
15 Order to Show Cause (i.e., Taibi’s violation of the Court’s September 23, 2020 Order  
16 [Setting ENE] by failing to meet and confer with defense counsel at the subject premises  
17 by the deadline set by the Court).<sup>4</sup> Although Taibi claims this failure was attributable to  
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20 <sup>3</sup> Banks’ Villa Rancho Bernardo Rehabilitation Center medical records are attached as  
21 Exhibit 2 to this Order. Because of the sensitive nature of these records, the Court directs  
22 the Clerk’s Office to file Exhibit 2 under seal.

23 <sup>4</sup> The Court understands the parties agreed to a mutual waiver of fees in costs in connection  
24 with the dismissal of this case. Dkt. No. 27 at 6. The Court, however, is imposing a punitive  
25 sanction to vindicate the Court’s authority, not a sanction to compensate Defendants for  
26 incurred fees or costs. *See HM Elecs., Inc. v. R.F. Techs., Inc.*, 171 F. Supp. 3d 1020, 1027  
27 (S.D. Cal. 2016) (“[I]f the sanction primarily aims to vindicate the authority of the court  
28 by punishing the offending party, the sanction is punitive”; reversing award of  
compensatory sanctions awarded to party that bargained away its right to recoup attorney’s  
fees and costs).

1 the COVID-19 pandemic, the Court’s Order gave the parties specific instructions for that  
2 contingency:

3       If counsel are unable to safely meet and confer in person due to circumstances  
4 relating to the COVID-19 public emergency, counsel must jointly call  
5 Chambers prior to this deadline to explain the reason(s) they cannot meet at  
6 the subject premises and how they propose to accomplish the objectives of the  
in-person requirement by videoconference or other means.

7 Dkt. No. 5 at 4 n.5. That did not happen. Instead, the Court reset the meet and confer  
8 deadline, allowing counsel a second chance to comply with the Court’s Order. Dkt. No. 7.  
9 Thereafter, Taibi did not respond to three emails from defense counsel seeking to schedule  
10 the meet and confer. Dkt. No. 9 at 4.<sup>5</sup> Although Taibi ultimately participated in an on-site  
11 meet and confer, he did not do so until December 14, 2020, after the Court issued the  
12 December 7, 2020 Order to Show Cause. Dkt. No. 12 at 2–4.

13       The Court finds Taibi’s failure to meet and confer as ordered is the product of his  
14 failure to read and comply with the Court’s ENE Order. At the April 19, 2021 hearing on  
15 the Orders to Show Cause, Taibi denied (incorrectly) that the Court’s ENE Order provided  
16 instructions for the parties to follow if the COVID-19 pandemic prevented an on-site meet  
17 and confer. Dkt. No. 31 at 6. Also, defense counsel sent Taibi three emails over a nine-day  
18 period seeking to timely schedule the meet and confer required by the Court’s ENE Order.  
19 Dkt. No. 9 at 4. Taibi did not respond to any of these emails. *Id.* Taibi’s failure to comply  
20 with the Court’s ENE Order warrants sanctions.

21       Taibi has a history of not complying with court orders. *See Jackson v. Juanita’s Taco*  
22 *Shop, Inc.*, No. 18-cv-2679-H (LL), Dkt. No. 19 at 3 (sanctioning Taibi \$200 because,  
23 among other things, he failed to meet and confer and ignored defense counsel’s efforts to  
24 \_\_\_\_\_

25  
26 <sup>5</sup> Although Taibi claimed that he recalls trying to contact defense counsel and sent  
27 responsive emails, he has not “brought any of those emails to the Court, unfortunately.”  
28 Dkt. No. 31 at 4. Because of the equivocal nature of Taibi’s statement and his failure to  
submit the responsive emails, the Court credits the declaration of defense counsel  
representing that Taibi did not respond. Dkt. No. 9 at 4.

1 schedule the meet and confer), Dkt. Nos. 31, 32 (issuing two additional Orders to Show  
2 Cause after Taibi’s client did not appear at the ENE and after the parties still had not met  
3 and conferred); *Gay v. Mariscos El Pulpo II, Inc.*, No. 19-cv-0256-WQH (KSC), Dkt. No.  
4 29 (sanctioning Taibi \$683 (\$483 to defense counsel and \$200 to the Court) because he  
5 failed to timely appear at an ENE and failed to appear at all for the subsequent Order to  
6 Show Cause hearing); *Mason v. Tic Bayside Inn, LLC*, No. 19-cv-0392-W (LL), Dkt. Nos.  
7 10, 17 (two Orders to Show Cause directed to Taibi for his failure to comply with the ENE  
8 Order and his client’s failure to appear at the ENE). Taibi failed to take heed of prior  
9 warnings and sanctions. The Court, therefore, sanctions Taibi \$500 for his violations of the  
10 ENE Order in this case. *See, e.g., Wilson v. KRD Trucking W.*, No. 10-cv-00163-KJD-NJK,  
11 2013 WL 836995, at \*4 (D. Nev. Mar. 6, 2013) (“In determining the appropriate sanction,  
12 the Court notes that a primary objective of Rule 16(f) is the deterrence of conduct that  
13 unnecessarily consumes the Court’s time and resources that could have been more  
14 productively utilized by litigants willing to follow the Court’s procedures.”).

15 **B. December 22, 2020 Order to Show Cause**

16 The Court sanctions Taibi \$1000 in connection with the December 22, 2020 Order  
17 to Show Cause. This Order to Show Cause arose out of Banks’ failure to appear at the  
18 December 18, 2020 ENE. Dkt. No. 16. Taibi represented that Banks was unavailable to  
19 participate in this ENE because he was recovering from head trauma suffered in a severe  
20 physical attack on November 4, 2020 while residing at Villa Rancho Bernardo  
21 Rehabilitation Center. *See* Dkt. No. 13 at 2 (describing Banks’ November 4, 2020  
22 admission at Palomar Hospital following “severe blow to the head” at Villa Rancho  
23 Bernardo Rehabilitation Center); Dkt. No. 31 at 8 (representing Banks was in “critical  
24 condition” at Palomar Hospital due to “head trauma” after “he was hit over the head”  
25 during an attack); and *id.* at 10 (explaining “Mr. Banks’ memory is a bit sketchy from the  
26 . . . attack.”). Banks’ medical records do not substantiate this claim. Ex. 1, Ex. 2. A sanction  
27 is appropriate because Taibi’s statements are inaccurate, he has a history of his clients  
28

1 failing to appear for ENEs, and he has not offered an adequate reason for Banks not  
2 appearing at the December 18, 2020 ENE.

3         The Court further finds Taibi misrepresented Banks’ medical condition to excuse  
4 Banks from the ENEs. Beginning with his telephone call to Chambers on November 9,  
5 2020, Taibi made numerous representations to the Court that Banks was attacked and  
6 suffered a critical head injury. *See, e.g.*, Dkt. Nos. 8, 9 at 4, 12, 13, 31. While his earlier  
7 representations (made prior to Banks’ January 22, 2021 discharge from Villa Rancho  
8 Bernardo Rehabilitation Center where he had no direct communication with Taibi) could  
9 conceivably be attributed to a misunderstanding, Taibi did not correct his statements after  
10 he obtained Banks’ Villa Rancho Bernardo Rehabilitation Center medical records on  
11 February 19, 2021. *See* Dkt. No. 19 (February 24, 2021 Taibi Decl. discussing his efforts  
12 to continue the ENE due to Plaintiff’s medical condition and his February 19, 2021 receipt  
13 of the complete copy of Banks’ Villa Rancho Bernardo Rehabilitation Center medical  
14 records, but not correcting his earlier representations that Banks suffered a serious head  
15 injury in an attack), Dkt. No. 27 (April 27, 2021 Taibi Decl. with similar representations  
16 but not correcting his earlier statements regarding Banks’ medical condition). To the  
17 contrary, Taibi continued to claim Banks sustained critical head trauma in an attack well  
18 after he knew, or should have known, the medical records do not corroborate this claim.  
19 *Compare* Dkt. No. 19 at 4 (“On February 19, 2021, Plaintiff’s counsel received a complete  
20 copy of the Plaintiff’s medical records during his stay at [Villa Rancho Bernardo  
21 Rehabilitation Center] . . . .”), *with* Dkt. No. 31 at 8 (Taibi’s statements during the April  
22 19, 2021 OSC hearing that Banks was in “critical condition” at Palomar Hospital due to  
23 “head trauma” because “he was hit over the head”), *and* Dkt. No. 31 at 10 (explaining “Mr.  
24 Banks’ memory is a bit sketchy from the . . . attack.”).

25         Judges in this district have previously found Taibi’s representations to the Court to  
26 be not credible and also expressed concerns regarding the accuracy of representations made  
27 in IFP applications by Taibi’s clients. *See, e.g., Gay v. Mariscos El Pulpo II, Inc.*, No. 19-  
28 cv-0256-WQH (KSC), Dkt. No. 29 at 3 n.1. (finding “Taibi’s in-court representation . . .

1 [was] clearly false”); *Reyes v. A&J Gaslamp, LLC*, No. 18-cv-2695-CAB (NLS), 2018 WL  
2 6326374 at \*2 (Dec. 4, 2018, S.D. Cal.) (After taking note of eight other ADA cases filed  
3 by Taibi and Plaintiff Reyes, “the Court finds that the representations contained in Reyes  
4 IFP application are not credible. That Plaintiff has only \$100 in monthly income from  
5 settlements despite having filed eight cases in this court and scores more in state court over  
6 the past five years is simply implausible, particularly considering that all of the federal  
7 cases, and presumably all of the state cases, seek statutory damages of at least \$4,000 plus  
8 attorney’s fees.”); *Mason v. Ivanov*, No. 18-cv-946-JAH (BGS), Dkt. Nos. 11, 18  
9 (expressing concern over representations in IFP applications); *Jackson v. Dang*, 18-cv-  
10 1380-CAB (WVG), Dkt. No. 9 (same); *Gay v. Berumen*, No. 18-cv-2661-CAB (BLM),  
11 Dkt. No. 6 (same); *Mason v. Tic Bayside Inn, LLC*, No. 19-cv-0392-W (LL), Dkt. No. 21  
12 at 3 (expressing concerns relating to Plaintiff’s involvement after counsel reported the  
13 parties reached a settlement and taking judicial notice of *Mason v. Ivanov, supra*).

14 The Court’s credibility finding here, combined with Taibi’s history of making  
15 questionable or untruthful statements to the Court and his history of failing to comply with  
16 orders, including Judge Lopez and Judge Crawford’s orders requiring his clients attend  
17 ENEs, warrant a \$1000 sanction. Additionally, because Taibi has a history of  
18 misrepresenting facts and making questionable representations that extends beyond this  
19 case, the Court expands its referral to the Standing Committee on Discipline to include this  
20 conduct.

21 The Court does not impose sanctions on Banks for failing to appear at the December  
22 18, 2020 ENE. The record suggests a possibility that Banks may not have received notice  
23 of the December 18, 2020 ENE conference because he and Taibi were not in direct contact  
24 at the time. Dkt. No. 31 at 10–15. The Court, therefore, cannot find Banks had notice of  
25 the December 18, 2020 ENE and failed to appear.

### 26 **C. March 23, 2021 Order to Show Cause**

27 Although Banks was no longer receiving in-patient treatment on February 26, 2021,  
28 the Court will not impose sanctions for his failure to appear at the February 26, 2021 ENE.

1 Banks explained he was confused about the date and apologized to the Court for his  
2 mistake. Dkt. No. 26.

3 The Court also finds no basis to sanction Taibi for Banks' failure to appear at the  
4 February 26, 2021 ENE. Taibi stated at the ENE he did not know Banks' whereabouts. The  
5 record also reflects Taibi notified Banks about the ENE and expected him to attend. Dkt.  
6 No. 26 at 4, 27 at 6–7. Sanctions are unwarranted under these circumstances.

7 The Court's March 23, 2021 Order to Show Cause cites four new cases Taibi filed  
8 on Banks' behalf during the same timeframe at issue here, when Banks was allegedly  
9 unavailable to participate in Court proceedings and when Banks and Taibi had no direct  
10 communication. These four cases are pending before other judges and the undersigned are  
11 not inclined to delve into the circumstances of their filing. The Standing Committee on  
12 Discipline is better equipped to investigate these broader issues and the Court believes it  
13 appropriate for it to do so. The Court, therefore, reaffirms its referral to the Standing  
14 Committee on Discipline.

#### 15 **IV. CONCLUSION**

16 The three Orders to Show Cause issued in this case are not an aberration. Instead,  
17 they are the latest in a troubling pattern of Taibi's failures to comply with court orders, his  
18 clients' failures to attend hearings as ordered, and his failure to ensure representations to  
19 the Court are truthful. Other judges of this Court have cautioned, sanctioned, and even  
20 dismissed cases brought by Taibi for conduct like that at issue here. Unfortunately, all were  
21 ineffective in preventing a recurrence.

22 The undersigned are concerned about Taibi's representations in this case and others.  
23 Because the Court's concern extends beyond this case, the Court expands its referral to the  
24 Standing Committee on Discipline to include this conduct.

25 The undersigned also share Judge Houston and Judge Lopez's concerns about the  
26 involvement of Taibi's clients in the cases brought in their names. The sanctions imposed  
27 here, however, redress only the conduct that occurred in this case. The Court defers to the  
28

1 Standing Committee on Discipline to investigate the larger issues involving Taibi's clients'  
2 involvement in the cases he has brought under their names.

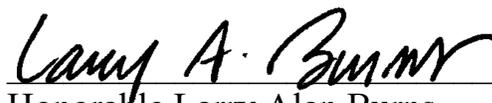
3 Based on the foregoing, the Court:

- 4 1. Sanctions Taibi \$500 in connection with the December 7, 2020 Order to Show  
5 Cause;
- 6 2. Sanctions Taibi \$1,000 in connection with the December 22, 2020 Orders to  
7 Show Cause and expands the referral to the Standing Committee on Discipline to  
8 include Taibi's representations to the Court;
- 9 3. Does not impose monetary sanctions in connection with the March 23, 2021  
10 Order to Show Cause, but reaffirms the referral to the Standing Committee on  
11 Discipline; and
- 12 4. Pursuant to Cal. Bus. & Prof. Code §6068(o)(3), orders Taibi to report the  
13 sanctions imposed by this Order to the California State Bar no later than **July 6,**  
14 **2021.**

15 Taibi must pay the \$1,500 in sanctions imposed in paragraphs one and two above to  
16 Miscellaneous Fines, Penalties and Forfeitures, Not Otherwise Classified, Fund of the  
17 United States Treasury on or before **June 18, 2021.**

18 **IT IS SO ORDERED.**

19  
20 Dated: June 4, 2021

  
\_\_\_\_\_  
Honorable Larry Alan Burns  
United States District Judge

21  
22  
23  
24 Dated: June 4, 2021

  
\_\_\_\_\_  
Honorable Daniel E. Butcher  
United States Magistrate Judge