

IN THE CIRCUIT COURT OF THE 7th JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA

ROBERT BEARDEN, DONALD
CLENDENING and SABRINA
CLENDENING, his wife

CASE NO.:
DIVISION: 02

Plaintiffs,

v.

Defendants.

**ORDER GRANTING PLAINTIFFS' MOTION FOR SANCTIONS
FOR FRAUDULENT DISCOVERY**

THIS MATTER, having come before this Honorable Court with the Court having read and considered Plaintiffs' Motion for Sanctions for Fraudulent Discovery; Defendant Response to Motion for Sanctions; and Defendants

Response in Opposition to Plaintiffs' Motion for Sanctions for Fraudulent Discovery, as well as having heard oral argument on April 23, 2018 and, again, at an evidentiary hearing on June 27, 2018, the Court **GRANTS** Plaintiffs' Motion for Sanctions for Fraudulent Discovery against Defendant

Based on the record before this Court, Plaintiffs have presented clear and convincing evidence that Defendant engaged in a pattern of serious and calculated misconduct that was intentional and designed to thwart the discovery process. Defendant not only lied and presented false testimony under oath about his background, he continued to perpetrate his misconduct by lying and presenting false responses about his background in response to Request for Admissions. Furthermore, Defendant committed fraud upon this Court by stating in his Response to Motion for Sanctions, "he did not engage in any improper conduct during discovery,"

knowing all along, as will be discussed below, he had lied under oath about his background, specifically, his medical certification to drive tractor trailers. Defendant continued misconduct throughout this litigation has thwarted Plaintiffs from effectively conducting discovery, caused delay, and unnecessary expense by Plaintiffs. Accordingly, this Court has the inherent authority to strike Defendant Answer and Affirmative defenses and enter default judgment as to liability as a sanction.

Findings of the Court

1. Defendant provided false and misleading sworn testimony that he had a valid two year medical certificate when he was hired by Defendant in January 2016.
2. Defendant provided false and misleading sworn testimony that he had a valid two year medical certificate at the time of the subject collision.
3. Defendant provided false and misleading sworn testimony that he did not alter his Driver Fitness Report.
4. Defendant provided false and misleading sworn testimony that he did not have an explanation for the forged and altered Driver Fitness Report, even though he forged and altered the Driver Fitness Report.
5. Defendant provided false and misleading sworn testimony that he had never been in possession of the Driver Fitness Report, even though he forged and altered the Driver Fitness Report.
6. Defendant provided a false and misleading response to Request for Admission No. 17, when he swore the forged and altered Driver Fitness Report was “true, correct, and unaltered.”
7. Defendant provided false and misleading statements to the Court in his Response to Motion for Sanctions when he stated, “he did not engage in any improper conduct during

discovery,” even though he knew he had provided false and misleading sworn testimony regarding a Driver Fitness Report he forged and altered.

8. Defendant did not have a valid Medical Certificate to operate a commercial motor vehicle at the time of the subject collision.
9. Defendant has thwarted discovery in this case by continuing to perpetuate a fraud and lie to the parties and the Court until Plaintiffs’ counsels’ persistence required the truth to finally be told.

Conclusion of Law

The District Courts of Appeal in Florida have affirmed the imposition of the ultimate sanction on parties for litigation misconduct, expressing intolerance for litigants who undermine the system of justice through misconduct. *See Austin v. Liquid Distributors, Inc.*, 928 So.2d 521 (Fla. 3d DCA 2006) (“It is well-settled that a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding is not permitted to continue to employ the very institution she has subverted to achieve her ends”); *Storm v. Allied Universal Corp.*, 842 So.2d 245 (Fla. 3d DCA 2003) (holding that the ends of justice preclude a miscreant like plaintiff from employing the system he set about to corrupt); *Long*, 805 So. 2d at 884 (“A trial court has a duty and an obligation to dismiss a cause of action based upon fraud”); *Cabrerizo*, 760 So.2d at 228 (requiring “swift measures” to sanction a plaintiff that “mindfully undermined the integrity of the courts by creating a mockery of the principles of justice through his deceitful misconduct”); *Martinsen*, 736 So.2d at 794.

The evidence in this matter shows, clearly and convincingly, that Defendant has obstructed the discovery process, demonstrated a willingness to lie under oath, and has evidenced a total and flagrant disregard for the integrity of the civil justice system. The Court does not consider the fact that Defendant forged and altered the Driver Fitness Report allegedly prior to this litigation in making its findings. Instead, the Court’s findings are based on Defendant

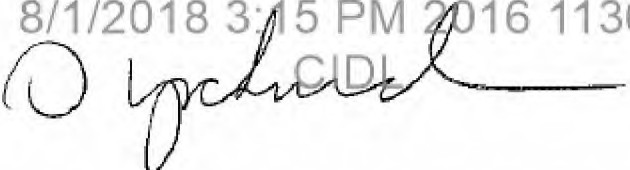
actual conduct during discovery in this case. As shown above, Defendant [redacted] has engaged in a pattern of knowingly fraudulent and deceitful misconduct that leaves no doubt his misconduct is intentional, designed to deceive Plaintiffs, and improperly delayed this litigation for improper purposes.

Accordingly, the Court finds that since Defendant [redacted] has knowingly made false and misleading statements under oath, perpetuated misconduct and fraud upon the parties and Court during this litigation, “[he] should not be permitted to continue to employ the very institution it has subverted to achieve [his] ends.” *Cabrerizo*, 760 So. 2d at 229–30.

It is **ORDERED** and **ADJUDGED** that:

1. The Court **GRANTS** Plaintiffs’ Motion for Sanctions for Fraudulent Discovery against Defendant [redacted]
2. Defendant [redacted] Answer and Affirmative Defenses to Plaintiffs’ Complaint for Damages and Demand for Jury Trial are stricken;
3. Default as to liability is entered against Defendant [redacted] with a trial to proceed against Defendant [redacted] on Plaintiffs’ damages.

DONE AND ORDERED in Chambers at DeLand, Volusia County, Florida.

8/1/2018 3:15 PM 2016 11368
 CIDL

e-Signed 8/1/2018 3:15 PM 2016 11368 CIDL

SANDRA C. UPCHURCH
CIRCUIT JUDGE