IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

NICOLE WADE; JONATHAN GRUNBERG; TAYLOR WILSON; WADE, GRUNBERG & WILSON, LLC;

Plaintiffs,

v.

L. LIN WOOD and L. LIN WOOD, P.C.,

Defendants.

Civil Action File No: 2020-CV-339937

PLAINTIFFS' SECOND MOTION FOR SANCTIONS AND BRIEF IN SUPPORT THEREOF

COME NOW Plaintiffs Nicole Wade, Jonathan Grunberg, Taylor Wilson, and Wade Grunberg & Wilson, LLC (collectively, "Plaintiffs") and file this Second Motion for Sanctions pursuant to O.C.G.A. §§ 9-11-37(d) and (b)(2)(A)-(C) requesting that the Court strike Defendants' pleadings and enter judgment against Defendants for directly lying to this Court about facts and documents pivotal to the parties' dispute in this case. Plaintiffs also show this Court that Defendants' lies come atop numerous, deliberate discovery abuses by Defendants which show a complete contempt for this Court, the Civil Practice Act, and the fair administration of justice.

Recently obtained emails from Defendant L. Lin Wood to local counsel in the Disputed Case[1] show that Defendants have: (1) directly and deliberately lied to this Court in Defendant Wood's sworn affidavit about Defendants' conduct surrounding the payment of compensation owed to Plaintiffs from the Disputed Case; (2) directly lied to this Court throughout their pleadings in this case when Defendant Wood stated he had no involvement in the purported decision of the

[1] "Disputed Case" and "Disputed Client" refer to the representation and client for whom Defendants have refused to pay Plaintiffs' the sum agreed in their settlement agreement.

Disputed Client to withhold consent to the payment of compensation to Plaintiffs; (3) lied to this Court and to Plaintiffs when they stated unequivocally that no such emails with local counsel in the Disputed Case exist; and (4) participated in direct and actionable fraud against Plaintiffs by entering into the Settlement Agreement, while at the time of execution, actively working to prevent payment to Plaintiffs for attorneys fees as required under the Settlement Agreement. To be clear, Plaintiffs are not filing this Second Motion for Sanctions to tell the Court that Defendants previously hid these documents but subsequently disclosed them in some sort of mea culpa; Defendants continue to hide the e-mails and pretend they do not exist to this day.

This newly discovered dishonesty comes after numerous discovery abuses by Defendants which evidence a complete disregard for the rules of procedure and contempt for this Court. First, Defendants have failed to provide any meaningful responses to two separate sets of Requests to Admit and Interrogatories and otherwise failed to provide any response to those Interrogatories until months after they were due. Defendants have failed to file a response to numerous motions until over 90 days past their due date, many of which remain unopposed. Shockingly, Defendant Wood entered into an agreement to dismiss his counterclaims with prejudice to avoid a claim for attorneys' fees for his groundless assertions, and then simply re-filed substantially similar counterclaims but again failed to respond in any way to a motion to dismiss those counterclaims.

In short, Defendants have largely failed to participate in this litigation, and in almost every instance in which they have even partially participated, they have made outright lies to the Court and Plaintiffs. Defendants' newest dishonesty and fraud should not be tolerated by this Court.

INTRODUCTION

I. Defendants Hid Their Own E-mails Revealing Their Fraud and Actively Lied About It to Plaintiffs and the Court.

The Court is aware that this case involves a March 17, 2020, settlement agreement (the "Settlement Agreement") entered into by the parties following their separation from practicing law together, which agreement required Defendants to pay a sum certain to Plaintiffs for work Plaintiffs performed for, among others, one client in particular (the "Disputed Client").

Beneath that, this lawsuit is about two overarching issues, which Plaintiffs have alleged as follows.

First, the purported reason for Defendants' breach of the Settlement Agreement: Defendants' outright lie that the individual Plaintiffs were not lawyers of Defendants' firm despite their open and continuous practice for L. Lin Wood, P.C. for a period collectively exceeding 20 years (a fact acknowledged in the Settlement Agreement itself, in hundreds of court filings, on Defendants' website, in public announcements made by Defendants, and by Defendants in various writings created by Defendants confirming Plaintiffs were "partners" and "non-equity partners").

And *second*, Defendants' fraudulent engineering of the Settlement Agreement with the present intent – at the time of execution – to breach the agreement and "never pay one thin dime"[2] to Plaintiffs. More specifically, Defendants' fraudulently intended at the time of execution to take the absurd position that Plaintiffs were not lawyers of their firm, which would necessitate client consent (from Defendants' own client) for the fees in their Settlement Agreement pursuant to Rule of Professional Conduct 1.5(e); consent which Plaintiffs now know for certain Defendants made

[2] This is one of Defendants' very common refrains and is one of the central allegations subject of Defendants' Motion to Strike on the alleged basis that such refrains are somehow irrelevant to the fact he never paid – or intended to pay – Plaintiffs one thin dime.

sure on the eve of and contemporaneously with the Settlement Agreement's execution would never be given by their client. Indeed, they intended to argue that client consent was required but, before signing the Settlement Agreement, arranged for the Disputed Client to refuse consent to the Settlement Agreement. That is fraud.

While this Motion addresses the now indisputable fact that Defendants planned in advance – in writing – to defraud Plaintiffs, ***this Motion addresses the more pertinent alarming fact that Defendants actively hid – and denied under oath – the existence and substance of Wood's own e-mails setting forth in plain English their plan to defraud Plaintiffs and the mechanisms by which they would attempt to accomplish this fraud, sent just days prior to the execution of the Settlement Agreement.***

And, having planned in advance and ensured the Disputed Client would not consent, Defendants have stated under oath in this case, e.g., "I endeavored in good faith to obtain consent of the client in the Disputed case to the fee split," (Sept. 21, 2020 Aff. of L. Lin Wood ¶ 66 (attached as Exhibit E to the enclosed Affidavit of G. Taylor Wilson)), and "[]although I made no representations [in the Settlement Agreement] regarding client consent, I expected to be able to obtain such consent." (*Id.* ¶ 37).[3]

The core of Defendants' written and pre-conceived plan had five parts: (1) first, ensure prior to executing the parties' Settlement Agreement that the Disputed Client would not consent to Defendants' soon-to-be-made promise to pay Plaintiffs legal fees in the Settlement Agreement; (2) second, take the position that Plaintiffs were somehow never lawyers of Defendants' firm, which would necessitate the Disputed Client's consent to payment of fees under Georgia Rule of

[3] The number of perjurious statements contained in Defendant Wood's September 21, 2020, Affidavit are too many, and the details to vast, to fully address here. Regardless, Plaintiffs have compiled the material documents referenced in one single affidavit, the Affidavit of G. Taylor Wilson, filed contemporaneously herewith, for the Court's convenient review.

Professional Conduct 1.5(e); (3) third, wait until the payment came due to claim Defendants "just learned" the Disputed Client would not consent; (4) fourth, demand from Plaintiffs' "contemporaneous time records" of their work for that client to assess a quantum meruit recovery, time records which Defendants knew neither they nor Plaintiffs kept; and (5) fifth, cover it up through lies to Plaintiffs and the Court. All in an effort to "never pay one thin dime" to Plaintiffs because of perceived and made-up conspiracy theories about Plaintiffs' departure from Defendants' firm.

On February 22, 2020, Defendants e-mailed their co-counsel for the Disputed Client, with the subjects "A good idea!" and "Taylor, Jonathan, and Nicole," as follows:

> "Taylor, Jonathan, and Nicole have hired a lawyer … **I need for you and [the Disputed Client][4] to state in writing that [the Disputed Client] do not and shall not agree that any fees due to my PC be divided with any other lawyer except on a quantum mer[uit] basis.** I am confident they have the right to control the fees…. **In short, I need your help and the help of [the Disputed Client] to nip this nonsense in the bud quickly and quietly…. Will you help me?"**
>
> ***
>
> "I would like to ask you to consider preparing a letter from you to Beal [Plaintiffs' counsel] and a letter **signed by [the Disputed Client] … making clear that it is there [sic] express directive that no fees be paid to Taylor, Jonathan, and Nicole that exceed a quantum meruit basis regardless of any agreement I made or attempted to make… This needs to be nipped on the bud and quickly so**…. Would you please be willing to call me in the morning and let me give you the basic details of what is going on and what I would like for you to consider doing for me and what I would like for [the Disputed Client] to consider doing for me which I believe will bring this foolishness to an abrupt and unhappy ending for Taylor, Jonathan, and Nicole. **If they realize they are not going to receive [the fees from the Disputed Client][5], they will have NO ability to finance their frivolous claims** … and the remaining office lease liability…. That alone will cut off their ability to finance and publicize their BS claims against me."

[4] Whenever in quotes, the Disputed Client's name(s) was stated. For confidentiality reasons, however, Plaintiffs replace it with the term Disputed Client.

[5] The redacted language is, in fact, the exact amount that Defendants promised to pay Plaintiffs for the Disputed Case in the Settlement Agreement.

(Wilson Aff. ¶ 4, Ex. A).

Defendants also hid[6] an e-mail they sent just days later, on March 4, 2020, to the same individual (Defendants' co-counsel for the Disputed Client) detailing the mechanics of how their plan to never pay Plaintiffs would be effectuated:

> **"Their problem on those cases is that they did not keep up with their hours and can only reconstruct them after the fact of settlement…. Any monies I offer them shall be in excess of the monies they are fairly entitled to under the law *and the statement of our clients* $0…. A legitimate argument could be made that the fair and respectful amount I should offer these people … is quantum meruit only … which under the law and *agreed to by my clients* will be worth $0 since th[ey] cannot legitimately reconstruct their hours in any of those cases."**

(*Id.*).

In short, on February 22, 2020, Defendants e-mailed their co-counsel for the Disputed Client requesting his and the Disputed Client's "help" to **"nip this in the bud quietly"** by ensuring the Disputed Client "do[es] not and shall not agree that any fees due to my PC be divided with any other lawyer except on a quantum meruit basis," the result of which would be that Plaintiffs "will have NO ability to finance their" claims against Defendants. On March 4, 2020, Defendants confirmed their client's apparent agreement to withhold consent to a lump sum payment, stating that quantum meruit as "***agreed to by my clients*** will be worth $0 since they [Plaintiffs] cannot reconstruct their hours."

Defendants hid those e-mails from Plaintiffs because they completely incriminated them. These e-mails demonstrate their advance plan to ensure that the Disputed Client *had already agreed just days before the Settlement Agreement at Defendants' request* to object somehow to

[6] Defendants' co-counsel for the Disputed Client did not hide this March 4, 2020, e-mail. He produced it to Plaintiffs, presumably because, unlike the February 22, 2020, e-mails above, it copied two third parties. This e-mail signaled to Plaintiffs that they needed to subpoena the witness from whom they received the hidden February 22, 2020, e-mails above.

Plaintiffs receiving a lump sum payment for attorneys' fees from Defendants, in direct contravention to the plain language of the Settlement Agreement.

Four days after the March 4, 2020, e-mail, Defendants left voicemails for Plaintiffs stating he would settle with them. (Wilson Aff. ¶ 5). Three days later, Defendants began negotiating the Settlement Agreement. (*Id.* ¶ 6). Two days later, they signed a term sheet reflecting the negotiated terms. (*Id*. ¶ 7, Ex. B). Four days after that, the parties executed the Settlement Agreement requiring Defendants to pay a sum certain to Plaintiffs for the Disputed Case and explicitly providing that the individual Plaintiffs "have worked as lawyers of L. Lin Wood, P.C. on cases since 2018," which is the truth and eliminates the need for client consent. (*Id.* ¶ 8, Ex. C).

When it came time for Defendants to meet their obligations under the Settlement Agreement approximately four months later in July 2020, they made good on their plan. Defendants stated to Plaintiffs, in relevant part (1) that contrary to the representation in the Settlement Agreement, "the WGW lawyers were not in Lin's firm at any time relevant to the [Disputed Client's] cases," (2) that the Disputed Client "withheld consent" without which "the fee splits in the Settlement Agreement … are void," (3) Plaintiffs would be paid only "quantum meruit" and only if (4) Plaintiffs "provide LLW with documentation of the services rendered by WGW in the [Disputed Client's] cases (including contemporaneous time records)…" (*Id.* ¶ 9, Ex. D). At that time, four months after March 17, 2020, Defendants further claimed they "*had just learned* that the [Disputed Client] has declined to consent." (*Id.*) (emphasis added). This mirrors Defendants' pre-conceived plan to a tee and demonstrates with particularity the fraud against the Plaintiffs and the fraud upon this Court.

Defendants continue to hide these e-mails and have expressly denied their existence. For instance, Defendants asserted without objection or qualification in their August 5, 2021, response

to Plaintiffs' Second Request for Production of Documents that they "are not in possession of any additional documents [communications, correspondence, text messages, or emails exchanged to or from Todd McMurtry, local counsel in the Disputed Case] regarding settlement funds from the [Disputed Client's] case or referencing any of the Plaintiffs." (Wilson Aff. ¶ 13, Ex. G).

Any response Defendants offer in attempt to explain or mitigate their misconduct, like so many other false and frivolous assertions they have made in this matter, will not be credible. Simply put, and as the Honorable Linda Parker of the United States District for the Eastern District of Michigan recently held – "Wood is not credible." (*See* Wilson Aff. Ex. L, Opinion and Order, p. 31, sanctioning Defendant Wood for, among other things, "a historic and profound abuse of the judicial process" in connection with a lawsuit aimed at alleged fraud in the 2020 Presidential election).[7]

FACTUAL BACKGROUND

Because the standard governing sanctions instructs courts to consider the totality of a party's conduct in considering the appropriate sanction, Plaintiffs detail the main issue but also summarize pertinent actions of Defendants throughout this case.

I. Brief Explanation of the Timeline.

Plaintiffs' quit Defendants' law firm on February 14, 2020, on an emergency basis. (Wilson Aff. ¶ 23). At that time, there were several client matters which had resolved but for which the clients had not yet tendered attorneys' fees to Defendant L. Lin Wood, P.C. (*Id.*).

Among those clients is the Disputed Client, who Defendant L. Lin Wood, P.C. represented as co-counsel with another firm and lawyer. (*Id.* ¶ 24). Defendants and their co-counsel continued

[7] There is little doubt that, if any response is filed to this Motion, Defendants will lay the blame at someone else's feet by asserting, for instance, that they delegated the document search to some other person.

to represent the Disputed Client following Plaintiffs' departure from the firm, including at the time the Settlement Agreement was executed and the monies owed thereunder came due. (*Id.*).

On March 17, 2020, the parties signed the Settlement Agreement, which is the subject of this case, and which provided for payment by Plaintiffs of certain expenses, including a lease, and a larger payment by Defendant for fees from, among others, the Disputed Case. (*Id.* ¶ 8, Ex. C). It also explicitly provides that "WGW never held any ownership interest in L. Lin Wood, P.C. (hereinafter 'LLW PC') but have worked as lawyers of L. Lin Wood, P.C. on cases since 2018." (*Id.*).

The compensation owed by Defendants to Plaintiffs from several matters did not become due and payable until approximately July 24, 2020. (*Id.* ¶ 26). On the same date, Defendants asserted via letter that "**we just learned** that the [Disputed Client] has declined to consent" to the fees specified in the Settlement Agreement and thus, because the "fee splits for these cases [in the Settlement Agreement] require client consent in order to comply with Georgia Rule of Professional Conduct 1.5(e)," "the fee splits pertaining to the [Disputed Client] in the settlement agreement are void," but the "other provision of the agreement remain valid, however, and LLW PC intends to honor them and expects for WGW to do the same," which Defendants contended meant Plaintiffs were indebted to them, not the other way around. (*Id.* Ex. D).

II. Defendants' Intentionally Hidden E-mails Expressly State Their Plan to Defraud Plaintiffs.

For the Court's convenience, the most material portions of the hidden e-mails are screenshotted below.

On February 22, 2020, at 2:42 a.m., just 24 days prior to the March 17, 2020, Settlement Agreement, Defendants wrote to their co-counsel for the Disputed Client, in part, as follows:

From: Lin Wood <lwood@linwoodlaw.com>
Date: February 22, 2020 at 2:42:00 AM EST
To: "Todd V. McMurtry (tmcmurtry@hemmerlaw.com)" <tmcmurtry@hemmerlaw.com>
Subject: Taylor, Jonathan, and Nicole

Todd,

I can explain more to you tomorrow by phone but I would like to ask you to consider preparing a letter from you to Beal and a letter signed by [redacted] to you or Beal making clear that it is there express directive that no fees be paid to Taylor, Jonathan, and Nicole that exceed a quantum meruit basis regardless of any agreement I made or attempted to make to get rid of their foolishness to prevent it from harming my future efforts for [redacted] and others. That is, they and you should demand that on a fair and reasonable attorney hourly fee for documented fair and reasonable hours spent on the [redacted]

[redacted] In short, Taylor, Jonathan, and Nicole are trying to claim 50% of my fee while attempting to stick me with 75% of the outstanding liability owed on the office lease. Their greed will not be honored by any court. But their efforts to be greedy could damage me, my family, my legacy, and my clients-which include your clients [redacted] if the disputes become public. This needs to nipped on the bud and quickly so.

Would you please be willing to call me in the morning and let me give you the basic details of what is going on and exactly what I would like for you to consider doing for me and what I would like for [redacted] to consider doing for me which I believe will bring this foolishness to an abrupt and unhappy ending for Taylor, Jonathan, and Nicole. If they the realize that they are not going to receive [redacted] for the [redacted] case, they will have NO ability to finance their frivolous claims regarding the fees in [redacted] and the remaining office lease liability. Worse case scenario will be that I will be authorized by the clients to hold my PC's portion of the [redacted] fee in my escrow account pending final resolution of the disputes between me and WGW. That alone will cut off their ability to finance and publicize their BS claims against me.

(Wilson Aff. Ex. A-1).

This is exactly the position taken by Defendants *after* their breach, except that Defendants asserted afterwards that they did not learn of the alleged lack of client consent until July 24, 2020. As shown here, they planned it in advance.

That same day, February 22, 2020, just sixteen minutes later at 2:58 a.m., Defendants e-mailed their co-counsel again, in pertinent part, as follows:

From: Lin Wood <lwood@linwoodlaw.com>
Date: February 22, 2020 at 2:58:42 AM EST
To: Todd McMurtry <tmcmurtry@hemmerlaw.com>
Subject: A good idea!

Todd,

I need for you and [redacted] to state in writing that [redacted] do not and shell not agree that any fees due to my PC be divided with any other lawyers except on a quantum Meryl at basis. I am confident they have the right to control the fees. I am confident that their right to do so exceed my right, if any, to be coerced into paying these greedy lawyers 50% of my fee.

In short, I need your help and the help of [redacted] to nip this nonsense in the bud quickly and quietly. If Bill receives a letter on Saturday from you, [redacted], he and his class will quickly realize that they are in deep trouble as they will not have the financial ability to pay the lawyer or meet their obligations under the lease.

Will you help me? I will be up early and driving over to Reynolds tomorrow and will look forward to

(*Id.* Ex. A-2).

On March 4, 2020, at 1:17 a.m. (Eastern),[8] Defendants again e-mailed their co-counsel (as well as others), stating in pertinent part, as follows:

[8] The time stamp shown in the e-mail appears to be Pacific time.

From: Lin Wood <lwood@linwoodlaw.com>
Sent: Tuesday, March 03, 2020 10:17 PM
To: Todd V. McMurtry (tmcmurtry@hemmerlaw.com)
Cc: Kimmy Hart Bennett; Nikki Baker
Subject: FW: Resolution

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Todd,

I am prepared to offer WGW fees on a quantum meruit basis ONLY for [redacted]. Their problem on those cases is that they did not keep up with their hours and can only reconstruct them after the fact of settlement.

The dollar amount that I'm willing to offer these foolish people in an effort to be kind (and attempt to do God's will is only a portion of the [redacted] fee due and payable to LLW, PC. After considering the absurdity of the demand they made upon me yesterday, I am now inclined only offer them between [redacted]. Any monies I offer them shall be in excess of the monies they are fairly entitled to under the law and the statement of our clients $0.

us. A legitimate argument could be made that the fair and respectful amount I should offer these people (who have been practicing law for fame and fortune and conniving against their office sharing agreement partner since 2018) is quantum meruit only as to [redacted] which under the law and agreed to by my clients will be worth $0 since that cannot legitimately reconstruct their hours in any of those cases.

(*Id.* Ex. A-3).

Again, the highlight: as Defendants subsequently claimed to require on July 24, 2020, they planned on March 4, 2020, the need for Plaintiffs to provide their time records to receive any compensation and then only in quantum meruit, which Defendants asserted then "will be worth $0," which had already "agreed to" by the Disputed Client. They demanded those "time records" on July 24, 2020, knowing that they did not exist as part of his fraudulent plan set out in his February 22 email.

III. Defendant's Unabashed Lies to this Court and Plaintiffs Regarding the Existence and Content of the E-mails.

The explicit, repeated, and varying manner in which Defendants have lied about these e-mails cannot be refuted.

More than a year ago, on September 10, 2020, Plaintiffs served their First Request for Production of Documents.[9] In it, Plaintiffs requested and Defendants responded as follows:

REQUEST FOR PRODUCTION NO. 5:

Any and all documents, correspondence, tangible communications, text messages, or emails exchanged from or to any person regarding the division of fees in the [redacted] case from January 1, 2020 to the date of trial in this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

See enclosed flash-drive for documents provided in response to Request for Production No. 5.

(Wilson Aff. ¶ 11, Ex. F).

Despite receiving no objection, Defendants did not produce the subject e-mails. In fact, Plaintiffs received exactly and only three e-mails from Defendants in response to this request. (*Id.* ¶ 12).

[9] Again, all redactions refer to the Disputed Client.

On April 13, 2021, Plaintiffs served their Second Request for Production of Documents. In it, Plaintiffs requested and Defendants responded as follows:

REQUEST FOR PRODUCTION NO. 9:

All communications, correspondence, text messages, or emails exchanged to or from Todd McMurtry regarding settlement funds from the [redacted] or referencing any of the Plaintiffs.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

The Defendants are not in possession of any additional documents responsive to this Request other than those produced in their responses to Request No. 5 of Defendants' Response to Plaintiffs' First Request for Production.

(*Id.* ¶ 13, Ex. G).

Plaintiffs gave Defendants multiple opportunities to produce these e-mails, not just in document requests and other written discovery, but also by filing multiple motions regarding Defendants' discovery violations and woefully incomplete productions. They not only failed to produce them, *they expressly denied their existence* as set forth above. (*Id.*).

In their First Continuing Interrogatories to Defendants, Plaintiffs requested and Defendants responded under oath as follows:

INTERROGATORY NO. 8:

Describe all conversations and correspondence with [redacted] regarding the division of fees in the [redacted] from January 1, 2020 to the present, including in your response the date and time of the communication, the method of communication, the place of communication, and details of the substance of the communication.

RESPONSE TO INTERROGATORY NO. 8:

None.

(*Id.* ¶ 14, Ex. H).

In their September 10, 2020, First Requests for Admission, Plaintiffs requested and Defendants responded (under oath) as follows:

REQUEST FOR ADMISSION NO. 44:

Admit that as of March 17, 2020, to your knowledge, [redacted] had decided to withhold consent for Defendant LLW PC to split fees with Plaintiffs Wade, Grunberg, and Wilson.

RESPONSE TO REQUEST FOR ADMISSION NO. 44:

Denied.

(*Id.* ¶ 15, Ex. I). In the face of Defendants' responses to the requests for production and the express denials the e-mails exist, these interrogatory and request to admit responses clearly conceal the substance of the hidden e-mails.

IV. Defendant Wood Lies Under Oath About His Conduct Now Revealed by the Emails

Despite the content of the hidden e-mails where Defendants explicitly requested that the Disputed Client withhold consent, on September 21, 2020, Defendant Wood submitted an affidavit

to this Court in which he alleged the exact opposite. Defendant Wood asserted under oath that the form he prepared for co-counsel to present to the clients in the Disputed Case "accurately indicated that I requested the clients sign the document and thereby consent to the fee split in the Settlement Agreement." He went on to state: "**I endeavored in good faith to obtain consent of the client in the Disputed Case to the fee split**." (*Id.* (Wood Aff.) Ex. E, ¶ 47, 66) (emphasis added). However, we now know that Wood wrote to co-counsel **before** signing the Settlement Agreement and begged him to do the exact opposite: to go to the clients on the Disputed Case and urge them not to consent to Plaintiffs' fees: "I need for you and (clients) to state in writing that [clients] do not . . . agree that any fees due my PC be divided with any other lawyers except on a quantum [meruit] basis. . . . **In short, I need your help and the help of** [clients] **to nip this nonsense in the bud quickly and quietly."** (*Id.* Ex. A-2).

Similarly, Defendants further asserted in their *verified* Amended Counterclaim that they "requested that the client consent to how that fee would be divided between" Defendants and Plaintiffs:

> 14. The settlement funds were sent to the client's attorneys in late July 2020, and in late July and on or about July 24, 2020, the client met with his independent legal counsel, without Mr. Wood's participation, to review the Settlement Agreement. In accordance with applicable bar rules, Mr. Wood through independent legal counsel, requested that the client, execute his consent to the agreement so Mr. Wood, consistent with his obligations under Rule 1.5 of the Georgia Rules of Professional Conduct, and/or other applicable law, disburse to Plaintiffs/Counter-Defendants Wade, Grunberg, and Wilson.

(Am. CC ¶ 14).[10] When, in truth, as shown in the hidden e-mails, Defendants approached that "independent legal counsel" and asked him to "help" him by ensuring the Disputed Client would not consent, rendering this purported subsequent interaction nothing but a farce and completion of the fraudulent scheme because the Disputed Client had already agreed to withhold consent at Defendants' request.

Wood furthered propagated his lie on June 16, 2021, during Defendant Wood's recorded rants before a court reporter (during the time he had improperly noticed Plaintiff Wade for a deposition) when he falsely stated that he had no idea about the supposed issue of client consent until well after the Settlement Agreement was executed:

> I had a law firm draw up a fee sharing agreement, Alston & Bird. Well, they missed the fact that the law in Georgia requires client consent. They didn't tell me about that until almost two months after I had entered into the agreement with Wade, Grunberg & Wilson. And so when it came time for

(*Id.* ¶ 16, Ex. J).

V. Defendants' Other Complete Failures to Participate in Discovery.

Plaintiffs have tried in vain for an entire year to obtain any meaningful discovery from Defendants.

[10] Though not specifically subject of this Motion, Defendants have also failed to produce the purported document presented to the Disputed Client specifying the fees to be paid to Plaintiffs and their purported request that they be paid. *Compare* Wood Aff. ¶ 47.

As set forth in Plaintiffs' April 13, 2021, Combined Motion to Compel and to Determine the Sufficiency of Defendant Lin Wood's Response to Plaintiff's First Requests for Admissions, on September 10, 2020, Plaintiffs served their First Continuing Interrogatories to Defendants, First Request for Production of Documents and Notice to Produce to Defendant, and Requests for Admissions on Defendant Wood. Defendants served placeholder responses on October 23, 2020, objecting to each and every request on the basis that "discovery is stayed for a period of 90 days (until January 6, 2021)" because of Defendants' Motion to Dismiss filed October 8, 2020. After the responses came due, and having received no substantive or supplemental responses, on March 5, 2021, Plaintiffs sent Defendants a letter pursuant to Uniform Superior Court Rule 6.4 in an attempt to settle the discovery dispute. (*Id.* ¶ 17). Defendants offered no response to that letter. (*Id.*). Defendants have never responded to that motion to compel but did offer blatantly insufficient discovery responses on May 10, May 26 and May 27, 2021, approximately six weeks after Plaintiffs filed their motion to compel. (*Id.*).

As set forth in Plaintiffs' May 21, 2021, first Motion for Sanctions, Plaintiffs served their Second Continuing Interrogatories, Second Requests for Production of Documents and Notice to Produce, and Second Requests for Admissions to Defendants on April 13, 2021. (*Id.* ¶ 18). Having received no responses whatsoever, Plaintiffs filed their motion for sanctions. (*Id.*). Defendants have never responded to that May 21 motion for sanctions. (*Id.*). Defendants did provide belated (and woefully incomplete) responses to the Second Requests for Admissions on June 8, 2021, and belated (and woefully incomplete) responses to the Second Continuing Interrogatories and Requests for Production on August 5, 2021. (*Id.*).

VI. Defendants' Complete Failures to Participate in Motion Practice.

Defendants have basically ignored the Civil Practice Act and Superior Court Rules and, to date, gotten away with it without a single repercussion. Plaintiffs have literally been litigating motions against no opposition, and yet none of those motions have been heard, granted, or denied.

On December 23, 2020, Plaintiffs filed their Motion to Strike Defendant Lin Wood's Counterclaims, which Defendants did not oppose but instead dismissed their counterclaims with prejudice.

On April 13, 2021, Plaintiffs filed their Motion to Compel. That motion remains unopposed.

On May 14, 2021, Plaintiffs filed their Motion for Contempt and on May 19, 2021, their companion Supplemental Motion for Contempt. Those motions remained unopposed until August 6, 2021.

On May 21, 2021, Plaintiffs filed their first Motion for Sanctions. That motion remained unopposed until August 6, 2021.

On June 2, 2021, Plaintiffs filed their Motion to Quash Defendants' Non-Party Subpoena to Bryan Cave. That motion remains unopposed.

On July 16, 2021, Plaintiffs filed their Motion to Dismiss Defendants' Amended Counterclaims. That motion remains unopposed.

All of those motions carried with them a 30 day deadline.

VII. Defendants' Sole Stated Excuse for Their Failure to Respond to Discovery is Nonsensical.

Defendants argument in the filed the Affidavit of Larry L. Crain, Esq., asserting that their failures to respond to various documents was because of their "mistaken[]" "understanding" "that the earlier stay of discovery was still in effect" (Wilson Aff. ¶ 19, Ex. K) is yet another lie by

Defendants. If this claim were true, why did Defendants serve subpoenas and notices of depositions during the time they believed the case was stayed? (*See* subpoena served on Bryan Cave on May 7, notices of depositions to Plaintiffs on May 10, responses to Plaintiffs' requests for production on May 10 and amended notices of depositions to Plaintiffs on June 2.) (Wilson Aff. ¶ 20). This should be taken into account when assessing Defendants' willfulness and Defendants should not be permitted to lodge such obvious misrepresentations as excuses to avoid sanctions.[11]

ARGUMENT AND CITATION OF AUTHORITY

The outcome of this Motion depends on two things: (1) a determination as to whether Defendants' various discovery violations were willful, which requires only a conscious or intentional failure to act and (2) this Court's broad discretion to determine the appropriate sanctions to level against Defendants for their indisputable willful misconduct. In considering the former, Defendants' willfulness should be considered "in the context of the entire period beginning with the service of interrogatories and ending with service of answers" because "[e]vents during this entire time period are probative of whether [Defendants] acted with conscious indifference to the consequences" of their discovery failures. *City of Griffin v. Jackson*, 239 Ga. App. 374, 377 (1999) (citation omitted).

Here, Defendants have engaged in an entire year of varying discovery misconduct, including both the total failure to respond to discovery despite attempts to meet and confer and in the face of motions to compel and for sanctions, and outright falsehoods mixed with non-substantive responses when belated discovery responses were provided. Under these

[11] Defendants have further claimed that they dismissed Mr. Crain as counsel as a result of these failures. The truth and merit of that claim notwithstanding, as set forth above, Defendants have taken little action to respond to pending motions or address their discovery failures since his dismissal. Moreover, Defendants are themselves counsel of record in this matter with all attendant duties owed by local counsel.

circumstances, a broad range of sanctions are appropriate and available to the Court, including, without limitation, entry of default judgment, dismissal of Defendants' Amended Counterclaims, evidentiary consequences, monetary sanctions, and awards of attorneys' fees.

I. The Standards Governing This Motion: A Total Failure to Respond and/or False Discovery Responses Warrant Severe Sanctions Even Absent a Prior Court Order.

O.C.G.A. § 9-11-37(b) governs sanctions to be issued where a party disobeys a prior court order, while O.C.G.A. § 9-11-37(d) governs a party's total failure to serve answers to interrogatories or respond to requests to produce documents. With respect to the sanctions available, however, those two code sections are co-extensive. Subsection (d) provides that, where a party "fails to serve answers or objections to interrogatories … or fails to serve a written response to a request for inspection [of documents] … the court … may make such orders in regard to the failure as are just; and, among others, it may take any action authorized under subparagraphs (b)(2)(A) through (b)(2)(C) of this Code section," as well as "require the party failing to act or the attorney advising him, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified…" O.C.G.A. § 9-11-37(d)(1).

In this instance, the Court is facing not only Defendants' prior total failure to respond to Plaintiffs' discovery responses, but also outright falsehoods in the belated discovery responses that were provided on one of the most pivotal issues in the case. The law is clear that falsehoods are tantamount to the total failure to provide responses, and thus warrant severe sanctions. An "intentionally false response to written discovery request, particularly when it concerns a pivotal issue in the litigation, equates to a total failure to respond, triggering O.C.G.A. § 9-11-37(d) sanctions. The trial court may sanction the offending party by, inter alia, striking out pleadings or rendering a judgment by default." *Found. Contractors, Inc. v. Home Depot U.S.A., Inc.*, 359 Ga.

App. 26 (2021), *disapproved on other grounds by Chrysler Grp., LLC v. Walden*, 303 Ga. 358 (2018) (citations omitted); *see also Orkin Exterminating Co., Inc. v. McIntosh*, 215 Ga. App. 587, 589-90 (1994) (collecting cases from other jurisdictions recognizing that "courts have interpreted a false response to an interrogatory as a 'failure to respond' under Fed.R.Civ.P. 37(d) or analogous state provisions and have imposed sanctions, including striking a party's pleadings and imposing judgment.") (citations omitted). The reason being that a discovery response "that falsely denies the existence of discoverable information is not exactly equivalent to no response. It is *worse* than no response…. The obstruction to the discovery process is much graver when a party denies" what is true than "when the party refuses to respond…" *Sandoval v. Martinez*, 780 P.2d 1152, 1155-56 (N.M. C.A. 1989) (emphasis in original).

The reason for Plaintiffs' detailed explanation herein as to the importance of these documents is borne out by the case law, which provides that the more material the discovery information sought, the more significant the discovery violation and the more obvious that Defendants' conduct was willful, intentional, and/or conscious. *Compare In re Delta/AirTran Baggage Fee Antitrust Litig.*, 846 F. Supp. 2d 1335, 1352-53 (N.D. Ga. 2012) ("Particularly persuasive to the court's finding that First Union's failure was a 'good faith error' was the fact that '[t]here were no 'smoking guns' in the belatedly produced documents.") (citations omitted). Whereas here, the e-mails Defendants hid from Plaintiffs were "pivotal." *Found. Contractors*, 359 Ga. App. 26.

"Trial courts have broad discretion to control discovery, including the imposition of sanctions. Absent the showing of a clear abuse of discretion, a court's exercise of that broad discretion will not be reversed." *Rivers v. Almand*, 241 Ga. App. 565, 566 (1999) (citations omitted). "The sanction of dismissal for failure to comply with discovery provisions of the Civil

Practice Act requires only a conscious or intentional failure to act, as distinguished from an accidental or involuntary non-compliance. A conscious or intentional failure to act is in fact wil[l]ful." *Roberts v. Maren Eng'g Corp.*, 225 Ga. App. 110, 110 (1997) (citations omitted).

Critically, as no prior discovery order has been entered in this matter despite Plaintiffs' repeated attempts to seek Court intervention, "[p]rior to imposing the sanction of dismissal under O.C.G.A. § 9-11-37(d), there need be no order to compel discovery as provided for in O.C.G.A. § 9-11-37(b). All that is required is a motion, notice and a hearing." *Stolle v. State Farm Mut. Auto. Ins. Co.*, 206 Ga. App. 235, 237 (1992) (citation omitted); *see also American Radiosurgery, Inc. v. Rakes*, 325 Ga. App. 161, 167 (2013) ("an order compelling discovery is not a condition precedent for imposing sanctions under O.C.G.A. § 9-11-37(d)(1)."); *Bryant v. Nationwide Ins. Co.*, 183 Ga. App. 577, 578 (1987) ("immediate sanctions" may be entered "without the preliminary necessity of an order to compel.").

Finally, especially here because Defendants' belated responses following Plaintiffs' first motion for sanctions were false and constitute smoking guns on pivotal issues in the case, "[o]nce a motion for sanctions has been filed, their imposition cannot be precluded by a belated response made by the opposite party." *Bryant*, 183 Ga. App. at 578; *see also West v. Equifax Credit Info. Servs., Inc.*, 230 Ga. App. 41, 43 (1997) ("West answered the discovery only after Equifax moved for sanctions. Late responses do not nullify the motion.") (citations omitted).

Upon a finding of willfulness, the Court must only exercise its discretion to determine what sanctions to impose. Those provided explicitly by O.C.G.A. § 9-11-37 are as follows:

1. An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action.

2. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence.

3. An order striking out pleadings or parts thereof … or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

4. Require the party failing to act or the attorney advising him, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

O.C.G.A. §§ 9-11-37(b)(2)(A)-(C), 9-11-37(d)(1).

II. Application of the Standard Where Defendants Consciously Engage in Multiple Discovery Violations and Those Violations Are Not Merely Negligent.

As set forth in the fact section, *supra,* Defendants' violations here include both a total failure to participate and falsehoods when they did purport to participate in the discovery process.

First, Defendants failed to offer any responses (only objections) to Plaintiffs' first sets of discovery – despite meet and confer efforts – until well after they were due. When they did respond, well after Plaintiffs' filing of a still unopposed motion to compel, Defendants' responses were grossly inadequate.

Second, Defendants failed to offer any responses to Plaintiffs' second sets of discovery, necessitating a motion for sanctions. While that motion remains unopposed, Defendants did offer belated, grossly inadequate, and false responses eventually. Most significantly, Defendants proffered a bald-faced lie regarding the pivotal e-mails at issue in this motion.

Under these circumstances, the most severe sanctions available to the Court are appropriate. For instance, in *Rivers v. Almand*, 241 Ga. App. 565 (1999), the Court of Appeals affirmed the dismissal of the plaintiff's complaint with prejudice "for her total noncompliance with the discovery process." *Id.* at 565. More specifically, the plaintiff first "completely failed to respond" to "interrogatories and requests for production of documents," then defense counsel sought without reply to meet and confer before moving "to compel or in the alternative for

sanctions." *Id.* Then, the plaintiff "did not file a written response to [the defendant's] motion to compel or for sanctions." *Id.* at 566. The Court of Appeals held that "the evidence confirms that Rivers committed ***three separate*** violations of the discovery rules, inexplicably failing to comply with the most elementary requirements of the discovery sections of the Civil Practice Act." *Id.* (emphasis added). Notably, the Court of Appeals affirmed the sanction despite there being no pre-existing order compelling discovery responses. The same is true here: Defendants have engaged in *at least three separate* violations of the most basic discovery rules.

Similarly, in *Roberts v. Maren Eng'g Corp.*, 225 Ga. App. 110 (1997), the Court of Appeals affirmed the "sanction of dismissal" where "the Robertses failed to respond to defendants' discovery requests for over three months after their responses were due," where they failed to respond despite "numerous letters and phone calls from defense counsel" and "even in light of the defendants' motion to dismiss the complaint." *Id.* at 110. That court held that it "is patently absurd to argue that they were not aware responses were past due when faced with such motions." *Id.* The same has happened here: Defendants have proffered the supposed excuse (under oath, too) that they allegedly believed that discovery was still stayed when their responses to Plaintiffs' second sets of discovery were due. (Wilson Aff. ¶ 19, Ex. K (Crain Affidavit)). That discovery was served on April 13, 2021, and was due on May 17, 2021. Yet, during this same time period Defendants claim under oath they believed discovery was stayed: (1) on May 7, 2021, Defendants attempted to subpoena a third party (signed by Mr. Crain); (2) on May 10, 2021, they noticed Plaintiffs' depositions (albeit a faulty notice); and (3) they responded to Plaintiffs' first set of

discovery on May 10, May 26, and May 27, 2021. (*Id.* ¶ 20). It is "patently absurd" to state under oath that they believed the case and discovery were stayed.[12]

In *Revels v. Wimberly*, 223, Ga. App. 407 (1996), as well, the Court of Appeals affirmed dismissal where "five months went by in which Revels did not answer any of this discovery" and filed "no response to this motion for sanctions." 223 Ga. App. at 408. They did so despite protestations that the "attorney's busy personal schedule" interfered with Revels' ability to timely respond to discovery. *Id.* at 408-09.

Defendants' willfulness may also be inferred from their own comments prior to and during litigation regarding their intent to litigate Plaintiffs into the ground. For instance, prior to filing suit, Defendants stated "I dare you to sue me for it. You don't have the balls to do it and if you do it, you shall lose in and in the process, lose more of your damn assess if there's anything left of your assess after I finish with your asses tomorrow…" (Ver. Am. Compl. ¶ 137). Defendants stated "God Almighty told me to get you back to where you belong. Broke and essentially homeless…. Buckle up your damn seatbelts. Unless I change my mind under the instructions of God, you are in for the roughest ride of your lives. I'm going to teach you all a lesson that you are going to learn…." (*Id.*). Defendants told Plaintiffs, again prior to suit, "If ya wanna go to war and you think you're gonna beat me, you're gonna lose. I got ya every which way, coming and going…. The last thing you wanna do is start off your law firm, before you even get started getting crushed by me, and I got the power to do it." (Ver. Am. Compl. ¶ 154). In the very e-mails Defendants have hidden they have stated that, as a result of their fraud, Plaintiffs "will not have

[12] *Compare* Hon. Linda Parker's Sanctions Order, holding, e.g., "The Court does not believe that Wood was unaware of his inclusion as counsel in this case until a newspaper article alerted him to the sanctions motion filed against him and this is why…. No reasonable attorney would sit back silently if his or her name were listed as counsel in a case if permission to do so had not been given. Second, Wood is not credible. He claims he was never served with the City's motion for sanctions … Most importantly, Wood's social media postings undermine his current assertions, as do his statements in other court proceedings." (Sanctions Order pp. 27-34).

the financial ability to pay the lawyer or meet their obligations under the lease" and "they will have NO ability to finance their frivolous claims." (Wilson Aff. Ex. A). In their social media posts during litigation, Defendants declared "Could take years to resolve this litigation! … I also still enjoy teaching young lawyers a few legal strategy tricks. I love legally ensnaring my opponents!" (*Id.* ¶ 21).

That kind of conduct – promises to delay and inflict financial pain during litigation – also enters courts' analysis of willfulness in these matters. For instance, the Court of Appeals held that "the trial court was authorized to conclude that Riches to Rags was intentionally prolonging the discovery process" where "Atkins promised as much in his response to McAlexander's initial demand letter," noting that the defendant had previously advised the plaintiff "this case will drag over two years or three and even if you have a still tight case … it still doesn't mean [McAlexander] will be a winner…. It was [McAlexander] who caused this and it will be [McAlexander] who loses. Sure you can sue me. I also can play this game and once I start I will not let go and he will not be able to afford it…." *Riches To Rags, Inc. v. McAlexander & Associates, Inc.*, 249 Ga. App. 649, 649-50, 653 (2001).

III. No Reasonable Basis for Claim of Oversight or Negligence

Stated more simply, with respect to Defendants' willfulness, it cannot be reasonably disputed that Defendants hid the e-mails at issue on purpose:

1. They specifically identify Plaintiffs by name *in the subject line* and otherwise expressly refer to Plaintiffs by name repeatedly;
2. They are sent to the Disputed Client's co-counsel with Defendants;
3. They expressly identify Plaintiffs' counsel by name;
4. They expressly identify the Disputed Client by name;

5. They expressly discuss the Disputed Client's consent or lack thereof to the compensation called for by the Settlement Agreement;
6. They expressly identify the defendant(s) in the Dispute Client's case(s);
7. They expressly identify the specific dollar amount the Plaintiffs were entitled to under the Settlement Agreement; and
8. They expressly identify the details of how Defendants would execute their fraudulent plan.

(*Compare* Wilson Aff. Ex. A).

In short, *any search – even the most lackadaisical but good faith search – for documents* related to this matter would have revealed their existence, to the extent Defendants wish to claim they had previously forgotten about their existence. There can be no innocent explanation for Defendants' failure to produce them.

IV. The Necessity of Sanctions in This Case.

It is not uncommon that courts are hesitant to level severe sanctions. However, they are not only appropriate in this case, but they are necessary to respond to Defendants' flouting of this Court's authority and the legal process, and to set an example to other litigants. If Defendants can unabashedly refuse to participate in discovery and motion practice, and then openly lie about perhaps the most significant issue in this case while hiding the smoking gun documents demonstrating their lies, what incentive to party litigants have to abide the rules?

"[W]hen a party has displayed a willful, bad faith approach to discovery, it is not only proper, but imperative, that severe sanctions be imposed to preserve the integrity of the judicial process and the due process rights of the other litigants." *Sandoval*, 780 P.2d 1152, 1156 (citation omitted). As the Supreme Court of the United States has recognized:

> But here, as in other areas of the law, the most severe in the spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent…. other parties to other lawsuits would feel freer than we think Rule 37 contemplates they should feel to flout other discovery orders of other district courts.

Nat'l Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 643 (1976) (affirming sanction of dismissal for failure to answer interrogatories).

Or, as the Honorable Linda Parker put it while sanctioning Defendant Wood in one of his election fraud cases:

> America's civil litigation system affords individuals the privilege to file a lawsuit to allege a violation of law. Individuals, however, must litigate within the established parameters for filing a claim. Such parameters are set forth in statutes, rules of civil procedure, local court rules, and professional rules of responsibility and ethics. Every attorney who files a claim … is charged with the obligation to know these statutes and rules, as well as the law allegedly violated…. **The sanctity of both the courtroom and the litigation process are preserved** only when attorneys adhere to this oath and follow the rules, and **only when courts impose sanctions when attorneys do not**. And despite the haze of confusion, commotion, and chaos counsel intentionally attempted to create by filing this lawsuit, one thing is perfectly clear: Plaintiffs' attorneys have scorned their oath, flouted the rules, and attempted to undermine the integrity of the judiciary along the way….

(Wilson Aff. Ex. L (Opinion and Order, pp. 2-4)) (emphasis added).

In addition to the myriad Georgia decisions affirming the ultimate sanction of dismissal discussed above, a variety of decisions employ the other tools available under O.C.G.A. § 9-11-37 to sanction Defendants for hiding material documents and/or lying about their existence. *See, e.g., Am. Angus Ass'n v. Sysco Corp.*, 158 F.R.D. 372, 375 (W.D.N.C. 1994) (holding that Defendants who withheld relevant documents would be prohibited from "introduc[ing] into evidence or plac[ing] before the jury the additional documents not disclosed to Plaintiff"); *Bell v. Auto. Club of Michigan*, 80 F.R.D. 228, 230-33 (E.D. Mich. 1978) (permitting plaintiffs depositions they requested, awarding attorney's fees and expenses, and holding that "Defendants

will not be permitted to deny the correctness of the information contained" in hidden documents where "responses of defendants to these interrogatories, as well as subsequent representations … both formal, in depositions and letters to the court, and informal, in oral statements, appear to conceal the material and mislead the plaintiffs and the court.").

The Court, to punish Defendants for their misconduct, to protect Plaintiffs' due process rights, and to deter future similar misconduct by other litigants, should issue severe sanctions.

CONCLUSION

Wherefore, Plaintiffs respectfully request the Court to issue sanctions and take any action it deems appropriate under O.C.G.A. § 9-11-37(b)(2)(A-C) for Defendants' failure to respond to Plaintiffs' Second Set of Discovery, their gross misrepresentations regarding the same in their belated responses, and their discovery conduct as a whole.

Respectfully submitted this 14th day of September, 2021.

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

NICOLE WADE; JONATHAN GRUNBERG; TAYLOR WILSON; WADE, GRUNBERG & WILSON, LLC; Plaintiffs, v. L. LIN WOOD and L. LIN WOOD, P.C., Defendants.	Civil Action File No: 2020-CV-339937

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the within and foregoing Plaintiff's Second Motion for Sanctions and Brief in Support Thereof via electronic mail and via the Court's electronic filing system to all counsel of record addressed as follows:

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