IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO: 50-2017-CA-010386XXXXMB AI

WENDY WALKER MENDELSOHN
and JOSHUA MENDELSOHN,

Plaintiffs,

vs.

E. LLWYD ECCLESTONE, JR.,

Defendant.

______________________________/

ORDER GRANTING DEFENDANT'S MOTION TO STRIKE PLEADINGS AND DISMISSING THIS ACTION WITH PREJUDICE

THIS CAUSE came before the Court for a special set evidentiary hearing on July 23, 2024, upon Defendant's Motion to Strike Pleadings (the "Motion") (DE #1202). Based on a review of the Motion and the court file, having heard argument of counsel and having considered the evidence presented by both Parties, and the Court being otherwise fully advised in the premises, the Court finds as follows:

INTRODUCTION

This Motion is founded on a claim of fraud upon the Court. Defendant is seeking the striking of Plaintiffs' pleadings based in principal upon issues surrounding Plaintiffs' former expert, Richard Loewenstein, M.D. ("Loewenstein"). Those issues include: (1) discovery violations from first withholding Loewenstein's file to then obstructing the defense from obtaining it; (2) misleading both defense counsel and the Court about the circumstances of Loewenstein's withdrawal in order to obtain a continuance of a long-standing specially-set trial, resulting in a thirteen (13) month delay of the proceedings; (3) violating Orders of this Court; and (4) making repeated misrepresentations to the Court about both the discovery violations and Loewenstein's withdrawal, including at the evidentiary hearing on the Motion.

There have been other serious issues along the way. As examples, the illegal recording of Defendant by Plaintiffs, the improper concealment of such in discovery by Plaintiffs and their counsel, and Plaintiffs' counsel's repeated efforts to illegally "use" the recordings in depositions and to structure still other discovery with the help of the illegal recording (see DE # 184, 313, 362, 831, 880, 881, 925, etc.), Plaintiffs' construction of a Hollywood-type video and efforts to conceal the video until settlement discussions (see DE # 1118, 1153, etc.). Judge Rowe deferred sanctions (see DE # 362) until trial for the illegal recording. The efforts to use the video continued nonetheless.

As detailed below, the Court finds that Plaintiffs and their counsel have demonstrated a deliberate and contumacious disregard of the Court's authority, bad faith, and several instances of conduct which evince intentional efforts to obstruct the administration of justice. The Court further finds, by clear and convincing evidence, that Plaintiffs and their counsel were successful in perpetrating a fraud on the Court. As a result, the Court after much deliberation has determined that the ultimate sanction is unfortunately appropriate.

PROCEDURAL HISTORY AND FACTUAL FINDINGS

Loewenstein's Disclosure, This Court's Trial Setting, Expert Discovery, and Plaintiffs' Obstruction of Loewenstein's Scope of Retention

Loewenstein was first disclosed by the Plaintiffs on March 21, 2022 when they filed his affidavit in support of a Motion for Rehearing of this Court's Order which granted Defendant's *Daubert* motion directed to Plaintiffs' former expert, Dr. Hopper. *DE #641*. Loewenstein's affidavit offered opinions about the DSM-5-TR and the concept of dissociative amnesia. It did not express any opinions about Plaintiff, Mrs. Mendelsohn, did not diagnose Mrs. Mendelsohn with any disorders and, in fact, did not even mention Mrs. Mendelsohn. *Id.*

On September 30, 2022, Plaintiffs filed a motion seeking a special set trial. *DE #724*. On October 20, 2022, this Court entered its Order Regarding Scheduling Lengthy Jury Trial which specially set Plaintiffs' case to begin trial on July 17, 2023. *DE #731*.

On October 24, 2022, Defendant served Plaintiffs with an Expert Request for Production (the "RFP") which requested a full and complete copy of Loewenstein's file in addition to specifically requesting all correspondence with Loewenstein and any documents created or relied on by him. *DE #734*. On December 2, 2022, Plaintiffs filed their response to the RFP, which indicated that Loewenstein's documents "will be provided upon receipt of response from expert." *DE #750*. Plaintiffs eventually produced some academic publications, some emails, and Loewenstein's previously filed affidavit. Plaintiffs did not produce anything to Defendant that suggested that Loewenstein was planning to expand his scope of involvement in the case.

Consistent with Loewenstein's anticipated limited scope, Plaintiffs filed a witness list on March 23, 2023 which indicated that Loewenstein would "testify consistent with his Affidavit previously filed." *DE #775*. Four days later, on March 27, 2023, Plaintiffs filed an Amended Expert Witness Disclosure which said that Loewenstein "specializes in the treatment of posttraumatic stress and dissociative disorders," and "will testify as to Wendy's dissociative amnesia." *DE #784*. That amended disclosure, which Plaintiffs would later argue put Defendant on notice of an expanded opinion, noted that Plaintiffs' *other* purported expert, Dr. Steven Gold, "will testify about his <u>diagnosis</u> of" Mrs. Mendelsohn. *Id*. Like their previous disclosure, Plaintiffs' Amended Expert Witness Disclosure once again pointed only to Loewenstein's previously filed affidavit.

<u>Plaintiffs' Obstruction of Loewenstein's File</u>

On March 30, 2023, Defendant filed a notice of production from non-party seeking to serve Loewenstein with a routine subpoena for his complete file prior to taking his deposition. *DE #785*.

Defendant's counsel asked Plaintiffs' counsel's office whether they would accept service of the subpoena. Plaintiffs' counsel's office indicated that Loewenstein had agreed to appear at his deposition but had not authorized Plaintiffs' counsel to accept service of the subpoena. The next day, April 6, 2023, Plaintiffs filed objections to Defendant's notice of production for non-party. *DE #793*. Plaintiffs' objection was that Loewenstein's complete file had already been produced, so Defendant's subpoena constituted "harassment" because it asked Loewenstein to "again produce documents which have already been produced." *Id.*

Defendant ultimately filed a notice of taking Loewenstein's deposition duces tecum, with the duces tecum subpoena once again requesting Loewenstein's entire file. *DE #800*. In the weeks leading up to Loewenstein's scheduled deposition, Defendant's counsel repeatedly emailed Loewenstein, copying Plaintiffs' counsel, and requested that he produce his complete file to Defendant prior to the deposition. Neither Loewenstein nor Plaintiffs' counsel responded to those emails or otherwise produced Loewenstein's file.

Dr. Gold's Deposition

On May 26, 2023, Defendant took the virtual deposition of Plaintiffs' other purported expert, Dr. Gold, by Zoom. Both Plaintiffs and their counsel were on the Zoom during the deposition. (Defendant's Ex. 55). When asked what he relied upon to reach his conclusions, Dr. Gold initially testified that he relied upon "the findings" of Loewenstein. Defendant's counsel noted that, as far as he knew, Loewenstein had never interviewed Mrs. Mendelsohn. Dr. Gold responded "No. I'm not — I don't believe that's the case. You're right." *Defendant Ex. 55, pp. 48-49*. Defendant would later learn that Plaintiffs and their counsel knew at that time that Loewenstein had, in fact, conducted extensive testing of Mrs. Mendelsohn.

Loewenstein's Deposition

Loewenstein was deposed on May 31, 2023. (Defendant's Ex. 16). During the deposition Defendant learned, for the first time in this case, that Loewenstein's scope of retention had "evolved considerably," and that he had conducted 16 hours of interviews and given Mrs. Mendelsohn a battery of psychological tests. *Defendant Ex. 16, pp. 6-7.* None of the interview videos or transcripts, tests, test results, scoring sheets, testing reports, or any other materials related to Loewenstein's testing and diagnoses of Mrs. Mendelsohn were ever produced to Defendant before the deposition.

During the deposition, Loewenstein acknowledged that he had received multiple emails from defense counsel requesting his file, but testified that he did not produce anything because Plaintiffs' counsel told him not to do so. He testified that he had given his file materials to Plaintiffs' counsel, and that Plaintiffs' counsel had told him they would be produced to Defendant. *Def. Ex. 16, pp. 10, 19.* Defendant's counsel adjourned the deposition, noting that it would be impossible to continue without the file materials, but also noting "I'm not blaming you for anything." *Def. Ex. 16, p. 19.* Neither Plaintiffs nor their counsel provided any explanation on the record at the deposition for their failure to produce Loewenstein's file materials.

Defendant's Initial Motion to Strike Pleadings and Plaintiffs' Motion for Continuance

On June 16, 2023, Defendant filed his initial Motion to Strike Plaintiffs' Pleadings (the "First Motion to Strike") based on Plaintiffs' discovery misconduct with respect to Loewenstein. *DE #875.* On June 20, 2023, just weeks before this case was specially set to begin trial, Plaintiffs filed a verified response to the First Motion to Strike. *DE #879.* In that response, Plaintiffs' counsel argued that Defendant "should have filed a motion to compel" to obtain any information "that apparently was not produced" in response to the RFP. *Id.* Plaintiffs' counsel further blamed

Defendant for not setting for hearing Plaintiffs' objections to the notice of production from non-party which falsely indicated that Loewenstein's entire file had already been produced. *Id.* Plaintiffs' counsel also reiterated that he had advised Defendant "that he was not authorized to accept the subpoena duces tecum for deposition." *Id.*

Plaintiffs' response to the First Motion to Strike included a Motion for Continuance that is the subject of the instant Motion. The Motion for Continuance, which was not verified, stated that Loewenstein had withdrawn from the case, and blamed Defendant's lead counsel, Roy Black, for that withdrawal. The Motion for Continuance stated, in pertinent part:

> Richard Loewenstein, M.D. will no longer participate in this case due to what transpired at his deposition. **Defense counsel convinced Dr. Loewenstein that he was in the wrong for not complying with a nonexistent subpoena or that Plaintiffs' counsel was in the wrong.** In any event, because he felt that his reputation was somehow damaged, Dr. Loewenstein will no longer participate in this case.

DE #879.

Plaintiffs, Wendy and Joshua Mendelsohn, signed the Motion for Continuance, stating "we hereby consent to and request the continuance **sought for the grounds stated above**." *Id.* The Court finds that both Plaintiffs and their counsel knew, at the time the Motion for Continuance was filed, that the "grounds stated above" were not true, and that Loewenstein had withdrawn solely as a result of Plaintiffs' counsel. The correspondence in the file makes this fact clear and convincing.

Removal from the Trial Docket

Given the representations made by Plaintiffs and their counsel, defense counsel agreed to briefly postpone the July 2023 trial to allow Plaintiffs to obtain a replacement for Loewenstein. Defense counsel advised the Court of their agreement during a hearing on June 23, 2023, and, as a result, that day the Court entered an Agreed Order Removing Case from Trial Setting. *DE #882.*

Notably, when defense counsel advised the Court of the agreement to continue, they specifically noted that they were "not looking for any new theories . . . [or] surprises" but understood Plaintiffs would need a new expert. *Motion, Ex. A, 3:21 – 4:18.* In other words, Defendant agreed to a continuance: (a) based on Plaintiffs' representation that Loewenstein withdrew because of defense counsel; and (b) under the impression that the case would quickly proceed to trial once a replacement expert was retained.

Defendant is of advanced age and suffers from signs of dementia (see DE # 851, 852, 862, 1072, 1082, etc.). Indeed, it is possible Defendant is now unable to testify due to competence or to meaningfully participate in the defense of the highly personal claims against him alleging actions of sexual abuse of more than 30 years ago. A year of unnecessary delay is unfairly prejudicial.

Defendant's Efforts to Obtain Loewenstein's File and Plaintiffs' Efforts to Obstruct

Following Loewenstein's withdrawal, Defendant continued seeking to obtain his file which Plaintiffs had still not produced. On July 6, 2023, Defendant filed a Notice of Production from Non-Party and Subpoena directed to Loewenstein, once again seeking his file and his communications with Plaintiffs' counsel. *DE #892*. Plaintiffs objected to this second subpoena on the grounds that Loewenstein's file was now protected by the work product privilege. *DE #898*. On July 21, 2023, Defendant filed a Motion to Overrule Plaintiffs' Objections. *DE #907*. On October 5, 2023, this Court held a hearing on the Motion to Overrule Plaintiffs' Objections. This Court granted Defendant's motion, permitting Defendant to serve Loewenstein with a subpoena **and** requiring Plaintiffs to produce Loewenstein's file to Defendant. *See DE #968, Order Granting Defendant's Motion; DE #975, Order Denying Plaintiffs' Motion for Rehearing.*

On October 16, 2023, rather than producing Loewenstein's file, Plaintiffs appealed this Court's Order overruling their objections. *DE #965*. Five months later, on March 5, 2024, the Fourth District Court of Appeal denied Plaintiffs' Petition for Writ of Certiorari. *DE #1046*. On March 19, 2024, Plaintiffs filed a "Notice of Serving Loewenstein File Pursuant to October 6, 2023 Order". *DE #1050*. Although Plaintiffs represented that they had finally produced Loewenstein's entire file, Defendant and the Court would later learn that no communications between Loewenstein and Plaintiffs' counsel were produced, including but not limited to Loewenstein's termination letter which stated the true reasons for his withdrawal from the case.

The Hearing on the First Motion to Strike

While the Parties awaited the pending appellate decision, this Court held a hearing on the First Motion to Strike on December 29, 2023. During the hearing, Plaintiffs' counsel made numerous misrepresentations which would later be uncovered when Loewenstein produced his file directly to Defendant. For example, while discussing Dr. Gold's deposition testimony about relying on Loewenstein, Plaintiffs' counsel claimed to have no knowledge about Loewenstein's testing and indicated that the experts communicate with each other. *Def. Ex. 18a, 82:10-15*. Plaintiffs' counsel went on to add that, when Dr. Gold was deposed on May 26, 2023, he "didn't have a clue what Dr. Loewenstein was doing." *Def. Ex. 18a, 83:4-8*.

With respect to Loewenstein, Plaintiffs' counsel claimed that he did not know what Loewenstein was doing, and did not receive Loewenstein's testing until the night before his deposition. *Def. Ex. 18a, 83:18-22*. He claimed that, when he objected to Defendant's first subpoena to Loewenstein on April 6, 2023, he "didn't know what the man was gonna do. I had no — I mean, you know, it's not like I'm directing him." *Def. Ex. 18a, 84:15-23*. Moreover, when

this Court asked Plaintiffs' counsel directly when Loewenstein's testing occurred, Plaintiffs' counsel responded: "It hadn't occurred. And I didn't know it was on the map to get done. Quite frankly, he was communicating directly with my clients and I was kind of out of the loop." *Def. Ex. 18a, 100:25 – 101:4*. At the evidentiary hearing, this Court then asked the Plaintiffs themselves when Loewenstein's testing occurred. Plaintiff, Joshua Mendelsohn, represented to the Court that the testing took place "the weekend before [Loewenstein's] deposition." *Def. Ex. 18a, 101:5-7*. That representation was not corrected by Plaintiff, Wendy Mendelsohn, who was also present in the courtroom at the time. Nevertheless this information was not timely disclosed or provided by the clients or their attorney.

None of these representations by Plaintiffs' counsel and Mr. Mendelsohn were true. The documents that Loewenstein would later produce show that: (a) Plaintiffs' counsel and his office were coordinating Mrs. Mendelsohn's interviews and testing with Loewenstein as early as February 2023, *Def. Ex. 20, 21, 22, 23*; (b) Mrs. Mendelsohn's first interview with Loewenstein took place on April 19, 2023, more than a month earlier than Joshua Mendelsohn represented to the Court, *Def. Ex. 23, Def. Ex. 16, 11:8-10*; and (c) not only did Plaintiffs' counsel know about Loewenstein's testing at the time of Dr. Gold's deposition, he left Loewenstein a voicemail the day before that deposition asking Loewenstein to send his test results to Dr. Gold before the deposition started, *Def. Ex. 30a*.

The Court notes that it did not enter a ruling on Defendant's First Motion to Strike, and that Defendant expressly adopted the factual recitation and legal arguments from the First Motion to Strike (and all supplemental briefing) in the instant Motion. The Court finds, now, that Plaintiffs' counsel and Mr. Mendelsohn intentionally misled the Court during the hearing on Defendant's First Motion to Strike.

Loewenstein's Production

On July 11, 2024, Loewenstein produced his complete file directly to Defendant's counsel. *Def. Ex. 2*. In addition to proving the falsity of the statements made during the hearing on the First Motion to Strike, the documents in the file conclusively establish that Plaintiffs' stated reason for Loewenstein's withdrawal was knowingly not true. On June 3, 2023, Loewenstein wrote to Plaintiffs' counsel to formally terminate his expert agreement, and to explain his reasons for doing so. *Def. Ex. 3*. His termination letter makes it abundantly clear that Plaintiffs' counsel was the <u>sole</u> reason that he was withdrawing. *Def. Ex. 3*. In addition, his termination letter makes clear and convincing that he did not blame *defense counsel* for his withdrawal, as Plaintiffs represented to the Court in their Motion for Continuance. The following statements appear in Loewenstein's termination letter to Plaintiffs' counsel:

> I repeatedly discussed with you and Ms. Leal *your* obligation to arrange for discovery in this matter, as my attorney counseled me to do.
>
> You should have communicated in a timely manner, to me and Black-Srebnick, your plan to fulfill your basic obligation for discovery in this matter. To be clear, I would *never* refuse a lawful subpoena sent to me.
>
> I repeatedly indicated my willingness to produce all documents through *your* office. I repeatedly asked for guidance both in email, text, and telephone calls with you. Finally, on May 30, 2023, the day before my deposition, you sent me a brief email . . . stating: "We produce things on your behalf. You are under no obligation by that subpoena." **Based on this betrayal of trust, I can no longer continue in my role as an expert in the above-referenced matter.**
>
> **Your statement to Mr. Black's office of my alleged refusal of a subpoena duces tecum put me in a position of serving as agent of obstruction.** To be clear, the statement that I refused to accept the Black-Srebnick subpoena duces tecum is wholly false and defamatory. Further, your failure to correct this lie is shown by your belated email statement to me that provision of discovery materials was your responsibility, and by your additional admission by silence during my deposition. **It is clear that, rather than following basic principles of discovery, you were playing**

> **games with discovery materials and attempted to use me as your agent in this deception.**
>
> **I was not surprised by Mr. Black's discontinuation of the deposition.** Without the routine, usual, and customary provision of discovery materials, there was no reason for him to continue.
>
> **Your lie casts me, not you, as the obstruction to discovery.**
>
> As I note in the email to which this is attached, **I will expect you to inform the Black-Srebnick firm that I have terminated my agreement to act as an expert, and the reason (your lying about me and discovery) that has led me to no longer find it possible to work with you.**

Def. Ex. 3, pp. 3-5.

Nothing in Loewenstein's termination letter is subject to interpretation. Having alerts to discuss reasons, Plaintiffs and their counsel had an obligation to be candid with both the Court and defense counsel and state the truthful reason for his withdrawal. Instead, they chose to deceive defense counsel and the Court, resulting in the granting of the continuance under knowingly false pretenses, which falsely supplied the grounds for a continuance (i.e., the expert's withdrawal or absence was not the fault of the party seeking a continuance), which delayed this case by more than a year and substantially prejudiced Defendant's chances of participating in his defense.

Other communications in Loewenstein's file, and other statements made by Plaintiffs' counsel, shed light on the reasons behind the decision to misrepresent the reason for Loewenstein's withdrawal. First, during the hearing on the First Motion to Strike, Plaintiffs' counsel noted to the Court that, in the Motion for Continuance, he had "cited some cases saying that if my expert withdraws at the eleventh hour, and it's not my fault or unknown to me, you gotta give me a continuance." *Def. Ex. 18a, 58:22 – 59:4.* Second, Plaintiffs' counsel wrote to Loewenstein's lawyer on June 6, 2023, and indicated that notifying defense counsel of the withdrawal would

"prove disastrous" for Mrs. Mendelsohn, and that Plaintiffs would not notify the defense or the Court of the withdrawal until after mediation occurred. *Def. Ex. 4.*

Third, Plaintiffs' counsel admitted that, without Loewenstein, they would likely lose the Motion for Summary Judgment that Defendant had pending at the time of Loewenstein's withdrawal. *See DE #849.* On June 15, 2023, five (5) days before filing the Motion for Continuance, Plaintiffs' counsel wrote to Loewenstein to tell him Mrs. Mendelsohn would most likely lose that motion and her case, and to threaten that her only recourse would then be to sue Loewenstein "for all the damages she could have been awarded in this case." *Def. Ex. 5.*

Five days later, Plaintiffs' counsel would file, <u>and Plaintiffs would sign</u>, the Motion for Continuance falsely blaming defense counsel for Loewenstein's withdrawal and seeking to necessarily remove any blame on Plaintiffs or their counsel. *DE #879.* Notably, just days later on June 23, 2023, Plaintiffs' counsel would write to a potential replacement expert, David Spiegel, and state that Loewenstein withdrew "because I defamed him." *Def. Ex. 26.*

<u>The Instant Motion and Plaintiffs' Response</u>

On July 12, 2024, the day after receiving Loewenstein's file, Defendant filed the instant Motion. On July 15, 2024, this Court ordered Plaintiffs to file a response within three (3) days. *DE #1205.* On July 18, 2024, Plaintiffs filed their response (the "Response"). *DE #1214.* Plaintiffs' Response, like their Motion for Continuance, contained additional misrepresentations to the Court.

For example, Plaintiffs' Response claims that the Motion for Continuance was "true and accurate" and that Dr. Loewenstein believed he was the obstruction to discovery "based on Mr. Black's statements that Plaintiffs' counsel lied about discovery, the subpoena or something else." *Response, p. 1.* As noted above, in Loewenstein's termination letter, he expressly and

unequivocally stated that statements made by Mr. Black played no role in his decision to withdraw from the case.

Plaintiffs' Response also suggests, multiple times, that "Plaintiffs' counsel was not authorized by Dr. Loewenstein to accept a subpoena on his behalf." *Response, p. 2.* Indeed, Plaintiffs' Response goes so far as to state "as directed by Dr. Loewenstein . . . Plaintiffs' counsel's office was not authorized to accept a subpoena on his behalf." *Response, p. 4.* As Loewenstein's termination letter made clear, and as Plaintiffs' counsel acknowledged in his June 15, 2023 email to Loewenstein, **Plaintiffs' counsel never asked Loewenstein if he could accept service on his behalf.** *Def. Ex. 5.* Loewenstein never directed Plaintiffs' counsel to refuse Defendant's subpoena. To the contrary, he explicitly told Plaintiffs' counsel that he would "never refuse a lawful subpoena sent to me". *Def. Ex. 3, p. 4.*

Quite disturbing to the Court is Plaintiffs' claim in their Response that, after their Petition for Certiorari was denied, "Plaintiffs complied with this Court's Order and gave a dropbox link which contained all of Dr. Loewenstein's records and correspondence exchanged." *Response, p. 3.* This is another false statement, as Plaintiffs did not produce *any* communications with Loewenstein, including his termination letter, when they represented to the Court that they had complied with its Order on March 19, 2024. *DE #1050.* The Court's October 6, 2023 Order required Plaintiffs to produce Loewenstein's entire file, including communications. Plaintiffs violated that Court Order. *DE #968, DE #975.* Plaintiffs' counsel's explanation at the evidentiary hearing – that he did not know if the dropbox link actually contained the correspondence with Loewenstein, but assumed it did – falls far short of being acceptable and belies the representation in the Response that this Court's Order had been complied with.

The Evidentiary Hearing on the Instant Motion

On July 23, 2024, the Court held an evidentiary hearing on Defendant's Motion. During the hearing, both Wendy Mendelsohn and Joshua Mendelsohn testified under oath, and both admitted that they had read Loewenstein's withdrawal letter **prior to** signing the Motion for Continuance. *Hearing Transcript, 8:12-23; 66:7-9.*

Moreover, Wendy Mendelsohn authenticated a letter that she wrote to Loewenstein on June 5, 2023 – fifteen (15) days before she signed the Motion for Continuance – in which she stated that her counsel told her Loewenstein had withdrawn "because you perceived that him [Plaintiffs' counsel] not turning over documents prior to your deposition was harmful to your reputation." *Hearing Ex. 1.* In that same letter, Mrs. Mendelsohn offered to replace Plaintiffs' counsel so that Loewenstein would "not have to talk to Mr. Coleman." *Hearing Ex. 1.* The letter, in addition to her sworn testimony, is clear and convincing evidence that Mrs. Mendelsohn knew that the Motion for Continuance was false and that Loewenstein's withdrawal had nothing to do with defense counsel.

After reviewing the evidentiary submissions and observing the Plaintiffs' testimony, the Court finds that both Wendy Mendelsohn and Joshua Mendelsohn knew the true reason for Loewenstein's withdrawal before signing the Motion for Continuance which contained the blatantly false statement about the basis for Loewenstein's withdrawal.

In addition, during the hearing, Plaintiffs' counsel continued to make a series of misrepresentations to the Court about the Loewenstein discovery and withdrawal. For example, after asking to be put under oath, Plaintiffs' counsel immediately stated that, to this day, he "can't tell you why Dr. Loewenstein withdrew." *Hearing Transcript, 40:19 – 41:2.* He repeated that statement multiple times throughout the hearing. *Hearing Transcript, 48:3-5; 49:3-5.* The Court

finds that Plaintiffs' counsel knew exactly the expressly stated reasons why Loewenstein withdrew given the unequivocal statements made in his June 3, 2023 termination letter.

Plaintiffs' counsel further argued that defense counsel ended Loewenstein's deposition because they did not like his answers, and repeated the false statement that he did not know Loewenstein was going to interview Mrs. Mendelsohn when he filed his April 6, 2023 objection, and repeated the false statement that defense counsel convinced Loewenstein he was in the wrong for not complying with a nonexistent subpoena. *Hearing Transcript, 44:16-21; 46:12-16; 47:15-22; 72:10-20.* It might be different had Plaintiffs provided all information and Dr. Loewenstein's views of why he withdrew as well as their own views, but they did not. Instead, efforts were made to miscast and conceal Dr. Loewenstein's own views explaining his own beliefs and actions.

Plaintiffs' counsel was also asked by this Court why he did not turn over Loewenstein's file materials when they were delivered to him via email five (5) days before Loewenstein's scheduled deposition. *Hearing Transcript, 67:10-18; Def. Ex. 24.* Plaintiffs' counsel told the Court that he never looked at the dropbox link sent to him by Loewenstein and had never seen Loewenstein's testing before the evidentiary hearing, but had his assistant send defense counsel the files and assumed that correspondence was included. *Hearing Transcript, 69:13 – 70:13; 52:12 – 54:8.* In other words, at best, Plaintiffs' counsel took no steps to ensure that he was complying with the Court's October 6, 2023 Order requiring production before falsely claiming in Plaintiffs' Response that he had produced Loewenstein's entire file without knowing if that was true.

Based on the foregoing, the Court finds that Plaintiffs' counsel with the knowledge of Plaintiffs made numerous misrepresentations, both in pleadings and in statements (including those under oath) to the Court in multiple filings and at multiple hearings.

THE LAW

"Clearly, a trial judge has the inherent power to do those things necessary to enforce its orders, to conduct its business in a proper manner, and to protect the court from acts obstructing the administration of justice." *Levin, Middlebrook, Mabie, Thomas, Mays & Mitchell, P.A. v. U.S. Fire Ins. Co.,* 639 So. 2d 606, 608-09 (Fla. 1994). The "inherent powers of a court to perform efficiently its judicial functions, to protect its dignity, independence and integrity . . . necessarily includes the authority to impose appropriate sanctions." *Tramel v. Bass*, 672 So. 2d 78, 83 (Fla. 1st DCA 1996), *rev. denied,* 680 So. 2d 426 (Fla. 1996). *See also Moakley v. Smallwood*, 826 So. 2d 221 (Fla. 2002); *Mercer v. Raine*, 443 So. 2d 946 (Fla. 1983) ("A deliberate and contumacious disregard of the court's authority will justify application of this severest of sanctions, as will bad faith, willful disregard or gross indifference to an order of the court, or conduct which evinces deliberate callousness.").

The Court further notes that the false representations in the Motion for Continuance, as well as the statements made during the various sanctions hearings, constitute a fraud on the Court. As stated, this is not the first instance of serious abuse by counsel with the participation and knowledge of the Plaintiffs. Judge Rowe, this Court's predecessor judge, deferred those sanctions until trial. Despite multiple orders finding the recording and its use illegal, the conduct did not end. The Court finds, by clear and convincing evidence including Defendant's evidentiary submissions and the testimony of Mr. and Mrs. Mendelsohn, that Plaintiffs have engaged in a fraudulent scheme warranting dismissal with prejudice. *Gilbert v. Eckerd Corp. of Fla., Inc.*, 24 So. 3d 773, 776. The Motion for Continuance, premised on a falsehood, led to a thirteen (13) month delay of this trial against an elderly Defendant with a time sensitive and diminishing ability to defend himself and a significant expansion of causes of action, dispositive motions, discovery, and numerous hearings

which have created significant problems of judicial administration. Plaintiffs' ongoing multiple and continuous actions are the type "where it appears that the process of trial has itself been subverted." *Ruiz v. City of Orlando*, 859 So. 2d 574, 576 (Fla. 5th DCA 2003).

In *Kozel v. Ostendorf*, the Florida Supreme Court adopted a six-factor test to assist the Court in determining whether striking Plaintiffs' pleadings is warranted:

1. Whether the attorney's disobedience was willful, deliberate, or contumacious, rather than an act of neglect or inexperience;
2. Whether the attorney has been previously sanctioned;
3. Whether the client was personally involved in the act of disobedience;
4. Whether the delay prejudiced the opposing party through undue expense, loss of evidence, or in some other fashion;
5. Whether the attorney offered a reasonable justification for noncompliance; and
6. Whether the delay created significant problems of judicial administration.

629 So. 2d 817, 818 (Fla. 1993).

The Court finds that every *Kozel* factor has been met in this case. Plaintiffs and their counsel have demonstrated a long history of obstruction. Plaintiffs and their counsel knew, before signing the Motion for Continuance, that Loewenstein was withdrawing from this case solely because of Plaintiffs' counsel's actions. They did not bring that withdrawal issue to the attention of opposing counsel or this Court in the hopes that the case could be resolved at mediation. Facing a motion for summary judgment that they admittedly did not believe they could defeat, they chose to knowingly misrepresent the reasons for Loewenstein's withdrawal in order to obtain a continuance that they knew might not have been granted had the true reasons for the withdrawal been disclosed. Plaintiffs signed the Motion for Continuance knowing it was false. They obstructed

Defendant's efforts to obtain Loewenstein's materials, both before and after his withdrawal. After their Petition for Certiorari was denied, they violated this Court's October 6, 2023 Order by failing to produce the communications with Loewenstein which have been discussed at length in this Order, despite representing to the Court that they had complied. When asked pointed questions by this Court, in sanctions hearings, both Plaintiffs' counsel and Mr. Mendelsohn gave false and misleading answers without any correction by Mrs. Mendelsohn who was also in attendance. Even when they were faced with Loewenstein's termination letter and emails, which leave no doubt about the reason for his withdrawal, both Plaintiffs' counsel and Joshua Mendelsohn doubled down and continued to blame defense counsel for that withdrawal during the evidentiary hearing. *Hearing Transcript, 60:4-8.* The proffered evidence directly belies the justifications provided by Plaintiffs and their counsel and, as such, the Court finds that none of the justifications were candid or reasonable.

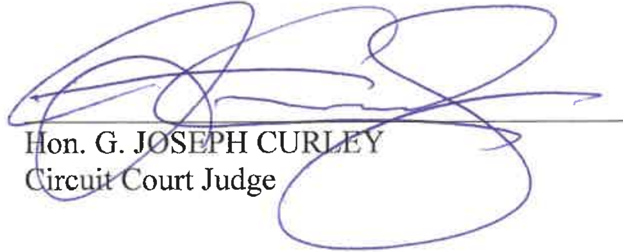
This Court relied upon the representations made by the Plaintiffs and their attorney. Those false representations caused significant and material disruptions. Despite this Court's desire to see every case tried on its merits, because the Plaintiffs' actions go directly to the integrity of the civil justice system, the Court has no choice but to take severe action in response.

Accordingly, Defendant's Motion is granted, and Plaintiffs' pleadings, including their Verified Seventh Amended Complaint and all defenses to Defendant's Third Amended Counterclaim, are stricken.

Accordingly, it is **ORDERED AND ADJUDGED** that Defendant's Motion to Strike Pleadings (DE #1202) is **GRANTED**. Plaintiffs' Seventh Amended Complaint and Plaintiffs' Answer and Affirmative Defenses to Defendant's Third Amended Counterclaim are hereby

stricken. The claims of Plaintiff are Dismissed with prejudice. The Court retains jurisdiction to award attorney's fees and costs as may be just and appropriate.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, on this 6th day of August, 2024.



Hon. G. JOSEPH CURLEY
Circuit Court Judge

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