COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS. SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,
Plaintiff
vs.

AIDAN KEARNEY, et al.
Defendants

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR SANCTIONS

I. INTRODUCTION

Plaintiff submits this memorandum in support of his motion for sanctions. Defendant has engaged in deliberate misrepresentations, procedural misconduct, and conspiratorial actions, warranting sanctions under Mass. R. Civ. P. 11(a) and the Court's inherent authority.

II. LEGAL STANDARD

11A Sanctions

Mass. R. Civ. P. 11(a) states that:

> "The signature of any attorney to a pleading constitutes a certificate that the attorney has read the pleading; that to the best of the attorney's knowledge, information, and belief there is a good ground to support it; and that it is not interposed for delay. If a pleading is not signed, or is signed with intent to defeat the purpose of this Rule, it may be stricken and the action may proceed as though the pleading had not been filed. For a willful violation of this rule an attorney may be subjected to appropriate

> disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted."

"Rule 11(a) sanctions extend to the assessment of fees and costs if an attorney fails to show a subjective good faith belief that a pleading or motion has factual and legal support." Worcester v. AME Realty Corp., 77 Mass. App. Ct. 64, 71 (2010) This rule "also applie[s] to motions and other papers by virtue of Mass.R.Civ.P. 7(b)(2)." Van Christo Advertising, Inc. v. M/A-COM/LCS, 426 Mass. 410, 414 (1998).

A 'good ground' requires that the pleadings be supported by 'reasonable inquiry and an absence of bad faith.'" Tilman v. Brink, 74 Mass. App. Ct. 845, 851 (2009) The rule "does not excuse an attorney's willful ignorance of facts and law which would have been known had the attorney simply not consciously disregarded them." Van Christo Advert., Inc. v. M/A-COM/LCS, 426 Mass. 410, 416–17 (1998). "In ruling on a motion for rule 11 sanctions, a judge may consider whether the attorney's misconduct was the result of a "genuine, professional judgment, or was instead to secure a tactical advantage by hampering the opposing party's presentation of its case, in violation of the rules of court and of professional conduct." Cahaly v. Benistar Prop. Exch. Tr. Co., 85 Mass. App. Ct. 418, 429 (2014) citations omitted.

Inherent power, fraud on the court

"Judges have the inherent power to do whatever may be done under the general principles of jurisprudence to insure to the citizen a fair trial, whenever his life, liberty, property or character is at stake. Simply stated, implicit in the constitutional grant of judicial power is authority necessary to the exercise of that power. Further, every judge must exercise his inherent powers as necessary to secure the full and effective administration of justice." Beit v. Probate &

Family Court Dep't, 385 Mass. 854, 859 (1982) quoting Crocker v. Superior Court, 208 Mass. 162, 179 (1911), and O'Coins, Inc. v. Treasurer of the County of Worcester, 362 Mass. 507, 510 (1972).

"When a fraud on the court is shown through clear and convincing evidence to have been committed in an ongoing case, the trial judge has the inherent power to take action in response to the fraudulent conduct. The judge has broad discretion to fashion a judicial response warranted by the fraudulent conduct. Dismissal of claims or of an entire action may be warranted . . . as may be the entry of a default judgment." Munshani v. Signal Lake Venture Fund II, LP, 60 Mass. App. Ct. 714, 718-719 (2004)

To find that a party has committed a fraud on the court, a judge must find "that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense." Rockdale Mgt. Co. v. Shawmut Bank, N.A., 418 Mass. 596, 598, 638 N.E.2d 29 (1994)

"Judges may exercise their inherent powers to fashion remedies that not only realistically protect the integrity of the pending litigation, but that also send an appropriate message to those who would so abuse the courts of the Commonwealth." Commissioner of Probation v. Adams, 65 Mass. App. Ct. 725, 731 (2006)

When some of the sanctionable conduct is "beyond the reach of the Rules," "and the conduct sanctionable under the Rules was intertwined within conduct that only the inherent power could address." The court is not required to "apply Rules and statutes containing

sanctioning provisions to discrete occurrences before invoking inherent power to address remaining instances of sanctionable conduct" as that "would serve only to foster extensive and needless satellite litigation[1], which is contrary to the aim of the Rules themselves." NASCO at 50-51

III. GROUNDS FOR SANCTIONS

A. Defendant's Service Violations Created Unfair Litigation Advantage

Superior Court Rule 9A(b)(i) and **Mass. R. Civ. P. 5(d)(1)**, requires service of all motion papers within a reasonable time after filing with the court. **Superior Court Rule 9A(b)(iii)** requires "prompt" notice of filing. Defendant filed his motion on **March 18th** but did not serve his reply brief or provide notice of filing until **March 20th at 1PM**, potentially after the court ruled.

Even worse, on March 17th at 10:14 AM, Defendant's counsel emailed Plaintiff asking whether Plaintiff wished to confer before filing. After Plaintiff inquired whether Defendant opposed a request for prompt hearing, Defendant responded that he still had time to reply and that Plaintiff's cross-motion gave him ten days—creating the false impression that filing was still several days away. See Email from Ryan McLane to Rian Waters (Mar. 18, 2025, 11:10 AM), Ex. A. Defendant then filed the motion that same day without informing Plaintiff, and waited two more days to provide notice.

[1] If this court does not address the obstruction of justice, it will be addressed with a RICO and Ch 12 Section 11I suit. Ignoring it will only make it worse for everyone.

Defendant's notice was neither "performed readily or immediately," nor "given without delay or hesitation." "Giving 'prompt' its fair meaning, [Defendant] did not notify [Plaintiff] promptly as a matter of law." Royal-Globe Ins. Co. v. Craven, 411 Mass. 629, 634 (1992) quoting Webster's Third New Int'l Dictionary (1961)

In Wojcicki v. Caragher, 447 Mass. 200, 210–11 (2006), the SJC explained that perjury alone does not constitute fraud on the court where "there are safeguards within the system to guard against such risks." But here, Defendant deliberately evaded those safeguards by concealing his reply brief and delaying notice to suppress opposition.

Courts "have discretion to forgive a failure to comply with a rule if the failure does not affect the opposing party's opportunity to develop and prepare a response." Malden Police Patrolman's Ass'n v. City of Malden, 92 Mass. App. Ct. 53, 55–56 (2017). That discretion does not apply here, where the delay directly deprived Plaintiff of due process. "Due process requires only notice and an opportunity to be heard." Rockdale Mgmt. Co. v. Shawmut Bank, N.A., 418 Mass. 596, 600 (1994).

B. Defendant Provided Improper Legal Advice to Mislead Plaintiff

In the same March 18 exchange, Defendant's counsel advised Plaintiff to "seek clarification" rather than file a motion—despite already having filed both the motion and reply brief. See Exhibit A, Email at 12:05 PM. Counsel also falsely implied that a response was not due for another week, creating a false impression that Plaintiff's own motion was premature. These communications led Plaintiff to withdraw a motion for hearing and redirect his attention elsewhere.

Such deception constitutes a textbook violation of the Court's expectations for candor and fairness. "[I]ntentionally conceal[ing] a material fact," and thereby "creat[ing] a false impression by such statement," is inherently misleading. Commonwealth v. Paquette, 475 Mass. 793, 800 (2016).

This tactic "plainly hindered [Plaintiff's] ability to prepare and present its case, while simultaneously throwing a large monkey wrench into the judicial machinery." The First Circuit has labeled such conduct "gross misbehavior" amounting to fraud on the court. Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1118–19 (1st Cir. 1989).

C. Defendant's Conduct Violates Rule 11(a)'s Requirement of Good Faith Filings

Defendant's belatedly served filing package included a reply brief that failed to address any of the core legal or factual arguments raised in Plaintiff's opposition. Instead, it materially mischaracterized Plaintiff's arguments, correspondence, and the broader factual record. Defendant further misrepresented his intent to file, and delayed notice of the reply brief until after the Court had already issued a ruling—denying Plaintiff a meaningful opportunity to respond. The Court initially ruled in Defendant's favor without proper factual or legal support, underscoring the prejudice caused by this ambush tactic.

This conduct squarely violates Rule 11(a), which requires that all filings be made in good faith and with reasonable factual and legal basis. The obligation is not merely procedural but rooted in the attorney's ethical duty to uphold the judicial process:

"As an officer of the court, an attorney is a key component of a system of justice, and is bound to uphold the integrity of that system by being truthful to the court and opposing counsel… Were we to condone any action to the contrary, the integrity of the judicial process would be vitiated." Matter of Neitlich, 413 Mass. 416, 423 (1992).

Similarly, an attorney who knowingly misrepresents facts to the Court or conceals relevant information breaches not only Rule 11 but the Court's fundamental trust:

"The court's inherent powers also include the power to sanction an attorney for making knowingly false misrepresentations to the court, intentionally misleading the court, or knowingly concealing information that an attorney has a duty to provide to the court." Wong v. Luu, 472 Mass. 208, 219 (2015).

Defendant's reply brief was optional—not required by Rule 9A—and thus its use to misrepresent facts and suppress fair rebuttal strongly suggests bad faith. Such abuse of discretion and disregard for professional responsibility warrants sanction under both Rule 11(a) and the Court's inherent powers.

1. Misrepresenting Opposition Brief

Without citing any contrary authority, Defendant falsely claimed that Plaintiff's arguments were irrelevant and unsupported, despite Plaintiff relying on clearly applicable case law. See Doe v. Nutter, McClennen & Fish, 41 Mass. App. Ct. 137, 142 (1996) (sanctions appropriate when filings ignore directly applicable authority).

Even Defendant's opposition to reconsideration was frivolous, and the Court has already acknowledged that Plaintiff was correct regarding the lack of a meritorious defense.

Issue 1 Meritorious nature of defense.

Plaintiff's opposition cited multiple decisions establishing that a conclusory affidavit is insufficient to vacate a default. Defendant has never identified a specific defense, either in filings or despite Plaintiff's repeated requests. No case law supports the adequacy of the affidavit submitted.

Issue 2: Kearney Received Proper Notice

Plaintiff presented unrefuted evidence that Defendant Kearney received actual and constructive notice. Notice was sent to a property Kearney still owns and receives mail at, and which is registered as the principal business address for Worcester Digital Marketing. Defendant did not cite any law refuting this; instead, he offered conclusory claims that the issue is "irrelevant."

Issue 3: Pattern of Defaults and Misrepresentations

Defendant's claims of mistake and undue influence lack the specificity required under Mass. R. Civ. P. 9(b). Plaintiff cited decisions showing that a pattern of defaults and evasive conduct is a relevant factor when evaluating credibility and prejudice. Counsel failed to conduct a reasonable inquiry into whether Kearney's claims—such as blocking Plaintiff's emails—were valid or supported by fact. "Where a represented party appends its signature to a document that a

reasonable inquiry into the facts would have revealed to be without merit, we see no reason why a district court should be powerless to sanction the party in addition to, or instead of, the attorney." *Business Guides, Inc. v. Chromatic Communs. Enters.*, 498 U.S. 533, 550 (1991).

Issue 4: Prejudice to Plaintiff

Plaintiff demonstrated that continued harassment—including through litigation abuse—has caused severe emotional and financial harm. Defendant misrepresented these concerns as previously adjudicated, despite citing an unrelated ruling that did not address any of the conduct now at issue. Defendant failed to rebut the well-established principle that prejudice is a relevant factor in evaluating motions to vacate.

Issue 5: Public Interest

Plaintiff cited case law confirming that public interest may be a factor in default proceedings. Defendant has engaged in documented patterns of witness intimidation and fraudulent business practices—none of which he disputes. Instead, he offers the unsupported position that such conduct has no relevance to the public interest.

D. Fraud on the court

Kearney's motion included an affidavit falsely testifying that he was unaware the case was open even though we had a two minute conversation in December where he explicitly said

he would not respond to the PI motion. “Dismissal or entry of a default judgment for fraud on the court has been warranted for creating and presenting false evidence in support of a claim or defense” Rockdale Mgt. Co. v. Shawmut Bank, N.A., 418 Mass. 596, 599 (1994)

Kearney’s failure to serve a Reply brief filled with inaccurate arguments, and deceiving me into believing he wouldn’t be ready to file for another week while he received an unopposed ruling is a straightforward effort to hamper the court's ability to fairly decide the matter. See Rockdale “Fraud on the court has been found in cases where a party has perjured him or herself to the court and the court has relied upon the fabrications when reaching a judgment.” Commissioner of Probation v. Adams, 65 Mass. App. Ct. 725, 730 (2006) citing Matter of Neitlich, 413 Mass. 416, 423, 597 N.E.2d 425 (1992) (fraud on the court where attorney made false statement with intent to deceive court)

Additionally, as the exhibit with my opposition showed, Kearney was aware that this case was on appeal but he chose to ignore it.

Kearney’s past actions are relevant

This courts repeated approval of Defendants (at times flagrant) misconduct without any justification adds weight to a finding of fraud on the court. “The presence or absence of an explanation by the district court may also be a factor.” Robson v. Hallenbeck, 81 F.3d 1, 3 (1st Cir. 1996)

“The trial court considered this wilfulness along with the defendants' harassing and intimidating speech toward the plaintiffs' counsel, which together created a whole spectrum of bad faith

litigation misconduct. As is often the case in life . . . the whole of abusive action is greater than the sum of the parts of which it is made. Were we to view judicial abuses piecemeal, each one might not be worthy of sanctions, or even comment. But these incremental abuses chip away at the fair administration of justice. It is the trial court that can evaluate the whole ball of wax and determine whether the small incremental blows to the integrity of the trial add up to something that requires sanctioning. Death by a thousand cuts is no less severe than death by a single powerful blow." Lafferty v. Jones, 336 Conn. 332, 379 (2020), cert. denied, 141 S. Ct. 2467, 209 L. Ed. 2d 529 (2021) (Internal citations omitted)

Kearney's behavior closely mirrors that of the defendant in Lafferty, who, like Kearney, weaponized social media and used it to harass opposing litigants. The court in Lafferty carefully differentiated the case from Bridges v. California,314 U.S. 252, 275–77, 62 S. Ct. 190, 86 L. Ed. 192 (1941), and found that the First Amendment did not protect Defendants harassing speech that reasonably would affect the way the Plaintiff's litigated.

On June 18, 2022, Kearney told a key witness to his november 19th 2021 conspiracy to obstruct the case that he would continue attacking her family and customers until she wanted to commit suicide. This incident is documented at Docket Entry 103, see also 99. It exemplifies the broader pattern of witness intimidation and psychological abuse that permeates Kearney's litigation strategy and supports the need for sanctions under the Court's inherent authority.

Making Plaintiff Whole for Expenses Caused by his Opponent's Obstinacy

While Rule 11 sanctions typically do not include compensation for emotional harm, Plaintiff respectfully notes that Defendant's litigation tactics are the identified cause and stressor of

Plaintiffs adjustment disorder which has progressed to a diagnosis of Other Specified Trauma Stressor Disorder, creating a cycle of preoccupation and physical harm. The purpose of sanctions includes deterring future misconduct and protecting the integrity of the court, both of which are served here. “The imposition of sanctions in this instance transcends a court's equitable power concerning relations between the parties and reaches a court's inherent power to police itself, thus serving the dual purpose of vindicating judicial authority without resort to the more drastic sanctions available for contempt of court and making the prevailing party whole for expenses caused by his opponent's obstinacy.” Chambers v. NASCO, Inc., 501 U.S. 32, 46 (1991)

IV. CONCLUSION

For the reasons set forth above, including deliberate misrepresentations, improper service, submission of false evidence, and fraud on the court, Plaintiff respectfully requests that this Court:

1. Impose monetary sanctions against Defendant and/or his counsel for violations of Rule 11(a) and applicable procedural rules;
2. Place Defendants in default under the Court’s inherent authority due to fraud on the court;
3. Grant such other and further relief as this Court deems just and appropriate to protect the integrity of these proceedings and deter future misconduct.

Respectfully submitted,

/S/ Rian Waters Dated 4/11/2025

WatersRian@gmail.com (530) 739-8951

Certificate Of Service

I, Rian Waters, hereby certify that I will today serve a copy of the **PLAINTIFF'S MOTION FOR SANCTIONS , MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR SANCTIONS, and exhibit A** upon Kearney by email at ryan@mclanelaw.com. Ryan agreed to accept email service at 2/26/25 hearing.

/S/ Rian Waters

(530)739-8951 Watersrian@gmail.com Dated: April 11th 2025