

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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HOWARD M. EHRENBERG,
CHAPTER 11 LIQUIDATING TRUSTEE,
Plaintiff,

Docket No.: 8-18-71748-ast
Adversary Proceeding No. 8-20-08053-ast

v.

SAGE GROUP CONSULTING, INC., and
SALIL SHARMA,
Defendants.

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**DEFENDANT SALIL SHARMA’S RESPONSE TO
PLAINTIFF’S OMNIBUS OBJECTION**

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I. INTRODUCTION

Defendant Salil Sharma (“Defendant”), acting pro se, submits this response to the Plaintiff’s Omnibus Objection to the Defendant’s Motion to Dismiss, Motion for Sanctions, and Motion for Entry of Default (the “Omnibus Objection”). Plaintiff’s conduct in this adversary proceeding demonstrates a persistent disregard for discovery obligations, procedural deadlines, and good faith litigation practices. This response highlights the Plaintiff’s bad-faith tactics, seeks dismissal of Plaintiff’s motion as procedurally improper, and requests sanctions for Plaintiff’s willful abuse of the discovery process.

Statement of Facts

This adversary proceeding, initiated by Plaintiff Howard M. Ehrenberg, Liquidating Trustee of the Orion Liquidating Trust (“Plaintiff”), alleges fraudulent conduct by Defendant Salil Sharma (“Defendant”) and Sage Group Consulting, Inc. Plaintiff claims that Defendant participated in sham transactions and concealed fraudulent activities orchestrated by Orion HealthCorp, Inc.’s former management. Despite the gravity of these allegations, Plaintiff has persistently failed to substantiate the claims with credible or relevant evidence, thereby significantly impeding Defendant’s ability to prepare an adequate defense.

1. Initiation and Nature of the Case

On March 16, 2020, Plaintiff initiated this proceeding, alleging that Defendant participated in fraudulent transactions totaling millions of dollars. Plaintiff purportedly relies on documents containing Defendant’s name, signature, and address as evidence. Defendant has consistently denied these allegations and sought discovery to evaluate and counter Plaintiff’s claims.

However, Plaintiff’s litigation has been marked by procedural delays, unsupported assertions, and discovery deficiencies.

2. Plaintiff’s Discovery Practices

- **Premature and Procedurally Deficient Requests:** On May 24, 2024, Plaintiff prematurely served Defendant with a First Request for Production of Documents, despite the discovery plan not being approved by the Court. Plaintiff demanded responses within 10 days, in direct contravention of Fed. R. Civ. P. 34(b)(2)(A), which mandates a 30-day response period unless otherwise ordered by the Court.

- **Defendant's Compliance:** On June 4, 2024, Defendant fully complied with the Plaintiff's request, adhering to procedural rules despite Plaintiff's irregular and unreasonable demands.

3. Defendant's Discovery Requests and Plaintiff's Obstruction

- **Specific and Relevant Requests:** On August 1, 2024, Defendant served 103 detailed document requests seeking materials directly related to Plaintiff's allegations, including financial records and communications.
- **Irrelevant and Noncompliant Responses:** In response, Plaintiff produced over 21,000 pages of documents, many of which were irrelevant and non-searchable image files. Plaintiff failed to provide documents that substantiate its claims, effectively obstructing the discovery process.
- **Baseless Objections:** Plaintiff objected to Defendant's requests as "overbroad" and "burdensome" without offering specific justifications or proposing alternatives, contrary to Federal Fed. R. Civ. P. 34(b)(2)(B).

4. Defendant's Good Faith Efforts

- **Engagement in Meet-and-Confer Sessions:** On September 6, 2024, Defendant participated in a meet-and-confer session to resolve discovery disputes amicably. Despite Defendant's good faith, Plaintiff failed to cooperate meaningfully and continued to delay producing relevant documents.
- **Full Compliance with Obligations:** Defendant consistently complied with procedural and discovery obligations, including producing requested documents and making himself

available for depositions. However, Plaintiff repeatedly delayed or canceled depositions, exacerbating the obstruction.

5. Plaintiff's Procedural Misconduct

- **Failure to Respond to Motions:** The plaintiff's repeated procedural defaults demonstrate a willful disregard for this Court's rules, warranting dismissal and sanctions. The plaintiff's failure to respond to the Defendant's September 20, 2024, motions by the required deadline is a clear violation of **Bankruptcy Rule 9006(b)**. This mirrors the conduct sanctioned in **Advanced Analytics, Inc. v. Citigroup Glob. Markets, Inc., 301 F.R.D. 47 (S.D.N.Y. 2014)**, where procedural delays prejudiced the opposing party and justified dismissal.
- **Improper and Isolated Motion:** On October 7, 2024, Plaintiff filed a procedurally improper motion to compel Defendant's deposition, isolating this issue from broader discovery disputes and engaging in litigation gamesmanship.

6. Prejudice to Defendant

Plaintiff's persistent refusal to provide meaningful discovery has prejudiced Defendant by depriving him of the necessary information to prepare a robust defense. The absence of relevant evidence has obstructed Defendant's ability to address substantive allegations, violating his due process rights and imposing undue financial and temporal burdens.

7. Escalation of Discovery Disputes

- **Defendant's Motion for Default:** On October 15, 2024, Defendant filed a Motion for Entry of Default due to Plaintiff's failure to timely respond to Defendant's Motion for Discovery and Sanctions filed on September 20, 2024.

- **Ongoing Disputes:** Despite another meet-and-confer session held on November 20, 2024, Plaintiff failed to resolve outstanding discovery issues and filed an Omnibus Objection on November 15, 2024, reiterating unsubstantiated claims and accusing Defendant of non-cooperation.

8. Defendant's Current Position

Defendant contends that Plaintiff's discovery responses remain grossly inadequate, plagued by procedural improprieties and substantive deficiencies. Plaintiff's bad-faith litigation tactics necessitate judicial intervention, and Defendant seeks entry of default and sanctions against Plaintiff for deliberate noncompliance and abuse of the discovery process.

Procedural History

1. **Initiation of the Case:** On March 16, 2020, Plaintiff initiated this adversary proceeding against Defendant Salil Sharma ("Defendant") and Sage Group Consulting, Inc., alleging their involvement in fraudulent activities related to Orion HealthCorp's bankruptcy.
2. **Discovery Plan and Initial Proceedings:** The parties filed a Joint Discovery Control Plan on April 30, 2024, establishing an initial fact discovery deadline of September 27, 2024. Despite the plan's filing, the Plaintiff served Defendant with document requests prematurely on May 24, 2024, before court approval of the discovery plan. Furthermore, Plaintiff only provided Defendant with 10 days to respond to the First Request for Production of Documents, contravening Fed. R. Civ. P. 34(b)(2)(A), which mandates a 30-day response period unless shortened by court order or party agreement. Defendant provided a timely response to Plaintiff's First Request for Production of Documents on June 4, 2024.
3. **Defendant's Discovery Requests:** On August 1, 2024, Defendant served Plaintiff with comprehensive discovery requests seeking documents and evidence supporting the

allegations in Plaintiff's complaint, with a response deadline of August 12, 2024. Plaintiff requested, and Defendant granted, an extension of time to produce the requested discovery, setting a new deadline of September 3, 2024. Despite reminders from Defendant on August 29, 2024, and September 5, 2024, Plaintiff failed to meet this deadline.

4. **Meet and Confer Sessions:** On September 6, 2024, the parties engaged in a meet-and-confer session to address the discovery dispute. Plaintiff agreed to provide a discovery response by September 11, 2024, and Defendant requested the Trustee's deposition. However, Plaintiff failed to provide the promised discovery response on September 11, 2024, further delaying the process. A subsequent meet-and-confer session on November 20, 2024, failed to resolve the ongoing disputes.
5. **Plaintiff's Evasive Discovery Responses:** On September 13, 2024, Plaintiff responded to Defendant's discovery requests with blanket objections, claiming the requests were overbroad without providing specific explanations as required under Fed. R. Civ. P. 34(b)(2)(B). Plaintiff produced over 21,000 pages of documents, many of which were irrelevant or non-searchable, failing to provide the core materials necessary to support its allegations. This conduct mirrors the obstructive practices condemned in Nat'l Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 96 S. Ct. 2778, 49 L. Ed. 2d 747 (1976), which upheld dismissal as a sanction for willful noncompliance with discovery obligations. Plaintiff's actions also resemble the vague objections criticized in Cine Forty-Second St. Theatre Corp. v. Allied Artists Pictures Corp., 602 F.2d 1062 (2d Cir. 1979), which held such objections justify sanctions.
6. **Defendant's Motions and Plaintiff's Procedural Failures:** On September 20, 2024, Defendant filed a Motion to Dismiss, Motion for Sanctions, and Motion to Compel Discovery due to Plaintiff's failure to produce meaningful discovery. Plaintiff failed to respond to Defendant's motion by the October 4, 2024 deadline, constituting a procedural default under Bankruptcy Rule 9006, which mandates timely responses to motions. This

default mirrors the procedural violations leading to dismissal in Advanced Analytics, Inc. v. Citigroup Glob. Markets, Inc., 301 F.R.D. 47 (S.D.N.Y. 2014). Instead of addressing the broader discovery deficiencies, Plaintiff filed a Motion to Compel Defendant's Deposition on October 7, 2024, fragmenting the discovery process and contravening Fed. R. Civ. P. 26(b)(1), which mandates comprehensive resolution of discovery disputes. This piecemeal approach is similar to the inefficient practices criticized in In re Lyondell Chem. Co., 567 B.R. 55 (Bankr. S.D.N.Y. 2017), aff'd, 585 B.R. 41 (S.D.N.Y. 2018), which emphasized the importance of comprehensive resolution. On October 15, 2024, Defendant filed a Motion for Entry of Default against Plaintiff for failure to timely respond to the September 20, 2024 motion. Defendant responded to Plaintiff's October 7, 2024 motion on October 21, 2024, arguing it was procedurally improper.

7. **Plaintiff's Omnibus Objection:** On November 15, 2024, Plaintiff filed an Omnibus Objection to Defendant's motions, alleging Defendant's non-cooperation in the discovery process.
8. **Current Disputes:** Defendant maintains that Plaintiff's discovery responses remain insufficient and that procedural improprieties necessitate judicial intervention. Defendant seeks entry of default and sanctions against Plaintiff. All aspects of discovery, including depositions, remain unresolved.

II. PROCEDURAL IRREGULARITIES IN PLAINTIFF'S OMNIBUS RESPONSE

1. Failure to Meet Procedural Requirements:

Plaintiff failed to file a response to Defendant's September 20, 2024, Motion to Dismiss, Motion for Sanctions, and Motion to Compel Discovery (**Exhibit I**) within the 14-day deadline set by Judge Trust's procedural rules. Procedural defaults like this prejudice

opposing parties and undermine judicial efficiency, as established in *Advanced Analytics, Inc.* This default warrants dismissal of Plaintiff's objections and supports granting Defendant's motion for entry of default.

2. Improper Filing of Piecemeal Motions:

Plaintiff's October 7, 2024, motion to compel deposition improperly fragments the discovery process by isolating deposition issues from broader discovery obligations. This tactic contravenes Fed. R. Civ. P. 26(b)(1), which mandates comprehensive resolution of discovery disputes as elucidated in Zubulake v. UBS Warburg LLC, 217 F.R.D. 309, 317 (S.D.N.Y. 2003). The Court should not condone such practices, which prejudice the Defendant and obstruct the discovery process. (**Exhibit B**).

3. Procedural Delays and Misuse of Judicial Resources

The Plaintiff has engaged in unwarranted delays by failing to respond to Defendant's September 20, 2024, motion by the required October 4, 2024, deadline. This conduct violates Bankruptcy Rule 9006(b) and undermines judicial efficiency, as emphasized in Henderson v. United States, 517 U.S. 654, 672, 116 S. Ct. 1638, 134 L. Ed. 2d 880 (1996). Moreover, the repeated postponements and last-minute filings reflect bad faith, designed to exhaust judicial resources and disrupt orderly case management.

III. REBUTTAL TO PLAINTIFF'S OMNIBUS ASSERTIONS

1. Defendant’s Demonstrated Good Faith Compliance and Plaintiff’s Misrepresentation:

Plaintiff inaccurately asserts that Defendant failed to meet and confer as required under Rule 37(a)(1). Evidence of a September 6, 2024, meet-and-confer session, supported by email correspondence and meeting logs (**Exhibit C**), demonstrates the Defendant’s compliance and good faith. Roadway Exp., Inc. v. Piper, 447 U.S. 752, 765, 100 S. Ct. 2455, 65 L. Ed. 2d 488 (1980), reinforces that sanctions should target bad faith actors, not parties actively engaging in the discovery process.

2. Plaintiff’s Pattern of Obstruction and Failure to Produce Meaningful Discovery:

Plaintiff’s production of over 21,000 pictures of pages of irrelevant documents fails to satisfy discovery obligations. Plaintiff has not provided core materials necessary to support its allegations of fraud, leaving Defendant prejudiced in preparing his defense (**Exhibit D**).

1. Production of over 21,000 irrelevant, non-searchable documents contravenes Fed. R. Civ. P. 34(b)(2)(E) by failing to organize materials in a usable manner, as noted in In re Adelpia Commc'ns Corp., 338 B.R. 546, 551 (Bankr. S.D.N.Y. 2005).
2. Blanket objections labeling Defendant’s requests as “overbroad” without justification violate Fed. R. Civ. P. 26(b), as interpreted in Hickman v. Taylor, 329 U.S. 495, 507, 67 S. Ct. 385, 91 L. Ed. 451 (1947).
3. The U.S. Supreme Court’s decision in Nat’l Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 96 S. Ct. 2778, 49 L. Ed. 2d 747 (1976) underscores that such discovery abuses justify dismissal.

3. Bad Faith Litigation Tactics & Procedural Impropriety of Plaintiff's Motion to Compel

Plaintiff's strategic delays, including last-minute cancellations of depositions and refusal to engage in meaningful discovery discussions, exemplify a pattern of bad faith. Courts have consistently condemned such behavior as obstructive and sanctionable (**Exhibit E**). Plaintiff's October 7, 2024, motion to compel Defendant's deposition is procedurally improper. Federal Fed. R. Civ. P. 26(b)(1) mandates comprehensive resolution of discovery disputes, which Plaintiff failed to pursue. Case law, including Advanced Analytics, Inc. v. Citigroup Glob. Markets, Inc., 301 F.R.D. 47 (S.D.N.Y. 2014), supports dismissal of motions filed in bad faith.

Plaintiff's Bad Faith Litigation Tactics - The plaintiff's allegations of fraud against Salil Sharma are baseless, speculative, and unsupported by evidence, despite over four and a half years of litigation. The plaintiff has failed to provide any meaningful discovery to substantiate their claims, including financial records, communications, or transaction details. Mr. Sharma fully complied with the plaintiff's document requests, producing all responsive materials. However, the plaintiff responded to Mr. Sharma's discovery requests with boilerplate objections, claiming overbreadth and undue burden, and failed to produce a single document. This lack of evidence, coupled with the plaintiff's repeated delays and misleading statements to the court, demonstrates bad faith litigation tactics. The plaintiff's fraud allegations fail to meet the heightened pleading standard under **Fed. R. Civ. P. 9(b)**, which requires specificity in pleading fraud, as emphasized in **Ashcroft v. Iqbal**, 556 U.S. 662 (2009). The absence of documentary evidence linking the Defendant to fraudulent activity mirrors the deficiencies described in **Bell Atl. Corp. v. Twombly**, 550 U.S. 544 (2007), where speculative claims were insufficient to survive judicial scrutiny.

The plaintiff's motion to compel Mr. Sharma's deposition is procedurally improper, untimely, and a bad faith tactic to avoid responding to Mr. Sharma's motion to compel discovery. Mr. Sharma offered multiple dates for his deposition between July and September 2024, accommodating the plaintiff's requests for an in-person deposition near his home. The plaintiff, however, repeatedly delayed or canceled these depositions, only to unilaterally schedule a deposition for a date they knew was not feasible for Mr. Sharma. The plaintiff also failed to provide dates for their own deposition, despite multiple requests from Mr. Sharma. This conduct demonstrates a clear pattern of obstruction and bad faith. The plaintiff's strategic delays, refusal to engage in meaningful discovery, and filing of piecemeal motions reflect a pattern of bad faith litigation. Such conduct undermines the integrity of the judicial process, warranting sanctions under **Fed. R. Civ. P. 37(b)(2)(A)**, as upheld in **Chambers v. NASCO, Inc., 501 U.S. 32 (1991)**.

The plaintiff's fraud allegations lack the specificity required under Fed. R. Civ. P. 9(b). The plaintiff has not identified specific fraudulent acts, dates, or details of Salil Sharma's alleged involvement. The plaintiff's attempt to link Mr. Sharma to the alleged actions of his brother-in-law, Paul Parmar, is legally insufficient and constitutes guilt by association. The plaintiff's conduct violates Mr. Sharma's due process rights by denying him a fair opportunity to defend himself. The plaintiff's failure to respond to Mr. Sharma's motion to compel discovery by the October 4, 2024, deadline, and their subsequent filing of a motion to compel Mr. Sharma's deposition constitutes willful default and bad faith litigation. The Court should deny the plaintiff's motion to compel, grant Mr. Sharma's motion for entry of

default, compel the plaintiff to produce all outstanding discoveries, impose sanctions for their bad faith conduct, and dismiss the plaintiff's complaint with prejudice.

4. Defendant's Prejudice

Plaintiff's misconduct has directly prejudiced the Defendant by obstructing access to critical documents necessary for preparing a defense. Courts have consistently held that such tactics justify sanctions, as seen in Nat'l Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 643, 96 S. Ct. 2778, 49 L. Ed. 2d 747 (1976). Plaintiff's actions have deprived Defendant of critical evidence, infringing on due process rights as articulated in *Mathews v. Eldridge*. The cumulative effect of these abuses justifies sanctions under Rule 37(b)(2)(A).

IV. SHARMA'S RESPONSE TO ALLEGATIONS AND ASSERTATIONS

Responses to Allegations Against Salil Sharma

This enhanced response addresses each allegation with more assertive language, deeper legal analysis, and additional supporting case law, leveraging the existing arguments and key points within the document.

A. Allegation of Participation in a Fraudulent Scheme

The Trustee's allegation that Mr. Sharma knowingly participated in a fraudulent scheme by fabricating diligence reports, websites, and invoices, causing economic harm, is baseless

and fails to meet the heightened pleading standard of Fed. R. Civ. P. 9(b).^{1 2} As articulated in Lundy v. Cath. Health Sys. of Long Island Inc., 711 F.3d 106 (2d Cir. 2013), pleading fraud requires particularity, specifying the “who, what, when, where, and how” of the alleged misconduct.³ The Trustee’s conclusory accusations lack the requisite specificity, offering no factual basis to support claims of Mr. Sharma’s knowing participation, fraudulent intent, or causation of economic harm.⁴ The Trustee’s failure to provide specific documentation or details renders the claim speculative and legally deficient. This deficiency is akin to the failures described in Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009), where the Supreme Court emphasized the need for factual substantiation beyond mere conclusory statements.⁵ The complete absence of evidence demonstrating Mr. Sharma’s knowledge of or involvement in the alleged scheme, coupled with the lack of proof linking him to the creation of fraudulent materials causing economic

¹ Trustee’s Claim: The Trustee alleges that Salil Sharma knowingly participated in a fraudulent scheme by fabricating diligence reports, websites, and invoices, thereby causing economic harm to the debtors., pg. 1, Exhibit A

² This allegation is devoid of substantive evidence and fails to satisfy the heightened pleading standard mandated by Fed. R. Civ. P. 9(b). Fed. R. Civ. P. 9(b) requires particularity in fraud claims, compelling the Plaintiff to articulate the “who, what, when, where, and how” of the alleged misconduct. The Second Circuit in Lundy v. Cath. Health Sys. of Long Island Inc., 711 F.3d 106 (2d Cir. 2013), emphasized the necessity of particularity, rejecting vague and conclusory accusations as legally insufficient., pg. 1, Exhibit A

³ This allegation is devoid of substantive evidence and fails to satisfy the heightened pleading standard mandated by Fed. R. Civ. P. 9(b). Fed. R. Civ. P. 9(b) requires particularity in fraud claims, compelling the Plaintiff to articulate the “who, what, when, where, and how” of the alleged misconduct. The Second Circuit in Lundy v. Cath. Health Sys. of Long Island Inc., 711 F.3d 106 (2d Cir. 2013), emphasized the necessity of particularity, rejecting vague and conclusory accusations as legally insufficient., pg. 1, Exhibit A

⁴ The Trustee has failed to provide any documentation or specific details that substantiate Sharma’s deliberate misconduct or fraudulent intent. Without evidence establishing Sharma’s knowing participation or causation of economic harm, this claim remains speculative and legally untenable., pg. 1, Exhibit A

⁵ Trustee’s Claim: The Trustee asserts that Sharma created a fraudulent website for NorthStar, falsified diligence reports, and conspired in a sham acquisition. Response: These allegations lack evidentiary support and rely entirely on conclusory assertions. As held in Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009), allegations must be supported by factual substantiation to survive judicial scrutiny. The Trustee’s claims are devoid of any contractual, email, or documentary evidence linking Sharma to the alleged fraudulent website or diligence reports., pg. 1, Exhibit A

harm, necessitates dismissal of this claim.^{6 7} The Trustee bears the burden of proof, and as stated in Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986), failure to produce such evidence mandates summary judgment in favor of the defendant.⁸

The plaintiff's fraud allegations fail to meet the heightened pleading standard under **Fed. R. Civ. P. 9(b)**, which requires specificity in pleading fraud, as emphasized in **Ashcroft v. Iqbal**, 556 U.S. 662 (2009). The absence of documentary evidence linking the Defendant to fraudulent activity mirrors the deficiencies described in **Bell Atl. Corp. v. Twombly**, 550 U.S. 544 (2007), where speculative claims were insufficient to survive judicial scrutiny.

B. Allegations Related to Specific Transactions

1. NorthStar Transaction

The Trustee's assertion that Mr. Sharma created a fraudulent website for NorthStar, falsified diligence reports, and conspired in a sham acquisition is devoid of evidentiary support.⁹ These claims, mirroring the deficiencies highlighted in *Iqbal*, rely solely on conclusory assertions and lack the factual substantiation required to survive judicial

⁶ None of the documents discovered demonstrate Sharma's knowledge of or involvement in the alleged fraudulent scheme., pg. 1, Exhibit A

⁷ There is no evidence to support the claim that Sharma created fraudulent diligence reports, websites, or invoices that caused economic harm to the debtors., pg. 1, Exhibit A

⁸ This claim fails to meet the evidentiary burden established in Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986), which requires clear and specific evidence. The Trustee has not provided any forensic accounting records, bank statements, or documentation linking Sharma to the alleged diversion of funds., pg. 2, Exhibit A

⁹ Trustee's Claim: The Trustee asserts that Sharma created a fraudulent website for NorthStar, falsified diligence reports, and conspired in a sham acquisition. Response: These allegations lack evidentiary support and rely entirely on conclusory assertions. As held in Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009), allegations must be supported by factual substantiation to survive judicial scrutiny. The Trustee's claims are devoid of any contractual, email, or documentary evidence linking Sharma to the alleged fraudulent website or diligence reports., pg. 1, Exhibit A

scrutiny.¹⁰ The Trustee has not presented any contractual agreements, email correspondence, or documentary evidence linking Mr. Sharma to the alleged fraudulent activities.¹¹ The absence of any evidence connecting Mr. Sharma to the creation of a fraudulent website, the falsification of diligence reports, or involvement in a sham acquisition renders these allegations unfounded and warrants their dismissal.^{12 13}

2. Phoenix Transaction

The accusation that Mr. Sharma diverted funds from the Phoenix Transaction for personal use is similarly deficient.¹⁴ The Trustee has failed to meet the evidentiary burden established in *Celotex*, providing no forensic accounting records, bank statements, or documentation linking Mr. Sharma to the alleged diversion.¹⁵ The absence of any financial records or documentation demonstrating a nexus between the Phoenix Transaction funds and Mr. Sharma's personal assets underscores the

¹⁰ Trustee's Claim: The Trustee asserts that Sharma created a fraudulent website for NorthStar, falsified diligence reports, and conspired in a sham acquisition. Response: These allegations lack evidentiary support and rely entirely on conclusory assertions. As held in *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009), allegations must be supported by factual substantiation to survive judicial scrutiny. The Trustee's claims are devoid of any contractual, email, or documentary evidence linking Sharma to the alleged fraudulent website or diligence reports., pg. 1, Exhibit A

¹¹ Trustee's Claim: The Trustee asserts that Sharma created a fraudulent website for NorthStar, falsified diligence reports, and conspired in a sham acquisition. Response: These allegations lack evidentiary support and rely entirely on conclusory assertions. As held in *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009), allegations must be supported by factual substantiation to survive judicial scrutiny. The Trustee's claims are devoid of any contractual, email, or documentary evidence linking Sharma to the alleged fraudulent website or diligence reports., pg. 1, Exhibit A

¹² No evidence connects Sharma to the creation of a fraudulent website or falsified diligence reports for NorthStar., pg. 2, Exhibit A

¹³ The Trustee has failed to provide corroborating documentation or testimony demonstrating Sharma's involvement in the alleged sham acquisition., pg. 2, Exhibit A

¹⁴ Trustee's Claim: Sharma is accused of diverting funds from the Phoenix Transaction for personal use., pg. 2, Exhibit A

¹⁵ This claim fails to meet the evidentiary burden established in *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986), which requires clear and specific evidence. The Trustee has not provided any forensic accounting records, bank statements, or documentation linking Sharma to the alleged diversion of funds., pg. 2, Exhibit A

speculative nature of this claim.^{16 17} This lack of evidentiary support necessitates the dismissal of this allegation.

3. MDRX Transaction

The allegation that Mr. Sharma created a fraudulent website to facilitate a sham acquisition of MDRX is speculative and unsubstantiated.¹⁸ As held in Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007), claims must rise above speculative assertions to state a valid cause of action.¹⁹ The Trustee's failure to present any contractual or electronic evidence implicating Mr. Sharma demonstrates the inadequacy of this claim.²⁰ The complete lack of documentation establishing Mr. Sharma's involvement in creating a fraudulent website or facilitating a sham acquisition of MDRX necessitates dismissal.²¹

¹⁶ No documents or financial records indicate Sharma diverted funds from the Phoenix Transaction., pg. 2, Exhibit A

¹⁷ The Trustee has not substantiated any nexus between the Phoenix Transaction funds and Sharma's personal assets., pg. 2, Exhibit A

¹⁸ Trustee's Claim: Sharma allegedly created a fraudulent website to facilitate a sham acquisition of MDRX. Response., pg. 2, Exhibit A

¹⁹ This allegation is speculative and unsubstantiated. In Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007), the Supreme Court held that claims must rise above speculative assertions to state a valid cause of action. The Trustee has failed to present any contractual or electronic evidence implicating Sharma., pg. 2, Exhibit A

²⁰ This allegation is speculative and unsubstantiated. In Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007), the Supreme Court held that claims must rise above speculative assertions to state a valid cause of action. The Trustee has failed to present any contractual or electronic evidence implicating Sharma., pg. 2, Exhibit A

²¹ o No documentation establishes Sharma's involvement in creating a fraudulent website or facilitating a sham acquisition of MDRX., pg. 2, Exhibit A

Responses to Assertions Against Salil Sharma

A. Assertions of Procedural and Discovery Misconduct

1. Frivolous Filings by Sharma

The Trustee's claim that Mr. Sharma's filings misrepresent facts and obstruct proceedings is unfounded.²² Mr. Sharma's filings are legally sound, appropriately challenging the Trustee's unsupported allegations and highlighting procedural deficiencies in the Trustee's case, consistent with the right affirmed in Patterson v. Newspaper & Mail Deliverers' Union of New York & Vicinity, 514 F.2d 767 (2d Cir. 1975).²³ ²⁴ Mr. Sharma has acted in good faith, filing timely responses and adhering to all court-ordered deadlines.²⁵

2. Fulfillment of Discovery Obligations

The Trustee's assertion of compliance with discovery obligations based on the production of a large volume of documents is misleading.²⁶ Mere volume does not equate to meaningful compliance. As held in Zubulake v. UBS Warburg LLC, 229 F.R.D. 422 (S.D.N.Y. 2004), discovery must be organized, relevant, and accessible.²⁷ The Trustee's production of irrelevant, non-searchable documents has obstructed Mr. Sharma's ability to

²²

Frivolous Filings by Sharma Trustee's Claim: Sharma's filings misrepresent facts and obstruct proceedings., pg. 2, Exhibit A

²³ Sharma's filings are legally sound and appropriately challenge the Trustee's unsupported allegations. The Second Circuit in Patterson v. Newspaper & Mail Deliverers' Union of New York & Vicinity, 514 F.2d 767 (2d Cir. 1975), affirmed the right of parties to file motions addressing procedural deficiencies., pg. 3, Exhibit A

²⁴ o Each of Sharma's filings highlights procedural deficiencies in the Trustee's case and is supported by evidence., pg. 3, Exhibit A

²⁵ Sharma has acted in good faith, filing timely responses and adhering to all court-ordered deadlines., pg. 3, Exhibit A

²⁶ Trustee's Claim: The Trustee alleges compliance with discovery obligations, citing the production of over 21,520 pages of documents. Response., pg. 3, Exhibit A

²⁷ The volume of documents produced does not equate to meaningful compliance. In Zubulake v. UBS Warburg LLC, 229 F.R.D. 422 (S.D.N.Y. 2004), the court held that discovery must be organized, relevant, and accessible. The Trustee's production of irrelevant, non-searchable documents has obstructed Sharma's ability to prepare his defense., pg. 3, Exhibit A

prepare his defense, constituting a failure to comply with discovery obligations.²⁸ Furthermore, despite a four-year discovery period and multiple meet-and-confer attempts by Mr. Sharma, the Trustee has failed to produce any documents substantiating the allegations against him.^{29 30}

3. Evasion of Discovery by Sharma

The allegation that Mr. Sharma refused to produce documents and evaded depositions is baseless.³¹ Mr. Sharma has actively participated in discovery, providing timely responses, producing responsive documents, and offering deposition dates.^{32 33} Conversely, the Trustee's unilateral scheduling of Mr. Sharma's deposition without confirming his availability demonstrates procedural bad faith.³⁴

B. Compliance with Procedural Rules

The Trustee's assertion of procedural propriety while alleging deficiencies in Mr. Sharma's filings is meritless.³⁵ The Trustee's piecemeal and untimely motions violate principles of

²⁸ The volume of documents produced does not equate to meaningful compliance. In Zubulake v. UBS Warburg LLC, 229 F.R.D. 422 (S.D.N.Y. 2004), the court held that discovery must be organized, relevant, and accessible. The Trustee's production of irrelevant, non-searchable documents has obstructed Sharma's ability to prepare his defense., pg. 3, Exhibit A

²⁹ None of the documents produced address or substantiate the Trustee's allegations against Sharma., pg. 3, Exhibit A

³⁰ The Trustee has failed to produce meaningful discovery over a four-year period, despite multiple meet-and-confer attempts by Sharma., pg. 3, Exhibit A

³¹ Trustee's Claim: Sharma allegedly refused to produce documents and evaded depositions., pg. 3, Exhibit A

³² These allegations are baseless. Sharma has actively participated in discovery, providing timely responses and offering deposition dates. The Trustee, however, has failed to reciprocate in good faith., pg. 3, Exhibit A

³³ Sharma has complied with all discovery requests and provided responsive documents where applicable., pg. 3, Exhibit A

³⁴ The Trustee's unilateral scheduling of Sharma's deposition without confirming his availability constitutes procedural bad faith., pg. 4, Exhibit A

³⁵ Trustee's Claim: The Trustee asserts the procedural propriety of its motions while alleging deficiencies in Sharma's filings., pg. 4, Exhibit A

judicial efficiency and procedural fairness.³⁶ As emphasized in In re Lyondell Chem. Co., 567 B.R. 55 (Bankr. S.D.N.Y. 2017), aff'd, 585 B.R. 41 (S.D.N.Y. 2018), discovery disputes should be resolved comprehensively.³⁷ Mr. Sharma's filings adhere to procedural requirements and address substantive deficiencies in the Trustee's case, including the Trustee's failure to respond to discovery requests and meet deadlines.³⁸ ³⁹ The Trustee's October 7, 2024, motion to compel deposition improperly isolates issues, contravening the court's guidance on efficient case management.⁴⁰

The Trustee's allegations against Mr. Sharma are unsupported by evidence and procedurally flawed. Mr. Sharma has consistently adhered to legal and procedural standards, while the Trustee has repeatedly failed to substantiate claims or comply with discovery obligations. The Court should dismiss the Trustee's claims, deny any sanctions against Mr. Sharma, and impose sanctions on the Trustee for bad-faith litigation tactics.⁴¹

³⁶ The Trustee's piecemeal and untimely motions violate principles of judicial efficiency and procedural fairness. In In re Lyondell Chem. Co., 567 B.R. 55 (Bankr. S.D.N.Y. 2017), aff'd, 585 B.R. 41 (S.D.N.Y. 2018), the court emphasized the need for comprehensive resolution of discovery disputes. Sharma's filings, by contrast, adhere to procedural requirements and address substantive deficiencies in the Trustee's case., pg. 4, Exhibit A

³⁷ The Trustee's piecemeal and untimely motions violate principles of judicial efficiency and procedural fairness. In In re Lyondell Chem. Co., 567 B.R. 55 (Bankr. S.D.N.Y. 2017), aff'd, 585 B.R. 41 (S.D.N.Y. 2018), the court emphasized the need for comprehensive resolution of discovery disputes. Sharma's filings, by contrast, adhere to procedural requirements and address substantive deficiencies in the Trustee's case., pg. 4, Exhibit A

³⁸ The Trustee's piecemeal and untimely motions violate principles of judicial efficiency and procedural fairness. In In re Lyondell Chem. Co., 567 B.R. 55 (Bankr. S.D.N.Y. 2017), aff'd, 585 B.R. 41 (S.D.N.Y. 2018), the court emphasized the need for comprehensive resolution of discovery disputes. Sharma's filings, by contrast, adhere to procedural requirements and address substantive deficiencies in the Trustee's case., pg. 4, Exhibit A

³⁹ Sharma's motions are procedurally sound, highlighting the Trustee's failure to respond to discovery requests and meet deadlines., pg. 4, Exhibit A

⁴⁰ The Trustee's October 7, 2024, motion to compel deposition improperly isolates issues, contravening the court's guidance on efficient case management., pg. 4, exhibit F

⁴¹ The Trustee's allegations and assertions lack evidentiary support and procedural validity. Sharma has demonstrated consistent adherence to legal and procedural standards, highlighting the Trustee's repeated failures to substantiate claims or comply with discovery obligations. This Court should dismiss the Trustee's claims, deny any sanctions against Sharma, and impose sanctions on the Trustee for bad-faith litigation tactics., pg. 1

V. LEGAL ARGUMENTS

A. Trustee's Admission of Routine Production of Irrelevant Discovery Constitutes Bad Faith and Obstructive Litigation Practices Requiring Judicial Sanctions

During a meet-and-confer session, the Trustee explicitly stated that "in litigation, it is a routine practice to produce 99% irrelevant discovery." This brazen and unapologetic assertion constitutes a direct affront to the foundational principles of fairness, transparency, and judicial integrity upheld by this Court. By openly admitting to producing predominantly irrelevant discovery, the Trustee flagrantly disregards **Fed. R. Civ. P. 34(b)(2)(E)**, which requires that discovery be organized and presented in a manner usable by the opposing party. Such conduct reflects not only a willful noncompliance with procedural rules but also a disturbing attempt to normalize abusive litigation practices.

Courts have consistently condemned discovery misconduct that impedes a party's ability to prepare its case. In **Zubulake v. UBS Warburg LLC**, 229 F.R.D. 422 (S.D.N.Y. 2004), the court emphasized the importance of organized and relevant production, holding that disorganized and inaccessible discovery significantly undermines the adversarial process. Similarly, the U.S. Supreme Court in **Nat'l Hockey League v. Metro. Hockey Club, Inc.**, 427 U.S. 639 (1976), upheld severe sanctions for bad-faith discovery violations that delay and obstruct justice.

The Trustee's deliberate admission that producing irrelevant materials is "routine practice" exemplifies bad faith and undermines the Court's mandate to ensure procedural fairness under **Fed. R. Civ. P. 37(b)(2)(A)**. This blatant abuse of discovery obligations calls for

decisive judicial intervention. To permit such conduct would embolden other litigants to exploit the judicial process, thereby setting a dangerous precedent and eroding public confidence in the courts.

This Court must act to curtail such abusive litigation practices by imposing sanctions on the Trustee for their deliberate obfuscation and disregard for procedural rules, as articulated in **Chambers v. NASCO, Inc.**, 501 U.S. 32 (1991). Such sanctions are necessary not only to deter future misconduct but also to preserve the integrity and efficiency of the judicial process.

B. Plaintiff's Procedural and Discovery Misconduct: A Pattern of Delay and Obstruction

The Plaintiff's conduct in this litigation, marked by procedural violations, discovery abuses, and misrepresentations, has significantly prejudiced Mr. Sharma's ability to mount an adequate defense. This pattern of delay and obstruction warrants sanctions, including dismissal of the Plaintiff's claims and entry of default judgment.

1. Plaintiff's Procedural Deficiencies and Misrepresentations

- a) **Failure to Respond and Misrepresentation of Good Faith Efforts:** The Plaintiff failed to respond to Mr. Sharma's September 20, 2024, Motion to Dismiss and Motion to Compel Discovery by October 4, 2024, deadline. This failure constitutes procedural default under Bankruptcy Rule 9006(b)(1).⁴² Further, the Plaintiff

⁴² The Plaintiff acknowledges receipt of the motion but did not file a timely response nor seek an extension, despite the deadline of October 4, 2024. Instead, the Plaintiff filed a separate motion on October 7, 2024, to compel a deposition, attempting to use this motion as a response to Sharma's motion. This approach is procedurally improper under Fed. R. Bankr. P. 9006(b), which mandates that parties must either respond within the set deadline or seek an extension from the Court. The Plaintiff has failed to do both and is now in default. Mr. Sharma has already filed a motion for entry of default due to the Plaintiff's failure to respond., pg. 11, Exhibit E

misrepresented to the Court that Mr. Sharma failed to meet and confer before filing his motion. This is demonstrably false, as evidenced by email correspondence and meeting logs confirming a meet-and-confer session on September 6, 2024.^{43 44} The Plaintiff's misrepresentation and procedural default demonstrate bad faith and a disregard for the rules of this Court. As held in Advanced Analytics, Inc. v. Citigroup Glob. Markets, Inc., 301 F.R.D. 47 (S.D.N.Y. 2014), procedural noncompliance that disrupts judicial efficiency is grounds for dismissal.⁴⁵ The Second Circuit has similarly held that procedural lapses justify dismissal when they cause undue delay or prejudice.⁴⁶ Moreover, the U.S. Supreme Court in Roadway Exp., Inc. v. Piper, 447 U.S. 752, 100 S. Ct. 2455, 65 L. Ed. 2d 488 (1980), held that sanctions are appropriate for bad-faith misrepresentations that undermine judicial integrity.⁴⁷

- b) **The plaintiff's repeated disregard for critical deadlines**, exemplified by their failure to respond by the October 4, 2024, deadline, has compelled the defendant to

⁴³ Mr. Sharma conducted a meet-and-confer on September 6, 2024, at 10:00 AM, as evidenced by the email correspondences and Microsoft Teams log showing that the meeting took place (Please see Exhibit C). These records clearly refute the Plaintiff's false claim that no meet-and-confer occurred. In fact, Mr. Sharma gave the Plaintiff multiple extensions to produce discovery, but the Plaintiff continuously delayed, citing various "unexpected delays" without making any formal requests for extensions. The attached email chain demonstrates the Plaintiff's pattern of delays and bad-faith tactics, where they would unilaterally decide to delay discovery without consulting Mr. Sharma., pg. 12, Exhibit E

⁴⁴ The emails from September 5, 2024, and September 6, 2024, clearly show that Mr. Sharma requested a meet-and-confer and followed up with a phone meeting on September 6, 2024. The Plaintiff's misrepresentation that this did not occur is a blatant falsehood aimed at misleading the Court, and they should be reprimanded for willfully misrepresenting the facts., pg. 12, Exhibit E

⁴⁵ In Advanced Analytics, Inc. v. Citigroup Glob. Markets, Inc., 301 F.R.D. 47 (S.D.N.Y. 2014), the court dismissed claims where procedural noncompliance disrupted judicial efficiency. Similarly, Plaintiff's failure to adhere to procedural deadlines here obstructs timely litigation.

⁴⁶ The Second Circuit has held that procedural lapses justify dismissal when they create undue delays or prejudice. See Patterson v. Newspaper & Mail Deliverers' Union of New York & Vicinity, 514 F.2d 767 (2d Cir. 1975).

⁴⁷ The U.S. Supreme Court in Roadway Exp., Inc. v. Piper, 447 U.S. 752, 100 S. Ct. 2455, 65 L. Ed. 2d 488 (1980), held that sanctions are appropriate for bad-faith misrepresentations that undermine judicial integrity. Plaintiff's misrepresentation here mirrors such conduct, warranting judicial scrutiny.

divert significant resources toward addressing procedural shortcomings instead of engaging with the substantive issues at hand. As highlighted in *Henderson v. United States*, 517 U.S. 654 (1996), adherence to procedural deadlines is essential for maintaining judicial efficiency and preventing undue delays, both of which the plaintiff's actions have severely undermined.

- c) **Improper Filing of Piecemeal Motions and Violation of Local Rule 7007-1:** The Plaintiff's October 7, 2024 motion to compel Mr. Sharma's deposition is procedurally improper. This motion attempts to isolate the deposition issue from the broader discovery dispute already raised in Mr. Sharma's September 20, 2024 motion, violating Fed. R. Civ. P. 26(b)(1), which includes depositions as part of discovery.^{48 49} This fragmented approach is a clear violation of Local Rule 7007-1, which requires a good faith conference before filing discovery motions.⁵⁰ The Plaintiff's failure to adhere to this rule, coupled with the filing of piecemeal motions, demonstrates an intent to obstruct efficient case management. As held in *In re Lyondell Chem. Co.*, 567 B.R. 55 (Bankr. S.D.N.Y. 2017), aff'd, 585 B.R. 41

⁴⁸ The Plaintiff's motion to compel deposition [Docket Num 53] is not only procedurally improper but also a deliberate attempt to divert the Court's attention from the core issues of discovery non-compliance. As depositions are a key element of discovery under Fed. R. Civ. P. 26(b)(1), they are encompassed by Mr. Sharma's motion to compel discovery., pg. 9, Exhibit E

⁴⁹ The Plaintiff's motion to compel deposition, filed on October 7, 2024, is procedurally improper and should be dismissed. This motion is nothing more than a transparent attempt to circumvent the Plaintiff's failure to respond to Mr. Sharma's September 20, 2024, motion to compel discovery. Under Fed. R. Civ. P. 26(b)(1), discovery encompasses all methods of obtaining information, including depositions. Therefore, the Plaintiff's motion to compel deposition is not a separate issue but a critical part of Mr. Sharma's original motion to compel discovery., pg. 42, Exhibit E

⁵⁰ Second, under Local Rule 7007-1, "[a] discovery-related motion under Bankruptcy Rules 7026 through 7037 shall be supported by an affidavit or affirmation certifying that the moving party has made a good faith effort to confer with the opposing party to resolve the issues raised by the motion by agreement and without judicial intervention, but has been unable to reach an agreement." Local Rule 7007-1. Sharma, again, failed to comply with this rule., pg. 10, Exhibit G

(S.D.N.Y. 2018), discovery disputes should be resolved comprehensively to avoid piecemeal litigation.⁵¹

2. Plaintiff's Substantive Discovery Deficiencies

- a) **Failure to Provide Meaningful Discovery:** The Plaintiff's production of over 21,000 pages of irrelevant and non-searchable documents does not satisfy their discovery obligations under Federal Rule 34(b)(2)(E).⁵² This tactic hinders Mr. Sharma's ability to prepare an effective defense. The Supreme Court in Nat'l Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 96 S. Ct. 2778, 49 L. Ed. 2d 747 (1976), upheld dismissal as a sanction for willful discovery violations.⁵³ The Plaintiff's inadequate production mirrors the obstructive practices condemned in that case.
- b) **Baseless Objections:** The Plaintiff's blanket objections to Mr. Sharma's 103 document requests as "overbroad" and "burdensome" lack the specificity required

⁵¹ Plaintiff's October 7, 2024, motion to compel Defendant's deposition isolates deposition issues from broader discovery disputes, in violation of Fed. R. Civ. P. 26(b)(1). Fragmented filings disrupt judicial efficiency and impose undue burdens on the judiciary. In In re Lyondell Chem. Co., 567 B.R. 55 (Bankr. S.D.N.Y. 2017), aff'd, 585 B.R. 41 (S.D.N.Y. 2018), the court emphasized resolving discovery disputes comprehensively to avoid piecemeal litigation. Plaintiff's fragmented filings reflect bad-faith litigation tactics designed to obstruct efficient case management.

⁵² objections to his September 13 responses and objections to Sharma's written discovery demands (the "R&Os"), and (iii) produced over 21,000 pages of documents while making hundreds of thousands of documents available to Sharma for inspection. Sharma responded with a lengthy letter on November 11, 2024, at 10:41 p.m (Exhibit F). and demanded "compliance" to a laundry list of perceived issues within seven days or risk "sanctions." Not twelve hours later, Sharma filed his 370-page filing with the Court brazenly asserting that the Liquidating Trustee is somehow in default, that the 21,000 pages of documents are insufficient and otherwise repeated the same baseless claims already asserted in his Motions. It is not clear if Sharma even reviewed the documents produced, however, as they illustrate Sharma's central role in the alleged fraud, including documents showing his name, signature, and business address on materials interwoven in the fraud. Additional documents made available to Sharma (but that he has taken no steps to inspect) include copies of his New Jersey driver's license and bank records., pg. 4, Exhibit G

⁵³ 0 In Nat'l Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 96 S. Ct. 2778, 49 L. Ed. 2d 747 (1976), the Supreme Court upheld dismissal as a sanction for willful discovery violations. Plaintiff's inadequate production here reflects the obstructive practices condemned in that case. 0 Similarly, the Bankruptcy Court in In re Adelphia Commc'ns Corp., 338 B.R. 546 (Bankr. S.D.N.Y. 2005), criticized disorganized document productions that hindered fair litigation.

by Federal Rule 34(b)(2)(B).⁵⁴ These vague objections are obstructive, similar to the tactics condemned in Cine Forty-Second St. Theatre Corp. v. Allied Artists Pictures Corp., 602 F.2d 1062 (2d Cir. 1979).⁵⁵

- c) **Deliberate Obstruction of Depositions:** The Plaintiff unilaterally scheduled Mr. Sharma's deposition for September 20, 2024, despite knowing of his unavailability on that date.⁵⁶ Simultaneously, the Plaintiff has failed to produce the Trustee, Mr. Ehrenberg, for deposition, despite repeated requests from Mr. Sharma.⁵⁷⁵⁸ This conduct demonstrates bad faith and obstructs the discovery process.

C. Prejudice to Mr. Sharma

The Plaintiff's actions have caused significant prejudice to Mr. Sharma, hindering his ability to prepare a defense and imposing unnecessary financial burdens.

- a) **Impact on Defense Preparation:** The Plaintiff's refusal to produce relevant discovery, particularly documents supporting the allegations of fraud, has deprived Mr. Sharma of the foundational evidence necessary to challenge the claims against

⁵⁴ RESPONSE: Plaintiff objects to this Request as it is overly broad as to time and scope, requests documents on topics that are neither relevant nor proportional to the needs of the case, and is unduly burdensome and oppressive to the Trustee. Plaintiff further objects to this Request on the grounds that it seeks information which is protected by the attorney-client privilege and/or attorney work product doctrine, or any other applicable privilege or immunity., pg. 174, Exhibit E

⁵⁵ In Cine Forty-Second St. Theatre Corp. v. Allied Artists Pictures Corp., 602 F.2d 1062 (2d Cir. 1979), the Second Circuit condemned vague objections as obstructive. Plaintiff's conduct mirrors these tactics, justifying sanctions.

⁵⁶ This serves as formal notice that I will not be available for the deposition currently scheduled for Friday, September 20, 2024. As I previously informed you during our meet and confer on September 6, 2024, this date was unilaterally set without confirming my availability, and I am unable to attend on that day., pg. 140, Exhibit E

⁵⁷ I am following up on my deposition request sent on September 5, 2024. Can you please confirm the availability of Trustee Mr. Howard M Ehrenberg for the deposition as I requested in my email., pg. 137, Exhibit E

⁵⁸ On Thu, Sep 5, 2024 at 2:34 PM Salil Sharma salil71@gmail.com wrote: Hi Neal,, pg. 137, Exhibit E

him.⁵⁹ ⁶⁰ This lack of access to key information violates Mr. Sharma’s due process rights, as recognized in Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).⁶¹ For example, Mr. Sharma needs documents related to the alleged “exorbitant fees”⁶² and financial transactions⁶³ to understand the basis of the claims and prepare a defense.

- b) **Delay and Financial Burden:** The Plaintiff’s procedural misconduct, including last-minute deposition cancellations and the production of irrelevant documents, has caused significant delays and imposed an unnecessary financial burden on Mr. Sharma. These delays have hindered his ability to efficiently address the claims and have resulted in wasted time and resources. The Supreme Court in Chambers v. NASCO, Inc., 501 U.S. 32, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991), upheld sanctions for intentional delays and procedural abuses.⁶⁴

⁵⁹ It is important to note that this request is straightforward and fundamental to addressing the claims made against me. Given that the allegations you have made are specific and detailed, there should be no reason for delay in providing this essential information. The discovery you are holding is necessary for me to understand the basis of your allegations and to prepare an appropriate response., pg. 151, Exhibit E

⁶⁰ It is important to note that this request is straightforward and fundamental to addressing the claims made against me. Given that the allegations you have made are specific and detailed, there should be no reason for delay in providing this essential information. The discovery you are holding is necessary for me to understand the basis of your allegations and to prepare an appropriate response., pg. 159, Exhibit E

⁶¹ In Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), the Supreme Court emphasized the importance of procedural due process and access to evidence for defense preparation. Plaintiff’s conduct violates these principles, severely prejudicing Defendant.

⁶² Misrepresentation of the Meet and Confer Process, pg. 2, Exhibit E

⁶³ Each documents evidencing wire transfers, ownership changes, or other financial activities involving these entities.”, pg. 5, Exhibit J

⁶⁴ In Chambers v. NASCO, Inc., 501 U.S. 32, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991), the Supreme Court upheld sanctions for intentional delays and procedural abuses, recognizing the need to protect judicial processes from bad-faith litigants.

D. Fraudulent Conduct Allegations: Lack of Factual and Legal Basis

The Plaintiff's allegations against Mr. Sharma, including claims of aiding and abetting fraud, conspiracy, and fraudulent misrepresentation, are not supported by evidence and fail to meet the heightened pleading standard of Rule 9(b).^{65 66} As articulated in Lundy v. Cath. Health Sys. of Long Island Inc., 711 F.3d 106 (2d Cir. 2013), Fed. R. Civ. P. 9(b) requires the Plaintiff to plead fraud with particularity, specifying the “who, what, when, where, and how” of the alleged fraud.⁶⁷ The Plaintiff has not met this standard.

1. Specific Transaction Allegations: NorthStar, Phoenix, and MDRX

a) **NorthStar Transaction:** The Plaintiff alleges that Mr. Sharma created a fraudulent website and falsified diligence reports for the NorthStar transaction.⁶⁸

These allegations are conclusory and lack evidentiary support. The Plaintiff has not produced any contracts, emails, or other documentation linking Mr. Sharma to these activities.

⁶⁵ The Plaintiff's allegations of fraud against Salil Sharma are conjectural, speculative, and unsupported by any discovery. Over 4.5 years, the Plaintiff has produced no documentation or factual support. Under Fed. R. Civ. P. 9(b), allegations of fraud require specificity-who committed the fraud, what acts were involved, when and where they occurred, and how the fraudulent scheme operated. The Plaintiff has provided none of this, relying solely on generalized accusations to damage Salil's reputation and business, pg. 17, Exhibit E

⁶⁶ The Plaintiff's allegations that Defendant Sharma knowingly participated in fraudulent schemes, including the creation of fictitious diligence reports, invoices, and websites, are devoid of evidentiary support. These allegations fail under the heightened pleading standard required by Fed. R. Civ. P. 9(b), as emphasized in Lundy v. Cath. Health Sys. of Long Island Inc., 711 F.3d 106 (2d Cir. 2013). This rule mandates the Plaintiff to specify the “who, what, when, where, and how” of the alleged fraud, a requirement conspicuously unmet in the Plaintiff's filings.

⁶⁷ The Plaintiff's allegations that Defendant Sharma knowingly participated in fraudulent schemes, including the creation of fictitious diligence reports, invoices, and websites, are devoid of evidentiary support. These allegations fail under the heightened pleading standard required by Fed. R. Civ. P. 9(b), as emphasized in Lundy v. Cath. Health Sys. of Long Island Inc., 711 F.3d 106 (2d Cir. 2013). This rule mandates the Plaintiff to specify the “who, what, when, where, and how” of the alleged fraud, a requirement conspicuously unmet in the Plaintiff's filings.

⁶⁸ REQUEST 19. All documents that support or relate to the allegations against the Defendant set forth in Plaintiff's Adversary Proceeding Complaint at paragraph 71 that, “In or about September 2015, Parmar instructed Sharma to create a fraudulent website for NorthStar, portraying NorthStar as an independent operating business, for the purpose of enticing equity investment in the Debtors to effectuate the sham NorthStar acquisition.”, pg. 183, Exhibit E

- b) **Phoenix Transaction**: The Plaintiff accuses Mr. Sharma of diverting funds for personal use in connection with the Phoenix Transaction.⁶⁹ However, the Plaintiff has not provided any forensic accounting records, bank statements, or other evidence to support this claim. This failure to provide evidence violates the Plaintiff's burden of proof.
- c) **MDRX Transaction**: The Plaintiff's allegation that Mr. Sharma created a fraudulent website for MDRX to facilitate a sham acquisition⁷⁰ is purely speculative and lacks any factual basis.

2. B. Plaintiff's Lack of Evidence vs. Defendant's Compliance

Despite the seriousness of the allegations, the Plaintiff has failed to produce any evidence directly implicating Mr. Sharma in fraudulent conduct. This lack of evidence contrasts sharply with Mr. Sharma's compliance with the Plaintiff's discovery requests.⁷¹ Mr. Sharma has produced all requested documents and has consistently cooperated with the discovery process. The Plaintiff's failure to provide supporting evidence, while simultaneously accusing Mr. Sharma of discovery evasion, demonstrates bad faith and a lack of a meritorious claim.

⁶⁹ REQUEST 34. All documents that support or relate to the allegations against the Defendant set forth in Plaintiff's Adversary Proceeding Complaint at paragraph 116 that, "Upon information and belief, the Phoenix Payments were then transferred from the escrow account to Sharma, as the Phoenix Transaction was ostensibly the sale of SGC assets, even if the transaction seems to have only occurred on paper.", pg. 191, Exhibit E

⁷⁰ REQUEST 29. All documents that support or relate to the allegations against the Defendant set forth in Plaintiff Adversary Proceeding Complaint at paragraph 100 that, "Upon information and belief, the Sage Defendants knowingly provided substantial assistance to, and conspired with, Former Management to effectuate the fraudulent MDRX-Apex Transaction, in order to enrich themselves at the Debtors' expense.", pg. 189, Exhibit E

⁷¹ When you served Plaintiff's First Request for Production of Documents on May 24, 2024, you allotted me exactly 10 calendar days to respond, requiring document production by June 4, 2024. Despite the expedited timeline, I fully complied with your request by the given deadline. It would have been beneficial if the Federal Rules of Civil Procedure were applied consistently, regardless of which party is making the request., pg. 148, Exhibit E

The Plaintiff's conduct in this litigation has been marked by procedural violations, discovery abuses, and misrepresentations, all of which have prejudiced Mr. Sharma's ability to defend himself. The Plaintiff's allegations lack evidentiary support and fail to meet the heightened pleading standard for fraud. The Court should dismiss the Plaintiff's motion, deny sanctions against Mr. Sharma, and impose sanctions on the Plaintiff for their bad-faith litigation tactics. Mr. Sharma respectfully requests dismissal of the claims against him and entry of default judgment.

E. The Plaintiff's Motion to Compel Deposition is Procedurally Improper and Should Be Dismissed

The Plaintiff's motion to compel deposition is procedurally flawed due to its selective and untimely nature, designed to circumvent the comprehensive discovery obligations outlined in the Defendant's prior motion. This tactic constitutes gamesmanship and undermines the principles of efficient case management, as established in Advanced Analytics, Inc. v. Citigroup Glob. Markets, Inc., 301 F.R.D. 47, 51 (S.D.N.Y. 2014), where the court explicitly rejected attempts to fragment discovery and delay proceedings through selective responses.⁷²

⁷² The Plaintiff's motion to compel deposition, filed on October 7, 2024, is procedurally improper. The filing was an attempt to avoid responding to my September 20, 2024, motion to compel discovery, for which the Plaintiff's response was due by October 4, 2024. The Plaintiff failed to file a response or seek an extension, placing him in default., pg. 1, Exhibit E:

⁷³ ⁷⁴ ⁷⁵ ⁷⁶ ⁷⁷ ⁷⁸ ⁷⁹ The Plaintiff's motion, filed after the deadline to respond to the Defendant's comprehensive discovery motion, further violates Bankruptcy Rule 9006(b), which mandates timely responses or extensions. ⁸⁰ This procedural deficiency alone justifies dismissal, as seen in In re Lyondell Chem. Co., 567 B.R. 55, 59 (Bankr. S.D.N.Y. 2017), aff'd, 585 B.R. 41 (S.D.N.Y. 2018), emphasizing the need for comprehensive and timely discovery responses. ⁸¹ ⁸² Moreover, the Plaintiff's failure to engage in a good-faith meet and confer

⁷³ In Advanced Analytics, Inc. v. Citigroup Glob. Markets, Inc., 301 F.R.D. 47, 51 (S.D.N.Y. 2014), the court explicitly rejected attempts to selectively respond to discovery requests to delay, pg. 1, Exhibit E:

⁷⁴ production. Similarly, in In re Lyondell Chem. Co., 567 B.R. 55, 59 (Bankr. S.D.N.Y. 2017), aff'd, 585 B.R. 41 (S.D.N.Y. 2018), the Bankruptcy Court for the Southern District of New York emphasized that all aspects of discovery, including depositions, must be addressed comprehensively and timely., pg. 2, Exhibit E:

⁷⁵ The Plaintiff's motion to compel deposition, filed on October 7, 2024, is procedurally improper and should be dismissed. This motion is nothing more than a transparent attempt to circumvent the Plaintiff's failure to respond to Mr. Sharma's September 20, 2024, motion to compel discovery. Under Fed. R. Civ. P. 26(b)(1), discovery encompasses all methods of obtaining information, including depositions. Therefore, the Plaintiff's motion to compel deposition is not a separate issue but a critical part of Mr. Sharma's original motion to compel discovery., pg. 42, Exhibit E:

⁷⁶ The Plaintiff's response to Mr. Sharma's motion was due by October 4, 2024, but the Plaintiff failed to file a timely response or seek an extension. Instead of addressing the valid concerns in Mr. Sharma's motion, the Plaintiff filed a new, narrowly tailored motion to compel deposition, aimed at avoiding the broader discovery obligations. This type of piecemeal approach constitutes procedural gamesmanship and an abuse of the discovery process. Such behavior has been consistently rejected by courts., pg. 42, Exhibit E:

⁷⁷ The Plaintiff's motion to compel deposition, filed on October 7, 2024, is procedurally improper and should be dismissed. This motion is nothing more than a transparent attempt to circumvent the Plaintiff's failure to respond to Mr. Sharma's September 20, 2024, motion to compel discovery. Under Fed. R. Civ. P. 26(b)(1), discovery encompasses, pg. 83, Exhibit E:

⁷⁸ all methods of obtaining information, including depositions. Therefore, the Plaintiff's motion to compel deposition is not a separate issue but a critical part of Mr. Sharma's original motion to compel discovery., pg. 84, Exhibit E:

⁷⁹ The Plaintiff's response to Mr. Sharma's motion was due by October 4, 2024, but the Plaintiff failed to file a timely response or seek an extension. Instead of addressing the valid concerns in Mr. Sharma's motion, the Plaintiff filed a new, narrowly tailored motion to compel deposition, aimed at avoiding the broader discovery obligations. This type of piecemeal approach constitutes procedural gamesmanship and an abuse of the discovery process. Such behavior has been consistently rejected by courts., pg. 84, Exhibit E:

⁸⁰ The Plaintiff acknowledges receipt of the motion but did not file a timely response nor seek an extension, despite the deadline of October 4, 2024. Instead, the Plaintiff filed a separate motion on October 7, 2024, to compel a deposition, attempting to use this motion as a response to Sharma's motion. This approach is procedurally improper under Fed. R. Bankr. P. 9006(b), which mandates that parties must either respond within the set deadline or seek an extension from the Court. The Plaintiff has failed to do both and is now in default. Mr. Sharma has already filed a motion for entry of default due to the Plaintiff's failure to respond., pg. 11, Exhibit E:

⁸¹ production. Similarly, in In re Lyondell Chem. Co., 567 B.R. 55, 59 (Bankr. S.D.N.Y. 2017), aff'd, 585 B.R. 41 (S.D.N.Y. 2018), the Bankruptcy Court for the Southern District of New York emphasized that all aspects of discovery, including depositions, must be addressed comprehensively and timely., pg. 2, Exhibit E:

⁸² In Advanced Analytics, Inc. v. Citigroup Glob. Markets, Inc., 301 F.R.D. 47, 51 (S.D.N.Y. 2014), the court ruled that a party cannot selectively respond to discovery requests to delay the production of relevant materials. Similarly,

regarding the deposition, as required by Local Rule 7007-1 and Federal Rule 37(a)(1), further invalidates the motion.⁸³ ⁸⁴ This lack of good faith is evident in the Plaintiff's unilateral scheduling of depositions on dates known to be infeasible for the Defendant, a tactic designed to create a false narrative of non-compliance.⁸⁵ ⁸⁶ The Plaintiff's actions mirror the bad-faith conduct sanctioned in Chambers v. NASCO, Inc., 501 U.S. 32, 43, 111 S. Ct. 2123,

the Bankruptcy Court for the Southern District of New York in In re Lyondell Chem. Co., 567 B.R. 55, 59 (Bankr. S.D.N.Y. 2017), aff'd, 585 B.R. 41 (S.D.N.Y. 2018), emphasized that all aspects of discovery, including depositions, must be addressed comprehensively and timely. The Plaintiff's actions contradict these well-established principles of comprehensive discovery compliance., pg. 84, Exhibit E:

⁸³As an initial matter, there are at least five procedural deficiencies with the Motions that mandate dismissal. First, under Federal Rule 37(a)(1), made applicable by Bankruptcy Rule 37, a party moving for an order compelling discovery must certify that he "has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." Fed. R. Civ. P. 37(a)(1). Sharma made no attempt, pg. 9, Exhibit G:

⁸⁴Second, under Local Rule 7007-1, "[a] discovery-related motion under Bankruptcy Rules 7026 through 7037 shall be supported by an affidavit or affirmation certifying that the moving party has made a good faith effort to confer with the opposing party to resolve the issues raised by the motion by agreement and without judicial intervention, but has been unable to reach an agreement." Local Rule 7007-1. Sharma, again, failed to comply with this rule., pg. 10, Exhibit G:

⁸⁵ Plaintiff's False Allegations: Despite being aware that September 20, 2024, was not a valid deposition date, the Plaintiff falsely claimed that Salil had failed to attend the deposition, knowing full well that no mutually agreed deposition had been scheduled. The Plaintiff's misleading assertion that Salil had evaded the deposition by failing to appear on that date is both factually and procedurally inaccurate (Please see Attachment D)., pg. 16, Exhibit E:

⁸⁶ The Plaintiff's claim that Salil has failed to attend depositions is deliberately misleading. Salil provided multiple deposition dates, including July 17, 2024, August 23, 2024, and September 6, 2024, which the Plaintiff either canceled or ignored. The Plaintiff's unilateral scheduling of the September 20, 2024, deposition-despite prior knowledge that the date was not feasible-further reflects their intent to deceive the Court and shift blame onto Salil (Please see Attachment D)., pg. 18, Exhibit E:

115 L. Ed. 2d 27 (1991), where the Supreme Court affirmed the inherent authority of courts to impose sanctions for such procedural manipulation.^{87 88 89}

F. Plaintiff's Default on Discovery and Deposition Obligations

The Plaintiff's persistent failure to comply with discovery obligations, coupled with their refusal to participate in depositions, constitutes willful non-compliance under Fed. R. Civ. P. 37 and warrants the imposition of sanctions, including entry of default. This pattern of obstruction, spanning over four and a half years, has severely prejudiced the Defendant's ability to prepare a defense, as recognized in Cine Forty-Second St. Theatre Corp. v. Allied Artists Pictures Corp., 602 F.2d 1062 (2d Cir. 1979), where the Second Circuit upheld

⁸⁷ Courts in the Second Circuit have consistently emphasized the need to address discovery matters comprehensively to avoid unnecessary delays and inefficiencies in litigation. In Advanced Analytics, Inc. v. Citigroup Glob. Markets, Inc., 301 F.R.D. 47, 51 (S.D.N.Y. 2014), the court underscored that parties must not selectively engage in discovery or use piecemeal motions to delay proceedings. The Plaintiff's October 7, 2024, motion to compel deposition violates this principle by sidestepping the broader discovery obligations addressed in my September 20, 2024, motion, thereby fragmenting the litigation process and prolonging resolution. Moreover, the United States Supreme Court in Chambers v. NASCO, Inc., 501 U.S. 32, 43, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991), held that courts have inherent authority to impose sanctions for bad-faith litigation tactics. The Plaintiff's motion to compel deposition, filed in bad faith, attempts to distract the Court from his failure to comply with the broader discovery process. The Court should impose sanctions on the Plaintiff to ensure the integrity of the judicial process., pg. 2, Exhibit E:

⁸⁸ litigation tactics. The Plaintiff's behavior in this case-attempting to distract from their own failure to produce discovery by filing a separate motion for deposition-amounts to bad faith conduct. The Court should not condone this type of procedural manipulation and should consider sanctions against the Plaintiff for this bad-faith litigation tactic., pg. 45, Exhibit E:

⁸⁹ In addition, the United States Supreme Court in Chambers v. NASCO, Inc., 501 U.S. 32, 43, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991), emphasized that courts have the inherent authority to sanction bad-faith litigation tactics. The Plaintiff's behavior in this case-attempting to distract from their own failure to produce discovery by filing a separate motion for deposition-amounts to bad faith conduct. The Court should not condone this type of procedural manipulation and should consider sanctions against the Plaintiff for this bad-faith litigation tactic., pg. 86, Exhibit E:

sanctions for willful discovery obstruction.^{90 91 92 93 94 95} The Plaintiff's failure to produce any meaningful discovery, despite repeated requests and court orders, further violates Fed. R. Civ. P. 37(b)(2)(A), which authorizes sanctions for such non-compliance.⁹⁶ This refusal to

⁹⁰ From the outset of this litigation, the Plaintiff has engaged in a continuous pattern of non-cooperation and obstruction, designed to prevent Salil Sharma from obtaining critical discovery necessary for his defense. Despite multiple motions, requests, and court orders, the Plaintiff has failed to provide a single piece of meaningful evidence that would support their allegations of fraud. This repeated refusal to engage in the discovery process has severely prejudiced Salil's ability to defend himself against these unsubstantiated claims (Please see Attachment B, Attachment C), pg. 16, Exhibit E:

⁹¹ Complete Lack of Evidence for Allegations: In 4.5 years, the Plaintiff has produced no financial records, documents, or communications to support their claims, nor have they provided dates for the deposition of Trustee Howard Ehrenberg, which Salil has repeatedly requested. The Plaintiff's non-compliance with discovery obligations is not only a violation of Federal Fed. R. Civ. P. 37(b) but also represents a clear strategy of delay and bad faith litigation (Please see Attachment B, Attachment C), pg. 17, Exhibit E:

⁹² The Plaintiff's failure to comply with discovery and deposition obligations is a direct violation of Fed. R. Civ. P. 37. Courts have consistently held that willful obstruction of discovery and refusal to appear for depositions warrant severe sanctions, including dismissal of the claims. In Cine Forty-Second St. Theatre Corp. v. Allied Artists Pictures Corp., 602 F.2d 1062 (2d Cir. 1979), the Second Circuit upheld sanctions against a party that willfully obstructed discovery, including failing to appear for depositions. The court made clear that bad faith conduct in discovery should not be tolerated., pg. 47, Exhibit E:

⁹³ Failure to Provide Discovery: For over 4.5 years, the Plaintiff has failed to produce any meaningful discovery, despite multiple requests and repeated motions. Fed. R. Civ. P. 37(b)(2)(A) allows for sanctions, including dismissal, for parties who fail to comply with discovery orders. The Plaintiff's refusal to provide financial records, communications, and documentation related to the fraud claims constitutes a clear violation of Fed. R. Civ. P. 37., pg. 47, Exhibit E:

⁹⁴ The Plaintiff's persistent refusal to engage in the discovery process has caused severe and irreparable prejudice to Mr. Sharma. Without access to the necessary documents, Mr. Sharma has been denied the opportunity to adequately defend against the Plaintiff's allegations. The Plaintiff's failure to comply with discovery obligations has left Mr. Sharma without the information required to refute the claims made against him, thereby undermining the fairness of the proceedings. The prejudice Mr. Sharma has suffered is compounded by the Plaintiff's ongoing delays and evasions, which have further obstructed Mr. Sharma's ability to prepare his defense. especially when essential documents are withheld-warrants severe sanctions, including entry of default (Nat'l Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 640, 96 S. Ct. 2778, 49 L. Ed. 2d 747 (1976)). Here, the Plaintiff's non-compliance is not a mere oversight but a willful and deliberate attempt to deprive Defendant Sharma of his due process rights, which demands decisive judicial action to prevent further injustice., pg. 75, Exhibit E:

⁹⁵ In Cine Forty-Second St. Theatre Corp. v. Allied Artists Pictures Corp., 602 F.2d 1062 (2d Cir. 1979), the Second Circuit affirmed that willful non-compliance with discovery obligations is grounds for entry of default. The court ruled that where a party refuses to participate in discovery and thereby prejudices the opposing party's ability to defend, the "harshest sanction" of entry of default is not only justified but required to preserve the integrity of the litigation process. Here, the Plaintiff's intentional refusal to produce essential documents for more than Four and half years mirrors the egregious conduct condemned in Cine Forty-Second St. Theatre Corp. v. Allied Artists Pictures Corp., 602 F.2d 1062 (2d Cir. 1979) Mr. Sharma's defense has been severely crippled, and entry of default is the only appropriate remedy., pg. 92, Exhibit E:

⁹⁶ Failure to Provide Discovery: For over 4.5 years, the Plaintiff has failed to produce any meaningful discovery, despite multiple requests and repeated motions. Fed. R. Civ. P. 37(b)(2)(A) allows for sanctions, including dismissal, for parties who fail to comply with discovery orders. The Plaintiff's refusal to provide financial records, communications, and documentation related to the fraud claims constitutes a clear violation of Fed. R. Civ. P. 37., pg. 47, Exhibit E:

provide essential documents has left the Defendant at a significant procedural disadvantage, mirroring the prejudice addressed in Nat'l Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 96 S. Ct. 2778, 49 L. Ed. 2d 747 (1976), where the Supreme Court upheld default judgment for willful discovery violations.^{97 98 99} The Plaintiff's conduct also aligns with the bad faith litigation tactics condemned in Valley Engineers Inc. v. Elec. Eng'g Co., 158 F.3d 1051, 1054 (9th Cir. 1998), where dismissal with prejudice was deemed appropriate for persistent discovery violations.^{100 101 102} Moreover, the Plaintiff's failure to even provide dates for their own deposition, despite repeated requests from the Defendant, further

⁹⁷ Failure to Participate in Depositions: The Plaintiff has also willfully refused to attend depositions or cooperate in setting mutually agreeable dates for depositions. Courts have held that failure to comply with deposition requirements is a serious breach of the discovery process. In Nat'l Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 96 S. Ct. 2778, 49 L. Ed. 2d 747 (1976), the Supreme Court upheld dismissal as a sanction for repeated failure to attend depositions, underscoring that such conduct undermines the integrity of the judicial process., pg. 47, Exhibit E:

⁹⁸ Failure to Provide Discovery: The Plaintiff's refusal to comply with discovery obligations for over 4.5 years is an outrageous violation of Fed. R. Civ. P. 37. In Nat'l Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 96 S. Ct. 2778, 49 L. Ed. 2d 747 (1976), the Supreme Court affirmed that parties who obstruct the discovery process and willfully refuse to comply with their obligations should face sanctions, including dismissal. The Plaintiff's behavior is entirely consistent with what the courts have described as bad faith litigation-and sanctions are not only warranted but necessary., pg. 59, Exhibit E:

⁹⁹ In Nat'l Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 96 S. Ct. 2778, 49 L. Ed. 2d 747 (1976), the U.S. Supreme Court upheld entry of default as an appropriate sanction for willful misconduct in discovery, emphasizing that parties who abuse the discovery process undermine the very integrity of the judicial system. The Plaintiff's behavior in this case mirrors that level of obstruction and non-compliance, warranting entry of default to prevent further harm to Mr. Sharma's rights., pg. 123, Exhibit E:

¹⁰⁰ Failure to Produce Discovery: Courts have emphasized that when a party willfully refuses to comply with discovery obligations over an extended period, as seen in Valley Engineers Inc. v. Elec. Eng'g Co., 158 F.3d 1051, 1054 (9th Cir. 1998), no further time should be granted. Here, the Plaintiff's failure to provide the requested documents, combined with their refusal to attend depositions, demonstrates a pattern of bad faith., pg. 48, Exhibit E:

¹⁰¹ Bad Faith Litigation: The Plaintiff's conduct has demonstrated a persistent pattern of bad faith, as seen in their refusal to engage in discovery and their reliance on dilatory tactics. In Valley Engineers Inc. v. Elec. Eng'g Co., 158 F.3d 1051, 1054 (9th Cir. 1998), the court dismissed the case with prejudice due to persistent discovery violations, holding that such behavior undermines the judicial process and prejudices the defendant., pg. 51, Exhibit E:

¹⁰² Valley Engineers Inc. v. Elec. Eng'g Co., 158 F.3d 1051, 1054 (9th Cir. 1998): The court upheld dismissal with prejudice for repeated discovery violations, recognizing that continued obstruction of the discovery process renders it impossible for the opposing party to mount an effective defense. The Plaintiff's conduct in this case-marked by repeated delays and a complete lack of evidence - renders their claims legally unsustainable., pg. 61, Exhibit E:

demonstrates their willful disregard for the discovery process.^{103 104} This lack of cooperation has denied the Defendant a fair opportunity to prepare for trial, a fundamental element of due process as emphasized in Wells Fargo Bank, N.A. v. Schubnel, 176 A.D.3d 1353, 110 N.Y.S.3d 464 (2019).¹⁰⁵

G. No Further Extensions Should Be Granted

The Plaintiff's persistent pattern of delay and non-compliance over four and a half years demonstrates that granting further extensions would be futile and would only reward bad faith litigation tactics. The Plaintiff has been afforded ample opportunity to comply with discovery obligations, and further extensions would only serve to exacerbate the prejudice already suffered by the Defendant.¹⁰⁶ This principle is well-established in Patterson v. Newspaper & Mail Deliverers' Union of New York & Vicinity, 514 F.2d 767 (2d Cir. 1975), where the Second Circuit held that further extensions should be denied when a party engages in dilatory tactics.¹⁰⁷ The Plaintiff's repeated failure to schedule and attend depositions, despite the

¹⁰³ Additionally, I granted the Plaintiff multiple extensions to comply with discovery obligations. Despite my good-faith efforts, the Plaintiff continued to delay and failed to provide any meaningful discovery or even dates for his own deposition. The attached emails from September 5, 2024, and September 11, 2024, demonstrate my multiple requests for the Plaintiff's deposition, to which the Plaintiff did not respond. This failure to provide dates for depositions, despite repeated requests, demonstrates the Plaintiff's bad faith and disregard for the discovery process., pg. 2, Exhibit E:

¹⁰⁴ Emails from September 5, 2024, and September 11, 2024, demonstrate Mr. Sharma's repeated attempts to schedule the Plaintiff's deposition. Despite these efforts, the Plaintiff has not provided a single date or even indicated their availability, which highlights their ongoing refusal to engage in discovery. Mr. Sharma's good faith is well documented, and the Plaintiff's bad-faith conduct is undeniable., pg. 13, Exhibit E:

¹⁰⁵ Similarly, as in the case of Wells Fargo Bank, N.A. v. Schubnel, 176 A.D.3d 1353, 110 N.Y.S.3d 464 (2019) The court highlighted that due process requires parties to have a fair opportunity to participate in litigation, which includes access to discovery. The Plaintiff's failure to produce documents deprives Mr. Sharma of his due process rights. The Plaintiff's denial of key discovery documents constitutes a violation of Mr. Sharma's due process rights, as established in Wells Fargo Bank, N.A. v. Schubnel, 176 A.D.3d 1353, 110 N.Y.S.3d 464 (2019). This failure fundamentally impairs Mr. Sharma's ability to defend himself and justifies entry of default., pg. 99, Exhibit E:

¹⁰⁶ After 4.5 years, the Plaintiff has been afforded ample opportunity to provide discovery and schedule depositions. Further extensions would only reward the Plaintiff's bad faith conduct and cause significant prejudice to Salil Sharma's defense. Courts have routinely denied extensions when the requesting party demonstrates a pattern of delay tactics or non-compliance., pg. 48, Exhibit E:

¹⁰⁷ Willful Delay of Depositions: The Plaintiff has repeatedly failed to schedule and attend depositions, despite Salil Sharma offering multiple dates in good faith. In Patterson v. Newspaper & Mail Deliverers' Union of New York & Vicinity, 514 F.2d 767 (2d Cir. 1975), the Second Circuit held that courts must refuse further extensions when it is

Defendant's good-faith offers of multiple dates, exemplifies such dilatory conduct.^{108 109 110} Moreover, the Plaintiff's failure to produce any meaningful discovery, despite repeated requests and court orders, demonstrates a willful disregard for the judicial process, as recognized in Valley Engineers Inc. v. Elec. Eng'g Co., 158 F.3d 1051, 1054 (9th Cir. 1998), where the court denied further extensions due to persistent discovery violations.^{111 112 113} The Plaintiff's conduct also aligns with the behavior sanctioned in Citibank, N.A. v. Kerszko, 203 A.D.3d 42, 161 N.Y.S.3d 232 (2022), where the court held that willful and contumacious refusal to comply with discovery justifies the denial of further extensions.^{114 115 116}

clear that the requesting party is engaging in dilatory tactics. The Plaintiff's repeated refusals to cooperate in setting depositions fall squarely within this category., pg. 48, Exhibit E:

¹⁰⁸ Contrary to Plaintiff's allegations, Salil Sharma has consistently demonstrated a willingness to participate in the discovery process and has offered multiple viable dates for his deposition, including July 17th, 2024, August 23rd, 2024, and September 6th, 2024. Each of these dates was provided in good faith, and Salil remained available and ready to proceed. It was the Plaintiff's lack of cooperation and cancellation of agreed-upon dates that caused the delays, not any refusal on Salil's part., pg. 20, Exhibit E:

¹⁰⁹ On July 17, 2024, the Plaintiff canceled the deposition without offering an alternative date or explanation, demonstrating a lack of commitment to the discovery process., pg. 20, Exhibit E:

¹¹⁰ On August 23, 2024, the deposition was rescheduled due to Salil's documented, pg. 20, Exhibit E:

¹¹¹ Failure to Produce Discovery: Courts have emphasized that when a party willfully refuses to comply with discovery obligations over an extended period, as seen in Valley Engineers Inc. v. Elec. Eng'g Co., 158 F.3d 1051, 1054 (9th Cir. 1998), no further time should be granted. Here, the Plaintiff's failure to provide the requested documents, combined with their refusal to attend depositions, demonstrates a pattern of bad faith., pg. 48, Exhibit E:

¹¹² Bad Faith Litigation: The Plaintiff's conduct has demonstrated a persistent pattern of bad faith, as seen in their refusal to engage in discovery and their reliance on dilatory tactics. In Valley Engineers Inc. v. Elec. Eng'g Co., 158 F.3d 1051, 1054 (9th Cir. 1998), the court dismissed the case with prejudice due to persistent discovery violations, holding that such behavior undermines the judicial process and prejudices the defendant., pg. 51, Exhibit E:

¹¹³ Valley Engineers Inc. v. Elec. Eng'g Co., 158 F.3d 1051, 1054 (9th Cir. 1998): The court upheld dismissal with prejudice for repeated discovery violations, recognizing that continued obstruction of the discovery process renders it impossible for the opposing party to mount an effective defense. The Plaintiff's conduct in this case-marked by repeated delays and a complete lack of evidence - renders their claims legally unsustainable., pg. 61, Exhibit E:

¹¹⁴ imposition of sanctions, including default judgment. Here, the Plaintiff's failure to respond to discovery requests for over four and a half years has caused significant prejudice to Mr. Sharma's defense. The Plaintiff's deliberate delay tactics in this case align with the behavior condemned in Citibank, N.A. v. Kerszko, 203 A.D.3d 42, 161 N.Y.S.3d 232 (2022), where sanctions were imposed to prevent further abuse of the judicial process., pg. 78, Exhibit E:

¹¹⁵ Similarly, in Citibank, N.A. v. Kerszko, 203 A.D.3d 42, 161 N.Y.S.3d 232 (2022), the Second Department ruled that willful and contumacious conduct-such as repeated failure to comply with discovery demands-justifies denying further extensions and imposing sanctions. The court found that delaying tactics, which serve no legitimate purpose other than to hinder the progress of litigation, are grounds for strong judicial intervention. The Plaintiff's actions in this case closely align with, pg. 82, Exhibit E:

¹¹⁶ In Citibank, N.A. v. Kerszko, 203 A.D.3d 42, 161 N.Y.S.3d 232 (2022), the court emphasized that repeated failure to comply with discovery obligations amounts to willful and contumacious conduct, justifying sanctions, including the denial of further extensions. The court stressed that granting additional time to a party engaging in such conduct only encourages further delays and undermines the integrity of the litigation process. Similarly, in

Furthermore, the Plaintiff's recent attempt to shift the focus to the Defendant's deposition, while simultaneously avoiding their own discovery obligations, further underscores their bad faith and warrants the denial of any further extensions.¹¹⁷ Finally, as emphasized in *Castillo v. Charles*, further extensions would only compound the prejudice suffered by the Defendant due to the Plaintiff's strategic avoidance of discovery.^{118 119 120}

H. Compel Discovery and Depositions and Impose Sanctions

The Plaintiff's persistent refusal to comply with discovery and deposition obligations necessitates immediate judicial intervention to compel compliance and impose sanctions. The Court should compel the Plaintiff to produce all outstanding discovery within a short timeframe

Larisa Ivanovna Markus, No. 21-2238 (2d Cir. 2023), the Second Circuit imposed sanctions after a party failed to provide meaningful discovery over several years, ruling that the pattern of delay and failure to meet deadlines merited severe penalties to ensure fairness to the opposing party. In *Castillo v. Charles*, the court reinforced that the judiciary should not reward parties that abuse discovery processes by failing to comply with established timelines, holding that further extensions would compound the prejudice to the opposing party., pg. 103, Exhibit E:

¹¹⁷ On October 7, 2024, rather than addressing the discovery deficiencies or responding to the pending motion, the Plaintiff filed a separate motion [Docket Num 53] to enforce a deposition of Mr. Sharma, ignoring the unresolved and more pressing discovery issues. This tactic represents a deliberate effort to shift the focus away from his non-compliance and further delay the case without addressing the core issues at hand., pg. 69, Exhibit E:

¹¹⁸ In *Castillo v. Charles*, the Second Circuit addressed the impact of delayed discovery on a defendant's ability to prepare a defense. The court ruled that continued discovery violations result in an unfair advantage for the non-compliant party, placing the opposing party at a disadvantage. Mr. Sharma's case is strikingly similar, as the Plaintiff's persistent failure to meet discovery obligations has irreparably harmed his defense strategy. The court in *Castillo* found that discovery delays undermine the fairness of the proceedings and warrant strong judicial intervention., pg. 78, Exhibit E:

¹¹⁹ Finally, in *Castillo v. Charles*, the court held that the failure to provide timely discovery, especially when compounded by a clear pattern of delay tactics, severely undermines the opposing party's ability to prepare their case and is grounds for entry of default. The Plaintiff's failure to engage in discovery here has similarly left Mr. Sharma at a significant disadvantage, depriving him of the information necessary to mount a full defense. *Castillo* reinforces the principle that where one party is deprived of critical discovery, the court should intervene to prevent further delays and abuse of the judicial process., pg. 83, Exhibit E:

¹²⁰ In *Citibank, N.A. v. Kerszko*, 203 A.D.3d 42, 161 N.Y.S.3d 232 (2022), the court emphasized that repeated failure to comply with discovery obligations amounts to willful and contumacious conduct, justifying sanctions, including the denial of further extensions. The court stressed that granting additional time to a party engaging in such conduct only encourages further delays and undermines the integrity of the litigation process. Similarly, in *Larisa Ivanovna Markus, No. 21-2238 (2d Cir. 2023)*, the Second Circuit imposed sanctions after a party failed to provide meaningful discovery over several years, ruling that the pattern of delay and failure to meet deadlines merited severe penalties to ensure fairness to the opposing party. In *Castillo v. Charles*, the court reinforced that the judiciary should not reward parties that abuse discovery processes by failing to comply with established timelines, holding that further extensions would compound the prejudice to the opposing party., pg. 103, Exhibit E:

and schedule depositions without further delay.¹²¹ This is consistent with the authority granted to courts under Fed. R. Civ. P. 37(b)(2)(A) to impose sanctions for failure to comply with discovery orders.¹²² The New York District courts have regularly compelled discovery and imposed sanctions for similar non-compliance, highlighting the court's duty to ensure fairness and efficiency in the discovery process.¹²³ The Plaintiff's refusal to attend depositions, despite the Defendant's repeated offers of available dates, further warrants the imposition of sanctions under Rule 30.¹²⁴ This conduct mirrors the behavior addressed in Update Art, Inc. v. Modiin Pub., Ltd., 843 F.2d 67 (2d Cir. 1988), where the Second Circuit compelled a party to attend depositions and imposed sanctions for non-compliance.¹²⁵ Moreover, the Plaintiff's attempt to compel the Defendant's deposition before fulfilling their own discovery obligations demonstrates bad faith and a deliberate effort to obstruct the discovery process.¹²⁶ This tactic

¹²¹ The Plaintiff's refusal to comply with both discovery and deposition obligations necessitates immediate court intervention. The Court should compel the Plaintiff to produce all outstanding discovery within five days and schedule depositions with no further delay. Additionally, sanctions must be imposed to hold the Plaintiff accountable for their willful non-compliance., pg. 49, Exhibit E:

¹²² Failure to Provide Discovery: For over 4.5 years, the Plaintiff has failed to produce any meaningful discovery, despite multiple requests and repeated motions. Fed. R. Civ. P. 37(b)(2)(A) allows for sanctions, including dismissal, for parties who fail to comply with discovery orders. The Plaintiff's refusal to provide financial records, communications, and documentation related to the fraud claims constitutes a clear violation of Fed. R. Civ. P. 37., pg. 47, Exhibit E:

¹²³ Compel Discovery: Courts in the Southern District of New York and Eastern District of New York have repeatedly held that when a party fails to engage in good faith discovery, the court must compel production. the NY district courts have routinely compelled discovery and imposed sanctions after the non-compliant party failed to produce documents and cooperate with deposition scheduling. The Second Circuit has similarly affirmed that when parties engage in deliberate obstruction, the court must step in to ensure compliance and fairness., pg. 49, Exhibit E:

¹²⁴ Enforce Depositions: The Plaintiff's refusal to attend and participate in depositions is a clear violation of Fed. R. Civ. P. 30. In Update Art, Inc. v. Modiin Pub., Ltd., 843 F.2d 67 (2d Cir. 1988), the Second Circuit compelled the party to attend depositions and imposed sanctions for their failure to comply. Salil Sharma has repeatedly made himself available for deposition, while the Plaintiff has consistently failed to reciprocate in good faith., pg. 49, Exhibit E:

¹²⁵ Enforce Depositions: The Plaintiff's refusal to attend and participate in depositions is a clear violation of Fed. R. Civ. P. 30. In Update Art, Inc. v. Modiin Pub., Ltd., 843 F.2d 67 (2d Cir. 1988), the Second Circuit compelled the party to attend depositions and imposed sanctions for their failure to comply. Salil Sharma has repeatedly made himself available for deposition, while the Plaintiff has consistently failed to reciprocate in good faith., pg. 49, Exhibit E:

¹²⁶ By filing this motion for deposition, the Plaintiff is engaging in procedural gamesmanship to manipulate the discovery process. The Plaintiff's motion should have been filed in response to Mr. Sharma's September 20, 2024, motion, not as a standalone filing aimed at circumventing the default. The Court should recognize this motion for what it is-a bad faith tactic designed to avoid compliance with discovery obligations. Moreover, the Plaintiff's actions violate the principles of judicial efficiency by forcing the Court and Mr. Sharma to address the same

is similar to the conduct sanctioned in S. New England Tel. Co. v. Glob. NAPs Inc., 624 F.3d 123 (2d Cir. 2010), where the Second Circuit upheld severe sanctions for persistent discovery violations.¹²⁷ ¹²⁸ Finally, the Plaintiff's failure to produce any relevant documents, despite the Defendant's specific and reasonable requests, further justifies compelling discovery and imposing sanctions to ensure a fair and equitable litigation process.¹²⁹

I. Dismissal with Prejudice

The Plaintiff's egregious and persistent pattern of bad faith conduct, including their failure to provide discovery, refusal to attend depositions, and reliance on frivolous motions, warrants dismissal with prejudice under Fed. R. Civ. P. 41(b). This sanction is appropriate when a party's actions demonstrate a clear intent to obstruct the judicial process and prejudice the opposing party.¹³⁰ The Plaintiff's four-and-a-half-year delay in providing any meaningful discovery, despite repeated requests and court orders, constitutes a failure to prosecute and justifies dismissal under Fed. R. Civ. P. 41(b), as affirmed by the Supreme Court in Link v.

discovery issue in piecemeal motions rather than in one comprehensive motion to compel discovery., pg. 10, Exhibit E:

¹²⁷ Sanctions for Non-Compliance: Courts routinely impose sanctions when a party willfully refuses to participate in discovery or depositions. In S. New England Tel. Co. v. Glob. NAPs Inc., 624 F.3d 123 (2d Cir. 2010), the Second Circuit upheld severe sanctions for persistent failure to comply with discovery, noting that such behavior "compromises the fairness and efficiency of the judicial process." Here, the Plaintiff's failure to produce discovery or attend depositions has similarly undermined the fairness of the litigation., pg. 50, Exhibit E:

¹²⁸ Impose Sanctions: Sanctions are necessary to ensure that the Plaintiff is held accountable for their bad faith conduct. The Second Circuit has repeatedly upheld the imposition of sanctions, including dismissal of claims, where parties refuse to comply with discovery or engage in obstructive tactics. In S. New England Tel. Co. v. Glob. NAPs Inc., 624 F.3d 123 (2d Cir. 2010), the court imposed significant sanctions against a party for willful non-compliance, affirming that such behavior cannot be tolerated in the pursuit of justice., pg. 60, Exhibit E:

¹²⁹ Despite multiple extensions, requests, and motions, the Plaintiff has failed to provide a single piece of meaningful discovery over a period of 4.5 years. This deliberate refusal to provide discovery is a clear violation of Fed. R. Civ. P. 37, which demands sanctions for such willful non-compliance (Please see Attachment B, Attachment C)., pg. 18, Exhibit E:

¹³⁰ The Plaintiff's pattern of bad faith behavior-including their failure to provide discovery, refusal to attend depositions, and reliance on frivolous motions-warrants dismissal with prejudice under Fed. R. Civ. P. 41(b). Dismissal is the appropriate remedy when a party's persistent non-compliance with court orders and discovery obligations renders the case not prosecutable., pg. 50, Exhibit E:

Wabash R. Co., 370 U.S. 626, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962).¹³¹ ¹³² ¹³³ The Plaintiff's conduct also aligns with the bad faith litigation tactics condemned in Valley Engineers Inc. v. Elec. Eng'g Co., 158 F.3d 1051, 1054 (9th Cir. 1998), where the court dismissed a case with prejudice due to persistent discovery violations.¹³⁴ ¹³⁵ ¹³⁶ The Plaintiff's refusal to attend depositions, despite the Defendant's good-faith offers of multiple dates, further demonstrates their willful disregard for the discovery process and supports dismissal.¹³⁷ This behavior has severely prejudiced the Defendant's ability to prepare a defense, as recognized in Patterson v. Newspaper & Mail Deliverers' Union of New York & Vicinity, 514 F.2d 767 (2d Cir. 1975), where the Second Circuit emphasized the prejudice caused by dilatory discovery tactics.¹³⁸

¹³¹ • Failure to Prosecute: Fed. R. Civ. P. 41(b) authorizes dismissal when a plaintiff fails to prosecute their case or comply with court orders. In Link v. Wabash R. Co., 370 U.S. 626, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962), the Supreme Court affirmed that dismissal is a proper sanction for failure to prosecute, emphasizing the importance of judicial efficiency and fairness to all parties. The Plaintiff's actions have brought this case to a standstill, and their refusal to comply with discovery and deposition obligations justifies dismissal. 46, pg. 50, Exhibit E:

¹³² • Fed. R. Civ. P. 41(b) permits dismissal of claims for failure to prosecute or comply with court orders. In Link v. Wabash R. Co., 370 U.S. 626, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962), the Supreme Court upheld dismissal with prejudice, affirming that dismissal is warranted when a party exhibits a persistent disregard for legal obligations. The Plaintiff's actions in this case have caused unnecessary delays and significantly prejudiced Salil Sharma's defense, justifying dismissal with prejudice., pg. 56, Exhibit E:

¹³³ • Link v. Wabash R. Co., 370 U.S. 626, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962): The Supreme Court confirmed that dismissal with prejudice is appropriate when a party exhibits a pattern of persistent non-compliance and failure to prosecute in good faith. The Plaintiff's actions in this case meet this standard and warrant the ultimate sanction of dismissal with prejudice. 56, pg. 60, Exhibit E:

¹³⁴ • Bad Faith Litigation: The Plaintiff's conduct has demonstrated a persistent pattern of bad faith, as seen in their refusal to engage in discovery and their reliance on dilatory tactics. In Valley Engineers Inc. v. Elec. Eng'g Co., 158 F.3d 1051, 1054 (9th Cir. 1998), the court dismissed the case with prejudice due to persistent discovery violations, holding that such behavior undermines the judicial process and prejudices the defendant., pg. 51, Exhibit E:

¹³⁵ • Valley Engineers Inc. v. Elec. Eng'g Co., 158 F.3d 1051, 1054 (9th Cir. 1998): The court affirmed the dismissal of a case with prejudice due to repeated discovery violations, underscoring that such behavior undermines the judicial process. The Plaintiff's refusal to comply with discovery obligations and their deliberate efforts to delay the case demonstrate that dismissal with prejudice is the proper remedy., pg. 56, Exhibit E:

¹³⁶ • Valley Engineers Inc. v. Elec. Eng'g Co., 158 F.3d 1051, 1054 (9th Cir. 1998): The court upheld dismissal with prejudice for repeated discovery violations, recognizing that continued obstruction of the discovery process renders it impossible for the opposing party to mount an effective defense. The Plaintiff's conduct in this case - marked by repeated delays and a complete lack of evidence - renders their claims legally unsustainable., pg. 61, Exhibit E:

¹³⁷ Salil's repeated efforts to facilitate his deposition clearly demonstrate that he has not evaded his responsibilities, but rather, it is the Plaintiff who has failed to engage in the process in good faith., pg. 20, Exhibit E:

¹³⁸ severely prejudiced Salil Sharma by depriving him of the opportunity to obtain evidence through discovery and defend against the baseless fraud allegations. The Second Circuit has repeatedly emphasized the prejudice caused by discovery abuse, as in Patterson v. Newspaper & Mail Deliverers' Union of New York & Vicinity, 514 F.2d 767 (2d Cir. 1975), where the court recognized that dilatory tactics impede the defendant's right to a fair trial., pg. 51, Exhibit E:

Moreover, the Plaintiff's recent attempt to compel the Defendant's deposition, while simultaneously avoiding their own discovery obligations, further underscores their bad faith and supports dismissal with prejudice.¹³⁹

VI. RELIEF REQUESTED

Defendant respectfully requests that the Court:

1. **Dismiss the Plaintiff's Complaint with Prejudice:**

Pursuant to **Fed. R. Civ. P. 41(b)**, the plaintiff's willful failure to prosecute and comply with court rules justifies dismissal, as affirmed in **Link v. Wabash R. Co., 370 U.S. 626 (1962)**.

2. **Dismiss Plaintiff's Omnibus Objection and Motion to Compel Deposition:**

Plaintiff's motion is procedurally improper, untimely, and fails to meet the requirements of Federal Fed. R. Civ. P. 37.

3. **Grant Defendant's Motion for Entry of Default:**

Plaintiff's failure to respond to Defendant's September 20, 2024, motion within the required timeframe constitutes procedural default.

4. **Impose Sanctions on Plaintiff:**

¹³⁹ The Plaintiff's refusal to comply with court orders, failure to provide discovery, and refusal to attend depositions constitute a clear case of bad faith and justify dismissal with prejudice under Fed. R. Civ. P. 41(b). This case should not be allowed to continue in the face of such egregious misconduct., pg. 51, Exhibit E:

Defendant requests sanctions under Federal Fed. R. Civ. P. 37 for Plaintiff's bad-faith conduct, including its failure to produce meaningful discovery and its procedural abuses designed to delay resolution (**Exhibit I**).

5. Order Compliance with Discovery Obligations:

The Court should compel Plaintiff to produce all relevant discovery materials within five days to ensure fairness and transparency in this proceeding.

VII. CONCLUSION

Plaintiff's conduct has undermined the integrity of the judicial process, prejudiced Defendant's ability to defend against unsupported allegations, and violated fundamental principles of fairness. The Court should grant Defendant's motions, impose sanctions against Plaintiff, and dismiss Plaintiff's procedurally improper filings.

Date: November 28, 2024

Respectfully submitted,

/s/ Salil Sharma

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IX. EXHIBITS LIST

- **Exhibit A:** Affidavit of Salil Sharma in response to Trustees Allegations - **Attached**
- **Exhibit B:** *Plaintiff MTC Deposition [Docket # 53]*
- **Exhibit C:** *Defendant - Certificate Good Faith-Meet Confer Call [Docket # 69]*
- **Exhibit D:** *Ehrenberg v. Sage - Rule 26c1 Certification [Docket # 68]*
- **Exhibit E:** *Letter to Judge Requesting for Rejection of Plaintiff Motion [Docket # 59]*
- **Exhibit F:** *Letter to Judge Regarding Discovery Issues [Docket # 63]*
- **Exhibit G:** *Plaintiff-Omnibus Response [Docket # 65]*
- **Exhibit H:** *Salil motion for Entry of Default [Docket # 54]*
- **Exhibit I:** *Defendant Motion to Dismiss or Compel Discovery [Docket # 48]*
- **Exhibit J:** *Response to Defendant Salil First Request for Production of Documents [Docket # 59-Attachment C]*

Exhibit A

AFFIDAVIT OF SALIL SHARMA

I, Salil Sharma, being duly sworn, hereby depose and state as follows:

1. Allegation of Participation in a Fraudulent Scheme

Trustee's Claim: The Trustee alleges my knowing participation in a fraudulent scheme, fabricating diligence reports, websites, and invoices, causing economic harm to the debtors.¹

Response: This allegation is frivolous and demonstrably false. The Trustee's conclusory accusations lack the requisite specificity mandated by Federal Rule of Civil Procedure 9(b). As articulated in *Lundy v. Catholic Health System of Long Island Inc.*, 711 F.3d 106 (2d Cir. 2013), a plaintiff alleging fraud must plead with particularity the "who, what, when, where, and how" of the purported misconduct. The Trustee has failed to meet this fundamental pleading requirement. Moreover, the Trustee's claims are wholly unsubstantiated by the evidentiary record.^{2 3 4}

Key Facts:

- The Trustee has produced no documents whatsoever evidencing my knowledge of or involvement in any fraudulent scheme.⁵

¹ Trustee's Claim: The Trustee alleges that I knowingly participated in a fraudulent scheme by fabricating diligence reports, websites, and invoices, thereby causing economic harm to the debtors., pg. 1, exhibit 1

² This allegation is baseless and unsupported by evidence. Federal Rule of Civil Procedure 9(b) requires fraud claims to specify the "who, what, when, where, and how" of the alleged misconduct, which the Trustee has failed to do. The Second Circuit in *Lundy v. Catholic Health System of Long Island Inc.*, 711 F.3d 106 (2d Cir. 2013), underscored that vague and conclusory accusations do not meet the required standard.

³ None of the documents produced by the Trustee demonstrate my knowledge of or involvement in any fraudulent scheme.

⁴ There is no evidence to substantiate claims that I created fraudulent diligence reports, websites, or invoices, or that these actions caused economic harm to the debtors.

⁵ None of the documents produced by the Trustee demonstrate my knowledge of or involvement in any fraudulent scheme.

- No evidence supports the Trustee’s claims that I created fraudulent diligence reports, websites, or invoices, or that these actions caused economic harm to the debtors.⁶

2. Allegations Related to Specific Transactions

A. NorthStar Transaction

Trustee’s Claim: The Trustee asserts that I created a fraudulent website for NorthStar, falsified diligence reports, and conspired in a sham acquisition.⁷

Response: These allegations are devoid of factual basis and fail to satisfy the pleading standards established by *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Iqbal v. Hasty*, 556 U.S. 662 (2009). The Trustee’s conclusory assertions, without factual substantiation, are legally insufficient.⁸

Key Facts:

- No evidence links me to the creation of a fraudulent website or falsified diligence reports for NorthStar.⁹
- The Trustee has not provided any corroborating documentation or testimony supporting the claim of my involvement in a sham acquisition.¹⁰

B. Phoenix Transaction

⁶ There is no evidence to substantiate claims that I created fraudulent diligence reports, websites, or invoices, or that these actions caused economic harm to the debtors., pg. 1, exhibit 1

⁷ Trustee’s Claim: The Trustee asserts that I created a fraudulent website for NorthStar, falsified diligence reports, and conspired in a sham acquisition.

⁸ The Trustee has presented no evidence supporting these allegations. In *Iqbal v. Hasty*, 556 U.S. 662 (2009), the Supreme Court held that conclusory allegations without factual substantiation cannot survive judicial scrutiny.

⁹ There is no evidence connecting me to the creation of a fraudulent website or falsified diligence reports for NorthStar.

¹⁰ The Trustee has not provided any corroborating documentation or testimony to support the claim of my involvement in a sham acquisition.

Trustee's Claim: The Trustee accuses me of diverting funds from Phoenix Transaction for personal use.¹¹

Response: This claim is baseless and fails to meet the evidentiary burden articulated in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). The Trustee has offered no financial records, forensic accounting evidence, or any other credible evidence linking me to the alleged diversion of funds.¹²

Key Facts:

- No documentation or financial records indicate that I diverted funds from the Phoenix Transaction.¹³
- The Trustee has failed to substantiate any connection between Phoenix Transaction funds and my personal assets.¹⁴

C. MDRX Transaction

Trustee's Claim: The Trustee alleges that I created a fraudulent website to facilitate a sham acquisition of MDRX.¹⁵

Response: These allegations are purely speculative and lack any evidentiary foundation. As held in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), claims must be plausible and supported by factual allegations, not mere speculation.¹⁶

¹¹ Trustee's Claim: The Trustee accuses me of diverting funds from the Phoenix Transaction for personal use.

¹² This claim fails under the evidentiary standard established in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), which requires clear and specific evidence. The Trustee has produced no financial records or forensic accounting evidence linking me to the alleged diversion of funds.

¹³ No documentation or financial records indicate that I diverted funds from the Phoenix Transaction.

¹⁴ The Trustee has failed to substantiate any connection between Phoenix Transaction funds and my personal assets.

¹⁵ Trustee's Claim: The Trustee alleges that I created a fraudulent website to facilitate a sham acquisition of MDRX.

¹⁶ The Trustee's allegations are speculative and unsupported. In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), the Supreme Court held that claims must rise above speculative assertions.

Key Facts:

- No evidence or documentation establishes my involvement in creating a fraudulent website or facilitating a sham acquisition of MDRX.¹⁷

3. Assertions of Procedural and Discovery Misconduct

A. Frivolous Filings by Sharma

Trustee's Claim: The Trustee claims that my filings misrepresent facts and obstruct proceedings.¹⁸

Response: My filings are proper and comply with all applicable legal and procedural rules. They appropriately challenge the Trustee's unsubstantiated allegations and highlight deficiencies in the Trustee's prosecution of this matter. The right to file motions addressing procedural deficiencies is well-established, as affirmed by the Second Circuit in *Patterson v. Newspaper & Mail Deliverers' Union of N.Y.*, 514 F.2d 767 (2d Cir. 1975).¹⁹

Key Facts:

- Each of my filings highlights procedural deficiencies in the Trustee's case and is substantiated by evidence.²⁰
- I have acted in good faith, filing timely responses and adhering to all court-ordered deadlines.²¹

B. Fulfillment of Discovery Obligations

¹⁷ No evidence or documentation establishes my involvement in creating a fraudulent website or facilitating a sham acquisition of MDRX.

¹⁸ Trustee's Claim: The Trustee claims that my filings misrepresent facts and obstruct proceedings.

¹⁹ All my filings adhere to legal and procedural standards and appropriately challenge the Trustee's unsupported allegations. The Second Circuit in *Patterson v. Newspaper & Mail Deliverers' Union of N.Y.*, 514 F.2d 767 (2d Cir. 1975), affirmed the right of parties to file motions addressing procedural deficiencies.

²⁰ Each of my filings highlights procedural deficiencies in the Trustee's case and is substantiated by evidence.

²¹ I have acted in good faith, filing timely responses and adhering to all court-ordered deadlines.

Trustee's Claim: The Trustee alleges compliance with discovery obligations, citing the production of over 21,520 pages of documents.²²

Response: Mere volume of production does not constitute meaningful compliance with discovery obligations. As explained in *Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422 (S.D.N.Y. 2004), discovery must be organized, relevant, and accessible. The Trustee's document production has been none of these.²³

Key Facts:

- None of the documents produced by the Trustee address or substantiate the allegations against me.²⁴
- The Trustee has failed to provide meaningful discovery over a four-year period, despite multiple meet-and-confer attempts.²⁵

C. Allegations of Evasion of Discovery

Trustee's Claim: The Trustee alleges that I refused to produce documents and evaded depositions.²⁶

Response: This allegation is demonstrably false. I have actively and diligently participated in discovery, providing timely responses to document requests and offering deposition dates.²⁷

²² Trustee's Claim: The Trustee alleges compliance with discovery obligations, citing the production of over 21,520 pages of documents.

²³ The volume of documents produced does not equate to meaningful compliance. In *Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422 (S.D.N.Y. 2004), the court emphasized that discovery must be organized, relevant, and accessible., pg. 3, exhibit A - Sharma affidavit in response to trustees allegations.docx

²⁴ None of the documents produced address or substantiate the Trustee's allegations against me.

²⁵ The Trustee has failed to provide meaningful discovery over a four-year period, despite multiple meet-and-confer attempts.

²⁶ Trustee's Claim: The Trustee alleges that I refused to produce documents and evaded depositions.

²⁷ These claims are false. I have actively participated in discovery by providing timely responses and offering deposition dates.

Key Facts:

- I have complied with all discovery requests and provided responsive documents where applicable.²⁸
- The Trustee unilaterally scheduled my deposition without confirming my availability, demonstrating procedural bad faith.²⁹

4. Compliance with Procedural Rules

Trustee's Claim: The Trustee asserts the procedural propriety of its motions while alleging deficiencies in my filings.³⁰

Response: The Trustee's motions are procedurally deficient, often piecemeal and untimely, violating principles of judicial efficiency and procedural fairness. As noted in *In re Lyondell Chem. Co.*, 567 B.R. 55 (Bankr. S.D.N.Y. 2017), courts favor the comprehensive resolution of discovery disputes. The Trustee's approach has been the antithesis of this principle.³¹

Key Facts:

- My motions are procedurally sound and highlight the Trustee's failure to meet discovery obligations and procedural deadlines.³²

²⁸ I have complied with all discovery requests and provided responsive documents where applicable.

²⁹ The Trustee unilaterally scheduled my deposition without confirming my availability, an act of procedural bad faith.

³⁰ Trustee's Claim: The Trustee asserts the procedural propriety of its motions while alleging deficiencies in my filings.

³¹ The Trustee's piecemeal and untimely motions violate principles of judicial efficiency and procedural fairness. In *In re Lyondell Chem. Co.*, 567 B.R. 55 (Bankr. S.D.N.Y. 2017), the court emphasized the need for comprehensive resolution of discovery disputes.

³² My motions are procedurally sound and highlight the Trustee's failure to meet discovery obligations and procedural deadlines.

- The Trustee’s October 7, 2024, motion to compel deposition improperly isolates issues, contravening efficient case management principles.³³

CONCLUSION

The Trustee’s allegations are entirely without merit, lacking evidentiary support and procedural validity. I have consistently adhered to legal and procedural standards, while the Trustee has repeatedly failed to substantiate claims or comply with discovery obligations. I respectfully request that this Court dismiss the Trustee’s claims with prejudice, deny any sanctions against me, and impose sanctions on the Trustee for engaging in bad-faith litigation tactics.³⁴

Dated: December 2, 2024

/s/ Salil Sharma

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³³ The Trustee’s October 7, 2024, motion to compel deposition improperly isolates issues, contravening efficient case management principles.

³⁴ The Trustee’s allegations and assertions are without merit, lacking evidentiary support or procedural validity. I have demonstrated consistent adherence to legal and procedural standards, while the Trustee has repeatedly failed to substantiate claims or comply with discovery obligations. I respectfully request this Court to dismiss the Trustee’s claims, deny any sanctions against me, and impose sanctions on the Trustee for engaging in bad-faith litigation tactics.