IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JANE LUNA, as Administratrix of the Estate of Charles Jason Toll, deceased,	)	
Plaintiff,	)	
v.	)	**CASE: 3:11-0093**
	)	**JURY DEMAND**
	)	**Judge Campbell**
	)	**Magistrate Judge Knowles**
RICKY J. BELL, Warden of Riverbend Prison; GAELAN DOSS, Correctional Officer; and CAPTAIN JAMES HORTON, all individually,	)	***ORAL ARGUMENT REQUESTED***
Defendants.	)	

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

Comes now the Plaintiff, by and through undersigned counsel and pursuant to the Court's inherent authority and moves this Court for the imposition of appropriate sanctions, including an award of attorneys' fees and costs.

INTRODUCTION

On February 2, 2011, Plaintiff filed a civil lawsuit against Brandon Jackson, Sean Stewart, Gaelan Doss, Darrell Freeman, Bruce Bishop, Jr., William Amonette, Joshua Mills, James Horton, Jeffrey Reckart and Ricky Bell[1] pursuant to 42 U.S.C. § 1983. Plaintiff alleged that the aforementioned individuals violated Charles Jason Toll's Constitutional rights by subjecting him to cruel and unusual punishment while incarcerated at Riverbend Maximum Security Institute and for failing to train the correctional officers who worked at the prison. These violations resulted in Mr. Toll's untimely death. Contemporaneous with the filing of the

[1] Prior to the original trial in this case, Plaintiff dismissed her claims against Brandon Jackson, Sean Stewart, Darrell Freeman, Bruce Bishop, Jr., William Amonette, Joshua Mills and Jeffrey Reckart.

Complaint, Plaintiff served written discovery on Ricky J. Bell and James Horton. The first numbered request asked for a copy of the personnel file of the Defendants, including William Amonette who was a co-defendant at the time. The fifth numbered request asked for "all reports, memorandums, documents of any sort prepared by any employee of the State of Tennessee as it pertains to the death of Mr. Toll including but not limited to reports of internal affairs whether maintained electronically or in written form." The sixth numbered request asked for "all emails and other written communications which in any way pertained to the death of Mr. Toll from August 17, 2010 through date including but not limited to email traffic between the various defendants, supervisors, and any other employee of the Tennessee Department of Corrections or employee of the State of Tennessee. Included within this request that all backup computers or software be searched for relevant material pertinent to this questions so as to acquire information which may have been deleted on regular servers or other computer processors or backup software." Counsel for Defendants provided several thousands of pages in response to Plaintiff's Requests for Production of Documents. However, the resignation letter provided by Mr. Amonette at the time of his resignation was in fact not provided in any of these documents. Subsequently, counsel for Plaintiff took the deposition of Mr. William Amonette. In his deposition, Mr. Amonette was asked why he no longer worked at Riverbend Maximum Security Institute. He indicated that he had resigned after Mr. Toll's death because he felt he was being given a hard time at work due to a rumor he had spoken with one of Plaintiff's attorneys. Even after being pressed as to the circumstances surrounding his resignation, the testimony of Mr. Amonette made no mention of resigning due to being asked to falsify his training records, other correctional officers being told to falsify their training records, or Internal Affairs not

interviewing witnesses regarding Mr. Toll's death. (Doc. 176-1). A jury trial was held August 14, 2013 through August 23, 2013 and a verdict was entered in favor of the Defendants.

The New York Times ran a newspaper and online story regarding the case on July 28, 2014, some 11 months after the trial in this matter. In preparation for the story, the reporter issued a Freedom of Information Act request for the personnel file of Mr. Amonette. The reporter was provided Mr. Amonette's personnel file which included a copy of his resignation letter. (Doc. 180-1). Upon further inquiry by Plaintiff, she was provided a copy of the resignation letter from an employee of the Tennessee Department of Corrections. This was the first time Plaintiff knew of the actual contents of Mr. Amonette's resignation letter, dated February 7, 2011, a period of five days after this lawsuit was filed and over two years prior to the original trial. Subsequently, Ben Hall, a reporter with News Channel 5, issued his own Freedom of Information Act request and obtained a copy of Mr. Amonette's resignation letter which differed from the one provided to *The New York Times*. While the content of the resignation letters were the same, on Mr. Hall's request, the resignation letter indicated it was Page 1 of 5. (Doc. 180-2). An email, which accompanied the letter, stated that the other pages attached to the resignation letter were Mr. Amonette's leave sheet, time sheet, roster and training summary. (Doc. 180-3). None of these significant documents were provided to Plaintiff at any time.

Plaintiff, within the time limit provided by law, subsequently filed a Motion to Reopen the case along with a Rule 60 Motion. Oral arguments were heard and Judge Nixon granted Plaintiff's motions, vacated the judgments entered in favor of the Defendants and ordered that a new trial be held. On July 30, 2015, Plaintiff filed a Motion for Sanctions against Defendants. (Doc. 213). On August 21, 2015, Plaintiff filed a Motion to Withdraw her Motion for Sanctions, reserving the right to refile at a later date. (Doc. 219). Your Honor granted Plaintiff's Motion to

Withdraw on August 24, 2015. (Doc. 220). Plaintiff is now filing this Renewed Motion for Sanctions.

ARGUMENT

The Federal Rules of Civil Procedure clearly establish a strong policy favoring full disclosure of relevant information. Specifically, F.R.C.P. 26(b) establishes this strong view as follows:

> *Scope in General.* Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense—including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(C).

The Federal Rules of Civil Procedure, with respect to interrogatories and requests for production of documents, all refer to and incorporate the broad and liberal construction of discovery set forth in F.R.C.P. 26(b). Therefore, the Federal Rules of Civil Procedure indicate that "[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party…." Fed.R.Civ.P. 26(b)(1). Relevancy means that the evidence "appears reasonably calculated to lead to the discovery of admissible evidence." Fed.R.Civ.P. 26(b)(1); *see also Coleman v. Am. Red Cross,* 23 F.3d 1091, 1097 (6th Cir.1994). The Court should broadly interpret whether evidence is relevant. *See Oppenheimer Fund, Inc. v. Sanders,* 437 U.S. 340, 351 n. 12, 98 S.Ct. 2380, 57 L.Ed.2d 253 (1978) (quoting 4 J. Moore, *Federal Practice* § 26.96[1], at 26-131 n. 4 34 (2d ed.1976)).

Given the strong public policy favoring full disclosure, F.R.C.P. 26(e)(1) further requires that parties to litigation are under an affirmative duty to supplement discovery responses as follows:

> (1) *In General*. A party who has made a disclosure under Rule 26(a)—or who has responded to an interrogatory, request for production, or request for admission—must supplement or correct its disclosure or response:
>
> > (A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or
> >
> > (B) as ordered by the court.

To show the strong public policy towards disclosure during discovery, in the event litigants fail to comply with the obligations set out by the Federal Rules of Civil Procedure, the Rules offer different sanctions which can be awarded. However, and as is the case here, in addition to the express powers specifically identified under the Federal Rules of Civil Procedure, the Court has broad inherent power to impose sanctions for abusive conduct during discovery which may not be accounted for in the Federal Rules of Civil Procedure. *See Chambers v. NASCO*, 501 U.S. 31, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991); *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980). A court's inherent power "is governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Link v. Wabash R. Co.*, 370 U.S. 626, 630-31, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962); *see also Roadway Express, Inc. v. Piper*, 447 U.S. 752, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980). This inherent power includes the Court's "power to control and supervise its own proceedings." *Smith v. Northwest Fin. Acceptance, Inc.*, 129 F.3d 1408, 1419 (10th Cir.1997). As the Court noted in *Davidson Hotel Co. v. St. Paul Fire & Marine Insurance Co.*, 136 F.Supp.2d 901 (W.D. TN 2001) when ruling on a Motion for

Sanctions, "the Court to ensure fair and efficient administration of justice grant the power to sanction" even without a previous discovery order that was violated.

Further, the decision to impose sanctions lies within the sound discretion of the trial court. *See Dillon v. Nissan Motor Co.*, 986 F.2d 263, 268 (8th Cir.1993). Sanctions are "not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent." *Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 96 S.Ct. 2778, 49 L.Ed.2d 747 (1976). "[T]he applicable sanction should be molded to serve the prophylactic, punitive, and remedial rationales" against the abusive party. *West v. Goodyear Tire & Rubber Co.*, 167 F.3d 776, 779 (2d Cir.1999). The Court should adjust the severity of the sanction depending on the circumstances of each case, including analyzing whether the conduct was intentional, negligent, or inadvertent. *See Potts v. Mayforth*, 59 S.W.3d 167, 171-72 (Tenn.Ct.App.2001); *Shahrdar v. Global Housing, Inc.*, 983 S.W.2d 230, 235-36 (Tenn.Ct.App.1998).

There is no question that Mr. Amonette's resignation letter should have been submitted in response to Plaintiff's discovery requests. As indicated above, Mr. Amonette's resignation letter was dated February 7, 2011 which was five days after the lawsuit was filed and discovery was sent. Even if Mr. Amonette's resignation letter did not make its way to his personnel file by the time Defendants provided their initial responses, which was on April 25, 2011, the Federal Rules of Civil Procedure clearly require a duty to supplement responses.

Counsel for Defendants have contended they never saw the resignation letter and were never provided a copy from the Tennessee Department of Correction. However, as indicated above, two individuals submitted FOIA requests and were readily provided with the resignation letter. It is unfathomable to believe that two public individuals not involved in the litigation were

provided the letter, but attorneys were conveniently not. Moreover, at some point, the resignation letter had been altered as is evidenced by the fact that the first resignation letter provided to *The New York Times* did not contain the same "1 of 5" text as the second resignation letter provided to Ben Hall with New Channel 5. The additional documents, which were apparently attached to the resignation letter, were also not produced to the Plaintiff. After receiving a copy of the resignation letter, Ben Hall sent an email to the Attorney General's office asking some probing questions including why the resignation letter sent to *The New York Times* was altered. (Doc. 180-4). Six days after Mr. Hall's email and while Plaintiff's Motion to Set Aside was pending, Mr. Crownover filed a second affidavit indicating that his office had conveniently found a computer file with the original scanned copy of Mr. Amonette's personnel file but it did not include the resignation letter. (Doc. 179-1). Mr. Crownover's first Affidavit indicated that this information had been destroyed and he was unable to review the personnel files and discovery documents. (Doc. 178-2).

Plaintiff has contended on numerous occasions how she was irreparably damaged by the failure of Defendants to produce Mr. Amonette's resignation letter. Failure to train was an essential element of Plaintiff's claims against the Defendants and this resignation letter would have not only called into question the credibility of every defense witness but could have been investigated further by the Plaintiff in preparation for trial. The letter included allegations of falsifying training records and the failure of Internal Affairs to question certain witnesses regarding Mr. Toll's death. Not only would an investigation into all of these allegations have been of upmost importance for the Plaintiff to accurately and fairly prepare for trial, it is reasonable to conclude that a named defendant complaining of a request to falsify training records would be dispositive on the issue. Certainly this Court has found this argument

persuasive and the damage associated with Defendants' conduct compelling, as evidenced by the decision to order a new trial. Judge Nixon eloquently stated in his Order, "The Court finds that Mr. Amonette's newly-discovered resignation letter is material evidence that would have assisted the jury in weighing the credibility of the defense witnesses, would have affected depositions and the parties' presentation of trial evidence, and would most likely have led the parties to other evidence." (Doc. 187, p. 7).

Following Judge Nixon's granting of a new trial, Plaintiff proceeded with serving discovery on Defendants as well as reaching out to witnesses on the case in preparation for the second trial. In light of Plaintiff finding out the contents of Mr. Amonette's resignation letter and the fact that it was not produced to Plaintiff during her original Requests for Production of Documents, Plaintiff served her Fifth Requests for Production of Documents to Defendants on August 24, 2015. Within those Requests, Plaintiff asked for Defendants to "produce the full contents of William T. Amonette's personnel file." On September 18, 2015, Defendants sent their Responses to Plaintiff's Fifth Requests for Production of Documents. (See Exhibit 1). Within those Requests, Defendants produced what they claim to be the personnel file of Mr. Amonette as received by the Department of Human Resources. The personnel filed totaled 264 pages. (See Exhibit 2). Upon receiving this document from Defendants, Plaintiff bates stamped the records. They are bates stamped 005759 through 006019. Interestingly, the personnel file of Mr. Amonette, produced in response to Plaintiff's First Requests for Production of Documents, totaled 131 pages. (Doc. 175-2). When comparing the two files, to the best that Plaintiff can tell, it appears that 104 pages are identical and 146 pages were not included in the originally produced personnel file. Also of interest, in the newest produced personnel file is Mr. Amonette's resignation letter--with the "1 of 5" notation written at the bottom--along with a one

page email correspondence between Samantha Hall and Lori Bogaerts discussing what else was attached with Mr. Amonette's resignation letter. (See Exhibit 2, Plaintiff's bates stamped numbered pages 005764-005765). These were the documents which Plaintiff attached to her post-trial Motions as proof of the resignation letter's existence. Defendants have yet to produce the other documents which were attached to Mr. Amonette's resignation letter. Additionally, Defendants provide no explanation as to why there is such a huge discrepancy in what was produced in the First Requests versus what was produced in the Fifth Requests. At this point, there is no telling what information was not originally supplied to the Plaintiff in preparation for the first trial.

Of even more significance, which occurred after Plaintiff's Motion to Reopen Case and Plaintiff's Rule 60(b) Omnibus Motion for Relief were heard, is a discussion had with Mr. Amonette himself regarding, among other things, his resignation letter. Before getting to Mr. Amonette's testimony, Plaintiff would like to point out certain contents of Mr. Crownover's Affidavits. In Mr. Crownover's first Affidavit, he expressly stated, "I did not exhaustively review the many, many pages of the personnel files of the defendants, and *I do not recall the resignation letter*." (Doc. 178-2) (Emphasis added). In his Second Affidavit, Mr. Crownover again stated, "I do not recall the resignation letter." (Doc. 179-1). Additionally, on Page 4 of their Response to Plaintiff's post-trial Motions, Defendants specifically state, "Defendants' attorneys have no recollection of a resignation letter and no knowledge as to whether it was in Mr. Amonette's personnel file or not." (Doc. 178-citing the Affidavits of Mr. Crownover and Ms. Lorch).

On September 12, 2015, William Amonette gave a forty six page Statement on the Record to Mr. Kurt Kerns regarding, in addition to other things, his resignation letter. (See Exhibit 3).

Mr. Amonette stated to Mr. Kerns as follows:

A. February. Arthur Crownover called me and referenced a letter that I had written for my resignation letter.

Q. He referenced your resignation letter?

A. Yeah, he did. He referenced my resignation letter and he asked why I wrote the letter because it caused him a lot of concern. Because I was kind of hard on the Department of Corrections. And he basically expressed to me that – not basically. He did – he expressed me that I was in the same boat as all of them, everybody else that was there, and did I realize that. And I told him, yeah, I did realize that, but not everybody had been talked to. And still at this point in time, because I talked to Battle still on a regular basis, that he still hadn't been talked to. And he said, "Well, who is Battle?" And I said, "Well, do you know everybody that was there?" And he said, "Yeah." So he read me the list. He didn't have the correct number of people that were there. He didn't know at that point in time. So he said, "Can you send me a copy of everybody that was there?" And I said, "Yes." On 2/17, I went to the post office and sent him a copy of everybody that was there. So –

Q. And so this whole conversation with Arthur Crownover happened in February, and he is talking with you specifically about your resignation letter of February 7th?

A. He said – yes, sir. He said the letter – my resignation letter caused him a lot of concern that I had wrote it in that way, because it was hard on the Department of Corrections, and he referenced that it was hard on the Department of Corrections. And I told him it was. I told him I didn't have any ill will toward Department of Corrections, but I felt that Fisher didn't belong there, and that if you are going to be a policeman and you do what's right – and if somebody had done something wrong – and I personally didn't feel that anybody did anything willfully wrong –

Q. Sure.

A. -- and if I thought they did, I would have put a stop to it. But the fact that he didn't talk to everybody, it caused me a lot of problems. And I left mainly for that reason, that it just seemed like that everybody was – they didn't take it seriously. And I'm a serious person.

(See Exhibit 3, p. 9, ll. 9-25; p. 10, ll. 1-25; p. 11, ll. 6).

Later on in the discussion, Mr. Kerns and Mr. Amonette again discuss a second conversation about the resignation letter.

Specifically, Mr. Amonette states as follows:

> Q. Right. Now, as I'm looking at this February 7, 2011, letter, I heard you share with us earlier that Crownover called you and talked to you about it. Was there ever a time that he expressed concern about this letter to you again?
>
> A. Yeah. I had a deposition with an attorney – I believe his name was Weissman – at the State of Tennessee downtown in Mr. Crownover's office. After the deposition – the letter had come up in the deposition, and Mr. Weissman asked me, "Did you write a resignation letter?" I said, "Yeah, I did, probably seven or eight pages, should be in my file." And he said it wasn't in there. That was right toward the end of our deposition. After the deposition was over, Mr. Crownover said, "I'm going to walk Mr. Amonette out." He walked me out to the two doors to the elevator. He said, "How do you think you did?" I said, "I think I did okay. Two things you probably didn't like." He said, "What's that?" And I said that I said Reckheart wasn't the type of person that needed to work at the Department of Corrections, much less on a maximum security institution and that letter, my resignation letter. He said, "Yeah, I could have done without those," and I said, "Yeah, I bet you could have," and he said, "Yeah. Well, he didn't follow up with you," and we had a brief discussion about the letter and Mr. Reckheart.

(See Exhibit 3, p. 17, ll. 24-25; p. 18, ll. 1-25; p.19, l. 1).

Mr. Kerns then questioned Mr. Amonette about Mr. Crownover's Affidavits which were filed with this Honorable Court.

Specifically,

> Q. Now, are you aware today that since this new trial has been granted, an affidavit from Arthur Crownover, II, makes two allegations in it: One, that he doesn't recall any resignation letter of yours and he doesn't know whether it could have been in some other documents that he had received in the process of the case, and he also states that he didn't ever intentionally withhold any documents from any of Jane Luna's attorneys? What are your thoughts on those statements?
>
> A. The fact that he said he never read that letter, whew, that's not true. I mean, I don't know how else to put it. It's just untruthful. He and I had two conversations about the letter, and I had told him – the first time we talked about it was

approximately February 16h of 2011 – that I was not out to hurt the Department of Corrections. I want – I mean, I believe my job was to make it better.

Q. Sure.

A. I took a lot of ownership of any job I did. If I was typing on that little keyboard over there, it would be important to me to do it right. And I thought it was important that everything was documented and done properly. And I told him as much because he – when we were talking about the letter, he was concerned that I was just out to burn the Department of Corrections. That wasn't it at all. I just want everybody talked to. And, now, we talked about the letter for a good while and we probably were on the phone 15, 20 minutes. And we discussed that I would send him a list of all the people that were involved in the cell extraction that night, and I did so the next day, February 17th.

(See Exhibit 3, p. 19, ll. 5-25; p. 20, ll. 1-14).

While Judge Nixon did not find that Plaintiff had proven fraud, misrepresentation or misconduct in her Rule 60(b) Motion, it is abundantly clear that based on the newly obtained evidence stated above Defendants by and through counsel, General Crownover in particular, engaged in willful conduct. Counsel for Defendants have continuously argued that they have no recollection of a resignation letter and do not know if it was originally contained within the documents produced to Plaintiff. As previously mentioned, Mr. Crownover filed two Affidavits with the Court where he attested to not recalling the resignation letter. Mr. Amonette clearly testified that he had conversations with Mr. Crownover on two separate occasions regarding the resignation letter. One conversation lasted approximately 15-20 minutes. It is impossible to believe that Mr. Crownover could have simply forgotten about these two conversations with Mr. Amonette. Plaintiff argues this is nothing short of willful fraud, misrepresentation and/or misconduct on behalf of Defendants. It is clear that Mr. Crownover knew of the resignation letter's existence as early as February 2011. Moreover, Mr. Amonette's Statement on the Record undoubtedly establishes that Mr. Crownover spoke to Mr. Amonette prior to his deposition regarding the specific contents of the resignation letter. Mr. Crownover then sat through Mr.

Amonette's deposition, who was his client at the time, and heard his testimony regarding why he resigned from Riverbend. At no point in time did Mr. Crownover stop the deposition or bring it to anyone's attention that Mr. Amonette was not being entirely forthcoming in his deposition as is required by the Rules of Professional Conduct.

There is undoubtedly clear and convincing evidence Defendants knew of the exact contents of Mr. Amonette's resignation letter over four years ago and that they intentionally misrepresented this fact not only to the Plaintiff but to the Court as well. Further, as evidenced by the fact that Defendants produced only the two pages originally obtained by the Plaintiff regarding Mr. Amonette's resignation letter as well as the 146 page difference in Mr. Amonette's personnel file, there is clearly a willful withholding of evidence on behalf of the Defendants.

The instant case clearly involved significant bad faith conduct not only during the discovery process but throughout the entire case. The Court has the authority, and duty, to take appropriate actions to punish the Defendants for their conduct and to deter others from engaging in similar abuse in the future. While the opportunity to try this case again is of huge significance to the Plaintiff, said remedy in and of itself is not sufficient. Trying this case for a second time is a huge burden on both the Plaintiff and the Court. This is exactly what is contemplated when it is stated above that a court's inherent power to award sanctions "is governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the *orderly and expeditious disposition of cases*." *Link v. Wabash R. Co.*, 370 U.S. 626, 630-31, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962); *see also Roadway Express, Inc. v. Piper*, 447 U.S. 752, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980)(emphasis added.) As a direct consequence of Defendants' willful and fraudulent behavior, this case will be tried a second time, which is hardly an orderly and expeditious disposition.

Plaintiff, as noted above, has suffered tremendous financial expense, to say nothing of emotional pain, as a result of Defendants' actions. While Plaintiff would like to believe that she will receive full disclosure from the Defendants in preparation for the second trial, it does not appear that this is the case, as is evidenced by the huge page difference between what has been produced as Mr. Amonette's personnel file. There has clearly been an injustice caused to the Plaintiff throughout this entire litigation and the Defendants should be punished appropriately to deter any further injustice. In fact, Judge Nixon, when ordering a new trial, stated that "given the facts of this case, the Court finds that such course is required to prevent an injustice." (Doc. 187, p. 8).

Based on Defendants egregious conduct, Plaintiff submits that ordering Defendants to pay all Plaintiff's attorneys' fees and costs is not only an appropriate sanction, but also a necessary one to assist with the economic hardship associated with trying this case for a second time. As evidenced by the attached Affidavits of David J. Weissman, Jeff Roberts and John Griffith, Plaintiff incurred $359,640 in attorney's fees. (See Exhibits 4, 5 and 6, respectively). In addition to attorney's fees, Plaintiff incurred $63,228.07 in costs as is evidenced by the attached Affidavits. (See Exhibits 4-6). Additionally, and as evidenced by the attached Affidavit of Amy Hardee, Plaintiff incurred $2,598.75 in support staff fees for the preparation and original trial in this case.

Plaintiff, in order to prepare for the new trial in this case, also had to incur the cost of ordering the transcript from the original trial. (See Exhibit 8). Had it not been for Defendants abuse during this case, Plaintiff would not have to incur additional attorney's fees and costs for a second trial, not to mention the emotional toll of having to go through a second trial.

WHEREFORE, PREMISES CONSIDERED, Plaintiff moves the Court for an Order from the Court fashioning an appropriate remedy, commensurate with Defendants' conduct in this case and for all attorneys' fees and costs incurred on this case as well as the cost of the original trial transcript. Finally, Plaintiff prays for all such further relief, both general and specific, to which she may be entitled under the premises.

Respectfully submitted,

/s/ David J. Weissman
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document through the Court's Electronic Filing System to:

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On this 19th day of October, 2015.

s/ David J. Weissman
David J. Weissman