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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Consumer Financial Protection Bureau, Plaintiff, v. Morgan Drexen, Inc., and Walter Ledda, individually, and as owner, officer, or manager of Morgan Drexen, Inc., Defendants.	Case No. SACV13-01267 JLS (JEMx) **PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF ITS MOTION FOR TERMINATING SANCTIONS AGAINST DEFENDANT LEDDA** **HON. JOSEPHINE L. STATON**

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I. INTRODUCTION

As its founder, President and CEO, sole board member, and the controlling member of the committee that determines the company's strategic and operational decisions, Walter Ledda exercises pervasive control over his co-defendant, Morgan Drexen, Inc. ("Morgan Drexen"). He was deeply involved in the bad faith conduct that led this Court to impose a sanction of default judgment on the company. He has admitted that he knew that Morgan Drexen created and produced fraudulent bankruptcy petitions in discovery. He has also admitted that he participated in the petition-creation project. Once the fraudulent petitions were produced to the Bureau, Ledda made them the centerpiece of his own defense in this case. The Court then relied on his misrepresentations in denying the Bureau's Motion for Summary Judgment. Ledda had months – and numerous opportunities – to disclose the true nature of the petitions to the Court, the Bureau, and even his own trial counsel, but he never did. And if not for the whistleblowing by former Morgan Drexen board member Rita Augusta, the Court and the Bureau would have proceeded to trial having no idea that Ledda's defense was based on profound misrepresentations.

Like Morgan Drexen, Ledda engaged in willful, bad faith conduct that was highly prejudicial to the Bureau, and an affront to the integrity of this Court and our civil justice system. On this basis, and to deter others from committing similar acts, the Court should impose default judgment on Ledda, just as it did on Morgan Drexen.

II. STATEMENT OF RELEVANT FACTS

Defendant Walter Ledda founded Morgan Drexen in 2007.[1] At all times relevant to this litigation, he has been Morgan Drexen's President, Chief Executive

[1] Statement of Uncontroverted Facts (Doc. 166-2) (hereinafter "UF") ¶ 341.

Officer, and a member of its board of directors.[2] He is also the controlling member of the company's Executive Committee, which makes the company's operational and strategic decisions.[3] Until 2013, Ledda directly owned more than 75% of the company.[4] He then transferred his shares to a trust that he controls and of which he is the sole beneficiary.[5]

In his capacity as Morgan Drexen's founder, its President and CEO, a board member, the controlling member of its Executive Committee, and its majority shareholder, Ledda exercises extensive control over the day-to-day affairs of the company.[6] For example: (1) he developed, implemented, and oversaw the dual program for debt relief that is the subject of this litigation; (2) he directed Morgan Drexen to create the dual program's "preferred creditor" program, through which Morgan Drexen negotiates with creditors through an internet portal and does not make bankruptcy threats; and (3) he reviews Morgan Drexen's advertisements, and, among other things, decides when they should be further reviewed by outside counsel.[7]

From 2010 to the present, Ledda has monitored the work of Morgan Drexen through weekly manager meetings.[8] These meetings typically take place on Mondays and Fridays.[9] Ledda sets the agenda for the meetings.[10] Jeffrey Katz is

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[2] UF ¶ 13. In 2014, Ledda became the sole member of the company's board of directors when Rita Augusta resigned as a result of her concern about the company's conduct. Declaration of Rita Augusta in Support of Bureau's *Ex Parte* Application for Terminating Sanctions (Doc. 274-4) ¶ 5, Ex. 1. Before that time, Ledda believed he had the power to remove Augusta from the board. UF ¶ 345.

[3] UF ¶¶ 360-362.

[4] UF ¶ 17.

[5] UF ¶¶ 17-18.

[6] UF ¶¶ 341-371.

[7] UF ¶¶ 27-28 88, 351-353, 356.

[8] UF ¶ 363.

[9] UF ¶¶ 367-368.

[10] UF ¶ 364.

present at these meetings.[11] The purpose of the Monday meeting is for departments to report to Ledda what work they plan to do for the week.[12] The purpose of the Friday meeting is for departments to report to Ledda what work they actually accomplished during the week.[13]

During the investigation stage of this case, Ledda confirmed that he has the power to approve or disapprove projects at Morgan Drexen.[14] He also acknowledged his pervasive control of the company, stating that, at Morgan Drexen, "[e]ventually, the buck stops with me."[15] In his Opposition to the Bureau's Motion for Summary Judgment, Ledda even conceded that he "is a control person as to [Morgan Drexen]."[16] Ledda did not even attempt to refute the Bureau's allegation that he is individually liable for Morgan Drexen's violations of law, except to note that he "does not control the attorneys" who contract with Morgan Drexen.[17]

Consistent with Ledda's long history of controlling nearly every facet of Morgan Drexen's business operations – by his own admissions – Ledda was at the center of the company's deceitful manufacturing of bankruptcy petitions. Ledda's own declaration submitted to the Court in support of Defendants' Opposition to the Bureau's Motion for Sanctions demonstrates that he authorized, paid for, and was intimately involved in the project to manufacture bankruptcy petitions.[18] Among other things, Ledda admitted that he:

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[11] UF ¶ 370.
[12] UF ¶ 367.
[13] UF ¶ 369.
[14] UF ¶ 350
[15] UF ¶¶ 349-50.
[16] Memorandum in Opposition to the Bureau's Motion for Summary Judgment (Doc. 188) at 23-24.
[17] *Id*.
[18] Declaration of Walter Ledda in Opp'n to Motion for Sanctions (Doc. 261-1) (hereinafter "Ledda Decl.").

- "[P]layed [a role] in the production of the clients [sic] files for the 480 consumers randomly chosen" by the Bureau;[19]
- Knew that data used to create the petitions "was scattered and housed in different systems and different formats," including in "[u]nprocessed Bulk Mail" and "other misc. sources";[20]
- Knew that Jeffrey Katz had instructed employees to input data into Morgan Drexen's systems to create the bankruptcy petitions;[21]
- Was asked to help with the redaction process;[22] and
- Decided how to compensate the Morgan Drexen employees who worked to manufacture the bankruptcy petitions.[23]

At the evidentiary hearing held on February 10, 2015 ("Evidentiary Hearing"), Ledda confirmed his central role in the creation and production of the fraudulent petitions. Among other facts, he acknowledged that he:

- Was directly involved in providing assistance with discovery-related "technological issues" that arose during the course of this litigation;[24]
- Was informed by Jeffrey Katz that Morgan Drexen was "running behind" in what he referred to as "the redaction project" (redacting personal information from the petitions he was creating);[25]
- Approved Katz's request to ask Rita Augusta and other Morgan Drexen employees to assist in the creation of bankruptcy petitions;[26]
- Discussed with Rita Augusta how to compensate Morgan Drexen employees working on the petition-creation project;[27]

[19] *Id*. at ¶ 3.
[20] *Id*. at ¶ 4.
[21] *Id*. at ¶ 5.
[22] *Id*. at ¶ 6.
[23] *Id*. at ¶ 8.
[24] Transcript of February 20, 2015 Hearing (hereinafter "Evidentiary Hrg.") at 111.
[25] *Id*. at 114.
[26] *Id*.

- Personally approved the method by which Morgan Drexen would compensate these employees;[28]
- Knew that the petitions that Morgan Drexen produced were not created in the ordinary course of business;[29]
- Knew that Morgan Drexen employees searched for information not found in the bankruptcy database and inputted that information into bankruptcy petitions that were produced to the Bureau;[30] and
- Knew that Morgan Drexen employees created bankruptcy petitions for consumers who were no longer enrolled in the dual program and that these petitions were produced to the Bureau.[31]

It is undisputed that, despite his knowledge of and direct participation in the manufacture of bankruptcy petitions, Ledda never told his counsel, the Bureau, or the Court what he knew or what his role was in the project.[32] Further, the Court has established that, at the summary judgment stage, Ledda made "misleading assertions [to the Court] regarding the preparation and creation of bankruptcy petitions that purportedly occurred in the ordinary course of business."[33] When the Court accepted those asserted facts in its summary judgment order, Ledda did not bring the errors to the Court's attention.

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[27] *Id*. at 110.
[28] *Id*. at 110-111.
[29] *Id*. at 109.
[30] *Id*. *at* 109-110.
[31] *Id*. at 110.
[32] Doc. 284 (hereinafter, "Sanctions Oder) 20.
[33] Sanctions Order 21.

III. ARGUMENT

A. Ledda's Role in Manufacturing Evidence and Failing to Disclose Key Facts to the Court Warrants Default Judgment

1. Ledda's Willfulness, Bad Faith, and Fault

The Court has already found that Defendants acted willfully and in bad faith by falsifying evidence during the discovery process and then hiding the truth from the Court, opposing counsel, and even their own counsel until exposed by the Bureau.[34] By his own admission, Ledda was at the center of Defendants' fraudulent conduct. Accordingly, Ledda's willfulness, bad faith, and fault warrant the sanction of default judgment as to Ledda individually.

In finding that Defendants acted willfully and in bad faith, the Court focused on a number of facts, including:

- Defendants produced information in the form of petitions when it could have been produced in another format;[35]
- Morgan Drexen employees searched for information outside of the bankruptcy system and inputted it into the bankruptcy system in advance of production;[36]
- Petitions were created for consumers who were no longer even enrolled in a program supported by Morgan Drexen;[37] and
- Perhaps "most damning," Defendants had numerous opportunities to alert Defense counsel, the Bureau, and the Court of the true nature of the petitions they produced but never did.[38]

[34] *Id*. at 22.
[35] *Id*. at 18-19.
[36] *Id*. at 19.
[37] *Id*. at 21.
[38] *Id*. at 20.

All of these facts, which warranted default judgment against Morgan Drexen, likewise warrant default judgment against Ledda given his central role in the conduct.

To begin, Ledda admits to having worked on "technical issues" relating to discovery in this case.[39] There is no dispute that Ledda authorized Morgan Drexen to pay employees to work on the petition-creation project. There is also no dispute that he knew that information was produced to the Bureau in the deceptive form of bankruptcy petitions, even though, as Defendants conceded at the Evidentiary Hearing, the information could have been produced in other forms, such as a .csv file.[40] Given his involvement in the petition-creation project and hands-on management style at the company, Ledda surely knew that producing the information in a form such as a .csv file would have made clear that the bankruptcy petitions were not actually created in the normal course of business. But Ledda stayed silent as he and Morgan Drexen passed the petitions off as authentically created in the normal course of business. Moreover, when Ledda testified at the Evidentiary Hearing, he did not present any explanation about why Defendants produced old versions of bankruptcy petitions that coincided with the last payment the consumer made to Morgan Drexen, rather than current versions of bankruptcy petitions, one of a series of facts the Court found "strongly suggests an intent to deceive the Court and opposing counsel."[41]

In finding bad faith, the Court also relied on Defendants' admissions that, in advance of production, employees were directed to search a variety of locations outside of the bankruptcy system and input that information into the system to

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[39] Evidentiary Hrg. at 111.

[40] Sanctions Order 19; Evidentiary Hrg. at 153-54.

[41] Sanctions Order 18. The Court found: "Defendants have not provided a convincing reason for why they would decide to use old versions of bankruptcy petitions if the only goal was to produce the requested information to the Bureau in a single and convenient format." *Id*. at 19.

create bankruptcy petitions.[42] Ledda (by his own admission) was well aware that this was happening, and, as a defendant and the head of Morgan Drexen, had complete control to stop this. Instead, he did the opposite: he approved overtime payment for employees working on the project. As the Court noted, "the only logical conclusion is that Defendants were attempting to make it seem that more substantive bankruptcy work had been performed on customer files to support Defendants' charging of upfront fees."[43]

Ledda's role in the production of the fraudulent petitions *alone* constitutes willfulness and bad faith, but Ledda did not stop there. After the production, Ledda, as an individual defendant – like Morgan Drexen – made the petitions "the heart of the defense in this case."[44] At the summary judgment stage, he trumpeted Defendants' purported bankruptcy work, and the Court "relied on Defendants' misrepresentations and falsified evidence" in rendering its order denying summary judgment. [45] Ledda had numerous opportunities to inform his own lawyer, the Bureau, or the Court of the true nature of the petitions produced, including: (a) during discovery disputes before Magistrate Judge McDermott; (b) when his counsel deposed the Bureau's expert, Katherine Porter, on the subject of Defendants' purported bankruptcy work; (c) during summary judgment briefing; and (d) after the Court issued its order denying summary judgment, in which it "clearly relied on Defendants' misleading assertions regarding the preparation and creation of bankruptcy petitions that purportedly occurred in the ordinary course of business."[46] He never did.

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[42] Sanctions Order 19.
[43] *Id*.
[44] *Id*. at 24.
[45] *Id*.
[46] *Id*.at 21-22.

At the evidentiary hearing, Ledda claimed that he never had a discussion with Katz about whether Morgan Drexen would disclose to the Bureau that the bankruptcy petitions it produced were created specifically for this litigation.[47] Given Ledda's day-to-day management of the company and specific involvement in the fraudulent document production, this testimony is not credible. Moreover, even if this *were* true, it does not serve as a defense to a finding of supreme bad faith. Ledda, not Katz, is a defendant in the case. Ledda knew that the petitions were not created in the normal course of business and yet he made bankruptcy petitions central to his defense at the summary judgment stage. Whether he and Katz discussed informing the Bureau of their conduct is of no import. Whatever their discussion, Ledda chose not to inform *anyone* outside Morgan Drexen of what Defendants were doing, and Defendants' conduct remained a secret until Ms. Augusta blew the whistle.

Of all of the people involved in the creation of the sham bankruptcy petitions, no one had a greater incentive to mislead the Bureau and the Court than Ledda. As an individual defendant and Morgan Drexen's largest shareholder, he faced the greatest financial loss. And no one had greater power to determine how Defendants would produce information to the Bureau than Ledda, as an individual defendant in this case, the founder, majority shareholder, President, CEO, and board member of his co-defendant, Morgan Drexen, and the person to whom Jeffrey Katz reported.

Given Ledda's role at Morgan Drexen, his control of the company, and his specific conduct relating to the production of fraudulent petitions, it is clear that the company's conduct in this case was a reflection of Ledda's decision-making, direct action, and self-interest. As such, the Court is completely justified in finding

[47] Evidentiary Hrg. at 116.

that Ledda engaged in bad faith conduct warranting the imposition of default judgment.

2. Relevant Factors Support Default Judgment Against Ledda

In its Sanctions Order, the Court listed the five factors to be weighed before the imposition of default judgment as a sanction.[48] These factors support the imposition of default judgment against Ledda as strongly as they supported default judgment against Morgan Drexen.

a. The Public's Interest in Expeditious Resolution of Litigation Supports The Imposition of Default Judgment Against Ledda

As the Court noted in its Sanctions Order, the public's interest in expeditious resolution of litigation "always favors imposing sanctions."[49] Given the Court's finding that "Defendants' conduct has caused considerable delays in this case and has threatened Plaintiff's and the Court's ability to resolve this litigation," this factor weighs heavily in favor of default judgment against Ledda, just as it did against Morgan Drexen.[50]

b. The Court's Need to Manage its Docket Supports The Imposition of Default Judgment Against Ledda

The second factor is the Court's need to manage its docket. The Court noted that "this factor also almost always weighs in favor of granting a default judgment" and found that "Defendants' falsification of evidence and deceitful conduct throughout the discovery process have created considerable hurdles to the resolution of this action."[51] As such, this factor supports the imposition of default judgment against Ledda as well as Morgan Drexen.

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[48] Sanctions Order 22 (citation omitted).
[49] *Id.*at 23 (citation omitted).
[50] *Id*. at 23.
[51] *Id*.

c. The Risk of Prejudice to the Bureau Seeking Sanctions Supports the Imposition of Default Judgment Against Ledda

The next factor is the risk of prejudice to the party seeking sanctions. Ledda's participation in the creation of the petitions and his failure to reveal them as fabrications once the Court relied on them prejudiced the Bureau as much as Morgan Drexen's conduct. The Bureau wasted considerable time (deposition and trial preparation) and incurred significant expense (retention of expert Katherine Porter) responding to Defendants' canard. Ledda's actions impaired the Bureau's ability to go to trial on the true issues and interfered with the rightful decision of this case.

d. The Public Policy Favoring Disposition on the Merits Does Not Counsel Against The Imposition of Default Judgment Against Ledda

Although recognizing that this factor "almost always weighs against dismissal," in its Sanctions Order, the Court found that it weighed "only slightly against terminating sanctions" against Morgan Drexen.[52] The same is true with respect to Ledda. Just as Morgan Drexen did, by falsifying evidence, Ledda "undermined the integrity of the Court's summary judgment order," and thus compromised the Court's "ability to reach a merits determination."[53] As a result, as with Morgan Drexen, "this factor 'is insufficient to outweigh the other four factors.'"[54]

e. There Are No Appropriate Less Drastic Sanctions

As the Court noted in its Sanctions Order, a court may terminate a case based on spoliation of evidence where: "(1) less drastic sanctions would be

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[52] *Id*. at 25.
[53] *Id*.
[54] *Id*. at 25-26 (citation omitted).

inappropriate, (2) the Court implemented alternative sanctions before ordering dismissal, and (3) the Court warned the party of dismissal before ordering dismissal."[55]

All of these factors make clear that there is no appropriate lesser sanction that would adequately address Ledda's egregious conduct in this case. It is undisputed that Ledda (1) knew that Morgan Drexen was "running behind" in producing documents to the Bureau; (2) approved the use of Morgan Drexen employees to create bankruptcy petitions; (3) ensured the employees were compensated for this work; (4) knew that the petitions were not being created in the normal course of business and that they included information not found in the bankruptcy database; (5) knew that petitions were created for consumers who were no longer even enrolled in any program supported by Morgan Drexen; (6) assisted with technological issues relating to Defendants' productions; (7) misrepresented the bankruptcy work performed by Morgan Drexen to the Court; and (8) failed to set the record straight after the Court relied on the manufactured bankruptcy petitions at the summary judgment stage.[56] Moreover, Ledda had complete control over the document production, both as an individual Defendant and as Morgan Drexen's ultimate, fully-informed decision-maker.

The Court has already rejected lesser sanctions to address Morgan Drexen's conduct. Its reasoning applies to Ledda as well. The Court cannot issue a curative jury instruction because Ledda waived his right to a jury trial.[57] Because Ledda made Morgan Drexen's purported bankruptcy work the center of his defense, just as Morgan Drexen did, a lesser sanction of evidence exclusion is equally unworkable as it "would require the Court to exclude all evidence of bankruptcy

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[55] *Id*. at 26 (citations omitted).
[56] Evidentiary Hrg. at 109-11; 114; Sanctions Order 17-22.
[57] Sanctions Order 26 (citation omitted).

services performed by Defendants, a ruling that would be an effective dismissal."[58] Lastly, the Court has already found that it "anticipates that Defendants would continue to deceive the Court, its own trial counsel, and opposing counsel if the Court allowed this case to proceed to trial."[59] Given this, nothing short of default judgment is appropriate.

The second and third criteria are also inapplicable to Ledda. Ledda was on notice that Morgan Drexen would be sanctioned for its failure to follow Magistrate Judge McDermott's orders. But because he kept Defendants' conduct hidden from everyone outside the company—even his own trial counsel—neither Judge McDermott nor the Court had the opportunity to implement alternative sanctions before Ledda and Morgan Drexen manufactured bankruptcy petitions. For these reasons, and because "lesser sanctions would not be adequate to punish" Ledda "for the wrongful conduct and ameliorate the prejudice and harm to the [Bureau]," default judgment is the appropriate sanction for Ledda's conduct.[60]

3. Ledda Cannot—and Should Not—Be Permitted to Avoid Liability for his Sanctionable Conduct by Feigning Ignorance

Given Ledda's own admissions about his central role in facilitating the bankruptcy petition creation project, his misrepresentations to the Court, and his failure to set the record straight despite countless opportunities to do so, it is unclear how Ledda will even begin to try to dig himself out of the default judgment hole. As the Court noted in its Sanctions Order, Ledda testified during the evidentiary hearing that he "'expected that [the Bureau] would have been notified of these petitions as they were created outside the normal course of business,' but claims that he never discussed with Katz whether the Bureau had been informed of

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[58] *Id*. at 26.
[59] *Id*.
[60] *Id*. at 27 (citation omitted).

the creation of the bankruptcy petitions."[61] If this is Ledda's defense—that he just "never discussed" a project of this magnitude that carried this much risk of sanctionable conduct with the company's general counsel—then default judgment is even more vital to punish Ledda for feigning ignorance when confronted with the facts.

Ledda's testimony—which is essentially that it just slipped his mind to ask Katz about what, exactly, Defendants would represent to the Bureau and this Court regarding the authenticity and significance of the petitions he helped create—is self-serving and not credible. Ledda is Morgan Drexen's "control person."[62] He facilitated a project to create hundreds of fake bankruptcy petitions at the eleventh hour—risking terminating sanctions due to the delay in production. If he wanted the Bureau and the Court to know the true nature and significance of the bankruptcy petitions, he would not have left such a vital piece of information to chance. But he plainly did not want the truth to come out, which is why his ignorance defense fails. Ledda's testimony that he "expected that [the Bureau] would have been notified" about the truth is just one more lie in a long string of lies Defendants have told during the course this litigation.

Even putting Ledda's credibility aside, he cannot escape terminating sanctions by placing all the blame on Katz. The First Circuit addressed this issue in *Guex v. Allmerica Fin. Life Ins. & Annuity Co.* when it affirmed dismissal of a plaintiff's complaint even though the district court had considered (in part) "numerous discovery order[]" violations by a non-party company (of which the plaintiff was the president and which was also represented by the plaintiff's attorney) in ruling that terminating sanctions against the plaintiff were warranted.[63] The plaintiff had taken "the position that his company's violations were none of his

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[61] *Id.* at 27.
[62] Doc. 188 at 23-24.
[63] 146 F.3d 40, 43-44 (1st Cir. 1998).

concern, even though he is the president of the company, and his lawyer is also the company's lawyer."[64] The First Circuit held that "the magistrate judge was entitled to find that [the plaintiff] had feigned his inability to control his company's conduct," and thus the non-party company's conduct could support a finding that terminating sanctions against the plaintiff were warranted.[65]

Moreover, as the Ninth Circuit has held, "[a] party's destruction of evidence qualifies as willful spoliation if the party has 'some notice that the documents were *potentially* relevant to the litigation before they were destroyed.'"[66] Ledda had more than "some notice" that the status of the bankruptcy petitions were "potentially relevant" to this litigation—he sought to create a defense to the

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[64] *Id*.

[65] *Id*. at 44; *see also Combs v*. *Rockwell Int'l Corp*., 927 F.2d 486, 488 (9th Cir. 1991) (affirming terminating sanction against plaintiff after plaintiff's counsel made material changes to transcript of plaintiff's deposition that plaintiff had represented was "correct and truthful," noting that plaintiff, "*whether or not* in collusion with counsel, thus attempted to deceive the district court on material matters before it. Falsifying evidence is grounds for the imposition of the sanction of dismissal") (emphasis added); *The Sunrider Corp*. *v*. *Bountiful Biotech Corp*., 2010 WL 4590766, at *29, *32 (C.D. Cal. Oct. 8, 2010), *report and recommendation adopted*, 2010 WL 4589156 (C.D. Cal. Nov. 3, 2010) (default judgment warranted where defendant, among other discovery violations, failed to preserve documents destroyed by defendant's non-party agent; noting that "[w]hen a party's failure or inability to comply with a pretrial discovery order was caused 'by its own conduct [*or by circumstances within its control*,' the court may strike the party's answer and render a default judgment as a sanction") (emphasis added; citation omitted); *In re Lebbos*, 385 B.R. 737, 753 (Bankr. E.D. Cal. 2008) (noting that courts have "held parties responsible for one another's conduct in determining whether terminating sanctions are appropriate"); *See generally In re Phenylpropanolamine (PPA) Products Liab*. *Litig*., 460 F.3d 1217, 1233 (9th Cir. 2006) (noting that "Rule 37 sanctions, including dismissal, may be imposed where the violation is 'due to willfulness, bad faith, *or* fault of the party,'" and that "[d]isobedient conduct not shown to be outside the litigant's control meets this standard") (citation omitted).

[66] *Leon v*. *IDX Sys*. *Corp*., 464 F.3d 951, 959 (9th Cir. 2006).

Bureau's suit based on the existence of those petitions and, as the Court recognized, made them a central feature of his defense. His decision to facilitate the bankruptcy petition creation project—and thus destroy the true status of the petitions—constitutes willful spoliation warranting terminating sanctions.[67]

There is a strong basis to hold individuals accountable for the destruction of documents within their control, whether they engage in that destruction directly, or indirectly through willful blindness or through the delegation of the destruction to a subordinate. The U.S. Supreme Court has instructed that dismissal pursuant to Rule 37 is appropriate "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 sanction."[68] As one court noted, "[t]he system can provide no harbor for clever devises to divert the search, mislead

[67] It is well-established in this Circuit that a party "cannot avoid dismissal by arguing that he or she is an innocent party who will be made to suffer for the errors of his or her attorney." *W. Coast Theater Corp. v. City of Portland*, 897 F.2d 1519, 1523 (9th Cir. 1990) (citation omitted). Rather, "[t]he established principle is that the faults and defaults of the attorney may be imputed to, and their consequences visited upon, his or her client." *See also Anderson v. Air W., Inc.*, 542 F.2d 522, 526 (9th Cir. 1976) (holding that, although "courts have occasionally refused to assign responsibility for an attorney's negligence to the client," dismissal for failure to prosecute was warranted where plaintiff "demonstrated a degree of sophistication which makes it improper to absolve her of all responsibility for the actions of her attorney"). Here, Ledda—not his attorney—is at fault for his central role in willfully creating fake bankruptcy petitions and then passing those petitions off as authentic to the Bureau and the Court. As the Court recognized, Ledda even kept the true nature of the petitions a secret from his own trial counsel, Gerald Klein. This is therefore not a case of a client facing punishment for his attorney's negligence: default judgment is warranted to sanction Ledda for Ledda's own conduct.

[68] *Nat'l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639, 643, 96 S.Ct. 2778, 49 L.Ed.2d 747 (1976).

opposing counsel or the court, or cover up that which is necessary for justice in the end."[69]

Ledda attempted a "clever devise" on the stand when he testified that he was an innocent party and simply assumed that someone would have informed the Bureau about the true nature of the petitions. If Ledda is permitted to escape default judgment by merely feigning ignorance about how the petitions were held out to the Court and the Bureau, then how many other litigants in the future will take the risk of fabricating evidence, knowing that they will get off scot-free by claiming that they just assumed the truth had been communicated? Default judgment against Ledda is thus not only warranted by his own conduct, but also to deter others who are considering taking the same litigation risk.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court grant the Bureau's Motion For Terminating Sanctions against Walter Ledda.

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[69] *Jones v. Clinton*, 36 F. Supp. 2d 1118, 1131-32 (E.D. Ark. 1999) (imposing sanctions not only to redress the misconduct of the sanctioned party, "but to deter others who . . . might themselves consider . . . willfully violating discovery orders of this and other courts, thereby engaging in conduct that undermines the integrity of the judicial system.")

Respectfully submitted,

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