

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

CELESTE BORYS, et al., Plaintiffs, vs. TIMOTHY BALLARD, et al, Defendants.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER Case No. 230907663 Judge Todd Shaughnessy
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Before the court are motions for terminating sanctions filed by Defendants Timothy Ballard (“Mr. Ballard”) and Operation Underground Railroad, Inc. (“OUR”). The issues giving rise to the motions first came to the court’s attention in late January 2024 with the filing of a Motion for Rule 16 Pretrial Conference, following which the court permitted limited, pre-merits discovery on issues related to the now-pending motions. Thereafter, on May 17 and June 26, Mr. Ballard and OUR filed their Motions for Terminating Sanctions. After briefing and argument, the court set the matter for a two-day evidentiary hearing, held December 30 and 31, 2024. The parties thereafter submitted written closing arguments.

Based on the evidence presented at the evidentiary hearing and in the various submissions by the parties, the arguments made in both pre- and post-hearing briefing, and for good cause, the court now makes the following findings of fact, conclusions of law and order.

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BACKGROUND AND SUMMARY

Plaintiff Celeste Borys (“Ms. Borys”) was employed by OUR as an executive assistant, and ultimately the executive assistant for Mr. Ballard, who was then Chair of OUR’s Board of Directors and its Chief Executive Officer. Shortly before starting as Mr. Ballard’s executive assistant, Ms. Borys had been invited by Mr. Ballard to participate, and begun participating, in OUR’s “undercover operations” during which representatives of OUR would pose as individuals involved in human trafficking, purportedly for the purpose of identifying and prosecuting individuals involved in human trafficking in various places around the world. In this capacity, Ms. Borys (and other “operatives”) would pretend to be Mr. Ballard’s romantic partner and engage in various behaviors allegedly intended to make their relationship “look real” to the “suspects” they were investigating, a practice known within OUR as the “couples ruse.” Ms. Borys and Mr. Ballard also developed a close personal relationship, the exact nature of which is disputed: Ms. Borys contends that Mr. Ballard used his position of power and influence to exploit her into participating in unwanted sexual activity with him; Mr. Ballard denies the parties had a sexual relationship outside of that contemplated by the “couples ruse.” Ms. Borys correctly states that her relationship with Mr. Ballard was not a typical employer-employee relationship.

In mid-2023 Mr. Ballard’s relationship with OUR soured. OUR conducted an internal investigation of Mr. Ballard and ultimately his employment relationship was terminated. Mr. Ballard says he quit. OUR says he was fired. Mr. Ballard left OUR and continued doing the same type of work with a new company, Defendant The Spear Fund (“Spear Fund”). Shortly after Mr. Ballard’s

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departure, Ms. Borys left OUR as well and joined Mr. Ballard as his executive assistant at Spear Fund, continuing also to assist him in these same capacities.

Throughout the time Ms. Borys worked as Mr. Ballard's executive assistant, both at OUR and Spear Fund, she was given real-time and unlimited access to his business and some of his personal records as part of her job was to monitor his email as it was received. This occurred primarily through Ms. Borys logging into Mr. Ballard's personal Gmail account and associated Google Drive, the place where he kept all of his business-related communications. Thus, while logged in on any of her own electronic devices, Ms. Borys had unrestricted access to Mr. Ballard's current email as well as his stored email and Google Drive files.

In the fall of 2023 various individuals came forward and accused Mr. Ballard of sexual and other misconduct. These individuals claimed Mr. Ballard had exploited them and engaged in various other types of misbehavior under the guise of participating in "operations" designed to "rescue" individuals from human trafficking. Around this time Ms. Borys also gradually became disillusioned with Mr. Ballard and began to feel that she too had been exploited by him. She ultimately resigned from her employment with Spear Fund in September 2023. She did not share her growing disillusionment with Mr. Ballard, however. Instead, she assisted him in transitioning to a new executive assistant while, at the same time, consulting lawyers about a lawsuit. She also did not log out of Mr. Ballard's Gmail and Google Drive when she quit and instead maintained her real-time, unfettered access to all of his files. Mr. Ballard, for his part, did not change his password or otherwise take even simple steps necessary to remove her access.

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Although the precise timeline is somewhat ambiguous, after leaving Spear Fund Ms. Borys consulted with and ultimately retained the same lawyers who were representing other women suing (or contemplated suing) Mr. Ballard and, with the assistance of those attorneys, filed the complaint in this case on October 10, 2023. Throughout this time, including after filing the complaint in this matter but before serving it on Mr. Ballard, Ms. Borys continued to maintain real-time, unfettered access to Mr. Ballard's email and electronic files and continued to receive pop-up notifications on her cell phone whenever he received an email. She admits that on at least two occasions she read Mr. Ballard's incoming email communications as it was received. She also admits that on at least two occasions, including at least one that occurred after her complaint had been filed, she accessed Mr. Ballard's email and Google Drive files and spent hours searching those files. Ms. Borys testified at the evidentiary hearing in this matter that she did not do so to collect evidence for her case or the other cases, but instead to try and "understand what had happened to her." Her explanation, however, is not credible. Ms. Borys gave an entirely different explanation in a declaration filed in a related case, where she acknowledged that she searched Mr. Ballard's electronic files to gather "proof" of her claims. Additionally, the circumstances surrounding her search for the documents, such as the particular types of documents she searched for and the search terms she used, together with the use to which they were put, demonstrates that Ms. Borys searched Mr. Ballard's electronic files for the purpose of gathering evidence, and did so after the complaint in this case had been filed.

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Ms. Borys told her attorneys about her access to Mr. Ballard's emails and his electronic files and that she was accessing them after leaving Spear Fund and after suing Mr. Ballard. Her attorneys did not tell her to stop, but instead accepted the documents she provided, attached those materials as exhibits to filings in the various cases, thereby making them publicly accessible, referenced the content of documents in press releases regarding the cases, and otherwise made use of the documents and information contained in the documents in this case and in related cases involving Mr. Ballard and OUR.

Some of the materials Ms. Borys took and provided to her attorneys were marked on their face as subject to the attorney-client privilege or work product doctrines. Ms. Borys and her attorneys made use of these documents in the same manner as the other documents Ms. Borys took. Her attorneys did not notify OUR or Mr. Ballard that their client had given them potentially privileged materials. When OUR and Mr. Ballard later learned what had happened, and demanded the documents be returned, Ms. Borys's counsel refused.

Mr. Ballard knew Ms. Borys had access to his email and related materials after she stopped working as his executive assistant, indeed they had at least one conversation about an email he received after she observed a pop-up notification on her phone. Mr. Ballard did not change his password or otherwise take steps to shut off her access until early November 2023. This was extremely careless on his part and Mr. Ballard fails to offer an adequate explanation for why he did not better protect his and OUR's business and other information. Mr. Ballard's negligence in this regard, however, does not amount to giving Ms. Borys permission to monitor his email and to search

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his files at a time when she was his litigation adversary. Mr. Ballard did not know that Ms. Borys had retained the same lawyers who had filed other lawsuits against him; he did not know that Ms. Borys herself had filed a complaint against him until he was served; and he did not know that Ms. Borys and her attorneys were using this access to collect information for litigation purposes, file it publicly, and thereby release it to the media. Had Mr. Ballard known any of these things, he almost certainly would have immediately cut off her access.

The conduct by Ms. Borys and her attorneys was deliberate and egregious, particularly their casual disregard of potentially privileged information. Although Ms. Borys insists she did not know what she was doing was wrong, this too is not credible. Ms. Borys quit her job working for Mr. Ballard because of his treatment of her and others, consulted lawyers about suing him for misconduct, and then filed a lawsuit against him and others with whom he was affiliated, all while maintaining possession of the electronic equivalent of a key to his locked office and file drawers. Then, after meeting with lawyers and after suing him, she used that electronic key to secretly search through his files and collect evidence to try and help support her case and the cases brought by others. Practically speaking, what Ms. Borys did is no different than if she had used a key to access Mr. Ballard's office in the dark of night to secretly photocopy documents from locked file drawers, including documents that were marked as privileged. The wrongful nature of that conduct should have been obvious to anyone, including importantly her lawyers. While the seeming ease of access to another person's electronic information, and the ability to search someone else's personal and business files from the comfort of your living room, might cause a person to think that what she is

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doing is somehow different than breaking into a locked office or file drawer, the reality is the two are the same. Her attorneys should have stopped the conduct the moment it came to their attention, turned over the potentially privileged materials to their adversary, and allowed the court to sort out the consequences. Unfortunately they did none of those things.

Finally, the court lawfully cannot excuse Ms. Borys's conduct even if the court assumes that she is a victim and Mr. Ballard is a predator, as her counsel claims. One of the themes underlying much of what she has to say in response to these motions is, effectively, the ends justify the means. She and her attorneys remain, even now, indignant to any suggestion of impropriety and unapologetic about their actions. But if Mr. Ballard is indeed the predator she claims he is, that fact would have been revealed in due course, to the world at large, through litigation and a public trial before a jury. A trial in a courtroom, however, takes time, requires patience, and demands all participants follow established rules. A trial in the court of public opinion, however, contains no such restrictions. The media has an insatiable appetite for information, a short attention span, and much less stringent and exacting rules for obtaining information. The fatal error by Ms. Borys and her lawyers was assuming, or at least acting as though the rules applicable to a trial in the court of public opinion are the same as the rules for a courtroom. They are not.

Terminating sanctions are both appropriate and necessary. They are appropriate because the conduct by Ms. Borys and her attorneys lies far outside the bounds of permissible litigation behavior. Monitoring the electronic communications of your litigation adversary is unquestionably forbidden and long-settled standards prohibit using an opponent's privileged or potentially

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privileged information. Terminating sanctions are necessary to sanction Ms. Borys for the conduct and to ensure no litigant in the future believes they have license to engage in similar behavior.

FINDINGS OF FACT

A. Ms. Borys' Employment with OUR and Mr. Ballard

1. Ms. Borys worked as an executive assistant for Mr. Ballard both at OUR and later Spear Fund.

2. It is not entirely clear when Ms. Borys began work with OUR. Ms. Borys stated that she began work with OUR when she was hired as an executive assistant in October 2022, or when she was hired as a community relations manager "over the volunteers."

3. During the onboarding process for OUR, Ms. Borys signed a series of employment-related agreements including a non-disclosure agreement which required her to keep OUR information and documents confidential. She also agreed to various company policies that required confidentiality.

4. Ms. Borys initially worked as an executive assistant to Simon Brewer, OUR's Chief Financial Officer and Chief Operating Officer. Ms. Borys met and became casually acquainted with Mr. Ballard while working for Mr. Brewer. Some time around October 2022 Mr. Ballard approached Ms. Borys about the possibility of her accompanying him and others affiliated with OUR on "ops" posing as his "couple's ruse" partner.

- a. An "op" or "operation" in OUR parlance meant an undercover operation wherein employees or independent contractors of OUR, including Mr. Ballard, would travel

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to a predetermined location and engage in investigatory or interdictive activities aimed at identifying and rescuing women and children believed to be victims of sex trafficking. Such activities might include coordinating with local law enforcement, visiting brothels or illicit massage parlors, and then assisting with the apprehension of the traffickers and freeing the victims.¹

- b. The “couples ruse” as it was known within OUR was a theatrical tactic employed by the OUR “operators” while on an “operation” to purportedly establish legitimacy and reduce suspicion with traffickers. Mr. Ballard would have one of various female “operators” act as his spouse or romantic partner in front of the alleged sex workers or traffickers and engage in sexually explicit language or actions to dispel suspicion.

5. Ms. Borys began participating in these “undercover operations” in or around November, 2022, on an “operation” in London.

6. Around March 2023, Mr. Ballard approached Ms. Borys about becoming his executive assistant and she transferred to that position around this time.

7. In her capacity as Mr. Ballard’s executive assistant, she was given access to Mr. Ballard’s personal email. Mr. Ballard had an OUR email address but rarely, if ever, used it. Instead, Mr. Ballard

¹ See Tom Jackman, Hunting for Sex-traffickers Abroad – By Posting As Johns, THE WASHINGTON POST (September 23, 2016), https://www.washingtonpost.com/local/public-safety/hunting-for-sex-traffickers-abroad--by-posing-as-johns/2016/09/23/f449dd48-7057-11e6-8365-b19e428a975e_story.html

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used a personal Gmail account for all of his business-related communications. Mr. Ballard also had a Google Drive account associated with this email in which he stored business-related communications and documents.

8. Ms. Borys's job duties as Mr. Ballard's executive assistant at OUR included monitoring Mr. Ballard's emails, managing his calendar, arranging travel and other ministerial matters typically performed by executive assistants.

9. Mr. Ballard provided Ms. Borys his passwords for his Gmail and Google Drive accounts, and for all of his "other accounts." Ms. Borys described this as "unfettered access and passwords." This included access to his work and personal accounts, including his OUR email account, his personal Gmail account, and an iCloud account under his name.

10. Ms. Borys was tasked with managing Mr. Ballard's inboxes and keeping him apprised of correspondence that needed his attention. Ms. Borys testified that she always kept Mr. Ballard's Gmail open on her phone and laptop so she could quickly and easily monitor and screen his emails as they came in.

11. Mr. Ballard used two-factor authentication to help secure his Gmail account which alerted him when an unrecognized device attempted to sign into his account. Mr. Ballard testified that he monitored and responded to two-factor notifications when they came in. When Ms. Borys was first accessing Mr. Ballard's accounts after starting as his executive assistant, he received security alert and asked Ms. Borys to confirm whether it was her who was attempting to log into his account.

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12. Mr. Ballard testified that he primarily used his personal Gmail account to send and receive emails related to his work at OUR. This practice was contrary to OUR's policies, which generally required OUR employees to use their OUR-assigned email for work-related correspondence.

13. Mr. Ballard testified that "Ms. Borys was instructed when she was onboarded as his executive assistant [at OUR] to only monitor new incoming emails and not to search through his account or forward correspondence out of his account unless she was instructed" and that "[s]he was not authorized to access his account for any reason outside of the scope of her position as his executive assistant." Ms. Borys denies that her access was limited in any way.

14. Business-related communications intended for Mr. Ballard were occasionally sent to Ms. Borys directly at her OUR email address because she was known to be his executive assistant. Additionally, Mr. Ballard would forward emails and documents to Ms. Borys, often accompanied by a message asking her to perform a ministerial task, such as printing the document. In this fashion, various communications with or documents from Mr. Ballard's files would end up in Ms. Borys's own email. Ms. Borys testified that she never removed any documents or emails while employed by OUR.

15. Ms. Borys's work as Mr. Ballard's executive assistant included attending meetings with him, both inside and outside OUR's offices. These included, on occasion, Ms. Borys attending meetings with OUR's attorneys. Ms. Borys attended these meetings in her capacity as Mr. Ballard's executive assistant.

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16. The scope of Ms. Borys's work as Mr. Ballard's executive assistant differed significantly from her prior work as Mr. Brewster's executive assistant. As Mr. Ballard's executive assistant, Ms. Borys was asked to engage in a variety of personal tasks such as chauffeuring him to meetings, picking up his prescriptions, dropping off his dry cleaning, and similar conduct.

17. During this time, Ms. Borys also continued to participate in OUR "operations," which involved frequent travel with Mr. Ballard to various parts of the world. Mr. Ballard, Ms. Borys, and others associated with OUR would travel together and stay in the same hotels as part of these "operations."

18. Although the precise nature is disputed, it is clear Ms. Borys and Mr. Ballard developed a close personal relationship as well. Ms. Borys respected and admired Mr. Ballard, or at least the person she believed him to be at that time. She also was devoted to the stated mission of OUR and to helping victims of abuse, and believed Mr. Ballard to be similarly motivated.

B. Ms. Borys's Access to Attorney-Client Communications while at OUR

19. Ms. Borys had some level of access to confidential attorney-client communications while working at OUR, but it was in her capacity as Mr. Ballard's executive assistant. Ms. Borys was never in a decision-making position as it relates to OUR's privileged communications, nor was she ever a control person or otherwise in a position to waive OUR's attorney-client privilege.

20. Some time in "early 2023" Ms. Borys claims she arranged several meetings with lawyers and "others" to discuss legal issues involving Mr. Ballard and OUR, including most significantly a criminal investigation by the Davis County Attorney's Office. Ms. Borys testified that

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she was invited to and attended at least some of meetings with Mr. Ballard, OUR representatives, and OUR's outside attorneys. The court finds that to the extent she attended such meetings or was copied on related communications, it was because she was Mr. Ballard's executive assistant. There is no evidence that Ms. Borys was ever a client of OUR's attorneys or that she was independently consulted by OUR's attorneys to seek her input or advice on company legal matters.

21. Holland and Hart was OUR's outside counsel. Brent Andrewsen of Holland and Hart testified that:

a. He "was never instructed by anyone at OUR to include Ms. Celeste Borys in any privileged and confidential attorney client communications on behalf of the company. She was never a decision maker regarding any legal issue in which I was involved."²

b. To the best of his recollection, he "never copied Ms. Borys on any privileged and confidential attorney client emails nor . . . forwarded any privileged documents to her."³

c. He recalled Ms. Borys being present "on one or two occasions only when I was speaking with Mr. Ballard and others." His "understanding was that each time she was present solely in the capacity as Mr. Ballard's executive assistant and nothing more."⁴

² Decl Brent Andrewsen in Support of OUR's Motion for Terminating Sanctions ("Andrewsen Decl") ¶4.

³ Andrewsen Decl. ¶5

⁴ Andrewsen Decl. ¶6.

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22. Holland and Hart's client was OUR. Holland and Hart did not represent Ms. Borys or Mr. Ballard in their individual capacities. Ms. Borys did not have the authority to waive OUR's attorney-client privilege. Her presence at meetings with OUR's attorneys was administrative in nature as opposed to being a substantive participant. An attorney in Mr. Andrewson's position would not have had any reason to believe that Ms. Borys's presence in a meeting or sending documents to her to provide to Mr. Ballard, even if that happened, would constitute a waiver of OUR's privilege.

23. Mr. Ballard had separate legal counsel, at least for certain matters. One of the documents Ms. Borys accessed and copied from Mr. Ballard's email files was a common interest agreement between and among OUR, Mr. Ballard, and their respective attorneys. That document is marked on its face as "CONFIDENTIAL – COMMON INTEREST PRIVILEGE & ATTORNEY WORK PRODUCT." As it pertains to anything covered by that agreement, Mr. Ballard would not have had the authority to waive OUR's attorney-client privilege.

24. As noted above, Ms. Borys had signed employment agreements with OUR which required her to keep OUR's confidential information confidential.

25. At the evidentiary hearing on the motions for terminating sanctions, in response to questions from the court regarding documents Ms. Borys took that were marked as attorney-client privileged, Ms. Borys testified that after providing the documents to her attorneys she never met with them to discuss the circumstances surrounding those particular documents, such as where those documents may have been used before, to whom they may have been disclosed, how they

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may have been used, or other information that would have been necessary to determine whether the privilege had been waived.

26. Former Utah Attorney General Sean Reyes submitted a declaration in which he states that he was provided with a copy of a letter in draft form marked attorney-client privilege. It is not clear what version of that letter he was provided or other circumstances of that disclosure. That disclosure, of course, could potentially have waived any attorney-client privilege or work product protection for that document.

27. Ultimately the court does not draw final conclusions regarding waiver of attorney-client privilege or work product protection, as it is not necessary to do so and the factual record is incomplete. Instead, the court outlines some of the facts that might be relevant. Suffice to say that it is neither clear nor obvious that OUR or Mr. Ballard waived the attorney-client privilege as a result of any of the actions identified by Ms. Borys. Determining whether a waiver occurred is something that should have been presented to the court to decide before such documents were used or disclosed. That did not happen. Instead, Ms. Borys and her attorneys decided for themselves that waiver must have occurred and made use of the documents, including publicly filing them with the court in various proceedings.

C. Mr. Ballard's and Ms. Borys's Departure from OUR

28. OUR conducted an internal investigation related to Mr. Ballard and, on June 22, 2023, Mr. Ballard and OUR signed a Separation and Mutual Release Agreement ending his employment with OUR. He left OUR and started working at Spear Fund.

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29. There was no public announcement that OUR was “firing Mr. Ballard” nor any public statement by OUR that Mr. Ballard’s actions in the context of the “couples ruse” had been inappropriate. Mr. Ballard maintains that he resigned. Ms. Borys and others say he was fired. Whether he resigned or was fired is not material to the issues currently before the court.

30. Mr. Ballard was required to return to OUR all company-related emails and any documents or business records. That would have included any communications with OUR’s in-house or outside attorneys, and documents marked attorney-client privilege. Mr. Ballard did not comply with this requirement of his separation agreement. As noted above, virtually all business communications were sent to Mr. Ballard’s personal Gmail account and were kept by him in email files and an associated Google Drive. Mr. Ballard did not provide any of these documents to OUR upon his departure. His failure to return these documents to OUR did not amount to granting permission to Ms. Borys and her attorneys to use them as they saw fit.

31. OUR was unaware that Ballard continued to maintain copies of OUR’s confidential materials, including its privileged materials, after he left OUR. OUR made reasonable efforts under the circumstances to get Mr. Ballard to comply with his obligations under the separation agreement and communicated to him that he may be violating the confidentiality provisions of his departure agreement with OUR.

32. Ms. Borys remained at OUR for a few weeks after Mr. Ballard’s departure. She left OUR to join Mr. Ballard at the Spear Fund to continue working as his executive assistant.

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33. According to Ms. Borys, in the time leading up to her resignation, Mr. Ballard told Ms. Borys of a plan in which OUR would be dismantled, dissolved, and remade into Spear Fund. That Spear Fund would be the next iteration of OUR.

34. OUR presented Ms. Borys with a severance agreement just before her departure. She testified that she signed it because Mr. Ballard urged her to do so and she trusted Mr. Ballard. According to Ms. Borys, Mr. Ballard had told her to “just sign it. It’s okay. Just go ahead and sign it. It’s just – it’s nothing. Just go ahead and sign it.”⁵ According to Ms. Borys, Mr. Ballard told her to “sign the severance agreement to effectuate what [she] thought was a transfer from OUR to The Spear Fund with Ballard, which his Uncle Craig was supposedly carrying out.”⁶ And “[Mr.] Ballard just told [her] to sign and return it, and that it was not a big deal because OUR was becoming The SPEAR Fund and that OUR was giving a grant to The SPEAR Fund to pay our salaries.”⁷

35. Contemporaneous written communications between Mr. Ballard and Ms. Borys, however, do not support her claim that Mr. Ballard urged her to “just sign” the agreement. Rather, Mr. Ballard pointed out to her provisions that he thought she should remove from the agreement and terms he thought she should negotiate. Ms. Borys followed up with OUR on at least some of the items Mr. Ballard identified.

⁵ Borys Dep. 106: 11-14

⁶ Decl. of Celeste Borys (1/26/24) ¶ 31

⁷ Decl. of Celeste Borys (1/26/24) ¶ 34.

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36. Ms. Borys signed her severance agreement with OUR on July 7, 2023. That agreement restated the confidentiality obligations of her original employment agreement and mandated she return OUR's property. The agreement also included a severance payment.

37. Ms. Borys did not have an exit interview from OUR and was not provided any information or explanation regarding the requirements of the severance agreement.

38. After Ms. Borys signed her severance agreement and resigned her employment with OUR, OUR discontinued her access to company email.

39. On the last day Ms. Borys had access to OUR's document management system, July 7, 2023, Ms. Borys texted Mr. Ballard and asked "Can you ask your lawyer what is legal that that [sic] I can take out of my laptop for YOU? Emails contracts info to obviously benefit you etc. Only if it is not expensive and you think it's worth it. After 5 I believe I am cut off."⁸

40. Mr. Ballard did not ask her to copy any OUR documents and she did not remove any OUR documents for him. Ms. Borys also testified that she was asked to return to OUR, and did return to OUR, any of its property including all computer equipment. Ms. Borys also testified that she did not remove any documents or emails during her employment with OUR.

41. If this is true, and the court does not have any reason to believe it is not, then Ms. Borys would not have had access to any OUR documents, including any privileged documents, after

⁸ Decl. of Niko Costin (dkt. 486); BMFS Ex. 110 (dkt. 487).

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July 7, 2023 – other than those which Mr. Ballard maintained access to and which she could view using her own access to Mr. Ballard’s email and electronic files. To the extent Ms. Borys used her OUR-assigned email while working as Mr. Ballard’s executive assistant, then her access to any OUR emails and any email files, including her own, would have been cut off with the termination of her employment. Any OUR documents that might have remained on her OUR computer would have been turned back into OUR when she left. She would no longer have had access to any documents sent to her by others, since all would have been directed to her OUR email address or stored in her OUR email or other electronic files or on OUR equipment that she returned to OUR. She therefore would have no access to any documents purportedly sent to her by others, including any OUR privileged documents.

42. In short, after July 7, 2023, the only way Ms. Borys would have had access to any OUR documents, including its privileged materials, would be through Mr. Ballard’s personal Gmail and Google Drive account. Ms. Borys maintained access to Mr. Ballard’s personal Gmail and Google Drive accounts throughout this time.

43. This is why Ms. Borys testified that she had some documents from OUR that were marked privileged and confidential. She explained that “[Mr. Ballard] to me and ... to a lot of people was OUR. OUR is Tim ... *those were on my computer because I was logged in on Tim’s email.*”⁹

⁹ Borys Dep. 105:17-22.

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(Emphasis added.) If her testimony is accurate, then Ms. Borys did not have any of these documents on any of her computers, nor did she have independent access to them, after July 7, 2023, when she left OUR.

44. Ms. Borys did not sign an employment agreement with Spear Fund similar to the one she signed with OUR nor did she have onboarding or training on confidentiality of Spear Fund documents. Spear Fund appears to have been an informal operation with no offices, employees, payroll system, etc. So, although Ms. Borys purportedly worked for Spear Fund, Spear Fund wasn't paying her. Even Mr. Ballard testified that, at various points, he did not know which entity employed Ms. Borys.

45. Mr. Ballard testified that "eventually" it was decided that one of his for-profit companies would pay Ms. Borys as an independent contractor with no other benefits. Both Mr. Ballard individually and Spear Fund, at various times, paid various amounts to Ms. Borys either for salary, for reimbursement of expenses, or both, a fact that is disputed by the parties.

46. Ms. Borys testified that much of her work at Spear Fund involved communicating and coordinating with then Utah Attorney General Sean Reyes.

D. Ms. Borys's Departure from The Spear Fund

47. Ms. Borys formally resigned as Mr. Ballard's executive assistant on September 10, 2023. In the three months she worked for Mr. Ballard at Spear Fund a number of things changed that prompted her to quit. Her gradual disillusionment with Mr. Ballard and departure from Spear Fund occurred over time. She did not point to a single event as the precipitating cause. She also did

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not quit working for Mr. Ballard on September 10, 2023. Instead, she assisted in transitioning him to his new executive assistant and educating that person on what the job required. She also does not appear to have shared with Mr. Ballard her growing discontent and, at least by all external appearances, seemed to have departed amicably.

48. Ms. Borys offered a number of different reasons for her gradual falling out with Mr. Ballard.

49. Ms. Borys testified that she was not paid for her work. She testified that she also was told to pay various expenses, “maxing out my credit cards on behalf of Ballard and The Spear Fund, waiting for the non-existent grant from OUR” and was never fully reimbursed for expenses paid leaving her “financially devastated.” Mr. Ballard disputes her claim that she wasn’t paid. Whether she was or wasn’t paid is not material to the issues currently before the court.

50. She also was asked to take on additional administrative and other responsibilities and had a greater level of involvement, apparently because Spear Fund lacked the overhead and resources that were available at OUR. Ms. Borys testified that this additional responsibility, on top of her already busy schedule, as well as being apart from her family caused her additional stress and anxiety.

51. Ms. Borys stated that “Ballard’s excessive drinking and his maniac personality” also contributed to her decision.

52. Ms. Borys was aware of at least one woman who had come forward with complaints related to the “couples ruse” and Mr. Ballard’s behavior, but at that time she believed and accepted

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Mr. Ballard's explanation with respect to that individual. She was not aware that other women in addition to that person had come forward with complaints related to the "couples ruse."

53. Ms. Borys stated that she did not resign because she thought Mr. Ballard was doing anything wrong but because she "could no longer handle the stress of it all."

54. In addition, Ms. Borys felt her position with Spear Fund was negatively impacting her family life. Her "marriage was falling apart" and she "hadn't seen [her] kids very long."

55. In her September 10, 2023, resignation email and in a text message sent around the same time, Ms. Borys offered to help Mr. Ballard with the transition to his new executive assistant.

56. After she sent her resignation email, Mr. Ballard continued to email, text, call, and otherwise have Ms. Borys continue to act as his executive assistant for a period of weeks.

57. Ms. Borys testified that on September 11, 2023, the day after she sent her resignation email, she accompanied Mr. Ballard on a business trip to Washington, D.C. She said she agreed to go on this trip, despite having just resigned, because she has previously agreed to go.

58. In the mid-September time frame, Mr. Ballard was involved in a disciplinary matter before his church. Mr. Ballard asked Ms. Borys to obtain a letter from Mr. Ballard's Bishop, Les Eldredge, which she did on September 17, 2023.

59. Around this same time, Mr. Ballard had asked Ms. Borys to provide factual information related to that disciplinary matter; specifically, he requested that she write a letter stating that she, and not Mr. Ballard, had sent certain text messages from Mr. Ballard's phone as part of "couples ruse" training. Ms. Borys believed that Mr. Ballard wanted her to "take the fall" for

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him in this disciplinary matter. Ms. Borys refused because what she was being asked to say was not factually accurate. This prompted a late-night call from Mr. Ballard, which she refused to take. Mr. Ballard then called her teenage son's phone to try and speak with her.

60. Ms. Borys did provide a letter in support of Mr. Ballard on or around September 25, 2023, in which she refuted a number of things that were being said about him including that he had engaged in inappropriate conduct with an OUR employee or independent contractor.

61. Mr. Ballard hired a new executive assistant, Trevor Fenton, on or about September 26, 2023. Ms. Borys began training him and delegating tasks to him on that date and she continued to assist in the transition through early October, 2023. Ms. Borys emailed Mr. Ballard's passwords "and other information" to Mr. Fenton on October 2, 2023.

62. According to Ms. Borys, Mr. Ballard contacted her on October 1, 2023, requesting that she make travel arrangements for Mr. Ballard and his wife which, if true, indicates that he was unaware of any adversity between himself and Ms. Borys. The record reflects Ms. Borys having forwarded emails to Mr. Fenton on October 10, 2023, the same day the complaint in this case was filed.

63. Mr. Ballard assumed his new executive assistant would take steps necessary to cut off Ms. Borys's access to his email and Google Drive, by changing the passwords or otherwise. Mr. Fenton did not immediately do this.

64. At least as late as September 17, 2023, one week after Ms. Borys's resignation email, Mr. Ballard knew that Ms. Borys still had access to his email and was regularly monitoring it. On that

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date, Glenn Beck sent an email to Mr. Ballard and this email “popped up” on Ms. Borys’s phone because she was logged into Mr. Ballard’s Gmail account. Ms. Borys texted Mr. Ballard and asked if he had seen the email from Glenn Beck to which Mr. Ballard responded, “Yes. Thank you.” Ms. Borys testified that within “a day or two” Mr. Ballard texted her to ask if she had read the Glenn Beck email and that the two of them “talked about it.”

65. This exchange demonstrates three things: First, after she left Spear Fund Ms. Borys continued to have real-time, unfettered access to Mr. Ballard’s email and to his email and electronic files. Second, Ms. Borys was regularly and consistently monitoring Mr. Ballard’s email as it was received. As she acknowledged, each and every email sent to Mr. Ballard’s Gmail account – the account to which all or virtually all of his business and personal email was sent – “popped up” on her phone enabling her to click on the notification and read an email as it was received. Third, at least up through the time of the Glenn Beck email, Mr. Ballard *knew* that Ms. Borys had access to his email and, to some degree, knew that Ms. Borys was monitoring it.

66. Mr. Ballard did not formally request that Ms. Borys log out of his email or otherwise not access it after the September 17, 2023, Glenn Beck email exchange.

67. Mr. Ballard learned in early November 2023 that Ms. Borys still had access to his personal email.

68. On November 3, 2023, Mr. Fenton changed the passwords for Mr. Ballard’s Gmail and iCloud accounts and removed all devices that were logged into the Gmail account. At that time,

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he noticed two devices, a MacBook and iPhone, that did not belong to Mr. Ballard or Mr. Fenton were logged in at South Jordan, Utah. Mr. Fenton believed those devices belonged to Ms. Borys.

69. Mr. Fenton's belief was correct. Ms. Borys no longer had access to Mr. Ballard's personal email and Google Drive files beginning November 3, 2023.

E. Ms. Borys's Lawsuit Against Mr. Ballard and Search of His Electronic Files

70. The complaint in this case was filed October 10, 2023. Between October 10, 2023, when the complaint was filed, and November 3, 2023, when Mr. Fenton changed the password to Mr. Ballard's Gmail and Google Drive files, Ms. Borys continued to have real-time, unfettered access to Mr. Ballard's email and electronic files.

71. At the time this case was filed, there was one other case against Mr. Ballard and OUR filed by the same attorneys representing Ms. Borys. That case *WW, MK, DM, HDT, and DS v. Operation Underground Railroad, Inc., et al.*, Case No. 230907617 (the "WW Case"), was filed October 9, 2023, the day before this case was filed.

72. These same attorneys subsequently filed the following cases on behalf of other plaintiffs against Mr. Ballard and OUR:

- a. *Jordana Bree Righter v. Operation Underground Railroad, Inc. et al.*, Case No. 230908862 (the "Righter Case"), filed on November 20, 2023;

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- b. *Suzanne Whitehead v. Operation Underground Railroad, Inc. et al.*, Case No. 230908977 (the “Whitehead Case”), filed on November 27, 2023;
- c. *Kelly Johana Suarez Moya et al. v. O.U.R., et al.*, Case No. 240901556 (the “Moya Case”), filed on February 23, 2024.

73. Mr. Ballard was served with a summons and the complaint in this case on November 24, 2023. Personal service was effected on his wife at their residence.

74. Neither Ms. Borys nor her attorneys has identified when Ms. Borys first contacted her attorneys, first consulted with them about the possibility of bringing this lawsuit, or when they were officially retained. At the evidentiary hearing, Ms. Borys agreed with her counsel’s statement that she met with Alan Mortensen, Suzette Rasmussen, and Mike Green, three of her current attorneys, for the first time in an “October timeframe.”¹⁰

75. Ms. Borys testified that she accessed Mr. Ballard’s Gmail account around the end of October, after the lawsuit had been filed. She was, at that time, logged into his email account. Ken Krogue of the Spear Fund sent an email to Mr. Ballard that “popped up on my phone, as they do when anyone gets an email and you have ... the Gmail app on your phone....” So, for a period of weeks after filing this lawsuit on October 10, every time anyone sent Mr. Ballard an email, it would “pop up” on Mr. Borys’s phone. In other words, Ms. Borys was monitoring, in real time, all email

¹⁰ Dec 30 Hg. Transcript, 96: 9-11.

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communications with someone she had just sued and who was, at the time, unaware of the pendency of the lawsuit. Additionally, because she was logged into Mr. Ballard's email account, she would have been able to monitor all of Mr. Ballard's outgoing email by opening his "sent" email file.

76. In addition to monitoring his email communications in real time, Ms. Borys testified that she affirmatively accessed Mr. Ballard's electronic files to search for documents twice: "I think it was on the 5th and 30th of October, I want to say ... [but] I could be wrong." Ms. Borys further testified that she spent about an hour each time searching for documents in Mr. Ballard's email and electronic folders. If these dates are accurate, and if they represent the only times Ms. Borys accessed and searched Mr. Ballard's electronic files, the first occurred less than a week before filing the complaint in this case. Neither Ms. Borys nor her counsel provided the court a copy of their engagement letter, nor did either identify when that engagement letter was signed, but the court finds she must have retained these attorneys prior to October 5. In her deposition, she testified that she met with her attorneys before conducting her first search of Mr. Ballard's electronic files. The complaint in this case took some time to draft and counsel would not have drafted it unless they had been retained and at least a tentative decision made to file suit. In the absence of evidence to the contrary – evidence only in the possession of Ms. Borys and her attorneys which they have not disclosed – the only reasonable conclusion is that as of October 5, or whenever she first searched Mr. Ballard's electronic files, Ms. Borys was in the position of an adversary to both Mr. Ballard and OUR. Neither Mr. Ballard nor OUR were aware of the existence of this adversity.

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77. Ms. Borys's October 30 search would have been several weeks after the complaint was filed, but before it was served in early November, at which point she unquestionably was an adversary of both Mr. Ballard and OUR. Again, at this time neither Mr. Ballard nor OUR were aware of the existence of this adversity.

78. On direct examination in the evidentiary hearing, Ms. Borys testified that she did not search Mr. Ballard's email "with the intent of gathering documents for litigation."

79. The following exchange occurred during the evidentiary hearing:

Q: Did you have any understanding whether any documents on his G-mail would help prove your claims in this case?

A: No. That wasn't my goal. Like, my goal ever. That wasn't even my (sic) forefront of my mind. I just needed to figure what had happened to me.

Q: What about the other – other women? We know that there's other lawsuits, and we're not going to get into any of those, but did you search Tim's G-mail to try and gather documents that might be helpful to their cases?

A: Never. No.

Q: Did you consider whether any documents would be used to prove your case or the other women's cases?

A: No.

....

Q: Were you looking for things to try and put your life back together again?

A: Yes.

Q: Did you think anything that you were seeing was confidential?

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A: No.

80. Ms. Borys's testimony at the evidentiary hearing regarding the reason why she accessed and searched Mr. Ballard's electronic records is not credible.

81. First, and most important, in a declaration filed almost a year earlier in *WW, et al. v. OUR, et al.*, Case No. 230907617 (Third District Court) (Koch, J.), Ms. Borys contradicted that testimony. In her declaration she identified the documents she obtained from Mr. Ballard's electronic records and explained why she copied them and gave them to her attorneys.

82. In that declaration Ms. Borys explains that her "access to Mr. Ballard's emails was never formally or informally revoked" and that "[m]any of the documents that Ballard complains about being made public came to [her] own email."¹¹ She then states: "It was only after the brave five women came forward and Ballard was no longer grooming me and lying to me, that I was able to see what a manipulative monster Ballard is." She concludes:

Given the threats that Ballard has made to others, having the Utah Attorney General as one of his best friends, seeing him shame the women that he has sexually assaulted and had affairs with, and knowing the cult-like following of Ballard's donors, knowing that Ballard has used his grants and "donations" to foreign law enforcement to have people arrested, *I felt these documents that I was provided and given full access to by Ballard were relevant to the matter and would provide proof when I, and others, made our complaints public, about Ballard and OUR.*¹²

¹¹ Borys Decl. (1/26/24) (Docket 84 in *WW v. OUR*, Case No. 230907617) ¶ 57.

¹² *Id.* ¶ 60-61 (Emphasis added.).

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Id. ¶ 61 (Emphasis added.) Ms. Borys’s declaration never mentions that she accessed and copied the documents in order to “understand what had happened to her”; rather, it makes clear she accessed and copied them because they “were relevant to the matter and would provide proof when I, and others, made our complaints public....”¹³

83. Second, Ms. Borys testified that, as part of her process of searching Mr. Ballard’s files, she eventually began using search terms. She believes some of first search terms she used were “Sean Reyes” and “Troy Rawlings” two high-profile individuals who had connections to Mr. Ballard. Mr. Reyes was then Utah’s Attorney General and was, Ms. Borys believed, one of Mr. Ballard’s best friends. That relationship generated significant public interest in this dispute. Mr. Rawlings, the Davis County Attorney, was purportedly directing a criminal investigation into Mr. Ballard and OUR that

¹³ In contrast to her declaration testimony, Plaintiffs’ Written Closing Argument states: “Celeste’s motivation and mindset for accessing, printing, and giving the Documents to her lawyers *were not based in any way on selecting documents to further her case* or on circumventing the discovery process in this action.” Pls. Written Closing Argument, at 15 (Emphasis added.). She then attempts to explain her declaration testimony by arguing that the court must consider it in context and, specifically, suggests that at the time of her declaration, January 26, 2024, she thought the documents “were relevant” and “would provide proof when I, and others, made our complaints public” but that isn’t necessarily what she thought in October 2023, when she was accessing and copying the documents. *Id.* at 17 (“While she may have retroactively felt the Documents may be relevant, that does not mean she knew or believed they were relevant to litigation at the time she obtained those documents which were not already in her possession.”). There are at least two problems with this argument. First, in her testimony at the evidentiary hearing Ms. Borys never offered this explanation, or any explanation, for the statements in her declaration despite ample opportunity to do so. Counsel’s argument in a brief is not evidence. Second, the argument is contradicted by the declaration itself, the purpose of which was to explain when and why she accessed and copied the documents.

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had been the subject of significant internal discussion and was likewise a high-profile matter of considerable interest in the media. Notably, Ms. Borys never mentioned having searched her own name, something the court would expect her to do if she genuinely was “trying to understand what had happened to her.”

84. Third, Ms. Borys testified that when she found meaningful documents, she printed them and gave them to her attorneys. The only people with whom she discussed the documents or to whom she provided copies were her attorneys. She does not, for example, reference having discussed them with a therapist or mental health care provider, a religious or spiritual advisor, her spouse or a close friend, or any other type of individual one would be expected to consult if the sole reason was trying to understand the impact of traumatic events. Providing documents to her attorneys is not consistent with trying to “understand what had happened to her” but it is consistent with the statement in her declaration that she was looking for documents that were “relevant to the matter” and would provide “proof” when she “made her complaints public.”

85. Ms. Borys’s inconsistent testimony on this basic point undermines her credibility generally. The court, for example, does not find credible Ms. Borys’s claim that she only searched Mr. Ballard’s electronic files on two occasions, each consisting of no more than an hour.

86. Although Ms. Borys discussed what she was doing with her attorneys and provided the documents she found to her attorneys, there is no credible evidence that her attorneys told her to access and copy the documents or that she did so at their direction. There is no credible evidence

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that Ms. Borys ever asked her attorneys whether it was okay for her to access Mr. Ballard's electronic files, nor is there any credible evidence of Ms. Borys's attorneys having given her any legal advice regarding accessing the documents. Ms. Borys purports to raise an advice-of-counsel defense, but fails to provide the factual information necessary to establish such a claim. At the December evidentiary hearing, the following exchange took place:

Q: Did you rely on the legal advice that was given to you by your lawyers in the use of the documents?

A: Yes.

Q: Okay. Your personal computer and phone, do you still have them?

THE COURT: Just – I'm sorry. ... Thus far, I've heard nothing about her having received any advice. So you're saying that she relied on legal advice, but I think you're leaving something hanging in the air. I haven't heard anything about a single communication with lawyers about ...

Ms. Van Orman: And I wasn't going to get into that, because I thought it was privileged information.

THE COURT: No. No. ... I understood we had a conversation at the beginning of the day today about privilege being waived.

....

So I'm just letting you know that, simply having her say that she relied on her attorneys, that's not advice of counsel that she can rely on. If she's going to rely on advice of counsel, then we need to know who she talked to, what they said, what she said, when it occurred, so on and so forth. Her simply saying she relied on the advice of lawyers is not going to be sufficient. And if you need some time to talk about that, you can talk about it. But her simply saying that she relied on advice from attorneys is not going to cut it. ... We don't need to do this now. If you want to have – if you want to talk about how far you want to go down this road,

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that's fine. But I think in fairness to you, I just wanted to let you know that that's not going to be enough.¹⁴

87. Following a lunch break, Ms. Borys testified that after searching for documents and printing them, she contacted one of her attorneys, Ms. Rasmussen, and asked if she could show her some documents. The two met and reviewed documents Ms. Borys had obtained from Mr. Ballard's electronic files. Ms. Rasmussen reviewed the documents and asked Ms. Borys whether Mr. Ballard knew she had access, to which Ms. Borys responded "yes." Ms. Rasmussen asked whether Mr. Ballard had told her not to access them, and Ms. Borys responded "I haven't talked to him. He has not revoked my access." Ms. Borys left the documents with Ms. Rasmussen. Ms. Borys did not identify any legal advice given to her by Ms. Rasmussen regarding accessing the documents. Ms. Rasmussen did not testify.

88. Ms. Borys also testified that she met with Mr. Mortensen and reviewed with him documents she had copied from Mr. Ballard's electronic files some time in November. According to Ms. Borys, Mr. Mortensen asked her repeatedly "Do you have – did you – does he know you're in this email? How did you get it?" Ms. Borys responded: "I'm still logged in on my – on this phone and on this computer, and I haven't talked to him. And he hasn't taken away access. And that's how I got the documents."¹⁵ Eventually Mr. Mortensen asked her for permission to use the documents

¹⁴ December 30 Hg. Tr., 109:4-110:22.

¹⁵ December 30 Hg. Tr., 115:19-116:5.

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and she gave him permission. Ms. Borys did not identify any legal advice given to her by Mr. Mortensen regarding accessing the documents. Mr. Mortensen participated in the evidentiary hearing as counsel, but did not testify.

89. Ms. Borys's attorneys should have advised her to stop accessing Mr. Ballard's electronic files immediately, and to instead rely on the discovery processes in the then-pending (or impending) case. The fact that her attorneys did not tell her to stop, however, does not amount to giving her legal advice that what she was doing was permissible.

90. Ms. Borys admitted she did not rely on the advice of counsel. In response to a question about whether, with respect to her initial review of documents, she "receive[d] any advice from counsel allowing, encouraging you, or permitted you to initially access the documents in Mr. Ballard's G-mail and print them out? Did you receive any advice of counsel allowing you to do that?" Ms. Borys responded "No" and acknowledged that was "100 percent on my own."¹⁶

91. When Ms. Borys provided the documents to her attorneys, she knew they would be used in her case and in the cases brought by other women, and she consented to them being used in this fashion.

92. Ms. Borys has epilepsy which is treated with a vagus nerve stimulator. She has suggested that this medical condition somehow affected her ability to appreciate the nature of her

¹⁶ December 30 Hg. Tr., 226:16-25.

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conduct or that it otherwise justifies her conduct. Ms. Borys self-reported certain symptoms of this medical condition, but none that obviously bear on the question of whether Ms. Borys lacked the ability to understand or appreciate the nature of her conduct. Ms. Borys did not call any medical experts to address this. Ms. Borys has not shown with any credible evidence that any medical issue she may have played a role in her decision to search Mr. Ballard's electronic records.

93. Counsel for Mr. Ballard represented that during the time in question Ms. Borys would have had access to approximately 40,000 emails and documents belonging to Mr. Ballard and/or OUR. That figure was not disputed.

94. Ms. Borys reviewed more documents than the 94 or so documents that she took.

95. Some of the documents were stamped "privileged and confidential attorney client communication".

96. Some contained sensitive personal information, such as a patriarchal blessing given to Mr. Ballard. A patriarchal blessing is a sacred ordinance in the Church of Jesus Christ of Latter-day Saints whereby an authorized patriarch, under divine inspiration, gives a personalized blessing to a church member. Members of the Church of Jesus Christ of Latter-day Saints regard patriarchal

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blessings as sacred and confidential, to be viewed only by the recipient and the recipient's close family members.¹⁷

97. Some of the documents Ms. Borys took contained financial information belonging to Mr. Ballard and members of his family. Other documents contained financial and other internal information that OUR considered confidential and/or proprietary.

98. Some of the "documents" were, when filed, compilations of multiple documents that Ms. Borys combined into a single PDF, even though they are unrelated documents with different dates. In one instance, Ms. Borys combined two documents together: a non-privileged email from OUR's outside counsel to an attorney at the Utah Attorney General's office and a draft document discussing the Troy Rawlins investigation marked "DRAFT-ATTORNEY CLIENT PRIVILEGE." OUR's outside counsel confirmed the two communications are unrelated and Ms. Borys seemed to acknowledge as much. Combining them created the impression that a document marked privileged had been sent to a third party. That combined "document" was thereafter filed publicly as an exhibit to the First Amended Complaint in the *WW* case.

99. Mr. Ballard claims he first learned that documents had been taken from his electronic files when the documents were publicly filed by Ms. Borys's attorneys in their other clients' cases.

¹⁷ *Church History, Frequently Asked Questions, Patriarchal Blessings*, CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, (April 6, 2021) <https://history.churchofjesuschrist.org/faq/library/patriarchal-blessings?lang=eng>.

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100. The First Amended Complaint in the WW case was filed on November 2, 2023. Ms. Borys's attorneys attached to that complaint eleven exhibits that were among those Ms. Borys took from Mr. Ballard's electronic files.¹⁸ Two of those documents contain an "attorney-client privilege" legend on them; two others are communications between OUR executives and its in-house and outside attorneys. Mr. Ballard's patriarchal blessing also was attached as an Exhibit.

101. On November 27, 2023, Suzanna Whitehead, represented by the same counsel as Celeste Borys, filed a complaint, *Suzanne Whitehead v. Utah Attorney General Sean Reyes; Timothy Ballard; Operation Underground Railroad, Inc., and Does 1 through 100*, Case No. 230908977 (the "Whitehead Case"). This complaint included eight of the same documents at issue attached as exhibits.

102. Ms. Borys's attorneys did not inform counsel for OUR or Mr. Ballard that they were in possession of documents marked privileged and confidential. Mr. Ballard's attorneys first contacted Ms. Borys's attorneys about the documents via letter on December 4, 2023, in which they expressed concern that "Ms. Borys had accessed Mr. Ballard's email without authorization and obtained documents her counsel publicly filed, including private, confidential, and attorney-client

¹⁸ See First Am Compl. in *WW, MK, DM, HDT, and DS v. Operation Underground Railroad, Inc., et al.*, Case No. 230907617 (dkt 3); Exhibits F, H, I, J (dkt. 5); Ex. K (dkt. 6); Exs. L, M, N (dkt. 8); and Exs. O, P, Q (dkt 9). These documents were subsequently marked "private" and public access to them was limited in accordance with court rules.

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privileged communications.” Counsel requested the documents be returned and removed from the public filing.

103. Counsel for Ms. Borys responded to Mr. Ballard’s counsel in a letter dated December 6, 2023, with a number of follow-up questions directed towards Mr. Ballard such as “what authority Mr. Ballard has to act in OUR’s name” and “who Mr. Ballard believes to be the owner of said exhibits and images and why he believes he is the owner,” and stated that “[o]nce we receive this information, we will be in a position to respond to your requests.”¹⁹

104. On January 26, 2024, in the *WW* case, Ms. Borys submitted a declaration in which she identified at least 92 documents that she had taken from Mr. Ballard’s electronic files. She provided an index of those documents and testified about how she had obtained them and why.

105. On January 31, 2024, Mr. Ballard’s counsel filed a Motion for a Rule 16 Pretrial Conference and in it requested leave to conduct an early, limited deposition of Ms. Borys to determine the extent of the privileged and private information taken by her. Ms. Borys responded on February 14, 2024, and on February 20, 2024, this court held a hearing on the motion. Among other things, the court ordered limited 2-hour depositions of Ms. Borys, Mr. Ballard, and a Rule 30(b)(6) deposition of OUR. Counsel for Ms. Borys represented to the court that “until the Court

¹⁹ Exhibit BMFS 6, docket no. 478.

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rules on this, that we will not disseminate them [i.e., the documents Ms. Borys took from Mr. Ballard's electronic files] any further."²⁰

106. Three days later, on February 23, 2024, Ms. Borys's counsel publicly filed one of the documents as Exhibit H to the Complaint in the *Moya Case*. This document was identified as Exhibit P on the index prepared by Ms. Borys.

107. Ms. Borys was deposed on March 22, 2024. Both Mr. Ballard and a Rule 30(b)(6) witness for OUR were deposed on March 24, 2024.

108. On March 25, 2024, Mr. Ballard filed his first Motion for Sanctions based on Ms. Borys's attorneys filing Exhibit H to the *Moya* Complaint the day after representing they would make no further use of the documents pending a ruling by the court.

109. Mr. Ballard filed his Motion for Terminating Sanctions on May 17, 2024. (Dkt. 475.) Plaintiffs filed their opposition on June 18, 2024, (Dkts. 549-556) and Mr. Ballard filed his reply on July 3, 2024 (Dkt. 615). Plaintiffs also submitted an Addendum to Memorandum Opposing Ballard's Motion for Terminating Sanctions on July 16, 2024. (Dkt. 673).

110. OUR filed its Motion for Terminating Sanctions on June 26, 2024. (Dkt. 601.) Plaintiffs filed their opposition on July 10, 2024, (Dkt. 640) and OUR filed its reply on July 20, 2024. (Dkt. 720). The parties also filed various ancillary motions related to the Motion for Terminating Sanctions, all

²⁰ Rule 16 Hearing Tr. at 16:9-19.

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of which were addressed at or prior to an evidentiary hearing held December 30 and 31, 2024. The parties elected to submit written closing arguments, which were filed on February 28, 2025, and April 3, 2025. Various ancillary and related motions have been filed and briefed since that time.

111. Currently, there are 1,286 docket entries in the case. The case has been pending for 21 months and, based on the docket, it appears little to no merits discovery has been conducted.

DISCUSSION

Mr. Ballard and OUR ask the court to grant terminating sanctions pursuant to rule 37 of the Utah Rules Civil Procedure and the court's inherent powers. Under rule 37, a court may impose sanctions where: (i) a party failed to follow the court's order instituted pursuant to rule 37's authority; (ii) a party failed to attend a deposition; or (iii) a party spoliates evidence. Utah R. Civ. P. 37 (b), (d) & (e).²¹ "In cases meriting [rule 37] sanctions, there is often a consistent pattern of behavior disregarding discovery requirements or court orders, as well as evidence that the sanctioned party is on notice that its pattern of behavior will result in sanctions if it continues." *Kilpatrick v. Bullough Abatement, Inc.*, 2008 UT 82, ¶ 35.

Here, the court cannot grant relief under rule 37. No court orders had been issued at the time the conduct by Ms. Borys and her attorneys occurred, thus their conduct did not violate any

²¹ Rule 37 also provides authority for the court to grant costs, expenses and/or attorney fees pursuant to other discovery violations. Utah R. Civ. P. 37(c)

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court order, and there is no claim of spoliation of evidence. Sanctions are therefore not available under rule 37. Nevertheless, the court has inherent authority to regulate the conduct and proceedings before it, and that inherent authority includes the authority to grant terminating sanctions in the unusual circumstances where such extreme sanctions are appropriate. In Utah,

courts of general and superior jurisdiction possess certain inherent powers not derived from any statute. Among these are the power to punish for contempt, to make, modify, and enforce rules for the regulation of the business before the court, ... to recall and control its process, to direct and control its officers, including attorneys as such, and to suspend, disbar, and reinstate attorneys. Such inherent powers of courts are necessary to the proper discharge of their duties....

The summary jurisdiction which the court has over its attorneys as officers of the court ... is inherent, continuing, and plenary ... and ought to be assumed and exercised ... not only to maintain and protect the integrity and dignity of the court, to secure obedience to its rules and process, and to rebuke interference with the conduct of its business, but also to control and protect its officers, including attorneys.

In re Evans, 130 P. 217, 224-25 (Utah 1913); *see also* Utah Code § 78A-2-201(5) (“Every court has authority to ... control in furtherance of justice the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it in every matter”); *id.* § 78A-2-201(3) (“Every court has authority to ... provide for the orderly conduct of proceedings before it or its officers....”).

This inherent power to regulate necessarily includes the ability to enforce such regulation through diverse and appropriate means, including levying monetary sanctions, excluding evidence, or disqualifying counsel from a case. *Featherstone v. Schaerrer*, 2001 UT 86, ¶ 16. “A court’s power

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to enforce its rules implies the existence of a mechanism for enforcement. That mechanism may take a variety of forms... Without sanctions, the power to enforce would be meaningless. As well as being consistent with our precedent in this area, this result also comports with the trial court's statutory authority to control proceedings before it." *Banard v. Wassermann*, 855 P.2d 243, 249 (Utah 1993) (citing Utah Code Ann. §§ 78-7-5, 78-7-17 [*renumbered as* Utah Code Ann. §§ 78A-2-201 & 78A-2-218 (2025)]).

Stated another way, courts have the authority to manage their own affairs as necessary to maintain an orderly and just system and "[t]hat authority includes 'the ability to fashion an appropriate sanction for conduct which abuses the judicial process.'" *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101 (2017) (quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45 (1991)). Further, an appropriate sanction may include dismissal which, though severe, is within the court's discretion. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45 (1991) ("[O]utright dismissal of a lawsuit . . . is a particularly severe sanction, yet is within the court's discretion.")

Utah's appellate courts have not yet articulated a standard or test for courts to apply when considering terminating sanctions pursuant to their inherent authority, but several cases provide helpful guidance. "Upon hearing from the parties, completing its fact-finding, and assessing the extent of [a party's wrongdoing], the trial court may exercise its inherent power and levy sanctions." *Wilson v. IHC Hospitals, Inc.*, 2012 UT 43, ¶ 94 (cleaned up). The Utah Supreme Court has held that district courts have the power to levy sanctions including attorney fees, fines, exclusion of evidence, and even disqualification of counsel or a firm." *Featherstone v Schaerrer*, 2001 UT 86, ¶ 16. Most

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importantly, “the court should be careful to ensure that any sanction is appropriately related to the nature of the misconduct and the resulting prejudice, either actual or potential.” *Wilson v. IHC Hospitals, Inc.*, 2012 UT 43, ¶ 94.

Utah courts also have adopted a standard for imposing terminating sanctions under rule 37. “Sanctions are warranted when (1) the party’s behavior was willful; (2) the party has acted in bad faith; (3) the court can attribute some fault to the party; or (4) the party has engaged in persistent dilatory tactics tending to frustrate the judicial process.” *Kilpatrick v. Bullough Abatement, Inc.*, 2008 UT 82, ¶ 14. And Utah’s Federal District Court, guided by Tenth Circuit authority, has adopted a standard that applies specifically to terminating sanctions grounded in the court’s inherent authority. *Xyngular Corp. v. Schenkel*, 200 F.Supp. 3d 1273 (D. Utah 2016), *aff’d sub nom., Xyngular v. Schenkel*, 890 F.3d 868 (10th Cir. 2018). In *Xyngular*, the court concluded that terminating sanctions were appropriate against a party who engaged in bad faith misconduct by requesting a third party surreptitiously collect documents which he later reviewed and ultimately used in litigation, circumventing lawful discovery mechanisms. *Xyngular Corporation v. Schenkel*, 200 F. Supp. 3d 1273, 1216 (D. Utah 2016) (“The court may exercise its inherent powers to sanction Schenkel only if the Xyngular Parties show by clear and convincing evidence that he acted willfully, in bad faith, or with some fault [when he committed discovery violations but did not specifically violate a court order].”).

The federal standard is not inconsistent with Utah law, but instead appears consistent with the standard that the court would apply under rule 37 and thus can help ensure that “the sanction

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is appropriately related to the nature of the misconduct and the resulting prejudice.” *Wilson v. IHC Hospitals, Inc.*, 2012 UT 43, ¶ 94. Accordingly, the court here will analyze the facts at hand using this standard for guidance.

At the outset, the court recognizes the strong preference that cases be decided on the merits, and that dismissal of a case for discovery violations is a severe sanction that should be imposed only if lesser sanctions would not serve the ends of justice. “For this reason, dismissal is appropriate only when the party seeking sanctions proves ‘wilfulness, bad faith, or some fault’ by clear and convincing evidence.” *Xyngular*, 200 F. Supp. 3d at 1301 (cleaned up). “Conduct amounts to ‘bad faith’ if it shows ‘intentional or reckless disregard’ of the rules.’ But actual ill will is not required; ‘substantial and prejudicial obduracy’ or conduct that delays or disrupts the litigation can be enough.” *Id.* (cleaned up). A movant makes either of these showings by clear and convincing evidence ‘if the evidence places in the ultimate factfinder an abiding conviction that the truth of its factual contentions [is] highly probable.’” *Id.* at 1301-02 (cleaned up).

“Because dismissal is a harsh sanction, it must be exercised with restraint. The Tenth Circuit Court of Appeals has articulated five so-called *Ehrenhaus* factors that district courts should evaluate when considering whether to impose the sanction of dismissal: (1) the degree of actual prejudice to the opposing party, (2) the degree of interference with the judicial process, (3) the litigants culpability, (4) whether the litigant was warned in advance that dismissal was a likely sanction, and (5) whether a less sanction would be effective.” *Id.* at 1302; *see also Ehrenhaus v. Reynolds*, 965 F.2d 916, 921 (10th Cir. 1992).

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A. The Evidence Clearly and Convincingly Establishes Intentional Conduct Designed to Circumvent the Discovery Process.

“Parties anticipating litigation may not engage in self-help by improperly gathering a potential adversary’s property. This conduct is an affront to the established rules of engagement and fair play in lawsuits. It amounts to an end-run around the Federal Rules of Civil Procedure, including the rules governing discovery and the orderly exchange of information relevant to disputes presented for resolution in our courts. This conduct undermines the confidence of both litigants and the public in the fairness of judicial proceedings.” *Xyngular*, 200 F. Supp. 3d at 1317. The *Xyngular* case cites two other federal cases for the unremarkable proposition that surreptitiously gathering documents from a litigation adversary amounts to sanctionable conduct. See *Glynn v. EDO Corp.*, 2010 WL 3294347 (D. Md. Aug. 20, 2010); *Jackson v. Microsoft*, 211 F.R.D. 423 (W.D. Wash. 2002). In *Glynn*, a former employee of the defendant obtained from a current employee before the litigation was filed the defendant’s non-public, internal documents and other information. *Glynn*, at *1-5. And in *Jackson*, the plaintiff obtained thousands of company documents from his supervisor’s computer shortly before leaving the company. *Jackson*, at 425-32. In *Jackson* and the *Xyngular*, the court imposed terminating sanctions; in *Glynn*, the court imposed a monetary sanction.

The conduct in this case is more serious and egregious than the conduct in any of these other cases for several reasons.

First, Ms. Borys accessed, copied, and delivered to her attorneys documents that were marked on their face as being subject to attorney-client privilege as well as documents that were

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exchanged between in-house counsel for OUR, outside counsel for OUR, and members of OUR's control group. In *Xyngular* and *Jackson*, the parties involved obtained confidential and proprietary information, but so far as the court can tell those documents did not include potentially privileged materials. If a client involved in a dispute with the client's former employer delivers to her attorney documents from the former employer's files that are marked "attorney-client privilege," that should set off alarm bells. If the exact same documents had been produced by OUR or Mr. Ballard in discovery, Ms. Borys's attorneys likely would have been required to alert opposing counsel of this fact before making use of the documents, as detailed in the Utah State Bar's Ethics Advisory Opinion No. 99-01. There, the ethics advisory committee addressed an attorney's obligations when an opposing party produces documents under conditions where the opposing party may not have intended to waive the attorney-client privilege. Ultimately, the advisory committee determined that "an attorney in possession of an opposing party's attorney-client communications for which the attorney-client privilege has not been intentionally waived should advise opposing counsel of the facts of its disclosure, regardless of the specific facts surrounding its disclosure." Utah Ethics Opinion 99-01, at *2.

There is nothing on the face of the documents to indicate that the privilege was intentionally waived and, in response to questions from the court, Ms. Borys denied having discussed with her attorneys the particular circumstances surrounding her acquisition of the documents or to whom they had been disclosed, which would have been necessary to determine whether the privilege had been intentionally waived. In the context of inadvertently produced privileged materials, the ethic's

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committee continues, “[o]nce the fact of disclosure is before both parties, they can then turn to the legal implications of the disclosure and a legal assessment of whether waiver has occurred. In some instances the parties may be able to agree regarding how to handle the disclosure. In other instances, it may be necessary to see judicial resolution of the legal issue.” *Id.*²² This has been the settled, accepted, and standard practice among lawyers for more than 20 years. Ms. Borys’s attorneys did not notify counsel for Mr. Ballard or OUR that it had come into possession of potentially privileged documents, but instead made use of those documents, attaching them as exhibits to pleadings filed with the court, and they then refused to turn over the documents when the issue was brought to their attention after counsel for defendants had discovered for themselves that this had occurred.

Second, in this case, there is evidence that Ms. Borys monitored Mr. Ballard’s electronic communications in real time: she testified she received a notificaton on her phone whenever Mr. Ballard received a new email and, in at least two instances that she admits to, she read Mr. Ballard’s correspondence as it arrived in his inbox at a time when she knew her interests and Mr. Ballard’s

²² The Utah ethics opinion cites ABA Formal Opinion 94-382, in which the ABA “addressed the somewhat different situation where a third party provided an attorney-client communication to a lawyer, without being solicited to do so.... The opinion concluded that the best course of action [in that scenario] was for the receiving attorney to advise opposing counsel of the disclosure, and then either return the documents or seek assistance from the court in determining the appropriate course of action under the particular facts at hand....” *Id.* at *2. That scenario is analogous to this one.

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interests were adverse, including at least once after she had filed this lawsuit. Remarkably, to Ms. Borys, it seemed entirely normal for her to continue to read communications to Mr. Ballard after quitting her job, lawyering up, and suing him. Even as of the time of the December 2024 evidentiary hearing she did not seem to grasp why anyone would think what she did was problematic; she minimized her actions by stating that these communications “just popped up” on her phone or computer and, naturally, she just read them. Based on her testimony and demeanor, the court believes Ms. Borys read far more than just the two emails she admitted to in her testimony. Indeed, she had at her fingertips all of Mr. Ballard’s incoming and outgoing email communications both before and after filing suit.

To put this in context, this court is unaware of any instance anywhere in which a civil litigant has been permitted to monitor the content of their opponent’s communications in real time. In the context of a criminal proceeding, law enforcement and prosecutors would not be permitted to monitor the content of a defendant’s or suspect’s email communications in real time without meeting the stringent and exacting requirements of Utah’s wiretap statute, one of which is judicial approval and oversight of the means, manner, and content of intercepted communications. See Utah Code Ann. § 77-23a-8. None of the other cases cited to the court involve real-time monitoring of the content of a litigation opponent’s electronic communications.

To be sure, Ms. Borys previously had permission to review these materials in the manner she did, but that permission ended when she quit her job. And her last day with Spear Fund was somewhat ambiguous, because of her willingness to transition her job responsibilities to another

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and because Mr. Ballard continued to reach out to her. But at some point prior to October 10 she decided to sue Mr. Ballard and OUR. At that point, she was required to cease monitoring his electronic communications. She didn't. Ms. Borys justifies her conduct by blaming Mr. Ballard for being careless about not changing his password or cutting off her access. And he undoubtedly was negligent. But his negligence doesn't excuse or justify her conduct. An employer who neglects to collect a former employee's keys to the office when they quit does not thereby grant that former employee permission to use those keys to come and go as they please. Likewise, an employer who neglects to cut off a former employee's access to the computer network isn't giving the former employee permission to log on at will. Although this seems so obvious as to not require explanation, neither Ms. Borys nor her attorneys seem to grasp the point.

Third, Ms. Borys admits that she personally accessed Mr. Ballard's electronic files *after* this lawsuit had been filed. She conducted a series of keyword searches through tens of thousands of documents, curating a selected list of documents that she believed provided the "proof" needed to support her claims and the claims brought by other plaintiffs. In the other cases cited by the parties the documents were collected by others, or were gathered prior to the offending party leaving the employ of the party whose materials were taken. Here, the documents – or at least the documents copied during the second search identified by Ms. Borys – were gathered after the complaint had been filed and at a point in time when the Utah Rules of Civil Procedure unquestionably applied and

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governed the discovery process.²³ The rules of civil procedure do not envision or allow this type of “self-help” evidence gathering,²⁴ and the various requirements and restrictions for disclosures and discovery in the context of a pending lawsuit were not followed.

Ms. Borys responds that she had access to all of these documents while she was employed by OUR and/or Spear Fund, and that Mr. Ballard, OUR, and Spear Fund all knew she had access to them. There is no doubt that while she was employed by OUR and Spear Fund, Ms. Borys had access to all of the documents she took after her employment with Spear Fund ended, at least insofar as those documents existed at that time. This is a function of the fact that Mr. Ballard, OUR, and Spear Fund gave her (or allowed her to have) unlimited access to Mr. Ballard’s electronic files as his executive assistant. Likewise, while working at OUR and Spear Fund Ms. Borys could have run the same keyword searches and located the same documents she located after she quit Spear Fund and sued defendants. This too is a function of the unlimited access she was given while employed by these companies. And some of the documents may have been sent directly to her, by email or by text, while she was working for Mr. Ballard and she therefore had them in her “possession” at one

²³ At one point Ms. Borys testified that she did not provide any of the documents at issue until after the lawsuit had been filed, at which point the rules of civil procedure applied.

²⁴ This is not to say the rules of civil procedure do not permit informal discovery or evidence gathering. They certainly do and, in fact, encourage this practice as a less-expensive and less burdensome means to prepare for trial. But when it comes to collecting the internal documents of your opponent from your opponent’s files, the limitations and restrictions of the rules surely do apply.

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point in time. But these arguments miss the point: Ms. Borys had access to these materials *because* she was employed by these companies and she had access to them in her capacity as their employee and Mr. Ballard's executive assistant. Her right to access these documents ended when her employment ended. The agreements she signed with OUR upon commencement of her employment and upon its termination made this explicit. And although she did not sign similar agreements with Spear Fund, a written agreement is not required to establish this basic proposition.

In short, the record clearly and convincingly establishes that the conduct by Ms. Borys and her attorneys was intentional or willful. It was a deliberate effort to bypass discovery and the requirements of the rules of civil procedure, and it resulted in potentially privileged communications being publicly disclosed, rather than turned over to opposing counsel as long-established standards require. The nature of the conduct and the refusal to accept any accountability or responsibility for it, together with the use to which materials were put, weighs very strongly in favor of terminating sanctions.

B. Prejudice to Mr. Ballard and OUR

Ms. Borys took between 90 and 100 documents from Mr. Ballard's electronic files. So far as the court can tell, none of the documents mention Ms. Borys by name and none appear to be directly related to her claims in the case. Instead of searching for documents directly relevant to her claims, Ms. Borys seems to have searched for documents that she or her attorneys believe would cast OUR, Mr. Ballard, and parties related to them in a negative light generally.

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Most of the documents probably would have been produced in discovery, many subject to an appropriate protective order. So, in this sense, had they been patient, plaintiffs likely would have received in discovery many of the documents at issue. With respect to the documents marked as attorney-client privilege, depending on the outcome of a waiver analysis, plaintiffs ultimately may have received them too.

OUR and Mr. Ballard claim they have been prejudiced as a result of being deprived of the processes and protections afforded by the rules of civil procedure, and that is undoubtedly true. Had proper procedures been followed, they could have resisted discovery of certain materials, sought a protective order to prohibit dissemination of some of the materials, and protected (or attempted to protect) what they claim to be privileged communications. The court agrees that OUR and Mr. Ballard have been prejudiced by plaintiffs circumventing the rules.

Their larger claim of prejudice, however, concerns the use to which these materials were put and the media campaign they contend plaintiffs have orchestrated relying, at least in part, on the documents. OUR contends that “[p]laintiffs intentionally pushed OUR documents into the public domain by press releases and press conferences designed to point the media and the public to the attachments to the several complaints.”²⁵ Had proper procedures been followed, OUR could potentially have prevented some of these materials from ending up in the public domain – at least

²⁵ OUR Closing Brief, at 64-65.

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up until the time of trial.²⁶ The purported media campaign and the public filing of documents with the court was not done by Ms. Borys herself, but instead by her counsel or others. Although Ms. Borys consented to the use of the documents for purposes of the various lawsuits, there is no evidence to suggest Ms. Borys was consulted regarding how the documents would be used or whether they would be filed in a way that made them publicly accessible for a time. Her lack of personal involvement in these decisions weighs against terminating sanctions.

Ultimately the court finds the element of prejudice weighs in favor of sanctions, and mildly in favor of terminating sanctions. Were it not for the egregiousness of the plaintiffs' conduct, as described in Part A above, then this factor would support a sanction of something less than dismissal of the claims. Consideration of this factor, along with the nature of the conduct at issue, supports terminating sanctions.

C. Degree of Interference with the Judicial Process

This factor weighs in favor of terminating sanctions for all of the reasons discussed in Part A above.

²⁶ The court does not find persuasive Mr. Ballard's contention that publication of the documents has somehow compromised or prejudiced work related to assisting victims of human trafficking or that victims of human trafficking have somehow been harmed or their identities compromised. This claim is speculative, at best.

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D. Culpability

The degree of culpability in this case is high, for all of the reasons discussed in Part A above, and this factor likewise weighs in favor of terminating sanctions. Ms. Borys has pointed to a medical condition she suffers from, but nothing in the record establishes any meaningful connection between that condition and the conduct at issue. Ms. Borys also toyed at various times with an advice-of-counsel explanation for her conduct, but that claim ultimately finds no factual support in the record.

E. Advance Warning that Dismissal was a Likely Sanction

Well established legal standards plainly prohibit this type of litigation conduct. *Xyngular* was decided almost a decade ago. The *Glynn* and *Jackson* cases go back decades, and the Utah and ABA ethics advisory opinions represent litigation standards and practices that likewise have existed for decades. The attorneys representing Ms. Borys knew – or they certainly should have known – that a potential consequence of her surreptitious monitoring of Mr. Ballard’s electronic communications and searches of his electronic files while the parties were adverse and after the complaint had been filed could potentially result in her case being dismissed. This is a significant aggravating factor. Ms. Borys, on the other hand, is not an attorney and not versed in the standards for and expectations surrounding litigation practice. Although Ms. Borys should have known what she was doing was wrong, the court cannot say she knew or understood the potential consequence might be dismissal of her case. This is a meaningful mitigating factor. Taking both into consideration, the court

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concludes that this factor is neutral insofar as it relates to whether terminating sanctions, as opposed to something less than terminating sanctions, are appropriate.

F. Efficacy of a Lesser Sanction

The only sanction short of terminating sanctions that the court considers potentially appropriate would be an order that (a) requires the return of all of the documents, (b) prohibits Ms. Borys from making any use of the documents or information contained in them, including excluding her use of such information at trial, (c) disqualifying Ms. Borys's attorneys from representing her in this case, and (d) payment of Mr. Ballard's and OUR's fees and expenses incurred in litigating this issue. In the court's view, a sanction of this nature represents the bare-minimum appropriate in light of the conduct at issue.

Ms. Borys argues that even if her conduct is determined to be inappropriate, no sanction is warranted because a sanction imposed by the court based on its inherent authority is equitable in nature, and both OUR and Mr. Ballard have asserted legal claims for relief based on these same facts. Specifically, OUR has filed a counterclaim in this case based on Ms. Borys's alleged improper acquisition of its documents, and Mr. Ballard has filed a separate action against Ms. Borys requesting relief based on the same conduct. It may well be that requesting, and being granted, the relief sought by this motion affects OUR's and Mr. Ballard's ability to pursue relief with respect to other claims and in other venues. The court need not decide that issue today. Rather, that is a matter to be determined in a motion directed at those claims or in those venues. The existence of those

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claims, however, is not a reason to deny a request for sanctions, lest sanctionable conduct potentially go unpunished.

Ultimately no order from the court can unscramble this egg. The information from these documents is known to Ms. Borys's attorneys, and it has been disclosed to the public due to some of them having been filed publicly in one or more of the pending cases. Subsequent steps were taken to protect those documents, such that they no longer are publicly available, but for a time they were part of the public record in cases that have been the subject of significant media attention. Because the documents do not appear to be directly relevant to Ms. Borys's claims, but instead appear calculated to cast the defendants in a bad light, it is not clear what effect, if any, excluding her use of them at trial would have on the outcome. If the court ultimately concludes that none of the documents are admissible anyway, an order excluding her use of them at trial would allow her conduct in obtaining them to go unsanctioned. Nor is this a case where an adverse-inference-type instruction is likely to have much impact and it is not at all clear what such an instruction could properly say. A financial sanction, in the form of paying the moving parties' fees and expenses, comes closest to a sanction that both imposes a meaningful consequence and sends a clear message regarding the inappropriate nature of the conduct but falls short of dismissal. But even that would leave the parties essentially where they started 18 months ago. Had they accepted some degree of responsibility, then perhaps this would be appropriate. Their failure to accept any responsibility is a significant aggravating factor.

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On balance, and recognizing the seriousness of the decision, the court concludes that only terminating sanctions will appropriately punish the behavior and deter others from engaging in similar conduct, an unfortunate result in a system that strongly prefers to have cases heard and decided on their merits. For that reason, the court will order all of Ms. Borys's claims against all named defendants be dismissed with prejudice. There has been no evidence presented and no argument to suggest Mr. Borys played any meaningful role in the events in question, and therefore his separate, stand-alone claim will not be dismissed. The court will order costs, as permitted by rule 54(b) of the Utah Rules of Civil Procedure, but denies the request for attorneys' fees because the court believes that dismissal is a sufficient sanction under the circumstances.

ORDER

Based on the foregoing, and for good cause, the court orders all of Ms. Borys's claims against all named defendants dismissed with prejudice.

Because this order does not dispose of all claims against all parties, a final judgment as contemplated by Rules 54 and 58A of the Utah Rules of Civil Procedure is not appropriate at this time.

Lastly, the parties have filed a number of motions, and/or completed briefing on various motions, following the evidentiary hearing in this matter and have submitted those motions for decision by the court. The following motions will be decided as follows:

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1. OUR filed an unopposed motion to supplement the record with transcripts of videotape deposition clips played during the evidentiary hearing, which apparently are not audible in the recording of the evidentiary hearing. That motion is unopposed and GRANTED.

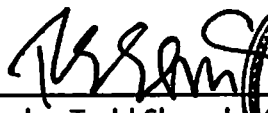
2. OUR has filed a motion for reconsideration of the court's order denying OUR's motion to dismiss. That motion is DENIED AS MOOT.

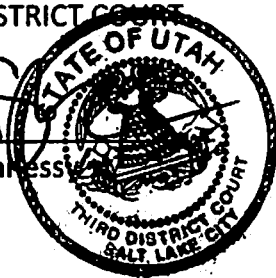
3. Mr. Ballard filed a motion for sanctions for publishing additional private information after the December evidentiary hearing. That motion was fully briefed and set for oral argument. The court cancelled oral argument, prompting Ms. Borys to file a motion to be heard with respect to this particular motion for sanctions. All of these motions, together with all related motions, are DENIED AS MOOT.

With this, the court believes that all outstanding motions in the matter have been addressed.

DATED: July 18, 2025.

THIRD JUDICIAL DISTRICT COURT


Judge Todd Shaughnessy



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 230907663 by the method and on the date specified.

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	07/18/2025	/s/ REAGAN ROBICHAUX
Date:	_____	_____
		Signature