

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA

MARK KING, RANDOLPH PINA,  
DONALD ZAREMBA, DAVE GORDON,  
and JOHN DICK, all as individuals and  
in their capacity as current and former  
Board Members of the North Shore at  
Lake Hart Homeowners Association  
Board of Directors,

CASE NO.: 2016-CA-000280-O

Plaintiffs,

v.

MARIA O'DONNELL,

Defendant.

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**ORDER GRANTING "PLAINTIFFS' AMENDED MOTION FOR SANCTIONS IN THE  
FORM OF STRIKING OF DEFENDANT'S PLEADINGS AND ENTRY OF DEFAULT  
AGAINST DEFENDANT, OR IN THE ALTERNATIVE, ENTRY OF AN ADVERSE  
INFERENCE/PRESUMPTION AGAINST DEFENDANT FOR HER INTENTIONAL  
DELETION OF EVIDENCE OF BREACH OF CONFIDENTIAL SETTLEMENT  
AGREEMENT"**  
**and**  
**ORDER GRANTING "PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND  
COSTS"**

THIS MATTER came before the Court upon the "Plaintiffs' Amended Motion for Sanctions in the Form of Striking Defendant's Pleadings and Entry of Default against Defendant, or in the Alternative, Entry of an Adverse Inference/Presumption against Defendant for Her Intentional Deletion of Evidence of Breach of Confidential Settlement Agreement," filed on December 27, 2021, and "Plaintiffs' Motion for Attorneys' Fees and Costs," filed February 10, 2022, both heard on May 25, 2022. The Court, having considered the Motions, case law, and arguments of counsel, finds as follows:

## RELEVANT FACTS AND PROCEDURAL HISTORY

Plaintiffs filed the instant Motions after many attempts since 2016 to obtain discovery documents from Defendant, specifically, contents from her Facebook page. They allege that they have requested the documents in question on at least four separate occasions, and Defendant has never fully complied with their request.<sup>1</sup> Notably, on March 11, 2020, this Court ordered Defendant to provide the requested discovery and noted that if she did not produce the discovery in ten days, Plaintiffs could pursue sanctions. Defendant did not provide the requested discovery, and Plaintiffs set their motion for sanctions for a hearing on August 24, 2020. The Court imposed sanctions for Defendant's repeated failure to adequately respond to Plaintiffs' multiple requests and her failure to comply with this Court's prior order. The Court ordered that Defendant turn over the requested documents within ten days of the order's rendition and determined that Plaintiffs were entitled to attorneys' fees and costs as appropriate sanctions. The Court specifically noted in its order that further failure to comply with its order could result in the striking of pleadings and an entry of default judgment against Defendant. Defendant again failed to comply with the Court's order.

Presently, Plaintiffs filed their most recent motions for attorneys' fees and costs and to impose sanctions against Defendant, requesting that the Court strike Defendant's pleadings, the most severe of sanctions. They argue that Defendant has had ample time to turn over the discovery they seek, yet she continuously refuses to do so, despite the Court's previous orders and imposition of sanctions. Plaintiffs additionally note that Defendant's counsel represented at the hearing held on November 6, 2019, that Defendant may have deleted the Facebook content

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<sup>1</sup> Plaintiffs noted that Defendant did at one point turn over thousands of pages of documents to them on November 3, 2017, but that production included hundreds of irrelevant, unrequested documents, as well as incomplete and unidentified documents.

that Plaintiffs have been seeking for over four years. The Court heard Plaintiffs' Motions on May 25, 2022, and took the matter under advisement. This Order follows.

#### ANALYSIS AND RULING

The imposition of sanctions is squarely within the trial court's sound discretion. *See* Fla. R. Civ. P. 1.380; *Barrett v. Escape of Arrowhead Ass'n, Inc.*, 194 So. 3d 504, 506 (Fla. 4th DCA 2016); *Mercer v. Raine*, 443 So. 2d 944, 946 (Fla. 1983). Striking a pleading as a sanction is severe and is to be used sparingly. *Mercer*, 443 So. 2d at 946; *Adams v. Barkman*, 114 So. 3d 1021, 1024 (Fla. 5th DCA 2012). "Circumstances in which [striking pleadings are] justified include where a litigant or lawyer's behavior indicates a deliberate and contumacious disregard of the court's authority, bad faith, willful disregard or gross indifference to an order of the court, or conduct which evinces deliberate callousness." *Adams*, 114 So. 3d at 1024 (internal citations and quotations omitted) (citing *Mercer*, 443 So. 2d at 946). When a court is determining whether the striking of a party's pleadings is warranted as a sanction, it must consider the following factors:

1) whether the attorney's disobedience was willful, deliberate, or contumacious, rather than an act of neglect or inexperience; 2) whether the attorney has been previously sanctioned; 3) whether the client was personally involved in the act of disobedience; 4) whether the delay prejudiced the opposing party through undue expense, loss of evidence, or in some other fashion; 5) whether the attorney offered reasonable justification for noncompliance; and 6) whether the delay created significant problems of judicial administration.

*Kozel v. Ostendorf*, 629 So. 2d 817, 818 (Fla. 1993); *see also Fisher v. Professional Advertising Directors Co., Inc.*, 955 So. 2d 78, 79–80 (Fla. 4th DCA 2007).

After carefully considering the Motions, the Court exercises its discretion and imposes sanctions in the form of striking Defendant's pleadings and entering a default judgment against her. The Court has already imposed sanctions on Defendant for her refusal to turn over the



discovery documents Plaintiffs seek, despite warnings and orders from the Court. The previous sanctions were not successful in achieving her compliance. Because of this, the Court has no confidence that Defendant would comply with any subsequent order instructing her to turn over the discovery. The Court also finds it concerning that there is an implication that Defendant has destroyed the items that Plaintiffs requested. The only sanction left for the Court to impose is striking all of Defendant's pleadings and entering a default judgment against her due to her deliberate and contumacious disregard of the court's authority and willful disregard or gross indifference to the Court's prior order. *Adams*, 114 So. 3d at 1024

The above findings are consistent imposing the most severe of sanctions pursuant to the *Kozel* factors: this failure to turn over the requested documents was not the result of neglect or inexperience, as Defendant and her counsel had ample opportunity to give Plaintiffs the requested documents and did not do so; the Court previously imposed sanctions in its November 12, 2020 Order; Defendant was undoubtedly involved in the disobedience, as the documents sought involve her private Facebook account; Defendant's refusal to turn over the documents has resulted in extreme delay, as Plaintiffs' litigation has been stalled in excess of four years due to her refusal; neither Defendant nor her attorney have offered any justification whatsoever for her noncompliance, despite having over four years and ample time and opportunity to do so; and the delay has caused a significant delay in judicial administration, as essentially no movement has occurred in this case for over four years because of Defendant's complete disregard of court orders. 629 So. 2d at 818. Having met the *Kozel* factors, the Court is justified in its discretion to strike all of Defendant's pleadings and enter a default judgment against her.

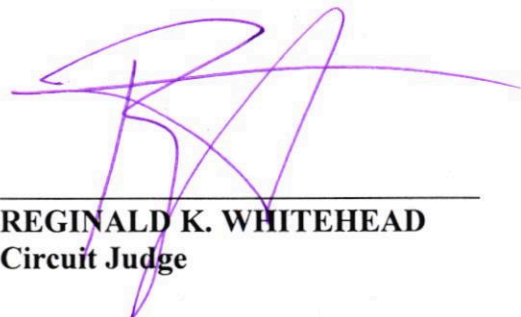
Therefore, the Court finds Defendant's willful and blatant disregard for its previous warnings and orders warrant striking all of her pleadings and enters a default judgment against

her. *See Adams*, 114 So. 3d at 1024. The Court similarly finds that Plaintiffs are entitled to an award of the attorneys' fees and costs associated with litigating this matter.

Accordingly, the following is hereby **ORDERED AND ADJUDGED**:

1. "Plaintiffs' Amended Motion for Sanctions in the Form of Striking Defendant's Pleadings and Entry of Default against Defendant, or in the Alternative, Entry of an Adverse Inference/Presumption against Defendant for Her Intentional Deletion of Evidence of Breach of Confidential Settlement Agreement" is **GRANTED**.
2. "Plaintiffs' Motion for Attorneys' Fees and Costs" is **GRANTED**.
3. The Court **imposes sanctions on Defendant and strikes all of Defendant's pleadings**.
4. As a result of these sanctions, the Court enters a **default judgment against Defendant**.
5. Plaintiffs are **awarded attorneys' fees and costs** associated with litigating this matter. The Court reserves jurisdiction to determine the amount of those costs and fees. Once the Court determines the amount of the costs and fees, Defendant **shall** pay them directly to Plaintiffs' counsel within **10 days** of that determination.

**DONE AND ORDERED** in Chambers, at Orlando, Orange County, Florida, on this 25  
day of July, 2022.



REGINALD K. WHITEHEAD  
Circuit Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on 25<sup>th</sup> July, 2022, a true and accurate copy of the foregoing was e-filed using the Court's ECF filing system, which will send notice to all counsel of record.

A handwritten signature in purple ink, appearing to read "R. Edward", is written over a horizontal line.

Judicial Assistant