

---

CITY OF PHILADELPHIA, a municipal  
corporation,

*Plaintiff,*

v.

WRT MANAGEMENT, INC. f/k/a  
TANNER'S SPORT CENTER INC., et al.,

*Defendants.*

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

Civil Action No. 230702394

CIVIL DIVISION

---

**[PROPOSED] ORDER FOR AN EVIDENTIARY HEARING**

AND NOW, this                      day of                      , 2025, upon consideration of Plaintiff  
City Motion for Sanctions,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

1.        An evidentiary hearing is scheduled for \_\_\_\_\_

---

2.        Defendant Frank's Gun Shop & Shooting Range, LLC, ("Frank's") shall produce  
to testify at said hearing a corporate designee competent to address Plaintiff's allegations that it  
has spoliated evidence, with knowledge about Frank's discontinuance of business, disposal of  
assets, submission of documents to the ATF, declaration of bankruptcy, and any efforts to  
preserve evidence or mitigate any loss.

3.        Said corporate representative shall bring to the said hearing all documents and  
records of communications necessary to provide full and accurate account of Frank's  
discontinuance of business, disposal of assets, submission of documents to the ATF, declaration  
of bankruptcy, and efforts to preserve evidence or mitigate any loss of relevant evidence.

BY THE COURT

---

J.

---

CITY OF PHILADELPHIA, a municipal  
corporation,

*Plaintiff,*

v.

WRT MANAGEMENT, INC. f/k/a  
TANNER’S SPORT CENTER INC., et al.,

*Defendants.*

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

Civil Action No. 230702394

CIVIL DIVISION

---

**[PROPOSED] ORDER IMPOSING SANCTIONS ON DEFENDANT FRANK’S GUN  
SHOP & SHOOTING RANGE LLC FOR SPOILIATION OF EVIDENCE AND  
ISSUING RULE TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE IMPOSED  
ON ZIMOLONG, LLC, AND GOLDSTEIN LAW PARTNERS, LLC**

AND NOW, this                      day of                      , 2025, upon consideration of Plaintiff City  
of Philadelphia’s (“City”) Motion for Sanctions, having held an evidentiary hearing on the  
matter, and having determined that:

1. Defendant Frank’s Gun Shop & Shooting Range LLC (“Frank’s”) engaged in  
spoliation of evidence in its control which evidence was central and indispensable to the City’s  
claims against Franks;
2. Frank’s spoliation of evidence was intentional and conducted in bad faith;
3. The City has suffered severe and irreversible prejudice in its ability to prove its  
claims and continue prosecuting this case;
4. Lesser sanctions are not adequate, either to protect the City’s interests given the  
irreversibility of Frank’s spoliation of central and indispensable evidence, or to deter future  
misconduct given the egregiousness of the Defendant Frank’s actions;

5. There is prima facie evidence that Frank's solicited the support of its counsel, Zimolong, LLC and Goldstein Law Partners, LLC in furtherance of its unlawful spoliation of evidence, deception of the tribunal and the opposing counsel, and fraud, including fraud upon the court;

6. Zimolong, LLC and Goldstein Law Partners, LLC, have a continuing duty of candor to the court to remediate fraud and disclose the details surrounding the unlawful spoliation of evidence which this Court has ordered Frank's to produce, and the loss of which continues to prejudice the City;

IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

1. Following sanctions shall be imposed on Defendant Frank's:
  - a. Summary judgment is entered in favor the City of Philadelphia for all of its claims against Defendant Frank's, including public nuisance, negligence, negligence per se, negligent entrustment, and violations of 18 PA. CSA §6111(g)(6);
  - b. The City's allegations against Frank's—that Defendant Frank's negligently, recklessly, and intentionality sold and entrusted firearms to known and obvious straw purchasers, with reckless disregard to lives and safety of the City and its residents, directly caused harm to the City and its residents, and created a public nuisance in the City, in the form of both firearms that have already been recovered in crime scenes throughout City and which remain in circulation in the illegal secondary market for firearms or in the hands of criminals—are deemed proved and admitted, with no further defense permitted from the Defendant Frank's;

c. Frank's must pay all of the City's legal costs and counsel fees beginning May 31, 2024, until the final enforcement of sanctions, including fees for experts retained to rebut Frank's false claim that ATF prohibited it from making copies of the spoliated evidence. The City's attorneys should submit their request for attorney's fees and costs by \_\_\_\_\_;

2. Furthermore, a rule is hereby issued to show cause, within 20 days of the date of this order, why Zimolong, LLC, and Goldstein Law Partners, LLC should also not be sanctioned for Frank's spoliation of evidence and related misconduct;

3. Defendant Frank's and its attorneys are enjoined from invoking attorney-client privilege regarding its communications with Zimolong, LLC and Goldstein Law Partners, LLC from May 31, 2024, regarding any assistance it solicited from them to facilitate the spoliation of evidence, deception of opposing counsel and the tribunal, or obstruction of inquiry into its misconduct, and fraud, including fraud upon the Court;

4. This Court retains jurisdiction of this matter for the purpose of enforcing this Order.

BY THE COURT:

---

J.

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**

---

CITY OF PHILADELPHIA, a municipal  
corporation,

*Plaintiff,*

v.

WRT MANAGEMENT, INC. f/k/a  
TANNER'S SPORT CENTER INC.,  
FRANK'S GUN SHOP & SHOOTING  
RANGE LLC, MAD MINUTE  
ENTERPRISES, LLC d/b/a DELIA'S GUN  
SHOP, and DELIA'S GUN SHOP, INC.,

*Defendants.*

CIVIL DIVISION

Case No. 230702394

---

**PLAINTIFF'S MOTION TO IMPOSE SANCTIONS FOR SPOILIATION OF EVIDENCE  
AS TO DEFENDANT FRANK'S GUN SHOP & SHOOTING RANGE, LLC AND FOR  
AN ORDER TO SHOW CAUSE AS TO ZIMOLONG, LLC AND  
GOLDSTEIN LAW PARTNERS, LLC**

Plaintiff City of Philadelphia (the "City") hereby moves the Court to sanction Defendant Frank's Gun Shop & Shooting Range LLC ("Frank's") for spoliation of evidence and for an order to show cause as to Zimolong, LLC and Goldstein Law Partners, LLC for why they should not be sanctioned for their respective roles in Frank's spoliation. In support of the aforementioned relief, the City also requests that the Court hold an evidentiary hearing at which a corporate designee of Frank's should be required to testify. The grounds justifying the requested relief are set forth in the accompanying Memorandum of Law.

Date: March 19, 2025

Respectfully submitted,

Case ID: 230702394  
Control No.: 25034174

PHILADELPHIA LAW DEPARTMENT  
RENEE GARCIA, CITY SOLICITOR

/s/ *Melissa Medina*

Lydia M. Furst, Chief Deputy City Solicitor

Attorney I.D. No. 307450

Melissa Medina, Divisional Deputy City Solicitor

Attorney I.D. No. 327048

Ryan B. Smith, Deputy City Solicitor

Attorney I.D. No. 324643

1515 Arch Street, 15<sup>th</sup> Floor

Philadelphia, PA 19102-1595

Tel (215) 683-3573

Lydia.Furst@phila.gov

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**

---

CITY OF PHILADELPHIA, a municipal  
corporation,

*Plaintiff,*

v.

WRT MANAGEMENT, INC. f/k/a  
TANNER'S SPORT CENTER INC.,  
FRANK'S GUN SHOP & SHOOTING  
RANGE LLC, MAD MINUTE  
ENTERPRISES, LLC d/b/a DELIA'S GUN  
SHOP, and DELIA'S GUN SHOP, INC.,

*Defendants.*

CIVIL DIVISION

Case No. 230702394

---

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION  
TO IMPOSE SANCTIONS FOR SPOILIATION OF EVIDENCE AGAINST FRANK'S  
GUN SHOP & SHOOTING RANGE, LLC AND FOR AN ORDER TO SHOW CAUSE  
AS TO ZIMOLONG, LLC AND GOLDSTEIN LAW PARTNERS, LLC**



## TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT.....	1
MATTER BEFORE THE COURT .....	3
STATEMENT OF THE QUESTIONS INVOLVED .....	3
PROCEDURAL AND FACTUAL BACKGROUND .....	4
ARGUMENT .....	11
I.    Frank’s Willful Spoliation of Evidence and Business Dissolution Have Caused Irreparable Prejudice to the City.....	12
II.   Frank’s Counsel Should Be Required To Show Cause Why Sanctions Should Not Issue Against Them .....	20
III.  The Attorney-Client Privilege Cannot Be Used To Hide Spoliation And May Need To Be Pierced At An Evidentiary Hearing. ....	27
CONCLUSION.....	29

## **PRELIMINARY STATEMENT**

In July 2023, the City of Philadelphia filed this public nuisance lawsuit against three local gun stores it alleged were engaged in illegal gun sales. A year ago, in March 2024, this Court determined that the City had stated viable claims against the stores, denying each defendant's preliminary objections. However, the case against Defendant Frank's Gun Shop & Shooting Range ("Frank's") stalled. For months, the City sought discovery from Frank's, while Frank's refused to produce *a single document*. The City was ultimately forced to file a motion to compel in September 2024, which this Court granted in full, ordering Frank's to fully respond to the City's requests for production of documents and interrogatories. On November 1, 2024, after the court-ordered production deadline came and went, the City once again reached out to Frank's counsel Zimolong, LLC seeking the documents, only to learn that—after months of emails, discussions and court filings—Frank's no longer had any documents “in its care, custody, and control.”

The truth is now clear: Frank's has no responsive documents because it handed them all over to the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) in a calculated effort to put them beyond the City's and this Court's reach. Unbeknownst to the City, during the pendency of this litigation and of the discovery dispute regarding the City's request for documents, the ATF determined that Frank's had committed willful violations of law and was moving to revoke its federal firearms license. Goldstein Law Partners, LLC—which represents Delia's Gun Shop, a co-defendant in this case—was hired to negotiate a surrender of Frank's license. At some point in October 2024—*after* this Court ordered Frank's to produce responsive documents to the City and approximately seven months after Frank's first was put on notice of the City's demand for these documents—Frank's instead sent them all to ATF. Once the ATF obtained these documents, they became immune to a third-party subpoena from the City. But Frank's and its counsel did not take

any steps to preserve this evidence: they did not make copies; they did not permit the City to inspect the records; and they did not even take the most basic step of informing the City or the Court that the revocation process was occurring and that it would be disposing of all its records. In short, Frank's made it impossible for the City to prove its case.

This is beyond mere oversight—this is willful, bad-faith spoliation of evidence that was central to the City's claims. As explained below, Frank's sale logs, background check certifications, and compliance records would have provided direct proof of Frank's illegal facilitation of straw purchases. By ensuring those records were permanently rendered inaccessible, Frank's has irreversibly prejudiced the City's ability to prove its claims and its right to a fair trial.

Making matters worse, once the City became aware of this conduct and sought this Court's emergency intervention, Frank's and its counsel moved expeditiously to avoid accountability for its actions. One day before this Court was set to have a hearing to question a corporate representative of Frank's, Frank's filed for Chapter 7 bankruptcy with its own lawyers paying thousands in legal fees for the bankruptcy, so that the filing could happen as quickly as possible. During the bankruptcy proceedings, Frank's admitted that the reason for filing for bankruptcy at the time it did was to stay this case.

In light of this egregious conduct, the City moves to sanction Frank's by entering judgment against it and by ordering the payment of the City's costs and attorneys' fees to remedy this misconduct and deter future abuses. In addition, the City moves for an order to show cause as to Frank's counsel for why they should not be sanctioned for their respective roles in Frank's spoliation of documents. At minimum, it appears Zimolong, LLC and Goldstein Law Partners negligently failed to supervise discovery and ensure their client's preservation of evidence, and they breached their duty of candor to the Court by failing to disclose both the likely and actual

spoliation of evidence. However, the facts known so far suggest the possibility of something even worse: an intentional effort to mislead the Court and the City, and avoid accountability. For this reason, the City also requests an evidentiary hearing at which a corporate designee of Frank's should be required to testify. At the evidentiary hearing, the City anticipates that it will be able to establish that Frank's attorney-client privilege should be pierced for communications pertaining to the spoliation of evidence.

### **MATTER BEFORE THE COURT**

The City moves this Court for an order: (i) imposing sanctions against Frank's for willful spoliation of evidence; (ii) requiring Zimolong, LLC and Goldstein Law Partners to demonstrate why they should not be sanctioned for their respective roles in their client's spoliation; and (iii) requiring a corporate designee of Frank's to appear at an evidentiary hearing so that the City may ascertain the level of fault between Frank's and its counsel for the aforementioned spoliation.

### **STATEMENT OF THE QUESTIONS INVOLVED**

1. Should this Court enter judgment and an award of costs and attorneys' fees against Frank's for its spoliation of evidence?

*Suggested Answer: Yes.*

2. Should this Court require Zimolong, LLC and Goldstein Law Partners to show cause why they should not be sanctioned for their roles in the spoliation of Frank's documents?

*Suggested Answer: Yes.*

3. Should a corporate designee of Frank's be required to appear at an evidentiary hearing so that the City may ascertain the level of fault between Frank's and its counsel and be permitted to establish why the attorney-client privilege should be pierced with regard to communications pertaining to the spoliation of evidence in this matter?

*Suggested Answer: Yes.*

## **PROCEDURAL AND FACTUAL BACKGROUND**

The spoliation that occurred in this case is straightforward: Frank's had documents that were integral to the City's ability to prove its case and responsive to pending discovery requests, but instead of preserving those documents, it got rid of all of them. Once it was caught, it filed bankruptcy on the eve of a hearing at which this issue would be addressed, to try to end this case and avoid accountability for the spoliation. The City details the relevant facts below.

### **The Discovery Dispute**

In July 2023, City filed a complaint alleging that Frank's and two other local gun stores engaged in straw sales of firearms in violation of federal and state law from 2018 to 2022. Compl. ¶¶ 28-48. The City filed an amended complaint in October 2023. Firearms that Frank's sold in these transactions have been recovered by the Philadelphia Police Department in connection with violent crimes that have harmed Philadelphia residents. Am. Compl. ¶¶ 72-73, 75, 80.

On March 5, 2024, the City served its first set of Requests for Production on Frank's. The Requests sought records and information relevant to Frank's illegal conduct, including transaction documents related to the straw purchases referenced in the Amended Complaint, Frank's communications with federal and state law enforcement concerning these transaction, and Frank's practices and policies for detecting and preventing such transactions. *See* Exhibit 1 at ¶¶ 1, 6.<sup>1</sup> These documents were essential to proving the City's allegations that Frank's violated the law by falsely certifying firearm transaction forms, making additional false entries in required forms, and proceeding with sales despite knowing or having reasonable cause to know that the purchaser was buying the gun illegally. *See e.g.*, Am. Compl. ¶¶ 46, 102, 115, 139-142. Frank's responded on May 3, 2024, refusing to produce a single document. *See* Exhibit 2.

---

<sup>1</sup> All numbered exhibits are attached to the declaration of Drew Zagami.

On July 9, 2024, after unrelated briefing, the City requested a meet and confer with Frank's concerning its objections to the discovery requests. *See* Exhibit 3 at 8-9. Mr. Zimolong initially ignored the request, but, after multiple follow-ups and delays, the parties were eventually able to meet and confer on August 21. *Id.* at 3. The meet and confer did not result in the production of any documents by Frank's.

On September 5, 2024, the City moved to compel Frank's to produce responsive documents. On September 15, 2024, Mr. Zimolong stated that his client was "in Poland and w[ould] not be back until early October," suggested "it would be helpful to resolve some of the issue[s] without resorting to motion practice," and requested that the City withdraw its motion "and refile it, if needed, after he returns." *See* Exhibit 4 at 2. The City declined to do so. *Id.*

On September 26, 2024, this Court granted the City's motion to compel in its entirety and ordered Frank's to "produce all documents responsive to the City's Requests for Production" by October 17, 2024. *See* Exhibit 5. Four days later, on September 30, 2024, Frank's moved for reconsideration of this Court's decision. *See* Exhibit 6. On October 8, 2024, Frank's submitted a supplemental brief, arguing that the City's motion to compel should be held in abeyance pending its petition for interlocutory appeal to the Commonwealth Court with respect to this Court's previous denial of its preliminary objections. Exhibit 7 at 3. Frank's argued that such a delay would cause "no prejudice" to the City. *Id.* Frank's further asserted that it would suffer "irreparable harm" if compelled to engage in discovery, "because [Frank's] will have been required to produce documents in a suit in which [it] enjoys immunity." *Id.* Mr. Zimolong signed both filings.

The Court's production deadline of October 17, 2024 came and went without any production by Frank's. On October 24, 2024, this Court denied Frank's motion for reconsideration. *See* Exhibit 8. On November 1, 2024, the City reminded Mr. Zimolong that Frank's failure to

respond to the discovery requests and produce documents constituted noncompliance with this Court's order. *See* Exhibit 9. On November 4, 2024, Frank's served amended responses to the discovery requests and asserted, for the first time, that it had "no documents in its care, custody, and control responsive" to the City's requests. *See* Exhibit 10. Perplexed, the City advised Mr. Zimolong that Frank's representations were inconsistent with its record-keeping obligations under federal and state law, as well as its duty to preserve relevant evidence during litigation. *See* Exhibit 11. Mr. Zimolong replied that he was "very confused" by this email, and that Frank's "answers are full, complete, and accurate." *Id.*

Ten days later, Mr. Zimolong provided the City with a single document: a "Report of Violations" issued by the ATF to Frank's, dated November 28, 2023, showing serious violations by Frank's, including repeat sales to straw purchasers. *See* Exhibit 12.

#### *The License Revocation and Spoliation of Documents*

Unbeknownst to the City, during the entire discovery dispute, Frank's was engaged in negotiations with the ATF about the revocation of its license, culminating in Frank's disposing of all of its documents without any attempt at preservation, mitigation or communication with the City or the Court. As Frank's was doubtlessly aware, once federal firearm transaction forms are sent to ATF, the ATF does not make them available to civil litigants pursuant to federal law. *See* Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 609-10 (2011) (prohibiting the ATF from using appropriated funds to disclose the contents of its tracing database or any records required to be kept by federal firearm licensees, including pursuant to a subpoena). The City was able to piece together the below facts largely based on hearings and a conversation with defense counsel that occurred after the spoliation, as well as a Federal Freedom

of Information Act (“FOIA”) request that it submitted once it found out that Frank’s had gotten rid of its documents.

In May 2023, the ATF—which is the federal regulator tasked with oversight of federally-licensed gun stores—initiated a compliance inspection at Frank’s. *See* Exhibit 13 at 3. In November of that year, the ATF determined that Frank’s had violated federal gun regulations on dozens of occasions. *Id.* at 3-5. Given the seriousness of these violations, on May 31, 2024, ATF served a Notice to Revoke or Suspend License and/or Impose a Civil Fine (the “Revocation Notice”) upon Frank’s. *See id.* at 3. The Revocation Notice informed Frank’s that ATF intended to revoke its Federal Firearms License due to Frank’s willful violations of the Gun Control Act and its implementing regulations. *Id.* It listed eleven separate categories of violations. *Id.* at 3-5. The Revocation Notice also advised Frank’s of its right to contest the revocation, but Frank’s waived that right. *Id.* at 3.

When a gun store stops doing business, one of two things must happen within 30 days of discontinuance: (i) the business must deliver its firearm transaction records to the ATF; or (ii) it must deliver those same records to a “successor” gun store. *See* 27 C.F.R. § 478.127; *see also* Affidavit of Andrew Traver, ¶ 4. These records include acquisition and disposition (A&D) records, firearm transaction forms (ATF Form 4473s), and multiple sales forms. *See* 18 U.S.C. § 923(g)(1)(A); *see also* Traver Affidavit, ¶ 4. The point of this regulation is that it allows the ATF to continue tracing guns that are recovered in crimes by referring to these transaction records. Traver Affidavit, ¶ 5. However, no provision of the law prevents the gun store at issue from simply making and retaining copies prior to delivering the records to the ATF or successor gun shop, particularly when they are a litigant in an ongoing litigation and have a duty to preserve evidence. *See* 27 C.F.R. § 478.127; *see also* Traver Affidavit, ¶ 7-8.



Notably, Frank's was represented in its ATF matter by Jonathan Goldstein of Goldstein Law Partners—a firm that has represented a co-defendant in this litigation (Delia's Gun Shop) since the beginning of the case. *See* Exhibit 14 at 26:8-24. Attorneys from Goldstein Law Partners, including Mr. Goldstein, have been engaged in identical discovery disputes with the City on behalf of their client Delia's, have been copied on virtually every email with Mr. Zimolong, and have litigated an identical and contemporaneous motion to compel on behalf of Delia's. In short, Goldstein Law Partners was well aware of Frank's obligation to preserve evidence, yet at no point did it make any attempt to inform the City what was going on. In addition, Mr. Zimolong was aware of the ATF matter. *See id.* at 15:10-11 ("Mr. Zimolong: I was aware that the ATF investigation was going on[.]"). Yet, while Mr. Zimolong was negotiating and failing to produce Frank's discovery with the City in July and August, and opposing the City's motion to compel in September and October, he never once mentioned the ATF investigation or the forthcoming revocation and disposal of documents.

On August 21, 2024, ATF served Frank's a final notice of revocation, stating that the revocation would go into effect on September 20, 2024. *See* Exhibit 13 at 1-2. That same day, at 2:00 PM, the City and Frank's met and conferred, but Mr. Zimolong said nothing about the Revocation Notice, or the final notice from the ATF. On September 15, 2024—five days before Frank's license revocation was scheduled to take effect—Mr. Zimolong asked the City to withdraw its motion to compel because his client was in Poland and stated that some of the issues in the City's motion could be resolved without resorting to motion practice. *See* Exhibit 4 at 2. Yet he never mentioned the revocation and the forthcoming disposal of documents.

At some point between September 24 and October 20, 2024, Frank's lost its license. According to Frank's, it stopped operating on September 24, 2024. *See* Exhibit 15 at 6:6-8.

However, ATF documentation states that Frank’s “stay of revocation expired [on] 10/20/24.” Exhibit 13 at 9. Mr. Jonathan Goldstein, of Goldstein Law Partners, has since stated that he negotiated a surrender of Frank’s license in lieu of the ATF’s revocation. Exhibit 15 at 13:23-14:7. However, the City has seen no documentary evidence of this assertion, and ATF documentation refers to the license as revoked. Exhibit 13 at 9. According to ATF documentation, it received the boxes of Frank’s records on November 1, 2024: eight months after the City served document requests on Frank’s, two months after the City filed its motion to compel, and a month after the Court granted the motion to compel and ordered production of those very documents. Exhibit 13 at 10. According to Mr. Goldstein, *all* of Frank’s records were sent to ATF, which would include not only federal transaction records but also state firearm transaction forms and sales invoices, Exhibit 15 at 20:15-23, even though there is no regulation requiring those latter records to be sent to ATF. At no point were copies of any records made or was the City informed of this transfer.

On November 11, 2024, through independent research, the City learned that Frank’s no longer held an active federal firearms license, and that a recently created entity called Tons of Guns, LLC had obtained a license to deal firearms at Frank’s storefront.<sup>2</sup> Thus, on November 12, 2024, the City filed a motion for a special and preliminary injunction, asking this Court to enjoin Frank’s from “any further transfer or disposal of any documents in its possession with any potential relevance to this case,” to require Frank’s “to take steps to mitigate any loss of access that has

---

<sup>2</sup> The City later learned that on September 19, 2024, Tons of Guns registered to do business under the fictitious name “Frank’s Gun Shop & Double Tap Shooting Range” at the same address Frank’s conducted its business—which is property owned by the family that ran Frank’s. *See* Exhibit 16; Exhibit 15 at 9:4-13. Also in September 2024, Tons of Guns obtained a federal firearms license to deal firearms at this location. *See* Exhibit 17. Frank’s transferred its remaining firearms inventory and office equipment to Tons of Guns. Exhibit 15 at 9:17-20, 23:11-25:1. Although it could have potentially transferred its records to Tons of Guns as a successor, *see* 27 C.F.R. § 478.127, and thereby mitigated harm to the City through the loss of access to these records, Frank’s evidently chose not to do so.

already taken place,” and to require Frank’s to appear at a hearing to explain what had happened and what Frank’s had done with these relevant documents. Exhibit 18 at 6-7. This Court granted the injunction and scheduled an oral argument for November 18<sup>th</sup>. Exhibit 19.

At the November 18th hearing, the City explained that it suspected that spoliation had occurred but needed additional information from Frank’s. *See* Exhibit 14 at 7:22-8:20. Upon questioning from the Court, Mr. Zimolong stated that that it was his understanding that all responsive documents were now with the ATF and that he “had knowledge of the [ATF] investigation, but [ ] did not know where it was in the investigation until it ultimately became time to potentially turn over the documents.” *Id.* at 17:8-25. In addition, Mr. Goldstein, who was at the hearing as counsel for Delia’s Gun Shop, disclosed for the first time that his firm was retained to handle Frank’s ATF matter. *Id.* at 26:8-24. The Court concluded the hearing by stating that its injunction would stay in effect pending an in-person hearing where Frank’s corporate designee would be questioned. *Id.* at 25:15-26-7. The Court set a hearing on December 10 for the corporate designee to appear; several days later, the Court moved that hearing to December 4, 2024 at 2:00 PM. Exhibit 20. The hearing never took place.

#### Frank’s Bankruptcy Filing

On November 21, 2024, three days after the hearing, Frank’s adopted a resolution to file for Chapter 7 bankruptcy. *See* Exhibit 21. On December 3, 2024, one day before Frank’s corporate designee was set to appear in court, Mr. Zimolong emailed the City’s counsel informing them that Frank’s had filed for bankruptcy that day in the United States Bankruptcy Court for the Eastern District of Pennsylvania. *See* Exhibit 22. The email stated, “You are now subjected to the automatic stay found in 11 U.S.C. Section 362 and the penalties for violation thereof. Guide your conduct accordingly.” *Id.*

The bankruptcy petition listed only four creditors: Franciszek Stelmach (Frank's president), Goldstein Law Partners, Zimolong, LLC and the City. Exhibit 23 at 12. Documents filed as part of the bankruptcy case showed that Goldstein Law Partners paid the legal fees for the bankruptcy filing. *See* Exhibit 24 at 4; Exhibit 25.<sup>3</sup> As Mr. Zimolong predicted, the immediate result of the bankruptcy was that this case was stayed against Frank's and its corporate designee did not have to appear before this Court. Exhibit 26.

At a creditors' meeting in the bankruptcy proceeding, Frank's corporate representative, Sebastian Stelmach (son of Franciszek Stelmach, the owner of Frank's), testified under oath that Frank's filed for bankruptcy when it did to stay the matter before this Court. Exhibit 15 at 18:17-19:20. In addition, at the hearing, Mr. Goldstein stated that he fronted the payment for the bankruptcy attorneys due to "a velocity issue." *Id.* at 14:12-15:4. In other words, the bankruptcy filing needed to get done quickly. On January 29, 2025, the bankruptcy was closed. *See* Exhibit 27. Frank's debts were not discharged. *See* Exhibit 28. In other words, the only thing that the bankruptcy accomplished was delaying this case. On March 4, 2025, the City filed a Notice of Close of Bankruptcy. *See* Exhibit 29. At a status hearing on the same day, the Court orally lifted the stay as to Frank's.

### **ARGUMENT**

Frank's has permanently disposed of all evidence the City would have used to prove its claims, causing irreversible prejudice to the City. Given the severity of this misconduct, the Court should impose substantial sanctions against Frank's, including judgment for the City and an award of costs and attorney's fees. In addition, the Court should enter an order to show cause why Frank's

---

<sup>3</sup> This payment arrangement was unusual, prompting the bankruptcy trustee to question Mr. Goldstein about it at the creditor's hearing. *See* Exhibit 15 at 14:12-25 ("THE TRUSTEE: Now, Mr. Goldstein, while you're here, why did you pay the debtors counsel's fees in this case?").

counsel should not be sanctioned for their role in the spoliation. Finally, in support of both requests, the City requests an evidentiary hearing at which a corporate designee of Frank's should be required to testify.

**I. Frank's Willful Spoliation of Evidence and Business Dissolution Have Caused Irreparable Prejudice to the City**

Spoliation of evidence is "the non-preservation or significant alteration of evidence for pending or future litigation." *Pyeritz v. Commonwealth*, 32 A.3d 687, 692 (Pa. 2011). Pennsylvania courts recognize that spoliation occurs whenever "relevant evidence has been lost or destroyed," *Harkins v. Three Monkeys Croyden, Inc.*, 2024 WL 3634231 at \*8 (Pa. Super. Ct. Aug. 2, 2024) (citations omitted), including when that loss or destruction violates the responsible party's court-ordered preservation obligations. *King v. Pittsburgh Water and Sewer Auth.*, 139 A.3d 336, 346 (Pa. Commw. Ct. 2016).

Pennsylvania follows the Third Circuit's approach to spoliation sanctions, which considers "fault, prejudice, and other available sanctions." *Schroeder v. Commonwealth*, 551 Pa. 243, 250 (1998) (citing *Schmid v. Milwaukee Electric Tool Corp.*, 13 F.3d 76 (3d Cir. 1994)). That approach involves a three-part test: "(1) [T]he degree of fault of the party who altered or destroyed the evidence; (2) the degree of prejudice suffered by the opposing party, and (3) the availability of a lesser sanction that will protect the opposing party's rights and deter future similar conduct." *Id.* Consideration of each of these factors leaves no doubt: Frank's is responsible for the spoliation of critical evidence in this case, and its actions have caused severe, irreversible prejudice to the City. Despite knowing this litigation was ongoing and that it was under a clear duty to preserve relevant records, Frank's engaged in a calculated effort to obstruct discovery and destroy that evidence. Frank's transferred its books and records—apparently after the Court ordered them produced—to ATF without making copies, which ensured they would be placed beyond the City's reach

permanently. This bad-faith conduct has deprived the City of key evidence necessary to prove its claims and warrants serious sanctions.

Frank's is significantly at fault for the spoliation of relevant evidence in this case.

Spoliation fault turns on two factors: “the extent of the offending party’s duty or responsibility to preserve the relevant evidence, and the presence or absence of bad faith.” *Creazzo v. Medtronic, Inc.*, 903 A.2d 24, 29 (Pa. Super. Ct. 2006). While the City does not currently know which actor – Frank’s, Zimolong, LLC or Goldstein Law Partners—orchestrated the spoliation of Frank’s documents, there is little doubt that Frank’s had a duty to preserve the relevant evidence and acted in bad faith when it got rid of it.

*First*, Frank’s had a clear duty to preserve relevant evidence. The duty to preserve arises where ““(1) the [spoliator] knows that litigation...is pending or likely; and (2) it is foreseeable that discarding the evidence would be prejudicial to the [other party].”” *Id.* But Frank’s did not just have notice that litigation was likely—it was actively litigating both the City’s claims against it *and* the City’s discovery requests for the very documents that it transferred to ATF. These records, Frank’s knew, were central to the City’s claims. The City’s case focuses on Frank’s knowing facilitation of straw purchases, in which firearms are illegally sold to customers who falsely identify themselves as the true buyers even though they intend to transfer the firearms to someone else. The records Frank’s handed over to ATF reflect precisely the information that the City needed to prove these allegations: federal transaction forms (ATF Form 4473), multiple handgun sale forms, and acquisition and disposition records. The Form 4473s were particularly important as they include identifying information about the buyer and require the buyer to answer certain questions that help determine whether or not he or she is eligible to buy the gun, including whether or not the buyer is acquiring the guns for himself. Am. Compl. ¶¶ 32-34. The Form 4473 also

includes the number and type of guns the customer is purchasing, the results of the background check and certification by the seller about the legality of the sale.

Moreover, Frank's evidently even transferred to ATF documents that it did not need to, such as its state transaction forms, invoices, customer profiles, and its policies about preventing straw purchases. *See* 27 C.F.R. § 478.127 (only requiring federal records to be submitted to ATF upon closure of business); Exhibit 10; Exhibit 14 at 12:4-10; Exhibit 15 at 20:15-21:7, 30:7-31-2. These records too were critical to prove, among other things, how often customers were coming in to buy identical guns and the steps that Frank's took to prevent illegal straw purchases.

Courts consistently find spoliation where, as here, a party discards crucial evidence it is duty-bound to preserve. *See Robinson v. Mercy Fitzgerald Hosp.*, 2021 WL 2826691 at \*12 (Pa. Super. Ct. Jul. 7, 2021) (finding spoliation where defendant failed to preserve "the only photographic evidence taken on the day of [plaintiff]'s" accident, which "would have been relevant to numerous issues at trial"); *Thompson v. Lau*, 2007 WL 7597634 (Pa. Ct. Cmmn. Pl. Sept. 16, 2007) (approving of spoliation jury charge where defendant destroyed evidence notwithstanding that "[p]laintiff had sent a letter to the [d]efendants...asking that the evidence be preserved."); *Marshall v. Brown's IA, LLC*, 213 A.3d 263, 269 (Pa. Super. Ct. 2019) (finding spoliation where defendant deleted security footage even after plaintiff "advised it of impending litigation, and requested that it preserve" the footage).

*Second*, Frank's acted with bad faith. Bad faith spoliation occurs where a party takes "affirmative actions" to destroy relevant evidence. *Stream Companies, Inc. v. Windward Advertising*, 2013 WL 3761281 at \*5 (E.D. Pa. Jul. 17, 2013) (finding "strong" indication of bad faith where spoliator "actively deleted" emails subject to court orders); *see also Orion Drilling Co., LLC v. EQT Production Co.*, 826 F. App'x 204, 216-17 (3d Cir. 2020) (affirming finding of

bad faith where plaintiff's employee "threw some [relevant] documents away the day before [plaintiff] filed suit," which "support[ed] the conclusion that there was an intentional destruction of documents"). That is exactly what Frank's did here.

Frank's license revocation process began on May 31, 2024 and concluded with Frank's surrendering its records by November 1, 2024. *See* Exhibit 13 at 3, 10. Throughout that period, while the parties were actively litigating the City's discovery requests to Frank's, Frank's affirmatively evaded its discovery obligations by engaging in a myriad of dilatory tactics before transferring relevant evidence in its possession to ATF, without making copies—even though, as explained in the expert affidavit of former ATF agent Andrew Traver, nothing prevented them from doing so. *See supra* at 7. As previously discussed on page 2, once these documents are in the possession of ATF, they become unavailable to civil litigants via a third-party subpoena, because federal law prohibits ATF from spending any appropriated funds to disclose these records to the public. Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 609 (2011).

Neither Frank's nor its counsel disclosed any of this to the City or the Court. And when the City caught on, and this Court scheduled a hearing to investigate Frank's conduct, Frank's filed a frivolous bankruptcy proceeding to delay that hearing and skirt accountability. Frank's corporate representative even *admitted under oath* that the bankruptcy filing was timed to stay the matter before this Court. Exhibit 15 at 18:17-19:20.<sup>4</sup> These delays all served the same bad faith purpose:

---

<sup>4</sup> Indeed, Frank's bankruptcy petition was likely itself a bad faith filing. Bankruptcy courts routinely find that petitions are filed in bad faith where, as here, the bankruptcy petition conveniently disrupts litigation in which the debtor is presently engaged; the debtor has little to no assets to distribute; and the debtor's only creditors are its adversary in the disrupted litigation, its own insiders, and its attorneys. *See, e.g., In re Semco Manufacturing Co., Inc.*, 649 B.R. 155, 168-70 (Bankr. S.D. Tex. 2023) (dismissing corporate Chapter 7 petition as filed in bad faith where



to mislead the City and this Court, to delay at every turn, and to run down the clock until Frank's could relinquish all inculpatory evidence to ATF—all in an attempt to absolve itself of its liability to the City and its obligations to this Court.

The Superior Court's spoliation sanctions analysis in *Marshall v. Brown's IA, LLC* is particularly instructive on Frank's bad faith. There, the plaintiff sent a letter to defendant two weeks after her accident, specifically requesting that the defendant retain surveillance video footage from "six hours prior to the accident and three hours after the accident." 213 A.3d at 265-66. The defendant ignored that request. Instead, it preserved footage from 37 minutes before the accident to 20 minutes after, and it allowed the rest to be automatically deleted. *Id.* at 266. The Superior Court held that the record supported a finding of bad faith because defendant failed to notify opposing counsel of its footage deletion policy, failed to offer the footage for review before its deletion, and failed to preserve the requested footage in its entirety. *Id.* at 272 n. 8.

*Marshall* is directly on point here. Just as the defendant there concealed the imminent deletion of key evidence and failed to notify the opposing party before destroying it, here Frank's concealed the fact that it would be surrendering records to ATF and failed to make copies or allow the City the opportunity to access them before doing so. In fact, Frank's conduct is even more egregious than the *Marshall* defendant's. That defendant, at least, preserved *some* of the requested evidence. But Frank's transferred *all* its records to ATF, which ensured that *none* of the records it was ordered to produce would ever be available to the City.

---

corporation filed "on the weekend before jury selection" in active state court matter, had no creditors other than corporate insiders and state court adversary, and had "no assets to administer"); *In re American Telecom Corp.*, 304 B.R. 867, 868 (Bankr. N.D. Ill. 2004) (dismissing Chapter 7 petition where corporate debtor filed four days before trial in pending action, had "virtually no assets," and listed as creditors only its own attorneys, principles, and trial adversary).

The prejudice to the City from Frank's spoliation is severe and irreversible. It is "common sense" that parties who spoliate evidence do so because that evidence is damaging to them: "a party who has notice that [evidence] is relevant to litigation and who proceeds to destroy [evidence] is more likely to have been threatened by [that evidence] than is a party in the same position who does not destroy the document." *Mount Olivet Tabernacle Church v. Edwin L. Wiegand Div.*, 781 A.2d 1263, 1269 (Pa. Super. Ct. 2001) (internal citations omitted). The result of that destruction is prejudice to the deprived party, which is left with a "paucity of direct evidence" to introduce at trial. *Creazzo*, 903 A.2d at 30; *see also Harkins*, 2024 WL 3634231, at \*9 ("A litigant naturally suffers some prejudice where it has been precluded from conducting its own independent investigation of discarded evidence.").

The prejudice to the City from Frank's spoliation is beyond mere inconvenience or a reduction in available evidence. Rather, Frank's has effectively destroyed *all* evidence of its own illegal conduct: firearms transaction records documenting the illegal straw purchasing, invoices, acquisition and disposition records, communications with law enforcement, and policies and training information concerning preventing straw transactions. These records and documents were direct evidence of Frank's illegal conduct. Now that these records are permanently in ATF's possession, the City has no way of recovering this evidence.

Without these records, it is impossible for the City to establish the full scope of Frank's illegal sales and the full extent of its liability. By intentionally and in bad faith destroying this evidence, Frank's has "made a decision that dominates this litigation and constrains the [City] in developing" its claims against Frank's. *Fox Run Apartments v. General Motors Corp.*, 1996 WL 910153 at \*3 (Pa. Ct. C.P. Bucks Cnty. Apr. 9, 1996). This is quintessential prejudice.

Frank's spoliation of relevant evidence warrants sanction of judgment against Frank's, as well as an award of costs and attorneys' fees. Indeed, judgment is the only sanction that will protect the City's remaining rights and provide adequate deterrence of the other defendants in this case and to gun stores generally.

This Court has vast discretion to “impose a range of sanctions” against parties who spoliates evidence. *Pyeritz*, 32 A.3d at 692. Judgment “against the offending party” is one such sanction, available in response to “egregious conduct.” *Creazzo*, 903 A.2d at 29. *See, e.g., Papadopoulos v. Schmidt, Ronca & Kramer, PC*, 21 A.3d 1216, 1224, 1229 (Pa. Super. Ct. 2011) (affirming dismissal with prejudice of plaintiff's complaint where plaintiffs “knowing[ly] and willful[ly]” destroyed evidence that would have “accrue[d] to the potential benefit of the” defendant); *Creazzo*, 903 A.2d at 30 (awarding summary judgment where proof of claim became “untenable” without the spoliated evidence); *Fox Run Apartments*, 1996 WL 910153, at \*3 (granting summary judgment to non-spoliating party). Ultimately, the Court's task is to fashion a sanction that will “protect the [prejudiced party]'s rights and deter future similar conduct.” *Schroeder*, 710 A.2d at 27. And where the destruction of evidence also constitutes the violation of a court order, the appropriate sanction should serve as a general deterrent, because such violation constitutes a “clear and present danger to the effective function of the judiciary, the orderly administration of justice, and the rule of law. When such a violation passes without consequences equal to its gravity, we can anticipate violations of increasing frequency.” *County of Fulton v. Secretary of Commonwealth*, 292 A.3d 974, 1020 (Pa. 2023) (approving sanctions against party that deliberately defied court's order).

Frank's conduct is sufficiently egregious to warrant this sanction. For nearly half a year, Frank's misled the City and this Court and delayed this proceeding—so that it could avoid

producing and then dispose of relevant evidence central to the City's claims against it. As a result, it is now too late to protect the City's rights. The records are gone. Frank's eliminated that evidence from this case, likely defying this Court's order compelling it to produce the very same evidence. Frank's now has no documents to produce and is a defunct corporate entity. Thus, sanctions in this case must do more than deter Frank's from additional spoliation in this action (which it will be unable to effect), or in future litigation (which, as a non-entity, it will not face). Rather, the deterrent effect must reach other defendants, both in this action and in the future, and demonstrate that they cannot violate federal and Commonwealth law for years; cause substantial harm to the City and its residents; and then, once called to answer for that conduct, destroy all record of its wrongdoing. In other words, defendants cannot simply drop everything and run away when they get caught. Frank's conduct, therefore, is beyond the remedial and deterrent effect of mere monetary penalty. *See Marshall*, 213 A.3d at 268 (noting that spoliation sanctions may take form of "fines and attorney fees"). It calls instead for more significant sanction—judgment on liability.

The evidence that Frank's destroyed is so central to the City's claims that judgment is effectively the same remedy as the lesser available sanction of an adverse inference, under which the fact-finder would "accept as true any factual allegation that the evidence would have been offered to prove had it not been destroyed." *King*, 139 A.3d at 346. In other words, here, the fact-finder would accept that the spoliated records would have shown that Frank's—in its transactions with each of the straw purchasers the City has identified in its discovery requests and with any additional straw purchasers that the City may later identify through additional independent research—violated federal and Commonwealth law by knowingly and illegally selling firearms to buyers it knew were straw purchasers. Those claims are the heart of the City's case against Frank's. An adverse inference—that the spoliated evidence would prove those claims—leads inexorably to

the City prevailing at trial on the question of Frank's liability. This Court, in its discretion and in the interest of both deterrence and judicial economy, should grant that judgment to the City now.

Frank's misconduct has also caused the City and counsel to expend considerable time and resources on litigation and investigatory efforts that would not have been necessary but for the spoliation and related dilatory tactics. Simply put, Frank's knew as of May 31, 2024, when the ATF served the store with the Revocation Notice, that it would ultimately be required to relinquish its transaction records to the ATF or to a successor entity. *See* Exhibit 13 at 3; *see also* 27 C.F.R. § 478.127. From this point forward, Frank's should have taken steps to preserve access to relevant documents, but instead engaged in dilatory tactics while failing to apprise the Court or counsel of the impending disposal of its records. Frank's should be made to bear the expense of the City's litigation costs against the store, which costs were necessitated only because the store chose to engage in spoliation and related misconduct to obfuscate the disposition of its records. *See* 42 PA. CONST. STAT. § 2503(7) (authorizing the award of counsel fees to parties in litigation "as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter"); *Estate of Liscio*, 638 A.2d 1019, 1023 (Pa. Super. 1994) (affirming counsel fee sanction imposed upon both party and counsel for bad faith conduct). As set forth below, to the extent that Frank's counsel suborned this misconduct, they should be held jointly and severally liable for these fees and costs.

## **II. Frank's Counsel Should Be Required To Show Cause Why Sanctions Should Not Issue Against Them**

This Court should further order Frank's counsel—Zimolong, LLC (counsel for Frank's in this litigation) and Goldstein Law Partners (counsel Frank's in the ATF matter and counsel for Delia's in this litigation)—to show cause why sanctions should not issue against them as well. *See*

*County of Fulton*, 292 A.3d at 1018 (sanctioning counsel with “joint and several responsibility” for various litigation misconduct such as spoliation).

Pennsylvania courts possess the inherent authority to impose sanctions on counsel for spoliation and other misconduct related to litigation, as well as for violations of Pennsylvania Rules of Professional Conduct. *See County of Fulton*, 292 A.3d at 1013-14; *Sutch v. Roxborough Mem'l Hosp.*, 151 A.3d 241, 257-260 (Pa. Super. Ct. 2016) (holding that trial court properly disqualified counsel and assessed against her attorney costs the plaintiff expended obtaining the disqualification order). The Pennsylvania Rules of Civil Procedure further confer on courts broad powers to issue sanctions appropriate for the management of discovery. *See* Pa. R. Civ. P. 4019. Additionally, Pennsylvania law authorizes the award of counsel fees as a sanction for litigation misconduct. 42 PA. CONST. STAT. § 2503(7).

Zimolong, LLC and Goldstein Law Partners may have engaged in sanctionable misconduct related to spoliation of Frank’s records. At minimum, it appears that each failed to prevent spoliation by properly supervising Frank’s retention of relevant records. *See, e.g. Pyeritz*, 32 A.3d at 692 (defining spoliation as “non-preservation” of evidence); *Farrell v. Farrell*, 218 A.3d 485, 490-91 (Pa. Super. Ct. 2019) (affirming trial court authority to sanction counsel for failing to adequately supervise client during discovery and serving inadequate discovery responses); PA Eth. Op. 2014-5 (finding that “attorney’s duty to preserve evidence ... applies to information regardless of form, i.e. discoverable information may not be concealed or destroyed regardless of whether it is in paper, electronic, or some other format.”). *Cf. Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422, 432 (S.D.N.Y. 2004) (sanctioning counsel for failure to adequately supervise client’s preservation of evidence—including by failing to make backup copies of documents the loss of which was likely—because “counsel is more conscious of the contours of the preservation

obligation; [and] a party cannot reasonably be trusted to receive the ‘litigation hold’ instruction once and to fully comply with it without the active supervision of counsel.”).

Both sets of attorneys also failed to disclose to the Court and to the City the potential, impending, and actual loss of evidence. *See* 204 Pa. Code R. 3.3 (establishing duty of candor to the court); Rule 3.4 (duty of fairness to the opposing party). Rule 3.3(b) states that “[a] lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in . . . fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.” Comment 12 to Rule 3.3, which addresses the requirement of section (b), specifically defines “fraudulent conduct” as **“unlawfully destroying or concealing documents** or other evidence or failing to disclose information to the tribunal when required by law to do so.” (emphasis added). Comment 12 also states that “[l]awyers have a special obligation to protect a tribunal against” such fraudulent conduct.

In addition, Rule 3.4(a) prohibits lawyers from “unlawfully obstruct[ing] another party’s access to evidence or unlawfully alter[ing], destroy[ing] or conceal[ing] a document or other material having potential evidentiary value or assist[ing] another person to do any such act.” *C.f. DR Distribs, LLC v. 21 Century Smoking, Inc.*, 513 F. Supp. 3d 839, 906 (N.D. Ill. 2021) (sanctioning counsel because their “failure to timely disclose the destruction of evidence violate[d] the rules requiring candor to the court and fairness to the opposing party and counsel.”), *citing Cobell v. Babbitt*, No. 1:96CV01285 (RCL), 1999 U.S. Dist. LEXIS 20918, at \*196 (D.D.C. Dec. 3, 1999) (“At a minimum, those attorneys who were aware of [spoliation] and yet chose to take no

action to ensure timely notification are guilty ... of violating the Rules of Professional Conduct which demand candor to the Court and fairness to the plaintiffs and plaintiffs' counsel.”).<sup>5</sup>

As detailed above, Goldstein Law Partners represented Frank's with regard to the surrender of its federal license, while also representing another defendant in this case involved in an identical discovery dispute over the production of firearms transaction records. *Supra* at 7-8. Thus, it was aware that Frank's had an obligation to preserve its potentially responsive records, yet it failed to prevent spoliation and also did not inform the Court or the City's counsel of the impending spoliation. *See* comment 3 to Rule 3.3 (“There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation.”).

Zimolong, LLC was also aware of the ATF audit, *see* Exhibit 14 at 15:10-11, yet it did not preserve Frank's records nor make the Court or the City's counsel aware of the potential for spoliation. Instead, Mr. Zimolong engaged in dilatory, obdurate, and vexatious conduct to obstruct discovery while Frank's completed its spoliation of evidence. As discussed *supra* at 4, Zimolong, LLC initially ignored the City's first request for a meet and confer on July 9, 2024. After multiple follow-ups and delays, Mr Zimolong finally agreed to meet with the City on August 21. Mr. Zimolong then rebuffed the City's efforts to memorialize the meeting, repeatedly accusing the City's counsel of “lying” and calling on the City's counsel to withdraw from the matter.<sup>6</sup> After the City filed its motion to compel, Mr. Zimolong requested that the City withdraw the motion.

---

<sup>5</sup> Crucially, attorneys must abide by these ethical obligations “even if compliance requires disclosure of information otherwise protected by [attorney-client confidentiality provisions of] Rule 1.6.” Rule 3.3(c). In turn, Rule 1.6 mandates disclosure of otherwise confidential client communications “if necessary to comply with the duties stated in Rule 3.3 [requiring candor to the court].” Rule 1.6(b). *See also* Rule 1.6(c)(2) (exception applies when necessary to “prevent, mitigate or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services are being or had been used”).

<sup>6</sup> *See* Exhibit 3 at 2 (“It is an outright lie...”, “I would ask that you correct your lie...”, “So, it is a lie”, “I am not sure how folks practice in New York, but in Philadelphia we do not lie[.]”).



Further, Mr. Zimolong submitted a brief to this Court on October 8, 2024—after Frank’s had received a final notice of revocation—arguing that the City’s motion to compel should be held in abeyance and claiming that the City would suffer “no prejudice” from such a delay, but that Frank’s would suffer “irreparable harm” if compelled to engage in discovery, “because [Frank’s] will have been required to produce documents in a suit in which [it] enjoys immunity.” *Supra* at 5.

On November 5, after the documents were already gone, Mr. Zimolong *still* refused to disclose to counsel what had happened to them:

Mr. Zimolong,

As you are aware, gun stores are legally required to maintain transaction documents, and all litigants are required to preserve evidence that may be relevant to an ongoing litigation. The City requested in March, and the Court has ordered production of, a variety of transaction records and other documents from Frank's. Frank's new representation that it does not possess responsive documents is inconsistent with these obligations. Please inform us within the next 24 hours where the requested records are.

Best,  
Alla

\*\*\*\*\*

Ms. Lefkowitz:

I am very confused by your email. Frank’s has provided answers to your client’s requests for production of documents.

\*\*\*\*\*

Mr. Zimolong,

Franks’ answer states that it has no responsive firearms transaction documents in its possession. These are forms that are required to be maintained by federal and state law, and that you have previously represented in court filings that Franks maintains. *See e.g.* Oct. 8 Supplemental Brief at 2 (asserting need for stay on grounds that "any order compelling discovery would cause irreparable harm to Frank's because it will have been required to produce documents in a suit in which [it] enjoys immunity[.]")

Please inform us where the documents are. If they have been transferred, when and to whom were they transferred?

Best,  
Alla

\*\*\*\*\*

Ms. Lefkowitz:

The answers are full, complete, and accurate. Thank you.

Exhibit 11.

The above facts make clear that, at a minimum, Goldstein Law Partners and Zimolong, LLC failed in their duty to supervise Frank's preservation of evidence, as well as to practice fairness and candor before the tribunal when spoliation occurred. At worst, it is possible that Goldstein Law Partners and Zimolong, LLC did not merely neglect their duties as counsel, but rather intentionally facilitated Frank's spoliation of evidence.

Accordingly, this Court should require both firms to show cause why they should not be sanctioned along with their client and to allow the Court to determine the level of fault and bad faith each of them had during Frank's spoliation efforts and decide on the appropriate sanctions. *See Marshall*, 213 A3d at 272 (defining spoliation as "non-preservation," which "may be negligent, reckless, or intentional; a party's bad faith, or lack of it, in the destruction of potentially relevant evidence goes to whether and what type of sanction should be imposed, not whether spoliation occurred").

Moreover, Goldstein Law Partners appears to have, at minimum, assisted in orchestrating Frank's bankruptcy specifically to obtain a stay of these proceedings and prevent this Court from further inquiring into their own misconduct as counsel. As detailed *supra* at 10, Frank's resolved to file for Chapter 7 bankruptcy three days after this Court made clear that it would require a corporate representative to appear in court to be questioned with regard to the destruction of its

documents. The bankruptcy petition was filed one day before the scheduled hearing, and Goldstein Law Partners paid the legal fees associated with filing because it needed to happen quickly. *Supra* at 11. The bankruptcy had no discernible benefit for Frank's, other than to delay the case before this Court. There was no orderly liquidation or distribution of assets, as the company had only \$44.39 remaining at the time of the petition, and these minimal assets were not distributed. *See* Exhibit 28. And neither Frank's debts nor liabilities were discharged, since a Chapter 7 bankruptcy does not discharge a corporation's debts or liabilities. *See* 11 U.S.C. § 727(a)(1) ("The court shall grant the debtor a discharge, unless the debtor is not an individual[.]"); *see also* *U.S. Dismantlement Corp. v. Brown Assocs., Inc.*, 2000 WL 433971, \*2 (E.D. Pa. Apr. 13, 2000) ("Corporations that file for bankruptcy under Chapter 7 get neither discharge of their debts nor fresh starts."); *In re American Cap. Equip., LLC*, 688 F.3d 145, 163 (3d Cir. 2012) (noting that corporate debtor "will not be discharged of its liabilities under Chapter 7").<sup>7</sup>

If Goldstein Law Partners orchestrated Frank's declaration of bankruptcy in order to obstruct this Court's inquiry into its own misconduct (despite the fact that such a maneuver was a mere waste of the client's time and resources with no discernible benefits), it would have engaged in abuse of process in a manner prejudicial to the administration of justice. *See* Pa. R. Prof. Cond. 8.4 (declaring it professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice").

---

<sup>7</sup> It appears that Frank's counsel was under the incorrect impression that Frank's Chapter 7 filing would discharge Frank's debts and permanently terminate this case. *See* Exhibit 30 at 1 ("Be advised that the bankruptcy court entered an order discharging the case and closing the matter. As such, under the Bankruptcy Code the plaintiff is unable to take any further action against the discharged debtor and the case against the debtor must be immediately dismissed with prejudice. If you refuse, we will have no choice but to file suit against you.").

For all the aforementioned reasons, the Court should require Zimolong, LLC and Goldstein Law Partners to explain their role in Frank's spoliation of documents and the hastily-filed bankruptcy. If the Court determines that either law firm engaged in sanctionable conduct with respect to the spoliation, then the Court can determine the appropriate sanctions or invite briefing from the parties on the issue.

### **III. The Attorney-Client Privilege Cannot Be Used To Hide Spoliation And May Need To Be Pierced At An Evidentiary Hearing.**

In order to ascertain the level of fault between Frank's and its counsel for the aforementioned spoliation, the City requests that the Court hold an evidentiary hearing and require a corporate designee of Frank's to testify. The City anticipates that Frank's and its counsel will attempt to rely on the attorney-client privilege to avoid answering questions and producing written and electronic communications pertaining to the spoliation of evidence. The City further anticipates that it will be able to establish at the evidentiary hearing that the attorney-client privilege should be pierced with regard to communications pertaining to spoliation.

Pennsylvania courts have established a "two-part inquiry" when evaluating the attorney-client privilege: First, courts look at whether the challenged communication falls within the scope of the privilege; then the challenging party has the burden to produce *prima facie* evidence that an exception applies. *See In re Investigating Grand Jury of Phila. Cnty.* No. 88-00-3503, 593 A.2d 402, 407 (Pa. 1991) (party seeking to pierce the attorney-client privilege through the crime-fraud exception has the "burden of proof ... to produce *prima facie* evidence that the communications were made in the course of the commission of a proposed crime or fraud").

There are at least three independently sufficient reasons why the City will likely be able to establish a *prima facie* case that an exception to the privilege applies. *First*, "attorney-client privilege does not protect communications made for [the] purpose or in course of commission of

proposed crime or fraud.” *In re Thirty-Third Statewide Investigating Grand Jury*, 86 A.3d 204, 217 (Pa. 2014) (citing *In re Investigating Grand Jury of Philadelphia Cnty. No. 88-00-3503*, 593 A.2d 402, 406 (Pa. 1991)). The exception applies regardless of whether “both attorney and client are guilty or if the client alone is guilty.” *Nadler v. Warner Co.*, 321 Pa. 139, 144 (1936). As detailed *supra* at 22, Rule 3.3(b) of the Pennsylvania Supreme Court’s Rules of Professional Conduct, and its comments, consider the destruction or concealment of documents to be “fraudulent conduct that undermines the integrity of the adjudicative process[.]” Thus, any communications that Frank’s had with either Zimolong, LLC or Goldstein Law Partners about the unwarranted disposal of responsive documents, or the effort to conceal the spoliation, is not privileged.

*Second*, Rule 1.6 of the Pennsylvania Supreme Court’s Rules of Professional Conduct specifically require disclosure of otherwise confidential client communications “if necessary to comply with the duties stated in Rule 3.3 [requiring candor to the court].” 204 Pa. Code R. 1.6(b); *see also* Rule 3.3(c) (counsel must abide by duty of candor to the court “even if compliance requires disclosure of information otherwise protected by [attorney-client confidentiality provisions of] Rule 1.6.”) As discussed *supra* at 22-23, Frank’s counsel had, and continues to have, a duty of candor to the Court to disclose the spoliation of evidence. But when this Court asked Mr. Zimolong during the November 18, 2024 hearing why he did not abide by his duty of candor to the court, Mr. Zimolong immediately invoked attorney-client privilege as the reason he did not inform the Court and opposing counsel about spoliation. *See* Exhibit 14 at 18:3-19:7. Similarly, when the City’s counsel attempted to solicit from Frank’s why it filed for bankruptcy on the eve of a hearing about spoliation with no legitimate bankruptcy purpose (such as discharge of debt and

orderly distribution of assets), Goldstein Law Partners attempted to invoke privilege on Frank's behalf to prevent disclosure. *See* Exhibit 15 at 18:17-19:20.

*Third*, attorney-client privilege is inapplicable to the extent that evidence already establishes that spoliation took place, and the main remaining question is the apportionment of fault among Frank's, Zimolong, LLC and Goldstein Law Partners. Pennsylvania law makes clear that "[t]he purpose of the attorney-client privilege is to benefit the client, and accordingly, the client is the holder of the privilege." *Knopick v. Boyle*, 189 A.3d 432, 440 (Pa. Super. Ct. 2018). As such, Zimolong, LLC and Goldstein Law Partners cannot invoke the privilege here to advance the interests of their law firms, which may conflict with Frank's in the determination of their comparative culpability.

### **CONCLUSION**

For the foregoing reasons, the City respectfully asks this Court to sanction Frank's for spoliation. The City also asks this Court to enter an order to show cause why Zimolong, LLC and Goldstein Law Partners should not be sanctioned for their role in the spoliation. In support of the above, the City also asks the Court to hold an evidentiary hearing at which a corporate designee of Frank's should testify about the aforementioned conduct.

DATED this 19th day of March 2025.

Eric Tirschwell\*  
James E. Miller\*  
Eugene Nam\*  
Laura Keeley\*  
**EVERYTOWN LAW**  
450 Lexington Ave.  
P.O Box # 4184  
New York, NY 10017  
Phone: (646) 324-8222  
etirschwell@everytown.org

Alla Lefkowitz \*  
**EVERYTOWN LAW**  
P.O. Box 14780  
Washington, DC 20044  
Phone: 202-545-3257  
alefkowitz@everytown.org

/s/ Melissa Medina  
**CITY OF PHILADELPHIA LAW DEPT.**  
Lydia M. Furst, Chief Deputy City Solicitor  
Attorney I.D. No. 307450  
Melissa Media, Divisional Deputy City  
Solicitor  
Attorney I.D. No. 327048  
Ryan B. Smith, Deputy City Solicitor  
Attorney I.D. No. 324643  
1515 Arch Street, 15<sup>th</sup> Floor  
Philadelphia, PA 19102-1595  
Tel (215) 683-3573  
Lydia.Furst@phila.gov

Chloe Bootstaylor\*  
**KRAMER LEVIN NAFTALIS &  
FRANKEL LLP**  
2000 K Street NW, 4th Floor  
Washington, DC 20006  
(202) 775-4500  
CBootstaylor@kramerlevin.com

Drew Zagami\*  
**KRAMER LEVIN NAFTALIS &  
FRANKEL LLP**  
1177 Avenue of the Americas  
New York, NY 10036  
(212) 715-9100  
DZagami@kramerlevin.com

**CERTIFICATE OF SERVICE**

I, Melissa Medina, hereby certify that on the date below, the foregoing Motion and accompany exhibits were served on all counsel of record by electronic filing and are available for viewing and downloading.

Dated: March 20, 2025

/s/ Melissa Medina  
Melissa Medina  
Divisional Deputy City Solicitor