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M. RIVERA

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 REPLY BRIEF IN FURTHER SUPPORT OF ITS MOTION FOR SANCTIONS FOR SPOLIATION 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

The City submits this reply in support of its spoliation motion to underscore three central points. *First,* spoliation occurred. Frank's repeatedly represented that it surrendered all the store's records to the ATF and later produced only a subset of responsive records. This conduct *is* spoliation, even if narrower in scope than Frank's originally led the City and the Court to believe.

Second, the City is irreversibly prejudiced because Frank's disposed of the best direct evidence of many of its illegal straw sales. The spoliated records contain a wealth of information that is not duplicated elsewhere, and indicate that Frank's proceeded with firearms transactions in the face of serious irregularities. Moreover, the sheer scale of Frank's spoliation will prevent the City from ever determining the full scope of Frank's public nuisance. Contrary to Frank's arguments, the City plainly has a continued interest in obtaining declaratory and final judgment against an illicit gun dealer like Frank's, as well as appropriate post-judgment relief, sanctions,

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and attorney's costs commensurate with Frank's spoliation. This interest is not extinguished by Frank's bankruptcy or the cessation of its operations.

Third, Frank's and its attorneys engaged in sanctionable misconduct. Frank's now admits that it got rid of most of its documents on November 1, 2024, ***more than a month after this Court's September 26, 2024 Order compelling production***. For several months thereafter, Frank's claimed (incorrectly) that it had no documents at all, only later to find and disclose 430 pages of responsive material. Frank's admits not having even looked for these documents until after the City moved for sanctions. This conduct plainly violated the Court's order. Counsel's subsequent efforts to frustrate inquiries into the spoliation further underscores this misconduct.

In the end, while Frank's and its attorneys have admitted to sanctionable and egregious misconduct, much remains unknown. To date, the City has submitted hundreds of pages of declarations, affidavits, and correspondence documenting Frank's spoliation of evidence and related misconduct. In contrast, the vast majority of averments in Frank's briefing are unsupported by record citation, and neither Frank's nor its attorneys have submitted a single declaration or affidavit supporting their version of events. Instead, they focus on disavowing knowledge and responsibility and deflecting blame on the City. In this context, it remains vitally important to conduct further inquiry, both through an evidentiary hearing and a rule to show cause as to why sanctions should not issue against Frank's attorneys.

ARGUMENT

I. FRANK'S SPOLIATED RELEVANT EVIDENCE

Frank's and its attorneys first argue that spoliation did not occur, citing Frank's recent production of approximately 430 pages of records responsive to the City's first set of discovery requests. *See* Frank's April 6, 2025 Response to the Spoliation Motion ("Zimolong Op.") at 3-4;

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Goldstein Law Partners' April 9, 2025, Reply in Opposition to the Spoliation Motion ("Goldstein Op.") at 4. But this ignores the elephant in the room: that many documents the City requested are still missing. It also ignores the unknown but potentially vast set of store records that are plainly relevant to the City's claims but had not yet been requested in discovery. The latter category likely includes dozens—if not hundreds—of transaction records that the ATF reviewed before concluding that Frank's willfully violated federal law by knowingly selling guns to straw purchasers. *See* Zagami Ex. 13 (ATF findings).[1]

The City has now completed a careful review of Frank's production and confirms that Frank's has failed to produce—and by deduction, spoliated—between 135 and 143 separate transaction records that it was legally obligated to create and maintain,[2] which the City specifically sought in its first requests, and which the Court ordered produced. *See* Declaration of James E. Miller, ¶ 3 (attached hereto). These missing records include between a quarter and a third of the federal Firearms Transaction Records (ATF Form 4473) that the City requested—between 19 and 27 missing forms (out of 77 known transactions), depending on how the store kept the forms. *Id.* It also includes more than a third of the Pennsylvania Records of Sale (Form SP4-113) (28 missing forms). *Id.* Beyond this, half of the ATF Form 3310.4 multiple handgun sale reports that Frank's was required to complete are also missing—for 11 out of 22 qualifying transactions. *Id.* And Frank's did not produce a single entry from its acquisition and disposition book ("A&D book," essentially a rolling roster of the store's firearms inventory), confirming that it spoliated that entire

[1] Exhibits to the Zagami Declaration are attached to the March 19, 2025 declaration of Drew Zagami, Esq. filed with the City's March 20, 2025 Motion to Impose Sanctions for Spoliation and Order to Show Cause ("Spoliation Mot."). Exhibits to the Furst Declaration are attached to the April 7, 2025 declaration of Lydia M. Furst, Esq. filed with the City's April 7, 2025 Notice to Court Regarding Spoliation Motion and Frank's Recent Document Production ("City's Notice").
[2] This number is approximate because Form 4473 can cover more than one gun on a single form.

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category of record. *Id.* Nor has Frank's produced a single sales receipt, firearms trace request, or piece of customer data. *Id.* In sum, Frank's 430-page production contains 93 unique legally mandated transaction records and is missing between 135 and 143 others, meaning the store has produced less than half of the required records covered by the City's first set of discovery requests. *Id.* This includes five known straw purchasers covered by the City's requests (who collectively purchased at least 15 guns), for which Frank's has not produced a single record. *Id.*

Further, this is only a portion of the relevant evidence that Frank's spoliated because it represents only the transaction records for straw purchasers known to the City in March 2024 when it served its first set of discovery requests. But the City alleged—and the ATF's revocation findings now confirm—that "the true number of firearms that Defendants have diverted to the criminal market through illegal straw transactions is substantially higher." Am. Compl. ¶ 3; *see also id.* ¶ 28. Indeed, the ATF found that Frank's consummated at least ten separate transactions with nine different people that it knew or should have known were straw purchasers, falsifying its federal transaction records in the process. *See* Zagami Decl. Ex. 13, at 23-27. Frank's apparently failed to copy or preserve *these* transaction records, despite knowing since July 2023 that the City's lawsuit focused on illegal straw purchases at the store. It is black letter law that parties have an obligation to preserve all evidence that is potentially relevant to litigation, whether actual or impending, and regardless of whether such evidence was specifically identified or requested in a discovery demand. *See Marshall v. Brown's IA, LLC*, 213 A.3d 263, 272 (Pa. Super. Ct. 2019) (spoliation includes "the destruction of potentially relevant evidence"); *see also Schroeder v. Commonwealth*, 551 Pa. 243, 252 (Pa. 1998) (finding spoliation for loss of evidence which occurred prior to litigation). The City would have sought these transaction records in the ordinary course of litigation, as they are indisputably relevant to its efforts to hold Frank's accountable for illegal

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straw sales.[3]

Frank's efforts to escape this conclusion are unavailing. Initially, it blames the ATF, asserting that it was the ATF—not Frank's—that removed the relevant records. *See* Zimolong Op. at 12-13; Goldstein Op. at 4. But there are many problems with this argument. First, it elides the undisputed fact that the records sat in Frank's sole possession for more than five months between May 29, 2024—when the ATF served notice of revocation—until November 1, 2024, when the ATF collected the records. During this time, Frank's knew that it would have to surrender records after losing its license, it knew that the City was actively pursuing these records in discovery, and it was being advised by two separate law firms who were "aware" of the ATF revocation proceedings and this Court's discovery orders. *See* Zagami Ex. 14, 15:10-16:9 (Mr. Zimolong conceding "aware[ness]" of ATF proceeding); Goldstein Op. at 2. And yet between the store and its lawyers, no one can identify a single step taken during this period to ensure that the records were preserved. The failure to preserve evidence within a party's control is still spoliation, even if the loss of evidence is passive or consummated at the hands of a third party. *See Marshall*, 213 A.3d at 266 (finding spoliation where defendant failed to preserve relevant data from automatic deletion); *Cnty. of Fulton v. Sec'y of Commonwealth*, 292 A.3d 974, 1014 (Pa. 2023) (finding spoliation due to third party inspection of voting machines in a manner which potentially altered their data systems).

What is more, Frank's attorneys at Goldstein Law Partners were *not* passive: they "coordinated with ATF to turn over its firearm transaction records." Goldstein Op. at 2. Of course,

[3] The comprehensiveness of Frank's spoliation makes it impossible to precisely determine its scope. The ATF's 2023 inspection that revoked Frank's license appears to have looked back only as far as 2021. There is now no way to tell how many more straw purchasers the City might have identified had it been able to request transaction records back to 2018, which is the full relevant period covered by its lawsuit. *See* Zagami Decl. Ex. 1, at 4 (defining relevant period).

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there is nothing problematic in and of itself about counsel coordinating with a federal regulator to make sure that a client complies with federal regulations. However, in the context of Frank's spoliation, this coordination shows that Goldstein Law Partners was intimately involved with and aware of when and how documents would be transferred. In fact, the result of this coordination appears to be that Frank's turned over all of its records to the ATF well before it had to—without giving any warning to the City or the Court. Frank's lost its license on October 20, 2024, three days after the Court-ordered production deadline. Because federal law gives dealers 30 days after discontinuance of business to turn over records, Frank's had until November 19, 2024 to do so. *See* 27 C.F.R. § 478.127. But after Goldstein Law Partners' coordination efforts, Frank's turned its records over *two and a half weeks before the* deadline, on November 1.

Next, Frank's attorney at Zimolong LLC asserts that the ATF "prohibited Frank's from removing any firearms transactions records from its place of business" and thereby "prevented Frank's from making copies." Zimolong Op. at 6. This assertion is unsupported by anything besides counsel's say-so and is contradicted by the record. To begin with, Zimolong LLC cites no supporting witness declaration, email, or other record corroborating that the ATF actually gave this instruction.[4] There is little reason for the Court to credit Zimolong LLC's unsubstantiated

[4] This is not the first unsupported yet exculpatory averment concerning spoliation that Zimolong LLC has lodged: the City has compiled a lengthy record of similar averments by Zimolong LLC that have already proven inaccurate. *See* City's Notice at 5-9. For example, Mr. Zimolong originally told the City's counsel that the ATF took possession of Frank's documents "before the discovery order," *see* Miller Decl. Ex. 1, when in fact the documents were transferred on November 1, 2024. This is *after* the Court's September 26 Order compelling production, after the deadline in this Order had passed, and even after the Court denied Frank's motion for reconsideration on October 24. Another troubling inconsistency is that Frank's amended discovery responses—which stated that it had no responsive documents "in its care, custody, and control"—were served on November 4, 2024, but were actually dated and signed on October 28, 2024. *See* Zagami Decl. Ex. 10. This suggests that Frank's made the decision to spoliate its records by October 28, shortly after the Court denied its last avenue for lawfully avoiding production. Zagami Decl. Ex. 8.

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claim that ATF prevented Frank's from copying records, particularly where Zimolong LLC avers that it did not represent Frank's in the ATF matter and disavows all personal knowledge of the proceedings. *See* Zimolong Op. at 6 n.3, 7 n.4. Moreover, Goldstein Law Partners, which *did* represent the store in the ATF revocation, conspicuously makes no mention of the ATF prohibiting Frank's from removing its records from its place of business or preventing it from copying records as a part of the revocation proceedings. *See* Goldstein Op. at 2-3.

Instead, Goldstein Law Partners points out that an FFL is always required by law to maintain its firearm transaction records in its place of business. *See id.* at 2 n.3; *see also* 18 U.S.C. § 923(g)(1)(A); 18 Pa. C.S.A. § 6113(a)(5) (analogous Commonwealth requirement). But this general duty to keep records on site does not prevent a store from copying them, particularly not with over five months' notice. The undisputed fact that attorneys at Zimolong LLC were able to scan and copy 430 pages of the store's transaction records in April 2024—a time when the store was under this very same duty—confirms that this general legal obligation was no impediment. There is also no reason to believe that the ATF proceedings altered this general duty or otherwise prevented the store from copying its records. The only evidence in the record on this point is the declaration of former ATF agent Andrew Traver offered by the City, who testified that "[t]he ATF does not prevent FFLs from making copies of the records in their possession either during revocation proceedings or during the 30-day period following the revocation," and added that he is "unaware of any reason why the ATF would do so, and ha[s] never seen such a prohibition in my experience overseeing and participating in revocations." Traver Decl. ¶ 7.[5]

[5] Another problem with Frank's attempt to attribute the spoliation to ATF's rules is that the ATF only takes possession of records that are created under federal law. *See* 27 C.F.R. § 478.127. It does not take records like the Commonwealth's SP4-113 forms, the store's sales receipts, or any customer data. *See id*; *see also* Traver Decl. ¶ 9. Neither Frank's nor its attorneys aver what happened to these non-federal records, but it makes little sense to blame the ATF for their loss.

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Finally, Frank's and Zimolong, LLC argue that the missing records in Frank's 430-page production can be explained away by Frank's failure to follow the law requiring it to create and maintain transaction records, suggesting that this underlying malfeasance—rather than spoliation—accounts for the absence of records. *See* Frank's April 8 Supplemental Response ("Zimolong Supp.") at 3-4. In other words, Frank's posits that it did not spoliate the missing records but instead violated federal and state recordkeeping laws by never creating the records in the first place. While this admission—and the ATF's underlying finding that the store repeatedly and willfully broke federal recordkeeping laws including by falsifying records of straw purchases—is powerful evidence that the store is liable on the merits of the City's claims, it does not explain the records missing from Frank's production. The City has compared the list of missing or records identified by the ATF to the list of straw purchasers in the City's first set of discovery requests. *See* Zagami Decl. Ex. 12, at 5-22 (ATF findings relating to missing records)[6]; *id.* Ex. 1, at 4 (defining list of straw purchasers for first discovery requests). There are only three names that appear on both lists. *See* Miller Decl. ¶ 6. However, all three of the transaction forms that ATF identified as missing for these individuals are present in Frank's production (probably because the store created the records in order to correct this deficiency once the ATF identified it). *See id.* Thus, Frank's theory does not explain the absence of any missing records, let alone all of them.

II. THE CITY IS PREJUDICED BY SPOLIATION

Frank's and its attorneys repeatedly assert that the City is not prejudiced by its inability to continue prosecuting its case against Frank's, which they variously describe as a bankrupt, defunct, and a "corpse." *See e.g.* Zimolong Op. at 4, 11 n.11, 14-15; Zimolong Supp. at 3; Goldstein Op. at

[6] Although this version of the ATF findings has been redacted for public filing, Frank's produced an unredacted version to the City, allowing for the comparison of purchaser names.

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8-9; Furst Decl. Ex. 8 (Transcript of March 20 Hearing) at 7:1-5. This argument is a thinly veiled effort to leverage the spoliation and related machinations to escape liability and should be rejected. It is also legally unsound, for several reasons. For one, Frank's has not even dissolved as a corporation, and, as the City has already detailed, Frank's bad faith bankruptcy petition did not discharge its liability to the City. *See* Spoliation Mot. at 26.[7] Nor has the public nuisance been fully abated by the store's closure, as the overwhelming majority of guns known to the City that Frank's sold in illegal straw sales are yet to be recovered—meaning that they continue to circulate in the community and harm the City and its residents. Moreover, regardless of the store's closure, the City has a continued interest in obtaining a merits judgment demonstrating that gun dealers like Frank's that unlawfully sell firearms to straw purchasers can be held liable for the resulting harms. Entitlement to a judgment and its execution upon assets are distinct issues, *see Macharg v. Macharg*, 151 A.3d 187, 190-91 (Pa. Super. Ct. 2016), and the City has the right to consider whatever post-judgment relief may be appropriate.

Frank's and its attorneys next argue that the City is not prejudiced by spoliation because the missing records are duplicative of other evidence in the City's possession, or because they would not support the City's claims on the merits. *See, e.g.*, Zimolong Op. at 14; Goldstein Op. at 5-6. Both contentions are incorrect. First, the missing records are not duplicative of material already in the City's possession. Much of what the City knows about straw purchasing at Frank's comes from charging instruments in criminal cases against the straw purchasers, which summarize the transactions at a high level. By contrast, Frank's transaction records are direct evidence that the straw purchases took place and describe details of the attendant circumstances that cannot be

[7] Regardless, Pennsylvania law requires that even a dissolved corporation must continue defending itself as a party in litigation pending against it. *See Chongqing Kangning Bioengineering Co. v. Conrex Pharm. Corp.*, 327 A.3d 209, 217 (Pa. Super. Ct. 2024) (citing 15 Pa.C.S.A. § 1978(a)).

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found anywhere else. For example, the ATF Form 4473s and Pennsylvania SP4-113 forms identify the store employees involved with each transaction. The City would have used these records to identify store personnel to depose and further develop a factual record of its claims. The transaction records also frequently contain red flags of straw purchasing that are not present in any other record. To cite just a few examples from Frank's recent document production, Frank's appears to have (1) sold a gun to someone who failed to sign the affirmation stating that they were not a straw purchaser, (2) transferred a gun to a straw purchaser after a delayed background check without reverifying the person's identity, and (3) sold hundreds (possibly thousands) of dollars' worth of guns to straw purchasers who told the store they were unemployed. These are serious irregularities and indicators of illegal conduct that can only be identified from the underlying transaction records. Their presence in Frank's limited document production strongly suggests that the missing records would have yielded significant additional evidence of misconduct.

Moreover, Frank's spoliation prejudices the City by preventing it from determining the full scope of the store's misconduct or the resulting public nuisance. Put another way, the missing records would have identified additional straw purchasers and straw-purchased guns that are currently unknown to the City. This is not a hypothetical: the ATF uncovered nine straw purchasers—previously unknown to the City—while reviewing some of the very records that were later spoliated. *See* Zagami Ex. 12, at 23-28.[8] Frank's failure to preserve evidence relevant to the City's claims deprives the City of a fair opportunity to fully measure and prove its damages from

[8] For example, the ATF found that on February 22, 2022, Frank's sold three handguns (a Ruger EC9S, a Taurus TX22, and a Taurus G2C) to a straw purchaser even though the store "knew or had reason to believe she was not the actual buyer," and then falsified its records of this transaction in willful violation of federal law. Zagami Decl. Ex. 12, at 23. This straw purchaser (and the eight others listed in the ATF's findings) was previously unknown to the City. Her name and the serial numbers of the firearms that she purchased at the store are unredacted on a different version of this exhibit produced by the store in discovery.

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Frank's public nuisance. It is difficult to imagine a more prejudicial impact from spoliation.

III. THE COURT SHOULD SANCTION FRANK'S AND ISSUE AN ORDER TO SHOW CAUSE AS TO ITS ATTORNEYS

Finally, the record firmly establishes that Frank's, Zimolong LLC, and Goldstein Law Partners each share significant fault for spoliating Frank's records. Zimolong LLC and Goldstein Law Partners both incorrectly assert that the Court must first find a party at fault before it can find that spoliation occurred. *See* Zimolong Op. at 12; Goldstein Op. at 3. In fact, spoliation can be negligent, reckless, or intentional, and the degree of fault is simply one component that the Court may consider when exercising its discretion to fashion an appropriate remedy. *See Marshall*, 213 A.3d at 268; *see also Mount Olivet Tabernacle Church v. Emerson Elec. Co.*, 781 A.2d 1263, 1273 (Pa. Super. Ct. 2001) (noting that even in the absence of fault, a lesser sanction such as an adverse inference instruction may be warranted). Fault is a two-part analysis that evaluates (1) the actor's duty or responsibility to preserve the relevant evidence, and (2) the presence or absence of bad faith. *See id.* at 1270-72. Here, all three actors had a duty to preserve the evidence. Instead, Frank's defied this Court's order by spoliating records when it should have been producing them and then acted to frustrate the City's and Court's efforts to investigate the spoliation. This is clear-cut evidence of bad faith on the part of all involved.

There is no dispute that Frank's was under a court order to produce its records at the time it spoliated them—and had been for over a month. Zagami Decl. Ex. 5. Yet neither Frank's nor its attorneys describe any effort whatsoever to comply with that order. Zimolong LLC apparently did not even begin searching for documents until March 20, 2025—after the City filed its spoliation motion—when it located the forgotten set of copies made in April 2024. *See* Zimolong Op. at 11. Rather than complying with the order, Zimolong LLC filed a motion for reconsideration that neither asked for nor obtained a stay of the store's duty to produce records. *See Brown v. Greene*

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Cnty. Off. of Dist. Att'y, 255 A.3d 673, 675 n.3 (Pa. Commw. Ct. 2021) (motion for reconsideration does not automatically toll any applicable deadlines). Meanwhile, attorneys at Goldstein Law Partners "brokered a deal" with ATF that allowed the store to stave off revocation long enough for Frank's to dispose of its assets to a newly formed successor entity, Tons of Guns LLC*, see* Goldstein Op. at 2, but did nothing to preserve Frank's documents. After the Court denied Frank's reconsideration motion on October 24, the records remained in Frank's possession for another week and *still* nobody took any steps to secure, produce, or preserve them (aside from the 430 pages of previously-made copies that no one, at that time, appears to have realized existed). Instead, as explained above, Goldstein Law Partners "coordinated" with ATF to transfer Frank's records and accelerated the transfer by two and a half weeks. Frank's and its attorneys' failure to act in the face of this Court's orders, despite knowledge that the ATF was moving to revoke the store's license, is clear evidence that the spoliation of Frank's records was done in bad faith.

For its part, Goldstein Law Partners argues that it had no duty not to spoliate evidence because it represented Frank's only in connection with the ATF revocation and "did not represent or advise Frank's concerning its discovery obligations in the instant matter." Goldstein Op. at 4. This effort to pass the buck to Zimolong LLC (which Zimolong then attempts to pass back to Goldstein Law Partners) misapprehends the scope of an attorney's duties and would lead to absurd results. An attorney's duty not to spoliate potentially relevant evidence, and to advise clients not to spoliate, is not limited to counsel that represents the client in a particular lawsuit. *See e.g. Farrell v. Farrell*, 218 A.3d 485, 491 (Pa. Super. Ct. 2019) (sanctioning counsel for failure to adequately advise a client against misconduct in a pro se proceeding in which the client was representing herself); PA Eth. Op. 2007-100 at *6 (discussing the need for a lawyer to "give consideration to the law of spoliation insofar as it would affect the client's ability to use or produce documents or

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data in an unrelated representation"). This is the only approach that makes sense; otherwise, any non-litigating counsel could simply spoliate evidence to shield their client from liability, which is tantamount to what Goldstein Law Partners is asking the Court to endorse here. This is especially so in this case, where Goldstein Law Partners does not dispute that it knew that Frank's had an obligation to preserve evidence for the City's lawsuit and to comply with this Court's September 26 Order. While both Zimolong LLC and Goldstein Law Partners argue they did not have a duty to inform the City or the Court of the ATF matter, this overlooks their overarching duty to prevent—and barring that, to disclose—their client's efforts to fraudulently dispose of documents relevant to the City's lawsuit. *See* Zimolong Op. at 15; Goldstein Op. at 7; *see also* 204 Pa. Code R. 3.3(b) (requiring attorneys to actively guard against and prevent the use of their services to perpetrate a fraud on the court); *see also id.* Comment 12 (specifically defining "fraudulent conduct" to include "unlawfully destroying or concealing documents").

Moreover, both law firms engaged in further bad faith conduct to frustrate the City's efforts to get to the bottom of the spoliation once it occurred. As documented at length in the City's April 7, 2025 Notice, counsel at Zimolong LLC engaged in a series of misstatements about Frank's records that were, at best, reckless as to their truthfulness. *See* City's Notice at 5-8.[9] Counsel had

[9] The timeline presented in Zimolong Op. and Zimolong Supp. contains so many inaccuracies that it is not practical for the City to address each one of them in this brief—and many are tangential or irrelevant in any case. For example, Frank's complains that the City made no effort to meet and confer before seeking a preliminary injunction, *see* Zimolong Op. at 8, but ignores the import of emails doing precisely that. *See* Zagami Decl. Ex. 11. It claims that Frank's did not get timely notice of the City's intent to proceed against it after bankruptcy, *see* Zimolong Op. at 10, but ignores that its attorney skipped the March 4, 2025 status conference at which this was discussed, despite having prior notice of the hearing and that it concerned the stay of litigation as to Frank's. *See* Zagami Decl. Ex. 26; Furst Decl. Ex. 11. Finally, Frank's insinuates that the City delayed its production by refusing to let Frank's simply sign the existing confidentiality order, *see* Zimolong Op. at 11, Zimolong Supp. at 2, when in reality Frank's proposal had serious legal flaws that would have been obvious had counsel simply read the order on the public docket. *See* Furst Decl. Ex. 12.

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a duty to conduct a reasonably diligent inquiry before repeatedly representing to the Court and the City that Frank's had no records in its possession. *See* Pa. R. Prof. Cond. 3.3 & Comment 3. Counsel's admitted failure to do so, particularly in the face of a Court order requiring Frank's to produce documents, cannot be squared with Pennsylvania law and the Rules of Professional Conduct which encompass false statements made with reckless disregard for their truth. *See id.*; *see also Off. of Disciplinary Couns. v. Surrick*, 749 A.2d 441, 444 (Pa. 2000) (suspending counsel for reckless misrepresentations); *Gregg v. Ameriprise Fin.,* Inc., 245 A.3d 637, 646 (Pa. 2021) (clarifying that fraud encompasses misrepresentations made with "reckless disregard as to whether it is true or false").

For its part, Goldstein Law Partners makes little effort to explain its role in Frank's bankruptcy; for which the firm fronted the payment due to "velocity issues," and which Frank's (through bankruptcy counsel) admitted was engineered for the specific purpose "to effectuate a stay of the litigation involving the city." *See* Spoliation Mot. at 10-11; 25-27; *see also* Zagami Decl. Ex. 15 at 14:12-15:4; 18:17-19:9. Instead, Goldstein Law Partners contends that the bankruptcy constituted a legitimate effort to discharge Frank's liabilities, even though a Chapter 7 bankruptcy does *not* discharge a corporation's debts. *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, at *2 (E.D. Pa. Apr. 13, 2000) ("Corporations that file for bankruptcy under Chapter 7 get neither the discharge of their debts nor fresh starts.").

CONCLUSION

For the foregoing reasons, this Court should grant the City's motion for spoliation sanctions as to Frank's and for an order to show cause as to Zimolong LLC and Goldstein Law Partners.

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DATED this 25th day of April 2025.

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CERTIFICATE OF SERVICE

I, Melissa Medina, hereby certify that on the date below, the foregoing Reply in Further Support of the City's Motion for Sanctions for Spoliation, and accompanying declaration and exhibit, were served on all counsel of record by electronic filing and are available for viewing and downloading.

Dated: April 25, 2025

/s/ Melissa Medina
Melissa Medina
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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

DECLARATION OF JAMES E. MILLER IN SUPPORT OF PLAINTIFF'S REPLY BRIEF CONCERNING THE CITY'S SPOLIATION MOTION

I, James E. Miller, being over 18 years old and competent to testify, do declare, pursuant to 18 PA CONST. STAT. § 4904, as follows:

1. I am a Deputy Director for Affirmative Litigation at Everytown law, which is outside counsel to Plaintiff the City of Philadelphia ("City") in this action. I am an attorney in good standing licensed in the State of New York, and have been admitted to appear before this Court *pro hac vice*.

2. I have personally reviewed every single record produced by Frank's in discovery in this litigation, including the 430 pages of store records disclosed on April 2, 2025. Several other attorneys working for the City on this matter have also reviewed these records. My knowledge of these records' contents is based on my personal review of them as well as on reviews performed by other attorneys at my direction.

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3. Based on this review of Frank's productions, the City has identified 27 known straw purchases for which Frank's has not produced an ATF Form 4473, 28 straw purchases for which Frank's has not produced a Pennsylvania Form SP4-113, 77 straw purchases for which Frank's has not produced an acquisition & disposition book entry, and 11 qualifying straw purchases for which Frank's has not produced an ATF Form 3310.4 report of multiple handgun sale. Based on the information currently known to the City, the City has identified 77 straw purchased firearms at Frank's; of these, 22 transactions are multiple-handgun transactions as defined by federal law and regulations. For at least five straw purchasers identified in the City's discovery requests (who are believed to have purchased at least 15 firearms from the store), Frank's has not produced a single transaction record. This means that there are between 135 and 143 legally mandated records for known straw purchases that the City requested but that Frank's has not produced. The reason this number is approximate is that ATF Form 4473 can cover multiple firearms on a single record, and the City does not know how Frank's completed the missing Form 4473s. Altogether, Frank's has produced 93 unique legally mandated transaction records.

4. Frank's production does not contain any sales receipts or customer data such as a purchase history, as far as the City can determine. Nor or are there any records documenting or relating to firearms traces performed by law enforcement on firearms sold by Frank's. While none of these types of records is legally mandated, it is common for retail firearms dealers, like any retailer, to generate and retain sales receipts as part of their normal bookkeeping functions.

5. The transaction records produced by Frank's to date contain several indicators of serious irregularities in the sale of firearms. This includes, but is not limited to: (1) a firearm that the store sold to someone who failed to sign the affirmation on ATF Form 4473; (2) a firearm that the store sold to someone after the background check returned a 'delay' notification, where the store did not

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document reverifying the transferee's identity as required; and (3) an individual who purchased at least 8 firearms from Frank's while indicating that they were unemployed.

6. I have compared the list of transactions for which the ATF identified missing federally mandated records at Frank's to the list of straw purchases at Frank's that are known to the City. Based on this review, the City has identified only three individuals for whom the ATF identified a missing record who are also straw purchasers included in the City's first set of discovery requests. However, all three of the records identified as missing by the ATF for these individuals are present in Frank's April 2, 2025 production to the City.

7. Attached hereto as **Exhibit 1** is a true and accurate copy of an email from Mr. Zimolong to counsel for the City dated November 13, 2024.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 25, 2025, in Colchester, Connecticut.

/s/ James E. Miller

James E. Miller
EVERYTOWN LAW
450 Lexington Ave.
P.O Box # 4184
New York, NY 10017
Phone: (646) 324-8220
jedmiller@everytown.org

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EXHIBIT 1

Case ID: 230702394
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From: Wally Zimolong <wally@zimolonglaw.com>

To: Lydia Furst <Lydia.Furst@Phila.gov>

Subject: Re: Notice of an E-Filing on Case #230702394

Sent: 11/13/2024 1:33:49 AM

Attachments: image001.png, image002.jpg

External Email Notice. This email comes from outside of City government. Do not click on links or open attachments unless you recognize the sender.

I don't know the exact date. Before the discovery order.

Wally Zimolong, Esquire
Zimolong LLC
353 West Lancaster Avenue, Suite 300
Wayne, PA 19087
www.zimolonglaw.com
O: (215) 665-0842
M: (609) 932-8836

From: Lydia Furst <Lydia.Furst@Phila.gov>
Sent: Tuesday, November 12, 2024 8:29:02 PM
To: Wally Zimolong <wally@zimolonglaw.com>
Subject: RE: Notice of an E-Filing on Case #230702394

Since when?

From: Wally Zimolong <wally@zimolonglaw.com>
Sent: Tuesday, November 12, 2024 8:09 PM
To: Lydia Furst <Lydia.Furst@Phila.gov>
Subject: Re: Notice of an E-Filing on Case #230702394

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The ATF has the documents.

Wally Zimolong, Esquire

Zimolong LLC

353 West Lancaster Avenue, Suite 300

Wayne, PA 19087

www.zimolonglaw.com

O: (215) 665-0842

M: (609) 932-8836

From: Lydia Furst <Lydia.Furst@Phila.gov>
Sent: Tuesday, November 12, 2024 7:49:16 PM
To: Wally Zimolong <wally@zimolonglaw.com>
Subject: RE: Notice of an E-Filing on Case #230702394

You can call at (215) 683-3573. I would appreciate an answer to these questions in advance of our call. Your client was subject to discovery obligations and a court order to produce documents.

From: Wally Zimolong <wally@zimolonglaw.com>
Sent: Tuesday, November 12, 2024 6:03 PM
To: Lydia Furst <Lydia.Furst@Phila.gov>
Subject: Re: Notice of an E-Filing on Case #230702394

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Call you at 12:30. What number should I use?

Wally Zimolong, Esquire

Zimolong LLC

353 West Lancaster Avenue, Suite 300

Wayne, PA 19087

www.zimolonglaw.com

O: (215) 665-0842

M: (609) 932-8836

From: Lydia Furst <Lydia.Furst@Phila.gov>
Sent: Tuesday, November 12, 2024 5:47:29 PM
To: Wally Zimolong <wally@zimolonglaw.com>
Subject: RE: Notice of an E-Filing on Case #230702394

Yes, I have availability after 11 tomorrow.

From: Wally Zimolong <wally@zimolonglaw.com>
Sent: Tuesday, November 12, 2024 5:44 PM
To: Lydia Furst <Lydia.Furst@Phila.gov>
Subject: Re: Notice of an E-Filing on Case #230702394

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Are you available to discuss tomorrow?

Wally Zimolong, Esquire

Zimolong LLC

353 West Lancaster Avenue, Suite 300

Wayne, PA 19087

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O: (215) 665-0842

M: (609) 932-8836

From: Lydia Furst <Lydia.Furst@Phila.gov>
Sent: Tuesday, November 12, 2024 5:30:29 PM
To: Wally Zimolong <wally@zimolonglaw.com>
Subject: RE: Notice of an E-Filing on Case #230702394

Hi Wally,

On what date did Frank's transfer the documents to ATF? Did Frank's make any copies prior to the transfer? What did Frank's do with non-ATF documents like sales receipts, customer information, communication records, and the Pennsylvania state forms?

Thanks,

Lydia

Lydia Furst (she/her)

Chief Deputy City Solicitor

Affirmative & Special Litigation

City of Philadelphia Law Department

1515 Arch Street, 15th floor

Philadelphia, PA 19102

P: (215) 683-3573

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lydia.furst@phila.gov

www.phila.gov/law

From: Wally Zimolong <wally@zimolonglaw.com>
Sent: Tuesday, November 12, 2024 2:44 PM
To: Lydia Furst <Lydia.Furst@Phila.gov>
Subject: FW: Notice of an E-Filing on Case #230702394
Importance: High

External Email Notice. This email comes from outside of City government. Do not click on links or open attachments unless you recognize the sender.

Hi Lydia:

I received your client's motion for a special and preliminary injunction. Frank's is no longer in business. All documents you are requesting were transferred to the ATF well before your motion. Please give me a call to discuss.

Wally Zimolong, Esquire

Main Office

353 West Lancaster Avenue, Suite 300, Wayne, PA 19087

Mailing Address

P.O. Box 552, Villanova, PA 19085-0552

Office: 215.665.0842| **Mobile**: 609.932.8836| **Email**: wally@zimolonglaw.com |

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Control No.: 25034174

www.zimolonglaw.com

From: cp-efiling@courts.phila.gov <cp-efiling@courts.phila.gov>
Date: Tuesday, November 12, 2024 at 10:57 AM
To: Wally Zimolong <wally@zimolonglaw.com>
Subject: Notice of an E-Filing on Case #230702394

Image removed by sender.

Dear Walter S. Zimolong,

A legal paper has been filed electronically in connection with a Trial Division - Civil case in which you are counsel of record for a party, or you are an unrepresented party, and have consented to be served electronically with any pleading (other than original process) as provided in Pa.R.C.P. No. 205.4 and Philadelphia Civil *Rule No. 205.4.

Filed as noted below. The following information is provided for your records:

Caption:
CITY OF PHILADELPHIA VS TANNER OPERATIONS, LLC ETA
Case Number: 230702394

Date Reviewed and Accepted:
November 12, 2024 10:56 am EDT/DST

Date Presented to the Office of Judicial Records for Filing and Date Deemed Filed:
November 12, 2024 10:32 am EDT/DST
Type of Pleading/Legal Paper:
PRELIMINARY INJUNCTION
E-File No.: 2411023235

To retrieve the legal paper filed and any related notice, order or legal paper, log in to the Electronic Filing Web Site at http://courts.phila.gov using the Court-issued User Name and Password. You may also go directly to the legal paper/document by copying and pasting the following web address(es) into your browser or by clicking the link(s) below to view the related document(s). Each link represents a separate document filed in connection with this matter. Utilizing the link(s) below will only take you to the actual document. You will not be logged into the court's electronic filing system.

Motion CoverSheet Form
https://fjdefile.phila.gov/efsfjd/zk_ealib.open_doc?h=O!SJw6PJA7N9YC7Il

2024.11.12 Emergency Petition re Franks FINAL.pdf
https://fjdefile.phila.gov/efsfjd/zk_ealib.open_doc?h=N!TKw5OJB8N8XC8Jk

THANK YOU,

ERIC FEDER
DEPUTY COURT ADMINISTRATOR
DIRECTOR, OFFICE OF JUDICIAL RECORDS

D I S C L A I M E R

The First Judicial District will use your electronic mail address and other personal information only for purposes of Electronic Filing as authorized by Pa. R.C.P. 205.4 and Philadelphia Civil *Rule 205.4.

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