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IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2015-019927 CA 01

IVY ROBINSON AND GLASFORD ROBINSON,

Plaintiffs,

vs.

SAFEPOINT INSURANCE COMPANY,

Defendant.

_____/

DEFENDANT'S SUPPLEMENTAL MOTION TO DISMISS FOR FRAUD ON THE COURT AND FOR ATTORNEY'S FEES AND COSTS

Defendant, SafePoint Insurance Company ("SafePoint"), by and through undersigned counsel, hereby files its Supplemental Motion to Dismiss for Fraud on the Court and for Attorney's Fees and Costs ("Supplemental Motion"), and in support thereof states as follows:

1. On March 13, 2017, SafePoint filed Defendant's Motion to Dismiss for Fraud on the Court and/or for Attorney's Fees and Costs Incurred by Defendant ("Initial Motion").

2. SafePoint's Initial Motion brought to this Court's attention the widespread and material inconsistencies in the testimony provided by Plaintiffs and their witnesses, which as a whole strongly evinces that Plaintiffs have acted in bad faith in this litigation and have put into motion an intentional plan to perpetrate a fraud on both SafePoint ***and this Court***.

3. Although SafePoint's Initial Motion provided this Court with enough facts to require an evidentiary hearing where this Court would be able to confront Plaintiffs about their

materially inconsistent testimony, SafePoint now supplements its Initial Motion with this Supplemental Motion in order to provide the Court with recent evidence discovered by SafePoint that unequivocally demonstrates that Plaintiffs have acted in bad faith throughout this litigation and have set into motion a scheme to defraud SafePoint and this Court.

4. Specifically, SafePoint has uncovered Plaintiffs' mobile phone records that show ***that Plaintiffs were first contacted by All Insurance Restoration Services, Inc. ("AIRS") on March 30, 2015,*** **10 days before Plaintiffs' allegedly suffered water damage caused by a plumbing leak in the kitchen on April 9, 2015 (the date of loss).** *See* Call Detail Records for Ivy Robinson's mobile phone,[1] attached hereto as **Exhibit "A"**; *see also* Interpreting Call Detail Records,[2] attached hereto as **Exhibit "B."**

5. In fact, Plaintiffs' mobile phone records specifically and unequivocally demonstrate that Plaintiffs must have spoken with AIRS, and hatched this fraudulent plan, **at least one week prior to allegedly suffering water damage caused by a plumbing leak in the kitchen on April 9, 2015.** *See* **Exhibit A.**

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[1] Plaintiff, Ivy Robinson, testified in deposition that her telephone number was 786-306-7186 and that her provider was T-Mobile. *See deposition transcript of Ivy Robinson, p. 46:19-22* (the entire deposition transcript of Ivy Robinson will be filed under a separate Notice of Filing).

[2] T-Mobile also provided a document that instructs how to interpret the Call Detail Records for Plaintiffs' mobile phone.

6. Indeed, AIRS[3] left voicemail messages for Ivy Robinson on March 30, 2015[4] and March 31, 2015,[5] and Ivy Robinsons checked these voicemail messages on March 31, 2015.[6] *See* **Exhibit A.**

7. Then, ***Ivy Robinson picked up calls and actually spoke with AIRS on April 1, 2015,[7]*** **eight days before the alleged date of loss,** and again on April 13, 2015.[8] *See* **Exhibit A.**

8. Notably, Ivy Robinson never called AIRS, even after the alleged date of loss on April 9, 2015; AIRS initiated every last one of these phone calls. *See* **Exhibit A.**

9. There is only one reasonable explanation for AIRS to initiate contact with Plaintiffs before Plaintiffs ever had any alleged water damage or any alleged pipe leak – AIRS sought out Plaintiffs as prospective clients to contrive false water damage claims in order to fraudulently recover money under Plaintiffs' homeowners insurance policy.

10. It is particularly impossible for Plaintiffs or AIRS to offer any other reasonable explanation for this contact prior to the alleged date of loss because: (1) Ivy Robinson has already testified under oath that she was first put into contact with AIRS two days after the alleged date of loss when two men from AIRS showed up at Ivy Robinson's home,

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[3] The phone number listed on AIRS' website, 305-501-2770, placed all of these calls.

[4] Exhibit "A" – p. 11 at 12:17:24 and 12:17:25 (last two rows).

[5] Exhibit "A" – p. 14 at 15:44:37 and 15:44:38 (13th and 14th rows).

[6] Exhibit "A" – p. 14 at 16:42:49 and 16:43:31 (19th and 21st rows).

[7] Exhibit "A" – p. 16 at 15:49:10 (7th row).

[8] Exhibit "A" – p. 35 at 16:00:48 (3rd row).

which was the day after Ivy Robinson's public adjuster allegedly promised to send someone to make repairs, *see deposition transcript of Ivy Robinson, pp. 51-69*; and (2) Clasford Robinson has already testified under oath[9] that he had no idea what company even came to his house to make repairs,[10] s*ee deposition transcript of Clasford Robinson, p. 67.*

11. In fact, Ivy Robinson's testimony that her public adjuster is the one that sent the two men from AIRS to Ivy Robinson's house two days after the alleged date of loss implicates this public adjuster as complicit in this fraudulent scheme.[11]

12. The only possible conclusion that can be reached based upon the unequivocal evidence provided in this Supplemental Motion is that Plaintiffs and AIRS, and possibly Plaintiffs' public adjuster and attorney, have conspired to fraudulently manufacture the instant claim and have continued to pursue this lawsuit in bad faith.

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[9] The entire deposition transcript of Clasford Robinson will also be filed under a separate Notice of Filing.

[10] The only possible reasonable explanation for the phone calls from AIRS would have been that Plaintiffs were friends with someone from AIRS. However, the deposition testimony in this mater demonstrates this is simply not true. *See deposition transcripts of Ivy Robinson and Clasford Robinson (both filed under separate Notice of Filing).* To the extent Plaintiffs now wish to claim a prior relationship with someone from AIRS in response to this Supplemental Motion, this Court should obviously ignore Plaintiffs' further lies and, at the very least, find that Plaintiffs' already unequivocally committed perjury by their prior statements that go to the heart of their claim, i.e., fraud on the court, and dismiss Plaintiffs' Complaint with prejudice, as well as award attorney's fees and costs to SafePoint for defending against this fraudulent claim.

[11] SafePoint requests that this Court explore all aspects of this fraudulent scheme during the evidentiary hearing necessitated by SafePoint's Initial Motion and Supplemental Motion, including whether Plaintiffs' public adjuster and Plaintiffs' attorney were actually complicit in this fraudulent scheme.

13. Therefore, SafePoint requests that this Court hold an evidentiary hearing in order to confront Plaintiffs, AIRS, Plaintiffs' public adjuster, and Plaintiffs' attorney regarding their respective knowledge of and level of participation in this clearly fraudulent scheme, and their corresponding bad faith litigation tactics in continuing to pursue this clearly fraudulent lawsuit.

14. After hearing the relevant evidence, this Court will be left with the grave but inevitable impression that, at the very least, Plaintiffs and AIRS have committed a fraud on this Court, and, potentially, that this fraudulent scheme also includes Plaintiffs' public adjuster and Plaintiffs' attorney.

15. Accordingly, after considering SafePoint's Initial Motion and Supplemental Motion, SafePoint requests that this Court: (1) hold an evidentiary hearing in order to make the requisite determinations of fact regarding Plaintiffs' fraudulent scheme; and (2) enter an order dismissing Plaintiffs' claims with prejudice and sanctioning Plaintiffs in the amount of SafePoint's attorney's fees and costs incurred in defending against Plaintiffs' fraudulent claim and continued bad faith pursuit of this lawsuit.

INCORPORATED MEMORANDUM OF LAW

I. THIS COURT HAS THE AUTHORITY AND THE OBLIGATION TO DISMISS PLAINTIFFS' COMPLAINT IN ITS ENTIRETY FOR PLAINTIFFS' FRAUD ON THE COURT

Where a party engages in a fraudulent scheme to fictitiously manufacture an insurance claim, particularly by offering false testimony belied by unequivocal evidence, ***the court has the***

inherent authority **and the obligation** ***to dismiss the plaintiff's entire case with prejudice***. *See, e.g., Hanono v. Murphy*, 723 So. 2d 892, 896 (Fla. 3d DCA 1998). In *Hanono v. Murphy*, the court reversed the trial judge for not dismissing the plaintiff's case with prejudice where unequivocal evidence demonstrated that Plaintiff had committed perjury. In so holding, the *Hanono* Court stated:

> **Our courts have often recognized and enforced the principle that a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding should not be permitted to continue to employ the very institution it has subverted to achieve her ends.** *Carter v. Carter*, 88 So. 2d 153, 157 (Fla. 1956)("**It is offensive to our sense of right that a wrongdoer be allowed to exploit his wrongs to the injury of another and to the profit of himself**."); *Ashwood v. Patterson*, 49 So. 2d 848, 850 (Fla. 1951)(stating "fundamental equitable principle that 'no one shall be permitted to profit by his own fraud, or take advantage of his own wrong, or found any claim upon his own iniquity, or profit by his own crime'"); *Cox v. Burke*, 706 So. 2d 43, 47 (Fla. 5th DCA 1998)("**Where a party lies about matters pertinent to his own claim . . . and perpetrates a fraud that permeates the entire proceeding, dismissal of the whole case is proper.**"); *Figgie Int'l, Inc. v. Alderman*, 698 So. 2d 563 (Fla. 3d DCA 1997)(affirming entry of default against party which had destroyed evidence and presented false testimony), review dismissed, 703 So. 2d 476 (Fla. 1997); *Mendez v. Blanco*, 665 So. 2d 1149 (Fla. 3d DCA 1996)(affirming dismissal of claim where plaintiff repeatedly lied under oath at deposition); *O'Vahey v. Miller*, 644 So. 2d 550, 550 (Fla. 3d DCA 1994)(**affirming dismissal of claim based upon established perjury of plaintiff which represented serious misconduct and "an obvious affront to the administration of justice"**), review denied, 654 So. 2d 919 (Fla. 1995); *Kornblum v. Schneider*, 609 So. 2d 138 (Fla. 4th DCA 1992)(**trial court has inherent authority to dismiss entire action for fraud which permeates the proceedings**); *Horjales v. Loeb*, 291 So. 2d 92, 93 (Fla. 3d DCA 1974)("**One who engages in a**

fraudulent scheme forfeits all right to the prosecution of a lawsuit."); see also *Fair v. Tampa Elec. Co.*, 158 Fla. 15, 27 So. 2d 514 (1946); *Fagan v. Powell*, 237 So. 2d at 579. We can think of no situation which more aptly justifies and requires this result.

It is true that these cases are approvals of rulings which, unlike the one below, imposed the ultimate penalty in the exercise of the trial court's discretion. **We must conclude, however, that the trial judge abused that discretion in not doing so in the present, extreme set of facts.** This was the case in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 64 S. Ct. 997, 88 L. Ed. 1250 (1944), perhaps the most important case in this sensitive area of the law. There, eloquently speaking through Justice Black, the Supreme Court reversed a determination of the Third Circuit Court Of Appeals that a party's fraudulent conduct in securing a prior appellate opinion did not justify setting the decision aside, holding that it had "both the duty and the power" [e.s.] to do so. *Hazel-Atlas Glass Co.*, 322 U.S. at 250-51, 64 S. Ct. at 1003, 88 L. Ed. 1250. *Savino v. Florida Drive In Theatre Management, Inc.*, 697 So. 2d 1011, 1012 (Fla. 4th DCA 1997) similarly states:

> **We recognized in *Kornblum v. Schneider*, 609 So. 2d 138, 139 (Fla. 4th DCA 1992), that where a party perpetrates a fraud on the court which permeates the entire proceedings, dismissal of the entire case is proper. Appellant lied about matters which went to the heart of his claim on damages. These repeated fabrications undermined the integrity of his entire action. We believe that the trial court has the right and obligation to deter fraudulent claims from proceeding in court. [e.s.]**

A proper allegiance to our system of justice and a proper respect for our own role in preserving its sanctity mandate the conclusion that Murphy has forfeited his right to proceed.

Accordingly, the judgment below is reversed and the cause remanded with directions to dismiss it with prejudice.

Hanono v. Murphy, 723 So. 2d 892, 895-96 (Fla. 3d DCA 1998) (emphasis added); *see also Metro. Dade Cty. v. Martinsen*, 736 So. 2d 794, 794 (Fla. 3d DCA 1999) **(reversing judgment and holding that the trial court abused its discretion in failing to dismiss the case based on plaintiff's untruthful sworn statements)**; *Savino v. Fla. Drive In Theatre Mgmt.*, 697 So. 2d 1011, 1012 (Fla. 4th DCA 1997) ("Appellant lied about matters which went to the heart of his claim on damages. These repeated fabrications undermined the integrity of his entire action. **We believe that the trial court has the right and obligation to deter fraudulent claims from proceeding in court.");** *Jimenez v. Ortega*, 179 So. 3d 483, 488-89 (Fla. 5th DCA 2015) (holding that trial court **abused its discretion in failing to sanction the plaintiff for his lies** despite the fact the plaintiff subsequently retracted these lies and "came clean").

Where a party provides false testimony, Florida law provides that the entire case is properly dismissed with prejudice if the court conducts an evidentiary hearing and finds that the plaintiff provided an insufficient explanation as to false testimony given on a central issue in the case. *See, e.g., Ramey v. Haverty Furniture Cos.*, 993 So. 2d 1014, 1020 (Fla. 2d DCA 2008); *see also Pino v. Bank of N.Y.*, 121 So. 3d 23, 39 n.12 (Fla. 2013) (specifically noting that the *Ramey* Court "affirmed the trial court's dismissal of plaintiff's action based on fraud on the court where plaintiff 'provided intentionally false deposition testimony and interrogatory answers' "). For example, in *Ramey v. Haverty Furniture*, the Court affirmed the trial court's dismissal of plaintiff's action based on fraud on the court where the plaintiff "provided intentionally false deposition testimony and interrogatory answers" that "directly related to the central issue in the case" and "unfairly hamper[ ] the presentation of the opposing party's . . . defense." *Ramey v. Haverty Furniture Cos.*, 993 So. 2d 1014, 1020-21 (Fla. 2d DCA 2008) (citations omitted). In its

holding, the *Ramey* Court focused on the fact that the plaintiff clearly lied throughout discovery. *Id.* Moreover, the *Ramey* Court easily distinguished all case law suggested to be inapposite to its holding because the trial court conducted an evidentiary hearing where the plaintiff was provided an opportunity to attempt to explain his obvious lies, stating:

> The Rameys place unwarranted reliance on various cases which have set aside trial court dismissal orders entered for fraud on the court. These cases are readily distinguishable from the instant case. Some of the cases are distinguishable because they involved the circumstance that the trial court failed to conduct an evidentiary hearing and thus lacked a sufficient evidentiary basis for determining that fraud on the court had occurred. *See Howard*, 959 So. 2d at 310; *Myrick*, 932 So. 2d at 392; *Jacob*, 840 So. 2d at 1170; *Tri Star Invs.*, 407 So. 2d at 293; *Gehrmann v. City of Orlando*, 962 So. 2d 1059 (Fla. 5th DCA 2007). Certain cases are distinguishable because they presented circumstances that were ambiguous and thus provided no warrant for concluding that a clear showing of fraud had been made. *See Laschke*, 872 So. 2d at 346; *Gehrmann*, 962 So. 2d at 1060-61; *Amato v. Intindola*, 854 So. 2d 812 (Fla. 4th DCA 2003). And some of the cases are distinguishable on the ground that they involved misrepresentations that related to collateral matters rather than to the core of the case. *See Howard*, 959 So. 2d at 314; *Laschke*, 872 So. 2d at 345-46; *Kirby v. Adkins*, 582 So. 2d 1209 (Fla. 5th DCA 1991); *Parham v. Kohler*, 134 So. 2d 274 (Fla. 3d DCA 1961).
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> Here, the record unequivocally supports the trial court's determination that Mr. Ramey provided intentionally false deposition testimony and interrogatory answers. **Mr. Ramey was given a full opportunity at the evidentiary hearing to explain the discrepancies between his sworn responses in discovery and the pertinent medical records. The trial court rejected the explanation offered by Mr. Ramey and concluded that Mr. Ramey's statements in discovery concerning his prior medical treatment were "clearly . . . lie[s], which lie[s] [were] stated under oath on numerous occasions."** There is nothing

> ambiguous about the circumstances presented here: Mr. Ramey's dishonesty was blatant. And his dishonesty went right to the heart of the case. In such circumstances, "the need to maintain [the] institutional integrity [of the judicial system] and the desirability of deterring future misconduct" strongly support resort to the severe sanction of dismissal. *Aoude*, 892 F. 2d at 1118.
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> **In providing perjurious testimony, Mr. Ramey engaged in highly culpable misconduct. "Perjury, regardless of the setting, is a serious offense that results in incalculable harm to the functioning and integrity of the legal system as well as to private individuals."** *United States v. Holland*, 22 F.3d 1040, 1047 (11th Cir. 1994). **"[T]ampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society."** *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246, 64 S. Ct. 997, 88 L. Ed. 1250, 1944 Dec. Comm'r Pat. 675 (1944), *receded from on other grounds by Standard Oil Co. of Cal. v. United States*, 429 U.S. 17, 97 S. Ct. 31, 50 L. Ed. 2d 21 (1976).

Ramey v. Haverty Furniture Cos., 993 So. 2d 1014, 1020-21 (Fla. 2d DCA 2008) (emphasis added).

Therefore, based on the damning evidence provided by SafePoint in its Initial Motion and Supplemental Motion, SafePoint requests that this Court properly conduct an evidentiary hearing, and, after making the necessary determinations, exercise its inherent authority and obligation to dismiss Plaintiffs' Complaint with prejudice for their blatantly fraudulent scheme.

II. SAFEPOINT IS ALSO ENTITLED TO RECOVER ATTORNEY'S FEES AND COSTS REPRESETING ITS ACTUAL LOSS SUSTAINED IN DEFENDING AGAINST SUCH BAD FAITH CONDUCT OF PLAINTIFFS IN CONTINUING TO PURSUE THIS FRAUDULENT LAWSUIT

In addition to dismissing Plaintiffs' entire lawsuit for fraud on the court, Florida law provides that a defendant is also entitled to recover its attorney's fees and costs representing its actual loss incurred in defending against such bad faith conduct by Plaintiffs in continuing to vexatiously pursue a fraudulent lawsuit. *See Sky Dev., Inc. v. Vistaview Dev., Inc.*, 41 So. 3d 918, 920 (Fla. 3d DCA 2010) (affirming dismissal with prejudice and award of defendant's attorney's fees because the plaintiff's misconduct was certainly a "blatant showing of fraud, pretense, collusion or other similar wrongdoing."); *Pena v. Citizens Prop. Ins. Co.*, 88 So. 3d 965, 968 (Fla. 2d DCA 2012) (awarding fees and costs expended by defendant insurer from the filing of the complaint through dismissal because of the plaintiffs' fraud on the court, which necessitated efforts by the defendant insurer to expose the plaintiffs' fraud); *Moakley v. Smallwood*, 826 So. 2d 221, 224 (Fla. 2002) ("This Court and other courts in this state have recognized that attorney's fees can be awarded in situations where one party has acted vexatiously or in bad faith."); *Heiny v. Heiny*, 113 So. 3d 897, 903 (Fla. 2d DCA 2013) (A trial judge has inherent authority to award fees as a result of the bad faith conduct of an attorney or litigant but the amount of the award of attorneys' fees must be directly related to the attorneys' fees and costs that the opposing party has incurred as a result of the specific bad faith conduct of the attorney or litigant.).

SafePoint has incurred quite large expenses in defending against this fraudulent claim and litigation that was obviously pursued completely in bad faith. Therefore, SafePoint requests that this Court hold an evidentiary hearing and find that Plaintiffs have pursued this litigation fraudulently, vexatiously, and in bad faith, thereby necessitating an award of SafePoint's attorney's fees and costs for this entire lawsuit.

WHEREFORE, Defendant, SafePoint Insurance Company, respectfully requests that this Court invoke its inherent authority and hold an evidentiary hearing so that this Court may properly dismiss Plaintiffs' case in its entirety, with prejudice, and award SafePoint all attorney's fees and costs incurred to date, and to grant all other and further relief that this Court may deem just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by e-mail via the Florida Courts E-filing Portal system on this 29th day of March, 2017, upon: Greg Saldamando Esq. The Strems Law Firm., *Attorneys for Plaintiff,* Service E-mail:; pleadings@stremslaw.com, greg@stremslaw.com.

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