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XELA 1, LLC and ALEXANDER M. CARDOSO, Plaintiffs, v. ACCU REFERENCE MEDICAL LAB, LLC, KONSTANTIN BAS, BIO LABS USA, INC. d/b/a PLATINUM DIAGNOSTIC LABORATORY, ROLAND TUBMAN, and JOHN/JANE DOES 1-10, Defendants.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ESSEX COUNTY DOCKET NO. ESX-L-6114-18 Civil Action **ORDER**

THIS MATTER having been brought before the Court on the Joint Motion of defendants Accu Reference Medical Lab, LLC, and Bio Labs USA, Inc., d/b/a Platinum Diagnostic Laboratory, by and through their attorneys Morvillo PLLC and Gruppuso Legal, and defendant Konstantin Bas, by and through his attorneys Sher Tremonte LLP, for an Order pursuant to *R.* 4:23-2(b) and the Court's inherent authority awarding Defendants their attorney's fees and other relief arising from

plaintiffs Xela 1, LLC's and Alexander M. Cardoso's failure to obey the Court's Order Compelling Discovery entered March 29, 2019 (the "Joint Motion"); and the Court having considered the papers in support of and in opposition to the Joint Motion and having heard the oral argument of counsel; and for good cause shown;

IT IS on this 17th day of Sept. 2025, **ORDERED THAT**:

1. The Joint Motion is **GRANTED**.

2. Pursuant to Rule 4:23-2(b) and this Court's inherent authority, defendants Accu Reference Medical Lab, LLC ("Accu"), Bio Labs USA, Inc., d/b/a Platinum Diagnostic Laboratory, and Konstantin Bas (collectively, "Defendants") are awarded, and plaintiffs Xela 1, LLC and Alexander M. Cardoso (collectively, "Plaintiffs") shall pay, the reasonable attorney's fees and expenses incurred by Defendants that were caused by Plaintiffs' failure to obey the Court's Order Compelling Discovery entered March 29, 2019 (the "Discovery Order"), such amount to be subsequently determined as set forth in paragraph 3 hereof.

3. Within thirty (30) days of entry of this Order, counsel for each Defendant shall file a Certification of Services appropriately itemizing the services, fees, and expenses caused by Plaintiffs' failure to obey the Discovery Order. Plaintiffs may submit opposition as to the amount of fees and costs claimed within twenty (20) days of receipt of such submission, and Defendants may reply within ten (10) days of any opposition.

4. A copy of this Order is and shall hereby be deemed served on all counsel of record upon being uploaded to the New Jersey e-Courts filing system.

Hon. Keith E. Lynott, J.S.C.

[X] OPPOSED

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XELA 1, LLC and ALEXANDER M. CARDOSO,

Plaintiffs,

v.

ACCU REFERENCE MEDICAL LAB, LLC, KONSTANTIN BAS, BIO LABS USA, INC. d/b/a PLATINUM DIAGNOSTIC LABORATORY, ROLAND TUBMAN, and JOHN/JANE DOES 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. ESX-L-6114-2018

Civil Action

ORDER GRANTING PARTIAL SUMMARY JUDGMENT TO DEFENDANTS

THIS MATTER having been brought before the Court on the motion of defendants Accu Reference Medical Lab, LLC ("Accu") and Bio Labs USA, Inc. d/b/a Platinum Diagnostic

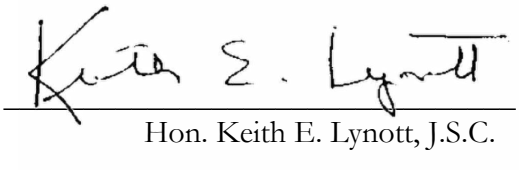
Laboratory, by and through their attorneys Morvillo PLLC and Gruppuso Legal, and defendant Konstantin Bas, by and through his attorneys Sher Tremonte LLP (collectively, "Defendants") for an Order granting partial summary judgment in favor of Defendants dismissing with prejudice plaintiff Alexander M. Cardoso's claim for breach of an alleged oral agreement under which he purportedly agreed to provide certain business development services to Accu in exchange for a 0.5% membership interest in Accu (the "Alleged Oral Agreement"); and the Court having considered the papers in support of and in opposition to the Motion and having heard the oral argument of counsel; and for good cause shown;

IT IS on this 17th day of Sept. 2025,

ORDERED that the Joint Motion is **GRANTED** in its entirety; and it is further

ORDERED that judgment is hereby entered in favor of Defendants dismissing with prejudice (i) plaintiff Alexander M. Cardoso's claim for breach of the Alleged Oral Agreement and (ii) the First Count of the Verified Complaint to the extent it encompasses Cardoso's claim for breach of the Alleged Oral Agreement; and it is further

ORDERED that a copy of this Order is and shall hereby be deemed served on all counsel of record upon being uploaded to the New Jersey e-Courts filing system.



Hon. Keith E. Lynott, J.S.C.

[X] OPPOSED

STATEMENT OF REASONS

In this action, alleging claims sounding in breach of contract and fraud, the Defendants, Accu Reference Medical Lab, LLC ("Accu Reference"), Konstantin Bas ("Bas") and Bio Labs USA, Inc., d/b/a Platinum Diagnostic Laboratory move for (i) an award of sanctions against the Plaintiffs, Xela 1, LLC ("Xela 1") and Alexander Cardoso ("Cardoso") pursuant to R. 4:23-2(b), asserting violation of a March 2019 discovery Order; and (ii) partial summary judgment as to one of the claims of the Plaintiffs. For the reasons set forth herein, the Court grants these motions.

I

The Defendant's Motion for Partial Summary Judgment

The Plaintiffs allege that, in connection with their commercial relationship with the Lab Defendants, Bas and Cardoso entered into an oral contract by which Cardoso or Xela, or both, agreed to assist Accu Reference in developing a sales force in New England in return for a 0.5% equity or membership interest in Accu Reference. The Plaintiffs assert the Defendants Accu Reference and/or Bas breached this agreement, as they performed under the alleged agreement and Accu Reference/Bas did not. For purposes of this Statement of Reasons, the Court refers to the alleged agreement as the "0.5% Oral Agreement."

The Defendants deny that any such agreement ever existed.[1] However, on this motion, they contend that, even if such an agreement existed, it was superseded as a matter of law by the parties' written contract, entered into after the date on which the Plaintiffs contend the parties entered the subject 0.5% Oral Agreement. They contend this fact is dispositively confirmed by evidence

[1] In connection with prior motion practice, the Defendants contended the Plaintiffs had failed even to plead a viable claim for the existence and breach of such alleged 0.5% Oral Agreement. The Court (Moore, P.J. Civ., ret.) denied the Defendants' motion to dismiss on this basis. This Court denied an application for reconsideration as to such ruling.

recently produced by the Plaintiffs (long after it should have been produced, so the movants contend) and additional testimony obtained by the Defendants following such production.

A

On a motion for summary judgment (or partial summary judgment, as the case may be), the Court is required to determine if the motion record presents a genuine dispute of material fact warranting a trial. See R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1996). A dispute of fact is genuine if a rational trier of the facts could resolve a disputed claim or defense in favor of the non-moving party.

To adjudicate a motion for full or partial summary judgment, the Court is required to employ the same analytical approach it would undertake to examine a motion for directed verdict at a trial pursuant to R. 4:37-2(b), except that the motion record consists of Certifications, deposition testimony and other discovery materials, as opposed to trial testimony and admitted Exhibits. The Court is required to assess the motion record to determine if there is a sufficient disagreement as to a matter of material fact to warrant submission of such dispute to the trier of fact or, alternatively, if the motion record is so one-sided in the movant's favor as to require entry of judgment for the movant as a matter of law.

On a motion for summary judgment, the Court does not determine the truth of the matters asserted, weigh the evidence or assess its credibility. Instead, it is required to examine the motion record through a lens that favors the non-moving party and to confer on such party the benefit of all favorable inferences one could reasonably draw from the record. The Court must determine if the motion record, so examined, contains evidence, beyond a scintilla, that could cause a trier of the facts to enter a verdict for the non-moving party.

If the moving party establishes prima facie a right to summary judgment (or partial summary judgment, as the case may be), the non-moving party must respond by adducing facts in competent evidential form that demonstrate the existence of a genuine dispute of material fact. Reference to pleadings, factual disputes of a non-material nature, conclusory or self-serving averments as to facts capable of independent demonstration or factual assertions of an insubstantial, speculative or fanciful nature are not a sufficient basis on which to deny a motion for summary judgment.

The Court must be cautious in granting a motion for summary judgment in order not to deny a deserving litigant a trial, thereby subjecting such litigant in effect to a trial by affidavit. However, where the motion record, properly examined, admits of only a single, unavoidable outcome, the Court is required to grant the motion, lest the parties be required to present for a trial that would not serve any useful purpose.

B

The Court rehearses the relevant facts and procedural history as follows. It examines the motion record through a prism that favors the Plaintiffs. That said, the Court finds the facts pertinent to the adjudication of this motion are not meaningfully disputed. Instead, the parties dispute the legal import of such facts.

As alleged in the Plaintiffs' Complaint, Xela is in the business of sales, marketing and business development within the clinical laboratory industry. The Complaint states that the Plaintiffs are "experts in sales, marketing and product development within the medical laboratory industry," with a specific specialty in soliciting and collecting blood samples and related products. Cardoso is the principal of Xela and receives all of its profits.

The Defendants Accu Reference and Platinum are clinical medical laboratories that test and analyze blood samples and related items. Bas is the principal and former president and CEO of these entities.

Xela and Accu Reference entered into a written Business Development Agreement, effective as of January 2, 2014 ("BDA"). Cardoso executed the BDA for Xela. Bas signed for Accu Reference.

The BDA provided that Xela was "being retained for expertise and experience in business development services for clinical laboratories and [would] be responsible [for] but not limited to [the] duties described in 'Exhibit A.'" Exhibit A, in turn, set forth a non-exclusive list of duties that Xela agreed to perform for Accu Reference pursuant to the BDA as follows:

a. Advising and consulting with Accu concerning new business opportunities, including advising on methods for developing Accu's business and promoting Accu's services and its sales representatives;
b. Working closely with Accu's sales representatives to identify venues to promote Accu's services to healthcare providers;
c. Promoting Accu's services and resources to prospective business opportunities by communicating with Accu's sales representatives and visiting healthcare providers;
d. Preparing marketing materials promoting Accu's services and delivering them to health care providers;
e. Educating Accu's sales representatives on Accu's services and establishing goals for them and a system designed to achieve those goals;
f. Assisting Accu's sales representatives in setting up, managing, and maintaining accounts for health care providers who use Accu's services;
g. Assisting Accu's sales representatives in securing phlebotomists for health care providers and working closely with the phlebotomist supervisor;
h. Working with Accu's sales representatives to educate healthcare providers and other clients about Accu's new services;
i. Meeting with Accu's management and its sales representatives to discuss business development and the marketing of Accu's services;
j. Working with Accu to develop brand awareness and assisting its sales representatives in increasing Accu's name recognition with accountable care organizations, systems, physician groups, and physicians;
k. Analyzing Accu's current and future promotional and marketing material and providing direction as to changes and the creation of new material, procedures, and marketing initiatives;

l. Assisting Accu in implementing marketing programs on a regional basis, and monitoring those programs for success and the need for changes according to results;
m. Evaluating and consulting concerning Accu's client-service systems for efficiency and improvement;
n. Traveling from state to state as necessary to support Accu's sales representatives and geographic regions in which Accu conducts business;
o. Assisting accuse lab operations to understanding and address client issues and complaints to improve customer service and lab efficiency; and
p. Working with Accu's sales representatives in furtherance of Accu's on ongoing compliance initiative.

The BDA provided for compensation to be paid to Xela in the amount of $100,000 per month.[2] The BDA did not provide for any other form of compensation.

Section 10 of the BDA sets forth an integration clause. This clause provided that, "this Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter hereof and supersedes any and all other agreements, arrangements and understandings, written or oral, between the parties."

Cardoso rendered services to Accu Reference through Xela. He was Xela's only employee. In deposition testimony, he acknowledged—multiple times—that the BDA encompassed "pretty much doing anything I was asked to do by Accu Reference."

Cardoso asserts that he and Bas separately agreed to an arrangement by which Cardoso would assist Accu Reference to "build, train, and manage a sales department" in "New England." He contends that, in return for such services, Bas agreed to convey to Cardoso a 0.5% membership interest in Accu Reference. Cardoso asserts that he and Bas intended to set forth this agreement in writing, but this never occurred.

[2] In their Complaint, the Plaintiffs claim (among other averments) that Accu Reference breached the BDA by failing to pay the required monthly compensation amount specified in the agreement. This claim is not at issue on this motion.

Cardoso claims that he performed according to the 0.5% Oral Agreement. He contends that he separately educated and trained sales personnel, taught them how to open and maintain accounts, created marketing and sales policies and procedures, and managed sales representatives.

Bas and Cardoso participated in a phone conversation on July 17, 2018 that took place over sixty-three minutes. Cardoso taped the conversation surreptitiously. He contends that this tape confirms the existence of the 0.5% Oral Agreement.

In connection with earlier summary judgment motion practice, the Plaintiffs produced and relied upon a previously produced partial recording of this conversation and accompanying transcript. The Defendants objected to the Plaintiffs' use of and reliance upon this fragment, contending (accurately) that the recording cut off mid-sentence. The Defendants asserted that, given the context of the partial recording, it was obvious that there was more to the conversation than was contained in the partial recording.

The Court (Moore, P.J. Civ., ret.) denied both the Plaintiffs' and the Defendants' motions for summary judgment. In response to the objections lodged by the Defendants as to the partial recording, the Court determined to conduct a Rule 104 hearing in advance of trial to ascertain whether the recording/transcript would be admissible.

Shortly before the scheduled date for such Rule 104 hearing before this Court, the Plaintiffs produced a complete recording of the July 17, 2018 conversation. They also provided a complete recording of a subsequent conversation between Cardoso and Bas that had not been previously provided in discovery or mentioned in motion practice.

Since that time, the parties have litigated extensively over these matters. The Defendants have contended that the Plaintiffs affirmatively withheld the complete recording of the July 17,

2018 conversation and that they presented to the Court and relied upon a fragment of the exchange in order to mislead the Court and the Defendants concerning the contents of the conversation.

They have sought various forms of relief, including a request to the Court to dismiss the Complaint with prejudice and a separate request to disqualify present counsel for the Plaintiffs for (allegedly) participating in the claimed deception. They now seek sanctions in the form of counsel fees incurred in connection with the prior summary judgment motion practice and subsequent motion for reconsideration (see discussion infra).

The Plaintiffs have contended that the record was not and is not clear as to whether they actually did produce the complete recording at an earlier stage of the case. In all events, they assert that any failure to produce the materials at issue was inadvertent.

The Court determined to permit a continuation of the deposition of Cardoso. The Court permitted the Defendants to inquire of Cardoso as to both the substance and content of the complete recordings, as well as Cardoso's knowledge of the circumstances by which the partial recording was prepared and used in prior proceedings and the complete recording was produced years later.

The testimony elicited from Cardoso at the continued deposition has implications for the current motion practice. Previously, Cardoso had testified that he and Bas agreed to the 0.5% Oral Agreement in 2015, after the execution of the BDA. In both prior deposition testimony and a Certification, Cardoso averred that the 0.5% Oral Agreement incepted in 2015, noting that at the time Xela was already performing services under the BDA.

However, in the continued deposition, Cardoso acknowledged that the alleged 0.5% Oral Agreement actually incepted in 2013 before the execution of the BDA. In such deposition, he testified that the 0.5% Oral Agreement originated in 2013 at a meeting at the Brach Eichler Law

Firm and also stated that in 2015 there were two separate contracts in place, the BDA and the 0.5% Oral Agreement. The Court accepts this fact as now established by the motion record.

C

On this motion, the movants contend that, as it is established that the 0.5% Oral Agreement, if it existed at all, incepted in 2013, such agreement was superseded by the BDA. They assert that the integration clause in the BDA operates to render null any prior agreements—oral or written—between the parties and that, due to such clause, the parol evidence rule operates to bar the use or introduction of any evidence of such an agreement to vary or contradict the terms of the BDA.

The movants contend that the subject matter of the written contract coincides with and indeed mirrors the services to be provided under the alleged 0.5% Oral Agreement. They contend the BDA explicitly provides for Xela to assist Accu Reference in developing its sales and marketing capabilities, including by training, developing and overseeing sales and marketing staff.

The movants posit that, by agreeing to perform such services pursuant to the BDA, the parties determined to accept the fixed monthly compensation amount of $100,000 rather than an alternate form of compensation, such as a percentage of sales and/or a conveyance of an equity stake in Accu Reference. They assert that the complete recording of the July 17, 2018 conversation confirms that the parties reached agreement on the $100,000 monthly fee as a fair measure of the value of the referrals of clients and of the 0.5% equity interest, without the need to perform monthly calculations of Accu Reference's receivables.

The movants assert the contention of the Plaintiffs—that the 0.5% Oral Agreement between Cardoso and Bas was a separate agreement, distinct and independent of the BDA—is belied by the undisputable commercial background. They argue that the BDA comprehensively

delineates marketing and sales services as among the services to be provided by Xela thereafter. They asseverate that Cardoso performed all services through Xela, as its only employee, and that Bas was not in a position to receive or benefit in an individual capacity from the services to be provided to Accu Reference.

Indeed, so the movants claim, the sales and marketing services contemplated by the BDA were for the benefit of Accu Reference only. The movants contend that to hold otherwise is not only to overlook the text of the BDA—and in particular, the integration clause—but to ignore this commercial reality.

The movants contend that, for this same reason, the 0.5% Oral Agreement also fails for lack of consideration. They posit that, as the Plaintiffs performed all the services required under the alleged agreement to Accu Reference under the BDA, there was no separate consideration supplied to support the 0.5% Oral Agreement. The movants further assert that there is no expert report provided by the Plaintiffs to support valuation of the 0.5% membership interest in Accu Reference, as would be required to establish damages for the alleged breach of 0.5% Oral Agreement.

D

In interpreting and construing a contract, the Court is required to give full and independent effect to all terms of the contract. This includes a clear and unambiguous integration clause. When such an integration of an instrument exists, the parol evidence rule operates to bar the use of extrinsic oral or documentary evidence to vary or contradict the terms of the agreement.

Under New Jersey law, courts enforce an integration provision via application of the parol evidence rule. When a contract contains an integration clause, the parol evidence rule, a principle of substantive contract law, "prohibits the introduction of evidence that tends to alter an integrated

written document." Conway v. 287 Corp. Ctr. Assocs., 187 N.J. 259, 268 (2006) (citing Restatement (Second) of Contracts § 213 (1981)); Winoka Village, Inc. v. Tate, 16 N.J. Super. 330, 333 (App. Div. 1951) ("[A] parol agreement which is in terms contradictory of the express words of a contemporaneous or subsequent written agreement, properly interpreted, is ineffectual and evidence of it inadmissible, whether the parol agreement be called collateral or not"). Although extrinsic evidence is "deducible only for the purpose of interpreting the writing," it is not admissible for "the purpose of modifying or enlarging or curtailing its terms," and is not relevant "so far as it tends to show, not the meaning of the writing, but an intention wholly unexpressed in the writing." Atl. N. Airlines v. Schwimmer, 12 N.J. 293, 301–302 (1953)).

In this case, the Plaintiffs contend that, prior to the execution of the BDA, the parties entered an independent agreement by which Plaintiff Cardoso was also to receive a 0.5% equity or membership interest in Accu Reference from Bas in return for his agreement to "build" a sales force in the latter entity. But such compensation terms are directly at odds with the fee arrangement contained in the BDA—a subsequent written agreement that not only provides expressly and unambiguously for a monthly fee of $100,000 as the sole compensation for a variety of services, including assisting Accu Reference with its sales and marketing efforts, but contains an integration clause explicitly providing that the instrument supersedes all prior agreements, arrangements and understandings.

The subject matter of the BDA manifestly includes assistance by Xela in developing, managing and overseeing a sales and marketing function for Accu Reference. The agreement includes an extensive Exhibit A that sets forth such services in elaborate detail. Virtually every item set forth in Exhibit A relates to sales and marketing-related tasks. Indeed, as Mr. Cardoso acknowledged in his deposition, the scope of services to be rendered to Accu Reference was so

broadly framed as to encompass essentially anything Accu Reference wanted or needed, including by way of sales and marketing assistance.

It is also apparent from the motion record that the parties ultimately agreed upon a fixed monthly fee for the services to be rendered, rather than compensation based on a percentage of business generated from the services, together with an equity interest in Accu Reference. Mr. Cardoso expressly acknowledged in the complete recording of the July 17, 2018 conversation that the parties had agreed as early as 2013 that this form of compensation was more desirable and practicable.

To hold otherwise, and to conclude that the parties had two independent agreements providing for separate services and compensation, is directly at odds with the unambiguously broad range of services incorporated into the BDA, and the integration clause by which the parties clearly and unambiguously agreed that the BDA was the final statement of the parties' agreement. If they indeed had in place a separate agreement to "build" a sales force in New England—even though such work was encompassed by the BDA—the parties surely would have—and could have—identified such agreement as an exception to the integration clause. They did not.

As noted, although parole evidence—including evidence of pre-agreement negotiations—can be admissible to facilitate a proper interpretation of a written agreement, it cannot be employed to vary, contract, enlarge or modify the terms of a fully integrated agreement. That is precisely what acceptance of evidence concerning the 0.5% Oral Agreement would entail, thereby rendering nugatory both the letter and intendment of the integration clause and the parol evidence rule that such clause was intended to import into the parties' agreement.

The parties might have agreed in 2013-2014 to two separate agreements—one involving referrals of clients by Xela to Accu Reference in return for a monthly fee, and a second involving

marketing and sales services, including building or strengthening a sales force, in return for a percentage equity interest in the business. But if that were the case, the BDA would not contain Exhibit A detailing a range of sales and marketing services to be provided by Xela under the mantle of the BDA and for the compensation stated therein, which services include the sales and marketing development services that the Plaintiffs argue are a part of the alleged separate and independent agreement. The contention of the Plaintiffs that they entered into separate agreements of this nature simply does not comport with—indeed it is conclusively rebutted by—the text and content of the BDA.

The Plaintiffs contend the 0.5% Oral Agreement involved the "building" and hiring of a sales and marketing staff by the Plaintiffs for Accu Reference, a service not specifically identified in the BDA. But the absence of explicit reference to "building" of a sales and marketing force in the BDA is mere semantics when one examines the breadth and comprehensive nature of the description of services contained in the BDA.

As two examples only, subsection (e) of Exhibit A obligated Xela to "[e]ducat[e] Accu's sales representatives on Accu's services and establish[] goals for them and a system designed to achieve those goals" and subsection (f) required Xela to "[a]ssist[] Accu's sales representatives in setting up, managing, and maintaining accounts for health care providers who use Accu's services." It is difficult to conceive of text more closely aligned with an agreement to “build” a sales and marketing force.

Putting aside the vague and imprecise description by the Plaintiffs of all terms of the 0.5% Oral Agreement, there is no indication in the motion record that Accu Reference ever granted authority to the Plaintiffs to hire (or fire) employees as part of these services. The function of identifying and recommending staff to Accu Reference for the strengthening and development of

a sales and marketing function within that entity is plainly within the compass of the services required by and delineated in the BDA. In all events, even if the 0.5% Oral Agreement contemplated hiring by Xela for Accu Reference of sales and marketing staff—a dubious proposition at best—such agreement was nonetheless superseded by the BDA.

Nor is the contention that the 0.5% Oral Agreement was a separate and independent agreement between Cardoso and Bas in their individual capacities even remotely persuasive. Such assertion is fundamentally at odds with the broad scope of services contemplated by the BDA. Moreover, Cardoso elected to operate his business using a corporate form, presumably at least in part to secure the benefits of limited liability, and provided all services under the BDA through Xela. In such circumstances, the contention that he intended to separately provide services under the 0.5% Oral Agreement in an individual capacity is not only not sustained as a fact, but is completely inconsistent with the commercial context.

There is simply no basis established on this motion record, even when examined in the Plaintiffs' favor, to conclude that the 0.5% Oral Agreement—which the Court accepts for purposes of this motion existed at one time—survived the crucible of negotiation, preparation and entry of the fully integrated BDA. The evidence obtained by the movants as a result of the disclosure of the complete recording and follow-up discovery required by the Court now establishes beyond peradventure that this agreement, if it existed, predated the BDA and was then superseded by its written terms and conditions.

The sockdolager to the Plaintiffs' contentions concerning a separate and independent agreement is the unambiguous integration clause. This clause establishes that the BDA was and is the final, fully integrated memorialization of the parties' full agreement. By operation of settled principles of law, the provision bars acceptance of evidence of other terms and conditions, such as

the 0.5% Oral Agreement, that would vary, contradict or modify the terms of the BDA. The integration clause negates any basis or need for, right to, or utility of a trial as to the disputed facts concerning whether the 0.5% Oral Agreement ever existed, as the BDA incontrovertibly superseded any such agreement.

II

The Defendants' Motion for Sanctions

The Court's disposition of the motion for partial summary judgment is highly pertinent to its consideration of the Defendants' motion for sanctions pursuant to R. 4:23-2(b) in the form of an award of reasonable attorneys' fees and costs associated with the Defendants' participation in the prior summary judgment motion practice. Although this Court has rarely granted such applications for sanctions and has examined this application carefully and through a skeptical prism, it is constrained in the circumstances presented to grant the application.

Following the disclosure by the Plaintiffs that there was a complete recording of the July 17, 2018 conversation between Cardoso and Bas and not merely the fragment used in extensive summary judgment motion practice (as well as another recording not previously included), the Court determined to permit additional discovery, including examination of Cardoso as to the provenance of the complete recording. It did so in order to ensure a full record for any future motion practice as to sanctions (as well as substantive motion practice) and to ensure the parties would have a record on which to present all possible arguments concerning the right vel non of Defendants to sanctions.

The Court previously declined to grant or impose sanctions until a full record was available and also denied an application to disqualify the Plaintiffs' current counsel of record successor to a prior counsel who passed away during the course of the case and who was incumbent when the

partial recording was first created and used. It did so in part because it believed, then and now, that current counsel who ultimately produced the complete recording likely would not have done so if he were then engaged in an effort as claimed by the Defendants to cover up its existence.

The now-developed record reveals that Mr. Cardoso, then represented by his prior counsel created the partial recording from the complete recording he had surreptitiously obtained when he engaged in the communication with Bas. It is readily apparent that he did so in order to prepare an item of evidence that placed the discussion between Cardoso and Bas in the most favorable context for the Plaintiffs.

Although there was nothing inherently wrong about this activity it had pernicious effects when the Plaintiffs then used it in this litigation without also producing the complete version. The Plaintiffs relied on the partial version in affirmatively seeking summary judgment on their claims, provoking vociferous protest from the Defendants. They continued to rely on such partial recording in connection with the Defendants' motion for reconsideration of the Court's denial of the Defendants' own motion for summary judgment without acknowledging in response to the Defendants' protest that they were in possession of a complete recording, including nearly 60 minutes of previously undisclosed discussion.

As this Court has previously determined. it is unthinkable that the Plaintiffs and prior counsel could have examined the Defendants' submissions to the Court and believe that the Defendants were in possession of the complete recording. The Defendants simply would not have responded as they did to the partial recording if they possessed the complete version. Evidence in the present record now establishes conclusively that there was no production of the complete recording prior to January 2024 and thus no mismanagement by the Defendants of their own files as the Plaintiffs previously claimed.

The Court issued a discovery order in 2019 requiring the Plaintiffs to produce materials in their possession custody or control. Such Order irrefragably encompassed the recording at issue, as well as the other complete recording first produced in January 2024. It is pellucid that the prior counsel for the Plaintiff failed to comply with this Order; that Mr. Cardoso became aware of such a violation at the latest during the summary judgment motion practice; and that current counsel should have recognized at an earlier juncture the need to cure the previous dereliction by his predecessor.

Whether the failure to produce the complete recording—either in 2019 or in the ensuing years when it became evident that the Defendants did not have the item —was intentional or merely negligent, the conduct had severe consequences for the progress of the case. Had the Defendants possessed the complete recording in a timely manner they could—and would—have examined Cardoso concerning its contents and import, just as they did during the follow-up discovery ordered by the Court in the wake of the late disclosure. The Defendants could—and would—have learned that the alleged 0.5% Oral Agreement pre-dated the BDA and could—and would—have raised the issue of the integration clause/parol evidence that was the basis for the present motion. As the Court's disposition of the present motion makes clear, they would have succeeded, at least in part, by securing the partial dismissal of the Plaintiffs' claim.

The Court need not tarry over whether the failure to produce the complete recording was deliberate or willful. Rule 4:23-2(b) does not require a showing of willful misconduct to support an award of reasonable attorneys' fees and costs associated with violation of a court order. In Oliviero v. Porter Hayden Co., 241 N.J. Super. 381 (App. Div. 1990), the Appellate Division sustained, with modification, the trial court's order imposing attorneys' fees and costs on a plaintiff's attorney who had negligently failed to disclose a material witness during discovery,

resulting in a mistrial. In so holding, the court declared that "[s]anctions for expenses for a violation of the Rules Governing the Courts may be allowed for mere carelessness or negligence." Id. at 385 (quoting State v. Audette, 201 N.J. Super. 410, 414 (App. Div. 1985)).

The court reasoned that the discovery rules were designed to eliminate, so far as possible, concealment and surprise at trials. It stated that "[a]side from specific rules, a court has inherent power to require a party to reimburse another litigant for its litigation expenses, including counsel fees." Id. at 387. After reviewing the body of Court Rules addressing the subject, including R. 4:23-2, concluded that "[i]t is perfectly clear from the foregoing that the trial court, aside from the mandate of this court, had more than ample authority to assess sanctions and counsel fees against plaintiff's attorneys for inconveniences and expenses incurred in attending an aborted three-day trial." Id. at 388.

There is no question that the Plaintiffs violated a Court Order and that the Defendants suffered consequences through having to engage in, and incur the legal cost of, proceedings that were manifestly distorted by the failure to comply with discovery obligations. The Defendants thus have the right to recover a reasonable quantum of counsel fees and costs incurred in connection with the prior summary judgment motion practice (and if not the entirety of such fees and costs, then a portion of the same as determined in further proceedings detailed herein).

The Defendants may submit a Certification of Services in support of a claim for reasonable attorneys' fees and costs within 30 days. The Plaintiffs may submit opposition as to the amount of fees and costs claimed within 20 days of receipt of such submission. The Defendants may submit a reply within 10 days of any opposition. The Court will conduct oral argument if desired.