DOCKET NO: : SUPERIOR COURT

JOHN DOE : J.D. OF NEW HAVEN

V. : AT NEW HAVEN

JANE DOE : JUNE \_\_, 20

PLAINTIFF’S MEMORANDUM IN SUPPORT OF MOTION FOR SANCTIONS IN THE FORM OF ATTORNEY’S FEES AND REIMBURSMENT FOR GAL FEES/OTHER LITIGATION EXPENSES

The Plaintiff, by and through his counsel, submits this memorandum in support of his Motion for Sanctions in the Form of Attorney’s Fees and Reimbursement for GAL Fees/Other Litigation Expenses. As explained below, the Motion for Sanctions is enforceable as the State of Connecticut allows the imposition of sanctions for bad faith or meritless litigation.

In support of his Motion for Sanctions, Father states:

Background Facts

1. On ***insert date*** this matter went to Judgment by agreement of the parties.
2. Since the date of this judgment, both parties have filed multiple motions, as listed below:
   1. Pleading #131: Plaintiff’s Motion for Contempt, Post Judgment (child support, alimony, unreimbursed medical expenses)
   2. Pleading #132: Plaintiff’s Motion for Modification, Post Judgment (parenting plan, wage withholding, Our Family Wizard)
   3. Pleading #147: Defendant’s Post Judgment Motion for Modification (parenting plan and child support)
   4. Pleading #155: Plaintiff’s Motion for Modification, Post Judgment (parenting plan)
   5. Pleading #162: Plaintiff’s Motion for Modification, Post Judgment (legal custody, physical custody, child support, attorney’s fees)
      1. Pleading #165: Defendant’s Objection to Plaintiff’s Motion to Modify
   6. Pleading #166: Defendant’s Motion to Open and Modify Judgment (legal and physical custody)
   7. Pleading #189: Plaintiff’s Motion for Contempt, Post Judgment (health insurance premiums)
   8. Pleading #196: Defendant’s Motion to Modify Child Support, Post Judgment
3. Throughout this litigation, the Defendant has relentlessly berated the Plaintiff and the children, in person, over the phone, and via email; evidence of this abuse will be presented at trial.
4. The Defendant’s vitriolic messages to the Plaintiff are far too numerous to list in this motion, however some key messages are highlighted below:
5. On February 10, 20\_\_, the Defendant emailed the Plaintiff “\_\_\_\_\_\_.”
6. On August 27, 20\_\_, the Defendant emailed the Plaintiff, “\_\_\_\_\_\_.”
7. On July 5, 2022, the Defendant emailed the Plaintiff, “… \_\_\_\_\_.”

THE MOTION FOR SANCTIONS SHOULD BE GRANTED BECAUSE THE PLAINTIFF ENGAGED IN BAD FAITH OR MERITLESS LITIGATION

The trial court may impose sanctions for bad faith or meritless litigation. It is well settled that under the “American rule”, the prevailing party is barred from an award such as attorney’s fees except as provided by statute or in certain defined exceptional circumstances. *Maris v. McGrath*, 850 A.2d 133 (2004), quoting *CFM of Connecticut, Inc. v. Chowdhwy*, 685 A. 2d 1108 (1996). However, one such exception is the bad faith exception, which sets forth that the court has the inherent authority to assess attorney’s fees when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. *Maris v. McGrath*, 850 A.2d 133 (2004). When determining whether to award attorney’s fees for nondiscovery litigation misconduct, the trial court should be guided by *Maris v. McGrath*. *Peny v. Peny*, 95 A.3d 500 (2014), discussing *Berzins v. Berzins*, 51 A.3d 941 (2012). Pursuant to *Maris*, the trial court must make a two-part finding in order to determine whether the conduct of an attorney or opposing party constitutes bad faith for the purposes of the bad faith exception. *Maris* at 845. First, the court must find that the litigant’s claims were entirely without color, and second, the court must make a finding as to

whether counsel (or the party’s) conduct constituted bad faith. *Id*. The trial court must set forth

those factual findings separately, and with a high degree of specificity. *Berzins v. Berzins*, 51 A.3d 941 (2012).

THE MOTION FOR SANCTIONS SHOULD BE GRANTED BECAUSE THE DEFENDANT’S CLAIMS WERE/ARE FRIVOLOUS AND ENTIRELY WITHOUT COLOR

This court should impose sanctions because the Defendant’s claims are frivolous, and entirely without color. Decisions of the Connecticut Supreme Court that have addressed the

issue have focused on two different components of colorability: (I) the factual merits and (2) the

legal merits of the claims at issue. *Rinfi·et v. Porter*, 164 A.3d 812 (2017). For example, in *Maris v. McGrath*, the court’s focus was on the lack of colorable facts in the case, holding that the plaintiff’s claims factually were “wholly without merit”; and “totally false”; The court went on to hold that, as applied to a party rather than an attorney, a claim is colorable for the purposes of the bad faith exception to the American rule if a reasonable person, given her firsthand knowledge of the underlying matter, could have concluded that the facts supporting the claim might have been established. *Maris* at 847. “This standard takes into account the capacity of the party for truthfully or untruthfully recounting those facts, as well as the capacity for honest mistakes, recollections, and disagreements over the facts.” *Id*.

Similarly, in *Keller v. Keller*, 142 A.3d 1197 (2016), the court held that under the factual

circumstances a reasonable person could not have come to the conclusion that the plaintiff could

prevail. Alternatively, the court may focus on the legal sufficiency of the claims in order to determine whether the action was entirely without color. *Rinfi’et* at 512. In *Berzins v. Berzins*, 51 A.3d 941 (2012), the trial court found that the party’s claims were legally without color. There, the court relied on “numerous and duplicative” motions filed by the party, each of which the court expressly found to have been frivolous. *Id* at 660. The court further supported its determination that the claims were without color by taking judicial notice of two additional actions brought by the party, which sought to relitigate an earlier order of the court, which the court found to have been “wholly without basis” *Id*.

In this case, the Defendant’s motions are wholly without merit. No reasonable person could come to the conclusion that the Defendant should prevail on the motions he has filed in this action (with the narrow exception of his motion to modify child support due to the oldest child reaching the age of majority). At no point has the guardian ad litem expressed that it would be best for the children to live primarily with the Father. No reasonable person could think that given the totality of the circumstances, which will be presented at trial, it is in the best interest of the children for the Father to have sole legal custody and primary physical custody of the children. As will be presented at trial, the Defendant is entirely incapable of truthfully recounting this family’s history.

THE MOTION FOR SANCTIONS SHOULD BE GRANTED BECAUSE THE

PLAINTIFF ACTED FOR REASONS OF HARASSMENT, DELAY, OR OTHER

IMPROPER PURPOSES.

This court should impose sanctions because the plaintiff acted in bad faith for reasons of

harassment, delay, or other improper purposes. When determining whether a party has engaged in bad faith litigation, the court must assess “whether there has been substantive bad faith as exhibited by, for example, a party’s use of oppressive tactics.” *Maris* at 845. In *Weaver v. Sena*, No. KNOFA084107935S, 2018 WL 709982 (Conn. Super. Ct. Jan. 10, 2018), the court held that when a party’s claims were entirely without color and meant to “harass, embarrass, frustrate and inconvenience the defendant,” the party was acting in bad faith.

In this case, there will be countless exhibits and substantial testimony outlining the Defendant’s consistent history of harassing, embarrassing and frustrating the Plaintiff. It is clear that the Defendant main purpose in life (at least for the past three years) has been to torture and abuse the Plaintiff.

CONCLUSION

For all of the foregoing reasons, the Plaintiff respectfully requests that this court grant

the Motion for Sanctions.

THE PLAINTIFF

JOHN DOE

By: 433848

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was electronically sent to the following counsel of record on this \_\_ day of \_\_\_\_\_\_, 20\_\_:

**Insert contact info for all parties of record here (except yourself)**

433848

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