UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Melissa Rosa,

Plaintiff,

v.

Board of Trustees of the University of Illinois,

Defendant.

No. 18 CV 8477

Judge Lindsay C. Jenkins

ORDER

Plaintiff Melissa Rosa brought this Title VII action for hostile work environment and retaliation claiming that she was sexually harassed by then-Sergeant Aaron Murauskas while both worked for the University of Illinois at Chicago Police Department ("UIC-PD"), and retaliated against by the Board of Trustees of the University of Illinois ("Board") for reporting it.

The case involves a series of alleged interactions between Rosa and Murauskas between December 2016 and December 2017. In January 2018, Rosa filed a complaint with the Board accusing Murauskas of sexual harassment. An investigation by the Board's Office of Access and Equity ("OAE") found no evidence of misconduct. Rosa then filed two claims with the EEOC in September and December 2018, and this suit against the Board followed in December 2018.

During discovery, Rosa produced a diary. The diary purportedly documented her experiences and physical and emotional state from January 17, 2018, shortly after Rosa submitted her complaint to the Board, to February 26, 2019, after the investigation concluded and Rosa resigned from UIC-PD. Rosa initially represented that she wrote the diary contemporaneously with the entries contained in the writing. But after the Board notified Rosa that an expert would examine the diary's authenticity, Rosa offered to stipulate that it was actually written in 2023. After some back and forth between the parties, an expert determined that the diary could not have been written contemporaneously with the events it described. After this examination, Rosa admitted in a meet and confer that the diary was not an original, but a copy made to aggregate scattered notes written years earlier. Rosa insists the diary was drafted at various points between 2018 and 2023.

Before the Court is the Board's motion seeking sanctions against Rosa for fabricating evidence and committing perjury in her deposition and in her declaration

in opposition to the Board's motion. The Board seeks the most drastic penalty, dismissal with prejudice, and fees and costs associated with the motion.

Having reviewed the parties' briefs and evidence, it is clear as day that the diary is not an original and was not prepared as Rosa claims. The Court finds that Rosa engaged in bad faith conduct and committed fraud on the Court by fabricating powerful corroborating evidence for her case and lying about it. Substantial misconduct demands substantial sanctions. Accordingly, the Court grants the Board's motion for sanctions, dismisses this case with prejudice, and awards the Board reasonable attorney's fees and costs associated with bringing this motion.

I. Background

A. The Complaint

Melissa Rosa was employed as a Police Officer by the UIC-PD beginning in May 2016. [Dkt. 113, ¶ 11.][1] Rosa alleges that between December 2016 and December 2017, she was sexually harassed and retaliated against by then-Sergeant Murauskas. Rosa complained about two incidents in December 2016 and May 2017 in which Murauskas allegedly made inappropriate comments and flirted with her. [Dkt. 129-7 at 2.] The harassment peaked on August 24, 2017, when Murauskas ordered Rosa to accompany him on a nighttime "party patrol." Alone in the police vehicle, Murauskas allegedly made sexually explicit comments to Rosa, solicited sexual acts, and grabbed her. [Dkt. 113, ¶¶ 19–21.] Rosa vehemently protested. Murauskas allegedly stated Rosa would be fired if she told anyone and claimed other UIC-PD leadership had retaliated against those who attacked or reported him. [*Id.* at ¶¶ 21–22.] Murauskas allegedly made further inappropriate comments in December 2017 and solicited sexual acts, telling Rosa that she would not have to worry about write-ups if she complied. [*Id.* at ¶ 25.] On January 12, 2018, Rosa filed a complaint to the Board. [*Id.* at ¶¶ 26–28.]

Rosa's employment at UIC-PD was also inflected by multiple infractions before, during, and after this period. She received verbal warnings and write-ups from Murauskas and others and was suspended multiple times for arriving late, inattention to duty, and being out of uniform. [Dkt. 129 at 4–6; Dkt. 129-7 at 2–3.] Rosa alleges that at least some of these disciplinary actions constituted retaliation. [Dkt. 113, ¶ 33.]

In March 2018, OAE concluded its investigation of Rosa's complaint and found that Murauskas had not violated the Board's Sexual Misconduct Policy or created a hostile environment, and that the conduct alleged during the party patrol was not established. [Dkt. 113, ¶ 32; Dkt. 129-8.] Rosa alleges that the investigation was

[1] Citations to docket filings generally refer to the electronic pagination provided by CM/ECF, which may not be consistent with page numbers in the underlying documents.

biased and inadequate because OAE did not interview relevant witnesses, follow up on information, or accurately report information provided by witnesses supporting Rosa. [Dkt. 113, ¶ 28.]

The Board is the sole remaining defendant in this case. Rosa claims that the Board subjected her to a hostile work environment because it was aware of the sexual harassment she endured but did not take appropriate action to prevent or correct it. She also alleges that the Board contributed to this environment and retaliated against her by authorizing Murauskas to file a defamation claim against her. [Dkt. 113, ¶¶ 37–40, 45.]

B. The Diary

In the course of discovery, the Board made a Request for Production on September 22, 2022, asking for "[a]ny and all documents or things relating in any way to any of the allegations or claims set forth in the complaint and/or amended complaint filed by plaintiff in this lawsuit and/or any of the statements or defenses set forth in the answer to plaintiff's amended complaint filed by defendants in this lawsuit," among other requests. [Dkt. 146-8 at 8.] Rosa answered that request on November 8, 2022. [Dkt. 146 at 19.] Months later, on the eve of her deposition on July 27, 2023, Rosa submitted a supplement to her production response that included a diary dated from January 17, 2018 to February 26, 2019. [Dkt. 129 at 10.]

The diary covers the Board's investigation of her complaint, up to when she resigned from UIC-PD and began training at the Cicero Police Department. According to Rosa, UIC's Director of Women's Leadership and Resource Center suggested she journal about her feelings as she went through the OAE investigation. [Dkt. 143 at 6.] The diary contains a detailed account of Rosa's emotional and physical state in response to the events giving rise to this case. [Dkt. 129-10.] For example, it references Murauskas' alleged misconduct, Rosa's resultant anxiety and PTSD, as well as the Board's failure to investigate her claim seriously. [*E.g.*, Dkt. 129-10 at 2, 5–9.]

During Rosa's deposition, the Board inquired about the suddenly produced diary. Rosa represented that she wrote the diary contemporaneously with the events described, that the diary was kept from the first entry date, and she had produced the entire diary. [Dkt. 129-1 at 38.] She did not provide a responsive answer when asked whether she copied the pages from a larger diary. [*Id.*]

On January 19, 2024, the Board notified Rosa that a forensic expert would inspect the diary to verify its authenticity. [Dkt. 129-13.] Rosa then offered to stipulate that the diary was written in 2023 rather than contemporaneously as she stated in her deposition to avoid a forensic examination. [Dkt. 129-15 at 5.] The Board refused but sent Rosa request to admit that the diary pages produced were entirely written in 2023. [Dkt. 129-16.] Rosa denied without elaboration. [Dkt. 129-11.]

In May 2024, a forensic chemist expert examined the diary and concluded that no entry could have been produced before June 2022 and all were likely written in 2023. [Dkt. 146-1.] The expert analyzed the chemicals present in the inks to isolate and date each unique ink. [146-1 at 21–23.] The first four diary entries used three types of ink. [*Id.* at 8, ¶ 16.] Based on the level of certain chemicals in the ink, the expert was "overwhelmingly confident" that the entries could not have been written before May 2022 and found "extremely strong" evidence with a high degree of confidence that they were written in 2023. [*Id.* at 8–9, ¶ 17.] Another reason for this conclusion was that the writer accidentally dated the fifth diary entry "4/1/23" rather than "4/1/18." The expert concluded that it was unlikely someone would mistakenly write a future date and that this error indicates the fifth entry was actually made in 2023. Therefore, the following entries were also likely made no earlier than 2023. [*Id.* at 11, ¶ 23.] The remaining 36 entries were written with one kind of ink around the same time, not over a period of months. [*Id.* at 10, ¶¶ 20–21.] The expert noted other indicia of backdating, such as obvious errors that the writer seemingly tried to obliterate. For example, the writer corrected "2/6/18" to "2/27/18" by simply writing "27" over the "6," but corrected "5/19/2" to "6/19/18" by vigorously scribbling over the date. [*Id.* at 9–10, ¶ 22.]

It was only after this examination that Rosa presented the version of events she stands by now. During a meet and confer between the parties, the Board informed Rosa that it would move for sanctions based on the expert's findings and Rosa admitted that the diary was not written contemporaneously. Instead, she claimed that it was copied from original notes over a period of three or four years. [Dkt. 129 at 20; Dkt. 143 at 17.] Rosa now explains that she initially journaled on a note pad, scraps of paper, and in a phone application. [Dkt. 143 at 6–7.] In late 2019 or 2020, she accidentally spilled coffee on the notes. [*Id.* at 7.] She began copying the damaged notes into the diary that was later produced because she thought it would be therapeutic since her case was ongoing. [*Id.*] Rosa copied some of the early entries, stopped, and then started again in mid-2020, finishing in 2023. [*Id.* a 7–8.] Rosa claims she discarded the original notes when she finished copying them. [*Id.* at 8.]

The Board's sanctions motion seeks default judgment with prejudice, or a combination of any of the following sanctions: (a) bar Rosa from testifying about any matters stated in the diary; (b) allow the Board to raise Rosa's misconduct at trial, but bar Rosa from using the diary or offering any explanation for the misconduct and instruct the jury that Rosa committed perjury and fabrication, which would allow the jury to draw adverse inferences against her credibility; (c) bar Rosa from testifying on the OAE investigation and the emotional and physical pain documented in the diary; (d) strike Rosa's claims as they relate to anything in the diary; (e) strike Rosa's claims except for the party patrol incident; (f) strike Rosa's damages; and (g) order Rosa to pay a fine or penalty. The Board also seeks costs and fees associated with this motion. [Dkt. 129 at 24–25.]

II. Legal Standard

Rule 37 of the Federal Rules of Civil Procedure authorizes the imposition of sanctions for a party's failure to comply with discovery orders. Fed. R. Civ. P. 37(b)(2)(A); *see also Ramirez v. T&H Lemont, Inc.*, 845 F.3d 772, 775–76 (7th Cir. 2016). The Seventh Circuit has signaled a willingness to broadly construe what constitutes a court order for the purposes of sanction under Rule 37 and a formal order is not required. *Ramirez*, 845 F.3d. at 775, n.3; *Quela v. Payco–General Amer. Credits, Inc.*, No. 99 C 1904, 2000 WL 656681, at *6 (N.D. Ill. May 18, 2000) (collecting cases). Litigants are presumed "to understand that fabricating evidence and committing perjury is conduct of the sort that 'is absolutely unacceptable.'" *JFB Hart Coatings, Inc. v. AM Gen. LLC*, 764 F. Supp. 2d 974, 981–82 (N.D. Ill. 2011) (quoting *REP MCR Realty, L.L.C. v. Lynch*, 363 F. Supp. 2d 984, 998 (N.D. Ill. 2005). Apart from Rule 37, courts also have "inherent authority" to "manage judicial proceedings" and "regulate the conduct of those appearing before it," including by imposing sanctions to "penalize and discourage misconduct." *Ramirez*, 845 F.3d at 776.

Sanctions imposed pursuant to a court's inherent authority require finding that the sanctioned party "willfully abused the judicial process or otherwise conducted the litigation in bad faith." *Id.* at 776. Rule 37, by contrast, has no intent requirement but demands more than simple inadvertence, mistake, or inability to comply. *Id.* (citing *Societe Internationale pour Participations Industrielles et Commerciales, S.A. v. Rogers*, 357 U.S. 197, 212 (1958)); *Long v. Steepro*, 213 F.3d 983, 987 (7th Cir. 2000) ("Fault . . . is not a catch-all for any minor blunder" but "in this context, suggests objectively unreasonable behavior."). To impose sanctions under either Rule 37 or a court's inherent authority, the facts underlying the sanctions must be established by at least preponderance of the evidence. *Ramirez*, 845 F.3d at 776–82.

III. Analysis

A. Sanctionable Conduct

1. Fabrication

The parties agree that Rosa's diary was not written contemporaneously with the events therein. The Board argues that it was quickly fabricated to support Rosa's case, while Rosa claims that it was copied precisely over multiple years from an original, contemporaneous version. [Dkt. 129 at 18–19; Dkt. 143 at 8–10.] Rosa also argues that the diary was not fabricated because it presents a truthful recollection of her feelings. [Dkt. 143 at 8–10.]

As the Board points out, a contemporaneous diary documenting the events underlying her lawsuit would be powerful corroborating evidence at trial. [Dkt. 146

at 15–18.] But Rosa's story stretches credulity to its limit. To start, there is no evidence that an original diary existed. Rosa claims that she destroyed the original notes, but even so, she should have been able to produce the notes allegedly kept on her phone. [Dkt. 143 at 6–7.] These are nowhere to be found and Rosa offers no explanation about them.

Rosa also changed her story multiple times. *See Smith v. Hautamaki*, No. 21-2004, 2023 WL 5163877, at *3 (7th Cir. 2023) (changing story supported finding of fabrication). She originally testified that the diary produced was contemporaneous and the sole copy. [Dkt. 129-1 at 38.] But Rosa now claims that she had a lapse in memory due to fatigue and simply confused the diary with her original notes. [Dkt. 143 at 10–11.] Although the Court recognizes that long depositions are tiring, the Board asked her multiple, clear questions about the origins of the diary. The questions were straightforward and did not ask for specific details. [2] [Dkt. 129-1 at 38.] *See Castro v. DeVry Univ., Inc.*, 786 F.3d 559, 571–72 (7th Cir. 2015) (deposition misstatements not necessarily excusable where witness has given clear answers to unambiguous questions). Given that Rosa had allegedly finished copying the diary within the last 18 months—from patchwork scraps and in scrutinizing detail—there is no reason for her to have mistaken the diary produced for the original, mixed media notes. Yet, once the Board broached forensic examination, Rosa shifted her position and offered to stipulate that the diary was written in 2023. [Dkt. 129-15 at 5.] A month later, Rosa refused to admit that very fact. [Dkt. 129-11.] Rosa now claims that she copied the diary beginning in 2020. [Dkt. 143 at 7–8.] Not only is this different from her offer to stipulate that the diary was written in 2023, it is also belied by the forensic expert's finding that the diary could not have been written before June 2022. [Dkt. 129-10.]

Rosa counters that her story changed because her counsel prematurely offered to stipulate to the 2023 date without knowing the full story. [Dkt. 143 at 15.] This too, is not credible. The diary was in dispute as early as January 2024 when the Board notified Rosa it would employ a forensic expert. Given the materiality of the diary and a foreseeable fabrication challenge, it would be incredible if Rosa's counsel did not ask how or when the diary was written until June 2024, or try to locate the original, especially in light of the Board's September 2023 production request that encompassed such a diary. [3] [Dkt. 146-8.]

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[2] "Q.: Is this – were these pages copied from a larger diary? A.: What do you mean? Q.: How long have you been keeping a diary? A.: Since this very first date. Q.: Are there other pages that weren't copied? A.: No. Q.: Is this the entirety of the diary? A.: Yes." [Dkt. 129-1 at 38.]

[3] Rosa argues that the production request did not ask for "diaries, journals, or calendars." [Dkt. 143 at 8.] But the request obviously encompassed these items by defining "documents" broadly to include "handwritten, typewritten, printed, photocopied, photographic, electronic or recorded matter." [Dkt. 146-8 at 3–4, ¶ 2.]

That Rosa happened to have documented powerful corroborating evidence, damaged it, and perfectly copied it over years without informing her counsel—only to produce it on the eve of her deposition, still without counsel inquiring about its origin—is an unlikely string of events that defies belief. It is thus improbable that any diary was written contemporaneously. Based on this finding, the produced diary's contents lack credibility. The Board's expert found that the diary was written in June 2022 or later. But the entries are written as if they are contemporaneous, using detailed and highly emotive language. It is not reasonable to conclude that someone could remember specific dates, events, feelings, and physical reactions from five years ago and record them accurately. In sum, the Court finds by at least preponderance of the evidence that Rosa fabricated the diary to advance her case.

2. Perjury

A declarant commits perjury when they (1) make a knowingly false statement (2) under oath or affirmation and (3) the statement is material. *Allen v. Chi. Transit Authority*, 317 F.3d 696, 702 (7th Cir. 2003) (finding false and material deposition statement perjurious). Willful false testimony is distinguishable from false testimony caused by "confusion, mistake, or faulty memory." *Montano v. City of Chicago*, 535 F.3d 558, 564 (7th Cir. 2008). False testimony is material if it is "designed to substantially affect the outcome of the case" at the time it's stated. *Flextronics Int'l, USA, Inc. v. Sparkling Drink Sys. Innovation Ctr. Ltd.*, 230 F. Supp. 3d 896, 909 (N.D. Ill. 2017) (quoting *United States v. Galbraith*, 200 F.3d 1006, 1014 (7th Cir. 2000). The Board argues that Rosa committed perjury in her deposition when she stated that the diary was written contemporaneously, and in her declaration, which describes the coffee spill and copying of the diary in 2020 and later. [Dkt. 146 at 4–13.]

As to falsity, Rosa admits that her deposition statements were not accurate. [Dkt. 143 at 10–11.] The Court also found by at least a preponderance of the evidence that Rosa's declaration contains false statements because forensic evidence shows that the diary was written no earlier than June 2022, and because there is no evidence that original diary notes existed. *See supra* Part III.A.1.

There is also ample evidence of willful intent. Inconsistencies or discrepancies, standing alone, are insufficient to support a perjury finding. *Montano*, 535 F.3d at 564 (discrepancy in plaintiff's trial testimony, though "implausible, or at least more convenient than persuasive," was insufficient to "suggest a deliberate falsehood.) But as discussed above, Rosa's false deposition and declaration statements were not caused by excusable mistake. *Id.* It was Rosa herself who allegedly copied the produced diary entries from the original, contemporaneous notes. So, it is unlikely that she could have confused the two versions (if an original version even existed) when asked directly about the diary's origins, or that she could have thought she copied it over three years ago when chemical evidence shows it was written within a

year of having been produced. This compels the conclusion that her statements were made with willful intent.

There is no dispute that Rosa's deposition was under oath, and her declaration was made under penalty of perjury pursuant to 28 U.S.C. § 1746. [Dkt. 143–1 at 2.]

As to materiality, Rosa argues that neither misstatement was material because the diary has "no bearing on the case." [Dkt. 143 at 5.] She insists that it is not relevant to any disputed issue, and that the content is not seriously contested. Rosa also claims that she did not intend to use the diary at trial. [*Id.*]

The contents of the diary speak to a "material matter" in this litigation. That is, it has "a natural tendency to influence, or [is] capable of influencing" the outcome. *Alexander v. Caraustar Indus., Inc.*, 930 F. Supp. 2d 947, 957 (N.D. Ill. 2013) (quoting *United States v. Grigsby*, 692 F.3d 778, 785 (7th Cir. 2012)). The diary—if accurate and authentic—would strongly corroborate Rosa's allegations and inform any damages. Rosa's claim against the Board is that it subjected her to a hostile work environment and allowed Murauskas to retaliate against her by filing a defamation claim. Both claims turn on whether Rosa's allegations of sexual harassment are true. *See Lapka v. Chertoff*, 517 F.3d 974, 982 (7th Cir. 2008) (element of hostile work environment claim is whether plaintiff was subject to unwelcome sexual conduct, advances, or requests). The former also depends on whether the Board was negligent in its investigation. Rosa admits that these are contested issues. [Dkt. 143 at 5.]

The diary provides corroborating evidence for both elements. It indicates that something happened between her and Murauskas and many entries dated during the OAE investigation feature Murauskas's conduct and show Rosa's fear of and anger towards him. [*E.g.*, Dkt. 129-10 at 2 ("I didn't know where to begin. Do I start on Aug. 25, 2017 [day after party patrol] or do I start from the beginning? The unwanted flirting and comments at training."); *id.* at 13 ("Training at the station today. Thank God I didn't see him. There is no way I can handle seeing him again . . . But yet I'm nervous b/c it is inevitable he works here.").] Other entries directly reference sexual harassment and disparage OAE's investigation. [*E.g.*, *id.* at 14 ("Did they really just fucking call this shit sexual harassment? . . . SEXUAL ASSAULT Requires touch! He fucking grabbed my wrist!! . . . The are trying to down play what happened to me!"); *id.* at 8 ("Today I am writing a letter to OEIG because I feel nothing is being done to actually help me. No one from UIC is doing anything."); *id.* at 11 ("But then again there is OAE! Trying to discredit me!").]

Rosa's damages claim is comprised of mental harm and the resulting physical fallout. [Dkt. 113, ¶ 48.] The diary helpfully describes in vivid language anxiety, PTSD, and panic attacks resulting from the alleged sexual assault and Murauskas's defamation claim. [*Id.* at 2 ("She asked me to explain what happened . . . I began to cry . . . Right away I got flash backs of that night . . . My anxiety started to flare up.");

id. at 26 ("Why the fuck was he the watch commander today? My heart was racing . . . Fight the Tears!!!"); *id.* at 28 ("he's really suing me?? Defamation of character. No fucking way . . . my heart is racing again am I having a panic attack? Fight the tears Melissa!").] Examples abound.

The diary's content cuts to the heart of this case and the Court has little trouble concluding that Rosa likely intended to use it. First, Rosa's response states that she would not use the diary at trial "*unless* it was needed to refresh her memory (and her counsel would expect that this would not be necessary)." [Dkt. 143 at 8–9 (emphasis added).] So, by Rosa's own words, she did not foreclose the possibility of using the diary at trial. And despite her representations, Rosa would likely need the diary to refresh her memory about the details of events because they occurred over six years ago. Rosa also claims she offered to stipulate that she would not use the diary at trial, but emails between counsel show that Rosa only offered to stipulate that the diary was written in 2023. [Dkt. 129-15 at 2.] Given the contested nature of the diary, it seems unusual that Rosa would not inform the Board earlier that she wouldn't use the diary to eliminate the issue if, as she claims, she wanted to "save time and costs/fees." [*Id.*] Ultimately, and regardless of whether Rosa actually intended to use the diary or not, the Court concludes that the diary *could* have substantially affected the outcome of the case regardless of whether it ultimately *would* have affected the outcome. Rosa surely believed it would have when she testified falsely about it at her deposition and in her declaration. Thus, the materiality requirement is satisfied.

Overall, the Court finds that Rosa committed fraud on the Court by fabricating the diary and perjuring herself about its authenticity multiple times. This misconduct rises above inadvertence, negligence or poor judgment—it constitutes bad faith tactics used to strengthen Rosa's case, discredit the Board's defense, and hoodwink the Court.

B. Sanctions

The Court now considers what sanctions to impose. Under Rule 37 and their inherent authority, "[d]istrict courts have broad discretion in fashioning sanctions against litigants." *Greyer v. Ill. Dep't of Corr.*, 933 F.3d 871, 877 (7th Cir. 2019); *see also Ramirez*, 845 F.3d (discussing sanctions under Rule 37 and inherent authority and overruling clear evidence standard). However, sanctions must be "proportionate to the circumstances." *Donelson v. Hardy*, 931 F.3d 565, 569 (7th Cir. 2019). Relevant factors to consider include "the extent of the misconduct, the ineffectiveness of lesser sanctions, the harm from the misconduct, and the weakness of the case." *Id.* The Court also considers its "interest in both punishing a party's dishonesty and deterring others who might consider similar misconduct." *Sanders v. Melvin*, 25 F.4th 475, 482 (7th Cir. 2022) (internal quotation omitted). The Board seeks dismissal with prejudice and attorney's fees, or some combination of lesser sanctions.

C. Attorney's Fees

The Board seeks costs and fees related to this motion. [Dkt. 129 at 2–3.] Rule 37(b)(2)(C) authorizes the Court to order the sanctioned party to pay the reasonable expenses, including attorney's fees, caused by the failure, unless that failure was substantially justified or other circumstances make an award of expenses unjust. Rosa's fabrication and perjury were not substantially justified and other circumstances do not make an award of expenses unjust. To the contrary, awarding attorney's fees is appropriate and necessary to deter future misconduct by parties in the future. *See Sanders*, 25 F.4th at 482.

"Attorneys' fees that are imposed as a sanction pursuant to a trial court's inherent authority 'may go no further than to redress the wronged party for losses sustained,' and the court 'may not impose an additional amount as punishment for the sanctioned party's misbehavior.'" *REXA, Inc. v. Chester*, 42 F.4th 652, 673 (7th Cir. 2022) (quoting *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 108 (2017)). Rosa argues that the Board forewent cheaper options to "pin [Rosa] down regarding when she wrote the journal entries," and instead "charged ahead with the [expert] work" prior to expert discovery. [Dkt. 143 at 16.] She suggests, for instance, that the Board could have served more tailored requests to admit to determine when Rosa wrote the journal. [*Id.*] This argument is nonsense. The forensic expert's analysis shows that the diary was written after Rosa claims it was. Merely asking Rosa for more information would not have uncovered the lie. Instead, Rosa's own actions required an expert to ferret out the truth. Accordingly, she must bear the expense. Costs must also be awarded to incentivize parties bring deception to the Court's attention. The Court will provide the parties an opportunity to address the proper allocation of the fees and costs awarded in subsequent briefing.

D. Dismissal with Prejudice

The Board also requests the Court dismiss Rosa's claims against it with prejudice. Dismissal with prejudice is a "draconian" sanction, *Greyer*, 933 F.3d at 877 (citation omitted), and the Court does not take it lightly. But the circumstances here warrant dismissal with prejudice to deter future misbehavior and punish Rosa's misconduct. No lesser sanction would do.

The Seventh Circuit has held that a "dismissal with prejudice is an appropriate sanction for lying to the court in order to receive a benefit from it, because no one needs to be warned not to lie to the judiciary." *Id.* at 481 (internal quotation omitted). Further, dismissal may "be appropriate when the plaintiff has abused the judicial process by seeking relief based on information that the plaintiff knows is false." *Id.* (internal quotation omitted). Both have occurred here. Rosa willfully fabricated a diary that would advance her case and lied about its origin multiple times. This conduct is egregious—"[f]alsifying evidence to secure a court victory undermines the most basic foundations of our judicial system." *Secrease v. W. & S. Life Ins. Co.*, 800

F.3d 397, 402 (7th Cir. 2015). Perjury, too, is "among the worst kinds of misconduct." *Rivera v. Drake*, 767 F.3d 685, 686 (7th Cir. 2014). Her misconduct was also harmful. If successful, Rosa could have produced an unjust result by tainting the case with false evidence. Regardless, her effort "impose[d] unjust burdens on the opposing party, the judiciary, and honest litigants who count on the courts to decide their cases promptly and fairly." *Secrease*, 800 F.3d at 402.

The Court recognizes that dismissal with prejudice as a sanction should be infrequently used, and it has carefully considered whether a less serious sanction is appropriate. *Ridge Chrysler Jeep, LLC v. DaimlerChrysler Fin. Servs. Amers. LLC*, 516 F.3d 623, 626 (7th Cir. 2008) (affirming dismissal of a company's claims as a sanction for the CEO's misconduct in litigation, while noting that "the penalty must be proportionate to the wrong.") No lesser sanction would be sufficient here. *See Greyer*, 933 F.3d at 877 (noting that "in all but the most extreme situations courts should consider whether a lesser sanction than dismissal with prejudice would be appropriate" (citation omitted)). Merely excluding the diary or deeming the Board's requests to admit true would achieve neither punishment nor deterrence—it would only put the parties in the positions they were in before the diary was produced. *Hautamaki*, 2023 WL 5163877, at *5. Sanctions of contempt or imposing reasonable expenses would punish Rosa but would not sufficiently punish the "gross abuse of process" exhibited. *Quela*, 2000 WL 656681, at *7. Similarly, instructing the jury on Rosa's misconduct, barring Rosa from testifying about the content of or events in the diary, or dismissing claims related to the diary, would be the "functional equivalent of dismissal." *Secrease*, 800 F.3d at 402.

IV. Conclusion

For the foregoing reasons, the Court grants the Board's motion for sanctions [Dkt. 129.] The Court dismisses Rosa's claims against the Board with prejudice and awards the Board reasonable attorney's fees incurred in uncovering Rosa's fraud and preparing its motion for sanctions. It imposes these sanctions under its inherent authority because Rule 37 does not squarely address fabricated evidence or perjury. *Zapata Hermanos Sucesores, S.A. v. Hearthside Baking Co.*, 313 F.3d 385, 391 (7th Cir. 2002) (inherent authority can be used to punish misconduct "not adequately dealt with by other rules."). However, Rosa's conduct may also be sanctionable under a broad reading of Rule 37. *See Ramirez*, 845 F.3d a 776 ("We have construed the sanctioning power conveyed by Rule 37 to extend to . . . hiding evidence and lying in [a] deposition."). Civil case terminated.

Enter: 18-cv-8477
Date: October 9, 2024

Lindsay C. Jenkins
United States District Judge