

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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GILEAD SCIENCES, INC., *et al.*, :  
 :  
 : Plaintiffs, : Case No. 25-cv-1469 (RER) (RML)  
 :  
 : v. :  
 :  
 : CITY PLUS CARE PHARMACY INC. D/B/A :  
 : HEAL THE WORLD PHARMACY, *et al.*, :  
 :  
 : Defendants. :  
 :  
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**PLAINTIFFS' REPLY MEMORANDUM OF LAW  
IN FURTHER SUPPORT OF MOTION FOR CASE-ENDING SANCTIONS  
AGAINST THE INDIVIDUAL DEFENDANTS**

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Gilead respectfully submits this reply memorandum of law in further support of its motion for case-ending sanctions against Defendants Nabila Chaudhary, Qaiser Chaudhary, and Hamza Chaudhary (together, the “Individual Defendants” or “Chaudharys”).

**A. The Chaudharys’ Lies and Perjury Are Absolutely Relevant to This Motion for Sanctions for Fraud on the Court**

The Individual Defendants fundamentally miscomprehend the nature of the case-ending sanctions for fraud on the Court that Gilead seeks in this motion. They begin their opposition brief with the remarkable assertion that “whether any party ‘lied’ to the other party is not an issue before this Court.” Opp’n Br. at 1. The Individual Defendants also repeatedly claim that it would be improper to issue case-ending sanctions for fraud on the Court because they claim to have a meritorious defense. *See, e.g., id.* at 18-23. The Individual Defendants could not be more wrong. Their widespread lies are at the core of the issue to be decided in this motion, and any alleged defenses on the merits of Gilead’s claims are irrelevant. “[W]hen a party lies to the court and his adversary intentionally, repeatedly, and about issues that are central to the truth-finding process, it can fairly be said that he has forfeited his right to have his claim decided on the merits. This is the essence of a fraud upon the court.” *McMunn v. Mem’l Sloan-Kettering Cancer Ctr.*, 191 F. Supp. 2d 440, 445 (S.D.N.Y. 2002) (collecting cases and issuing case-ending sanctions).

The Individual Defendants are similarly off-base in asserting that “[t]he sole issue is whether the Chaudharys have substantially complied with this Court’s Asset Freeze Orders.” Opp’n Br. at 1. The fraud-on-the-Court analysis is designed to take into account the full breadth of the Individual Defendants’ litigation misconduct – which, as set forth in Gilead’s opening papers, certainly encompasses their contempt of all of this Court’s orders (not just the Asset Freeze Orders), but extends well beyond that. *See, e.g., Abbott Labs. v. Adelpia Supply USA,*

No. 15-cv-5826, 2019 WL 3281324, at \*2 (E.D.N.Y. May 2, 2019) (“Rather than viewing the [D]efendants’ failure to comply with the Court’s January 2017 Orders in isolation, plaintiffs’ motion is more properly considered in the context of the Court’s broader inherent power, because such power ‘extends to a full range of litigation abuses,’ most importantly, to fraud upon the court.” (citations omitted), *R&R adopted*, 2020 WL 1429472 (E.D.N.Y. Mar. 24, 2020), *aff’d sub nom Abbott Labs v. H&H Wholesale Services, Inc.*, Nos. 23-446-cv(L) and 23-449-cv(con), 2024 WL 4297472 at \*3 (2d Cir. Sept. 26, 2024) (summary order).

The Chaudharys’ citation to civil-contempt caselaw, Opp’n Br. at 5-8, is irrelevant because Gilead has not moved (but reserves its right) to hold the Chaudharys in civil contempt – the remedy for which would be civil imprisonment until the Chaudharys complied. *See Armstrong v. Guccione*, 470 F.3d 89, 105 (2d Cir. 2006). Similarly, the Individual Defendants’ cited caselaw where lesser sanctions were issued under Federal Rule of Civil Procedure 37 for late productions or negligent spoliation of evidence, *see* Opp’n Br. at 4, 8, is inapposite to the relief Gilead seeks here for the Individual Defendants’ widespread fraud on this Court.

**B. The Record Leaves No Doubt that the Individual Defendants Willfully Withheld All Relevant Documents and Repeatedly Lied About It**

Gilead set forth in its opening brief extensive evidence that the Chaudharys have, for years, had access to and personally utilized the Gmail email account that they also used to run Heal the World Pharmacy. Opening Br. at 23-24. This evidence included screenshots from Hamza’s phone, as well as the statements of their own counsel, who represented in open court that they exclusively used that email address to communicate with the Chaudharys during the course of this litigation. *Id.* Gilead also set forth in its opening brief all the lies that each of the Chaudharys has told to this Court about their access to that email account, including in open court, in sworn deposition testimony, and in sworn responses to discovery demands. *Id.*

In response, the Individual Defendants have nothing to say. They entirely fail to refute or otherwise address Gilead's evidence. The most the Individual Defendants can muster is two sentences at the end of their brief in which they discuss counsel's attempt to work around their client's lies and obstruction by offering an ultimately unworkable plan to have Gilead download whatever emails were available on a computer sitting in the Pharmacy. Opp'n Br. at 31. Counsel's failed attempt to gain access to the documents that their clients are willfully withholding from them only serves only to prove Gilead's point. On this record, the only viable conclusion is that the Chaudharys have engaged in a continuing fraudulent scheme by hiding those emails and repeatedly lying about it with the purpose of preventing Gilead from receiving any documents that might shed light on the source of the counterfeit HIV medications that are at the heart of this case.

The same is true of the Chaudharys' long-running fraud on this Court with regard to their cell phones. In their opposition papers, Qaiser and Nabila have nothing to say about their outrageous lie that they could not produce documents from their phones because Gilead stole their phones. *See* Opening Br. at 32-33. For his part, Hamza shamelessly doubles down on his obvious perjury that the text messages seized from his cell phone are not his texts and he has no idea where they came from, and continues to claim without any substantiation or detail that he "lost" his phone. Declaration of Hamza Chaudhary, dated January 19, 2026 ("Hamza Decl.") at ¶ 34. But in an astonishingly blatant display of contempt for this Court's authority, Hamza now *also* denies under oath that he sent the witness-tampering texts he sent to his pharmacist. Opp'n Br at. 28; Hamza Decl. ¶ 16; *see* Opening Br. at 39-41; Ex. 30. Despite having already being caught red-handed in his first fraudulent attempt to disavow his own text messages – the Court will doubtlessly recall Hamza's recitation of, and immediate attempt to recant, his own phone

number at deposition – Hamza has the temerity to again tell this Court under oath that these too are not his texts, and he has no idea where they came from. But these texts were sent just days before Hamza’s deposition, discussed potential contact by lawyers in connection with this case, and coached the pharmacist to give the same false story that Hamza peddled when deposed shortly thereafter. Ex. 30 at -75-78. Hamza does not, and cannot, offer any evidence that those text messages are somehow faked or otherwise not what they appear to be on their face.

The record before this Court record leaves no doubt that the Individual Defendants have willfully withheld all relevant documents and communications in this case, supported by a sustained series of lies and perjurious testimony about their access to and ownership of those documents that has only gotten worse in their opposition papers. The purpose and effect of their fraud has been to deprive Gilead and this Court of any documentary evidence related to the claims in this case. That fraud, by itself, can only be appropriately remedied by the imposition of case-ending sanctions. But as set forth below and in Gilead’s opening papers, the Individual Defendants’ fraud on the Court extends much further.

**C. The Chaudharys Compound Their Fraud On this Court by Introducing New Lies and Self-Contradictory Testimony in Their Opposition Briefing**

Hamza’s perjury in denying that he wrote the witness-tampering texts to his pharmacist is just one of several instances in which the Individual Defendants worsen their fraud on this Court by telling new lies in their sanctions opposition briefing. Gilead summarizes some of the more salient additional examples below.

**1. Hamza’s Supply of HIV Medicine to Heal the World**

Defendants have insisted throughout this litigation that Hamza is a mere “technician” at Heal the World with absolutely no responsibilities with regard to prescription medicines. *See, e.g.*, Dkt No. 37 at 19 ¶¶ 3-4. Indeed, Hamza testified extensively at his deposition that he had

never “supplied medicines to the pharmacy,” had never “dispensed medicines” for the Pharmacy, and that his only handling of pharmaceuticals was stocking “OTC items” – i.e., over-the-counter, non-prescription items – kept on the shelves at the front of the store. Ex. 20 at 37:8-18, 51:5-13, 101:15-21. **Even when confronted with text messages in which Hamza clearly stated he was bringing Gilead-branded drugs into the pharmacy** – see Exs. 27-28 – Hamza steadfastly maintained that he had never brought drugs into the pharmacy, denying the texts were his and testifying that it “inconsistent with [his] job duties to have brought” any medicines to the Pharmacy. Ex. 20 at 138:16-25, 141:81-16. At his deposition, Qaiser testified the same: that Hamza “is cashier. Control the front area. And that’s all.” Ex. 6 at 108:11-12.

In their opposition briefing, months after the end of discovery and after an unbroken series of testimony and representations that Hamza never had anything to do with the Pharmacy’s supply of drugs, Qaiser and Hamza blithely submit sworn testimony saying that Hamza routinely drove to other pharmacies to “borrow” prescription drugs and bring them back to Heal the World, which they assert without support is “common practice among pharmacies”; and that Hamza would also drive to patient’s homes to deliver medicines and “return” previously dispensed, unwanted medicine back to the Pharmacy. Opp’n Br. at 29; Hamza Decl. ¶¶ 10-11; Declaration of Qaiser Chaudhary, dated January 19, 2026 (“Qaiser Decl.”) ¶ 36. The Individual Defendants go on to speculate that these HIV medicines that Hamza brought into the Pharmacy might be the source of the counterfeit BIKTARVY® that Gilead found on the Pharmacy’s shelves. Opp’n Br. at 29.

Gilead has been open from the beginning that its primary goal in this litigation has been to protect patients by finding out the source of the counterfeit Gilead-branded medicine discovered at the Pharmacy and shut it down. For the Defendants to fraudulently and

perjuringly deny for the entirety of this case that Hamza ever brought any prescription drugs to the Pharmacy, and then casually turn around and claim that the counterfeits might have come in when Hamza was routinely bringing in HIV medicine from other pharmacies, is unconscionable.

This latest narrative from the Individual Defendants makes little sense. Bottles of brand-name prescription HIV medicine cost thousands of dollars, and constitute a significant outlay of funds for an independent pharmacy – what pharmacy would allow a cashier from another pharmacy to simply show up and “borrow” two bottles? The Individual Defendants offer no clue what pharmacies they supposedly routinely “borrowed” HIV medicines from, whether they were pharmacies that were also connected to the Chaudharys, or how these “borrowed” medicines were recorded or replenished. But even if this latest story were true, revealing the truth only in opposing a motion for case-ending sanctions it is hardly exonerating. The constantly changing narratives, delivered under oath on the most crucial issues in the case, demonstrates the depth and persistence of the Individual Defendants’ fraud on this Court. *See, e.g., Cine Forty-Second St. Theatre Corp. v. Allied Artists Pictures Corp.*, 602 F.2d 1062, 1068 (2d Cir. 1979) (failure to issue case-ending sanctions “would encourage dilatory tactics, and compliance with discovery orders would come only when the backs of counsel and the litigants were against the wall.”); *Abbott*, 2019 WL 3281324 at \*12 (issuing case-ending sanctions where “defendants’ explanations ... continue[d] to change as the scent ‘becomes too fresh and the trail too hot to risk further non-compliance’” (quoting *Penthouse Int’l, Ltd. v. Playboy Enter. Inc.* 663 F.2d 371, 389 (2d Cir. 1981))).

## **2. Hamza’s New Mercedes**

In its opening brief, Gilead detailed how Hamza, at his deposition, got tripped up in a series of lies about why the Pharmacy paid for his new Mercedes luxury SUV, and who was currently paying the lease. Opening Br. at 36-37. But in his testimony, Hamza was clear that

this was his “personal car” that was given to him for free because the supposed owner of the Pharmacy “was generous.” Ex. 20 at 199:4-201:11. Under persistent questioning as to why the Pharmacy would possibly pay for his new Mercedes, Hamza never hinted that he used the vehicle for work purposes. *Id.* But the Individual Defendants have now decided to tell the story that Hamza was routinely driving to deliver and pick up prescription medicine for the Pharmacy, and so they now have suddenly clear memories that this is a work vehicle used to make deliveries, and offer sworn testimony that completely contradicts what was said at deposition. Hamza Decl. ¶¶ 9-10, 35; Qaiser Decl. ¶ 36.

### **3. Qaiser’s Payments from Heal the World and Supposed Construction Work**

In its opening brief, Gilead highlighted Qaiser’s rambling, self-contradictory, and obviously false testimony in service of explaining why, years after he supposedly sold the Heal the World, he kept getting large cash payments from the Pharmacy – including a check made out to cash with the note “Repair the Roof.” Opening Br. at 41-44. In his opposition, Qaiser offers a simple narrative: he went and fixed the roof of Heal the World himself. Qaiser Decl. ¶ 40. But Qaiser, who is 68 years old, repeatedly testified that a heart attack he suffered in the year 2020 left him physically incapable of making the trip to the pharmacy, let alone perform manual labor, and he gave extensive testimony about the construction crew he hired to do the work. Ex. 6 at 111:14-112:8, 113:6-7, 139:15-140:6. He cannot make that sworn testimony disappear by switching to the new narrative that he did all the work himself.

#### **D. The Chaudharys Revealed New Violations of the Asset Freeze Order, and New Lies to Cover Them Up, After Gilead Served Its Opening Papers**

In their opposition briefing, Defendants claim repeatedly that they have now complied with this Court’s Asset Freeze Orders. Opp’n Br. at 2, 13, 16. Not so. In fact, the record only

has gotten worse for the Chaudharys since Gilead filed its initial motion, as Defendants have trickled out new documents showing the extent of the Individual Defendants' contempt and the lies they tell to cover it up.

**1. Qaiser Pays for His Trip to Pakistan Using Funds the Individual Defendants Swore They Could Not Access**

As Gilead recounted in its opening papers, the Individual Defendants attempted to justify their failure to provide even the most basic information – such as account numbers – about their Pakistani bank accounts by claiming they are “frozen” and the only way to get any information at all would be to personally visit their banks in Pakistan to “verify their identity.” Opening Br. at 12-14. In their opposition papers, the Individual Defendants state they were finally able to provide some information to Gilead because “Qaiser traveled to Pakistan in October of 2025 for the purpose of obtaining account information.” Opp’n Br. at 24; Qaiser Decl. ¶ 13.

That narrative immediately unravels. The Individual Defendants reveal for the first time in their opposition briefing that Qaiser spent several thousand dollars from two of his Pakistani accounts to fund his trip to Pakistan. Opp’n Br. at 24-25. That is, of course, a willful violation of the Asset Freeze Order: Qaiser was prohibited from spending any assets, and he made no request to Gilead or application to this Court to release funds for his travel – a process with which he was intimately familiar, as the Individual Defendants had previously filed multiple emergency motions to lift the asset freeze on the fraudulent basis that their family was starving. *E.g.*, Dkt Nos. 37, 54. But equally damningly, when Qaiser travelled to Pakistan in October 2025, the Individual Defendants had been for months bound by an order of this Court to transfer all their Pakistan funds to the Clerk of this Court. Dkt No. 67. The Individual Defendants claimed to this Court at the time, and continue to claim in their opposition papers, that it was impossible for them to spend or transfer any funds from those accounts, or even learn their

account numbers, until they physically visited a branch in Pakistan. Opening Br. at 12-14; Opp'n Br. at 23-24. But those representations are obviously false, since Qaiser had no problem spending thousands of dollars from two Pakistani accounts to pay for his October travel. Qaiser did not travel to Pakistan in October 2025 in order to get information from his family's Pakistani banks in an attempt to comply with the Asset Freeze Order. He took an international vacation at Gilead's expense.

**2. The Individual Defendants Belatedly Reveal That They Emptied Their Pakistani MCB Account Days After They Were Ordered to Transfer Those Funds**

Further details confirm the Individual Defendants were lying about their ability to access their Pakistani accounts. As Gilead pointed out in its opening papers, the Individual Defendants persistently refused to provide any information at all about their MCB account, despite Qaiser admitting he had at least one account at that Pakistani bank during his deposition. Opening Br. at 15. The Individual Defendants served revised interrogatory responses that on November 20, 2025 – the day before Gilead's motion for case-ending sanctions was filed – that purported to give an “updated” of bank accounts that *still* did not include that MCB account. Declaration of Timothy A. Waters, dated February 17, 2026 (Waters Reply Decl.) Ex. 42.

The Chaudharys finally produced a two-page account statement for Qaiser's MCB account on December 2, 2025. Waters Reply Decl. Ex. 45. The contents of that statement leave little question as to why the Individual Defendants withheld all information about the MCB account for so long. It shows that in **June 2025**, mere days after this Court ordered the Individual Defendants to transfer the balance of funds in their overseas accounts to the Clerk of Court, Qaiser did take steps to transfer the funds in that account – but not to the Clerk of Court. *See* Dkt. No. 67. Instead, Qaiser emptied the account by writing a check for over \$50,000 to a man named Muhammad Farooq, apparently a family member, in gross and knowing violation of

the Asset Freeze Order. Waters Reply Decl. Exs. 45, 47; Opp. at 24; Qaiser Decl. ¶ 15. It could hardly be clearer that the Individual Defendants' representations that they could not access that account, or any information about it, were knowing lies, meant to conceal even more willful violations of the Asset Freeze Order.

Notably, just days before Qaiser wrote this over \$50,000 check, the Individual Defendants' counsel again represented in open Court that the Defendants lacked money for food and were on the verge of starvation. Ex. 39 at 11:10-13 ("You know, even our inmates at MDC have access to food and water and things like that and what I'm being told is that that is running dangerously low.").

On January 12, 2026, the Individual Defendants produced what appeared to be a photograph of a copy of this \$50,000+ check, which poses additional questions about what games the Chaudharys are playing with their finances. Waters Reply Decl. Ex. 47. The check is partially obscured, but despite the fact that it was made out to Farooq, the back of the check was endorsed by Qaiser Chaudhary, implying that Qaiser received the funds from this check. *Id.* Counsel for Gilead promptly requested additional information about this check, including a clearer photo of it and the papers that accompany it, but have received no response from the Individual Defendants' counsel. Waters Reply Decl. ¶ 8 and Ex. 48.

### **3. The Individual Defendants Continue to Conceal Information about Their Pakistani Silk Bank Accounts**

The Individual Defendants continue to conceal information about the Pakistani Silk Bank accounts. In December 2025, they produced a bank statement for a Silk Bank account ending in -037, but that statement is dated December 2024, and only contains information through that date. Waters Reply Decl. Ex. 46. Obviously Qaiser did not need to travel to Pakistan in October 2025 to obtain a bank statement dated December 2024.

Moreover, Gilead still does not have complete records regarding the Chaudharys' accounts. In Defendants' opposition and in Qaiser Chaudhary's declaration, Qaiser states that he has a Silk Bank account ending in either -015 or -018. Opp' n Br. at 25; Qaiser Decl. ¶ 15. Qaiser Chaudhary has never produced any account statement for this account. Instead, the only information he has provided is in the opposition brief, where he states that he spent money from that account on his trip to Pakistan. *Id.* Gilead still does not know what account number of that Silk Bank account, and has no proof as to its balance.

#### **4. Hamza Opens New Accounts to Circumvent the Asset Freeze**

Finally, the Defendants disclosed two Citizen Bank accounts that Hamza opened in May 2025 in order to circumvent and willfully violate the Asset Freeze Order. Waters Reply Decl. Ex. 43. Hamza deposited funds into those new accounts, which Gilead did not know about and the bank did not freeze, and spent those funds on things like Uber Eats, Netflix, and a store called "Tobacco Corner." Waters Reply Decl. Ex. 44 at -602-611. Hamza provides no excuse for why he did not disclose these accounts, or why he failed to transfer their contents to the Clerk of Court when ordered to do so.

In sum, the documents that the Individual Defendants produced *after* the close of discovery and *after* Gilead filed its motion for case-ending sanctions only serve to confirm that the Individual Defendants have been lying to the Court (and continue to lie in their opposition brief) about their ability to access and provide information about their assets, and that they have repeatedly and willfully violated this Court's Asset Freeze Orders. To put the scope of this fraud into perspective, the Chaudharys admit that as of March 1, 2025, they had over \$60,000 in their overseas accounts. *See* Qaiser Decl. ¶ 15. The Chaudharys also admit that they spent over \$7,000 – in accounts that should have been frozen – to travel to Pakistan. Opp'n Br. at 25; Qaiser Decl. ¶ 15. As described above, it is clearly false that this travel was required to access

the accounts: Qaiser could – and did – access and spend more than \$57,000 of the funds in his overseas accounts before October. Nor did it result in the Chaudharys complying with the Court’s Asset Freeze Orders. In total, by their own admission, the Chaudharys have transferred less than \$5,000 from their overseas accounts to the Clerk of Court. Opp’n. Br. at 24-25. While the Chaudharys spin their travel as an extraordinary effort to comply with the Court’s Orders, the documents the Chaudharys have produced show that it is nothing more than another means of dissipating funds that should have been frozen and transferred.

**E. The Chaudharys Cannot Escape Sanctions by Blaming Former Counsel**

Throughout their opposition, the Chaudharys attempt to blame their two sets of former counsel for the fraud upon this Court. *See, e.g.*, Opp’n Br. at 21-24. Given that the Chaudharys’ fraud on this Court has continued unabated from the beginning of this case through the new instances of perjury they commit in their sanctions opposition briefing, that argument fails out of the gate. Moreover, the Individual Defendants offer no communications with former counsel or any other evidence to support their repeated assertions that their first two sets of lawyers “misunderstood” the case, and the claim that Qaiser signed a false declaration under penalty of perjury because he did not bother to read it carefully is neither credible nor exonerating.

But the Court need not delve into the lack of factual support for the Chaudharys’ blame-the-lawyers defense, because in the context of case-ending sanctions, under controlling Second Circuit precedent that defense fails as a matter of law. *E.g., Abbott Labs v. H&H Wholesale Services, Inc.*, No. 23-446-cv(L) and 23-449-cv(con), 2024 WL 4297472 at \*3 (2d Cir. Sept. 26, 2024) (summary order) (holding defendant’s effort to blame former counsel “fails not only because a client can be held to account for the ‘acts and omissions’ of her counsel in connection with her discovery violations, but also because [defendant] is responsible for her false testimony

to the District Court [in her declaration] and at her deposition.” (citation omitted)); *Chevron Corp. v. Donziger*, 833 F.3d 74, 149-50 (2d Cir. 2016) (rejecting argument that sanctioned parties were “improperly punished” for their “lawyers’ failure to respond to ... discovery demands” where the clients “were not in a position to direct ... counsel to comply with discovery demands of which they were ignorant, and the significance of which they could not understand,” and holding that for sanctions purposes, the client is “bound by the acts of his lawyer-agent” and “[e]ven innocent clients may not benefit from the fraud of their attorney”); *Penthouse*, 663 F.2d at 389 (holding case-ending sanctions were required regardless of whether counsel “intentionally and deliberately misrepresented to the Court material facts,” was “negligent in not pursuing the matter more diligently to ascertain the facts from his client,” or “was misled by his client”); *Cine*, 602 F.2d at 1068, 1068 n.10 (reversing district court’s decision not to issue case-ending sanctions based on alleged gross negligence of counsel and remanding with instructions to dismiss the case, holding that “the acts and omissions of counsel” are “wholly attributable to the client” and “[a] litigant chooses counsel at his peril, and here, as in countless other contexts, counsel’s disregard of his professional responsibilities can lead to extinction of his client’s claim.” (citations omitted)). Even if the Individual Defendants made an actual showing – as opposed to self-serving mudslinging – that their two sets of former counsel were to blame for the fraud on this Court that occurred during the course of their representation, it simply would not affect the analysis. To hold otherwise would be to allow bad actors to escape the consequences of their fraud on the Court by engaging in a finger-pointing contest with their lawyers.

While the Individual Defendants’ blame-the-lawyer defense fails, their assertion of that defense has clearly waived privilege: they have put their communications with counsel directly at issue in a classic example of using the privilege as both sword and shield. *See, e.g., In re*

*County of Erie*, 546 F.3d 222, 227-229 (2d Cir. 2008); *see also Bittaker v. Woodford*, 331 F.3d 715, 718 (9th Cir. 2003) (“The rule that a litigant waives the attorney-client privilege by putting the lawyer’s performance at issue during the course of litigation dates back to at least *Hunt v. Blackburn*, 128 U.S. 464 (1888).”) The issue is moot, and so the Court need not reach it, if the Court were to grant case-ending sanctions on the current record. But otherwise, Gilead would be entitled to take discovery of these once-privileged communications, including both document discovery and depositions of former counsel. *See, e.g., Abbott*, 2019 WL 3281324 at \*5, \*10-11 (describing deposition testimony of former counsel that defendants attempted to blame for litigation misconduct).

#### **F. The Individual Defendants’ Remaining Arguments Fail**

The Individual Defendants briefly argue that Qaiser’s false deposition testimony is attributable to his supposedly limited proficiency in English. Opp’n Br. at 18. In reality, Qaiser’s proficiency in English and his ability to understand the questions asked of him was discussed and agreed upon during the deposition, including on the record. Ex. 6 at 176:15-17, 178:10-21. Further, Qaiser and his then-counsel were also well aware that while Qaiser’s deposition was taking place, there was an Urdu translator sitting literally outside the room, who had arrived early in anticipation for Nabila’s deposition (which was eventually postponed). Waters Reply Decl. ¶ 9. If he or his counsel had wanted a translator, that request could have been immediately accommodated.

The Individual Defendants also argue that Gilead’s motion should be denied because Gilead failed to move to compel. That is factually untrue: Gilead made oral and written motions to compel, which this Court granted. Dkt. Nos. 39, 57, 78; Aug. 6, 2025 Order; *see Penthouse* 663 F.2d at 338 (holding, in the context of affirming case-ending sanctions, “[t]he fact that the March 22 order was oral rather than written, and that it was not entered pursuant to a formal

written Rule 37(a) motion, does not deprive it of any of its binding force and effect.”). And in any event, while Rule 37(b) provides for sanctions for violating a discovery order, the filing of a motion to compel is in no way a prerequisite to the entry of sanctions under the Court’s inherent authority. *See, e.g., Abbott*, 2019 WL 3281324 at \*2.

Similarly, the Individual Defendants suggest that they are entitled to an explicit warning, or to imposition of lesser sanctions before this Court can enter case-ending sanctions. Opp’n Br. at 7. This Court has issued numerous warnings, but in any event “there is no requirement in the Second Circuit that parties be subjected to incremental sanctions, nor that they be warned prior to the issuance of case-ending sanctions.” *Abbott*, 2020 WL 1429472, at \*7; *see also Abbott*, 2024 WL 4297472 at \*3 (“[T]he District Court acted within its discretion in concluding that lesser sanctions would be ineffective given the record of repeated discovery abuses, misrepresentations to the court, and the prejudice to [plaintiff]”); *S. New England. Tel. Co. v. Glob. NAPs Inc.*, 624 F.3d 123, 148 (2d Cir. 2010) (district court is not “required to exhaust possible lesser sanctions before imposing dismissal or default if such a sanction is appropriate on the overall record”). In its opening papers, Gilead walked through the five-factor test that courts use to determine whether case-ending sanctions are appropriate, Opening Br. at 45-49, and nothing in Defendants’ opposition papers alters the clear conclusion the case-ending sanctions are the only appropriate remedy.

Finally, the pages that the Individual Defendants devote to the alleged on-the-job activities of the former pharmacist-in-charge are irrelevant. Opp’n Br. at 28-31 Those allegations have nothing to do with the Defendants’ fraud before this Court, and Defendants cannot excuse their litigation misconduct by finding a new scapegoat on which to pin the underlying counterfeiting. *E.g., McMunn*, F. Supp. 2d 440 at 445.

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Respectfully submitted,

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