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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2282CV01197

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CLERK OF THE COURTS
NORFOLK COUNTY

DARLENE SMITH[1]

v.

MATTHEW FARWELL, & others.[2]

FINDINGS, RULINGS AND ORDER IMPOSING SANCTION

This decision and order addresses two disturbing developments that are adversely affecting the practice of law in this Commonwealth and beyond. The first is the emerging tendency of increasingly popular generative artificial intelligence ("AI") systems, such as ChatGPT and Google Bard, to fabricate and supply false or misleading information. The second is the tendency of some attorneys and law firms to utilize AI in the preparation of motions, pleadings, memoranda, and other court papers, then blindly file their resulting work product in court without first checking to see if it incorporates false or misleading information.

Unfortunately, both tendencies have surfaced in this case. Specifically, this Court is the unhappy recipient of several legal memoranda filed by counsel for plaintiff Darlene Smith ("Plaintiff's Counsel") that cite and rely, in part, upon wholly-fictitious case law (the "Fictitious Case Citations") in opposing the motions to dismiss filed by defendants William Farwell, Robert

[1] As the personal representative of the estate of Sandra Birchmore.

[2] William Farwell, Robert Devine, Joshua Heal, the Town of Stoughton, and the Stoughton Police Department.

Devine, Joshua Heal, and the Town of Stoughton (collectively, "Defendants").[3] When questioned about the Fictitious Case Citations, Plaintiff's Counsel disclaimed any intention to mislead the Court and eventually pointed to an unidentified AI system as the culprit behind the Fictitious Case Citations. He has, at the same time, openly and honestly acknowledged his personal lack of diligence in failing to thoroughly review the offending memoranda before they were filed with the Court.

On December 7, 2023, the Court conducted a hearing for the purpose of better understanding how the Fictitious Case Citations came about and to decide what, if any, sanction to impose on Plaintiff's Counsel for submitting false and misleading information to the Court. Having considered all of the facts and circumstances, and hoping to deter similar transgressions by Plaintiff's Counsel and other attorneys in the future, the Court will require Plaintiff's Counsel to pay a monetary sanction in the amount of $2,000.00.

Factual Findings

This case arises from the tragic death of twenty-three year old Sandra Birchmore ("SB") by apparent suicide in February 2021. Plaintiff Darlene Smith ("Plaintiff" or "Ms. Smith") is SB's aunt and the personal representative of SB's estate. Ms. Smith commenced this wrongful death action against Defendants Matthew Farwell ("M. Farwell"), William Farwell ("W. Farwell"), Robert Devine ("Devine"), Joshua Heal ("Heal"), and the Town of Stoughton (the "Town") in December 2022.[4] Defendants M. Farwell, W. Farwell, and Devine are former

[3] Although the identity of Plaintiff's Counsel is a matter of public record, the Court has elected not to include his name in this decision and order as a matter of professional courtesy, and because the Court's principal intended audience for this decision and order is, in fact, the broader bar.

[4] Plaintiff's present Amended Complaint also names the Stoughton Police Department (the "Stoughton P.D.") as a separate defendant. The Stoughton P.D., however, is not an independent legal entity that is subject to suit, but rather a department of the Town. See *St. George Greek Orthodox Cathedral of Western Mass.* v. *Fire*

Stoughton Police Officers. Defendant Heal is the former Animal Control Officer for the Town. The gist of Plaintiff's claims is that Defendants took unlawful advantage of SB by engaging in sexual relations with her beginning, in some instances at least, when she was under sixteen years of age. In particular, Plaintiff asserts that M. Farwell, W. Farwell, and Devine cooperatively "groomed" SB from an early age for their shared sexual exploitation. Heal is alleged to have had consensual sex with SB, when she was an adult, knowing that she was involved in ongoing sexual relationships with M. Farwell, W. Farwell, and Devine. The Town is a defendant because it hired and employed the individual Defendants, some of whom allegedly had sex with SB while on duty.

Defendants W. Farwell, Devine, Heal, and the Town responded to Plaintiff's Amended Complaint by filing separate motions to dismiss (collectively, the "Motions to Dismiss").[5] See Docket Entry Nos. 18.0, 25.0, 28.0, 32.0. Plaintiff's Counsel, in turn, submitted four separate memoranda of law in opposition to the Motions to Dismiss (collectively, the "Oppositions"). See Docket Entry Nos. 18.2, 25.2, 28.9, 32.2. Each of the Oppositions is signed by Plaintiff's Counsel in accordance with Mass. R. Civ. P. 11, as amended, 456 Mass. 1401 (2010). Upon reviewing the Oppositions, the Court noted that Plaintiff's Counsel's legal citations concerning the elements of a wrong death action in two of the Oppositions seemed amiss. The relevant section of the Oppositions states as follows:

Dept. of Springfield, 462 Mass. 120, 121 n.1 (2012) (in action against Springfield Fire Department and City of Springfield, court treated entities as "a single defendant (city)"); *Henschel* v. *Worcester Police Dep't*, 445 F.2d 624, 624 (1st Cir. 1971) (explaining that "the Police Department [is not] a suable entity"); *Stratton* v. *City of Boston*, 731 F. Supp. 42, 46 (D. Mass. 1989) ("[T]he [Boston] Police Department is not an independent legal entity. It is a department of the City of Boston.").

[5] In a prior, separate decision and order, the Court denied the majority of W. Farwell, Devine, and the Town's motions to dismiss, and allowed Heal's motion to dismiss in its entirety. See Decision and Order Regarding Defendants' Motions to Dismiss, dated January 22, 2024 (Docket Entry No. 43.0).

> To establish a wrongful death claim, the Plaintiff must prove the following: (1) the defendant owed a duty of care to the deceased person (*Bartlett v. Gray*, 170 F. Supp. 3d 53, 57 (D. Mass. 2016)); (2) the defendant's acts or omissions fell short of what a reasonable person would have done under similar circumstances (*Estate of Berthiaume v. Pratt*, 448 Mass. 20, 25 (2006)); (3) the defendant's breach of duty was the cause of the deceased person's death (*Buckley v. Park Ward Motors, Inc.*, 20 Mass. App. Ct. 268, 272 (185)[*sic*]); and (4) the death of the deceased person resulted in damages.

Plaintiff's Opposition to Heal Motion to Dismiss ("Heal Opposition") at 6; Plaintiff's Opposition to Devine's Motion to Dismiss ("Devine Opposition") at 5. The Court spent several hours investigating the case law cited by Plaintiff's Counsel, but ultimately was unable to locate *Bartlett* v. *Gray*, 170 F. Supp. 3d 53, 57 (D. Mass. 2016),[6] *Estate of Berthiaume* v. *Pratt*, 448 Mass. 20, 25 (2006),[7] or *Buckley* v. *Park Ward Motors, Inc.*, 20 Mass. App. Ct. 268, 272 (185)[*sic*].[8]

On November 1, 2023, all counsel appeared in person before the Court for oral argument on the Motions to Dismiss filed by Defendants W. Farwell, Devine, Heal and the Town. Before turning to the substance of the parties' motions, the Court informed Plaintiff's Counsel of its discovery of the three Fictitious Case Citations and inquired how they had come to be included in Plaintiff's Oppositions. Plaintiff's Counsel stated that he was unfamiliar with the Fictitious Case Citations and that he had no idea where or how they were obtained. When asked who had

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[6] The case that appears at 170 F. Supp. 3d 53 is *Gebresalassie* v. *District of Columbia*, 170 F. Supp. 3d 52 (D.D.C. 2016) ("*Gebresalassie*"). *Gebresalassie* is not a case from the District of Massachusetts, nor does it involve a wrongful death claim.

[7] The case that appears at 448 Mass. 20 is *Sullivan* v. *Chief Justice for Admin. and Mgt. of Trial Court*, 448 Mass. 15 (2006) ("*Sullivan*"). Like *Gebresalassie*, *Sullivan* does not involve a wrongful death claim. After conducting a diligent search, the Court was able to find a much older case decided by the Maine Supreme Judicial Court titled *Estate of Berthiaume* v. *Pratt*, which appears at 365 A.2d 792 (1976). That case, however, involves a claim for invasion of privacy, not wrongful death, and obviously was not decided by a Massachusetts court.

[8] The case that appears at 20 Mass. App. Ct. 268 is *Commonwealth* v. *Ennis*, 20 Mass. App. Ct. 263 (1985) ("*Ennis*"). *Ennis* is a criminal case that, once again, does not involve a wrongful death claim.

drafted the Oppositions, Plaintiff's Counsel responded that they had been prepared by "interns" at his law office. The Court thereupon directed Plaintiff's Counsel to file a written explanation of the origin of the Fictitious Case Citations on or before November 8, 2023.

On November 6, 2023, Plaintiff's Counsel submitted a letter to the Court in which he acknowledged that the Oppositions "inadvertently" included citations to multiple cases that "do not exist in reality." He attributed the bogus citations to an unidentified "AI system" that someone in his law office had used to "locat[e] relevant legal authorities to support our argument[s]." At the same time, Plaintiff's Counsel apologized to the Court for the fake citations and expressed his regret for failing to "exercise due diligence in verifying the authenticity of all caselaw references provided by the [AI] system." He represented that he recently had subscribed to LEXIS, which he now uses exclusively "to obtain cases to support our arguments." He also filed amended versions of the Oppositions that removed the Fictitious Case Citations.

Following Plaintiff's Counsel's admission of fault, the Court, *sua sponte*, scheduled a hearing to learn more about the origin of the Fictitious Case Citations and to determine what, if any, sanction it should impose as a consequence of Plaintiff's Counsel's potentially misleading submission. The Court also conducted a further, more searching review of Plaintiff's motion papers, which confirmed that the Fictitious Case Citations appear in two of Plaintiff's Oppositions, and disclosed that an additional nonexistent case, *Korff* v. *The Greater Lowell Mental Health Association, Inc.*, 54 Mass. App. Ct. 1001, 1003 (2002),[9] is cited in three of

[9] No appellate decision appears at 54 Mass. App. Ct. 1001, and Court has been unable to locate any other reported case in the Commonwealth of Massachusetts with the title *Korff* v. *The Greater Lowell Mental Health Association, Inc.*

Plaintiff's Oppositions.[10] See Heal Opposition at 13-14; Devine Opposition at 8; Plaintiff Opposition to W. Farwell's Motion to Dismiss at 13.

The Court conducted the scheduled sanctions hearing on December 7, 2023. Plaintiff's Counsel began the hearing by apologizing again to the Court, and by representing that the Fictitious Case Citations were not submitted with the intention of misleading the Court. He explained that the Oppositions had been drafted by three legal personnel at his office; two recent law school graduates who had not yet passed the bar and one associate attorney. The associate attorney admitted, when asked, that she had utilized an AI system (Plaintiff's Counsel still did not know which one) in preparing the Oppositions. Plaintiff's Counsel is unfamiliar with AI systems and was unaware, before the Oppositions were filed, that AI systems can generate false or misleading information. He also was unaware that his associate had used an AI system in drafting court papers in this case until after the Fictitious Case Citations came to light. Plaintiff's Counsel said that he had reviewed the Oppositions, before they were filed, for style, grammar and flow, but not for accuracy of the case citations. He also did not know whether anyone else in his office had reviewed the case citations in the Oppositions for accuracy before the Oppositions were filed. Plaintiff's Counsel attributed his own failure to review the case citations to the trust that he placed in the work product of his associate, which (to his knowledge, at least) had not shown any problems in the past.

[10] It bears noting that Plaintiff's Oppositions include other case citations that contain typographical errors (including references to incorrect reporter volumes) and inaccurate quotations, or that do not stand for the legal propositions for which they are cited. Mistakes such as these weaken Plaintiff's legal arguments and undermine counsel's credibility. As the Court was able to locate these cases, however, it is unclear whether AI or human error is to blame for the additional mistakes. This decision and order therefore focuses on the implications of the four Fictitious Case Citations. Plaintiff's Counsel nonetheless would be well-advised to review *all* case citations for accuracy going forward.

The Court finds Plaintiff's Counsel's factual recitation concerning the origin of the Fictitious Case Citations to be truthful and accurate. The Court also accepts as true Plaintiff's Counsel's representation that the Fictitious Case Citations were not submitted knowingly with the intention of misleading the Court. Finally, the Court credits the sincerity of the contrition expressed by Plaintiff's Counsel. These facts, however, do not exonerate Plaintiff's Counsel of all fault, nor do they obviate the need for the Court to take responsive action to ensure that the problem encountered in this case does not occur again in the future.

Discussion

"Many harms flow from the submission of fake opinions." *Mata* v. *Avianca, Inc.*, 2023 WL 4114965 at *1 (S.D.N.Y. June 22, 2023) ("*Mata*"). With this admonition in mind, the Court concludes that, notwithstanding Plaintiff's Counsel's candor and admission of fault, the imposition of sanctions is warranted in the present circumstances because Plaintiff's Counsel failed to take basic, necessary precautions that likely would have averted the submission of the Fictitious Case Citations. His failure in this regard is categorically unacceptable. In the explanation of its decision that follows, the Court will briefly address the benefits and dangers that AI poses for our legal system, potentially instructive cases involving the misuse of AI from other jurisdictions, and the specific basis and rationale for the sanction imposed upon Plaintiff's Counsel in this case.

AI's Benefits and Dangers

The term "Artificial Intelligence" or "AI" first was coined by scientists in the 1950s to encompass "the capability of computer systems or algorithms to imitate intelligent human behavior." Artificial Intelligence, Merriam-Webster Dictionary, https://www.merriam-

webster.com/dictionary/artificial%20intelligence. "Generative AI" represents the latest wave of AI technology. Functionally, Generative AI can create text, images, sound, video, or other content in response to user prompts. For the legal profession, Generative AI technology offers the promise of increased efficiency through the performance of time-consuming tasks using just a few keystrokes. For example, Generative AI can draft simple legal documents such as contracts, motions, and e-mails in a matter of seconds; it can provide feedback on already drafted documents; it can check citations to authority; it can respond to complex legal research questions; it can analyze thousands of pages of documents to identify trends, calculate estimated settlement amounts, and even determine the likelihood of success at trial. See Petruzzi and Guye, "The perils of dabbling": AI and the practice of law, Reuters, (Sept. 11, 2023), https://www.reuters.com/legal/legalindustry/perils-dabbling-ai-practice-law-2023-09-11/; Lorek, How lawyers can take advantage of ChatGPT and other large language models disrupting the legal industry, ABA J. (May 11, 2023), https://www.americanbar.org/groups/journal/articles/2023/how-lawyers-can-take-advantageof-chatgpt-and-other-large-language-models-disrupting-the-legal-industry/. Given its myriad of potential uses, Generative AI technology seems like a superhuman legal support tool.

The use of AI technology, however, also poses serious ethical risks for the legal practitioner.[11] For example, entering confidential client information into an AI system potentially

[11] While this case centrally involves violations of Mass. R. Prof. C. 1.1, as amended, 490 Mass. 1302 (2022), Competence, AI presents numerous other potential ethical pitfalls for attorneys including, but not limited to, potential violations of Mass. R. Prof. C. 1.3, 471 Mass. 1318 (2015), Diligence; Mass. R. Prof. C. 1.6, 490 Mass. 1302 (2022), Confidentiality of Information; Mass. R. Prof. C. 2.1, 471 Mass. 1408 (2015), Advisor; Mass. R. Prof. C. 3.3, as amended, 490 Mass. 1308 (2022), Candor Toward the Tribunal; Mass. R. Prof. C. 5.1, as amended, 490 Mass. 1310 (2022), Responsibilities of Partners, Managers and Supervisory Lawyers; Mass. R. Prof. C. 5.5, as amended, 474 Mass. 1302 (2016), Unauthorized Practice of Law; and Mass. R. Prof. C. 8.4, 471 Mass. 1483 (2015), Misconduct.

violates an attorney's obligation to maintain client confidences because the information can become part of the AI system's database, then disclosed by the AI system when it responds to other users' inquiries. See Simon, Artificial Intelligence, Real Ethics, 90-APR NYSTBJ 34 (Mar.-Apr. 2018). Additionally, as demonstrated in this case, AI possesses an unfortunate and unpredictable proclivity to "hallucinate." See *Mata*, 2023 WL 4114965 at *1; Weise and Metz, When A.I. Chatbots Hallucinate, The New York Times, (May 9, 2023) https://www.nytimes.com/2023/05/01/business/ai-chatbots-hallucination.html. The terms "hallucinate" or "hallucination," as used in the AI context, are polite references to AI's habit of simply "making stuff up." AI hallucinations are false or completely imaginary information generated by an AI system in response to user inquiries. AI researchers are unsure how often these technological hallucinations occur, but current estimates are that they happen anywhere from three to twenty-seven percent of the time depending on the particular AI system. See Cade and Metz, Chatbots May "Hallucinate" More Often Than Many Realize, The New York Times, (May 9, 2023) https://www.nytimes.com /2023/05/01/business/ai-chatbots-hallucination.html.

Generative AI hallucinations can be highly deceptive and difficult to discern. The fictitious information often has all the hallmarks of truthful data and only can be discovered as false through careful scrutiny. For example, as demonstrated in this case, AI can generate citations to totally fabricated court decisions bearing seemingly real party names, with seemingly real reporter, volume, and page references, and seemingly real dates of decision. See *Mata*, 2023 WL 4114965 at *1 (attorneys submitted false caselaw to federal district court through misuse of AI). In some instances, AI even has falsely identified real individuals as accused

parties in lawsuits or fictitious scandals.[12] See, e.g., *Walters* v. *OpenAI, LLC*, Case No. 1:23-cv-03122 (N.D. Ga. July 14, 2023) (libel suit against AI company alleging AI system produced false "hallucinations" that plaintiff defrauded millions of dollars); Leffer, Australian Mayer Threatens to Sue Open AI for Defamation by Chatbot, Gizmodo, (Apr. 5, 2023) https://gizmodo.com/openai-defamation-chatbot-brian-hood-chatgpt-1850302595 (AI system reportedly falsely named Australian mayor as a convicted criminal in bribery scandal at Australian bank); Verma and Oremus, ChatGPT invented a sexual harassment scandal and named a real law professor as the accused, The Washington Post, (Apr. 5, 2023) https://www.washingtonpost.com/technology/2023/04/05/chatgpt-lies/ (AI system falsely alleges, citing hallucinated Washington Post article, that law professor was accused of sexual misconduct). For these reasons, any information supplied by a Generative AI system must be verified before it can be trusted.

Other Instances in Which the Misuse of AI Technology Has Resulted in Court Sanctions

While determining what sanction is appropriate for an attorney's inclusion of false, AI-generated information in pleadings or motion papers appears to present a novel issue for the Massachusetts courts, this is not the first time a judge has levied sanctions against a lawyer for the misuse of AI. Perhaps the most widely-publicized instance involves United States Federal

[12] AI's artful ability to make its hallucinations appear more believable by incorporating the names of real individuals and entities can be seen in the Fictitious Case Citations at issue in this case. For example, Park Ward Motors, Inc. is an honest-to-goodness car dealership located in Lake Crystal, Illinois, that specializes in vintage Rolls-Royce and Bentley automobiles. See https://parkwardmotors.com. Park Ward Motors, Inc. previously has been a party to reported litigation in the Pennsylvania state courts (see *Crompton* v. *Park Ward Motors, Inc.*, 299 Pa. Super. 40, 42 (1982)), but, as best this Court can tell, it never has been a party to any legal proceeding in Massachusetts.

District Judge P. Kevin Castel's recent decision sanctioning plaintiffs' counsel in *Mata* v. *Avianca, Inc.*, 2023 WL 4114965 at *1 (S.D.N.Y. June 22, 2023) (again, "*Mata*").[13]

The facts of *Mata* are similar, but admittedly not identical, to those of this case. In *Mata*, the plaintiff's attorney filed a sworn affirmation that was prepared, in part, through the use of Generative AI. The affirmation contained numerous citations to fictitious cases, including a citation to a nonexistent case purportedly decided by the Eleventh Circuit. See *Mata*, 2023 WL 4114965 at *5-7. Counsel for the defendant subsequently notified the court that she was "'unable to locate most of the case law cited'" in the attorney's affirmation, and that "'the few cases which [defense counsel] has been able to locate do not stand for the propositions for which they are cited." *Id.* at *3. The plaintiff's attorneys nonetheless did not withdraw the affirmation or offer the court any explanation "how it could possibly be that a case purportedly in the Federal Reporter or Federal Supplement could not be found." *Id.*

When the court was also unable to locate the elusive cases on its own, it ordered the plaintiff's attorneys to file an affidavit that included an appendix containing copies of eight suspect cases in their entirety. *Id.* After several delays, the plaintiff's attorneys filed the requested affidavit accompanied by "excerpts" from seven of the eight cases. *Id.* at *4-5. They explained that the excerpts "may not be inclusive of the entire opinions but only what is made

[13] Judge Castel's sanctions decision in *Mata* was issued pursuant to Fed. R. Civ. P. 11, which prescribes a different standard than the one imposed by Mass. R. Civ. P. 11 and 7. See *Van Christo Advertising, Inc.* v. *M/A-COM/LCS*, 426 Mass. 410, 416-417 (1998) ("*Van Christo*") (Mass. R. Civ. P. 11 and 7 follow the pre-1983 Fed. R. Civ. P. 11 subjective good faith standard). Although there is support in the case law for the proposition that Mass. R. Civ. P. 11 and 7 impose a "less stringent standard" than current Fed. R. Civ. P. 11 (see, e.g., *New England Allbank for Savings* v. *Rouleau*, 28 Mass. App. Ct. 135, 141 (1989)), the Massachusetts Appeals Court made it clear in *Van Christo* that, "[b]y interjecting the requirement that some prefiling inquiry be made, [it] has prescribed a *more rigorous* standard [for compliance with Rules 11 and 7] than that required by the original Federal rule." *Van Christo*, 426 Mass. at 416 (emphasis added).

available by online database." *Id.* at *4. They also reported that they had been unable to locate one of the eight cases. *Id.*

The court reviewed the case excerpts submitted by the plaintiff's attorneys and, although they admittedly bore "some traits that are superficially consistent with actual judicial decisions," the court quickly concluded that all of the excerpts, and all of cases from which they allegedly were obtained, were "fake."[14] *Id.* at *5. The plaintiff's attorneys eventually acknowledged that they had obtained each of the phony case citations, quotes, and excerpts from ChatGPT, a Generative AI system that is accessible for free on the Internet. *Id.* at *8. Additional information supplied by the plaintiff's attorneys further established that they had continued to "advocate[] for the fake cases and legal arguments contained in the [a]ffirmation" after they had reason to believe that the citations were false. *Id.* at *15.

Justice Castel ruled that the actions of the plaintiff's attorneys in submitting and continuing to defend the fictitious cases they had submitted to the court in the affirmation constituted sanctionable conduct under Fed. R. Civ. P. 11. *Id.* at *15-16. In deciding to impose sanctions, Justice Castel found that the plaintiff's attorneys' misbehavior went well beyond "poor and sloppy research," and amounted to "bad faith." *Id.* at *15-16. For these reasons, Judge Castel ordered the plaintiff's attorneys to promptly undertake each of the following corrective steps: (1) mail a letter to their client containing a copy of the court's sanction decision, with

[14] One of the excerpts that the plaintiff's attorneys submitted to the federal district court is appended to the *Mata* decision as "Appendix A." It contains, amazingly, the partial text of what purports to be a decision of the United States Court of Appeals for the Eleventh Circuit in the case *Varghese* v. *China Southern Airlines Co., Ltd.*, 925 F.3d 1339 (11th Cir. 2019) ("*Varghese*"). Although the *Varghese* decision excerpt appears authentic, it is, in fact, a complete fiction, right down to the names of the purported parties, the make-up of the purported appellate panel, the name of the purported principal author, the purported case history, and the purported holding. One need only spend a few moments perusing the Potemkin *Varghese* decision to appreciate both the tremendous power, and the potential peril, associated with Generative AI systems.

hearing transcripts and exhibits; (2) mail a similar letter to each of the falsely-cited federal judges; and (3) file copies of the letters they sent to the judges and their client with the court. *Id.* at *17. Judge Castel also imposed a monetary sanction of $5,000.00 on the plaintiff's attorneys, payable to the court. *Id.*

While the *Mata* case offers a particularly vivid example of the "[m]any harms" that can flow from the careless and unchecked use of AI technology in the preparation of court papers, it is not alone. There have been at least two other reported decisions in the United States over the past year in which courts have been confronted with, and called upon to address, false and misleading information contained in court submissions that were created with the assistance of AI technology. See *Park* v. *Kim*, 2024 WL 332478, *4 (2d. Cir. Jan. 30, 2024) (referring plaintiff-appellant's attorney for possible disciplinary action based upon his submission of reply brief that contained "non-existent authority" generated by ChatGPT); *Will of Samuel*, 2024 WL 238160, at *2 (N.Y. Sur. Jan. 11, 2024) (announcing court's intention to sanction moving party's attorney for submitting reply papers containing "fictional and/or erroneous citations as a result of his reliance on a website which contained information created by Generative Artificial Intelligence"). Other, similar decisions undoubtedly exist or are in the works. See Warwick, Colorado lawyer suspended for using AI platform to draft legal motion, CBS Colorado, (Nov. 22, 2023) https://www.cbsnews.com/colorado/news/colorado-lawyer-artificial-intelligence-suspension/. See also *United States* v. *Cohen*, 2023 WL 8635521, at *1 (S.D.N.Y. Dec. 12, 2023) (ordering defense counsel to "show cause in writing why he should not be sanctioned ... for citing non-existent cases to the Court").

The Basis and Rationale for the Sanction Imposed in This Case

This Court recognizes that the factual circumstances of this case differ in material ways from those presented in *Mata*. Although both cases involve the submission of multiple false and misleading case citations to the court, Plaintiff's Counsel in this case has been far more forthright in admitting his mistakes, and has not demonstrated any of the compounding deception exhibited by the plaintiff's attorneys in *Mata*. But Plaintiff's Counsel's lapses still are sanctionable under Mass. R. Civ. P. 11 and 7 because they resulted from his "lack of diligence and apparent failure to take seriously the responsibility of conducting litigation in compliance with the rules of civil procedure."[15] See *Partlow* v. *Hertz Corp.*, 370 Mass. 787, 790 (1976). Rule 11 of the Massachusetts Rules of Civil Procedure "imposes an obligation on attorneys in this Commonwealth to ensure that sham pleadings are not employed," *Community Natl. Bank* v. *Dawes*, 369 Mass. 550, 557 n.6 (1976), and that the pleading is "based upon a 'reasonable inquiry and an absence of bad faith,'" *Doe* v. *Nutter, McClennen & Fish*, 41 Mass. App. Ct. 137, 141-142 (1996). Plaintiff's Counsel's knowing failure to review the case citations in the Oppositions for accuracy, or at least ensure that someone else in his office did, before the Oppositions were filed with this Court violated his duty under Rule 11 to undertake a "reasonable inquiry." Simply stated, no inquiry is not a reasonable inquiry.

For these reasons, the Court, in its discretion, will require Plaintiff's Counsel to pay $2,000.00 to the Clerk of Court as a sanction for his violation of Mass. R. Civ. P. 11 and 7.[16] See *Van Christo*, 426 Mass. at 412 (Mass. R. Civ. P. 11 permits imposition of monetary sanctions).

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[15] Although Mass. R. Civ. P. 11 only applies, on its face, to "pleadings," Mass. R. Civ. P. 7(b)(2), 365 Mass. 748 (1974) extends the requirements of Rule 11 to "all motions and other papers provided for by these rules."

[16] Plaintiff's Counsel's conduct in this case also may violate certain ethical obligations that all Massachusetts attorneys possess, including the obligations of Competence (Mass. Rule. Prof. C. 1.1); Diligence

One further word is in order. Regardless of what others may believe, the Court considers the sanction imposed upon Plaintiff's Counsel in this instance to be mild given the seriousness of the violations that occurred. Making false statements to a court can, in appropriate circumstances, be grounds for disbarment or worse. See, e.g., *In re Driscoll*, 447 Mass. 678, 689-690 (2006) (one-year suspension appropriate where attorney pleaded guilty to one count of making false statement); *Matter of Budnitz*, 425 Mass. 1018, 1019 (1997) (disbarment appropriate where attorney knowingly lied under oath and perpetrated lies though making false statements in disciplinary proceeding). The restrained sanction imposed here reflects the Court's acceptance, as previously noted, of Plaintiff's Counsel's representations that he generally is unfamiliar with AI technology, that he had no knowledge that an AI system had been used in the preparation of the Oppositions, and that the Fictitious Case Citations were included in the Oppositions in error and not with the intention of deceiving the Court.

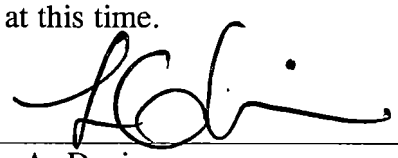
There is, however, a broader lesson to be learned here. It is imperative that all attorneys practicing in the courts of this Commonwealth understand that they are obligated under Mass. Rule Civ. P. 11 and 7 to know whether AI technology is being used in the preparation of court papers that they plan to file in their cases and, if it is, to ensure that appropriate steps are being taken to verify the truthfulness and accuracy of any AI-generated content before the papers are submitted. See *Mata*, 2023 WL 4114965 at *1 ("Technological advances are commonplace and there is nothing inherently improper about using a reliable artificial intelligence tool for

(Mass. Rule. Prof. C. 1.3); and Responsibilities of a Partner or Supervisory Lawyer (Mass. Rule. Prof. C. 5.1). As the power of a trial court to sanction an attorney for an ethical violation remains an open question in this Commonwealth (see *Messing, Rudavsky & Weliky, P.C.* v. *President & Fellows of Harvard College*, 436 Mass. 347, 349 (2002) (declining to decide whether judge lacked authority to issue sanctions for ethical violations)), the sanction imposed on Plaintiff's Counsel in the present circumstances is based solely on his violations of Mass. R. Civ. P. 11 and 7.

assistance. But existing rules impose a gatekeeping role on attorneys to ensure the accuracy of their filings."). The blind acceptance of AI-generated content by attorneys undoubtedly will lead to other sanction hearings in the future, but a defense based on ignorance will be less credible, and likely less successful, as the dangers associated with the use of Generative AI systems become more widely known.

Order

For the reasons stated, **IT IS HEREBY ORDERED** that Plaintiff's Counsel pay the Clerk of Court the sum of $2,000.00 as a monetary sanction within ten (10) days of the date of this Order. No other or further sanction is imposed at this time.



Brian A. Davis
Associate Justice of the Superior Court

Date: February 12, 2024