

IN THE CIRCUIT COURT OF THE COUNTY OF SAINT LOUIS  
TWENTY-FIRST JUDICIAL CIRCUIT  
STATE OF MISSOURI

COURTNEY ERIN RAWLINS, et al.	)	
	)	
Plaintiffs,	)	
	)	No. 24SL-CC02438
v.	)	
	)	Division 2
DAVID ULRICH, et al.	)	
	)	
Defendants.	)	

**PLAINTIFFS' MOTION FOR SANCTIONS**

Plaintiffs Courtney Erin Rawlins and Stacy Lauren Winters hereby move for sanctions against Defendants pursuant to Missouri Rule of Civil Procedure 61.01 and the Court's inherent powers. As part of a general campaign of delay and obstruction, which has forced Plaintiffs to file two Motions to Compel so far and led to the appointment of a Special Master, Defendants have abused discovery in two specific and highly prejudicial ways that warrant the imposition of sanctions. As detailed below, (1) Defendants withheld certain key evidence, disregarding multiple direct requests and their own promises to produce and making misrepresentations to the Court, the Special Master, and Plaintiffs' counsel; and (2) Defendants delayed their objection to producing material on certain personal devices for many months, resulting in seven incomplete depositions and up to a year of potential spoliation of evidence. The Court<sup>1</sup> should sanction Defendants for their discovery conduct.

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<sup>1</sup> Pursuant to the Court's January 28, 2026 Order, discovery questions are referred to the Special Master.

## LEGAL STANDARD

“The trial court is vested with broad discretion to control discovery and to choose a remedy to address any non-disclosure of evidence.” *Hoock v. SLB Acquisition, LLC*, 620 S.W.3d 292, 301 (Mo. App. E.D. 2021) (quoting *Gallagher v. DaimlerChrysler Corp.*, 238 S.W.3d 157, 162 (Mo. App. E.D. 2007)). Missouri Rule of Civil Procedure 61.01(d) authorizes courts to “take such actions as are just” if a party “fails to produce documents . . . as requested under Rule 58.01.” These actions can include “[e]nter[ing] an order requiring the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney fees, caused by the failure . . . .” Mo. R. Civ. P. 61.01(d)(4). The Court may also “enter an order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting the disobedient party from introducing designated matters in evidence.” Mo. R. Civ. P. 61.01(d)(1). The Court may also strike pleadings or parts of pleadings or enter a default judgment in response to discovery abuses. Mo. R. Civ. P. 61.01(d) (d)(2). Moreover, “[a] trial court may use its inherent powers and impose sanctions when parties act in bad faith.” *Hale v. Cottrell, Inc.*, 456 S.W.3d 481, 488 (Mo. App. W.D. 2014) (citing *AJ.H. ex rel. M.J.H. v. M.A.H.S.*, 364 S.W.3d 680, 682 (Mo. App. E.D.2012)). In the case of spoliation of evidence, Missouri courts grant opposing litigants a related adverse inference “holding them to admit that the destroyed evidence would have been unfavorable to their position,” even without a showing of prejudice to the requesting party. *Hill v. SSM Health Care St. Louis*, 563 S.W.3d 757, 761-63 (Mo. App. E.D. 2018) (quoting *Schneider v. G. Guilliams, Inc.*, 976 S.W.2d 522, 526 (Mo. App. E.D. 1998)).

## DISCUSSION

In two specific respects, Defendants have shown disregard for the Court's authority and Plaintiffs' valid discovery requests— withholding evidence and failing to timely make an objection to production— both to the significant prejudice of Plaintiffs, the Court, and even Defendants themselves.

**I. Defendants withheld highly probative evidence that had been validly requested, disregarding multiple direct requests and their own promises to produce, and making misrepresentations to the Court, the Special Master, and Plaintiffs' counsel.**

In their Second Motion to Compel, filed October 6, 2025, Plaintiffs complained that Defendants had failed to produce obviously relevant documents identified as attachments to e-mails Defendants had themselves produced. [Ex. 1 at 10-13] In their Reply in support of that Motion to Compel, filed on January 21, 2026, Plaintiffs identified further such documents that they were still waiting for. [Ex. 2 at 3 n.2] Among them, identified in an e-mail attached as Exhibit B of the Reply, were six attachments to a May 31, 2023, e-mail produced by Defendants on August 3, 2025. [Ex. 3]

Since Defendants initially produced this e-mail on August 3, 2025, its unproduced but highly relevant attachments had been the subject of extensive testimony at multiple depositions in September and October. *E.g.*, Heidenreich Depo. (9/12/25) at 117 *et seq.*; Havener Depo. (10/8/25) at 270 *et seq.*; Eden Depo. (10/21/25) at 270 *et seq.*; Bond Depo. (10/27/25) at 141 *et seq.*; Toth Depo. (10/28/25) at 201-235; Andrews Depo. (11/12/25) at 115 *et seq.* Testimony focused in part on discerning the nature and contents of the attachments, since they had not been produced. Toth Depo. at 209-211.

Deposition testimony confirmed that Exhibit B was a May 31, 2023, e-mail forming part of Kirkwood School District's investigation in response to Plaintiffs' first Sunshine request, in

which KSD Director of Technology Alison Toth forwarded the Custodian of Records, Defendant Laura Heidenreich, six survey files that could have been the survey she needed to respond to Winters's Sunshine request. [Ex. 3] At her deposition on September 12, 2025, Ms. Heidenreich claimed she didn't recall what KSD did with them after she received them. Heidenreich Depo. at 125. On October 28, Ms. Toth at her deposition testified that she also did not know what KSD did with the files she sent. In her capacity as Director of Technology, she was able to identify the files as survey questions and spreadsheets recording the results of three different student surveys, including one that is at the center of this case: the Hook-Up Topical Survey. Toth Depo. at 201-235.

At several of these depositions and since, both on and off the record, Plaintiffs' counsel pointed out these evidently relevant and potentially important attachments to Defendants' counsel and sought their production. *See, e.g.*, Bond Depo. at 142; Toth Depo. at 233. Defendants' counsel repeatedly promised to produce them and/or stated a belief that they had already been produced, despite Plaintiffs' repeated requests, promising to follow up with Bates numbers. *Id.* When the attachments still had not been produced in January, the e-mail became Exhibit B to Plaintiffs' January 2026 brief. [Ex. 2 at 3 n.2]

On January 21, 2026, the parties argued Plaintiffs' Second Motion to Compel, including Plaintiffs' allegations that Defendants' production was unreliable and incomplete, because these and other documents had not been produced. In response, **Defendants claimed with certainty (but still without Bates numbers) to have already produced these attachments, accusing Plaintiffs in front of Judge Stewart of misrepresenting their production.** Partly on the basis of this manufactured disagreement, the parties' discovery disputes were assigned to a Special Master.

**In front of the Special Master on February 12, 2026, Defendants again falsely claimed to have produced these attachments.** Plaintiffs asked for the Bates numbers of that production. Defendants offered none, then or thereafter.

In a Special Master-ordered and recorded meet-and-confer about further electronic searches on February 17, 2026, Plaintiffs used these attachments as an example of materials that were not produced even though they are relevant and responsive to discovery requests and clearly exist in KSD's possession. Defendants responded by:

- (1) repeating the false claim to have already produced the attachments;
- (2) backing up that false claim with a new false claim that the missing attachments did not include survey *results* (contrary to Toth's testimony), but were just the same survey *questions* Plaintiffs already had from other sources;
- (3) promising again to give Plaintiffs Bates numbers demonstrating they had been produced;
- (4) deriding Plaintiffs raising the issue yet again as "the Inquisition."

[Transcript Excerpt attached as Ex. 4]

Following this February 17, 2026, conference, Defendants again failed to follow up with the promised Bates numbers.

On March 4, 2026, as part of a separate follow up about the meet-and-confer, Plaintiffs again reminded Defendants of their promise to provide the Bates numbers for the "produced" documents. [Ex. 5]

On March 5, 2026, Defendants finally produced the attachments for the first time, admitting they had never produced them before, and claiming that was a result of a technological error in file transfer. [Ex. 6]

Defendants did not explain how a technological error could account for seven months of withholding the attachments despite repeated specific requests, nor how they could make seven months of claims that they intended to produce them, then that they had produced them, including before the Court and the Special Master, then mischaracterize the files and mock Plaintiffs for asking for them, without ever once checking whether they had been produced. And even though Defendants directly misrepresented their production to both the Court and Special Master, Defendants have not issued a corrective statement to either.

A “trial court is justified in applying sanctions where the record reveals a long course of failure to produce documents, or the facts show a pattern of repeated disregard to comply with discovery.” *Norber v. Marcotte*, 134 S.W.3d 651, 660 (Mo. App. E.D. 2004) (citing *Dobbs v. Dobbs Tire & Auto Centers, Inc.*, 969 S.W.2d 894, 899 (Mo. App. E.D.1998)).

Defendants’ failure to produce these documents in a timely fashion, aided by Defendants’ repeated misrepresentations about their production and unprofessional disparagement of Plaintiffs, has been significantly prejudicial to the Plaintiffs. This would be true no matter what evidence they withheld, because it caused unnecessary investigation and testimony and created unnecessary and costly disagreement and multiple recourses to the Court. Defendants then used the resulting conflict to discredit Plaintiffs and force Plaintiffs to share in the cost of a Special Master, all while, *at best*, failing to check even once that their repeated false assertions were true.<sup>2</sup>

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<sup>2</sup> At worst, they took these actions deliberately to avoid disclosing a fact that Kirkwood School District has been trying to conceal for close to three years: that students used the Kirkwood High School Yearbook Instagram account to circulate an explicit survey. (The date/time information in the withheld documents led immediately to the relevant post.)

However, the prejudice related to this withholding is particularly acute, because the withheld documents are directly relevant to, potentially even dispositive of, multiple factual allegations within the Petition. As such, they make unnecessary many hours of investigation and testimony over the past seven months. Specifically, the survey results for the Hook-Up Topical Survey, Defs' Nos. 20963-64 [Ex. 7], include time stamps that establish that KSD students replied to that survey four days before a KSD secretary circulated the survey that was the subject of Plaintiffs' first Sunshine request. In other words, **these withheld files shed light on *when*, and therefore *how*, the Hook-Up Topical Survey was disseminated**, facts previously unknown to Plaintiffs. *See, e.g.*, Petition ¶¶ 30, 36, 39 46.

To be clear, the new evidence in no way undermines any of Plaintiffs' claims. However, when the Hook-Up Topical Survey was sent and by whom is relevant to the questions of Defendants' knowledge and purpose in responding to Plaintiffs' Sunshine requests—core issues in this case. For that reason, determining what the parties knew about how and when the Hook-Up Topical Survey was sent has been the subject of much deposition testimony and discovery by both sides. *See, e.g.*, Heidenreich Depo. (9/12/25) at 117 *et seq.*; Havener Depo. (10/8/25) at 270 *et seq.*; Eden Depo. (10/21/25) at 270 *et seq.*; Bond Depo. (10/27/25) at 141 *et seq.*; Toth Depo. (10/28/25) at 201-235; Andrews Depo. (11/12/25) at 115 *et seq.*, and surrounding discussions. As recently as February 25, Defendants' counsel spent much of Plaintiff Winters's deposition questioning her basis for factual allegations related to the dissemination of the Hook-Up Topical Survey, suggesting that he considered the question potentially dispositive of Count I of the Petition. Winters Depo. (2/25/26) at 59-81. At the very least, past deposition preparation and witness time was wasted as a result of the Defendants not sharing these clearly responsive documents. It is likely also going to be necessary for Plaintiffs to re-depose certain witnesses on

subjects relating to this “new” information, which should have been in the hands of Plaintiffs at the original depositions.

In sum, not only did Defendants mislead the Plaintiffs, the Court, and the Special Master in withholding these documents, but the withholding has resulted in substantial wasted resources in investigating fact issues that are to a great extent settled by the withheld materials. As a result, Plaintiffs ask the Court, through the appointed Special Master, to impose sanctions on Defendants for significantly burdening Plaintiffs and the entire case through their wrongful failure to make discovery.

**II. Despite multiple opportunities, including a squarely relevant court appearance and order, Defendants delayed their objection to producing material stored on their employees’ and Board Members’ personal devices for 7 months, resulting in seven incomplete depositions and up to a year of potential spoliation of evidence.**

Plaintiffs also seek discovery sanctions against Defendants on the basis of their failure to make a timely objection to Plaintiffs’ requests for Defendants’ files stored on personal electronic devices. Rule 61.01(a) specifically provides that “[a]ny failure to act described in this Rule 61 may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has served timely objections to the discovery request or has applied for a protective order as provided by Rule 56.01(c).” Mo. Sup. Ct. R. 61.01. The rules further specify that objections, to be timely, must be part of a party’s timely responses to discovery, due 30 days after requests:

Missouri rules of discovery require a party to include any objections in their *timely* responses to discovery. Rule 57.01(c)(3) (interrogatories) (“If the information is withheld because of an objection, then each reason for the objection shall be stated”); 58.01(c)(3) (requests for production) (same); 59.01(d)(3) (“If an objection is asserted, then each reason for the objection shall be stated”).

*Carmed 45, LLC v. Huff*, 630 S.W.3d 842, 857 n.13 (Mo. App. E.D. 2021) (emphasis added); *see also Zimmer v. Fisher*, 171 S.W.3d 76, 80 (Mo. App. E.D. 2005) (“Rule 58.01(b) provides that

the party upon whom the request for production of documents is served shall serve a written response, which includes any objections, within thirty days after the request.”). This is no mere technicality. Failing to object in a timely fashion can, as here, prejudice the opposing party. *See id.*; *see also Hale*, 456 S.W.3d at 488 (recognizing court’s inherent power to impose sanctions); *A.J.H. ex rel. M.J.H.*, 364 S.W.3d at 682 (same).

Plaintiffs served their First Requests for Production on February 13, 2025, seeking various specific documents within Defendants’ control (including certain electronic communications, documents, and materials held by current and former employees and representatives of KSD) whether stored on “personal or professional electronic devices.” Pls’ RFPs Definitions 6 (defining “your” to include Defendants and all agents and representatives of Kirkwood School District, board of education members, current and former employees and students) & 9 (defining “document” to include materials in Defendants’ custody and control, including on personal and professional devices); and Instruction 4 (specifying that all requests were for “all documents now in your possession, custody, or control, including on personal or professional devices”). [Ex. 8] In their responses on April 15, 2025, Defendants made many objections, including one claiming lack of custody or control over social media posts and other statements sought in one single RFP (No. 18), but did not object to producing communications, documents, or other materials stored by their representatives on personal electronic devices in response to any of the other 45 RFPs. [Ex. 9]

Following several months of no production at all, Plaintiffs filed their first Motion to Compel Production in late May of 2025, asking the Court to require Defendants to respond to their RFPs. [Ex. 10] In response, Defendants filed on July 1, 2025, a Response and a Motion for

Protective Order asserting several of their timely raised defenses to production, but they still did not object to producing materials stored on personal electronic devices. [Ex. 11]

By the time of oral argument in July, no documents had yet been produced, so Plaintiffs had become concerned about preservation of texts and communications and other materials retained on personal devices in particular. Accordingly, their Reply in support of their Motion to Compel included a specific request for a preservation order related to personally stored files:

Given Defendants' lack of production so far, their arguments that student records, information prior to 2023, and information related to their yearbook and curriculum policy violations are not subject to discovery, the separation just yesterday (June 30) of Defendant Ulrich from Kirkwood School District, and the fact that Defendants' proposed order asks the Court to order no "further discovery" when discovery has not yet begun, **Plaintiffs are concerned that documents subject to discovery in this case will be destroyed before Defendants turn over information that may lead to further requests.**

Therefore, **Plaintiffs request that the Court order Defendants not to destroy or allow automatic destruction of any electronic or personal records relating to any of the matters in this lawsuit, including personal records in the private custody of the Defendants (including those current and former employees of KSD that have been identified in interrogatories and are represented by counsel for Defendants), including on private cell phones and computers and other devices. Plaintiffs further request that the Court charge Defendants' counsel with communicating that instruction to everyone named so far in this lawsuit in any interrogatory. . . .**

[Ex. 12 at Section IV (emphasis added)] Plaintiffs submitted a proposed order with their motion specifying Defendants' obligation. [Ex. 22]

Defendants did not oppose Plaintiffs' request for a preservation order; instead, counsel quickly acceded to Plaintiffs' request that they instruct their clients, including those in the RFPs, in their preservation obligations, cutting off Plaintiffs' argument to the Court almost as soon as it began. After argument, by order of the Court, the parties offered a common proposed order, which the Court entered, and which concluded with this instruction:

That counsel for the Defendants will ensure that **Defendants, including current and former employees and board members of Defendant Kirkwood School**

**District named in response to all parties' interrogatories, are aware of their obligation to retain and/or avoid destruction of all records dating back to the year 2020 that relate to the individual Plaintiffs or their families, or to the contents of Plaintiffs' Sunshine requests or the claims asserted in this case, to the extent those records were retained or required to be retained at the time that Defendants became aware of potential litigation related to those records, pending the completion of discovery in this case. This retention obligation extends to analog or digital personal records, including text messages and Google documents with multiple editors, retained within or outside Defendants' facilities, including information on personal electronic devices.**

[Ex. 13 (emphasis added)]

Obviously, if Defendants had timely objected, both the Court's hearing on Plaintiffs' request for a preservation order as to personal devices and this ensuing Order could and would have resolved the question whether personally retained files were subject to discovery. This would have been possible had Defendants timely raised their objection in their original discovery responses or even included it along with their other, timely objections, in their Motion for a Protective Order, or simply argued against Plaintiffs' request for a preservation instruction. The question was central to the issues before the Court, since the spoliation of such evidence was of primary concern to the Plaintiffs. [Exs. 12 (Pls' Reply) and 20 (Proposed Order)]

If Defendants cut off Plaintiffs' argument before the Court by only feigning cooperation in a preservation order that extended broadly to all personal devices in the hands of those named in the RFPs, while never planning on producing such evidence, they intentionally misled the Court and the Plaintiffs. Unfortunately, this appears to be the case, because Defendants insisted on inserting in the ensuing joint order, which refers to all such devices, the phrase "to the extent those records were retained or required to be retained at the time that Defendants became aware of potential litigation related to those records." [Ex. 13, quoted supra] They then proceeded to conduct discovery as if their obligations extended only to the personal devices of the named Defendants, without informing Plaintiffs or the Court. In other words, their acquiescence to

Plaintiffs’ request before the Court appears to have been the legal equivalent of making a promise to the teacher with their fingers crossed behind their backs.

At best, it was a shockingly (and conveniently) negligent omission for Defendants not to raise their objection to production of materials on personal devices when the issue was squarely before the Court in July of 2025, or at any time in the months of proceedings prior to Plaintiffs’ Second Motion to Compel. *See, e.g., Washington v. Sioux Chief Mfg. Co.*, 662 S.W.3d 60, 71 (Mo. App. W.D. 2022), *abrogated on other grounds by Steele v. Johnson Controls, Inc.*, 688 S.W.3d 192 (Mo. 2024) (upholding discovery sanction against Defendant who had failed to bring up an objection to an RFP despite many opportunities: “Defendant never expressed any confusion or sought clarification from the Court regarding the Court’s orders concerning this discovery, suggesting that Defendant understood what was being sought by Plaintiff.”).

Intentional or culpably negligent, Defendants’ conduct seriously prejudiced Plaintiffs. With depositions beginning nearly at the beginning of Defendants’ production, Defendants agreed to make materials related to each deponent available to Plaintiffs a week prior to their deposition. Communications between the parties about these materials reflect Defendants’ assurances that they would search personal devices for responsive materials:

We will continue to produce documents related to deponents as we are able, with the goal of having them produced at least a week prior to their depositions. As mentioned, we are still working with the District to check whether any personal notes or communication responsive to your requests exist.

[Ex. 14, 9/26/25 E-mail from A. Hancock to M.C. Martin] However, no materials from private devices were produced as to any witness.

On questioning, virtually all witnesses testified that Kirkwood School District employees and Board Members routinely communicated on personal electronic devices regarding school district business. [Ex. 15, Summary of Testimony on Personal Device Usage KSD] One former

Board Member stated that Defendant Ulrich used individual private communications to Board Members as a preferred mode of communication to avoid accountability via Sunshine requests. Kavanaugh Depo. at 364:13 *et seq.* [Ex. 15] While one witness stated she would have retained communications from three years ago on her current device, Andrews Depo. at 19-20, others stated that, by the time of their deposition, such communications had been destroyed. *See, e.g.*, Kavanaugh Depo. at 15; Toth Depo. at 15.

When Plaintiffs asked Defendants' counsel for clarification after the first deposition of whether and when Plaintiffs would receive any relevant privately retained files, they first answered that they were trying to comply, then ignored the direct question even when Plaintiffs expressly indicated a hope to avoid a second Motion to Compel. [Exs. 16, 17, 14, 18 (E-mails between counsel 9/16, 25, 26)] Only after Plaintiffs went ahead with their October 6 Second Motion to Compel, **in Defendants' late November 2025 responsive filing, did Defendants first articulate an objection to producing these materials [Ex. 19 at 16-18]**—materials that Plaintiffs had requested in February 2025, sought protection for in Court in July 2025, clearly expected with each of seven depositions, then asked for again before filing a Motion to Compel.

After the parties finally briefed and argued Defendants' objection in February of 2026, a full year after Plaintiffs' original requests, the Special Master has now taken under advisement whether Defendants must produce material retained on personal devices by their Board Members and current and former employees. Plaintiffs maintain their position that many such materials are within the actual control of the Defendants and are within the asserted control of Defendants under their own policies, and therefore that Defendants should be required to produce whatever such materials remain. [Ex. 2 at Section II.B and Ex. 15]

Regardless of the Special Master's or Court's disposition of their objection, however, Defendants' *untimeliness* in raising it was and will remain highly prejudicial. Defendants delayed seven months after their April 2025 responses to RFPs, failing to raise the objection in their June 2025 Motion for Protective Order, misrepresenting their position on preserving materials on personal devices to the Court and in a July 2025 Court Order, and forcing Plaintiffs to conduct seven depositions in Fall of 2025 without the benefit of materials they were justly expecting. Ultimately, Defendants' failure to produce materials stored on personal devices forced Plaintiffs to return to Court with a Second Motion to Compel, leading directly to the costly appointment of a Special Master.

Moreover, Defendants' actions suggest that their failure was not just a mistake or inattention, because they accomplished this delay by misleading the Court and Plaintiffs with apparent cooperation that they immediately (but privately) withdrew, making further cooperative assertions to Plaintiffs' counsel, then, after nevertheless failing to execute the discovery requests for many months, refusing to discuss the matter directly with Plaintiffs' counsel.

As such, Defendants' counsel's conduct has been prejudicial to Plaintiffs and wasteful of the resources of all parties (particularly if repeated depositions are necessary). A year of prolonged litigation and delay in preparation for trial is sufficient prejudice to warrant sanctions. *See, e.g., Dougherty v. Coppergate Commons Condo. Ass'n*, 719 S.W.3d 856, 863 (Mo. App. E.D. 2025), *reh'g and/or transfer denied* (Aug. 4, 2025), *transfer denied* (Sept. 30, 2025) (“[W]e agree the record shows the delay of over a year and several months, resulting in prolonged litigation of the underlying claims as well as the discovery dispute, and deprivation of information Coppergate needed to sufficiently prepare for trial established prejudice to Coppergate to support the trial court's imposition of sanctions.”) (citing *Vetter Constr. Co. v.*

*Innovated Constr.*, 696 S.W.3d 442, 447-48 (Mo. App. E.D. 2024); *Noble v. L.D. Enters.*, 687 S.W.3d 11, 20 (Mo. App. W.D. 2024) (after “nearly a year of waiting,” defendant still did not have complete responses and record supported conclusion of prejudice); *Frontenac Bank v. GB Investments*, 528 S.W.3d 381, 394 (Mo. App. E.D. 2017) (record demonstrated violations repeatedly caused delay and deprived party of “potentially valuable information” it could have used to prepare for trial, thereby showing prejudice)).

More egregiously, and perhaps intentionally, Defendants’ delay has likely caused spoliation of evidence that would have been obtainable if they had responded, even with an objection, to Plaintiffs’ RFPs in a timely manner. Witnesses have testified that communication on personal devices about Kirkwood School District business was commonplace [Ex. 15], and that at least one named Defendant, David Ulrich, intentionally communicated with members of the Kirkwood School District Board of Education individually on their personal electronic devices to avoid accountability in the case of a Sunshine request. Kavanaugh Depo. at 364:13 *et seq.* [Ex. 15]

As an example of evidence that may have been lost, key evidence cited in the Petition includes e-mails from the President of the Kirkwood Board of Education communicating directly with Plaintiff Winters about Sunshine Request 1 and communicating false information. [Ex. 20 (Winters 420)] Petition ¶¶ 55-60. When questioned by Plaintiff Winters with contrary (and correct) information, Ms. Shurn states in return communication that she will “get clarification” and get back to Ms. Winters. [Ex. 20 (Winters 420)] She then follows up later with an e-mail communication that still gives Ms. Winters false information. [Ex. 20 (Winters 419)] Ms. Shurn’s information, which was false in a way that was relevant to her Sunshine request, led Ms. Winters to contact Defendants again, and then over and over given their lack of response,

regarding the same Sunshine request. Petition ¶¶ 60-69. The record includes no evidence, at this time, of what Ms. Shurn did to “get clarification” regarding Ms. Winters’s Sunshine Request, but it was many more weeks before the School District told Ms. Winters the truth, which they had had in their possession since the day after her Sunshine request and which contradicted what Ms. Shurn had told her, about the material she had validly requested. Petition ¶ 69.

Based on the above evidence, Plaintiffs allege in the Petition that the Board President’s intervention into Kirkwood School District’s response with false information regarding Ms. Winters’s Sunshine Request renders the District itself liable for knowingly and purposefully breaking the Sunshine Law, but also that Ms. Shurn’s false information had its origin in falsehoods told to her by the Superintendent and/or the Custodian of Records, rendering one or both of them also liable for knowing and purposeful violations. Petition ¶ 249, Count I. However, if Defendants’ production in this area is complete, whatever communications Ms. Shurn made to “get clarification” were not made via e-mail. Based on deposition testimony, it is very likely that Ms. Shurn’s communication was with Dr. Ulrich, and that it took place via text or phone call from her personal device.

As Defendants’ counsel recently pointed out in front of the Special Master, gaps in e-mail communication between employees of Kirkwood School District are to be expected, because “these people worked together,” so they will often have communicated in person. [Statement of Ms. Hancock before Special Master, February 12, 2026.] The same is not true of communications between the Superintendent or Custodian and Board Members. Gaps in their e-mail correspondence will have been filled in largely by other forms of electronic communication that will be memorialized as texts, phone records and/or calendar entries that are retained on personal devices. Common sense demonstrated this would be true even before several witnesses

confirmed it, *see, e.g.*, Heidenreich Depo. at 102:20-21 (Ulrich communicated with the Board via phone and text) [Ex. 15], with one Board Member stating that this mode of communication was specifically favored by Defendant Ulrich for the purpose of avoiding creating public records. Kavanaugh Depo. at 364:13 *et seq.* [Ex. 15] Especially since the named Defendants have claimed that all their communications on personal devices from the period relevant to the Petition have been destroyed, and because Kirkwood School District has admitted to failing to preserve even the group text messages to the Board of Education that they are required under the Sunshine Law to retain, Defendants' failure to act to preserve requested evidence on personal devices from the moment it was requested in February 2025, combined with their seemingly intentional delay in raising an objection until November of that year, has likely led to the spoliation of some or all of such evidence.

In short, even if Defendants' April 2025 response had raised an objection to producing materials on personal devices that was then upheld, Plaintiffs would then have known in mid-2025, rather than mid-2026, that they must pursue other means of obtaining the relevant materials, such as by third-party subpoena. Thus, no matter what the Special Master decides to do with their objection, a year of potential spoliation is attributable to Defendants' misconduct.

#### **PRAYER FOR RELIEF**

“Rule 61.01 expressly permits imposition of . . . sanctions when doing so is a ‘just’ response to discovery violations . . . .” *Holm v. Wells Fargo Home Mortg., Inc.*, 514 S.W.3d 590, 597–98 (Mo. 2017) (affirming a trial court’s imposition of sanctions on parties who had “mislead [sic] this court about the existence of certain requested documents,” “failed to provide certain documents and information ordered by the Court and/or special master even after the special master found Defendants had failed to file timely objections to the requests,” and otherwise

“thrown up roadblocks to the preparation of Plaintiffs’ case at every stage of the discovery process by the perpetual evasiveness under—or, recalcitrance in complying with the discovery orders”).

In this case, Defendants have executed a strategy of throwing up roadblocks to Plaintiffs’ case by a combination of weaponized incompetence and gaslighting. Almost a year has elapsed since Defendants’ already-extended April 15 deadline for responding to Plaintiffs’ First Requests for Production, and Defendants have spent that year delaying; making false promises and excuses; forgetting, denying and renegotiating their own past statements; and covering Plaintiffs in irrelevant paper. Defendants’ various failures and refusals to act have forced two Motions to Compel and assignment of a Special Master despite Defendants’ failure to raise a single timely, valid objection to production, all while *Defendants* claimed exhaustion and overwork. Even now, a month on from the denial of all their objections, endless “negotiations” about what the Special Master actually ordered and even about what the parties stated in a recorded meet-and-confer continue to delay Defendants’ production.

Meanwhile, Defendants have withheld probative evidence and delayed raising an objection to discovery, concretely and severely prejudicing Plaintiffs. The Court has the discretion, in response to these violations, to order Defendants and/or their attorneys to pay Plaintiffs’ attorneys’ fees, strike Defendants’ pleadings or proffered evidence on certain issues, or even to enter a default judgment. Mo. R. Civ. P. 61.01. For spoliation of evidence, Plaintiffs are entitled to an adverse inference that destroyed evidence was unfavorable to Defendants. *Hill*, 563 S.W.3d at 761-63.

Accordingly, Plaintiffs seek compensation for the time and resources Plaintiffs’ counsel has been forced to expend unnecessarily, including reasonable fees involved in preparing and

arguing both Motions to Compel and fees and expenses related to the seven depositions of Defendants' witnesses that they completed without the benefit of key evidence or promised records from personal devices, plus the fees associated with the Special Master's service in this case,<sup>3</sup> including Plaintiffs' attorney fees for preparing for and appearing before the Special Master.

Furthermore, given Defendants' failure to preserve, or timely object to producing, key evidence that would establish (or not) the cooperation and responsibility of Defendant Ulrich in the Sunshine violations of others in Kirkwood School District, including Ms. Heidenreich, Plaintiffs also request that the Court adopt an adverse inference that holds Defendants to admit that communications and other files on personal devices, to the extent they are no longer available, support Plaintiffs' claims that Defendant Ulrich orchestrated the actions, or lack thereof, of other members of Kirkwood School District, including Board Members, employees, and his assistant, Defendant Laura Heidenreich, relating to Sunshine requests. *Hill*, 563 S.W.3d at 761-63 ("Appellant is entitled to an adverse inference that would hold SSM to admit that the content of the video was unfavorable to its position.").

As to all of Defendants' discovery violations, Plaintiffs further request any other appropriate and just relief.

Respectfully submitted,

**THOMAS MORE SOCIETY**

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<sup>3</sup>The Court's Order Appointing Special Master specifically provides for the Special Master to enter a judgment departing from the default allocation of 50% of his fees to each party. [Ex. 21]

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### **CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the above and foregoing was sent electronically via the Court's electronic filing system this 17th day of March, 2026, to:

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A copy was also sent on the same day via e-mail to Special Master, Judge Michael Mullen.

/s/ Mary Catherine Martin