

STATE OF NORTH CAROLINA
ORANGE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22CVS000255-670

BIOMILQ, INC.,

Plaintiff and
Counterclaim Defendant,

v.

SHAYNE GUILIANO and 108LABS,
LLC,

Defendants and
Counterclaim Plaintiffs,

v.

MICHELLE EGGER; BEV JOHN
DOES; and BIOMILQ JOHN DOES,

Counterclaim Defendants.

GATEKEEPER ORDER

1. **THIS MATTER** came on to be heard before the undersigned on 14 August 2024 following the Court's Order to Show Cause, electronically filed on 7 June 2024. (*See* ECF Nos. 371 ["Show Cause Or."], 492.) Defendant and Counterclaim Plaintiff Shayne Guiliano ("Mr. Guiliano") appeared at the show cause proceedings *pro se*.

2. Prior to the hearing on this matter, Mr. Guiliano filed a Motion to Recuse for Sua Sponte Proceedings. (*See* ECF No. 462.) On 5 August 2024, Special Superior Court Judge for Complex Business Cases Louis A. Bledsoe, III entered an order denying Mr. Guiliano's Motion to Recuse for Sua Sponte Proceedings. (ECF No. 490.) The hearing on the Court's Order to Show Cause, (ECF No. 371), was delayed pending a resolution of the motion to recuse, and the Court writes separately in this paragraph to acknowledge that motion and Mr. Guiliano's effort to recuse the undersigned and

to state that the recusal motion process has no bearing or influence on the decision herein.

3. The Court, after reviewing this matter in detail and considering the arguments of Mr. Guiliano and counsel of record, finds as follows:

I. FINDINGS OF FACT¹

4. This action was initiated by Plaintiff BIOMILQ, Inc. (“BIOMILQ”) on 4 March 2022 on the filing of its Complaint. (ECF No. 3.) At that time, Mr. Guiliano was represented by counsel in this litigation. (8 Mar. 2022 Not. Appearance, ECF No. 15.) However, on 28 March 2022, Mr. Guiliano’s counsel sought to withdraw. (See Mot. Withdraw, ECF No. 19.) That motion contained a representation regarding Mr. Guiliano’s intent to proceed without counsel. (Mot. Withdraw ¶ 12, ECF No. 19.)

5. Following a hearing on 1 April 2022, (see ECF No. 22), Mr. Guiliano’s counsel was permitted to withdraw and Mr. Guiliano thereafter proceeded without counsel in this action, (see Order on Mot. Withdraw, ECF No. 31).

6. On 15 May 2022, Mr. Guiliano filed five (5) motions with the Court: a purported motion to stay and four motions for extension of time, two of which were motions for extension of time for 108Labs, LLC (“108Labs”), a North Carolina limited liability company in which Mr. Guiliano is a member. (ECF Nos. 52–56.) The Court observed that the motions for extension of time were untimely, and that two of the four motions were “refiled after [Mr.] Guiliano determined that he had not

¹ To the extent one or more findings of fact are more properly considered conclusions of law, and vice versa, they are intended by the Court to be and should be properly categorized and considered as such.

electronically signed the certificate of service for ECF Nos. 52 – 53.” (See 16 May 2022 Order at 1 n.1, ECF No. 57.)

7. After Mr. Guiliano purported to act on behalf of 108Labs, the Court clarified in its 17 May 2022 Order that a corporate party to litigation, “with exceptions not relevant here, may only file a response to a complaint through properly licensed counsel.” (17 May 2022 Order at 2, ECF No. 61 (citing *LexisNexis, Div. of Reed Elsevier, Inc. v. Travishan Corp.*, 155 N.C. App. 205 (2002)).) The Court, for the first time in this action, emphasized “that parties, either appearing *pro se* or through their retained counsel, who make false representations to the Court, are subject to sanctions by the Court.” (17 May 2022 Order at 2, ECF No. 61.) The Court further emphasized that Mr. Guiliano, a non-lawyer, though proceeding *pro se*, would “be expected to abide by all rules and procedures applicable to this proceeding, including but not limited to the North Carolina Business Court Rules, [and] rules and procedures regarding the electronic filing of documents with the Court.” (17 May 2022 Order at 3, ECF No. 61.)

8. Mr. Guiliano thereafter filed a response to the Court’s 17 May 2022 Order, which was a filing not permitted as a motion or brief under Business Court Rule (“BCR(s)”) 7 as the Order did not otherwise elicit a response from the parties. (See ECF No. 62.) In that filing, Mr. Guiliano attempted to argue that he should be permitted to make an appearance on behalf of 108Labs in order to avoid entry of default. (See ECF No. 62.) The Court did not address this response, as it was a filing to which no Order was warranted or required.

9. Counsel licensed to practice law in this State thereafter appeared as counsel for 108Labs on 10 June 2022. (*See* ECF No. 64.) Mr. Guiliano continued to represent himself.

10. On 16 November 2022, Tara Warwick and Jonathan Carnes of CarnesWarwick PLLC appeared as counsel of record for Mr. Guiliano and 108Labs (together, “Counterclaim Plaintiffs”). (ECF Nos. 102–03.)

11. On 6 February 2023, Counterclaim Plaintiffs filed a document entitled Answer and Counterclaims. (ECF No. 120.) In this filing, Counterclaim Plaintiffs failed to answer the allegations in the First Amended Complaint, (ECF No. 42), but rather solely attempted to bring counterclaims against BIOMILQ and to raise claims against new parties Leila Strickland (“Strickland”), Michelle Egger (“Egger”), Breakthrough Energy Ventures, LLC (“BEV”), and Goodwin Procter LLP (“Goodwin”), (*see* ECF No. 120). Counterclaim Plaintiffs thereafter filed their Amended Answer and Counterclaims as of right on 2 March 2023. (ECF No. 127.) After receiving leave to do so, Counterclaim Plaintiffs filed their Second Amended Counterclaims on 5 June 2023, which alleged twenty-seven separate claims for relief and attempted to add the aforementioned individuals and entities to this action. (*See* ECF No. 154.)

12. BIOMILQ, Strickland, Egger, BEV, and Goodwin each timely moved to dismiss the Second Amended Counterclaims on 4 August 2023. (*See* Sched. Order, ECF No. 175; Mots. Dismiss, ECF Nos. 177, 180, 182, 185–86.) Following full briefing and a hearing conducted on 7 November 2023, (*see* ECF No. 210), those motions were

granted in part and denied in part, as set forth in more detail in *BIOMILQ, Inc. v. Guiliano*, 2024 NCBC LEXIS 8 (N.C. Super. Ct. Jan. 9, 2024), and *BIOMILQ, Inc. v. Guiliano*, 2024 NCBC LEXIS 58 (N.C. Super. Ct. Apr. 19, 2024).

13. On 17 November 2023, ten days after the hearing on the motions to dismiss, CarnesWarwick PLLC (“CarnesWarwick”) moved to withdraw as Mr. Guiliano’s counsel of record. (ECF Nos. 224, 226.) BIOMILQ, Strickland, and Goodwin (together, “Respondents”) opposed CarnesWarwick’s withdrawal, raising concerns, in relevant part, regarding Mr. Guiliano’s prior communications with counsel in this case. (See Resp. Br. 3, 7–8, ECF No. 230.)

14. With their response, Respondents filed emails sent by Mr. Guiliano between 13 September and 8 October 2023, a period of time during which he was represented by attorneys of record in this action. (Ex. D, ECF No. 230.5 [“Ex. D”].) Mr. Guiliano wrote, for example:

Does anyone or are you all going to play games which are serious violations of ethics in any case?

Or do you have someone in the background telling you don’t worry, he’ll pay any sanction and damage, just do whatever to steal the monopoly of cell cultured milk, or destroy it if Shayne gets it back?

Discovery will tell.

Spoilage is a serious violation of duties in litigation, as Walsh explained to me when she initiated her malicious complaint in 22CVS255 with Egger and Strickland and Biomilq, and it’s not appropriate or ethical for counterparties counsel to play this silence game when it comes to preservation and spoilage[.]

I can't believe how unethical the conduct of counterparty counsel has been. But I'm calling you both out, and giving you a chance to change course because [sic] I take further action, because I don't actually believe you want to follow Walsh off the cliff.

When has there ever been a more obvious and more malicious abuse of process in North Carolina history than 255, in respect of the prior pending notice of my pending action which became the filing of 283?

The gig is up.

And it's all just proof of abuse of process anyways, so I will be relentless in making Biomilq pay for the lies and abuse eventually through sanctions and more if this conspiracy collapses Biomilq before my divorce is completed.

You both also should know there was no probable cause remaining in the last amended complaint in biz ... the only "fact" Biomilq added was new lies like me only being at farm when Leila was there; which is the opposite of the truth.

I know Ms. Walsh is the mastermind and she is as delusional as Egger. And maybe you think your reputations will protect you from sanctions. But I will certainly test that hypothesis if you try to use your reputations to turn lies into truth any longer.

(Ex. D at 4–5, 8, 10, 15.) References to “Walsh” are regarding BIOMILQ and Strickland’s counsel, Rachel Walsh (“Ms. Walsh”), an attorney licensed to practice law in California who is appearing *pro hac vice* in this action. (See ECF Nos. 16, 191.) Another email of note, sent on 19 September 2023 at 2:14 p.m., again while Mr. Guiliano was represented by counsel, is seven pages long, single-spaced, containing similar statements to those quoted above. (See Ex. D at 5–12.) The terms

“malicious” and “maliciously,” in reference to the conduct of opposing counsel and then-parties, are used by Mr. Guiliano in these emails thirty-five times. (*See* Ex. D.)

15. On 29 November 2023, the Court entered its Order on Motion to Withdraw as Counsel of Record for Shayne Guiliano (the “29 November Order”), permitting CarnesWarwick’s withdrawal as counsel for Mr. Guiliano but setting forth clear expectations of Mr. Guiliano, given his decision to proceed *pro se* once again in this action. (ECF No. 232 [“29 Nov. Order”].) The Court, “out of an abundance of caution,” reminded Mr. Guiliano that he could not “make representations on behalf of 108Labs, LLC in this action because it may only be spoken for by licensed counsel.” (29 Nov. Order at 6.)

16. As to Mr. Guiliano’s communications with counsel, the Court cautioned Mr. Guiliano to “conduct himself in a courteous and respectful fashion as it relates to this litigation.” (29 Nov. Order at 6.) The Court went on to state that, “the Court, in its inherent authority, may expect all litigants to conduct themselves in a respectful manner toward the Court, its personnel, the litigation process, and the opposing parties and their counsel.” (29 Nov. Order at 6.) The Court was clear in stating its expectation that Mr. Guiliano “use respectful language in his communications with opposing counsel, and [that] the Court will not tolerate misrepresentations or inaccurate depictions of actions from any party to this action or their counsel.” (29 Nov. Order at 7 (citing *Paradyne Mgmt. v. Curto*, 2018 U.S. Dist. LEXIS 230935 (June 11, 2018)).)

17. Shortly thereafter, on 8 December 2023, the Court reminded Mr. Guiliano of his obligations to the Court and opposing counsel, as set forth in the 29 November Order, and directed him to Rule 11(a) of the North Carolina Rules of Civil Procedure (the “Rule(s)”). (ECF No. 236.)

18. During the week of 8 January to 12 January 2024, Mr. Guiliano filed three motions, amassing a filing of over 47 documents in total, including a motion for consolidation, a motion to reconsider, and a motion to amend case management order. (See ECF Nos. 251–54, 256–59.)

19. It thereafter came to the Court’s attention that Mr. Guiliano had not ceased his abusive and combative rhetoric with opposing counsel. (See Ex. C to Mot. Amend. PO, ECF No. 261.4 [“Ex. C”].) In a twenty-seven-page filing, opposing counsel submitted Mr. Guiliano’s emails to them dated from 18 December to 28 December 2023. (See Ex. C.) By way of example of the more troubling statements, Mr. Guiliano wrote:

To be clear, you are not leading the meeting, Ms. Walsh. I am. I have attached an agenda for everyone to review, which includes an item encouraging anyone else to suggest items for discussion.

And I am the one the order says everyone has to talk to Ms. Walsh, not you, Please stop pretending like you control this discovery agenda anymore for everyone.

In short, this is not an order about everyone meeting with Ms. Walsh to figure out how to accommodate her ongoing efforts to obstruct and delay my discovery into her conduct assisting Biomilq, Inc in misappropriation, it’s an order of ALL counterparties meeting with me to figure out how to protect all the discovery work product I’m about to

produce over conduct and property held by the counterparties to trace my property rights and assess liability[.]

In other words, I'm not sure we should give much weight to what Ms. Walsh says anymore given her history of bad conduct and untrustworthiness, but I'm happy to discuss this issue with everyone Thursday with Ms. Walsh present.

As an attorney of record still, technically, she does get to speak in this meeting and I have reserved time for her to do so, but I am much more interested in what everyone else has to say so we can move beyond this continuing effort by Ms. Walsh to obstruct my discovery and slow this case down to extinguish any more days than needed to resolve this action regarding this exclusive commercial opportunity owned by my marital estate[.]

I think it could [sic] we could do this like survivor, we could vote her out if majority agrees, since she is a subject of discovery, it just makes sense that she should step aside when it comes to me figuring out how to protect all the trade secrets I created That might be the simplest way to get her voted out without having to hold a counsel+pro se meeting to vote on it.

(Ex. C at 4–6, 15–16.)

20. Having reviewed this filing, the Court held a Conference with all parties to this action on 19 January 2024 (the “19 January Conference”). (See ECF No. 255.) At the 19 January Conference, the Court set forth ground rules for all further proceedings in this matter, stating, in relevant part:

[T]he Court restates its expectations that throughout this litigation, all communications in this matter, whether by e-mail, in informal conferences[,] to the Court during oral argument or otherwise, shall be respectful and courteous. On the 29th of November of last year, when counsel for Shayne Guiliano were permitted to withdraw, that's ECF

number 232, the Court cited the parties and their counsel to [*Paradyme Management v. Curto*, 2018 U.S. Dist. LEXIS 230935, at *12–14 (Md. Dist. Ct., June 11, 2018)]. The Court is frankly troubled and concerned by some of the statements made by Mr. Guiliano after the Court ordered that the expectations set forth in the *Paradyme* case are to be followed here.

(*See* 19 Jan. Conf. Tr. 8:20–9:12, ECF No. 463.2 [“19 Jan. Tr.”].) The Court cited specific examples of unacceptable rhetoric, including some of the statements quoted above, and stated that “[r]espectful communication will be required and the Court expects basic civility from everyone in this action.” (19 Jan. Tr. 10:23–24; *see* ECF No. 288.) The Court asked all counsel and unrepresented parties to orally confirm that they understood the Court’s expectations. (*See* 19 Jan. Tr. 11:2–12:15.) Mr. Guiliano orally confirmed that he understood the Court’s expectations in this matter:

THE COURT: And finally, does any -- Mr. Guiliano, do you have any misunderstanding or uncertainty about the Court’s expectations in this regard?

MR. GUILLIANO: No. Thank you for clarifying where the line is.

THE COURT: Is that answer a no, as I mentioned at the start of this hearing that I expect you to answer questions with a yes or no and then you may explain? Do you have any uncertainty or misunderstanding about the Court's expectations of counsel and pro se parties regarding courtesy and civility as we go forward in this action?

MR. GUILLIANO: No.

THE COURT: Thank you, sir.

(19 Jan. Tr. 12:2–15.) Despite his purported understanding, Mr. Guiliano’s use of disrespectful and otherwise inappropriate language continued.

21. In a filing on 31 January 2024, Mr. Guiliano wrote, “[a]nyone with google can easily find Biomilq,Inc’s publicity bragging about receiving \$25,000,000 in third party cash payments after separation because of alleged misappropriation of a monopoly. Only a party as dishonest as Biomilq,Inc would argue \$25,000,000 is less than \$5,000,000.” (Reply Br. 15, ECF No. 278 (emphasis removed).) Citing to this statement, the Court warned again that Rule 11 permits the Court “to impose an appropriate sanction on the signor of a filing if the filing was, in whole or in part, ‘for any improper purpose, such as to harass or to cause unnecessary delay or needless[ly] increase in the cost of litigation.’” (5 Feb. 2024 Order at 6, ECF No. 288 (quoting N.C.G.S. § 1A-1, Rule 11).) The Court further stated that future filings with this type of statement would be subject to being stricken from the record and the Court would decline to consider the arguments in said filing, as an appropriate sanction. (5 Feb. 2024 Order at 6, ECF No. 288.)

22. Notwithstanding the Court’s admonitions and warnings to him, Mr. Guiliano’s conduct has only continued and in some instances escalated. On 7 June 2024, the Court issued its Order to Show Cause, requiring Mr. Guiliano to appear and respond, indicating why he should not be sanctioned for his repeated violations of the Court’s Orders and the BCRs. (*See Show Cause Or.*)

23. Following entry of the Order to Show Cause, Mr. Guiliano’s misconduct continued. It is therefore necessary for the Court to highlight the volume of Mr. Guiliano’s filings on the Court’s docket and the impropriety of many of those

filings, to provide examples of further troubling statements by Mr. Guiliano and to detail Mr. Guiliano's various violations of the BCRs and Court Orders.

A. Volume of Filings

24. Between 29 April and 29 May 2024, Mr. Guiliano filed eleven (11) motions, (ECF Nos. 300, 312.1, 321–22, 325, 331, 335, 340, 351, 357, 363), three (3) of which the Court denied for failure to comply with the Court's prior Orders or the BCRs, (ECF Nos. 305, 324, 355).

25. In addition, Mr. Guiliano has repeatedly filed "responses" to the Court's Orders. None of these Orders elicited or otherwise permitted a response, and none of the responses were a permitted motion or brief under Business Court Rule 7. Rather, Mr. Guiliano's responses appear to be solely for the purpose of noting his disagreement or irritation with the Court's Orders. Notable examples include the following: (1) on 29 May 2024, Mr. Guiliano filed a response to the Court's Order on Guiliano Rule 11 Motion to Sanction and Strike, (*see* ECF No. 355), in which he asserted that the Court invented rules and violated BCR 7.8, (29 May Resp. 1–2, ECF No. 360); (2) on 14 June 2024, Mr. Guiliano filed a response to the Court's Order granting an extension of time to certain parties wherein he wrote that "the Court ignores *pro se* speech," and argued that he is not engaged in the unauthorized practice of law on behalf of 108Labs, (14 June Resp. 6, ECF No. 381); and (3) on 12 July 2024, Mr. Guiliano filed an Objection to Order to Stay Litigation Pending Resolution of Appeals, in which he argued that the Court "has become an accuser" and that the Order to Show Cause was improper, although Mr. Guiliano's filing was captioned as

a response to the Court's Order that stayed a majority of the litigation pending a ruling from our Appellate Court(s) on Mr. Guiliano's pending appeals, (*see* ECF No. 465).²

26. Mr. Guiliano has also filed inappropriate responses to filings by the parties in this action. For example, on 10 July 2024, Mr. Guiliano filed his affidavit in response to BIOMILQ's filing of the Affidavit of Christine Ring, (Ring Aff., ECF No. 453), a member of BIOMILQ's board of directors, (10 July Aff. Guiliano, ECF No. 455). It appears to the Court that Mr. Guiliano filed a competing affidavit, which is not a permitted further filing since it was not filed in connection with a brief.³ The affidavit also contains legal arguments, and to the extent it contains factual averments, most of those purported facts are not based on personal knowledge and instead are Mr. Giuliano's speculation and conjecture. *See Currituck Assocs. Residential P'ship v. Hollowell*, 170 N.C. App. 399, 403 (2005) (“[I]t is a general legal principle that affidavits must be based upon personal knowledge.”).

27. In June 2024, Mr. Guiliano filed fifteen (15) additional motions. (ECF Nos. 389, 390–94, 400–03, 406–17, 420–21, 424–25.) Additionally, Mr. Guiliano

² The Court also notes that Mr. Guiliano filed a clearly untimely notice of appeal on 17 May 2024, seeking to appeal, in relevant part, from the Court's 5 February 2024 Order on Guiliano's Motion for Joint or Whole Consolidation. (Not. Appeal, ECF No. 342; *see* Order, ECF No. 288.) Egger's counsel therefore suffered the unnecessary burden and expense of filing a motion seeking dismissal of Mr. Guiliano's untimely appeal. (Mot., ECF No. 404.) The Court ultimately granted that motion and dismissed the appeal in part as untimely. (*See* Order on Mot. Dismiss Appeal, ECF No. 478.)

³ The Affidavit of Christine Ring was submitted with BIOMILQ's permitted response to the Court's Order to Show Cause. (*See* ECF No. 453.) The Order to Show Cause did not permit the filing of a reply. (Show Cause Or. 9–10.) As a result, Mr. Guiliano's filing of the competing affidavit is in violation of the Order to Show Cause.

continues to file duplicative amended motions and briefs which have cluttered the docket. For example, in June 2024 alone: (1) Mr. Guiliano filed a motion for expansion of word count, (ECF No. 374), and withdrew it the same day, (ECF No. 375), only to refile the same motion with a brief the next day, (ECF Nos. 376–77); (2) Mr. Guiliano filed a motion for sanctions for discovery misconduct on 13 June 2024, (ECF Nos. 378–79), only to file an amended motion and brief the next day, (ECF Nos. 382–83); and (3) Mr. Guiliano filed a motion pursuant to Rule 54 on 17 June 2024, (ECF No. 386), and refiled the same motion the same day with an updated statement regarding BCR 7.3, (ECF No. 389; *see also* ECF Nos. 402–03 (filing an amended motion to correct a few typos), 410, 412 (filing an amended motion to correct grammar and typos), 413, 415 (filing an amended motion to correct one error referencing the wrong ECF No.)).

28. Duplicative filing continued into July 2024. (ECF Nos. 445–46 (filing an amended motion to correct one typo at page six, where Mr. Guiliano wrote ECF No. “300”, rather than “297”); ECF No. 462 (filing an amended brief to reference two new documents previously omitted).) The Court notes that Mr. Giuliano did not seek the Court’s permission to amend or modify any of these filings before he made his filings.

B. Disrespectful Language Directed at the Court and Counsel

29. Since undertaking to represent himself, Mr. Guiliano has engaged in name-calling and *ad hominem* attacks on both the Court and opposing counsel, some of which are described above, (*supra* ¶¶ 14, 19, 21), and more are described below.

1. Statements Directed at the Court

30. Prior to the Order to Show Cause, Mr. Guiliano's rhetoric when referring to the Court was generally within acceptable advocacy with some notable exceptions. For example, on 14 May 2024, Mr. Giuliano wrote the following in his *Guiliano Response Brief to Order on Requests for Discovery, Re-Requesting Discovery Under BCR 10*, (ECF No. 330):

[I]t's hard to understand how we ever arrived here, by a Court so professional and smart, if clearly prejudicial against pro se parties, whom could only deny Guiliano Justice herein by closing its eyes and ears so tightly.

Guiliano demands this Court cease any entry of findings which allow Biomilq, Inc or Goodwin to speak for Guiliano. Such findings are wildly inappropriate, when Guiliano's words to the contrary are obvious, clear, and convincing, as written in ECF No. 271.3

In a pattern only as consistent as is it frustrating, intentional or not, the Court appears to exercise its prejudicial discretion to ignore all of Guiliano's words ever spoken since ECF No. 3, allowing Biomilq, Inc to instead speak for Guiliano here as if spoken by him, contrary to his actual words clearly and convincingly spoken and written

What words may Guiliano ever say to make sense of this refusal of the Court to see how deeply fingers are stuck in its ears and how tightly its eyes crinkled close, if any?

(14 May Resp. Br. 3–5, 20, ECF No. 330.) The phrase “prejudicial discretion” appears eight times in that filing. (See ECF No. 330.) The bulk of Mr. Guiliano's filings around this time indicate his belief that the Court does not read or consider what he

files. (ECF Nos. 333.1 (“[D]epending on whether this Court gets to this word. (ECF No. To-Be-Continued.”), 335 (describing Mr. Guiliano’s belief that he faces judicial prejudice, which in his view is “clear to anyone who cares to look”), 360 (“[T]hese unAmerican orders do *unHeard* if silent damage to Justice without fair *Hearing* or *Seeing* by Justice of words never spoken, by prejudicially if opaquely limiting speech by Robinson Rule 288.3 in every brief filed in this action” (emphasis in original)).)

31. Mr. Guiliano’s language became more extreme after the Order to Show Cause was entered. For example, on 12 July 2024, Mr. Guiliano filed his *Objection to Order to Stay Litigation Pending Resolution of Appeals*, in which he wrote that the Court is “becoming the primary accuser against Guiliano,” and contending that the Court has an “ulterior motive” for entering the Order to Show Cause. (12 July Obj. at 3–4, ECF No. 465 [“Obj.”].) Mr. Guiliano stated,

[n]o judge in American history has been accuser, judge, jury and executioner, in such a way as under this sua sponte procedure, as far as Guiliano can find. This is one of the most abusive orders in North Carolina history, considering the stakes and the lack of credible allegations against Guiliano in this sua sponte order, or any other pending action.

(Obj. 6.) Mr. Guiliano also stated that the Court has “a clear hostility . . . to Guiliano’s right to speak candidly as an American,” and that the Court, “only squeezes its eyes shut hoping it never has to see or hear Guiliano before he disappears behind this abuse of process.”⁴ (Obj. 14, 19.)

⁴ Mr. Guiliano further stated:

The Court has clearly abused its discretion again and again to create what amounts to an extrajudicial firing squad of Guiliano’s constitutional rights, to

32. Five days later, the barrage continued. In response to Egger's Motion to Strike, Mr. Guiliano wrote that "the Court has a bias against a pro se party, and marital property interests, in favor of Business interests," and that "Guiliano doesn't understand how the Court could enter this sua sponte order with so many clear errors in it." (Guiliano's 17 July Resp. Br. 11, 21, 26, ECF No. 476 (also writing that "the Court has a pro se bias which includes ignoring Guiliano's arguments").)

33. On 29 July 2024, Mr. Guiliano wrote, "how many times does a Court need to enter false allegations in orders against a party before bias is established? More than once, or is once enough?" (29 July Reply Br. 5, ECF No. 485.)

34. Mr. Guiliano's response to the Order to Show Cause provides a further example. (See ECF No. 433.) There, Mr. Guiliano wrote:

This Court has repeatedly ignored facts and law and ethical rules to Guiliano's detriment, and Guiliano is calling out the conduct of the Court candidly and fairly in the time allowed, while also being careful to imply he believes the only clear bias is prejudice against a pro se party who is the only human harmed in this action.

which Guiliano is not given a full chance to respond under controlling authority on sanctions, based primarily on false allegations or allegations, many of which are not sanctionable under Rule 11, while denying Guiliano any opportunity to request correction of clear errors in the sua sponte order, and orders cited by that order.

In conclusion, the Court . . . ignores constitutional rights in a new abuse of discretion to continue it [sic] sua sponte crusade against Guiliano when it should have been stayed, refuses to correct its clear errors or provide sufficient evidence before the proceeding continues, all which only reveals the Court [sic] intent to relentlessly continue this abuse of discretion until Guiliano can no longer enjoy the constitutional rights guaranteed by the United States and North Carolina constitution, and many other laws and authorities, all selectively ignored by this Court in this motion, so the Court can continue to align more with counterparties on this malicious quest to divest Guiliano of property rights

(Obj. 20–21.)

The Court is not omnipotent. The Court is not Justice. This is not a controversial statement. It's an adjudicative fact. The Court is a collection of employees who work for Justice. The Court tries to sanction emails under Rule 11. The Court's orders repeat false accusations which objectively appear to lack candor. *See* ECF No. 390, 400-403, 410, 415. No-Tort, Not-Rule-11, Freedom-of-Candid-Speech, More-definitive, Motion-to-Strike, Dirty-Hands, Insufficient-Evidence.

This Court appears to think it can make up law and procedure, make up facts, and divest Guiliano of rights to speak candidly, own property, petition for grievances, confront accusers, and right to due process

(Guiliano's Sua Sponte Resp. 11, 13–15, ECF No. 433.) To state the obvious, by these statements, Mr. Guiliano attacked the Court's integrity and rebuked the judicial process and the Court's authority.

35. Mr. Guiliano also filed a Rule 54 Motion to Reconsider the Order to Show Cause in which he takes issue with nearly every paragraph of the Court's Order, indicating where, in his opinion, he has not violated the Court's Orders or the BCRs.⁵ (ECF No. 390; *see also* Br. Supp., ECF No. 391.) This filing is a clear attempt by Mr. Guiliano to respond to the Order to Show Cause without "using up" his permitted response with a 5,000-word limit. (*See* ECF Nos. 390–91.)

2. Statements Directed at Counsel

36. As described above, throughout this litigation, the Court has restated its expectation that all litigants and counsel engage with each other in a respectful and courteous manner. Mr. Guiliano has routinely violated this directive.

⁵ Similar responses appear at ECF Nos. 469, 476.

37. The vast majority of Mr. Guiliano's attacks have been targeted at Ms. Walsh. Mr. Guiliano has called Ms. Walsh "delusional," (Ex. D at 14), a "gaslighter," (Audio Rec. 2:52–54, ECF No. 455.1), and a "kleptomaniac," (Reply Br. 4, ECF No. 486), and he repeatedly refers to parties and non-parties to this action as "scoundrels" and "tricksters," (Guiliano Reply Br. at 8–10, ECF No. 344). Furthermore, throughout this litigation, Mr. Guiliano has accused Ms. Walsh of professional misconduct without any citation to record evidence that supports those contentions, seemingly engaging in this rhetoric to verbally abuse Ms. Walsh in an effort to bring about her withdrawal. For example, Mr. Guiliano has written: "Ms. Walsh committed an unauthorized practice of law," (Br. Resp. Mot. Strike 24, ECF No. 468); "Ms. Walsh needs a gatekeeper, not Guiliano," (Br. Resp. Egger Mot. Strike 17, ECF No. 476); Goodwin[, the law firm where Ms. Walsh works,] is no normal counsel but a necessary party, and Ms. Walsh is no normal counsel of record, but instead licensed conscious wrongdoers," (Br. Resp. Egger Mot. Strike 21, ECF No. 476); and that Ms. Walsh, is "one of the most corrupt 'IP Counsel' in history," (Reply Br. 4, ECF No. 486).

38. The Court declines to further restate the accusations by Mr. Guiliano against opposing counsel, but the record is replete with further examples. (*See, e.g.*, Mot. Compel Dep. 5–6, ECF No. 424; Obj. 5, ECF No. 465.)

C. Violations of the Business Court Rules and Court Orders

39. Finally, Mr. Guiliano has repeatedly violated the BCRs and Court Orders, as described in the Order to Show Cause. (*See* Show Cause Or. 6–7.)

40. On 28 May 2024, the Court formally notified Mr. Guiliano of these continued and repeated violations, particularly with respect to statements that the Court interpreted as impugning the integrity and motives of the Court. (ECF No. 355.) The Court advised Mr. Giuliano at that time “that further improper unprofessional, discourteous, and disrespectful statements [by Mr. Guiliano] regarding the conduct of the Court will be considered as potentially contemptuous, and the Court will undertake measures to determine whether and what sanctions should be imposed against him.” (28 May 2024 Order at 4, ECF No. 355.)

41. That same day, Mr. Guiliano refiled the same noncompliant motion that resulted in the Court’s 28 May 2024 Order, with the addition of the following language appearing at footnote two therein:

Ths [sic] Court erroneously summarily denied a nearly identical motion in ECF No. 355, stating that the word count of the motion and brief exceeded 7,500. The BCR Rule 72 [sic] only limits the word count of briefs, and this motion is as concise as necessary for relief. There is no word count on motions in North Carolina. Guiliano has corrected his previously unnoticed typo copied from other certificates which mention the motion, so that the certification literally only runs to the Brief. Further, the Court appears to have missed the conferral paragraph on pg [sic] four that explains the years of pre-motion conferral Guiliano has had with counterparties to stop filing obvious lies and fictions, now reflected herein, clarifying that the Court erroneously denies Guiliano motion and briefs, now refiled freshly with the certificate typo bringing this motion and brief in line with BCR rules literally.

(28 May Mot. 2 n.2, ECF No. 357.)⁶

⁶ In this same filing, Mr. Guiliano writes, “Guiliano requests oral arguments if relief is not granted in full without, so he may burn down this forest of lies with Truth and Evidence, orally, or *in camera*, if necessary.” (28 May Mot. 2, ECF No. 357.)

42. Mr. Guiliano has repeatedly violated provisions of BCR 7 despite the Court's reminders of its applicability, (ECF Nos. 305, 324), and he continues to file Motions and other documents that appear to be for an improper purpose.

43. For example, on 17 June 2024, Mr. Guiliano filed a "Generalized Brief in Support," seemingly asking that the Court consider this brief for any Rule 54 motion Mr. Guiliano files if he does not also file a separate brief with that motion. (See ECF No. 387.) Mr. Guiliano subsequently relied on that generalized brief by incorporation on at least four occasions.⁷ (ECF Nos. 391, 411, 414, 417.) This conduct violates BCR 7.8, which provides that "[a] party may not incorporate by reference arguments made in another brief or file multiple motions to circumvent these limits." On several occasions, Mr. Guiliano has also failed to file a brief in support of a motion that required one in violation of BCR 7.2. (See ECF Nos. 400–03, 406–07.)

44. And despite the Court's warnings that long motions may not be used to circumvent the word limit set by BCR 7.8 for briefs, (ECF No. 324 (citing *Lineage Logistics, LLC v. Primus Builders, Inc.*, 2023 NCBC LEXIS 147, at *1 (N.C. Super. Ct. Nov. 27, 2023)), Mr. Guiliano has continued to violate this Rule, (see, e.g., ECF Nos. 420–21 (a 31-page motion accompanied by a 25-page brief)).

⁷ Mr. Guiliano has also, on more than one occasion, attempted to incorporate by reference all materials filed in this matter to date, excluding briefs. For example, Mr. Giuliano has written: "this motion adopts all pleadings and Exhibits in filings in this action since ECF No. 3, without adopting briefs not attached, in direct support of this motion . . ." (28 May 2024 Mot. 3, ECF No. 357; see also ECF No. 382.) He has also attempted to incorporate by reference all filings in his entirely separate equitable distribution action. (14 June 2023 Am. Mot. Sanctions for Disc. Misconduct at 2, ECF No. 382.)

45. Most recently, on 11 August 2024, Mr. Guiliano filed two affidavits untethered to any motion, brief, or other permitted filing. (*See* ECF Nos. 496–97.) Each affidavit contains a narrative, which largely consists of statements regarding Mr. Guiliano’s conclusions and inferences based on things he has read or heard, rather than statements based on Mr. Guiliano’s own first-hand knowledge.

46. In sum, Mr. Guiliano has repeatedly violated the provisions of BCR 7, including BCRs 7.2 and 7.8.

47. Mr. Guiliano has also failed to comply with BCR 10.9 on at least two occasions by filing discovery-related motions without going through the mandatory dispute submission process outlined in BCR 10.9(b). (ECF Nos. 378–79, 424.)

48. Further, despite the Court’s numerous warnings to Mr. Guiliano about his inability to represent or otherwise speak for 108Labs, Mr. Guiliano has continued his attempts to represent the company, engaging in what appears to be the unauthorized practice of law on behalf of 108Labs. (ECF No. 344.) For example, in what he styles a reply brief to a motion filed by 108Labs, Mr. Guiliano attempts to make representations on behalf of that entity, even though 108Labs was represented by counsel in this litigation at that time and elected not file a reply brief. (Guiliano Reply Br. at 10, ECF No. 344.)

49. Nevertheless, on 14 June 2024, following entry of the Order to Show Cause, Mr. Guiliano wrote, “[i]n short, Guiliano has *never once* spoken personally for 108Labs in violation of the authority raised by the Court, and Guiliano will continue

to speak directly for himself if not also derivatively in future claims in other actions pending or soon to be filed[.]” (14 June Resp. 10, ECF No. 381 (emphasis added).)

50. Moreover, in his initial statement at the beginning of many of his filings over the course of the last two months, Mr. Guiliano has written the following (or something substantially similar):

Guiliano, representing himself, files this response and speaks personally as a defendant and counterclaim plaintiff in this action, **and speaks directly through 108Labs as an economic owner** pursuant to *Barger v. McCoy Hillard Parks*, 346 N.C. 650, 488 S.E.2d 215 (N.C. 1997), and speaks derivatively as the sole manager and active fiduciary and officer of 108Labs pursuant to N.C.G.S. 57D to any extent necessary and appropriate here

(ECF No. 398 (emphasis added in bold); *see also* ECF Nos. 399–403, 407–17, 420–21, 424–28, 445–49, 456, 462, 465, 467–68, 471, 476 (each containing substantially similar variations of the statement quoted above).) No derivative claims have been brought on behalf of 108Labs in this action, however. Rather, 108Labs has attempted to bring numerous claims on its own behalf and several claims survived the motions to dismiss previously described. Further, 108Labs continues to be represented in this action by North Carolina licensed counsel.

51. Finally, on the eve of the Show Cause Proceedings, and despite the Court’s clear statement in the Amended Notice of Hearing that “[d]ocuments already on the record shall not be re-filed[.]” Mr. Guiliano refiled a recording that appears already in this action, (*see* ECF Nos. 419.1, 497.1–.2).

52. The Court has not sanctioned Mr. Guiliano to date, despite repeated warnings regarding his conduct and reminders regarding the possibility of sanctions for noncompliant filings.

II. CONCLUSIONS OF LAW

53. The Court has authority and jurisdiction to enter this Order.

54. Mr. Guiliano has repeatedly abused the legal process as described in detail above and has clearly evidenced his inability or unwillingness to comply with reasonable and clear directives from the Court and with the requirements of the Business Court Rules. While an individual, as a party to a legal proceeding, may as a general rule have a right to represent himself, that right carries with it duties and responsibilities which, if routinely violated, may require that special limitations be placed on him and his access to the Court.

55. The Court, through its inherent power, “has authority to do all things that are reasonably necessary for the proper administration of justice.” *Daniels v. Montgomery Mut. Ins. Co.*, 320 N.C. 669, 674 (1987) (cleaned up). The Court’s inherent authority includes the “‘power to sanction disobedient parties, even to the point of dismissing their actions or striking their defenses’” *Red Valve, Inc. v. Titan Valve, Inc.*, 2019 NCBC LEXIS 57, at **39 (N.C. Super. Ct. Sept. 3, 2019) (quoting *Minor v. Minor*, 62 N.C. App. 750, 752 (1983)); see also *Patterson v. Sweatt*, 146 N.C. App. 351, 358 (2001) (“If a party fails to obey a court order, the court has the authority to require that party to pay the reasonable expenses, including attorney’s fees, caused by the failure.” (cleaned up)).

56. Similar to the defendant in *United States Bank Tr. v. Rogers*, 2022 N.C. Super. LEXIS 429 (N.C. Super. Ct. Nov. 8, 2022), (1) many of Mr. Guiliano’s filings “are not warranted by existing law or a good faith argument for the extension,

modification or reversal of existing law[;]” (2) Mr. Guiliano has engaged in a “pattern and practice of filing motions . . . and other documents for the improper purpose of harassing the Court” and opposing counsel, including Ms. Walsh; and (3) many of Mr. Guiliano’s filings are procedurally improper, violate prior court orders, have no legal effect, and have placed an undue burden on opposing counsel and the judicial system, thereby causing the Court and its staff to expend time and the Court’s resources unnecessarily and inefficiently. *Id.* at *8. These “improper filings have unnecessarily delayed the proceedings in this action and compelled [the parties, their] counsel [and the Court] to needlessly devote time responding to baseless and frivolous filings.” *Id.*

57. Based on these findings and conclusions, the Court will consider whether sanctions in the form of a gatekeeper order are appropriate. In making this determination, the Court must consider all relevant circumstances, including:

(1) the party’s history of litigation, in particular whether he has filed vexatious, harassing or duplicative lawsuits; (2) whether the party had a good faith basis for pursuing the litigation, or simply intended to harass; (3) the extent of the burden on the courts and other parties resulting from the party’s filings; and (4) the adequacy of alternative sanctions.

Barrington v. Dyer, 282 N.C. App. 404, 409 (2022) (quoting *Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 818 (4th Cir. 2004)). If a gatekeeper order is entered, it should be narrowly tailored to fit the specific circumstances at issue. *Id.*

58. As to the first factor, Mr. Guiliano has filed a number of other cases since this action was initiated.⁸ One case warrants special attention: *Guiliano v. Strickland* (24CVS000500-670; Orange Cty.). That action was initiated on 10 April 2024 and raises a number of the same or similar claims that this Court dismissed with prejudice on 19 April 2024 in this action. (See Order & Op., ECF No. 297; *Guiliano v. Strickland* (24CVS000500-670) Compl., ECF No. 3.)

59. As to the second factor, while the Court believes that Mr. Guiliano has a good-faith basis for pursuing this litigation concerning the propriety of Strickland's assignment of her rights in certain patent technology to BIOMILQ, Mr. Guiliano's litigation conduct has harassed and unduly burdened the Court and the parties in this action, including the parties' counsel. As Mr. Guiliano stated, and as previously noted, he believes he has the right to "burn down th[e] forest of lies." (28 May Mot. 2, ECF No. 357; *supra* ¶ 40 n.4.) Thus, while it appears Mr. Guiliano may have a proper purpose for pursuing litigation, he has gone beyond the bounds of proper advocacy and has repeatedly and unnecessarily filed numerous documents with the Court that are in violation of the Rules of this Court and the Court's Orders. This has, under

⁸ The Court is aware of at least five other pending actions Mr. Giuliano has initiated against some or all of the parties in this action: (1) *Guiliano v. Strickland*, 22CVD000283-670 (Orange Cty.), an equitable distribution action initiated on 8 March 2022; (2) *Guiliano v. Strickland*, 24CVD000473-670 (Orange Cty), a new equitable distribution action initiated on 5 April 2024; (3) *Guiliano v. Strickland*, 24CV000500-670 (Orange Cty.), initiated on 10 April 2024 and presently pending before the undersigned; (4) *Guiliano v. Myers Bigel, P.A.*, 24CV020836-910 (Wake Cty.), initiated on 3 July 2024; and (5) *Guiliano v. Strickland*, a federal action initiated on 8 July 2024, presently pending in the U.S. District Court for the Middle District of North Carolina bearing the Case No. 1:24cv563, (see ECF No. 463.14).

the third factor, resulted in a great toll and burden on the Court and other parties, all as described above in detail.

60. In the history of this litigation, Mr. Guiliano, as a *pro se* litigant, has demonstrated that he is either unable or unwilling to follow the requirements of North Carolina law, including the North Carolina Rules of Civil Procedure, the North Carolina Business Court Rules, and the Court's clear directives. Mr. Guiliano has filed baseless claims which were dismissed pursuant to Rule 12(b)(6) and has failed to follow this Court's Orders. He has continued to file motions after having motions filed on the same basis denied, and after being warned of potential sanctions therefrom.

61. Throughout this litigation, Mr. Guiliano has routinely shown "such a disregard for the rules of law and procedure which, if he were licensed as an attorney, would require and demand reporting him to the North Carolina State Bar questioning his fitness to practice." *Fatta v. M & M Props. Mgmt.*, 224 N.C. App. 18, 30 (2012).

62. Furthermore, Mr. Guiliano's invective language has not ceased despite numerous warnings from this Court. It is improper "to attack the personal integrity of opposing counsel instead of arguing the facts and the law, and it is elementary that [improper] conduct . . . lessens the dignity of the Court. Courts can adjudicate disputes only when the parties present reasoned arguments rather than invective-laden diatribes." *In re Se. Eye Center-Pending Matters*, 2023 NCBC LEXIS 37, at*5 (N.C. Super. Ct. Mar. 9, 2023) (cleaned up). "[A]busive language is considered a form of harassment under Rule 11." *Id.* at *5.

63. Mr. Guiliano's statements and actions have shown that he has filed motions for the improper purpose of harassing adverse parties and non-parties to this action, costing them unnecessary time and expense in responding to those filings. Additionally, Mr. Guiliano has placed undue burden on the judicial system, causing expense of time to this Court and its employees. *See Est. of Louis Dalenko v. Monroe*, 2009 N.C. App. LEXIS 807, at *6-7 (2009) (unpublished).

64. In its Order to Show Cause, the Court made clear to Mr. Guiliano that, among other sanctions the Court might impose, were dismissal of some or all of his claims and defenses, monetary sanctions, and/or a gatekeeper order. (Show Cause Or. 9.) The Court has considered lesser sanctions and finds them to be insufficient. The Court has issued repeated warnings and Mr. Guiliano's indifference goes beyond mere noncompliance. Indeed, after being provided notice of the Court's consideration of these specific sanctions, Mr. Guiliano's language in filings only intensified. There is little reason to believe that Mr. Guiliano will fulfill his obligations if given another chance to comport with the Rules and Court Orders. As a result, the Court concludes that severe sanctions are warranted.

65. Mr. Guiliano's repeated abuse of legal process requires that special limitations be placed upon his access to this Court.

This Court has the inherent power to impose such special limitations as are reasonably necessary for the proper administration of justice and to provide solutions which enable the process of litigation to proceed smoothly. Aspects of that power include the authority to regulate and discipline those persons who appear before the Court to prevent

impropriety and to fashion a remedy to meet the circumstances of each case.

Dalenko, 2009 N.C. App. LEXIS 807, at *7. The Court has considered the totality of the circumstances presented here, and the required factors set forth above, and determines that, while dismissal of his claims and striking of his defenses may not be appropriate at this juncture, entry of a gatekeeper order and monetary sanctions are both necessary and proper for the administration of justice and in order for this litigation to proceed smoothly.

66. **THEREFORE**, the Court hereby **ORDERS** as follows:

67. So long as Mr. Guiliano does not qualify as an indigent person pursuant to N.C.G.S. § 1-110, he shall not file or attempt to file any motion, pleading, or other documents in this action, the related action bearing the case caption *Guiliano v. Strickland* (24CVS000500-670; Orange Cty.), *Guiliano v. Myers Bigel, P.A.*, 24CV020836-910 (Wake Cty.), or any other matter which is designated to the North Carolina Business Court, either on Odyssey or the Business Court's electronic filing system, unless such document contains a certification signed by an attorney licensed under the laws of the State of North Carolina to practice law in this State. The certification from the licensed attorney, not Mr. Guiliano, must provide that the attorney has read and is aware of the requirements of this Order and, in the opinion of that attorney, the document sought to be filed by Mr. Guiliano complies with the Rules of Civil Procedure, including but not limited to Rule 11. A failure to comply with the certification requirement set forth herein shall result in the striking of the

filing or filings and may result in further sanctions, including but not limited to dismissal of Mr. Guiliano's claims and striking of his defenses.

68. The Court concludes that this limitation will provide room for potentially meritorious filings without imposing a categorical ban on future filings. *See Johnson v. Bank of Am., N.A.*, 2013 N.C. App. LEXIS 76, at *19 (2013) (unpublished).

69. Violation of this Order by Mr. Guiliano, or anyone on his behalf, shall be punishable by criminal and/or civil contempt.⁹ If warranted, the Court will initiate those proceedings either *sua sponte* or on the motion of any party to this action.

70. After one year of this Order being in effect, Mr. Guiliano may, by the filing of an appropriate motion and brief which complies with BCR 7 and the terms of this Order, request that this Gatekeeper Order be modified.

71. The Court further **ORDERS** that, pursuant to Rule 11, further sanctions are warranted here. “[A]busive language in written filings, not merely abusive language spoken aloud in the courtroom, may serve as grounds for sanctions.” *In re Se. Eye Center*, 2023 NCBC LEXIS 37, at *5. Name-calling and *ad hominem* attacks on opposing counsel—particularly those to the effect of allegations of fraud, criminal conduct, and other bad acts without evidentiary support—will not be tolerated by the Court and are sanctionable, and in some instances, result in criminal contempt. *Id.* at *5–6 (collecting relevant cases), n.33. Parties who elect to proceed *pro se* “are not immunized from sanctions under Rule 11 for abusive filings” like those Mr. Giuliano

⁹ See N.C.G.S. §§ 5A-11, 5A-13, 5A-21, 5A-23(a); *In re Se. Eye Center*, 2023 NCBC LEXIS, at *7 n.33–34 (N.C. Super. Ct. Mar. 9, 2023).

has submitted in these proceedings. *Id.* at *6. As stated, abusive language is a form of harassment prohibited by Rule 11. *Id.* at *5.

72. The Court hereby **ORDERS** that to the extent BIOMILQ, Strickland, Egger, BEV, and Goodwin contend they have incurred expense directly attributable to Mr. Guiliano's misconduct outlined herein, they may, within thirty (30) days from entry of this Order, file a detailed fee petition seeking attorneys' fees and costs incurred as a result of that misconduct, accompanied with appropriate affidavits. Mr. Guiliano may thereafter respond within twenty (20) days, so long as that response complies with this Order. The length limitations for briefs set forth in BCR 7.8 shall apply.

SO ORDERED, this the 15th day of August, 2024.

/s/ Michael L. Robinson
Michael L. Robinson
Special Superior Court Judge
for Complex Business Cases