

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SHERRY MORTON and )  
NATIONAL AEROBICS & FITNESS )  
TRAINERS ASSOCIATION, )  
 )  
Plaintiffs, )  
 )  
v. ) C.A. No. 24-1432-JLH-EGT  
 )  
BCAP GDI 1, INC., )  
 )  
 )  
Defendant. )

**MEMORANDUM ORDER**

Presently before the Court is Defendant BCAP GDI 1, Inc.’s (“Defendant” or “BCAP”) request for a finding of spoliation and for sanctions against Plaintiff Sherry Morton. (D.I. 74). For the reasons set forth below, BCAP’s request for sanctions is GRANTED-IN-PART and DENIED-IN-PART.<sup>1</sup>

**I. BACKGROUND**

Several decades ago, Ms. Morton founded a health and fitness company called Millennium Health & Fitness, Inc. (“Millennium”). (D.I. 2 ¶ 8; D.I. 74, Ex. A at 11:20-12:13). On August 19, 2023, Ms. Morton and BCAP signed a non-binding letter of intent regarding the potential purchase of Millennium by BCAP. (D.I. 2 ¶ 10). Shortly before the parties executed this letter of intent, on August 3, 2023, Ms. Morton emailed Millennium’s third-party IT vendor, Atruent:

Aida,

I am writing this email to get your assistance in having your team assist me in copying the CEO drive on an external hard drive, verify that the files are all there and then we will need to delete the CEO files from the sharepoint. . . .

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<sup>1</sup> The parties have consented to the undersigned’s jurisdiction to conduct all pretrial proceedings and decide all pretrial motions pursuant to 28 U.S.C. § 636(c). (D.I. 18).

Please keep this confidential between me and your team member  
that you assign for this task. NO TICKET!

Sincerely,

Sherry Morton

(D.I. 74-10 at BCAP\_00677). That same day, Atruent “created an internal ticket for this task so as not to alert anyone of what we’re doing,” ordered an external hard drive and confirmed that the “CEO folder” on Millennium’s SharePoint contained 404.52 GB. (*Id.* at BCAP\_00676). Sometime on or around August 22, 2023, Atruent copied and then deleted the CEO folder as instructed and shipped the external hard drive to Ms. Morton. (*Id.* at BCAP\_00673).

A few months later, on November 1, 2023, BCAP purchased all of Millennium’s stock via a Stock Purchase Agreement. (D.I. 2 ¶ 11). Sometime shortly thereafter, employees of the newly owned Millennium discovered that the “CEO folder” was missing from the company’s SharePoint. (*See generally* D.I. 76, Att. 2). On January 16, 2024, Millennium’s President Heather Collins opened a ticket with Atruent titled, “Restore OLD CEO Folder In Millennium SharePoint.” (*Id.* at BCAP\_0330244 (“Can you restore the OLD ‘CEO’ folder that was on our Millennium SharePoint”)). The next day, Atruent confirmed that it “found the ‘CEO’ folder” and that “the folder size is 411 GB and the restore will take time.” (*Id.*). In response, Ms. Collins requested a “[f]ull folder restore.” (*Id.* at BCAP\_0330243). In a later email to Atruent, Millennium’s CEO Frank Sturek confirmed that the “CEO Folder and BD subfolder from [Ms. Morton’s] CEO folder was restored on 26 March [2024] by you/your team.” (D.I. 76, Att. 5 at BCAP\_0046570; *see also* D.I. 74, Ex. C at 44:3-16 (Frank Sturek testifying, “Q. So those folders were actually recovered by Atruent back in the first part of 2024? A. Okay. Q. Is that right? A. That’s what it says here.”)).

In September 2024, according to BCAP, Millennium hired an outside consultant (AFIS) to “forensically analyze the company’s SharePoint.” (D.I. 74 at 2; D.I. 74-11 (Forensic Report); *see also* D.I. 12 ¶¶ 87-92). In its report, the outside consultant concluded:

We forensically collected all data residing in Millennium Health's SharePoint environment to include two recently deleted folders that Ms. Morton instructed the IT Service Provider (Artuent) [sic] to remove (delete) from the system. Ms. Morton requested that the folder named "BD" and the folder named "CEO" be copied to an external storage device, shipped to her home address and then be deleted from Millennium Health's SharePoint environment. The IT Service Provider (Artuent) [sic] was able to restore the complete contents of these two folders. Ms. Morton claims that she moved data to other folders/areas of SharePoint and that the data was deleted.

We performed a Hash analysis of all files residing in the Millennium Health's SharePoint Environment. A Hash value is a [sic] equivalent to a digital fingerprint of a file. Our analysis determined the following:

- 2,959 files resided in the SharePoint environment
- Analysis determined that 2,517 files that resided in the BD and CEO folders do not reside anywhere else in the SharePoint Environment, so once Ms. Morton instructed the IT Service Provider (Artuent) [sic] to delete these folders, this data was no longer available to Millennium
- We found 442 files that reside in the BD and CEO folders that reside in other folders within the SharePoint environment.

(D.I. 74-11 at 7). Important to this motion, the outside consultant apparently indicated that Atruent "was able to restore the complete contents" of the CEO folder. (*Id.*).

On December 31, 2024, Ms. Morton and Co-Plaintiff National Aerobics & Fitness Trainers Association ("NAFTA") filed the present action, with Ms. Morton accusing BCAP of breaching the Stock Purchase Agreement by retaining a portion of the purchase price as an "Indemnity Holdback." (See D.I. 2 ¶¶ 12-15 & 24-39).<sup>2</sup> On January 24, 2025, BCAP filed its Answer and Counterclaims, alleging (among other things) that Ms. Morton breached the parties' agreement by failing to deliver Millennium intellectual property. (D.I. 12 ¶¶ 69-111 (Counterclaim IV); *see also*

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<sup>2</sup> Although unrelated to this motion, NAFTA accuses BCAP of improperly terminating a separate agreement. (D.I. 2 ¶¶ 16, 19, 23 & 40-45 (Count IV)).

*id.* ¶¶ 129-45 (Counterclaim VI)). In particular, BCAP alleges that Ms. Morton breached the Stock Purchase Agreement by “arrang[ing] via email for thousands of confidential Millennium files to be downloaded to her external hard drive and deleted from Millennium’s system.” (*Id.* ¶ 103; *see also id.* ¶ 77 (“On August 3, 2023, Plaintiff Morton instructed Millennium’s IT vendor, Atruent, via email to download files from Millennium’s computer system to an external drive and then delete those files from the system, and to do so without creating a ticket documenting such actions.”)). Discovery in this case ensued.

Relevant here, the external hard drive that Atruent sent to Ms. Morton (containing the copied CEO folder) was never produced in this litigation. When asked about the drive during her deposition, Ms. Morton testified:

Q. Did you ask Atruent to delete files in the SharePoint that were a CEO folder and a BD folder?

A. Not a BD, but a CEO folder. I don’t believe and my memory tells me that BD folder was not even created until we were getting ready to sell, because all the BD documents were kept under Heather’s folder under -- I think it was COO at the time, and Heather and I were creating a BD folder on the SharePoint. And that’s where we were going to store everything.

Q. Did you get a copy from Atruent of the information that Atruent was deleting off of the SharePoint?

A. It was mostly my personal files, yes.

Q. Do you still have a copy of what Atruent gave you when they deleted these CEO files?

A. No, I don’t. And I asked Atruent to help me recover the files, but the drive was corrupted. And it’s been damaged with a hammer.

Q. It was damaged with a hammer.

A. After that, yeah.

Q. Who damaged it with a hammer?

A. I did, because I didn’t want anything left.

...

Q. And you smashed it with a hammer?

- A. I did.
- Q. Okay. Do you know when you did that?
- A. Oh, my goodness. February or March of this year.
- Q. Of 2025?
- A. Uh-huh.
- Q. Okay.
- A. But it was always kept in my safe in case I ever needed anything from it.
- Q. Okay.
- A. But it was mostly personal files.
- Q. And what sparked the decision to hit it with a hammer in February or March of 2025?
- A. It was corrupted, and then I didn't want -- because it was corrupted, I wanted to make sure that no one else could have access to it when I threw it away.

(D.I. 74, Ex. A at 43:7-45:17). In other words, despite previously storing it in her safe, Ms. Morton admitted that she “smashed” the external hard drive “with a hammer” approximately one or two months after BCAP countersued her for taking the drive.

On January 30, 2026, BCAP filed the present request for sanctions, alleging that Ms. Morton spoliated evidence by destroying the external hard drive and the contents therein. (D.I. 74). Letter briefing was completed on February 11, 2026. (D.I. 76; *see also* D.I. 70 & 73).

## **II. LEGAL STANDARD**

“Spoliation occurs where: the evidence was in the party’s control; the evidence is relevant to the claims or defenses in the case; there has been actual suppression or withholding of evidence; and, the duty to preserve the evidence was reasonably foreseeable to the party.” *Bull v. United Parcel Serv. Inc.*, 665 F.3d 68, 73 (3d Cir. 2012). Historically, in the Third Circuit, “a finding of bad faith [has been] pivotal to a spoliation determination.” *Id.* at 79.

If a court finds that spoliation occurred, it must then determine an appropriate sanction for the suppression or withholding of evidence. The sanctions analysis focuses on “(1) the degree of fault of the party who altered or destroyed the evidence; (2) the degree of prejudice suffered by the opposing party; and (3) whether there is a lesser sanction that will avoid substantial unfairness to the opposing party and, where the offending party is seriously at fault, will serve to deter such conduct by others in the future.” *Schmid v. Milwaukee Elec. Tool Corp.*, 13 F.3d 76, 79 (3d Cir. 1994).

Federal Rule of Civil Procedure 37(e) addresses sanctions available for a party’s loss (or destruction) of electronically stored information (“ESI”).<sup>3</sup> Rule 37(e) provides:

If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

- (1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or
- (2) only upon finding that the party acted with the intent to deprive another party of the information’s use in the litigation may:
  - (A) presume that the lost information was unfavorable to the party;
  - (B) instruct the jury that it may or must presume the information was unfavorable to the party; or
  - (C) dismiss the action or enter a default judgment.

Under this Rule, a party’s loss of ESI may be sanctionable when: (1) litigation is ongoing or anticipated, (2) the party failed to take reasonable steps to preserve the ESI and (3) the information lost cannot be restored or replaced through additional discovery. Rule 37(e)(1) allows for curative measures when a party’s loss of ESI causes prejudice to another party, while Rule 37(e)(2) allows

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<sup>3</sup> Rule 37(e) in its current form became effective December 1, 2015. Prior to the 2015 amendment, subsections (e)(1) and (e)(2) did not exist. *See* FED. R. CIV. P. 37(e) (2006).

for more severe sanctions when the loss of ESI occurred with “intent to deprive another party of the information’s use in the litigation.” FED. R. CIV. P. 37(e)(2).

Subsection (e)(1) is thus concerned with a party’s negligent or grossly negligent failure to preserve ESI, whereas subsection (e)(2) is directed to instances where a party intentionally destroyed or lost ESI. *See* FED. R. CIV. P. 37(e)(2) advisory committee notes to 2015 amendment (“The better rule for the negligent or grossly negligent loss of [ESI] is to preserve a broad range of measures to cure prejudice caused by its loss [i.e., (e)(1)], but to limit the most severe measures to instances of intentional loss or destruction [i.e., (e)(2)].”). In this way, Rule 37(e)(1) appears to depart from the traditional spoliation analysis under Third Circuit law in that it allows for sanctions (*i.e.*, curative measures) for conduct falling short of “bad faith” when the information lost is in the form of ESI. *See, e.g., Orologio of Short Hills Inc v. The Swatch Grp. (U.S.) Inc.*, 653 F. App’x 134, 145 (3d Cir. 2016) (“Spoliation of evidence requires ‘bad faith,’ not mere negligence . . . .” (citing *Bull*, 665 F.3d at 79)).

### **III. DISCUSSION**

In connection with Ms. Morton’s destruction of the external hard drive containing the copied CEO folder, BCAP seeks sanctions under both Rule 37(e) and the Court’s inherent authority. (D.I. 74 at 1). Rule 37(e) applies to ESI, and the Court’s inherent authority applies to physical evidence. *See* FED. R. CIV. P. 37(e); *Mazur v. Sw. Veterans Ctr.*, No. CV 17-826, 2019 WL 3711998, at \*6 (W.D. Pa. Aug. 7, 2019). Because the external hard drive is a physical device that contains ESI, both standards apply here. *See IOENGINE LLC v. Paypal Holdings, Inc.*, C.A. No. 18-452-WCB, 2022 WL 1443867, at \*3 (D. Del. May 3, 2022) (Bryson, J., sitting by designation) (applying both standards to “physical device that contains ESI”).

Before turning to the substance of BCAP’s motion, the Court first addresses Plaintiffs’ argument that the motion is untimely. (*See* D.I. 76 at 4-5). BCAP first learned of the alleged spoliation during Ms. Morton’s deposition on September 3, 2025. (D.I. 74, Ex. A). Shortly thereafter, the parties requested referral to a magistrate judge for mediation. (D.I. 52). The parties then engaged in efforts to resolve this case through mediation until mid-November. (*See* D.I. 56 & 59). When a settlement did not occur, BCAP began to pursue spoliation sanctions, participating in several meet-and-confers and ultimately filing its first motion to resolve the dispute on January 14, 2026. (D.I. 68; *see also* D.I. 70, 73 & 74). Although BCAP could have brought its motion sooner, the Court is not persuaded that BCAP acted with so much delay that the motion should be denied on that basis. And the case that Plaintiff relies on (*Biopharma*) does not compel a different result – there, the moving party knew about the alleged spoliation for “over two and a half years” before seeking sanctions. *See Biopharma v. Inhibrx, Inc.*, C.A. No. 22-276-CJB, 2024 WL 4651777, at \*1-2 (D. Del. Oct. 24, 2024).

The Court now turns to the merits of BCAP’s request for spoliation sanctions.

**A. Sanctions Under Rule 37(e) – Spoliation of ESI**

BCAP argues that sanctions under Rule 37(e) are warranted for Ms. Morton’s spoliation of the Millennium ESI contained on the smashed external hard drive. (D.I. 74 at 4-5). Plaintiffs respond that sanctions under Rule 37(e) are inappropriate here because the ESI contained on the external hard drive was recovered by Atruent. (D.I. 76 at 3-5). The Court agrees with Plaintiffs.

Whether under Rule 37(e)(1) or (e)(2), a party seeking sanctions must demonstrate that the threshold elements of the Rule are met. *See* FED. R. CIV. P. 37(e) (preamble). One of those elements is that the allegedly spoliated ESI “cannot be restored or replaced through additional discovery.” *Id.*; *see also* FED. R. CIV. P. 37(e) advisory committee notes to 2015 amendment

(“Because electronically stored information often exists in multiple locations, loss from one source may often be harmless when substitute information can be found elsewhere. . . . If the information is restored or replaced, no further measures should be taken.”). Here, the Court is unable to conclude that this threshold “actual loss” requirement is satisfied.

As set forth above, an outside forensic consultant concluded that the Millennium ESI contained on the external hard drive had been successfully recovered by Atruent. After Millennium President Heather Collins opened a ticket to restore the files on January 16, 2024, Atruent confirmed that it “found the ‘CEO’ folder” and that “the folder size is 411 GB and the restore will take time.” (D.I. 76, Att. 2 at BCAP\_0330244). Ms. Collins then requested a “[f]ull folder restore.” (*Id.* at BCAP\_0330243). In a later email to Atruent, Millennium’s CEO Frank Sturek confirmed that the “CEO Folder and BD subfolder from [Ms. Morton’s] CEO folder was restored on 26 March [2024] by you/your team.” (D.I. 76, Att. 5 at BCAP\_0046750; *see also* D.I. 74, Ex. C at 44:3-16). Arguing that the files were never recovered, BCAP relies heavily on the outside consultant’s “hash analysis.” (D.I. 74 at 2; D.I. 74-11 (Forensic Report)).<sup>4</sup> But BCAP fails to explain how the outside consultant could have conducted this hash analysis without access to the underlying (lost) files, and BCAP fails to reconcile the consultant’s statement that Atruent “was able to restore the complete contents” of the CEO folder (and BD subfolder). (D.I. 74-11 at 7). And BCAP does not identify any other relevant ESI that it suspects existed on the smashed drive. At the very least, BCAP has failed to meet its burden of proving that the allegedly lost ESI cannot be obtained through other discovery, as required by the Rule. *See Mazur*, 2019 WL 3711998, at \*6 (“The party seeking sanctions bears the burden of proving by a preponderance of

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<sup>4</sup> Based on its “hash analysis,” the consultant concluded that 442 of the 2,959 disputed files “reside in other folders within the SharePoint environment” and that the remaining 2,517 files do not. (D.I. 74-11 at 7; *see also* D.I. 76, Att. 8 (Forensic Hash Analysis)).

the evidence that spoliation of evidence occurred.”).<sup>5</sup> Sanctions under Rule 37(e) are thus not warranted. *See, e.g., Handy v. Del. River Surgical Suites, LLC*, No. 2:19-CV-1028-JHS, 2025 WL 1599140, at \*3 (E.D. Pa. May 1, 2025) (“[T]he potentially responsive ESI that was lost from Dr. Handy’s phone, was still available on Attorney Kevin Handy’s phone. In effect, this replaced Dr. Handy’s lost ESI. Accordingly, BCOS has failed to establish spoliation under Rule 37(e).”), *report and recommendation adopted*, 2025 WL 1594368 (E.D. Pa. June 5, 2025); *Johnston v. Titan Logistics & Res., LLC*, No. 2:17-CV-1617-NBF, 2021 WL 12318761, at \*17 (W.D. Pa. May 27, 2021) (“As to the image files of the DDLs, Plaintiffs cannot establish that the ESI was lost and cannot be restored or replaced, because those files have in fact been restored and replaced through additional discovery.”), *report and recommendation adopted*, 2021 WL 12318760 (W.D. Pa. July 29, 2021).

#### **B. Sanctions Under the Court’s Inherent Authority – Spoliation of Physical Drive**

BCAP also seeks sanctions under the Court’s inherent authority for Ms. Morton’s destruction of the physical device (*i.e.*, the external hard drive itself). (*See* D.I. 74 at 4 n.2). Despite acknowledging that Ms. Morton’s decision to destroy the external hard drive was “regrettable,” Plaintiffs reiterate that the ESI contained on the drive was apparently recovered, thus rendering spoliation sanctions inappropriate even under the Court’s inherent authority. (D.I. 76 at 1). On this point, the Court agrees with BCAP.

Under the Court’s inherent authority, spoliation occurs if (1) “the evidence was in the party’s control,” (2) “the evidence is relevant to the claims or defenses in the case,” (3) “there has

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<sup>5</sup> To be clear, the Court is not making an affirmative finding that all files contained in the CEO folder copied by Ms. Morton were recovered by Atruent. That is a fact issue underlying BCAP’s Fourth Counterclaim and is therefore a matter to ultimately be decided by Judge Hall in the bench trial.

been actual suppression or withholding of evidence” and (4) “the duty to preserve the evidence was reasonably foreseeable to the party.” *Bull*, 665 F.3d at 73. In this analysis, “a finding of bad faith is pivotal to a spoliation determination.” *Id.* at 79 (“This only makes sense, since spoliation of documents that are merely withheld, but not destroyed, requires evidence that the documents are actually withheld, rather than – for instance – misplaced. Withholding requires intent.”).

The first, second and fourth prongs of *Bull* are largely undisputed here. The external hard drive was in Ms. Morton’s possession until she destroyed it in February or March of 2025. (*See* D.I. 74, Ex. A at 44:10-45:9 (Ms. Morton testifying that she kept the external hard drive in her safe)). The external hard drive is relevant to claims in this case. The drive is expressly identified in BCAP’s Counterclaim IV, captioned “Breach of the SPA (Failure to Deliver and Theft of Company Intellectual Property),” as evidence that Ms. Morton breached the Stock Purchase Agreement by failing to return proprietary files. (*See* D.I. 12 ¶¶ 77, 103 & 105). BCAP also alleges in Counterclaim VI that Ms. Morton misappropriated Millennium business files and used those files to obtain fitness business for herself and possibly other companies. (*See id.* ¶¶ 129-45; *see also id.* ¶ 139 (referring back to misappropriation detailed in Counterclaim IV)). And Ms. Morton destroyed the hard drive only after BCAP asserted these counterclaims in litigation that she initiated. (*See* D.I. 74, Ex. A at 43:7-45:17). Her duty to preserve that external hard drive was beyond question when the hard drive was referenced by name in a counterclaim against her.

The third *Bull* factor warrants more attention. This factor asks whether the complained-of conduct constitutes “actual suppression or withholding of evidence.” *Bull*, 665 F.3d at 73. Ms. Morton admitted to destroying the external hard drive. (*See* D.I. 74, Ex. A at 43:7-45:17). There clearly has been suppression of something. And it was intentional. Plaintiffs nevertheless attempt to evade sanctions by appearing to suggest that what was lost was not evidence.

In Plaintiffs' view, Ms. Morton's destruction of a physical drive containing relevant evidence is beyond the reach of sanctions when whatever existed on the drive was recovered. (D.I. 76). But Plaintiffs fail to appreciate the distinction in evidentiary value between what was on the hard drive (and purportedly recovered) and the very existence of the hard drive (lost). The external hard drive contained Millennium proprietary information that Ms. Morton copied there and then deleted from the Millennium system; she was apparently contractually obligated to return those Millennium files. But Ms. Morton did not do that. She kept the hard drive. In BCAP's view, Ms. Morton's possession of that drive constituted a breach of the parties' Stock Purchase Agreement – and formed a basis for one or more of BCAP's counterclaims. (*See* D.I. 12 ¶¶ 77 & 103 (Counterclaim IV); *see also id.* ¶¶ 129-45 (Counterclaim VI)). The mere existence of the drive itself was evidence relevant to BCAP's counterclaims because Ms. Morton's possession of the physical drive was her continued improper possession of Millennium information. So Ms. Morton decided to destroy the hard drive after learning that it would be used against her in this case. Ms. Morton's destruction of that physical hard drive suppressed probative evidence of her taking and improperly possessing Millennium proprietary information. That is spoliation.<sup>6</sup>

A finding of bad faith is also warranted here. *Bull*, 665 F.3d at 79. When Ms. Morton obtained the external hard drive, she emphasized to Atruent to not create a ticket or share the request with others at Millennium. (D.I. 74-10 at BCAP\_00677 (“Please keep this confidential between me and your team member that you assign for this task. NO TICKET!”)). Most suspicious, Ms. Morton destroyed the external hard drive almost immediately after BCAP asserted

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<sup>6</sup> This is true regardless of whether the smashed drive contained other relevant evidence that was not recovered (something that BCAP does not argue). Although Plaintiffs try to cast what happened as a case of attempted spoliation, the destruction of the physical drive was the suppression of evidence separate and apart from the ESI contained thereon.

a counterclaim specifically accusing her of taking it. *See Mule v. 3-D Bldg. & Constr. Mgmt. Corp.*, No. 18-1997 (JS) (AKT), 2021 WL 2788432, at \*10 (E.D.N.Y. July 2, 2021) (“The circumstances leading up to the destruction of the physical files are suspicious and disconcerting at best.”). And in her deposition, she initially testified that the drive was destroyed by a hammer – not that *she herself* destroyed it with a hammer. In the Court’s view, Ms. Morton’s initial response was to deflect personal responsibility for the destruction because she knew her conduct was egregious. Although Ms. Morton then ultimately testified that she destroyed the hard drive because it contained “personal files” and was “corrupted” (D.I. 74, Ex. A at 43:7-45:17), the Court finds that testimony entitled to little to no weight. Nothing has been offered to support the claim that the drive was corrupted. And neither Ms. Morton nor her attorneys have offered any credible explanation for why she would destroy a drive containing relevant evidence in the middle of litigation even if it was corrupted or did contain personal files. Accordingly, BCAP has met its burden of establishing that Ms. Morton actually suppressed physical evidence in the form of the external hard drive.

Having found that that Ms. Morton spoliated physical evidence, the Court must assess what sanctions, if any, to apply under its inherent authority. In determining what sanctions are appropriate, the Court evaluates “(1) the degree of fault of the party who altered or destroyed the evidence; (2) the degree of prejudice suffered by the opposing party; and (3) whether there is a lesser sanction that will avoid substantial unfairness to the opposing party and, where the offending party is seriously at fault, will serve to deter such conduct by others in the future.” *Schmid*, 13 F.3d at 79. Courts may impose an adverse inference, “dismiss claims or grant judgments, suppress countervailing evidence, or impose fines and attorneys’ fees as sanctions for spoliation.”

*Magnetar Techs. Corp. v. Six Flags Theme Park Inc.*, 886 F. Supp. 2d 466, 481 (D. Del. 2012), *aff'd*, C.A. No. 07-127-LPS-MPT, 2014 WL 545440 (D. Del. Feb. 7, 2014).

For the reasons stated above with respect to bad faith, the Court finds Ms. Morton at fault – if not “seriously at fault” – for destroying the external hard drive. The hard drive was solely in her possession (in a safe), and she chose to destroy it shortly after BCAP asserted a counterclaim specifically accusing her of taking it. As a named plaintiff in this litigation, Ms. Morton cannot feign ignorance as to her duty to preserve evidence even if the drive contained personal or corrupted data. Although the degree of prejudice appears to be minimal because the relevant Millennium files contained on the drive were apparently recovered, the Court cannot conclude that BCAP suffered no prejudice, especially because the physical hard drive was evidence in and of itself. Weighing these competing considerations and mindful of the minimal evidence of prejudice,<sup>7</sup> the Court finds that an adverse inference or dismissal would be too extreme a sanction here. *See Magnetar*, 886 F. Supp. 2d at 481 (“The sanction of entering a judgment against a party is a last resort and should be imposed if no alternative remedy is available.” (footnote omitted)).

Instead, the Court finds that monetary sanctions against Ms. Morton in her personal capacity would better vindicate the “trifold aims of: (1) deterring future spoliation of evidence; (2) protecting the defendants’ interests; and (3) remedying the prejudice defendants suffered as a result of the spoliating party’s actions.” *Micron Tech., Inc. v. Rambus Inc.*, 917 F. Supp. 2d 300, 324 (D. Del. 2013) (citing *West v. Goodyear Tire & Rubber Co.*, 167 F.3d 776, 780 (2d Cir. 1999)). Here, BCAP requests “a monetary sanction against Morton (\$5,000) in the interest of general deterrence and to offset the expense of bringing this motion.” (D.I. 74 at 4). Considering the sanction will be issued against Ms. Morton in her personal capacity, the Court finds a \$5,000 fine

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<sup>7</sup> Particularly because Ms. Morton admitted to possessing the drive (and thus its contents).

to be appropriate.<sup>8</sup> *Cf. Cache La Poudre Feeds, LLC v. Land O'Lakes, Inc.*, 244 F.R.D. 614, 637 (D. Colo. 2007) (imposing \$5,000 monetary sanction for spoliation even though “Plaintiff almost certainly incurred fees and costs of more than \$5,000” in bringing motion). This amount is sufficient to remedy the modicum of prejudice suffered by BCAP and to deter similar conduct by others (and Ms. Morton) in the future. *See Schmid*, 13 F.3d at 79.

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The Court has no doubt that Ms. Morton knew what she was doing was wrong when she took a hammer to her external hard drive in the midst of this litigation. She should not escape the reach of sanctions simply because the relevant ESI contained on the smashed drive may have been recovered. Although the Court cannot sanction Ms. Morton under Rule 37(e) for her conduct, the Court can – and does – sanction Ms. Morton under the Court’s inherent authority in the amount of \$5,000.

**IV. CONCLUSION**

For the reasons set forth above, BCAP’s motion for sanctions is GRANTED-IN-PART and DENIED-IN-PART. IT IS FURTHER ORDERED that Ms. Morton shall, in her personal capacity, pay BCAP a fine of \$5,000 within thirty (30) calendar days of this Order.

Dated: May 27, 2026

  
UNITED STATES MAGISTRATE JUDGE

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<sup>8</sup> The Court misunderstood BCAP’s request for \$5,000 as one for attorneys’ fees and costs. (*See* D.I. 91). Having reviewed BCAP’s letter documenting the 21.7 hours and \$21,601.50 in attorneys’ fees incurred in drafting and filing the instant motion (D.I. 95), the Court finds that requiring Ms. Morton to pay for BCAP’s entire attorneys’ fees and costs in her personal capacity would be too severe a sanction. The Court instead orders her to pay a fine.