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GREGG ALAN STONE

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- ◆ CERTIFIED BY THE NATIONAL BOARD OF TRIAL
ADVOCACY AS A CIVIL TRIAL SPECIALIST
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RONALD J. MORGAN

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JAY H. BERNSTEIN

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- ◆ ADMITTED IN PA WASH DC

SENIOR COUNSEL

DAVID GELBAND

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AS A CIVIL TRIAL ATTORNEY
- ◆ ADMITTED IN NY

March 23, 2023

Via Efile

David J. Weaver, J.S.C.
Morris County Civil Division
P.O. Box 910
Morristown, NJ 07963-0910

**RE: Kanarek v. Barisone, et. al.
Docket No. MRS-L-2250-19**

Dear Judge Weaver:

This office represents plaintiff Lauren Kanarek in the above-referenced matter. Kindly accept this Letter Brief in further support of plaintiff's Motion to Compel Discovery. The Oppositions filed by defendants misstate the facts, misstate plaintiffs' requests, and misstate the governing law. The proclivity for theatrics on the part of the defense is both inappropriate and overdone. Professionalism must dictate the filings of the parties. Plaintiff is entitled to the requested discovery prior to her April 13, 2023 deposition. Plaintiff's Motion should be granted.

Plaintiff recognizes that all parties, including plaintiff, have outstanding discovery requests to answer. However, plaintiff's Motion does not run afoul of R. 4:23-5. Plaintiff

attempted to resolve this issue prior to the filing of Oppositions. See Exhibit "A", 3/15/23 Email to Defense Counsel. As noted therein, this is not an instance where defendants are in the process of answering discovery and are simply dilatory in their response. Rather, both defendants are claiming that the requested discovery is either privileged or confidential. Therefore, according to defendants, the requested discovery is never obtainable, whether plaintiff is in default or not.

This matter is under tight discovery deadlines. By the defendants' own admissions, the requested documents are essential to the claims and defenses in this action. Plaintiff is in need of the requested discovery to continue with her action and properly prepare/defend her deposition. As plaintiff's deposition is occurring on April 13, 2023, at the notice and request of defendants (defendant SGF made a Motion to Compel the Deposition on that date certain), plaintiff could not delay the filing of the instant application. To avoid any allegation otherwise, plaintiff is not seeking to adjourn her deposition and welcomes the opportunity to tell her side of the story.

As to defendant Barisone, Barisone misstates plaintiff's requests. Plaintiff's discovery request and subsequent follow-up are annexed hereto at **Exhibit "B."** As noted expressly in plaintiff's requests, and contrary to what defendant Barisone argues, plaintiff is not seeking criminal trial exhibits or pre-trial exchanges. The undersigned is in receipt of all discovery exchanged by the parties in the criminal action for Barisone's attempted murder of Lauren and has already reviewed those documents.

The docket of State v. Barisone identifies several Motions, Orders, and Appeals which are marked "confidential." See Exhibit "C", eCourts Print Out. Plaintiff requested those confidential filings and is entitled to same. Obviously, plaintiff has an interest in the

positions taken by the defendant in his criminal proceeding arising from the same attempted murder that forms the basis of this civil suit. Plaintiff advised on several occasions that counsel will sign a Protective Order. Defendant Barisone should produce the requested documents.

As to defendant SGF, SGF identified the documents in question as relevant and expressly stated that it intends to rely upon them. SGF's analogy to the narrow carve-out for video surveillance is inept and misplaced. The subject documents are not purely for impeachment purposes (as defendant SGF alludes), but are instead central to SGF's defense: namely that plaintiff has a pattern and practice of engaging in alleged harassment. To be clear, SGF stated:

"It is also one of SGF's claims that plaintiff is a habitual and persistent cyber-bully. She has a history, pattern, and practice of creating hostile environments using a variety of social media outlets...This case is not an isolated incident. As shown in the attached report, plaintiff had a prior "[REDACTED]" complaint filed against her for harassment tactics similar to the ones employed in this case. The [REDACTED] incident is not the only one known to SGF." See Exhibit "D," 3/9/23 Brief of SGF.

Ironically, SGF hurls claims of failing to follow the rules at plaintiff while it fails to comply with its obligations. As plaintiff continues to point out, the defense that Lauren is somehow comparatively at fault for being shot is absurd. However, if defendant SGF wants to continue down this shameful road of victim-blaming, then it must live with the consequences of its decisions. Either it has documents it intends to rely upon to build a defense that Lauren is a "habitual and persistent cyber-bully," which must be provided (or identified) before plaintiff's deposition, or, in the alternative, defendant SGF made false representations to the Court in its last filing.

Regarding the claim of privilege, defendant SGF has not met its burden to satisfy such a claim. Additionally, defendant SGF has failed to comply with the threshold requirement of providing a privilege log sufficiently describing the privileged documents. No privilege log has been provided.

The entity "asserting the privilege...bears the burden to prove it applies..." Horon Holding Corp v. McKenzie, 341 N.J. Super. 117, 125 (App. Div. 2001). Instead of complying with that burden with a properly provided privilege log, defendant SGF has adopted the baseless position that plaintiff is not entitled to relevant discovery.

If privilege exists, it must yield to the search for the truth. As articulated by our Supreme Court, despite "the existence of privileges, however, our desire to attain the truth, through the adversarial process, has led to a disfavoring of such a categorical approach to concerns about confidentiality." Payton v. N.J. Turnpike Auth, 148 N.J. 524, 539 (1997). The default position established by our Supreme Court is that our discovery rules must "be construed liberally in favor of broad pretrial discovery." Id. at 535. Plaintiff is entitled to any discovery which "appears reasonably calculated to lead to the discovery of admissible evidence" pertaining to the instant matter. In re Liquidation of Integrity Ins. Co., 165 N.J. 175, 82 (2000).

The work product doctrine gives way to the extent that plaintiff has "substantial need of the materials in the preparation of the case and [is] unable without undue hardship to obtain the substantial equivalent of the materials by other means." K.L. v. Evesham Twp. Bd. Of Ed., 423 N.J. Super. 337, 353-54 (App. Div. 2011). (quoting R. 4:10-2(c)). Even when the work-product doctrine applies, it does not justify withholding an entire document, as the defense has done. Rather, "materials which embody the attorney's

private thoughts and impressions, as distinguished from statements of witnesses,” are the only materials covered under the privilege. State v. Montague, 55 N.J. 387, 402 (1970). Any material that does not embody defense counsel’s private thoughts and impressions must be produced.

Defendant SGF has already underscored the significance of the withheld documents by previously arguing to the Court that they are of pivotal importance to its defense. Therefore, plaintiff has a substantial need for these documents to prepare her case. Plaintiff cannot obtain the documents from another source because plaintiff does not even know what they are. Documents pertaining to plaintiff’s previous instances of alleged harassment do not contain defense counsel’s private thoughts and impressions. New Jersey does not permit trial (or deposition) by ambush.

Plaintiff is entitled to the requested discovery, and it should be produced prior to plaintiff’s deposition. Plaintiff’s Motion should be granted.

Respectfully Submitted,



Gregg Alan Stone

Encl.

EXHIBIT "A"

Ronald Morgan

From: Gregg Stone
Sent: Thursday, March 23, 2023 9:25 AM
To: Ronald Morgan
Subject: FW: NJ eCourts MOTION TO COMPEL DISCOVERY Notification - Civil Case MRS-L-002250-19

Gregg Alan Stone, Esq.
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From: Gregg Stone
Sent: Wednesday, March 15, 2023 12:55 PM
To: Mark K. Silver <MKS@spsk.com>
Cc: Christopher Deininger <chris@deiningerlaw.com>
Subject: RE: NJ eCourts MOTION TO COMPEL DISCOVERY Notification - Civil Case MRS-L-002250-19

Mark: I am aware that we have yet to respond to your recovery requests. We are in the process of responding to same and intend to get you responses before the end of the month. My Motion is not violative of the Court Rule, given your position that you will never produce the requested documents based on claim of privilege. If you intend to maintain your privilege argument, I cannot withdrawal my Motion, and will be happy to explain same in my Reply. If you withdraw your claim of privilege and indicate that you are working to provide me responses, I will withdraw the Motion. I know Chris did not bring up the outstanding discovery issue, but I assume he will have a similar objection. Since Chris has not provided the materials from the criminal case yet, I assume he plans on arguing that I am not entitled to same. 3/31 is the last return date before Lauren's scheduled deposition of 4/13. If defendants are in the process of producing the requested documentation, of course I will withdraw. However, if defendants maintain that I am not entitled to the requested documents as a matter of law based upon privilege and/or confidentiality, we need a Court ruling to determine the parameters of permissible discovery. Thanks. Gregg

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Email: gstone@ksmlawoffice.com

From: Mark K. Silver <MKS@spsk.com>
Sent: Wednesday, March 15, 2023 10:18 AM
To: Gregg Stone <gstone@ksmlawoffice.com>

Cc: Christopher Deininger <chris@deiningerlaw.com>

Subject: FW: NJ eCourts MOTION TO COMPEL DISCOVERY Notification - Civil Case MRS-L-002250-19

Greg,

Just received your latest motion. You are in violation of Court rules. You are not permitted to file a Motion to Compel while your client is deficient in providing discovery. As I sent you last week, your client has not responded to discovery propounded as of July 2022. You are requested to withdraw the motion immediately.

Mark

Schenck Price

— SCHENCK PRICE SMITH & KING, LLP —

Serving Our Clients and Community for Over 100 Years

Mark K. Silver

Partner

Schenck, Price, Smith & King, LLP

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Sent: Wednesday, March 15, 2023 10:10 AM

To: SMARIN@KGSLAWOFFICE.COM; GRUIZ@KGSLAWOFFICE.COM; RMORGAN@KGSLAWOFFICE.COM;

BILINKAS@AOL.COM; CHRIS@DEININGERLAW.COM; CDEININGER@AOL.COM; Mark K. Silver <MKS@spsk.com>;

Mandee M. Alicino <ME@spsk.com>; LMF@LMFDEFENSE.COM; DKD@LMFDEFENSE.COM; JOE@LMFDEFENSE.COM;

JOHN@JPGRAVESLAW.COM; SABRINA@JPGRAVESLAW.COM; CSHELLHORN@CO.MORRIS.NJ.US

Subject: NJ eCourts MOTION TO COMPEL DISCOVERY Notification - Civil Case MRS-L-002250-19

SUPERIOR COURT OF NEW JERSEY - eCOURTS

The following was filed by STONE, GREGG, A on 03/15/2023 at 10:09 AM:

Plaintiff Name: LAUREN KANAREK

Defendant Name: MICHAEL BARISONE, SWEETGRASS FARMS LLC, RUTH COX, DOES 1-30 JOHN, ABC CORPORATIONS 1-20 ET AL.

Case Caption: KANAREK LAUREN VS BARISONE MICHAEL

Case Number: [MRS-L-002250-19](#)

Docket Text: MOTION TO COMPEL DISCOVERY submitted by STONE, GREGG, A of KIRSCH, STONE & MORGAN, PA on behalf of LAUREN KANAREK against MICHAEL BARISONE, SWEETGRASS FARMS LLC

Transaction ID: [LCV2023924262](#)

Notice has been electronically mailed to:

Plaintiff Attorney GREGG A STONE

SMARIN@KGSLAWOFFICE.COM
GRUIZ@KGSLAWOFFICE.COM
RMORGAN@KGSLAWOFFICE.COM

Defendant Attorney EDWARD J BILINKAS

BILINKAS@AOL.COM

Defendant Attorney CHRISTOPHER LOUIS DEININGER

CHRIS@DEININGERLAW.COM
CDEININGER@AOL.COM

Defendant Attorney	MARK SILVER	MKS@SPSK.COM ME@SPSK.COM
Defendant Attorney	LANE M FERDINAND	LMF@LMFDEFENSE.COM DKD@LMFDEFENSE.COM JOE@LMFDEFENSE.COM
Defendant Attorney	JOHN P GRAVES	JOHN@JPGRAVESLAW.COM SABRINA@JPGRAVESLAW.COM
Other	MORRIS COUNTY PROSECUTOR'S OFF	CSHELLHORN@CO.MORRIS.NJ.US

Notice was not electronically mailed to:

Defendant	DOES 1-30 JOHN
Defendant	ABC CORPORATIONS 1-20

[Login](#) to eCourts to view the Case Jacket. You will need a valid user ID (Bar ID) to view the submitted documents.

For questions, please contact the Superior Court of New Jersey - Civil Part.

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This email was sent from a notification-only address that cannot accept incoming mail. Please do not reply to this message.

EXHIBIT "B"

Ronald Morgan

From: Gregg Stone
Sent: Thursday, March 23, 2023 9:24 AM
To: Ronald Morgan
Subject: FW: Kanarek v. Sweet Grass Farms, et. als.

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Website: ksmlawoffice.com
Email: gstone@ksmlawoffice.com

From: Gregg Stone
Sent: Wednesday, March 8, 2023 2:07 PM
To: Christopher Deininger <chris@deiningerlaw.com>
Cc: Mark K. Silver <MKS@spsk.com>
Subject: Kanarek v. Sweet Grass Farms, et. als.

Chris: In my review of the criminal docket, I noticed that there are confidential Orders, Motions, and Appeals that were filed. Kindly provide me with all confidential filings and Orders from State v. Barisone, including all Appeals. We will execute a Consent Protective Order. Thanks. Gregg.

Gregg Alan Stone, Esq.
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Email: gstone@ksmlawoffice.com

Ronald Morgan

From: Gregg Stone
Sent: Thursday, March 23, 2023 9:23 AM
To: Ronald Morgan
Subject: FW: Lauren Kanarek vs. Barisone, et al.

Gregg Alan Stone, Esq.
Kirsch, Stone & Morgan
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Newark, NJ 07102
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Fax. (973) 623-6901
Website: ksmlawoffice.com
Email: gstone@ksmlawoffice.com

From: Gregg Stone
Sent: Thursday, March 9, 2023 3:08 PM
To: Christopher Deininger <chris@deiningerlaw.com>
Subject: Re: Lauren Kanarek vs. Barisone, et al.

No problem. In the interim, can you please provide the confidential filings and orders I requested yesterday. Thanks.
Gregg

Sent from my iPhone

On Mar 9, 2023, at 3:06 PM, Christopher Deininger <chris@deiningerlaw.com> wrote:

Greg I need until next Tuesday to finish my supplemental discovery demands. Ok?

Sent from my iPhone

On Mar 9, 2023, at 1:40 PM, Gladys Ruiz <gruiz@ksmlawoffice.com> wrote:

Good afternoon,
Attached please find additional
discovery requests.

Gladys Ruiz

Secretary to Gregg Alan Stone, Esq.
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<NTP - Deft. Barisone.pdf>
<Suppl Rogs - Deft. Barisone.pdf>
<NTP - Deft. Sweetgrass.pdf>
<Suppl Rogs - Deft. Sweetgrass.pdf>

EXHIBIT "C"

CASE JACKET

User: 089832013, R.MORGAN

Attention: The system does not recognize you as the attorney of record nor the prosecutor assigned to this case. Only the attorney of record and assigned prosecutor receive notifications regarding this case. For more information, please contact the Help Desk or [click here](#).

Case Number: MRS-19-001379

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Case Caption: STATE OF NJ VS MICHAEL BARISONE
Assigned To: Judge STEPHEN J TAYLOR

Case Initiation Date: 08/08/2019
Case Status: ACTIVE

Crime Type: CRIMINAL ATTEMPT

Case Detail

Prosecutor: CHRISTOPH SCHELLHORN
Address: 10 COURT ST PO BOX 900, MORRISTOWN, NJ 079630900












































Phone: (973) 285-6200
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







































Defendant: (001) MICHAEL L BARISONE SBI #:165091H







































Case Actions

Filed Date	Defendant Name	Filings	Docket Text	Transaction ID	Entry Date
08/08/2019	BARISONE, MICHAEL L		Municipal Complaint W-2019-000128-1438 first signature(s) completed	MCS2019353487	08/08/2019
08/08/2019	BARISONE, MICHAEL L		Municipal Complaint W-2019-000128-1438 Probable Cause Found	MCS2019353509	08/08/2019
08/10/2019	BARISONE, MICHAEL L		CONFIDENTIAL PUBLIC SAFETY ASSESSMENT generated re: MUNICIPAL COMPLAINT W-2019-000128-1438 [MCS2019353509]	PSP2019417976	08/10/2019
08/10/2019	BARISONE, MICHAEL L		First Appearance Hearing/Central Judicial Processing (CJP) scheduled for 1:30 PM on 08/10/2019 with Judge Andrew M Wubbenhorst, VIRTUAL COURTROOM re: MUNICIPAL COMPLAINT W-2019-000128-1438 [MCS2019353509]	PSP2019417984	08/10/2019
08/10/2019	BARISONE, MICHAEL L		First Appearance Hearing/Central Judicial Processing (CJP) scheduled for 2:00 PM on 08/10/2019 with Judge Andrew M Wubbenhorst, VIRTUAL COURTROOM re: MUNICIPAL COMPLAINT W-2019-000128-1438 [MCS2019353509]	PSP2019418029	08/10/2019
08/10/2019	BARISONE, MICHAEL L		CONFIDENTIAL Uniform Defendant Intake Form Complete but NO Public Defender requested (5A form NOT completed) re: MUNICIPAL COMPLAINT W-2019-000128-1438 [MCS2019353509]	PSP2019418298	08/10/2019
08/10/2019	BARISONE, MICHAEL L		PROSECUTOR ASSIGNED submitted by CHRISTOPHER F SCHELLHORN of MORRIS COUNTY PROSECUTORS OFFICE on behalf of the State of NJ- Case Prosecutor CHRISTOPHER F SCHELLHORN has been successfully updated.	CRM2019699968	08/10/2019
08/10/2019	BARISONE, MICHAEL L		Motion - PRETRIAL DETENTION submitted by CHRISTOPHER F SCHELLHORN of MORRIS COUNTY PROSECUTORS OFFICE on behalf of the State of NJ	CRM2019699974	08/10/2019
08/12/2019	BARISONE, MICHAEL L		Hearing is scheduled for 09:00 AM on 08/14/2019 with Judge Stephen J Taylor. re: PRETRIAL DETENTION [CRM2019699974]	CRM2019701033	08/12/2019
08/12/2019	BARISONE, MICHAEL L		ATTORNEY APPEARANCE submitted by ANTHONY J FUSCO of FUSCO & MACALUSO LLC	CRM2019703947	08/12/2019
08/14/2019	BARISONE, MICHAEL L		Motion Result: GRANTED on 08/14/2019 re: MOTION - PRETRIAL DETENTION [CRM2019699974]	CRM2019713313	08/14/2019
08/14/2019	BARISONE, MICHAEL L		ORDER by Judge Stephen J Taylor GRANTING DETENTION re: MOTION - PRETRIAL DETENTION [CRM2019699974]	CRM2019713314	08/14/2019
08/20/2019	BARISONE, MICHAEL L		SUBSTITUTION OF ATTORNEY submitted by EDWARD J BILINKAS of EDWARD J. BILINKAS	CRM2019733829	08/20/2019
08/21/2019	BARISONE, MICHAEL L		Filing Result: APPROVED re: SUBSTITUTION OF ATTORNEY [CRM2019733829] submitted by EDWARD J BILINKAS of EDWARD J. BILINKAS	CRM2019736252	08/21/2019
08/29/2019	BARISONE, MICHAEL L		COURT NOTICE submitted by COURT	CRM2019772388	08/30/2019

09/09/2019	BARISONE, MICHAEL L		CRIMINAL COURT ACTION SHEET - 9/9/19 submitted by COURT	CRM2019799039	09/09/2019
10/08/2019	BARISONE, MICHAEL L	<input checked="" type="checkbox"/>	Defendant is within 30 days of pre-indictment release date. If no action is taken by 11/06/2019, defendant shall be released.	CRM2019907795	10/08/2019
10/09/2019	BARISONE, MICHAEL L	<input checked="" type="checkbox"/>	CONFIDENTIAL Motion - EXTEND 90 DAY PERIOD TO INDICTMENT submitted by CHRISTOPHER F SCHELLHORN of MORRIS COUNTY PROSECUTORS OFFICE on behalf of the State of NJ	CRM2019917302	10/09/2019
10/11/2019	BARISONE, MICHAEL L	<input checked="" type="checkbox"/>	Motion Result: GRANTED on 10/11/2019 re: MOTION - EXTEND 90 DAY PERIOD TO INDICTMENT [CRM2019917302]	CRM2019927299	10/11/2019
10/11/2019	BARISONE, MICHAEL L	<input checked="" type="checkbox"/>	ORDER by Judge Stephen J Taylor re: MOTION - EXTEND 90 DAY PERIOD TO INDICTMENT [CRM2019917302]	CRM2019927302	10/11/2019
11/22/2019	BARISONE, MICHAEL L	<input checked="" type="checkbox"/>	Defendant is within 30 days of pre-indictment release date. If no action is taken by 12/21/2019, defendant shall be released.	CRM20191071392	11/22/2019
12/18/2019	BARISONE, MICHAEL L	<input checked="" type="checkbox"/>	Motion - PROTECTIVE ORDER submitted by CHRISTOPHER F SCHELLHORN of MORRIS COUNTY PROSECUTORS OFFICE on behalf of the State of NJ	CRM20191171953	12/18/2019
12/18/2019	BARISONE, MICHAEL L		CONFIDENTIAL INDICTMENT SUBMITTED BY COURT	CRM20191172889	12/19/2019
12/30/2019	BARISONE, MICHAEL L		CONFIDENTIAL LETTER FROM VCCO submitted by COURT	CRM20201241	01/02/2020
12/31/2019	BARISONE, MICHAEL L		COURT NOTICE submitted by COURT	CRM20191200886	12/31/2019
01/06/2020	BARISONE, MICHAEL L		ARRAIGNMENT/INITIAL CASE DISPOSITION CONFERENCE ORDER submitted by COURT	CRM202013444	01/06/2020
01/07/2020	BARISONE, MICHAEL L	<input checked="" type="checkbox"/>	ORDER by Judge Stephen J Taylor for EXCLUDABLE TIME	CRM202014804	01/07/2020
01/07/2020	BARISONE, MICHAEL L		ORDER - ARRAIGNMENT submitted by COURT	CRM202015046	01/07/2020
01/13/2020	BARISONE, MICHAEL L	<input checked="" type="checkbox"/>	Hearing is scheduled for 09:00 AM on 01/13/2020 with Judge Stephen J Taylor. re: PROTECTIVE ORDER [CRM20191171953]	CRM20191208801	01/13/2020
01/13/2020	BARISONE, MICHAEL L	<input checked="" type="checkbox"/>	Motion Result: GRANTED on 01/13/2020 re: MOTION - PROTECTIVE ORDER [CRM20191171953]	CRM20191208806	01/13/2020
01/13/2020	BARISONE, MICHAEL L	<input checked="" type="checkbox"/>	ORDER by Judge Stephen J Taylor re: MOTION - PROTECTIVE ORDER [CRM20191171953]	CRM20191208807	01/13/2020
01/31/2020	BARISONE, MICHAEL L		ORDER submitted by COURT	CRM2020106120	01/31/2020
02/20/2020	BARISONE, MICHAEL L		COURT NOTICE submitted by COURT	CRM2020177816	02/21/2020
03/02/2020	BARISONE, MICHAEL L	<input checked="" type="checkbox"/>	ORDER by Judge Stephen J Taylor for EXCLUDABLE TIME	CRM2020208133	03/02/2020
03/02/2020	BARISONE, MICHAEL L	<input checked="" type="checkbox"/>	ARRAIGNMENT/INITIAL CASE DISPOSITION CONFERENCE ORDER submitted by COURT	CRM2020211718	03/03/2020
03/02/2020	BARISONE, MICHAEL L		COURT ACTION SHEET submitted by COURT	CRM2020212582	03/03/2020
03/06/2020	BARISONE, MICHAEL L		CONFIDENTIAL VCCO LETTER submitted by COURT	CRM2020256984	03/16/2020
03/23/2020	BARISONE, MICHAEL L	<input checked="" type="checkbox"/>	ORDER by Judge Stuart A Minkowitz for EXCLUDABLE TIME	CRM2020280259	03/23/2020
03/30/2020	BARISONE, MICHAEL L	<input checked="" type="checkbox"/>	ORDER by Judge Stuart A Minkowitz for EXCLUDABLE TIME	CRM2020295894	03/30/2020
03/31/2020	BARISONE, MICHAEL L		COURT NOTICE submitted by COURT	CRM2020305771	04/03/2020
04/20/2020	BARISONE, MICHAEL L		COURT NOTICE submitted by COURT	CRM2020332031	04/20/2020
04/27/2020	BARISONE, MICHAEL L	<input checked="" type="checkbox"/>	ORDER by Judge Stuart A Minkowitz for EXCLUDABLE TIME	CRM2020351006	04/27/2020

05/06/2020	BARISONE, MICHAEL L	 	ORDER by Judge Stephen J Taylor for EXCLUDABLE TIME	CRM2020372179	05/06/2020
05/28/2020	BARISONE, MICHAEL L		COURT NOTICE submitted by COURT	CRM2020439412	06/03/2020
06/01/2020	BARISONE, MICHAEL L	 	ORDER by Judge Stuart A Minkowitz for EXCLUDABLE TIME	CRM2020433007	06/01/2020
06/04/2020	BARISONE, MICHAEL L	 	ORDER by Judge Stephen J Taylor for EXCLUDABLE TIME	CRM2020443227	06/04/2020
06/08/2020	BARISONE, MICHAEL L		CONFIDENTIAL VCCO LETTER has been filed by Court	CRM2022264460	03/25/2022
06/15/2020	BARISONE, MICHAEL L	 	ORDER by Judge Stuart A Minkowitz for EXCLUDABLE TIME	CRM2020468833	06/15/2020
06/24/2020	BARISONE, MICHAEL L		COURT NOTICE submitted by COURT	CRM2020492531	06/24/2020
06/29/2020	BARISONE, MICHAEL L	 	ORDER by Judge Stuart A Minkowitz for EXCLUDABLE TIME	CRM2020509361	06/29/2020
07/06/2020	BARISONE, MICHAEL L		CONFIDENTIAL ORDER - Final Case Disposition Conference Order submitted by COURT	CRM2020558634	07/15/2020
07/14/2020	BARISONE, MICHAEL L	 	ORDER by Judge Stuart A Minkowitz for EXCLUDABLE TIME	CRM2020550672	07/13/2020
07/27/2020	BARISONE, MICHAEL L	 	ORDER by Judge Stuart A Minkowitz for EXCLUDABLE TIME	CRM2020591511	07/27/2020
08/06/2020	BARISONE, MICHAEL L		COURT NOTICE has been filed by Court	CRM2020621859	08/06/2020
08/21/2020	BARISONE, MICHAEL L	 	ORDER by Judge Stephen J Taylor for EXCLUDABLE TIME	CRM2020664366	08/21/2020
09/11/2020	BARISONE, MICHAEL L		COURT NOTICE has been filed by Court	CRM2020723095	09/11/2020
09/21/2020	BARISONE, MICHAEL L	 	ORDER by Judge Stuart A Minkowitz for EXCLUDABLE TIME	CRM2020761640	09/21/2020
09/26/2020	BARISONE, MICHAEL L	 	ORDER by Judge Stephen J Taylor for EXCLUDABLE TIME	CRM2020784202	09/26/2020
10/01/2020	BARISONE, MICHAEL L		COURT NOTICE has been filed by Court	CRM2020800369	10/01/2020
10/13/2020	BARISONE, MICHAEL L	 	ORDER by Judge Stuart A Minkowitz for EXCLUDABLE TIME	CRM2020839022	10/13/2020
10/13/2020	BARISONE, MICHAEL L		COURT NOTICE has been filed by Court	CRM2020842574	10/13/2020
11/23/2020	BARISONE, MICHAEL L		COURT NOTICE has been filed by Court	CRM2020975222	11/23/2020
12/11/2020	BARISONE, MICHAEL L	 	ORDER by Judge Stuart A Minkowitz for EXCLUDABLE TIME	CRM20201028448	12/11/2020
12/14/2020	BARISONE, MICHAEL L		CONFIDENTIAL ORDER - Transport Order has been filed by Court	CRM20201038801	12/15/2020
12/21/2020	BARISONE, MICHAEL L		COURT NOTICE has been filed by Court	CRM20201057609	12/21/2020
12/21/2020	BARISONE, MICHAEL L		CONFIDENTIAL ORDER - Consent Order has been filed by Court	CRM20201058855	12/21/2020
02/03/2021	BARISONE, MICHAEL L		CONFIDENTIAL ORDER - Transport Order has been filed by Court	CRM202190660	02/03/2021
02/24/2021	BARISONE, MICHAEL L	 	ORDER by Judge Stuart A Minkowitz for EXCLUDABLE TIME	CRM2021155156	02/24/2021
03/01/2021	BARISONE, MICHAEL L		CONFIDENTIAL ORDER - Consent Order has been filed by Court	CRM2021168779	03/01/2021
03/21/2021	BARISONE, MICHAEL L		CONFIDENTIAL ORDER - Transport Order has been filed by Court	CRM2021231678	03/22/2021
03/26/2021	BARISONE, MICHAEL L	 	COURT NOTICE has been filed by Court	CRM2021252357	03/26/2021

03/29/2021	BARISONE, MICHAEL L	 	ORDER by Judge Stuart A Minkowitz for EXCLUDABLE TIME	CRM2021255377	03/29/2021
04/26/2021	BARISONE, MICHAEL L	 	ORDER by Judge Stuart A Minkowitz for EXCLUDABLE TIME	CRM2021341714	04/26/2021
05/10/2021	BARISONE, MICHAEL L	 	COURT NOTICE has been filed by Court	CRM2021385418	05/10/2021
05/24/2021	BARISONE, MICHAEL L		ORDER - Discretionary Conference Order has been filed by Court	CRM2021431280	05/24/2021
06/14/2021	BARISONE, MICHAEL L	 	Motion - MIRANDA HEARING has been filed by Christopher F Schellhorn, Morris County Prosecutors Office on behalf of the State of NJ	CRM2021495619	06/14/2021
06/25/2021	BARISONE, MICHAEL L		MIRANDA HEARING [CRM2021495619] is scheduled for 09:00 AM on 08/17/2021 with Judge Stephen J Taylor Court Room 200.	CRM2021532056	06/25/2021
07/06/2021	BARISONE, MICHAEL L	 	Response to Motion - BRIEF - IN LIMINE has been filed by Edward J Bilinkas, Edward J. Bilinkas on behalf of Michael L Barisone	CRM2021557023	07/06/2021
07/15/2021	BARISONE, MICHAEL L	 	NOTICE OF DEFENSE has been filed by Edward J Bilinkas, Edward J. Bilinkas on behalf of Michael L Barisone	CRM2021590415	07/15/2021
08/02/2021	BARISONE, MICHAEL L	 	ORDER by Judge Stephen J Taylor for EXCLUDABLE TIME	CRM2021645533	08/02/2021
08/27/2021	BARISONE, MICHAEL L	 	COURT NOTICE has been filed by Court	CRM2021733490	08/27/2021
09/13/2021	BARISONE, MICHAEL L		STATUS CONFERENCE FORM has been filed by Court	CRM2021779600	09/13/2021
09/15/2021	BARISONE, MICHAEL L	 	REPLY LETTER BRIEF MIRANDA HEARING has been filed by Christopher F Schellhorn, Morris County Prosecutors Office on behalf of the State of NJ	CRM2021785956	09/15/2021
09/16/2021	BARISONE, MICHAEL L	 	COURT NOTICE has been filed by Court	CRM2021801483	09/20/2021
09/23/2021	BARISONE, MICHAEL L		MIRANDA HEARING [CRM2021495619] is rescheduled for 11:30 AM on 10/08/2021 with Judge Stephen J Taylor Court Room 200.	CRM2021819025	09/23/2021
10/11/2021	BARISONE, MICHAEL L	 	NOTICE OF DEFENSE has been filed by Edward J Bilinkas, Edward J. Bilinkas on behalf of Michael L Barisone	CRM2021875705	10/11/2021
10/22/2021	BARISONE, MICHAEL L		MIRANDA HEARING [CRM2021495619] is rescheduled for 10:00 AM on 12/01/2021 with Judge Stephen J Taylor Court Room 400.	CRM2021920434	10/22/2021
11/17/2021	BARISONE, MICHAEL L	 	COURT NOTICE has been filed by Court	CRM20211003263	11/17/2021
12/17/2021	BARISONE, MICHAEL L	 	ORDER by Judge Stephen J Taylor for EXCLUDABLE TIME	CRM20211100706	12/17/2021
01/10/2022	BARISONE, MICHAEL L	 	COURT NOTICE has been filed by Court	CRM202221335	01/10/2022
01/25/2022	BARISONE, MICHAEL L		Motion Result: GRANTED re: MOTION - MIRANDA HEARING [CRM2021495619] entered on 01/25/2022	CRM20211141833	01/25/2022
01/25/2022	BARISONE, MICHAEL L	 	ORDER re: MOTION - MIRANDA HEARING [CRM2021495619] signed by Judge Stephen J Taylor	CRM20211141834	01/25/2022
01/26/2022	BARISONE, MICHAEL L	 	ORDER by Judge Stephen J Taylor for EXCLUDABLE TIME	CRM202268430	01/26/2022
01/28/2022	BARISONE, MICHAEL L	 	COURT NOTICE has been filed by Court	CRM202277392	01/28/2022
02/15/2022	BARISONE, MICHAEL L	 	COURT NOTICE has been filed by Court	CRM2022130831	02/15/2022
02/28/2022	BARISONE, MICHAEL L		PRETRIAL MEMORANDUM has been filed by Court	CRM2022189670	03/04/2022
03/04/2022	BARISONE, MICHAEL L	 	CONFIRMING LETTER has been filed by Christopher F Schellhorn, Morris County Prosecutors Office on behalf of the State of NJ	CRM2022192089	03/04/2022
03/07/2022	BARISONE, MICHAEL L	 	PRETRIAL MEMORANDUM has been filed by Christopher F Schellhorn, Morris County Prosecutors Office on behalf of	CRM2022200124	03/07/2022

			the State of NJ		
03/11/2022	BARISONE, MICHAEL L	 	VOIR DIRE QUESTIONS has been filed by Edward J Bilinkas, Edward J. Bilinkas on behalf of Michael L Barisone	CRM2022214594	03/11/2022
03/11/2022	BARISONE, MICHAEL L	 	COURT NOTICE has been filed by Court	CRM2022216431	03/11/2022
03/13/2022	BARISONE, MICHAEL L	 	Motion - IN LIMINE has been filed by Christopher F Schellhorn, Morris County Prosecutors Office on behalf of the State of NJ	CRM2022218653	03/13/2022
03/14/2022	BARISONE, MICHAEL L		ORDER - Trial Order has been filed by Court	CRM2022221911	03/14/2022
03/14/2022	BARISONE, MICHAEL L		ORDER - Sequestration Order has been filed by Court	CRM2022222392	03/14/2022
03/21/2022	BARISONE, MICHAEL L		DETAINED CAS has been filed by Court	CRM2022246620	03/21/2022
03/21/2022	BARISONE, MICHAEL L	 	Response to Motion - BRIEF - IN LIMINE has been filed by Edward J Bilinkas, Edward J. Bilinkas on behalf of Michael L Barisone	CRM2022247326	03/21/2022
03/25/2022	BARISONE, MICHAEL L		Motion Result: GRANTED IN PART re: MOTION - IN LIMINE [CRM2022218653] entered on 03/25/2022	CRM2022263191	03/25/2022
03/25/2022	BARISONE, MICHAEL L	 	ORDER re: MOTION - IN LIMINE [CRM2022218653] signed by Judge Stephen J Taylor	CRM2022263192	03/25/2022
04/04/2022	BARISONE, MICHAEL L		ORDER - Judgment of Acquittal Order has been filed by Court	CRM2022294035	04/04/2022
04/14/2022	BARISONE, MICHAEL L		ORDER - Order for Psych Evaluation NGRI has been filed by Court	CRM2022333626	04/14/2022
04/14/2022	BARISONE, MICHAEL L		VERDICT SHEET has been filed by Court	CRM2022334005	04/14/2022
04/27/2022	BARISONE, MICHAEL L	 	Judgment of Acquittal	CRM2022373795	04/27/2022
09/06/2022	BARISONE, MICHAEL L	 	CONFIDENTIAL KROL DISPOSITION LETTER has been filed by Christopher F Schellhorn, Morris County Prosecutors Office on behalf of the State of NJ	CRM2022800729	09/06/2022
09/06/2022	BARISONE, MICHAEL L	 	CONFIDENTIAL KROL DISPOSITION LETTER has been filed by Edward J Bilinkas, Edward J. Bilinkas on behalf of Michael L Barisone	CRM2022804259	09/06/2022
09/22/2022	BARISONE, MICHAEL L	 	CONFIDENTIAL ORDER has been filed by Court	CRM2022878092	09/27/2022
10/03/2022	BARISONE, MICHAEL L	 	CONFIDENTIAL ORDER has been filed by Court	CRM2022900337	10/03/2022
11/04/2022	BARISONE, MICHAEL L		Notice of Appeal filed with Appellate Division A-000742-22	APC20223711	11/04/2022
03/02/2023	BARISONE, MICHAEL L	 	NOTICE OF APPEARANCE OF CO-COUNSEL has been filed by Edward J Bilinkas, Edward J. Bilinkas on behalf of Michael L Barisone	CRM2023210072	03/02/2023
03/06/2023	BARISONE, MICHAEL L	 	Motion - POST CONVICTION RELIEF has been filed by Edward J Bilinkas, Edward J. Bilinkas on behalf of Michael L Barisone	CRM2023225459	03/06/2023
03/06/2023	BARISONE, MICHAEL L	 	Motion - POST CONVICTION RELIEF has been filed by Edward J Bilinkas, Edward J. Bilinkas on behalf of Michael L Barisone	CRM2023225665	03/06/2023
03/08/2023	BARISONE, MICHAEL L		CORRECTION: Motion - POST CONVICTION RELIEF has been filed by Edward J Bilinkas, Edward J. Bilinkas was changed to Motion - RECUSAL OF PROSECUTOR/JUDGE CRM2023225459	CRM2023236090	03/08/2023
03/08/2023	BARISONE, MICHAEL L		RECUSAL PROSECUTOR/JUDGE [CRM2023225459] is scheduled for 09:00 AM on 03/08/2023 with Judge Stephen J Taylor at Court Room 400.	CRM2023236095	03/08/2023
03/08/2023	BARISONE, MICHAEL L		CORRECTION: Motion - POST CONVICTION RELIEF has been filed by Edward J Bilinkas, Edward J. Bilinkas was changed to Motion - RECUSAL OF PROSECUTOR/JUDGE CRM2023225665	CRM2023236253	03/08/2023
03/08/2023	BARISONE, MICHAEL L		RECUSAL PROSECUTOR/JUDGE [CRM2023225665] is scheduled for 08:30 AM on 03/08/2023 with Judge Stephen	CRM2023236269	03/08/2023

3/23/23, 12:08 PM

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			J Taylor at Court Room 400.		
03/08/2023	BARISONE, MICHAEL L	<input checked="" type="checkbox"/>	Motion Result: DENIED re: MOTION - RECUSAL OF PROSECUTOR/JUDGE [CRM2023225459] entered on 03/08/2023	CRM2023236335	03/08/2023
03/08/2023	BARISONE, MICHAEL L	<input type="checkbox"/> <input checked="" type="checkbox"/>	ORDER re: MOTION - RECUSAL OF PROSECUTOR/JUDGE [CRM2023225459] signed by Judge Stephen J Taylor	CRM2023236336	03/08/2023
03/08/2023	BARISONE, MICHAEL L	<input checked="" type="checkbox"/>	Motion Result: DENIED re: MOTION - RECUSAL OF PROSECUTOR/JUDGE [CRM2023225665] entered on 03/08/2023	CRM2023236344	03/08/2023
03/08/2023	BARISONE, MICHAEL L	<input type="checkbox"/> <input checked="" type="checkbox"/>	ORDER re: MOTION - RECUSAL OF PROSECUTOR/JUDGE [CRM2023225665] signed by Judge Stephen J Taylor	CRM2023236345	03/08/2023

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EXHIBIT "D"

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Attorneys for Defendant, Sweet Grass Farm, LLC

<p>LAUREN KANAREK, Plaintiff, v. MICHAEL BARISONE, SWEET GRASS FARMS, LLC, RUTH COX, JOHN DOES 1-30; ABC Corporations 1-20 Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MORRIS COUNTY DOCKET NO.: MRS-L-2250-19 Civil Action</p>
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DEFENDANT SWEET GRASS FARM, LLC'S BRIEF IN OPPOSITION TO MOTION TO LIMIT PLAINTIFF'S DEPOSITION AND CROSS-MOTION TO COMPEL A DATE CERTAIN

OF COUNSEL AND ON THE BRIEF:

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PRELIMINARY STATEMENT

Absurd. Lacking legal merit. Obstructionist. Frivolous. The Court can take its pick, but those descriptors (and several more that are not appropriate for legal papers) best describe Plaintiff's latest motion. When a Plaintiff files a civil suit in New Jersey, he/she agrees to be bound by the New Jersey Rules of Court. Not this Plaintiff. She continually acts as if the Rules of Court do not apply to her and seeks to make up new ones as the case progresses.

Prior to having been asked a single deposition question, Plaintiff has made a pre-emptive motion seeking to bar SGF from both: 1) asking questions about the incident that form the basis of her Complaint; AND 2) asking questions that support SGF's defenses related to Plaintiff's comparative fault. Essentially, Plaintiff is stating that she does not want to be deposed at all. The legal support provided by Plaintiff for this "unique" litigation position – none. Plaintiff filed a six-page "legal brief" without including a single case citation. Why? Because there is no legal support for this position.

Without using the actual legal term, Plaintiff is arguing that SGF should be "collaterally estopped" from deposing Plaintiff about the incident that forms the entire basis of her claim solely because she was asked about the incident during the attendant criminal trial. To be clear, SGF was not part of the criminal trial. SGF's interests were not represented in the criminal trial. The legal issues in the criminal trial were distinctly different from the legal issues in this case. SGF has distinct and different legal interests from Defendant Barisone. As a result of these inescapable facts, and as shown below, Plaintiff cannot establish any of the elements necessary to make an argument for collateral estoppel. Therefore, there is no legal basis to place limits on SGF's discovery deposition just because other parties have questioned her on the topic.

Moreover, Plaintiff's proposal for a bifurcation of her deposition is equally without merit and flies in the face of the long-recognized tenants of judicial economy. Nothing about Plaintiff and/or her case is special and/or novel. New Jersey's Rules of Court have a clear protocol with respect to depositions. SGF will ask questions and Plaintiff's counsel will object, where appropriate. All objections other than form and/or privilege are preserved for the time of trial (See R. 4:14-3). Plaintiff has not presented any evidence, let alone compelling evidence, why this case should deviate from the norm. Therefore, Plaintiff's motion should be denied in its entirety.

In addition to opposing Plaintiff's motion, Defendant SGF hereby cross moves to compel Plaintiff's deposition testimony on a date certain. The February 17, 2023, Case Management Order ("CMO") mandates Plaintiff's deposition be completed on or before March 31, 2023. Prior to the CMO being issued, and due to various scheduling conflicts of counsel, all parties agreed that Plaintiff would be deposed on April 13, 2023 and the deposition would continue day-to-day as necessary. This is technically outside the terms set by the CMO. SGF is always willing to provide professional courtesies to counsel so long as it does not suffer any prejudice as a result. While SGF has every confidence in Plaintiff's attorney and the ability of counsel to work together, given the history of obstructionist behavior, SGF does not have the same confidence in the Plaintiff herself. In an abundance of caution, SGF hereby moves for an Order compelling Plaintiff's deposition to take place on April 13, 2023 and continuing day-to-day as necessary. This modification to the CMO will not affect any other dates within the CMO and/or the completion of discovery. Alternatively, if the Court is not willing to bless the parties' modification of the Order, SGF asks for an Order compelling Plaintiff to appear for a deposition in compliance with the Order.

SGF joins in Plaintiff's request to have all of the issues resolved before the April 13, 2023 deposition date.

FACTS

Given the prior motion practice in this case, the Court is aware of the facts of this case. In sum, Plaintiff alleges that she was shot by Defendant Barisone on property owned by SGF. Plaintiff's Complaint against SGF sounds in: 1) strict premises liability (a Count that will be ripe for dismissal following Plaintiff's deposition); and 2) negligent security. (*See* Plaintiff's Complaint annexed to the Certification of Mark K. Silver, Esq. ("Silver Cert.") as "**Exhibit A**"). As previously stated, one of SGF's numerous defenses is that Plaintiff created the alleged dangerous condition that SGF is alleged to have failed to have protected her from and, therefore, SGF is not liable to Plaintiff.

ARGUMENT

I. SGF SHOULD NOT BE PREEMPTIVELY COLLATERALLY ESTOPPED FROM EXPLORING ISSUES IN A DISCOVERY DEPOSITION.

It is axiomatic that discovery in a case should be liberally granted. Under New Jersey's Rules of Court, SGF is entitled to take discovery on any matter that is not privileged and relevant to the litigation. R. 4:10-1. Plaintiff's motion posits that SGF should be estopped from asking questions to Plaintiff about the very issues of the case simply because some other attorneys asked her questions on the same subject. This unsupported suggestion is made in the face of years of legal precedent.

It is well settled that:

[f]or the doctrine of collateral estoppel to apply to foreclose the relitigation of an issue, the party asserting the bar must show that: (1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to

the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.:

[In re Estate of Dawson, 136 N.J. 1, 20-21, 641 A.2d 1026 (1994) (citations and parentheticals omitted).] It is equally clear that "[e]ven where these requirements are met, the doctrine, which has its roots in equity, will not be applied when it is unfair to do so." Pace v. Kuchinsky, 347 N.J. Super. 202, 215, 789 A.2d 162 (App. Div. 2002).

At the outset, collateral estoppel is usually determined at trial *after* all discovery has taken place. Here, Plaintiff seeks a preemptive determination attempting to preclude SGF from even taking discovery.

Second, no party has ever taken a discovery deposition of Plaintiff. The transcript of the criminal trial cross-examination of Plaintiff is littered with objections and limitation rulings because the trial court decided there were numerous areas of inquiry that were not relevant in the criminal case. Those same areas of inquiry are wholly relevant in this arena.

While SGF has the utmost respect for Barisone's defense team, they did not ask questions and/or fully explore issues in the same way that SGF intends to do. In response to Plaintiff's claim that "SGF cannot do a better or more thorough job of questioning Lauren.....than Barisone did in his criminal defense"¹, SGF's response is simple: "Yes it can. Just watch." Contrary to Plaintiff's framing of the issue, this is not a "narrow topic". There are dozens, if not hundreds, of Plaintiff's statements and actions that were not explored during the criminal trial that go directly to the issues of this case.

Moreover, SGF was not a party to the criminal action and has no legal alignment with any party in the criminal action. Although centered around the same factual nexus, the legal issues in the two actions are distinctly different. The criminal action was to determine the criminal culpability of Michael Barisone. Plaintiff was a mere witness in an action between the

¹ See Plaintiff's brief at page 5.

State of New Jersey and Michael Barisone. The civil action (as least as to SGF) is to determine whether SGF was negligent in failing to protect Plaintiff from the alleged danger (Michael Barisone). Plaintiff is a party in this action and her conduct is germane to the issues of culpability.

In general, to sustain a negligence claim, a plaintiff must prove the following elements: “(1) a duty of care, (2) a breach of that duty, (3) proximate cause, and (4) actual damages.” Townsend v. Pierre, 221 N.J. 36, 51, 110 A.3d 52 (2015) (quoting Polzo v. Cty. of Essex, 196 N.J. 569, 584, 960 A.2d 375 (2008)). None of those elements were explored in the criminal trial and, therefore, Plaintiff’s attempt to claim that SGF should be estopped from even asking questions fails from the inception.

Looking at the bigger picture of this case, Plaintiff’s attitude towards discovery in this case is best described as “obstructionist”. Even a casual review of the docket shows that SGF has had to file Motions to Compel Discovery against Plaintiff at every stage of this litigation. (*See Court Docket*).

SGF has no ill will and/or malice towards the Plaintiff. It has no desire nor intent to embarrass Plaintiff or cause her any pain. However, SGF is entitled to discovery in this case and SGF intends to fully explore the merits of the claims Plaintiff has lodged against it and SGF’s defenses to those claims. There is little doubt that SGF’s deposition questioning will enter into sensitive areas that may cause Plaintiff to revisit unpleasant times in her life (including the alleged shooting). SGF is not asking questions to intentionally cause the Plaintiff anguish, it is asking questions because it is entitled to challenge the veracity of Plaintiff’s claims. With Defendant Barisone claiming that he has no memory of the events at issue, Plaintiff and her boyfriend, Robert Goodwin are the only “eye witnesses” to the event. Given what has been

uncovered in discovery, their credibility is in significant doubt. In fact, by finding Michael Barisone not guilty in connection with the alleged assault on Robert Goodwin, the criminal jury affirmatively announced that they did not believe portions of Plaintiff and/or Goodwin's testimony. Without tipping its strategy for Plaintiff's deposition, SGF has identified numerous discrepancies between evidence produced in this litigation and Plaintiff's criminal trial testimony and SGF intends to explore all of them.

SGF will restate what it has stated in other papers. Discovery is not harassment. A deposition is a legitimate and necessary discovery instrument. Plaintiff initiated this lawsuit. If she is unwilling to sit for a full deposition and fully answer questions about the incident, the solution to that problem is for her to dismiss her claims. The solution is not for SGF to be deprived of its rights to a full and fair process.

II. BIFURCATION OF PLAINTIFF'S DEPOSITION IS UNNECESSARY AND AGAINST THE INTEREST OF JUDICIAL ECONOMY.

Plaintiff's attempt to bifurcate her deposition can only be interpreted as a delay tactic. In the February 17, 2023 Case Management Order, Judge Weaver's handwritten note made it clear that he would not take kindly to requests for further discovery extensions. Plaintiff's proposal flies in the face of the Court's admonition. (*See* February 17, 2023 Case Management Order annexed to the Silver Cert. as "**Exhibit B**").

Whether she likes it or not, Plaintiff's role in the creating of the conditions that led to her allegedly being shot is fully relevant to the litigation. Plaintiff proposes the Court set a briefing schedule for a purported Summary Judgment motion regarding Plaintiff's comparative fault. Plaintiff does not need the Court to set a briefing schedule. If she believes she has a viable Summary Judgment motion, she can file that motion at any time. She has not done so because Plaintiff knows full well: 1) there is no way that that such a motion is a pure question of law. It

will absolutely involve a question of fact; and 2) SGF's first response to any such motion will be that discovery is not complete, and Plaintiff has not been deposed on questions relevant to the motion.

For example, although SGF is not willing to tip its entire deposition strategy, for the purpose of making a record, it will give away this one piece for free. As stated above, it is one of SGF's defenses that Plaintiff created the alleged dangerous condition that SGF is alleged to have failed to have protected her from. It is also one of SGF's claims that Plaintiff is a habitual and persistent cyber-bully. She has a history, pattern, and practice of creating hostile environments using a variety of social media outlets. As cited in a previous brief, and in Plaintiff's own words:

Q. Now did you have a plan to destroy Michael Barisone?

A. At some point – Yes.

(See Silver Cert. at "Exhibit C", March 30, 2022 Criminal Trial Testimony of Lauren Kanarek, pg. 89).

Q. Were you posting, in numerous posts, statements with regards to going to war?

A. Yeah.

(See Id. at pgs. 121-125).

This case is not an isolated incident. As shown in the attached report, Plaintiff had a prior "[REDACTED]" complaint filed against her for harassment tactics similar to the ones she employed in this case. (See Silver Cert. at "Exhibit D", Lexis Nexis [REDACTED] Report). The [REDACTED] incident is not the only one known to SGF.

In the interest of judicial economy Plaintiff's deposition should not be bifurcated and SGF should be allowed to ask of all of its question in a clear, concise and methodic manner.

Once a complete record is made, SGF is confident that the Court will recognize Plaintiff's role in creating the alleged dangerous condition that is an issue that absolutely must be decided by a jury.

III. PLAINTIFF'S DEPOSITION SHOULD BE ORDERED FOR A DATE CERTAIN.

As stated above, this cross-motion to compel Plaintiff's Motion for A Date Certain is made in an abundance of caution. The February 17, 2023, Case Management Order mandates Plaintiff's deposition be completed on or before March 31, 2023. Prior to the CMO being issued, and due to various scheduling conflicts of counsel, all parties agreed that Plaintiff would be deposed on April 13, 2023 and the deposition would continue day-to-day as necessary. This is technically outside the terms set by the CMO. SGF is always willing to provide professional courtesies to counsel so long as it does not suffer any prejudice as a result. Given the already existing motion practice surrounding Plaintiff's deposition and in an abundance of caution, SGF hereby moves for an Order compelling Plaintiff's deposition to take place on April 13, 2023 and continuing day-to-day as necessary. This modification to the CMO will not affect any other dates within the CMO and/or the completion of discovery. SGF makes this application because if a dispute arises during Plaintiff's deposition it does not want to be precluded from making an application for relief simply because the deposition date was not in technical compliance with the Court's CMO.

Finally, SGF joins in Plaintiff's request to have all of the issues resolved before the April 13, 2023 deposition date.

Respectfully submitted,

SCHENCK PRICE SMITH & KING LLP

/s/ Mark K. Silver

Mark K. Silver, Esq.

Dated: March 9, 2023

