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Attorneys for Defendant, Sweet Grass Farm, LLC

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

OF COUNSEL AND ON THE BRIEF:

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REPLY ARGUMENT AND OPPOSITION TO CROSS-MOTION

Read in its entirety and boiled down to its essence, Plaintiff Lauren Kanarek's ("Kanarek") entire argument as to why she should not have to appear in New Jersey for an in-person deposition can be summed up in five words – I do not want to. "I do not want to" is not a legal basis to defy a lawfully issued Notice of Deposition *in a lawsuit she initiated*.

The thrust of Plaintiff's argument is that SGF has not put forth a reason as to why an in-person deposition should take place. While that makes for interesting rhetoric, Plaintiff conveniently ignores the fact that she, not SGF, holds the burden of proof on this motion. SGF has established in its initial moving papers that it has served Plaintiff with a valid deposition notice in full conformance with New Jersey's Rules of Court and state law. As Plaintiff is the party who wishes to deviate from the procedures established in the New Jersey Rules of Court, the burden now shifts to Plaintiff to provide compelling evidence in support of her position. Not only has Kanarek failed to provide compelling evidence - she has failed to provide any evidence. Conspicuous by its absence are any "facts" whatsoever. Kanarek did not submit a Certification on her own behalf, a Certification from counsel, nor did she submit a Certification from any medical physician. There is no reason provided whatsoever other than an unsupported argument from her counsel that "remote depositions are easier". In the first instance, the undersigned counsel wholeheartedly disagrees with that assertion. In the second instance, and contrary to the assertions made in Plaintiff's brief, this office has been back to conducting in-person depositions for almost a full year. The New Jersey Judiciary has long since recognized that the practice of law can resume normal operations. In fact, the day after SGF filed its initial brief, the judiciary issued an updated policy removing the masking and social distancing requirements in the

Courthouse.¹ See Supplemental Certification of Mark K. Silver, Esq. (“Supp. Silver Cert.”) at **Exhibit 1**.

This Court should be aware that SGF did not issue this deposition notice until all other avenues were exhausted. On July 26, 2022, SGF and Plaintiff both voluntarily participated in a mediation session with The Honorable Maurice J. Gallipoli, J.S.C. (Ret.). See Supp. Silver Cert. at ¶5. Without discussing the confidential details of the mediation, suffice it to say, the parties were unable to resolve the case. As a result, it is time to get to work and proceed with discovery.

Contrary to the claims in Kanarek’s brief, none of the facts in this case are “undisputed” and Plaintiff has the burden of proving her entire case at trial. The majority of Kanarek’s opposition brief is focused on Barisone and his actions, but the deposition notice at issue was issued by SGF. Kanarek’s claims against SGF rise to the level of frivolousness and SGF intends to fully explore them at deposition. Plaintiff’s Complaint against SGF alleges two causes of action: 1) Strict Premises Liability; and 2) Negligent Premises Liability. The Strict Premises Liability count is ripe for Summary Judgment and Defendant will move for same at the close of discovery as no property owner has ever been held strictly liable for the actions at issue in this case. As for the negligence claim, SGF is entitled to face its accuser (Kanarek) and ask her questions in person.

Discovery is not “harassment”. Discovery is a legal tool used in every case to learn about the claims and evidence in Plaintiff’s possession. SGF is still waiting to learn what Kanarek believes is: 1) the standard of care owed; 2) the alleged duty owed to Kanarek; 3) how SGF breached that duty; and 4) what SGF could have done differently. When balancing SGF’s

¹ SGF still takes any legitimate COVID concerns very seriously. As stated in its initial moving papers, its conference room can safely social distance all involved.

absolute right to confront its accuser in person against Plaintiff's unsupported claim of inconvenience, SGF should win that balancing test every time.

Moreover, as the Court is aware depositions are not just about the "questions and answers". Plaintiff is alleging she was injured as the result of SGF's negligence and SGF has the right to observe how the alleged injuries have impacted Plaintiff's life and how Plaintiff may present live in front of a jury.

SGF is seeking to treat Plaintiff like every other Plaintiff who files a lawsuit. By refusing to appear for an in-person deposition, Kanarek is seeking special treatment. Kanarek is not above the law, and she does not get to re-write the New Jersey Rules of Court for her own convenience. If she does not want to appear for deposition, then she should dismiss her lawsuit.

As to Plaintiff's "backup position" and her request that an in-person deposition take place in Plaintiff's counsel's offices, SGF opposes that request. SGF might have been amenable to such a request before Plaintiff made SGF expend resources on this motion. It is not inclined to do so now. More importantly, however, is the fact that the number of exhibits keeps growing by the day. Just last week, SGF received, via subpoena, 38,000+ additional pages of public bulletin board material containing hundreds of additional statements made by Kanarek about this incident. As of right now, Kanarek will be questioned on documents, audio recordings and a video statement that she made. SGF knows all various types of media can easily be displayed at deposition in its counsel's office. It cannot be assured of same at Plaintiff's counsel's office. Moreover, all of the exhibits are already at the offices of Schenck Price and SGF should not have to incur the hassle and expense of moving them in and out of Nagel Rice's office on multiple days when Plaintiff's threshold argument is that she is not even willing to show up for her own deposition.

Lastly, on the topic of “showing up”, Plaintiff had the temerity to allege that statements made by SGF in its moving paper were inaccurate. As this Court has known for years and as Plaintiff will quickly learn, the undersigned counsel does not make statements that are not supported by evidence. Specifically, in its initial brief, SGF’s wrote that “the Morris County Prosecutor’s Office had to ask the Court systems of the State of New Jersey and the State of Florida to issue a subpoena compelling Kanarek’s in-person appearance at Barisone’s criminal trial”. Plaintiff claims that statement is untrue. Submitted for the Court review is an Order to Show Cause issued by a Judge in Palm Beach County, Florida referencing the aforementioned application by the State of New Jersey for a subpoena compelling attendance. See Supp. Silver Cert. at **Exhibit 2**.

Once again, the New Jersey Rules of Court and the laws of the State of New Jersey apply to everyone equally and Ms. Kanarek should be compelled to appear in New Jersey for an in-person deposition at SGF counsel’s office.

Respectfully submitted,

/s/ Mark K. Silver

Mark K. Silver, Esq.

Dated: September 6, 2022

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<p>LAUREN KANAREK,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>MICHAEL BARISONE, SWEET GRASS FARMS, LLC, RUTH COX, JOHN DOES 1-30; ABC Corporations 1-20</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MORRIS COUNTY</p> <p>DOCKET NO.: MRS-L-2250-19</p> <p style="text-align: center;">Civil Action</p> <p>SUPPLEMENTAL CERTIFICATION OF MARK K. SILVER, ESQ. IN SUPPORT OF DEFENDANT SWEET GRASS FARM, LLC'S MOTION TO COMPEL PLAINTIFF'S IN-PERSON DEPOSITION</p>
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I, MARK K. SILVER, ESQ., of full age, do certify as follows:

1. I am an attorney-at-law of the State of New Jersey and a Partner with the law firm of Schenck, Price, Smith & King LLP, attorneys for Defendant Sweet Grass Farm, LLC ("SGF"). I am the attorney responsible for handling this matter. As such, I have personal knowledge of the facts set forth herein.

2. I make this Supplemental Certification in support of SGF's Motion to Compel Plaintiff's In-Person Deposition on October 10, 2022.

3. SGF comes before this Court seeking an Order compelling Plaintiff, Lauren Kanarek, to appear in-person for deposition on October 10, 2022.

4. The New Jersey Judiciary's August 24, 2022 Notice to the Bar is attached hereto at **Exhibit 1**.

5. On July 26, 2022, SGF and Plaintiff both voluntarily participated in a mediation session with The Honorable Maurice J. Gallipoli, J.S.C. (Ret.).

6. A March 25, 2022 Order from the Court in Palm Beach County, Florida is attached hereto at **Exhibit 2**.

I hereby certify, pursuant to Rule 1:4-4(b), that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

SCHENCK PRICE SMITH & KING LLP
Attorneys for Defendant, Sweet Grass Farm, LLC

By: /s/ Mark K. Silver
Mark K. Silver

Dated: September 6, 2022

EXHIBIT 1

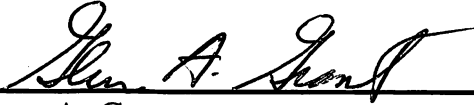
NOTICE TO THE BAR

JURY TRIALS & GRAND JURIES -- CONCLUSION OF MASKING AND SOCIAL DISTANCING REQUIREMENTS AS OF SEPTEMBER 1, 2022; ADJUSTMENT TO INITIAL VIRTUAL REPORTING FOR ALL JURORS

Effective September 1, 2022, the Supreme Court will conclude the requirement that all participants in jury proceedings maintain three feet of social distancing. As of that same date, participants in jury proceedings (including jurors) will no longer be required to wear a face mask, though all will continue to have the option to wear a face mask if they wish to do so. In issuing its attached August 24, 2022 Order on this, the Court is responding to the updated guidance recently issued by the Centers for Disease Control and Prevention (CDC).

All jurors will continue to begin their jury service virtually and will have an opportunity to raise any general concerns about reporting in person based on COVID-19. Subsequent to that mandatory virtual orientation phase, judges will have discretion to continue with jury selection either virtually or in person.

Questions about this notice may be directed to the Office of the Administrative Director of the Courts at (609) 376-3000.



Glenn A. Grant
Administrative Director of the Courts

Dated: August 24, 2022

SUPREME COURT OF NEW JERSEY

Since the onset of the COVID-19 virus, the Supreme Court has modified court operations consistent with recommendations from the Centers for Disease Control and Prevention (CDC) and the New Jersey Department of Health (NJ DOH). Based on that guidance, the Court has adjusted protocols for jury proceedings, which involve a substantial number of people in close physical proximity to one another.

The Court in its [March 9, 2022 Order](#) continued the requirements that all participants in in-person jury trials and grand juries wear masks and maintain at least three feet of social distancing. In its [March 18, 2022 Order](#), the Court continued the requirement that jury selection for all trials begin in a virtual format, in the presence of the attorneys and parties. During that phase, prospective jurors can request to be dismissed, excused, or deferred from jury service, and can raise any COVID-19 related concerns about reporting in person.

On August 11, 2022, the CDC issued updated [guidance](#) regarding COVID-19. In light of substantially changed circumstances -- including high levels of COVID-19 immunity, widespread availability of vaccines and boosters, and approved treatment options -- the CDC no longer recommends social distancing or masking as general mitigation strategies. The Judiciary

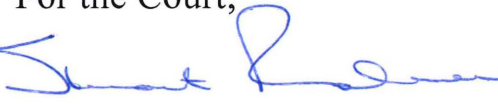
has confirmed with the NJ DOH that the court system can conclude three feet of social distancing in jury proceedings and permit rather than require individuals to wear face masks.

Consistent with this updated public health guidance, it is hereby ORDERED that effective September 1, 2022 and until further order:

1. The Court will no longer require participants in in-person jury proceedings (including grand juries) to maintain social distancing.
2. The Court will also conclude the requirement that participants in jury proceedings wear masks. To be clear, however, any participant may wear a mask if they choose to do so.
3. To protect members of the public who are at heightened risk of serious consequences from COVID-19, the Court will continue to afford all prospective jurors an opportunity to raise any general concerns about reporting in person based on COVID-19 concerns during the virtual juror orientation phase.
4. Afterward, and before the in-person exercise of peremptory challenges in criminal cases, individual trial judges will have discretion to conduct voir dire virtually or in person, taking into consideration all relevant factors.

Those adjustments should enable the Judiciary to support more jury trials, especially trials involving detained criminal defendants, and continue to protect the health of prospective jurors.

This Order supersedes any contrary provisions of the Court's March 9, 2022 and March 18, 2022 Orders. The Court may adjust the provisions of this Order based on changes in COVID-19 community levels or revised public health guidance.

For the Court,

Chief Justice

Dated: August 24, 2022

EXHIBIT 2

IN THE FIFTEENTH JUDICIAL COURT IN AND FOR PALM BEACH COUNTY,
STATE OF FLORIDA

IN RE: PETITION FOR THE FIFTEENTH JUDICIAL
CIRCUIT IN AND FOR PALM BEACH COUNTY,
FLORIDA, FOR ISSUANCE OF AN
INTERSTATE SUBPOENA

2022MM002279AXX

**ORDER COMPELLING THE ATTENDANCE OF A WITNESS
TO SHOW CAUSE WHY THEY SHOULD NOT BE ORDERED AND COMPELLED TO
ATTEND TRIAL OUT OF STATE**

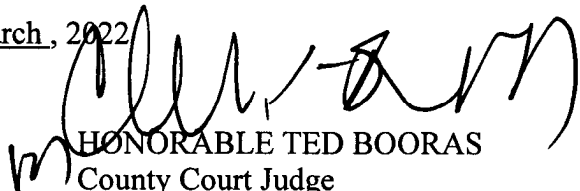
1. TO: Lauren Kanarek – 13013 46th Ct. N West Palm Beach FL 33411

WHEREAS the Circuit Court (Criminal) in the County of Palm Beach, City of West Palm Beach, State of Florida, has reviewed an AMENDED CERTIFICATE TO SECURE ATTENDANCE OF OUT-OF-STATE WITNESS under seal and signed by Honorable Stephen J. Taylor Morris County Superior Court in the case of New Jersey v Michael Barisone Indictment No. 19-12-00999-I. This Court finds that the Amended Certificate is legally sufficient, that there is a criminal prosecution pending in Morris County, New Jersey and establishes that Lauren Kanarek is a material and necessary witness to that proceeding.

Therefore,

IT IS ORDERED that Lauren Kanarek, at all times entitled to counsel, is to appear in the Palm Beach County Courthouse, Courtroom 1 at 10:30 AM, in the Fifteenth Judicial Circuit for Palm Beach County, before the Honorable Judge Ted Booras on **FRIDAY MARCH 25, 2022** at Criminal Justice Complex 3228 Gun Club Road, West Palm Beach, FL 33406 and there attend a hearing on why Lauren Kanarek should not be ordered and directed to appear as a material witness for the STATE OF NEW JERSEY.

So Ordered this 23 day of March, 2022


HONORABLE TED BOORAS
County Court Judge
15th Judicial Circuit
Palm Beach County, FL

FILED
MAR 23 2022
JOSEPH ABRUZZO, CLERK
PALM BEACH COUNTY, FL

Show Cause Order
Lauren Kanarek
2022MM002279AXX
Page 2

CERTIFICATE OF SERVICE

Received this Order for a Rule to Show Cause Hearing in the State of Florida this this ___ day of March, 2022, and executed same on the ___ day of _____, 2022 by delivering a true copy to the within named witness Lauren Kanarek in the County of Palm Beach, State of Florida.

BY: _____

State Attorney Investigator

Date: _____

NOT A CERTIFIED COPY

