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February 11, 2023

VIA ECOURTS

Hon. David J. Weaver, J.S.C.

Superior Court of New Jersey - Morris County

Morris County Courthouse, Washington & Court Streets

Morristown, New Jersey 07960

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

Barisone Motion For Sanctions Against Non-Party Witness
Return Date: February 17, 2023

CORRECTED TYPOGRAPHICAL ERROR PAGE 3, PARA. "5"

Your Honor:

I represent Michael Barisone, a defendant-counterclaim-plaintiff in the above-referenced matter. I am submitting this REPLY letter brief, in lieu of a formal one, in support of the Barisone motion compelling plaintiff's mother (non-party witness Kirby Kanarek) to appear and produced documents in response to a *subpoena duces tecum* I caused to be served back in November 2022.

PRELIMINARY REPLY STATEMENT

Kirby Kanarek has not voiced any objection to our application to compel her to produce the recordings, transcripts, and relevant communications, she admittedly has in her possession. She has filed no objection; raised no dispute; and given no explanation for her contempt when she

failed to answer or appear in response to the subpoena. The only objection seems to be coming from the plaintiff, through an attorney who does not represent Kirby Kanarek, making arguments without any sworn certification or other form of evidence capable of being considered by this Court.

Plaintiff is presenting a litany of attorney arguments, such as: (1) the falsehood that materials were already produced years ago; (2) the falsehood that the subpoena is overly broad; (3) the falsehood that the materials are not relevant, even for purposes of discovery; and (4) other arguments made by an attorney, without personal knowledge, and without supporting evidence.

The simple facts here demonstrate that Barisone's revised subpoena to Kirby Kanarek should be enforced.

REPLY ARGUMENT

Here are the facts:

1. Barisone is asserting a counterclaim against plaintiff focusing, in part, on plaintiff's surreptitious, unlawful recording of private conversations taking place at Sweet Grass Farm. See Barisone's Corrected Amended Counterclaim at page 12, paragraphs 9-12, & Counterclaim Count 4 at pages 19-21, **Exhibit G** to the Deininger Reply Certification (hereinafter cited as the "Deininger Reply Certif.").
2. Barisone's counterclaim includes an independent cause of action (asserted with leave of this Court) for injury and damages for eavesdrop recordings made in violation of N.J.S.A. §§ 2A:156A-1 et seq., including N.J.S.A. 2A:156A-24. Id. at Counterclaim Count 4 at page 20, paragraphs 45-46, **Exhibit G** to the Deininger Reply Certif.

3. At the criminal trial against Barisone, plaintiff testified under oath that she and boyfriend Goodwin acquired recording devices (two digital audio recorders and a Ring camera) in or about late July 2019, within the eight days before the shooting incident. See March 30, 2022 *Criminal Trial Transcript* page 138 (audio recording devices were ordered on Amazon on “July 31” 2019), & page 145 (purchase and use of video recording device), **Exhibit H** to the Deininger Reply Certif.
4. Also at the criminal trial, plaintiff was confronted with her prior written statement that she had acquired “cameras” back in April 2019, which plaintiff told her friend “Rosanna Williams” that she (plaintiff) purchased and then “planted in the barn” at Sweet Grass Farm.¹ See March 30, 2022 *Criminal Trial Transcript* page 146, line 10, through 149, line 11, and 150-151, **Exhibit H** to the Deininger Reply Certif.
5. So, based on plaintiff’s own testimony under oath, the scope of discovery of audio and video recordings sought from Kirby Kanarek is limited either to recordings made on the farm between the dates of July 31, ~~2016~~ 2019 and August 7, 2019, or, at most, to recordings made between late April 2019 and August 7, 2019.² See March 30, 2022 *Criminal Trial Transcript* pages 138, 145 & 146-149, **Exhibit H** to the Deininger Reply Certif.

¹ Plaintiff went on to testify that she was lying to Rosanna when she said that, which is one of many instances in which plaintiff impeached her own reputation for truthfulness. See March 30, 2022 *Criminal Trial Transcript* page 150-151, **Exhibit H** to the Deininger Reply Certif.

² For the 2019 season, plaintiff returned to Sweet Grass Farm in late April and stayed there until the shooting occurred in August of 2019. See Certification of Steven Tarshis (submitted herewith), at paragraph 7.

6. Plaintiff testified under oath at the criminal trial that she and Goodwin used those devices to make audio and video recording of other peoples' private conversations in which they (i.e. plaintiff and her boyfriend) were not participants. See generally, March 30, 2022 *Criminal Trial Transcript* pages 126 (admitting she made audio recordings of "private conversation where [she] was not a party to"), 134-140 (audio recordings of conversations in which she was not a participant), and 145-149 (video recordings), **Exhibit H** to the Deininger Reply Certif.
7. Plaintiff testified that, once she started making those recordings, Barisone became aware that, somehow, plaintiff was recording his conversations to the point where plaintiff confirmed in a text to her father (non-party Jonathan Kanarek, New York attorney)³ her impression that "they know we have a bug in the barn." See March 30, 2022 *Criminal Trial Transcript* page 151, line 19, through 153, line 21, **Exhibit H** to the Deininger Reply Certif., and text message exhibit "100-C-8", **Exhibit I** to the Deininger Reply Certif.
8. Plaintiff confirmed in her testimony that she made social media postings about Barisone and his live-in girlfriend (Mary-Haskins), and that she (plaintiff) was declaring "war" with the understanding that she was causing Barisone to experience "paranoia and jealousy". See March 30, 2022 *Criminal Trial Transcript* page 156, line 9, through 158, Line 9, **Exhibit H** to the Deininger Reply Certif.

³ Jonathan does not have any license to practice law in New Jersey. Therefore, he is precluded from acting as Kirby's attorney here.

9. In yet another one of her text messages, plaintiff revealed her intention to taunt Barisone and his family by revealing the surreptitiously-made recordings, see Exhibit J to the Deininger Reply Certif., and she professed the mis-guided notion that she somehow had “permission” to “take videos, recordings or anything else” she wanted to do to further her objectives, Exhibit K to the Deininger Reply Certif. It was stalking and harassment like that which led to Barisone’s mental breakdown that the jury found to have constituted “insanity” at the time of the shooting. Id.
10. The discovery provided in this case by plaintiff has been devoid of any copies of any audio or video recordings, and devoid of any transcripts of any of those recordings. See Deininger Certif., at paragraphs 3-6. No such materials have ever been provided by plaintiff, regardless of her attorney’s argument that such materials were “already provided” years ago. Id.
11. One of the recordings which has never been provided to Barisone’s attorneys, by anyone at any time, is plaintiff’s surreptitious recordings of Barisone’s conversations with his attorney, Steven M. Tarshis, Esq. Id.
12. Attorney Tarshis knows, based on his personal knowledge, that plaintiff somehow recorded conversations Tarshis had with Barisone, in the clubroom of the barn building, outside of the presence of plaintiff or Goodwin. See Tarshis Certification, paragraphs 5-13.
13. Kirby Kanarek has stated repeatedly, in public, that she has the recordings; has listened to the recordings; has prepared transcripts of the recordings; and, has reviewed

professionally-prepared transcripts of such recordings. See Kirby Kanarek Internet postings at **Exhibit D** through **Exhibit E** of the Deininger Reply Certif. and paragraphs 11-15 of that Certification.

14. Plaintiff, as well, has stated publicly, in writing, that such transcripts exist, and that she and her family planned to “send each transcribed audio to the psych ward” at the Ann Klein Psychiatric Hospital, when Barisone was held there following the trial. See **Exhibit F** to the Deininger Reply Certif.

15. Plaintiff has gone so far as to actually quote from the transcripts in her complaint to SafeSport, which was one of the many things she did in her efforts to conduct “war” against Barisone, driving him to such a level of intense mental and emotional distress that he had a mental breakdown that rendered him incapable of forming the requisite *mens rea* to be convicted of any crime in connection with the shooting. See Plaintiff’s SafeSport complaint at footnote “2” on page “4 of 4”, **Exhibit A** to the Deininger Reply Certif.

Those are the facts.

As a matter of law, the scope of discovery extends to all non-privileged documents, information, and things that are (1) evidence relevant to the claims, causes-of-action, and/or allegations at issue in a civil litigation, and/or (2) contain information reasonably calculated to lead to the discovery of relevant evidence. See Court Rule 4:10-2 (a). The recordings and transcripts in Kirby Kanarek’s possession, custody and/or control, are “evidence” directly relevant to Barisone’s counterclaim under N.J.S.A. §§ 2A:156A-1 et seq., including N.J.S.A. 2A:156A-24. Kirby Kanarek’s communications about Barisone, those recordings, and/or the other scope-

limiting topics, are expected to contain information leading to the discovery of additional, relevant evidence.

The Subpoena served upon Kirby Kanarek is limited in scope, not only by its expressed wording but also by the record facts of this case.

Barisone's requests for audio and video recordings, as well as his requests for transcripts of those records, is limited in scope by the fact that (according to plaintiff's sworn testimony) the only recordings were made either between July 31, 2019 and the August 7, 2019 date of the shooting, or, at the most, late-April of 2019 through to the August 7, 2019 date of the shooting.

Barisone's request for Kirby's communications (i.e. texts, emails, etc.) is limited to a finite group of potential discovery, limited in time (January 2019 through September 2019), limited in topic, and limited as to who the communications were with (i.e., plaintiff, her father, her mother, and/or her boyfriend). See Revised Subpoena, **Exhibit A** to the Deininger Certification filed initially in support of this motion (not the reply certification).

The revised subpoena is not overly-broad, is seeking information directly relevant to the claims and allegations in this civil suit, and cannot be fairly characterized as "harassing" or otherwise "improper". Kirby Kanarek never responded to the revised subpoena; never produced any records in response to it; and, instead, has ignored it intentionally. Accordingly, we are respectfully requesting that Kirby Kanarek be compelled to produce the transcripts, the recordings, and the subject communications.

Plaintiff admits readily that Barisone was not at fault in the shooting incident, when such an admission furthers her personal agenda at social occasions. See Tarshis Certification, paragraphs 17-22. What we see going on here is a concerted effort by plaintiff and her parents to obstruct discovery by hiding and failing to produce that which they know to be relevant.

CONCLUSION

For the forgoing reasons, the defendant-counterclaim plaintiff BARISONE is requesting that his motion be granted in all respects.

Submitted Respectfully,
DEININGER & ASSOCIATES, LLP

A handwritten signature in black ink, appearing to read 'C. L. Deininger', written over a horizontal line.

Christopher L. Deininger, Esq.

cc: All counsel of record

