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February 21, 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

Your Honor:

I represent Michael Barisone, a defendant-counterclaim-plaintiff in the above-referenced matter. I am submitting this letter to voice my objection to the plaintiff's unauthorized, sur-reply letter brief filed by Mr. Stone this morning. Here are my thoughts.

First, everyone knows that the Court Rules do not authorize the filing of after-the-fact, untimely, sur-reply papers. R. 1:6-2 (limiting papers on motion practice in a manner which does not allow sur-reply papers), R. 1:6-3 (stating the filing time period for motions, cross-motions, and authorized reply papers, to dates which pre-date the motion return date). Indeed, as to cross-motions the Court Rules state expressly that "No reply papers may be served or filed by the cross-movant without leave of court." R. 1:6-3 (b). So, for the record, my client is objecting to plaintiff's intentionally-improper filing.

Second, I must point out that plaintiff has again failed to present any evidence in support of the arguments being made by her attorney. Pursuant to the Court Rules, courts are constrained to decide matters based upon the “evidence” properly before the court. R. 1:6-6. Attorney argument is not evidence, and can be no substitute for an affidavit or sworn certification presenting facts and documents based upon the affiant’s personal knowledge. Id.

Though she felt somehow justified in making an improper, sur-reply filing, plaintiff did so without any sworn statement from any person claiming to have personal knowledge. In light of the evidence presented by Barisone in support of his motion to compel discovery from Kirby Kanarek (plaintiff’s mother), the absence of any evidence presented by plaintiff in her unauthorized sur-reply is confirmation that there is no one – not even plaintiff or her mother – willing to come forward to dispute any of Barisone’s overwhelming evidence that the discovery exists, that the discovery is known to Kirby Kanarek, and that the discovery is relevant evidence of claims and causes of action presented in Barisone’s counterclaim.

Submitted Respectfully,
DEININGER & ASSOCIATES, LLP



Christopher L. Deininger, Esq.

cc: All counsel of record