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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>
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**DEFENDANT SWEET GRASS FARM, LLC'S REPLY BRIEF IN SUPPORT OF ITS  
MOTION TO FIND JONATHAN KANAREK IN CONTEMPT OF COURT AND  
COMPEL RESPONSE TO SUBPOENA DUCES TECUM**

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**OF COUNSEL AND ON THE BRIEF:**

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**REPLY ARGUMENT AND OPPOSITION TO CROSS-MOTION**

To be clear, non-party Jonathan Kanarek has not filed opposition to Defendant SGF's motion. As a result, SGF's Motion for Contempt and/or to Compel should be granted as unopposed. The only papers filed with respect to SGF's motion is an opposition/cross motion filed on behalf of *Plaintiff*. Plaintiff's papers are legally deficient in myriad ways and should be struck in their entirety and/or wholly disregarded as unpersuasive.

**I. PLAINTIFF'S CHALLENGE TO THE SUBSTANCE OF SGF'S SUBPOENA IS UNTIMELY AND, THEREFORE, SHOULD BE DEEMED WAIVED.**

The most glaring deficiency in Plaintiff's latest submission is its untimeliness. As the Court will note, the opposition/cross-motion has been filed on behalf of *Plaintiff*, NOT on behalf of Jonathan Kanarek (the non-party to whom SGF's subpoena and Motion for Contempt is directed).<sup>1</sup> Plaintiff's opportunity to challenge the substance of SGF's subpoena has long since expired. Jonathan Kanarek was personally served with SGF's subpoena *duces tecum* on July 27, 2022 at 11:15 A.M. with notice to Plaintiff. Jonathan Kanarek's response to SGF's subpoena was due on August 16, 2022. Plaintiff's first objection to the substance of the subpoena arrives after a Motion to Compel has been filed and stands otherwise unopposed.

R. 1:9-2 expressly states that a motion to quash a subpoena must be "promptly made". Nothing about Plaintiff's application is prompt. If Plaintiff wanted to challenge the substance of SGF's inquiries, she should have filed an application to quash prior to the return date of the subpoena. She did not do so, thereby waiving any ability to participate in the current motions.

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<sup>1</sup> See Plaintiff's opposition brief, Paragraph 1. SGF has requested that the office of Nagel Rice formally declare that it represents Jonathan Kanarek on several occasions. To date, it has not done so.

**II. THE SUBSTANTIVE CHALLENGES TO SGF'S MOTION ARE UNSUPPORTED BY THE FACTS OF THE CASE.**

Even if the Court's chooses to indulge Plaintiff and consider her application on the merits, it will have a hard time doing so as, once again, there are no merits. For the second time in as many motions, Plaintiff has submitted an opposition with no factual support whatsoever. There is no Certification from Plaintiff, no Certification from counsel, nor a Certification from Jonathan Kanarek (the actual subject of the motion). Moreover, if one were only to read Plaintiff's paper, the reader would be unable to discern that two separate motions filed by two distinct parties against two separate individuals were currently before the Court.

Plaintiff's papers wholly fail to address SGF's motion and/or subpoena. All of the unsupported arguments of counsel appear to be directed to the application filed by Mr. Barisone, as none of said arguments are applicable to SGF. For example, pages 6-8 of Plaintiff's opposition allege the subpoenas in question are overbroad in time and scope. Even a cursory reading of the subpoena issued by SGF shows that statemen to be invalid. (See Original Certification of Mark K. Silver at Exhibit A). SGF's subpoena to Mr. Kanarek contains specific time frames and was specifically targeted to obtain documents and other materials directly relevant to this litigation and known to be (or at one time have been) in the possession of Jonathan Kanarek. Without giving away its entire trial strategy, SGF provides the following example:

SGF is currently investigating what evidence has been withheld and/or has otherwise been destroyed. For example, Plaintiff used to be a frequent poster on a public forum located at "Chronoofhorse.com." Plaintiff has specifically stated in numerous forum postings that she is in

possession of “videos” of relevant events leading up to the days before the alleged incident.<sup>2</sup> (See Supplemental Certification of Mark K. Silver, at Exhibit 1). Despite numerous requests from SGF for the production of any videos relevant to this matter, Plaintiff has failed to produce *any* videos in this matter. Similarly, the Morris County Prosecutor Office’s file did not contain any videos and the Prosecutor’s Office has advised it never obtained any videos from Kanarek or Robert Goodwin. SGF has reason to believe the videos are, or at one time were, in the possession of Jonathan Kanarek.

In an August 6, 2019, voice recording produced by the Morris County Prosecutor’s Office, Robert Goodwin, in a telephone conversation with Jonathan Kanarek, explicitly states he had just emailed “videos” to Jonathan Kanarek. (See Supplemental Certification of Mark K. Silver, at ¶¶ 4-9). In the recording, Goodwin references specific time codes in the “videos” to Jonathan Kanarek. (*Id.*) In other words, as of August 6, 2019, videos relevant to this litigation existed and were transmitted to Jonathan Kanarek.<sup>3</sup> Plaintiff references the existence of these videos as of August 2020. (See Supplemental Certification of Mark K. Silver, at Exhibit 1). Either these videos exist and SGF is entitled to discover them OR they have been destroyed after the initiation of the lawsuit and SGF is entitled to explore issues related to the spoliation of evidence. Any claim that the materials sought are not relevant to this litigation is pure sophistry and fail to pass any legal test this Court wishes to apply.

Moreover, separate and apart from the above, Jonathan Kanarek is an unequivocal fact witness in this case. Jonathan Kanarek allegedly “negotiated” on Plaintiff’s behalf with Mr. Barisone and with his attorney Steve Tarshis regarding her alleged tenancy on the property. SGF is not required, as Plaintiff suggests, to depose Jonathan Kanarek first and then seek

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<sup>2</sup>Plaintiff has admitted in responses to interrogatories that that the account utilizing the username “La-La Pop Rider” is registered to the Plaintiff. SGF has confirmed same via subpoena to the forum operator.

<sup>3</sup> SGF is fully prepared to play the relevant excerpts of the recording should the Court wish to hear them.

documentation later. (See page 8 of Plaintiff's brief). In fact, Plaintiff's proposed order of operation would go against hundreds years of established legal practice in this state. SGF wants documents first and then intends to depose Mr. Kanarek about them.

Similarly, (although not ripe for this motion as Nagel Rice does not purport to represent Jonathan Kanarek, and no formal claim of privilege has been made to *any* materials whatsoever) any claims that the "attorney client privilege" may protect any of the materials sought fail for numerous reasons including, but not limited to:

- **Waiver.** The audio recordings that form the basis of SGF's good faith inquiry were discussed and testified to in open Court during the criminal trial. Moreover, they were produced to SGF by the MCPO without any objection from Plaintiff.
- **Lack of Established Attorney-Client Relationship.** No one has established that an attorney client relationship exists between Jonathan Kanarek and Robert Goodwin and/or Lauren Kanarek. Establishing that relationship is a burden that would fall on those individuals.
- **Crime/Fraud Exception.** The Attorney-Client Privilege does not protect inherently illicit activities such as illegal listening devices and the recordings created therefrom.
- **No Other Possible Means to Obtain the Evidence.** Even if the Attorney-Client Privilege exists in some capacity, In Re Kozlov 79 N.J. 232, 243 (1979) clearly states that materials otherwise privileged are discoverable if the information cannot be secured from any less intrusive source. Here, it appears that Mr. Kanarek may be the *only* source of videos that have otherwise yet to surface or be produced from any other party or entity.

In sum, it is axiomatic that under New Jersey law, the rules of discovery are to “be construed liberally in favor of broad pretrial discovery.” Payton v. N.J. Turnpike Auth., 148 N.J. 524, 535, (1997). Thus, “[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” Evidence is relevant if it has “a tendency in reason to prove or disprove any fact of consequence to the determination of the action. *Id.* (citing N.J.R.E. 401). “Information which bears even a remote relevance to the subject matter of a cause of action is discoverable, if it is reasonably likely to lead to discovery of admissible evidence.” HD Supply Waterworks Group, Inc. v. Director, Division of Taxation, 29 N.J. Tax 573, 582 (2017). Responding to Subpoenas are part and parcel of this right. See McKenney v. Jersey City Med. Ctr., 167 N.J. 359, 370 (2001) (“Our procedures for discovery are designed to eliminate the element of surprise at trial by requiring a litigant to disclose the facts upon which a cause of action or defense is based”). Foreclosing SGF from discovery into such matters would significantly impede Defendant’s ability to defend against Plaintiff’s claims. See generally, Longo v. Am. Policyholders’ Ins. Co., 181 N.J. Super. 87, 90 (Super. Ct. 1981) (“Impediments to pretrial disclosure debase the judicial process by promoting surprise”). Accordingly, Plaintiff’s attempt to foreclose Defendants from obtaining relevant and material discovery is expressly disallowed under New Jersey law. See McKenney v. Jersey City Med. Ctr., 167 N.J. 359, 372 (2001) (“For over fifty years, courts have endeavored to transform civil litigation from a battle royal to a search for truth.”).

**III. JONATHAN KANAREK HAS MADE PUBLIC STATEMENTS THAT HE IS FULLY WILLING TO COMPLY WITH SGF’S SUBPOENA.**

Plaintiff’s opposition to this motion is wholly peculiar because Jonathan Kanarek has made public statements that he is willing to respond to the subpoena. For example, much like his daughter, Jonathan Kanarek enjoys discussing this case on the forum hosted by

“Chronoofhorse.com”. Just last week, posting under the username “Inigo-Montoya”, Jonathan Kanarek (posting in the Third person) made statements about the subpoenas at issue.<sup>4</sup> Specifically, he stated that “he looks forward to being deposed or providing any information” Defendants want. (See Supplemental Certification of Mark K. Silver, at Exhibit 2).

Since neither he, nor any attorney unequivocally admitting to representing him, has stepped forward to discuss the subpoena with SGF, SGF seeks an order compelling Jonathan Kanarek’s compliance.

#### **IV. KIRBY KANAREK HAS EVIDENCE NOT OBTAINABLE FROM OTHER SOURCES**

SGF did not serve Kirby Kanarek with its own subpoena because Mr. Barisone’s subpoena had already been issued, but SGF is equally interested in the information sought by Mr. Barisone. The Court should be aware that Ms. Kanarek has admitted, in public, to be in and/or to previously have been in, possession of evidence not yet produced by the Plaintiff. Completing the family trifecta, Kirby Kanarek also has an affinity for discussing this case on the forum hosted by “Chronoofhorse.com”. Posting under the username “Seeker” and/or “Seeker 1”, Kirby Kanarek has admitted to listening and transcribing tapes.<sup>5</sup> (See Supplemental Certification of Mark K. Silver, at Exhibit 3).

As Plaintiff has failed to turn over any recordings and/or transcripts whatsoever, SGF is entitled to discover what transcripts Kirby Kanarek has in her possession and if there are any recordings that have yet to be turned over to Defendants. Therefore, SGF joins in Barisone’s motion to compel Kirby Kanarek.

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<sup>4</sup> The “Chrono of Horse” forum has its own shorthand, but the undersigned counsel represents to the Court that “KK” stands for Kirby Kanarek and “JK” stands for Jonathan Kanarek.

<sup>5</sup> Kirby Kanarek has confirmed that she is the owner of the username “Seeker” and/or “Seeker1” and SGF has confirmed same via subpoena to “Chronoofhorse.com”.

**CONCLUSION**

For all of the foregoing reasons, SGF requests that the Court issue an Order either finding Jonathan Kanarek in contempt of Court and/or an Order compelling Jonathan Kanarek to fully and completely comply with production of materials sought by SGF's subpoena.

Respectfully submitted,

*/s/ Mark K. Silver*

Mark K. Silver, Esq.

Dated: September 16, 2022



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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 Find Jonathan Kanarek In Contempt Of Court And Compel Response To Subpoena Duces Tecum.

3. Written discovery has confirmed that Plaintiff Lauren Kanarek used to post statements about this case on the public forum hosted by “Chronoofhorse.com” under the username “La-La Pop Rider”.

4. On August 31, 2020, Plaintiff posted to that forum that she had “videos” of event relevant to this action. **(A true and accurate copy of her posting is attached here at Exhibit 1.)**

5. On September 1, 2020, Plaintiff made a second statement confirming the existence of videos related to the events at issue. **(A true and accurate copy of her posting is also attached here at Exhibit 1.)**

6. To date, despite being asked for in discovery, Plaintiff has failed to produce any such videos.

7. Similarly, the Morris County Prosecutor’s Office’s file failed to contain any such videos.

8. Upon information and belief, videos relevant to this litigation are or were in the possession of Jonathan Kanarek.

9. Specifically, audio recordings produced by the Morris County Prosecutor’s Office establish that during an August 6, 2019 telephone call between Robert Goodwin and Jonathan Kanarek, Goodwin advised Kanarek that he just emailed him some videos. Goodwin goes on to reference some specific time codes. (A true and accurate of Recording “R-00007-1908070037” is in the possession of the undersigned attorney and is ready to be played for the Court should the Court desire to hear it.)

10. Upon information and belief, Jonathan Kanarek posts on “Chronoofhorse.com” forum under the username “Inigo-Montoya”.

11. Last week the username “Inigo-Montoya” made statements about the subpoenas at issue. **(A true and accurate copy of that posting is attached here at Exhibit 2.)**

12. Kirby Kanarek posts on “Chronoofhorse.com” forum under the username “Seeker” and/or “Seeker 1”.

13. Kirby Kanarek has posted about the existence of transcripts of recordings at issue in this case. **(A true and accurate copy of her posting is attached here at Exhibit 3.)**

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 16, 2022



# **EXHIBIT 1**

La-LaPopRider #1000 August 31, 2020, 11:45pm

Exactly! Also, in my 911 call (possibly difficult to hear) when the officer asks if we're in immediate danger right then. I responded by saying "I feel we very much could be. The vehicle is back." (Those two sentences may have been broken up into two separate sentences, if the officer asked something else in between.) I haven't reviewed the calls in very long time.

On at least two occasions where MB called the cops & I spoke to them afterwards, I let them know that I would not be calling them to harass them (like my adversaries) unless I felt I was in real danger. I

<https://forum.chronofhorse.com//thats-a-twist/464204/print>

**CHRONO 001385**

417/419

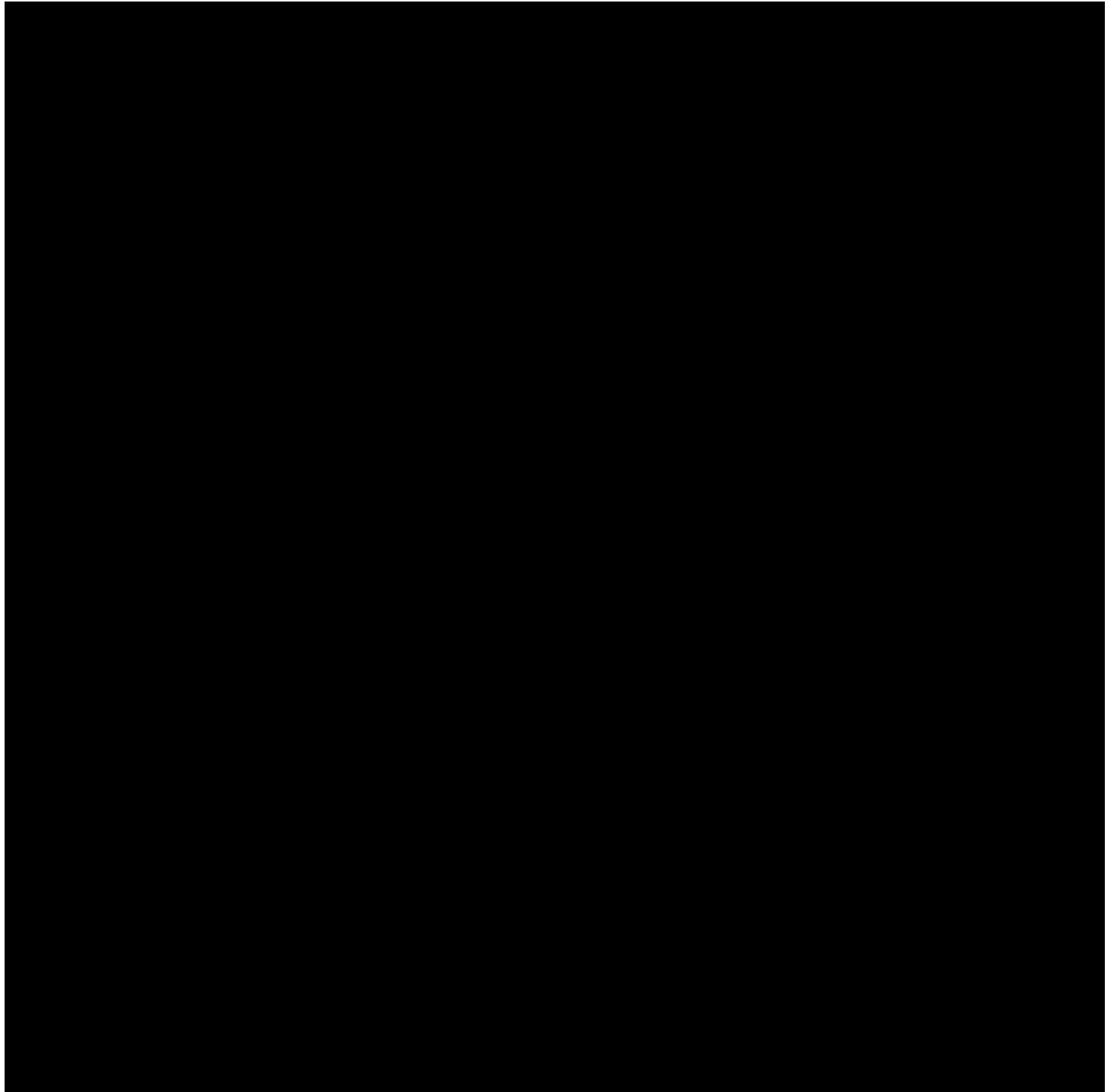
8/23/22, 10:36 AM

That's a twist - Dressage - Chronicle Forums

apologized to them for being called repeatedly by MB, for absolutely no reason.

I do, so wish I could share the contents of the documents mb actually thought we'd be stupid enough to sign. He even tried to block us from going in the Barn to ride, (something the DA told him repeatedly he was not allowed to do) until we signed his ominous paperwork... When we refused, he called the cops. Those papers literally, haunt me. I think they disturbed the cops as well. I have a video of that entire event- beginning to end. So crazy! Truly...

1 Like



8/23/22, 10:35 AM

WOW! New Info in Barisone-Kanarek Saga - Dressage - Chronicle Forums

La-LaPopRider #481 September 1, 2020, 12:20am

eggbutt:

How about all the discovery? How about his mention of the illegal recordings? 19,000 pages of evidence from LK's social media alone! Holy cow!!! The mention of LK and RG contacting SS? The mention that the CPS accusations were unfounded? The thought the attorney expects an acquittal (or did I misread that)? Gosh, all that sounds new to me!!

Wait... So, to be clear, you think a defense attorney is going to say "My client is GUILTY!" Nothing in his fictitious statements are new. Except, perhaps, the irony of it. Defense attorney falsely claims victim has made false claims. Ironic. And... incidentally, the same exact TACTIC used by every other defense attorney in the land of defense attorneys.

- 1.) I have always maintained the fact- I reported MB & others to SafeSport. (Nothing new.)
- 2.) I have always maintained the fact- I have video & audios. (Nothing new.)
- 3.) You have no idea who contacted CPS. (Nothing new.)



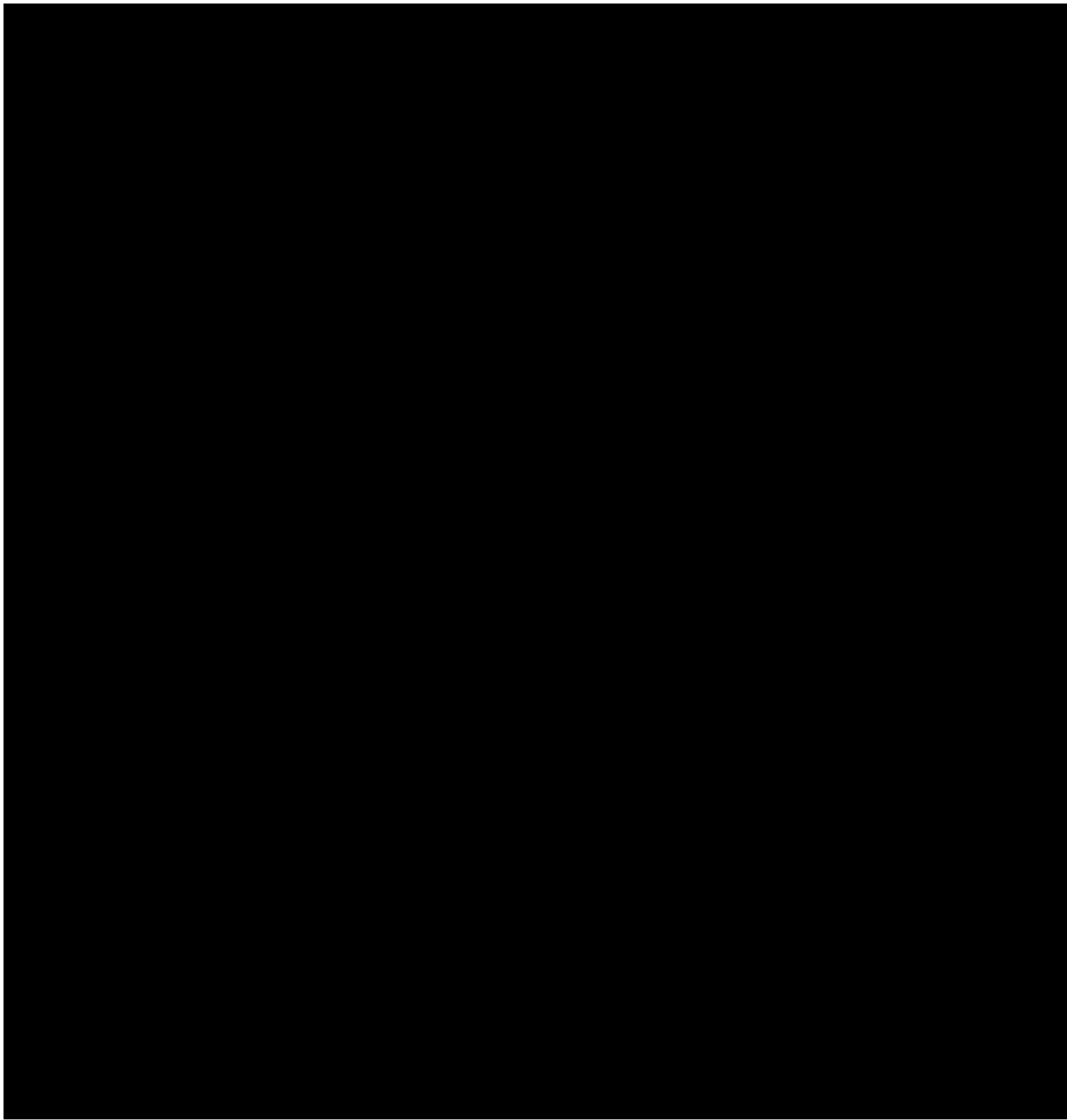
8/23/22, 10:35 AM

WOW! New Info in Barisone-Kanarek Saga - Dressage - Chronicle Forums

4.) Attorneys who are so convinced their client is "not guilty," doesn't waive a speedy trial. (Nothing new.)

What IS "new," exactly??? Please share with the class.

1 Like





# **EXHIBIT 2**

8:21 PM Wed Sep 7

...

100% battery icon



AA

forum.chronofhorse.com



MB Civil Trial: Conte...

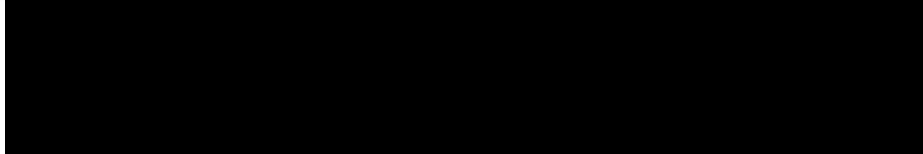


# MB Civil Trial: Contempt of Court?

Dressage

Sign Up

Log In



Inigo-montoya Greenie

trubandloki 28m

Sorry for the delay.  
 KK and JK received subpoenas. They turned it over to their lawyers who responded. The defendant's lawyers say they never received the response. The lawyers are working it out.  
 KK and JK look forward to being deposed or providing any information the other side wants. Why would they not be anxious to give information?  
 As the lawyers out there can confirm this kind of wrangling over subpoenas happens all the time. What would be gained by ignoring subpoenas.? It did not happen.

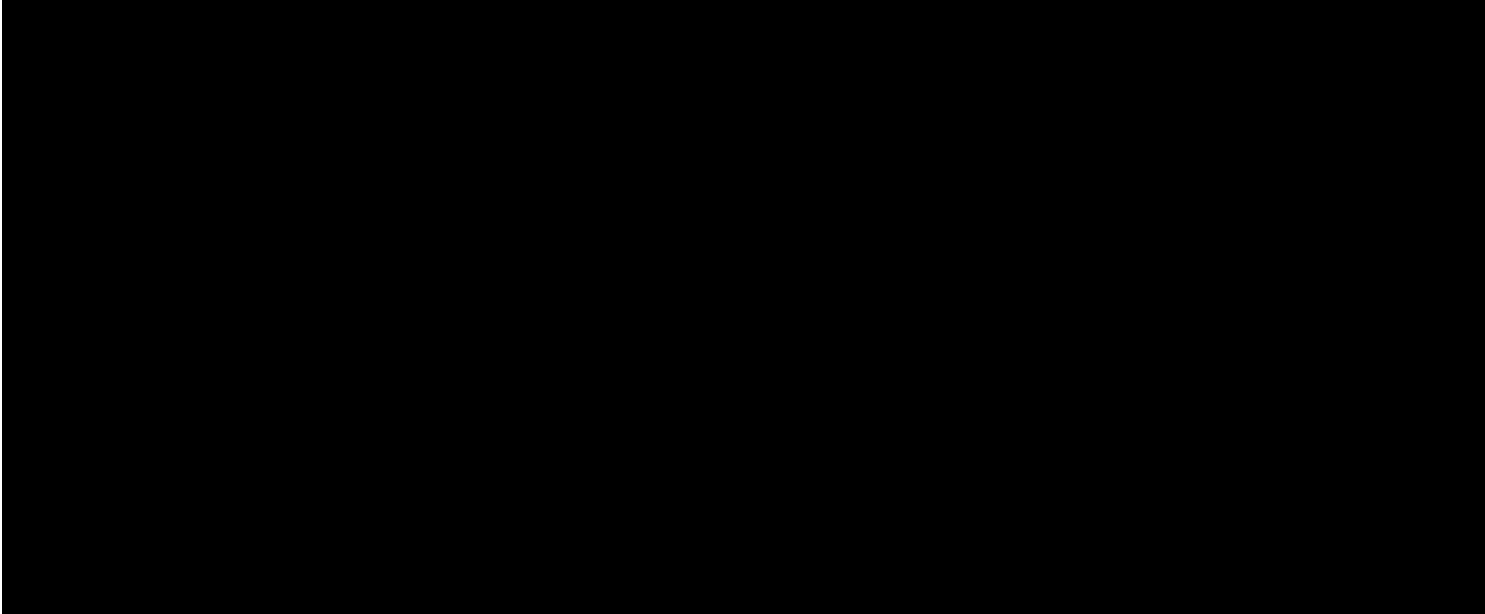
3068 / 3090  
Sep 7

1m ago

4 Replies



# **EXHIBT 3**



 Seeker1:

I am not at liberty to post the contents of the tapes at this time, but as I have said many times I listened and transcribed them. They were also transcribed by formal professional people and turned over to the prosecutor but I did hear them pretty clearly.

