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September 4, 2022

VIA ECOURTS

Hon. Louis S. Sceusi, 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 Cross-Motion Compelling Plaintiff's in-Person Deposition
Return Date: September 9, 2022

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 cross-motion compelling plaintiff LAUREN KANAREK to physically appear, in New Jersey, at counsel's offices, for her deposition in this matter. Barisone is also joining in the motion to compel made by co-defendant Sweet Grass Farms.

ARGUMENT

BARISONE is joining in the reply legal arguments made by Mark Silver, Esq., in his motion on behalf of co-defendant SWEET GRASS FARMS, LLC, seeking to compel plaintiff's in-person deposition. For purposes of this reply only, those arguments by co-defense counsel are adopted and incorporated herein by reference.

Plaintiff has failed to present any evidence in her opposition to the defendants' motion and cross-motion to compel her in-person deposition appearance. There is no attorney certification presenting documents that could be utilized as evidence, and also no certification or affidavit presenting any sworn statement from the plaintiff. The "opposition" as to plaintiff being compelled to appear in New Jersey for an in-person deposition, therefore, is limited exclusively to attorney argument.

When a motion is based upon facts not appearing in the record, the moving party must present affidavits "made on personal knowledge" of the persons presenting the factual basis for the relief requested. R. 1:6-6. Not even "facts" presented upon "information and belief" will suffice. See e.g. Wang v. Allstate Ins. Co., 125 N.J. 2, 16 (1991). The only exception to that mandate is when the facts are "judicially noticeable," in which case the Court may exercise discretion to take judicial notice of a fact not capable of reasonable dispute. R. 1:6-6. Attorney argument is not evidence and, as a matter of law, cannot be utilized as a substitute for evidence on a motion for relief. Estate of Kennedy v. Rosenblatt, 447 N.J. Super. 444, 456 (App. Div. 2016).

Plaintiff's only opposition to the motions compelling her personal appearance is the claim made by her attorneys that she is in some "weakened" medical state or condition, as a result of having been shot several years ago. See generally Plaintiff's Opposition & Cross-Motion For a Protective Order. Such an assertion is a medical opinion only capable of being proffered, in admissible form, by a qualified physician appearing in court and being subjected to cross-examination. It is not an assertion capable of being subject to any form of judicial notice. See Comment to Court Rule 1:6-6, noting that "net opinions of experts also fail to meet the motion-practice, admissible-evidence requirement of affidavits", citing Randall v. State, 277 N.J. Super. 192, 198 (App. Div. 1994).

Juxtaposed to plaintiff's dearth of evidence is the defendants' evidence that Lauren Kanarek is sufficiently healthy, strong, and well to appear for her in-person deposition in New Jersey. For example, plaintiff appeared in-person for her testimony at the criminal trial against Barisone, and did so by traveling up to New Jersey (whether it was by car, airplane or boat) to testify in the courtroom for two days, unmasked.

Following the alleged shooting, plaintiff has continued to compete athletically in the sport of dressage (see Deininger Reply Certif., **Exhibit A**); she has continued horseback riding and taking dressage lessons, including "4 horse lessons" in a single day (see Deininger Reply Certif., **Exhibit B**); she has gone out partying in New York City with her sisters as recently as April 2022 (see Deininger Reply Certif., **Exhibit C**); and, recently she has even spent two days being interviewed and filmed by CBS News for her appearance on an upcoming episode of the television program *48 Hours* (see Deininger Reply Certif., **Exhibit D**).

Rather than presenting any support for any medical need for any form of accommodation, the evidence before this Court confirms that plaintiff is living her life actively and without any impediment. Even giving plaintiff some benefit of the doubt, ordinary social distancing (which she did not require during the criminal trial) obviously would suffice.

CONCLUSION

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

Submitted Respectfully,
DEININGER & ASSOCIATES, LLP



Christopher L. Deininger, Esq.

cc: All counsel of record

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Attorneys for Barisone

LAUREN KANAREK,	:	SUPERIOR COURT OF NEW
	:	JERSEY LAW DIVISION – MORRIS
<i>Plaintiff,</i>	:	COUNTY
v.	:	
	:	
MICHAEL BARISONE; SWEETGRASS	:	
FARMS, LLC; RUTH COX; JOHN	:	DOCKET NO.: MRS-L-2250-19
DOES 1-30; ABC CORPORATIONS 1-	:	
20,	:	
	:	
<i>Defendants,</i>	:	
	:	

**REPLY CERTIFICATION OF
CHRISTOPHER L. DEININGER, ESQ., IN
SUPPORT OF BARISONE’S CROSS-MOTION AGAINST PLAINTIFF**

CHRISTOPHER L. DEININGER, ESQ., of full age, hereby certifies and says the following under penalty of perjury:

1. I am an attorney at law duly admitted in the State of New Jersey, and counsel in the above-captioned matter for defendant-counterclaim-plaintiff MICHAEL BARISONE (“Barisone”).

1. I am making this REPLY certification in further support of the Barisone cross-motion compelling plaintiff LAUREN KANAREK to appear for an in-person deposition in this action.

2. I reviewed the papers filed in opposition to my cross-motion by plaintiff’s counsel (collectively, “Plaintiff’s Opposition”).

3. Plaintiff's Opposition is devoid of any evidence capable of supporting Plaintiff's claim that she is in some sort of "weakened" physical condition, such that she should be relieved of making a personal, in-person appearance for her deposition in this matter.

4. Annexed hereto as **Exhibit A** is a true and accurate copy of a dressage-competition-record confirming that in 2020, following the alleged shooting and her recovery which occurred in 2019, plaintiff Lauren Kanarek has continued to engage in athletic competitions in the sport of dressage.

5. Annexed hereto as **Exhibit B** are true and accurate copies of two Internet postings made in or about January 2022 by Robert Goodwin – plaintiff's boyfriend who lives with her in Florida.

6. Those postings depict plaintiff Lauren Kanarek engaging in horseback riding, practicing the sport of dressage. See **Exhibit B**.

7. Annexed hereto as **Exhibit C** are true and accurate copies of three photographs of plaintiff Lauren Kanarek posted on Instagram, on or about Saturday April 16, 2022, in the immediate aftermath of the criminal trial in which defendant Barisone was found "not guilty" and/or "not guilty by reason of insanity" as to all charges pursued against him by the State of New Jersey.

8. In those postings, under the Instagram handle "laurenkana," it is indicated that plaintiff Lauren Kanarek attending a "party" after which she intended to go to a "hotel lobby" in New York City as "Sat night continued". See **Exhibit C**, first page.

9. Annexed hereto as **Exhibit D** is a true and accurate copy of a "selfie" of plaintiff Lauren Kanarek posted to Instagram in or about June 2022 – perhaps 8-12 weeks ago.

10. In the text posted underneath that selfie, it is indicated that plaintiff Lauren Kanarek had just participated in “part 1 of my [CBS News, *48 Hours* television show] interview & [film] shoot.” See Exhibit D.

11. Lauren Kanarek indicated as well that the events of that day were “festivities” held at a horse farm/training facility called “Little Ranches,” and that she was think of having “Thai food” for dinner following the conclusion of her “Long Day!” of being interviewed and filmed by CBS News. See Exhibit D.

12. Based on those Internet/social media postings, defendant MICHAEL BARISONE is disputing plaintiff’s claim of having some sort of “weakened” physical condition that might somehow justify her failure to make an in-person appearance for her deposition.

13. Annexed hereto as Exhibit E is a true and accurate copy of a page from Lauren Kanarek’s sworn response to “SUPPLEMENTAL INTERROGATORIES” served in this matter by her attorneys.

14. In her response to question “1” and question “2”, plaintiff directed the defendant parties (in essence) that they should go to her various Internet social media feeds to obtain copies of whatever she might post on social media and/or the Internet. See Exhibit E.

15. Because defendants were invited by plaintiff/plaintiff’s attorneys to go to plaintiff’s social media postings and Internet postings to obtain copies of her the information plaintiff was not herself producing, defendant MICHAEL BARISONE is taking the position that his attorneys are not “stalking” plaintiff but, rather, simply acting upon her invitation to view and gather information from her social media postings.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

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

CHRISTOPHER L. DEININGER, ESQ.

Dated: September 4, 2022

EXHIBIT A

HorseShowOffice.com™

Ride Times

2020 Great American Ins. Gp/USDF Region 1 Dressage Championships & VADA Fall

Ride Times for Lauren Kanarek

Unofficial ride times. See ride times posted at show for official ride times.

Day	Time	Class #	Class Name	Horse
10/10/2020	9:27:00 AM	341	Fourth Level Test 1 - Open	Even Better
10/10/2020	2:22:00 PM	343	Fourth Level Test 3 - Open	Jay-T
10/11/2020	10:37:00 AM	443	Fourth Level Test 3 - Open	Jay-T
10/11/2020	12:05:00 PM	433	Third Level Test 3 - Open	Even Better



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EXHIBIT B



Search Facebook



Lara



Lauren Kanarek

Jan 14 · 👥

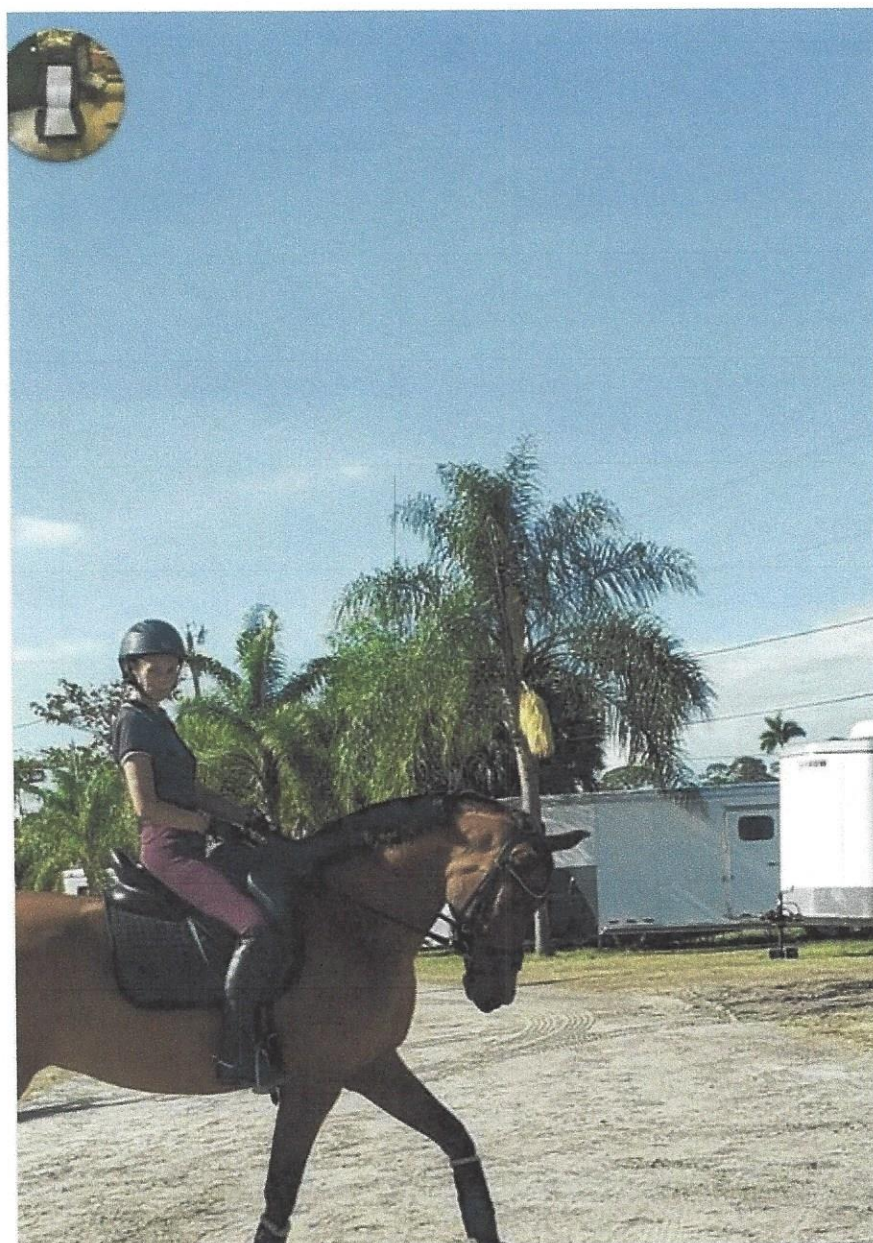
It's the sun!!! The shadow made my rear end look like a triangle! Always nice to end a 4 horse lesson and be finished by 9! Evie is back after a small bone contusion and he seems pretty happy about that!



Robert Guy Goodwin

Jan 14 · 👥

Lauren Kanarek please eat a sandwich or 5... 😊



Home



Friends



Watch



Marketplace



Notifications



Menu

5:03 AM Mon Jul 26



Search Watch



Robert Guy Goodwin is with Lauren Kanar · Follow



Jan 27, 2021 · 2

The big guy slowed down.



10

1 comment 1 share

Like

Comment

EXHIBIT C



Post



2 likes

laurenkana After the party it's hotel lobby... (Or my other sister's apt...) Big sis and me! #sisterlove Sat night continued! Pic 1. Sending our sentiments to anyone who supports gun violence & those who've tried to take lives Pic 2... Whatever. Pic 3. Us imitating people who don't "get," the distinction between "vindicated," and "headed to a max sec psych ward."And yes..... the #truth will absolutely #comeout #rn #standagainstgunviolence #standagainstmurderattempt #equestrianstrong #looklikethis #equestrianwronged #looklike..... #tbc



LAURENKANA
Posts



laurenkana

New York City, N.Y.



2 likes

laurenkana After the party it's hotel lobby.... (Or my other sister's apt...) Big sis and me! #sisterlove Sat night continued! Pic 1. Sending our sentiments to anyone... more

4 hours ago

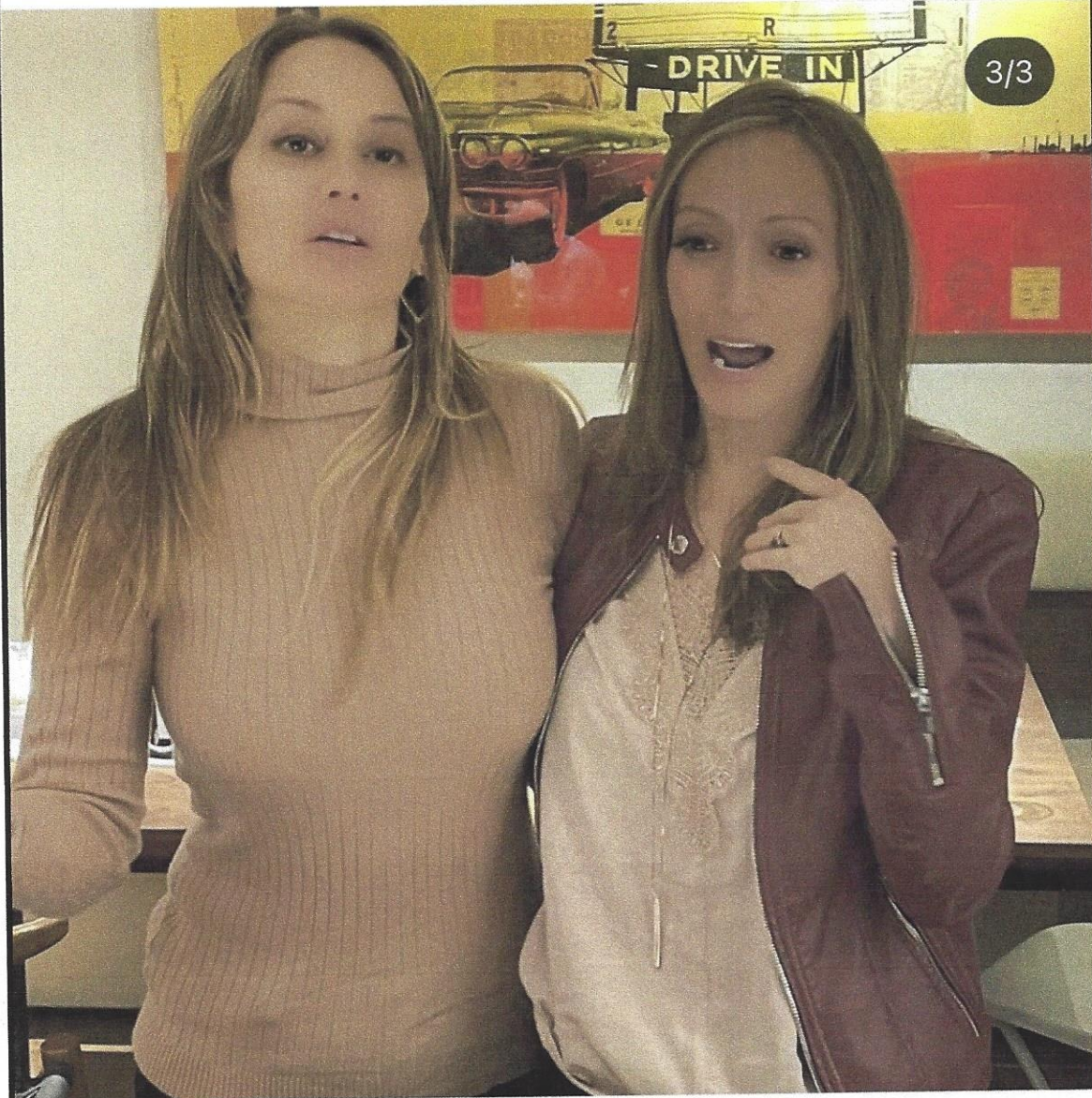


LAURENKANA
Posts



laurenkana

New York City, N.Y.



2 likes

laurenkana After the party it's hotel lobby.... (Or my other sister's apt...) Big sis and me! #sisterlove Sat night continued! Pic 1. Sending our sentiments to anyone... more

4 hours ago

EXHIBIT D



laurenkana

Little Ranches, Wellington



laurenkana Ahh, got that off my chest & even made a few more equine pals during part 1 of my 48 hrs interview & shoot! Thanks to Little Ranches for hosting today's festivities! Long day! I'm thinkin Thai food.... 🙌🏻🎬🐾

EXHIBIT E

SUPPLEMENTAL INTERROGATORIES

1. Please identify all of your Internet social media and networking websites and/or applications, which you have used and/or maintained an account in the last three (3) years and provide your username and password, or alternatively, under Rule 1.340(c), please provide a copy of all non-privileged content/data shared on the account in the last three (3) years. Internet social media websites include, but are not limited to, Facebook, LinkedIn, Twitter, Instagram, Foursquare, YouTube, Pinterest, Google+, Tumblr, Flickr, Skype, FaceTime, etc.

RESPONSE: Objection, overbroad and unduly burdensome. Without waiving, and subject to said objection, I have maintained the following social media accounts in the last three years:

Facebook: Lauren Kanarek

Twitter: @LaurenKanKan

Instagram: @LaurenKana

@LaurenKanarek

YouTube: LaurenKanarek1210@gmail.com

Pinterest: Unknown, I may have briefly had an account

Wassup: Lauren Kanarek

With regard to postings on the above-referenced accounts, I am not in possession of physical copies of all of the postings, but to the extent they exist they are online.

2. Please identify any and all blog or internet message boards, chat rooms, and public forums that you have participated in or a member of within the last three (3) years and provide your username and password, or alternatively, under Rule 1.340(c), please provide a copy of all non-privileged content/data shared on the account in the last three (3) years. "Internet message board or public forum" includes, but is not limited to, any internet website or service in which users post messages or content in a public-forum.

RESPONSE: Objection, overbroad and unduly burdensome. Without waiving, and subject to said objection, the only one I believe I was a member of is Chronical of the Horse, under the user name La-LaPoP Rider. I am not in possession of physical copies of all of the postings, but to the extent they exist they are online.

3. For any account identified in answer to Nos. 1 — 2, please describe in detail any and all content that you have deleted or erased on or after August 7, 2019 (and the dates

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DOES 1-30; ABC CORPORATIONS 1-	:	
20,	:	
<i>Defendants,</i>	:	
	:	

CERTIFICATION OF SERVICE

I, CHRISTOPHER L. DEININGER, ESQ., certify under penalty of perjury, that on September 4, 2022, I caused true and accurate copies of the defendant MICHAEL BARISONE’s **Reply Letter Brief and Reply Supporting Certification (with exhibits)**, to be served upon the Clerk of the New Jersey Superior Court, and upon all counsel of record, through e-Courts.

I hereby certify the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

DEININGER & ASSOCIATES, LLP
Attorneys for the Barisone



By : _____
CHRISTOPHER L. DEININGER, ESQ.