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October 30, 2022

VIA ECOURTS FILING

Hon. Louis S. Sceusi, J.S.C.
Superior Court of New Jersey, Morris County
Court & Washington Streets
P.O. Box 910
Morristown, New Jersey 07960-0910

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

**MICHAEL BARISONE's Motion For Leave to File & Serve an
Amended Pleading.**

Return Date: November 18, 2022

Dear Judge Sceusi:

Plaintiff Michael Barisone (Barisone) is submitting this REPLY letter brief in further support of his motion for leave to serve and file his proposed amended complaint.

REPLY ARGUMENTS

Point I: The Motion For Leave, For The Most Part, is Unopposed.

Plaintiff's objections to the motion to amend are limited to arguments against BARISONE's additional counterclaim count. See Plaintiff's Opposition Letter Brief. So, there is no opposition to BARISONE's other proposed amendments, which are numerous. Id.

Accordingly, the motion for leave to amend should be granted, at the least, as to all proposed changes other than the new counterclaim count.

Point II: Plaintiff's Statute of Limitations/Futility Argument is a Red Herring.

The “relation back” rule articulated within New Jersey Civil Practice Rule 4:9-3 makes Plaintiff's statute-of-limitations a red herring. Under R. 4:9-3, a late-filed counterclaim is permissibly asserted after the statute of limitations has expired, provided that the counterclaim “arose of out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading ...[.]” See R. 4:9-3.

BARISONE learned in the first instance that KANAREK has actually used electronic eves-dropping device in or about late March 2022, from KANAREK's testimony at the trial in New Jersey v. Michael Barisone (the “Criminal Trial”). See Deininger Reply Certification, at ¶¶ 8-10. The Criminal Trial was conducted before the Honorable Stephen Taylor, with opening statements made to the jury on or about March 27, 2022. KANAREK's testimony in which she first made the admission, under oath, to having made recordings through hidden devices, when she was not present, was heard in court on March 30, 2022. Id.

Prior to KANAREK making that admission, BARISONE could only have speculated whether KANAREK had actually utilized electronic eves-dropping devices at the farm, to illegally record conversations outside of her physical presence. See Deininger Reply Certification, at ¶¶ 6-7. Back in July 2019, within a month before the incident in which KANAREK was shot, BARISONE had his farm swept for bugging devices – a sweep which failed to locate any such devices. See Deininger Reply Certification, at ¶ 8. BARISONE did not know and could not have known before March 30, 2022, that KANAREK had actually used such devices on BARISONE's

farm. See Deininger Reply Certification, at ¶¶ 6-10. Indeed, it was because BARISONE did not and could not have known that fact back when his original counterclaim was filed, that BARISONE was required to plead his counterclaim in the alternative, using the following language:

Kanarek harassed Barisone by utilizing technology to “bug” (i.e. unlawfully eves drop) upon private conversation[s] Barisone was having; **and/or, alternatively**, harassed Barisone for purposes of causing him severe and significant emotional distress **by claiming that she had unlawful eves-dropping** of Barisone’s residence and/or business for purposes of stalking him and Barisone’s family members.

See Original Pleading at page 14, paragraph 12 (bold supplied), **Reply Exhibit 1** to the Deininger Reply Certification.

BARISONE’s proposed additional claim is not a new claim, based upon new conduct, transactions, or occurrences, not previously pleaded. To the contrary, BARISONE’s proposed additional claim arose out of the precisely identical conduct, transactions and occurrences, KANAREK and BARISONE pleaded in their respective, initial pleadings.

KANAREK has been on notice since day one of BARISONE’s appearance in this contested matter that BARISONE was making counterclaims against her as a defendant. See Original Pleading at page 12, **Reply Exhibit 1** to the Deininger Reply Certification. And, KANAREK has been on notice since day one of BARISONE’s appearance in this contested matter that BARISONE’s claims included her possible conduct of unlawful eves dropping. As a matter of fact and law, there is nothing “new” here other than a different legal theory of liability arising “out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading ...[.]” See R. 4:9-3. See also Molnar v. Hedden, 260 N.J. Super. 133, 136-140 (App.

Div. 1992); and Barley v. Barley, N.J. App. Div. No. A-4965-15T3 (October 20, 2017) (copy attached).

Under the court rules, an application for leave to amend a pleading is required to be granted liberally, without consideration of the ultimate merits of the amendments. Notte v. Merchants Mutual Insurance Co., 185 N.J. 490, 500-501 (2006); and R. 4:9-1. Indeed, absent abject futility or undue prejudice, the discretion to grant leave to amend is appropriate even after a matter is remanded on appeal. Bustamante v. Borough of Paramus, 413 N.J. Super. 276, 298 (App. Div. 2010); and Town of Harrison Bd. V. Netchert, 439 N.J. Super. 164, 178-179 (Law. Div. 2015). The standard a defendant must meet to succeed on an argument of “futility” is the same high standard for dismissal of a complaint for failure to state a claim upon which relief can be granted, made under R. 4:6-2 (e).

“[The] test to be applied in such instances requires a ‘painstaking’ examination of ‘the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.’ *Printing Mart v. Sharp Elecs. Corp.*, 116 N.J. 739, 746, 563 A.2d 31 (1989) (quoting *Di Cristofaro v. Laurel Grove Mem’l Park*, 43 N.J. Super. 244, 252, 128 A.2d 281 (App. Div. 1957)). [The court is] ‘not concerned with the ability of plaintiffs to prove the allegation[s] contained in the complaint’ and are required to afford plaintiffs ‘every reasonable inference of fact.’ *Ibid.* ‘The examination of a complaint’s allegations of fact required by the aforestated principles should be one that is ... undertaken with a generous and hospitable approach.’ *Id.*

C.f. Communications Workers of America, AFL-CIO v. Whitman, 335 N.J. Super. 283, 288-289 (App. Div. 2000).

At the criminal trial, KANAREK for the first time disclosed (in statements made on the witness stand, under oath) facts demonstrating that she caused wireless recording devices to be placed surreptitiously at Sweet Grass Farm, and made unlawful audio recordings of private

conversations in which none of the participants consented to being recorded. We have added a new proposed count to the counterclaim seeking damages based upon those acts, actions, and omissions, by KANAREK which, in our view, are actionable under N.J.S.A. 2A:156A-1 et seq.

CONCLUSION

For the foregoing reasons, plaintiff Barisone is respectfully requesting that his motion for leave to file and serve his proposed amended pleading be granted in all respects.

Respectfully,
DEININGER & ASSOCIATES, LLP

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

Christopher L. Deininger, Esq.

cc: Opposing Counsel through eCourts filing

CASE LAW EXHIBIT

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VERONICA BARLEY v. ARNELL D. BARLEY

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-o

VERONICA BARLEY,

Plaintiff-Respondent,

and

GLEN BEST,

Plaintiff,

v.

ARNELL D. BARLEY,

Defendant-Appellant,

and

DARRELL R. ANDERSON, SHOHN W.

BINGHAM and SHARON C. THOMAS,

Defendants.

October 20, 2017

Argued February 8, 2017 Decided

Before Judges Simonelli, Carroll and Gooden Brown.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-6976-15.

Glenn A. Montgomery argued the cause for appellant (Montgomery Chapin & Fetten, PC, attorneys; Mr. Montgomery and Michael D. Noblett, on the briefs).

Cory J. Rothbort argued the cause for respondent (Sellar Richardson, PC, attorneys; John M. Kearney, of counsel; Mr. Rothbort, on the brief).

The opinion of the court was delivered by

SIMONELLI, J.S.C.

By leave granted, defendant Arnell D. Barley appeals from the March 29, 2016 Law Division order, which dismissed her counterclaim with prejudice based on the two year statute of limitations (SOL), N.J.S.A. 2A:14-2(a). Defendant also appeals from the May 13, 2016 order, which denied her motion for reconsideration. For the following reasons, we reverse and remand for further proceedings.

The facts are straightforward. Defendant and plaintiff Veronica Barley are stepsisters. According to plaintiff, on April 5, 2013, she and defendant had a verbal dispute that turned into a physical altercation, during which defendant scratched her arms and tried to run her over with a car, causing her to fall and sustain injuries. According to defendant, plaintiff was the aggressor and caused her injuries that required medical treatment.

On April 6, 2015, plaintiff filed a complaint against defendant, seeking damages for the injuries sustained on April 5, 2013.¹ Because April 5, 2015 was a Sunday, the complaint was timely filed on Monday, April 6, 2015. See R. 1:3-1. In her first responsive pleading, defendant asserted a counterclaim, seeking damages for injuries sustained as a result of the same incident.

Plaintiff filed a motion to dismiss the counterclaim pursuant to Rule 4:6-2(e) based on the SOL. The motion judge granted the motion, and later denied defendant's motion for reconsideration. The judge acknowledged that in *Molnar v. Hedden*, 138 N.J. 96 (1994), our Supreme Court left open the question of whether a counterclaim filed after the SOL expired could relate back to a timely filed claim by an opposing party. However, the judge concluded that the relation-back doctrine under Rule 4:9-3 and equitable tolling did not apply to permit the untimely counterclaim. This appeal followed.

Our review of a trial court's decision on a Rule 4:6-2(e) motion to dismiss is plenary and we owe no deference to the trial judge's conclusions. *Rezem Family Assocs., LP v. Borough of Millstone*, 423 N.J. Super. 103, 114 (App. Div.), certif. denied, 208 N.J. 366 (2011). We also owe no deference to a trial court's legal conclusions, and review issues of law de novo. *Mountain Hill, LLC v. Twp. Comm. of Middletown*, 403 N.J. Super. 146, 193 (App. Div. 2008), certif. denied, 199 N.J. 129 (2009).

Defendant's contentions on appeal focus on principles of equity and fairness. Citing *Molnar*, supra, defendant argues that if equitable considerations exist, as they do here, courts should use them to determine whether the purpose of the SOL -- to protect against the litigation of stale claims, stimulating diligent prosecution of claims, penalizing dilatoriness, and serving as a measure of repose -- is served by its application. Defendant

also argues that barring a germane counterclaim undermines the principal consideration behind SOLs of fairness to the defendant.

Defendant posits it is inequitable and unfair to bar a germane counterclaim in an initial responsive pleading that arises out of the same facts and circumstances of the complaint, where, such as here, the plaintiff files a complaint on the last day of the SOL. Defendant also argues that barring her counterclaim serves no purpose of the SOL, as the claims asserted therein do not promote any measure of repose and are not stale because the same facts are required to support the affirmative relief sought by both parties.

In *Molnar v. Hedden*, 260 N.J. Super. 133, 136 (App. Div. 1992), the defendant had filed a responsive pleading and later filed a motion for leave to amend to assert a counterclaim arising out of the same transaction as pleaded in the complaint after the SOL had expired. *Id.* at 140. Viewing the matter under the Rule 4:9-3 relation-back lens, we held that the plaintiff's action was still pending when the motion was filed and that

application of our well-settled and liberal procedural jurisprudence dictates the conclusion that a counterclaim arising out of the same transaction as pleaded by the complaint and therefore meeting the test of R. 4:9-3 -- that is to say, a litigation component embraced by the entire controversy doctrine -- is eligible for the relation-back principle of the rule and consequently for protection from the limitations bar.

[*Ibid.*]

We then discussed tolling as an alternative for excepting a transactionally-related counterclaim from the SOL bar. *Id.* at 145. Citing 6 Charles A. Wright, Arthur R. Miller & Mary Kane Federal Practice and Procedure 1419 at 152 (1990), we stated: "In analyzing the cognate federal rules, Professors Wright, Miller and Kane note that the majority of federal courts have taken the view that 'the institution of plaintiff's suit tolls or suspends the running of the statute of limitations governing a compulsory counterclaim.'" *Id.* at 144-45. We were "persuaded that the federal rationale of tolling in respect of compulsory counterclaims applies fully to our definition of a required component of the controversy." *Id.* at 145. We subscribed to the view stated in 6 Wright, *supra*, 1419 at 152-53 that

This approach precludes plaintiff, when the claim and counterclaim are measured by the same period, from delaying the institution of the action until the statute has almost run on defendant's counterclaim so that it would be barred by the time defendant advanced it. Nor is plaintiff apt to be prejudiced by the tolling of the statute, since he presumably has notice at the time he commences his action of any counterclaim arising out of the same

transaction as his suit. Moreover, the necessarily close relationship between the timely claim and the untimely counterclaim should insure that the latter is not 'stale' in the sense of evidence and witnesses no longer being available; they should be as accessible for adjudicating the counterclaim as they were for the main claim.

[Ibid. (emphasis added).]

Lastly, we noted the tolling rationale, not Rule 4:9-3, will save a counterclaim asserted in a first responsive pleading from the SOL bar, stating

But it is also possible that a counterclaim might be sought to be asserted after the running of the [SOL] by way of a first responsive pleading where no prior answer was filed. In that case, the responsive pleading, not constituting an amended pleading, would not be technically subject to R. 4:9-3. But the counterclaim therein asserted would nevertheless relate back to the date of the filing of the complaint under a tolling rationale.

[Id. at 146 (emphasis added).]

While not binding, Comment 4 to Rule 4:7-1 expresses a similar rationale

Although [Rule 4:7-1] does not expressly so state, ordinarily a germane counterclaim will not be barred by the statute of limitations if the complaint itself is timely. A germane counterclaim is conceptually akin to an amended pleading that states a claim or defense arising out of the same conduct, transaction or occurrence as the original claim, and R. 4:9-3 expressly provides for relation back in that situation. The only difference is the identity of the party raising the germane claim, and it would seem to make little functional difference whether a party amends his own pleading to add a germane claim or if the adverse party responds with a germane claim. The policy of the [SOL] is no more offended in one case than the other.

[Pressler & Verniero, Current N.J. Court Rules, comment 4 on R. 4:7-1 (2018).]

The Court reversed our decision in *Molnar* on other grounds. The Court found the relation-back doctrine of Rule 4:9-3 was inapplicable because by the time the defendant sought to file his counterclaim, the SOL had run and the plaintiff's claims had been disposed of. *Molnar*, supra, 138 N.J. at 103-04. The Court did not rule on "whether [the] counterclaim, whether considered germane or new, pressed after the [SOL] expired but while plaintiff's claim was still 'alive' could be saved by virtue of the relation-back doctrine." Id. at 105.

In addition, the Court did not determine whether the plaintiff's suit tolled the defendant's SOL, stating

The reasons for finding such a tolling is to prevent a plaintiff from waiting until shortly before the statute of limitations has expired to file to prevent a defendant from asserting a cause of action. That circumstance is not present in this case. Nothing in the record suggests that plaintiff delayed filing, and defendant had time within which to file a counterclaim before the running of the statute of limitations. Cases that toll the statute of limitations, thereby allowing the defendant to assert a counterclaim after the statute of limitations would normally have run, do so because of the inherent inconsistency in permitting plaintiffs to amend complaints after the statute of limitations has expired but refusing defendants similar opportunities. Here, plaintiff, having accepted \$15,000 in settlement of her claim, could not be heard thereafter to amend her claim or to press a new claim. Therefore, denying defendant an opportunity to pursue his late counterclaim on a 'tolling' theory does not create the inconsistency that otherwise might justify a tolling of the statute. The facts of this case do not implicate the tolling question.

[Ibid. (emphasis added).]

The facts absent in Molnar are present here. Plaintiff's timely-filed complaint was pending when defendant filed her first responsive pleading asserting a germane counterclaim, and plaintiff delayed filing her complaint until the last day of the SOL, leaving defendant with no time within which to file a counterclaim before the running of the SOL. Under these circumstances, justice requires that defendant's germane counterclaim be saved from the SOL under the relation-back doctrine of Rule 4:9-3 or the tolling rationale.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

¹ Plaintiff also asserted claims against other defendants for alleged injuries she sustained in an unrelated motor vehicle accident. The trial court severed plaintiff's claims against defendant from the claims against the other defendants.

initial certification filed in support of this motion (the “*Proposed Amended Pleading*”).

5. The *Original Pleading* asserted a counterclaim against plaintiff KANAREK. See *Original Pleading* at page 12, **Reply Exhibit 1** to This Reply Certification. So, my client’s *Original Pleading* put KANAREK on notice from the start that she was a defendant in this matter as to claims asserted by BARISONE. Id.

6. In his *Original Pleading*, BARISONE alleged expressly, as part of the factual basis of his counterclaim, that

Kanarek harassed Barisone by utilizing technology to “bug” (i.e. unlawfully eves drop) upon private conversation[s] Barisone was having; **and/or, alternatively**, harassed Barisone for purposes of causing him severe and significant emotional distress **by claiming that she had unlawful eves-dropping** of Barisone’s residence and/or business for purposes of stalking him and Barisone’s family members.

See *Original Pleading* at page 14, paragraph 12 (bold supplied), **Reply Exhibit 1** to This Reply Certification. So, my client’s *Original Pleading* put KANAREK on notice from the start that she was a defendant in this matter based upon allegations of actual or threatened eves dropping. Id.

7. I had to plead that paragraph “12” in that manner, because in March 2020 I did not know whether KANAREK had actually bugged BARISONE’s living spaces or, alternatively, had just been claiming to have bugged those spaces.

8. During the criminal trial in *New Jersey v. Michael Barisone* (the “Criminal Trial”), in February 2022, the defense presented testimony demonstrating that BARISONE had had his property swept for bugging devices back in July 2019, and that the sweeping had failed to find any bugging devices.

9. Also during the Criminal Trial, the defense was able to elicit from KANAREK,

under oath, for the first time, that she had participated in the use of bugging devices on BARISONE's property, which recording were made outside of KANAREK's presence.

10. Accordingly, it was not until April 2022 that the defense knew that KANAREK had actually bugged conversations at Sweet Grass Farms, in the days leading up to the shooting incident.

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: October 30, 2022

REPLY EXHIBIT 1

01013

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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>	:	

ANSWER OF DEFENDANT MICHAEL BARISONE, WITH AFFIRMATIVE DEFENSES, COUNTERCLAIM, CROSS-CLAIMS, JURY DEMAND, ETC.

MICHAEL BARISONE (“Barisone”), through his attorneys, Deininger & Associates, LLP, for his Answer to the Complaint, says the following:

FACTS COMMON TO ALL COUNTS

1. Admitted.
2. Barisone is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and leaves plaintiff to her proofs.
3. Admitted.
4. Denied.
5. Denied.
6. Denied.
7. Denied.
8. Admitted.

9. Barisone is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and leaves plaintiff to her proofs.

10. Barisone is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and leaves plaintiff to her proofs.

11. Barisone is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and leaves plaintiff to her proofs.

COUNT ONE

(Strict Liability)

12. Barisone repeats and realleges each of his prior responses as though set forth at length herein.

13. Barisone admits that he resided at the farm and was operating his business there; but otherwise denies the allegations which include legal conclusions as to which no responses is required.

14. Barisone admits that he resided at the farm and was operating his business there; but otherwise denies the allegations which include legal conclusions as to which no responses is required.

15. Denied.

16. Denied.

WHEREFORE, MICHAEL BARISONE demands judgement in his favor, and against PLAINTIFF LAUREN KANAREK, dismissing her claims with prejudice, and awarding MICHAEL BARISONE such other relief as may be just and proper.

COUNT TWO

(Negligence)

17. Barisone repeats and realleges each of his prior responses as though set forth at length herein.

18. Barisone admits that he resided at the farm and was operating his business there; but otherwise denies the allegations which include legal conclusions as to which no responses is required.

19. Barisone admits that he resided at the farm and was operating his business there; but otherwise denies the allegations which include legal conclusions as to which no responses is required.

20. Denied.

21. Denied.

22. Denied.

WHEREFORE, MICHAEL BARISONE demands judgement in his favor, and against PLAINTIFF LAUREN KANAREK, dismissing her claims with prejudice, and awarding MICHAEL BARISONE such other relief as may be just and proper.

COUNT THREE

(Negligence as to Barisone)

23. Barisone repeats and realleges each of his prior responses as though set forth at length herein.

24. Denied.

25. Denied.

WHEREFORE, MICHAEL BARISONE demands judgement in his favor, and against PLAINTIFF LAUREN KANAREK, dismissing her claims with prejudice, and awarding MICHAEL BARISONE such other relief as may be just and proper.

COUNT FOUR

(Assault and Battery as to Barisone)

26. Barisone repeats and realleges each of his prior responses as though set forth at length herein.

27. Denied.

28. Denied.

WHEREFORE, MICHAEL BARISONE demands judgement in his favor, and against PLAINTIFF LAUREN KANAREK, dismissing her claims with prejudice, and awarding MICHAEL BARISONE such other relief as may be just and proper.

COUNT FIVE

(Negligence as to Ruth Cox, Etc.)

29. Barisone repeats and realleges each of his prior responses as though set forth at length herein.

30. The allegations in the paragraph do not pertain to Barisone and, therefore, no response is required. Otherwise, denied.

31. The allegations in the paragraph do not pertain to Barisone and, therefore, no response is required. Otherwise, denied.

32. The allegations in the paragraph do not pertain to Barisone and, therefore, no response is required. Otherwise, denied.

33. The allegations in the paragraph do not pertain to Barisone and, therefore, no response is required. Otherwise, denied.

WHEREFORE, MICHAEL BARISONE demands judgement in his favor, and against PLAINTIFF LAUREN KANAREK, dismissing her claims with prejudice, and awarding MICHAEL BARISONE such other relief as may be just and proper.

COUNT SIX

(Negligent Infliction of Emotional Distress)

34. Barisone repeats and realleges each of his prior responses as though set forth at length herein.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

WHEREFORE, MICHAEL BARISONE demands judgement in his favor, and against PLAINTIFF LAUREN KANAREK, dismissing her claims with prejudice, and awarding MICHAEL BARISONE such other relief as may be just and proper.

COUNT SEVEN

(Intentional Infliction of Emotional Distress)

40. Barisone repeats and realleges each of his prior responses as though set forth at length herein.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

WHEREFORE, MICHAEL BARISONE demands judgement in his favor, and against PLAINTIFF LAUREN KANAREK, dismissing her claims with prejudice, and awarding MICHAEL BARISONE such other relief as may be just and proper.

COUNT EIGHT

(Punitive Damages)

47. Barisone repeats and realleges each of his prior responses as though set forth at length herein.

48. Denied.

49. Denied.

WHEREFORE, MICHAEL BARISONE demands judgement in his favor, and against PLAINTIFF LAUREN KANAREK, dismissing her claims with prejudice, and awarding MICHAEL BARISONE such other relief as may be just and proper.

COUNT NINE

[Not Labeled]

50. Barisone repeats and realleges each of his prior responses as though set forth at length herein.

51. The allegations in the paragraph do not pertain to Barisone and, therefore, no response is required. Otherwise, denied.

52. The allegations in the paragraph do not pertain to Barisone and, therefore, no response is required. Otherwise, denied.

WHEREFORE, MICHAEL BARISONE demands judgement in his favor, and against PLAINTIFF LAUREN KANAREK, dismissing her claims with prejudice, and awarding MICHAEL BARISONE such other relief as may be just and proper.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

The Complaint fails to state claims and/or causes of action upon which relief could be granted.

SECOND SEPARATE DEFENSE

Defendant was not competent at the time of the alleged incident and, as a result, should have no liability to Plaintiff for her injuries, by reason of Barisone's mental state and/or condition which included but was not limited to battered-person-syndrome cause by Plaintiff's campaign of emotional battery against Defendant and/or persons in his care.

THIRD SEPARATE DEFENSE

Alternatively, Plaintiff's claims and/or prayers for relief are barred by application of principles of self-defense and defense of others, including adults, teenagers, children and/or horses using the farm.

FOURTH SEPARATE DEFENSE

Injuries and damages sustained by the Plaintiff are the result, in whole and/or material part, of the Plaintiff's own acts and omissions, including but not limited Plaintiff's acts and omission which constituted the root cause of an alleged injury, and/or Plaintiff's negligent, reckless, and/or intentional failure to avoid injuries she sustained.

FIFTH SEPARATE DEFENSE

Plaintiff's claims are barred by her own intervening intentional, reckless, malicious, and/or negligent acts, actions and/or omissions.

SIXTH SEPARATE DEFENSE

Plaintiff's claims and damages are barred, and/or must be reduced, by application of principles of comparative negligence and/or comparative fault, including but not limited to the law as expressed under the New Jersey Comparative Negligence Act.

SEVENTH SEPARATE DEFENSE

In the event that it is determined that this Defendant has liability to Plaintiff for her injuries and/or damages (which liability is denied), this Defendant is entitled to a credit, set off, and/or other reduction with respect to any and all collateral source payments Plaintiff received as a result of the incident(s), in accordance with N.J.S.A. § 2A:15-97.

EIGHTH SEPARATE DEFENSE

Plaintiff's claims are barred by application of the legal doctrines and principles, including but not limited to the estoppel, release, waiver, and/or binding admissions against interest.

NINTH SEPARATE DEFENSE

Plaintiff's alleged injuries and damages are the result of the acts and omissions of persons or entities other than the Defendant, including but not limited to acts and omissions by Plaintiff and/or third-party persons or entities over which Defendant had no control.

TENTH SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, by Plaintiff's negligence, neglect, and/or failure to act reasonably, timely, and/or appropriately.

ELEVENTH SEPARATE DEFENSE

Plaintiff's claimed injuries and damages, in whole or in part, are the direct and proximate result and consequence of Plaintiff's unreasonable failure to take advantage of preventative or corrective opportunities; her unreasonable failure to avoid harm; and/or her unreasonable failure to mitigate injury and damages.

TWELFTH SEPARATE DEFENSE

All or some of Plaintiff's claims are barred because the Defendant owed no duty to Plaintiffs, and/or because the Defendant was excused from such duties based upon Plaintiff's acts and omissions.

THIRTEENTH SEPARATE DEFENSE

Any duty owed to the Plaintiff by the Defendant was discharged and/or excused.

FOURTEENTH SEPARATE DEFENSE

Plaintiffs' alleged injuries and damages were not proximately caused by any act or

omission of the Defendant.

FIFTEENTH SEPARATE DEFENSE

Plaintiffs' claims are barred and/or any recovery must be reduced, based upon the doctrines of offset, recoupment, and/or Plaintiffs' duties to the Defendant.

SIXTEENTH SEPARATE DEFENSE

Plaintiff assumed the risk of conduct for the incident out of which this Complaint has arisen.

SEVENTEENTH SEPARATE DEFENSE

Plaintiff was unlawfully at the premises where the incident occurred, making unlawful use of it at the time the incident occurred, and therefore should be barred from recovery.

EIGHTEENTH SEPARATE DEFENSE

Defendant reserves the right to amend this answer to assert additional separate defenses and/or modify or withdraw those already asserted.

WHEREFORE, MICHAEL BARISONE demands judgement in his favor, and against PLAINTIFF LAUREN KANAREK, dismissing her claims with prejudice, and awarding MICHAEL BARISONE such other relief as may be just and proper.

DEININGER & ASSOCIATES, LLP

Attorneys for Barisone



By: _____

Christopher L. Deininger, Esq.

Dated: February 29, 2020

ANSWER TO CROSSCLAIMS

MICHAEL BARISONE, by and through his attorneys Deininger & Associates, LLP, as and for his answer to any and all crossclaims asserted against him, states as follows:

1. Defendant denies all cross claims, including but not limited to all crossclaims for contribution and indemnification, that have been or will be asserted against him.

2. Defendant incorporates all of his separate defenses to the complaint as separate and affirmative defenses to all crossclaims that have been or will be asserted against him.

WHEREFORE, MICHAEL BARISONE demands judgement in his favor, and against any and all CROSS-CLAIM PLAINTIFFS, dismissing their claims with prejudice, and awarding MICHAEL BARISONE such other relief as may be just and proper.

DEININGER & ASSOCIATES, LLP
Attorneys for Barisone



By: _____
Christopher L. Deininger, Esq.

Dated: February 29, 2020

CROSSCLAIMS FOR CONTRIBUTION & INDEMNIFICATION

1. MICHAEL BARISONE hereby makes a claim for contribution pursuant to the Joint Tortfeasors Contribution Law, N.J.S.A. 2A:53-1 et seq., against any and all co-defendants. Alternatively, MICHAEL BARISONE contends that in the event that proofs develop in discovery or at trial to establish a basis for liability on the part of any other defendant, and such defendant or defendants enter into a settlement agreement, in whole or in part with plaintiff, then MICHAEL

BARISONE asserts a claim for credit reducing the amount of any judgment in favor of Plaintiff against him to reflect the degree of fault to the settling defendants pursuant to Young v. Latta, 123, N.J. 584(1991).

2. Without admitting any liability herein, MICHAEL BARISONE claims complete common law and contractual indemnification from all co-defendants.

WHEREFORE, MICHAEL BARISONE demands judgement in his favor, and against any and all co-defendants, jointly and severally, and awarding him damages for contribution and/or indemnification, including but not limited to attorney’s fees, litigation expenses, and costs of suit, and awarding him such other relief as may be just and proper.

DEININGER & ASSOCIATES, LLP
Attorneys for Barisone



By: _____
Christopher L. Deininger, Esq.

Dated: February 29, 2020

COUNTERCLAIM AGAINST PLAINTIFF

Defendant MICHAEL BARISONE (“Barisone”), by and through his attorneys, Deininger & Associates, LLP., as and for his Counterclaim against plaintiff LAUREN KANAREK (“Kanarek”), says as follow:

FACTS COMMON TO ALL COUNTS

1. At all times relevant hereto, Barisone was and remains a resident of Morris County, New Jersey.

2. Upon information and belief, Kanarek is not a resident of Morris County, New Jersey but, rather, lives a transient lifestyle in which she resides in many locations including, but not limited to, from time to time, Morris County, New Jersey.

3. Kanarek has a criminal history which, upon information and belief, includes a charge and/or conviction for criminal assault.

4. Kanarek has a history of illegal drug use including, upon information and belief, heroin.

5. Kanarek has a history of tortious and/or criminal, antisocial behavior, including but not limited to stalking; bullying; threats of harm, injury, and mayhem against persons she chooses to target; threats against public figures; gaslighting; fraud; false reports; and other behaviors which are harmful, injurious, and destructive to the people she victimizes.

6. Upon information and belief, there is a dozen or more families, persons and businesses in the United States who were victimized by Kanarek through abuse, stalking, crime, and/or other forms of serious abuse, prior to August 2019 when Kanarek turned her sights upon Barisone.

7. At all times relevant hereto, Kanarek was and remains a significant user of various forms of social media including Facebook through which, upon information and belief, Kanarek has more than 10,000 Facebook "Friends," messenger communication contacts, chats, and like online activities (collective, whether on Facebook and/or other platforms, "Facebook").

8. For purposes of causing personal injury to Barisone, his business, injury to his good name and reputation, and/or injury to the like interests of Barisone's girlfriend and other people close to Barisone (collectively, the "Barisone Family"), Kanarek perpetrated a campaign against Barisone and the Barisone Family, which included, without limitation, Kanarek's utilization of Facebook to publish, promote, and disseminate statements, accusations, and falsehoods that were explicitly

threatening; explicitly and/or implicitly threatening injury and violence; causing the subject to be stalked; causing the subject to be bullied; harmful; deceptive; deceitful; false; causing the subject serious and severe emotional pain and distress; harming the subject's good name and/or reputation; causing the subject to be "destroyed"; harming the subject's family and friends; and/or that otherwise were grossly inappropriate, harmful, and/or injurious.

9. At all times relevant hereto, Kanarek's purpose was to cause injury, pain, distress, and upset of a severe and significant nature.

10. At all times relevant hereto, Kanarek's acts, actions and omissions were perpetrated maliciously, intentionally, recklessly and/or negligently.

11. At all times relevant hereto, Kanarek's wrongful acts, actions, and omissions included, for example, making false accusation of child abuse, false accusations of animal abuse, false accusation of insurance fraud, false reports to agencies providing child-protective-services, and other falsehoods through which her intention was to cause harm.

12. For example, Kanarek harassed Barisone by utilizing technology to "bug" (i.e., unlawfully eves drop) upon private conversation Barisone was having; and/or, alternatively, harassed Barisone for purposes of causing him severe and significant emotional distress by claiming that she had unlawful eves-dropping of Barisone's residence and/or business for purposes of stalking him and Barisone Family members.

13. As another example, Kanarek threatened physical violence and harm by and through her internet posting that her "weapons [were] hot" (a phrase indicating that she had a firearm, loaded with ammunition, and its chamber hot) and she was coming for Barisone and/or Barisone Family members.

14. At the time she made that threat, Kanarek was known to be familiar with firearms, to have claimed and/or actual access to a firearm, and to have used a firearm in the past for purposes of shot at her boyfriend and/or his motorcycle while she was in a fit of rage.

15. At all times relevant hereto, Kanarek had a duty to Barisone and the Barisone Family members to refrain from stalking, harming, harassing, threatening, threatening-with-violence, demeaning, injuring, and/or damaging the persons Kanarek was victimizing (including, most notably, Barisone).

16. At all times relevant hereto, Kanarek materially breach her duty(ies) to Barisone and the Barisone Family members, through the acts, actions, and omissions referenced above.

17. As a direct and proximate result and consequence of Kanarek's wrongful acts, actions, and omissions, Kanarek cause injury to Barisone including but not limited to: (a) placing him in fear for his life and physical wellbeing; (b) placing him in fear for the lives and physical wellbeing of Barisone Family members; (c) placing him in fear for the lives and physical wellbeing of Barisone's business staff, clients and the horses owned and/or boarded by Barisone at his dressage farm; (d) emotional distress, including emotional distress with physical manifestations; (e) traumatic stress; (f) emotional breakdown; (g) post-traumatic stress; (h) battered-person-syndrome; (i) psychiatric ailments and eventual breakdown; (j) destruction of his state of mental peace, tranquility, enjoyment and stability; (k) injury to his business; (l) injury mental state; (m) unlawful invasion of his privacy; (n) property damage; (o) irreparable harm; (p) financial harm; (q) physical harm; and (r) other injuries.

COUNTERCLAIM COUNT 1
(Negligent Infliction of Emotional Distress)

18. Barisone repeats and realleges the all prior allegations of this Counterclaim as though set forth at length herein.

19. Kanarek was negligent towards Barisone, and breached duties owed to him, including but not limited to duties identified above.

20. As a direct, proximate and foreseeable result of Kanarek's negligence and/or carelessness, Kanarek cause Barisone to be injured by and through severe emotional distress.

21. As a direct, proximate and foreseeable result of Kanarek's negligent acts, actions, and omissions, Barisone sustained serious and severe personal injuries, disability, pain and suffering, emotional distress, has sustained past and future lost income, and other injuries both personal and business in nature.

WHEREFORE, MICHAEL BARISONE demands judgment against LAUREN KANAREK for compensatory damages, punitive damages, interest, costs of suit; preliminary and permanent injunctive relief in the form of restraints barring LAUREN KANAREK from making posts about or referencing Barisone on the World Wide Web, and/or through any and all forms of social media, and/or otherwise stalking, harassing, and/or seeking to cause harm or injury to Barisone; and such other relief this Court deems just and proper.

COUNTERCLAIM COUNT 2
(Intentional Infliction of Emotional Distress)

22. Barisone repeats and realleges the all prior allegations of this Counterclaim as though set forth at length herein.

23. Kanarek has a lengthy history of antisocial cyber activities, including but not limited to cyber stalking; cyber threats of harm, injury, and mayhem against persons she chooses to target; cyber threats against public figures; and other behaviors which are harmful, injurious, and destructive to the people she victimizes.

24. There is a dozen or more families, persons and businesses in the United States who were victimized by Kanarek through abuse, stalking, crime, and/or other forms of serious abuse, prior to August 2019 when Kanarek turned her sights upon Barisone.

25. Kanarek's extensive history of cyber-abuse against her numerous victims establishes a pattern, practice, and modes operandi of Kanarek's intentional, tortious, harmful conduct against Barisone and others.

26. Kanarek intentionally inflicted severe emotional distress upon Barisone; maliciously inflicted severe emotional distress upon Barisone; recklessly inflicted severe emotional distress upon Barisone; and/or knew or otherwise should have known that emotional distress was the likely result of her acts, actions, and omissions directed at Barisone, Barisone Family members, Barisone's business, and/or the persons who associated with Barisone through his work in the field of dressage.

27. As a direct, proximate, and foreseeable result of Kanarek's conduct, Barisone suffered extreme emotional distress and harm.

28. Kanarek's conduct was extreme and/or outrageous.

29. Kanarek's conduct was the cause of Barisone's emotional distress.

30. The emotional distress Barisone suffered is severe.

31. As a direct, proximate and foreseeable result of Kanarek's acts, actions and/or omissions, Kanarek cause Barisone to be injured by and through severe emotional distress.

32. As a direct, proximate and foreseeable result of Kanarek's acts, actions, and omissions, Barisone sustained serious and severe personal injuries, disability, pain and suffering, emotional distress, has sustained past and future lost income, and other injuries both personal and business in nature.

WHEREFORE, MICHAEL BARISONE demands judgment against LAUREN KANAREK for compensatory damages, punitive damages, interest, costs of suit; preliminary and permanent injunctive relief in the form of restraints barring LAUREN KANAREK from making posts about or referencing Barisone on the World Wide Web, and/or through any and all forms of social media, and/or otherwise stalking, harassing, and/or seeking to cause harm or injury to Barisone; and such other relief this Court deems just and proper.

COUNTERCLAIM COUNT 3
(Negligence)

33. Barisone repeats and realleges the all prior allegations of this Counterclaim as though set forth at length herein.

34. As stated previously, Kanarek had duties to Barisone which she breached materially, causing Barisone injury and damages.

35. For example, in or about the beginning of August 2019, Kanarek knew, was aware of, and/or should have known, that her harassment of Barisone and/or Barisone Family members had caused Barisone to suffer a mental, psychiatric, and/or emotional breakdown.

36. In or about the beginning of August 2019, Kanarek knew, was aware of, and/or should have known, that due to Barisone's injured mental, psychiatric, and/or emotional state, Kanarek's continued harassment of and caustic interaction with Barisone was more likely than not to devolve into a confrontation involving a significant risk of physical injury and/or harm to the herself, Barisone, and/or other persons on the farm.

37. One of Kanarek's duties was Kanarek's duty care to cease and desist in her harassment, confrontation, and/or other caustic interactions with Barisone.

38. As a direct, proximate and foreseeable result of Kanarek's negligence and/or carelessness, Kanarek cause Barisone to be injured, pain, suffering, and damages.

39. As a direct, proximate and foreseeable result of Kanarek's negligent acts, actions, and omissions, Barisone sustained serious and severe personal injuries, pain and suffering, emotional distress, has sustained past and future lost income, and other injuries both personal and business in nature.

WHEREFORE, MICHAEL BARISONE demands judgment against LAUREN KANAREK for compensatory damages, punitive damages, interest, costs of suit; preliminary and permanent injunctive relief in the form of restraints barring LAUREN KANAREK from making posts about or referencing Barisone on the World Wide Web, and/or through any and all forms of social media, and/or otherwise stalking, harassing, and/or seeking to cause harm or injury to Barisone; and, such other relief this Court deems just and proper.

DEININGER & ASSOCIATES, LLP
Attorneys for Barisone



By: _____
Christopher L. Deininger, Esq.

Dated: February 29, 2020

NOTICE OF ALLOCATION

Pursuant to R. 4:7-5, this answering defendant hereby advised that if any co-defendants presently named or hereafter named, who are not represented by this law firm, settle the within matter prior to the conclusion of trial, the liability of any settling co-defendant(s) shall remain at issue and the defendants shall seek an allocation of the percentage of fault, negligence, and/or other liability by

the finder of fact against each and every settling co-defendant and/or a credit in favor of this answering defendants consistent with such allocation.

DEININGER & ASSOCIATES, LLP
Attorneys for Barisone

 

By: _____
Christopher L. Deininger, Esq.

Dated: February 29, 2020

JURY DEMAND

This Defendant demands a trial by jury as to all claims, issues, and causes of action arising in this civil action.

DEININGER & ASSOCIATES, LLP
Attorneys for Barisone

 

By: _____
Christopher L. Deininger, Esq.

Dated: February 29, 2020

DEMAND FOR STATEMENT OF DAMAGES

Pursuant to the Rules of this Court, R. 4:5-2, the Defendant / Counterclaimant demand that Plaintiff provide a statement as to her damages, within five (5) days.

DEININGER & ASSOCIATES, LLP
Attorneys for Barisone

 

By: _____
Christopher L. Deininger, Esq.

Dated: February 29, 2020

DESIGNATION OF TRIAL COUNSEL

Christopher L. Deininger, Esq., is hereby designated as trial counsel for Defendants / Counterclaimants.

DEININGER & ASSOCIATES, LLP
Attorneys for Barisone



By: _____
Christopher L. Deininger, Esq.

Dated: February 29, 2020

CERTIFICATION

I hereby certify that there are no other pending actions between or among interested parties which presently involve the subject matter of this action. I further certify that there are other pending action related to certain transactions and occurrences referenced in this action, namely *Sweet Grass Farms, LLC et al. v. Michael Barisone et al.*, pending in New Jersey Superior Court, Morris County, Chancery Division, and *State of New Jersey v. Michael Barisone*, pending in New Jersey Superior Court, Morris County, Criminal Division. This matter is still under investigation by the undersigned. I further certify that the matter in controversy is not the subject of any

arbitration proceedings. I 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.

DEININGER & ASSOCIATES, LLP
Attorneys for Barisone



By: _____
Christopher L. Deininger, Esq.

Dated: February 29, 2020

CERTIFICATION UNDER R. 4:5-1(b)(3)

I certify that confidential personal identifying information has been removed from the documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

DEININGER & ASSOCIATES, LLP
Attorneys for Barisone



By: _____
Christopher L. Deininger, Esq.

Dated: February 29, 2020

CERTIFICATION OF SERVICE

I, CHRISTOPHER L. DEININGER, ESQ., certify under penalty of perjury, that on October 30, 2022, I caused true and accurate copies of the defendants' **Reply Letter Brief and Reply Supporting Certifications (with exhibit)**, in connection with BARISONE's pending **Motion For Leave to File Amended Pleading**, 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.