

01013

**Christopher L. Deininger, Esq., N.J. Bar ID No. 004271996**  
**DEININGER & ASSOCIATES, LLP**  
**415 Route 10, Suite 1**  
**Randolph, New Jersey 07869**  
**(973) 879-1610; Fax (973) 361-1241**  
*Attorneys for Barisone*

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

**NOTICE OF MOTION SEEKING SANCTIONS &  
OTHER RELIEF AGAINST NON-PARTY KIRBY KANAREK**

TO:

KIRBY KANAREK  
4 Wilshire Drive  
Livingston, NEW JERSEY 07039

ON NOTICE TO:

G. A. Stone, Esq.  
Kirsch, Stone & Morgan  
50 Park Place, Suite 401  
Newark, NJ 07102

Mark Silver, Esq.  
Schenck Price  
220 Park Avenue, P.O. Box 991  
Florham Park, New Jersey 07932

John P. Graves, Esq.  
Law Offices of John P. Graves  
18 Macculloch Ave.  
Morristown, NJ 07960

Lane M. Ferdinand, Esq.  
Law Offices of L.M. Ferdinand  
505 Morris Ave.  
Springfield, NJ 07081

**PLEASE TAKE NOTICE** that on February 3, 2023, at 9:00 in the morning or as soon thereafter counsel can be heard, the undersigned attorney for defendant-counterclaimant

MICHAEL BARISONE shall move pursuant to the New Jersey Court Rules, including but not limited to R. 1:9-5, for an Order:

- (a) Compelling non-party witness KIRBY KANAREK in to appear for a deposition to testify in the above-captioned action concerning the subject matter(s) referenced in the *REVISED SUBPOENA DUCES TECUM* served upon her;
- (b) Compelling non-party witness KIRBY KANAREK forthwith to deliver to the undersigned true, accurate, and complete copies of each and every transcription of conversation recorded at Sweet Grass Farm, to the fullest and most complete extent that such transcripts are in the witness's possession, custody and/or control;
- (c) Holding non-party witness KIRBY KANAREK in contempt of Court based upon her failure to appear and/or produce records in response to the *REVISED SUBPOENA DUCES TECUM*; and
- (d) Granting in favor of BARISONE such other relief which is determined to be just, proper, and/or appropriate.

**PLEASE TAKE FURTHER NOTICE** that in support of this motion, the moving parties shall rely upon the sworn certifications (together with any and all exhibits thereto) and letter brief submitted herewith.

**PLEASE TAKE FURTHER NOTICE** that pursuant to R. 1:6-2(a), a copy of the proposed form of Order is submitted herewith, and that this motion shall be deemed uncontested unless

responsive papers are timely filed and served within the time period(s) prescribed under the Court Rules.

**DEININGER & ASSOCIATES, LLP**  
*Attorneys for Barisone*

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

By: \_\_\_\_\_  
Christopher L. Deininger, Esq.

Dated: January 18, 2023



01013

**Christopher L. Deininger, Esq., N.J. Bar ID No. 004271996**  
**DEININGER & ASSOCIATES, LLP**  
**415 Route 10, Suite 1**  
**Randolph, New Jersey 07869**  
**(973) 879-1610; Fax (973) 361-1241**  
*Attorneys for Barisone*

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

**ORDER ON BARISONE’S MOTION SEEKING  
SANCTIONS & OTHER RELIEF AGAINST NON-PARTY KIRBY KANAREK**

**THIS MATTER** having been brought before the Court by motion made by Deininger & Associates, LLP, attorneys for defendant-counterclaim-plaintiff MICHAEL BARISONE (“Barisone”) for an Order pursuant to the New Jersey Court Rules, including but not limited to R. 1:9-2, (a) Compelling non-party witness KIRBY KANAREK in to appear for a deposition to testify in the above-captioned action concerning the subject matter(s) referenced in the *SUBPOENA DUCES TECUM* served upon her, (b) Compelling non-party witness KIRBY KANAREK forthwith to deliver to the undersigned true, accurate, and complete copies of each and every transcription of conversation recorded at Sweet Grass Farm, to the fullest and most complete extent that such transcripts are in the witness’s possession, custody and/or control, (c) Holding non-party witness KIRBY KANAREK in contempt of Court based upon her failure to appear and/or produce records in response to the *REVISED SUBPOENA DUCES TECUM*; and (d) Granting in favor of

BARISONE such other relief which is determined to be just, proper, and/or appropriate; and the Court having considered the papers submitted, the opposition thereto, and the oral arguments of counsel, if any; and for good cause having been shown;

**IT IS** on this \_\_\_\_\_ day of \_\_\_\_\_, 2023,

**ORDERED** that non-party witness KIRBY KANAREK shall be and hereby is compelled to appear for a deposition to testify in the above-captioned action concerning the subject matter(s) referenced in the *REVISED SUBPOENA DUCES TECUM*, within \_\_ days of the date of this Order; and it is further

**ORDERED** that non-party witness KIRBY KANAREK shall be and hereby is compelled gather true, accurate, and complete copies of each and every transcription of conversation recorded at Sweet Grass Farm, to the fullest and most complete extent that such transcripts are within her possession, custody and/or control (including but not limited to records in the possession of plaintiff and/or her father), and deliver those records to the law offices of Deininger & Associates, LLP, on or before \_\_\_\_\_, 2023; and it is further

**ORDERED** that non-party witness KIRBY KANAREK shall be and hereby is held in contempt of Court based upon her failure to appear and/or produce records in response to the *REVISED SUBPOENA DUCES TECUM* on or before December 15, 2022; and it is further

**ORDERED** that a copy of this Order shall be served upon all parties within seven (7) days of the date hereof.

HON. \_\_\_\_\_, J.S.C.

\_\_\_\_ Opposed  
\_\_\_\_ Unopposed



3. On numerous occasions, plaintiff and her mother have claimed, publicly and in other contexts, to have possession, custody and control of transcriptions of those audio recordings.

4. Indeed, I have personally seen a small excerpt from one such transcript in SafeSport records of plaintiff's complaint against Barisone, which were produced in this action by plaintiff. I am ready, willing and able to provide the SafeSport materials to the Court for *in camera* review, should the need arise in connection with my motion. I have not attached those records here based upon my understanding that the records could be subject to some type of confidentiality restriction imposed by SafeSport, which I would not wish to violate by making the records part of the public record on this motion.

5. Annexed hereto as **Exhibit A** is a true and correct copy of the *REVISED* SUBPOENA DUCES TECUM which I caused to be served, by personal service of process, upon KIRBY KANAREK, calling for her to appear and produce the transcripts to my law firm in this action on December 15, 2022.

6. Annexed hereto as **Exhibit B** is a true and correct copy of the *Certification of Service* issued by GUARANTEED SUBPOENA evidencing personal service of process of the *REVISED* SUBPOENA DUCES TECUM upon KIRBY KANAREK, on November 29, 2022, together with the appropriate payment of a witness fee.

7. Annexed hereto as **Exhibit C** is a true and correct copy of this Court's prior Order and *Statement of Reasons*, in which this Court directed Kirby Kanarek that she had "ten (10) days upon receipt [of my revised subpoena] to comply." *See Statement of Reasons* at page 6.

8. The *REVISED* SUBPOENA DUCES TECUM was timely and properly served upon KIRBY KANAREK, whereupon she was obligated to appear and/or produce records on December 15, 2022, in the above-captioned action.



9. As of the date of this certification, KIRBY KANAREK has failed to appear, to produce records, and/or to otherwise respond to my *REVISED* SUBPOENA DUCES TECUM.

10. Indeed, as she did with my first subpoena to her, Kirby Kanarek has ignored and disregarded my *REVISED* SUBPOENA DUCES TECUM, as though she thinks she is above the law.

11. Based upon the foregoing, it is Barisone's position that KIRBY KANAREK is in contempt of the *REVISED* SUBPOENA DUCE TECUM, necessitating this motion.

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.



---

CHRISTOPHER L. DEININGER, ESQ.

Dated: January 18, 2023

**EXHIBIT A**



2. With respect to the audio recordings called for production in paragraph “1” above (collectively, the “Audio Recordings”), each and every transcription of the Audio Recordings in your possession, custody and/or control, which document or purport to document sound recorded on the Premises, including but not limited to professionally-prepared transcriptions, electronically-generated transcriptions, and/or transcriptions prepared by you and/or any other persons not licensed or certified as a professional court reporter;
3. Each and every video recording in your possession, custody and/or control, containing, and/or purporting to contain, video/photographic record of events taking place on the Premises, including but not limited to video/photographic records made in the farm house, the barn/stable, the club room, the garages, the arena, the locker area, and/or in any other area, structure, and/or space (including outdoor spaces) located on the Premises;
4. With respect to the video/photographic records called for production in paragraph “3” above (collectively, the “Video Recordings”), each and every transcription of the Video Recordings in your possession, custody and/or control, which document or purport to document events taking place on the Premises, including but not limited to professionally-prepared transcriptions, electronically-generated transcriptions, and/or transcriptions prepared by you and/or any other persons not licensed or certified as a professional court reporter;
5. Any and all electronic communications (including but not limited to emails, text messages, and/or “shared” files) between or among Kirby Kanarek, Lauren Kanarek, Jonathan Kanarek, and/or Robert Goodwin, that were sent, received, transmitted and/or exchanged, during the time period from January 2019 through September 2019, that concern any and/or all of the following subjects:
  - a. Barisone;
  - b. Lauren Kanarek’s disputes with Barisone;
  - c. Mary Haskins and/or her children;
  - d. Video recording, video recording files, and/or video recording activities and/or video recording equipment;
  - e. Audio recordings, audio recording files, and/or audio recording activities and/or audio recording equipment;
  - f. The Audio Recordings called for production by this Subpoena; and/or
  - g. The Video Recordings called for production by this Subpoena.
6. Any and all other documents, records, files, and/or electronic records evidencing and/or reflecting the creation, existence, preservation, enhancement, and/or distribution of Audio Recordings and/or Video Recordings called for production by this Subpoena.

**\*CERTIFIED RECORDS WILL BE ACCEPTED IN LIEU OF APPEARANCE.**

Please be advised that you may not produce or release any of the documents requested by this Subpoena before December 15, 2022. Furthermore, if you are notified that a motion to quash this Subpoena has been filed, you may not produce or release the documents required until either ordered by the Court, or all parties consent thereto.

Failure to appear according to the command of this Subpoena will subject you to a penalty, damages in a civil suit and punishment for contempt of Court.

**DEININGER & ASSOCIATES, LLP**

*Attorneys for Defendant-  
Counterclaim-Plaintiff Barisone*

By: /s/ Christopher L. Deininger  
Christopher L. Deininger, Esq.

/s/ Michelle M. Smith  
Michelle M. Smith  
Clerk of the Superior Court

Dated: November 17, 2022

cc:

Andrew L. O'Connor, Esq.  
Nagel Rice LLP  
103 Eisenhower Parkway  
Roseland, NJ 07068

Mark Silver, Esq.  
Schenck Price  
220 Park Avenue, P.O. Box 991  
Florham Park, New Jersey 07932

John P. Graves, Esq.  
Law Offices of John P. Graves  
18 Macculloch Ave.  
Morristown, NJ 07960

Lane M. Ferdinand, Esq.  
Law Offices of L.M. Ferdinand  
505 Morris Ave.  
Springfield, NJ 07081

**EXHIBIT B**



20221128113936

Superior Court Of New Jersey

MORRIS Venue

Docket Number: MRS L 2250 19

LAUREN KANAREK

Plaintiff

VS

MICHAEL BARISONE, ET AL

Defendant

Attorney: CHRISTOPHER L. DEININGER, ESQ.

CERTIFICATION OF SERVICE

I, DAVID TORRES, On Date/Time: 11/29/2022 8:35 AM

being over the age of 18, and in accordance with the prevailing rules, served the attached:

SUBPOENA DUCES TECUM

by delivering a copy thereof to:

KIRBY KANAREK

accepted by:

KIRBY KANAREK

title:

SELF

hereby described as being of:

SEX: F AGE: 65+ HEIGHT: 5'4"-5'8" WEIGHT: 100-130 LBS. SKIN: WHITE HAIR: BROWN OTHER:

at HOME address:

4 WILSHIRE DRIVE LIVINGSTON NJ 07039

An attendance and mileage fee of \$4.00 was attached as allowed by law.

LT BROWNISH BLONDE HAIR

To Be Used Where Electronic Signature Not Available

Served Data:

Subscribed and Sworn to me this

day of , 20

Notary Signature:

Name of Notary Commission Expiration

DocuSign Court Approved E-Signature

I, DAVID TORRES,

was at the time of service a competent adult, over the age of 18 and not having direct interest in the litigation. I declare under penalty of perjury that the foregoing is true and correct.

DAVID TORRES

Signature of Process Server

11/29/2022 Date

Name of Private Server: DAVID TORRES Address: 2009 Morris Avenue UNION, NJ 07083 Phone: (800) 672-1952

**EXHIBIT C**



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,	:	ORDER AND REASONS
	:	
<i>Defendants,</i>	:	

BEFORE THE COURT is Defendant Barisone’s Motion to Hold in Contempt, Motion to Compel, and Motion to Amend Answers. Also pending before the Court is Defendant Sweet Grass Farms’ Motion to Hold in Contempt and Motion to Compel. Also pending is Plaintiff Cross-Motion to Quash and Cross-Motion for a Protective Order. The Court, having considered the matter and any opposition; and after hearing orgal arguments of counsel; and for the reasons set forth in the attached Statement of Reasons; and for good cause shown;

IT IS on this 14<sup>th</sup> day of November, 2022, **ORDERED** as follows:

1. Defendant Barisone’s Motion to Hold in Contempt is hereby **DENIED**;
2. Defendant Barisone’s Motion to Compel is hereby **DENIED**;
3. Defendant Barisone’s Motion to Amend is hereby **GRANTED**;
4. Defendant Sweet Grass Farm’s Motion to Hold in Contempt is hereby **DENIED**;
5. Defendant Sweet Grass Farm’s Motion to Compel is hereby **DENIED**;
6. Plaintiff’s Cross-Motion to Quash is hereby **GRANTED**; and
7. Plaintiff’s Cross-Motion for Protective Order is hereby **DENIED**; and

**IT IS FURTHER ORDERED** that service of this Order shall be deemed effectuated upon all parties upon its upload to eCourts. Pursuant to Rule 1:5-1(a), movant shall serve a copy of this Order on all parties not served electronically within seven (7) days of the date of this Order



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Hon. Louis S. Sceusi, J.S.C  
Retired, T/A on Recall

Opposed  
 Unopposed

**STATEMENT OF REASONS****Lauren Kanarek, Plaintiff****v.****Michael Barisone, Sweet Grass Farms, LLC, and Ruth Cox, Defendants****MRS-L-2250-19**

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Pending before the Court is Defendant Barisone's Motion to Hold in Contempt, Motion to Compel, and Motion to Amend Answers. Also pending before the Court is Defendant Sweet Grass Farms' Motion to Hold in Contempt and Motion to Compel. All of these Motions are opposed by Plaintiff. Plaintiff has also filed a Cross-Motion to Quash and a Cross-Motion for a Protective Order.

**I. BACKGROUND**

This present matter arises out of a criminal matter that occurred on August 7, 2019. On August 7, 2019, Michael Barisone (hereinafter "Defendant Barisone" or "Barisone") confronted Lauren Kanarek (hereinafter "Plaintiff") and shot towards her fiancé on the porch of the farmhouse at 411 W. Mill Road, Long Valley, New Jersey. Plaintiff was lawfully on the subject porch. During this confrontation, without warning or provocation, Defendant shot Plaintiff in the chest multiple times at point blank range. Defendant was arrested and charged with multiple counts of attempted murder, assault and battery, and weapons offenses. Defendant went to trial, where he was recently found guilty of attempted murder, but not criminally responsible due to insanity. Sweetgrass Farms (hereinafter "Defendant SGF" or "SGF") was the owner of the farm and facility where the subject shooting occurred.

On August 24, 2022, Defendant Barisone filed a Motion to Hold Plaintiff's Mother (Kirby Kanarek, who is a non-party witness) in Contempt. Defendant Barisone alleges Plaintiff's Mother was served a subpoena on July 13, 2021 for which Defendant Barisone sought out copies of

transcripts Defendant believes Ms. Kirby was in possession of. Specifically, Defendant alleges Ms. Kirby is in possession of written transcripts of illegal audio recordings her family made at SweetGrass Farm in 2019. Plaintiff's Mother argues that Defendant Barisone's subpoena is overly broad, much of the information Defendant seeks was already gathered and produced to Defendant by the Morris County Prosecutors, and that this motion should therefore be quashed. In the alternative, Plaintiff argues that a protective order is appropriate should this Court refuse to quash any portion of Defendant's subpoena.

Defendant SGF has similarly filed a Motion to Hold Plaintiff's Father (Jonathan Kanarek, who is a non-party witness) in Contempt. Defendant SGF alleges that Plaintiff's Father was served a subpoena on July 26, 2022, for which Defendant SGF sought out "written communications related to the incident that occurred on August 7, 2019 which forms the basis of Plaintiff's Complaint." Plaintiff argues that "none of the materials sought in the subpoenas are relevant to any matter at hand, and are extremely burdensome for the non-party elderly parents of Plaintiff, and Defendants already have the materials for which they are seeking." Plaintiff again argues that this motion should be quashed, and to the extent any portion of Defendant SGF's subpoena is not quashed, a protective order is appropriate.

Further, Both Defendants have joined together in a Motion to Compel Plaintiff's in-person deposition. Specifically, Defendants argue remote depositions can and should be used "when all parties agree to use them, but in this instance, the parties do not agree." Defendants anticipate that Plaintiff's deposition will be a lengthy and exhibit intensive affair, and that a remote deposition would be more difficult. Plaintiff argues that she resides out of state in Florida, and the time and cost savings alone from conducting a remote deposition far outweigh any alleged detriment from not conducting the deposition in person. Plaintiff alleges Defendants fail to establish any prejudice

or burden from proceeding remotely, which has undoubtedly become default standard for conducting depositions that past two and a half years.

Lastly, Defendant Barisone has filed a Motion for Leave to File an Amended Pleading. Specifically, Defendant seeks to make corrections to certain responses in the Answer he initially filed. Defendant alleges that, those changes are needed due to the passage of time and further development of this matter in which the facts have changed in material ways. For example, Defendant argues that Barisone is no longer being held in jail because the criminal trial has concluded, which does not reflect in his Answer. Further, Defendant seeks to add a new counterclaim pursuant to the New Jersey Wiretapping and Electronic Surveillance Control Act, N.J.S.A. 2A:15A-1. Plaintiff argues that Defendant's motion must be denied because the counterclaim is barred by the statute of limitations, and the counterclaim does not relate back to the original pleading.

## II. ANALYSIS

Here, Defendant Barisone and Defendant SGF's Motion to Hold in Contempt is denied. The Court finds that Defendants' subpoenas served on Plaintiff's parents are overly broad and therefore unreasonable. For example, as Plaintiff persuasively points out, Defendant's mission to obtain "any and all electronic communications" between Plaintiff's mother and father, for an undefined period of time, is far too vague of a request. Plaintiff's argument that the contents of the subpoenas are overbroad, if valid, would indeed constitute justification for noncompliance, and hence, Plaintiff's parents have a right to test that issue before being ordered to comply, or before being held in contempt for failure to comply.

On the facts germane to this issue, the Court finds no reason to hold either Plaintiff's mother or father in contempt. Manifestly, the subpoena of Kirby Kanarek and Jonathan Kanarek, issued by counsel for Defendants is hereby quashed as overbroad and unduly burdensome. Defendants may, however, re-serve subpoenas more specific in scope as to the documents it seeks to have produced, limited to issues and time periods relevant to the issues raised in this litigation. Defendants shall have ten (10) days upon receipt of this Order to resubmit more specific requests, and Kirby and Jonathan Kanarek shall have ten (10) days upon receipt of such requests to comply. Given the Court's granting of Plaintiff's Motion to Quash, Plaintiff's Motion for a Protective Order is manifestly moot and therefore denied.

As for Defendants' motion seeking to compel the in-person deposition of Plaintiff, this motion is hereby denied. As Plaintiff importantly points out, the COVID-19 pandemic has forced depositions across the country to proceed virtually for the past two and a half years. Although the cause for concern relating to the uprise in remote depositions has ultimately settled down, this Court recognizes its undoubtedly appealing nature. For example, virtual depositions are unquestionably more cost efficient to all parties involved, and allow for greater availability of deposition dates as no traveling need be done. Given that Plaintiff resides in Florida and raises concerns health concerns from traveling due to her weakened physical state, it logically follows that forcing Plaintiff to appear for an in-person deposition would serve no legitimate purpose, yet to the contrary, cause much harm. Indeed, even Defendants themselves point out in its moving papers that "SGF anticipates that [Plaintiff's] deposition will be a lengthy and exhibit intensive affair." See Def. Brief p. 5. This further supports Plaintiff's position that deposition should be done remotely. Defendants have proffered no evidence of undue prejudice, or any other support for that matter for which Plaintiff must be compelled to appear in person for depositions. Having failed to

sufficiently plead their position to this Court's satisfaction, Defendants' motion to compel must manifestly be denied.

Finally, Defendant Barisone has filed a motion seeking leave of Court to amend his pleading-- this motion must be granted. Because the achievement of substantial justice is the fundamental consideration, the denial of such a motion in the "interests of justice" is appropriate only when there would be undue prejudice to another party. Franklin Medical Associates v. Newark Public Schools, 362 N.J. Super. 494, 506 (App. Div. 2003). Further, when claims asserted in an amended pleading arise "out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading." R. 4:9-3.

In the instant case, Plaintiff challenges the allowance of the amendment on the grounds that it introduces a new cause of action after expiration of the New Jersey Wiretapping and Electronic Surveillance Control Act's statute of limitations, and thus, the count fails to state a claim and would immediately be subject to dismissal. The inquiry here is whether Defendant's claim as set forth in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the Original pleading. If it did, the amendment relates back to the date of the Original complaint, and the statute of limitations is inapplicable.

The Court concludes that the amendment does not state a new cause of action. Defendant's claim against Plaintiff is, among other things, for damages suffered due to alleged negligent or intentional acts that resulted in Defendant's emotional distress. Indeed, during Oral Argument on November 4, 2022, counsel for Defendant alleged Plaintiff "bugged" the premises of Sweet Grass Farms with illegal listening devices to "drive [Defendant] crazy." The Court finds that Defendant's allegations pursuant to the Wiretapping Act refer to the general pool of culpable acts with respect to

Defendant's emotional distress claims that Defendant pled in his Original Counterclaim. Thus, Defendant's Wiretapping claim relates back to the Original pleading date of March 2, 2020.

Stated more precisely, Defendant contends that Plaintiff's alleged bugging of the premises occurred on or about July 2019. Even assuming the Act's limitation date was two years from when the cause of action arose, as Plaintiff argues to this Court, the statute of limitations *still* would not have expired until July 2021. However, Defendant filed the Original pleading in March 2020. In short, because the Court finds the Wiretapping Act relates back to the Original pleading, Defendant is well within the confines of the statute to add a related claim. For these reasons, the Court grants Defendant's leave to amend his responsive pleadings, and accordingly rejects Plaintiff's opposition.

### III. CONCLUSION

For the foregoing reasons Defendant Barisone's Motion to Hold in Contempt and Motion to Compel are hereby **DENIED**. Defendant Barisone's Motion to Amend is hereby **GRANTED**. Defendant Sweet Grass Farms' Motion to Hold in Contempt and Motion to Compel are hereby **DENIED**. Plaintiff's Cross-Motion to Quash is hereby **GRANTED**. Plaintiff's Cross-Motion for a Protective Order is hereby **DENIED**.



# Deininger & Associates LLP

Attorneys at Law

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Member New York & New Jersey

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Randolph, NJ 07869

Tel 973-879-1610

Fax 973-361-1241

www.deiningerlaw.com

chris@deiningerlaw.com

January 18, 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 3, 2023**

Your Honor:

I represent Michael Barisone, a defendant-counterclaim-plaintiff in the above-referenced matter. I am submitting this 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 revised *subpoena duces tecum* I caused to be served back in November 2022.

## **ARGUMENT**

Through GUARANTEED SUBPOENA, on November 29, 2022 I obtained personal service of process on the plaintiff's mother – Kirby Kanarek – seeking copies of transcripts she claims to have. See Deininger Certification, Exhibit "A" & "B". Kirby has admitted publicly that she has the transcripts, which purport to document what is contained on audio recordings made surreptitiously in the days/weeks/months leading up to the shooting incident at the center of this

civil lawsuit. The audio recordings were made at Sweet Grass Farm (where the shooting occurred) and were utilized to harass and cause fear among Barisone, his family members, his clients and staff. The recording were the subject of extensive testimony at the criminal trial which concluded in April 2022, wherein Barisone was found not guilty and/or not guilty by reason of insanity.

My subpoena has been ignored. I have received no response by Kirby Kanarek and/or anyone purporting to contact me on her behalf. Pursuant to the Court Rules, including but not limited to R. 1:9-5, I am seeking to compel a response to my subpoena, to compel delivery to me of the transcripts, and for other relief.

When a subpoena is properly served, by personal service, upon a non-party witness, the court has jurisdiction over that non-party for purposes of enforcement. *NJ Cure v. Estate of Robert Hamilton*, 407 N.J. Super. 247 (App. Div. 2009). Here, Kirby Kanarek was served personally with the *subpoena duces tecum* issued in this matter by Barisone. The revised *subpoena* required Kirby Kanarek to appear/produce records by December 15, 2022. Indeed, by order and *Statement of Reasons* issued in November 2022, Kirby Kanarek was ordered to comply with my revised subpoena within 10 days. See Deininger Certification, Exhibit "C". In contempt of the revised *subpoena*, Kirby Kanarek has failed to answer or appear.

### **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**



Christopher L. Deininger, Esq.

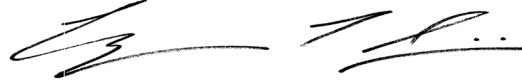
cc: All counsel of record.

**CERTIFICATION OF SERVICE**

I, CHRISTOPHER L. DEININGER, ESQ., certify under penalty of perjury, that on JANUARY 18, 2023, I caused true and accurate copies of the defendants' **Notice of Motion with certification of service, Letter Brief, Proposed Form of Order, and 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; and that I caused the same to be delivered to KIRBY KANAREK by U.S. Postal Service overnight mail to her home address of **4 Wilshire Drive, Livingston, NJ 07039**.

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.

