

SCHENCK PRICE SMITH & KING LLP

Mark K. Silver, Esq. (019752000)

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Florham Park, New Jersey 07932

(973) 539-1000

Attorneys for Defendant, Sweet Grass Farm, LLC

<p>LAUREN KANAREK,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>MICHAEL BARISONE, SWEET GRASS FARMS, LLC, RUTH COX, JOHN DOES 1-30; ABC Corporations 1-20</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MORRIS COUNTY</p> <p>DOCKET NO.: MRS-L-2250-19</p> <p style="text-align: center;">Civil Action</p> <p style="text-align: center;">DEFENDANT SWEET GRASS FARM, LLC'S MOTION TO COMPEL PLAINTIFF'S IN-PERSON DEPOSITION</p>
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TO: Bruce H. Nagel, Esq.
Andrew L. O'Connor, Esq.
Nagel Rice LLP
103 Eisenhower Parkway
Roseland, New Jersey 07068
Attorneys for Plaintiff

PLEASE TAKE NOTICE that, on September 9, 2022, at 9:00 a.m., or as soon thereafter as counsel may be heard, Schenck, Price, Smith & King LLP, attorneys for Defendant, Sweet Grass Farm LLC ("Defendant"), shall move before the Superior Court of New Jersey, Law Division, at the Morris County Courthouse, Morristown, New Jersey, for an Order seeking to Compel Plaintiff's October 10, 2022 In-Person Deposition.

PLEASE TAKE FURTHER NOTICE that Defendant shall rely on the accompanying Brief and Certification of Counsel, with exhibits.

PLEASE TAKE FURTHER NOTICE that pursuant to Rule 1:6-2, the undersigned requests oral argument if timely opposition is filed. A proposed form of order is annexed hereto.

SCHENCK PRICE SMITH & KING LLP
Attorneys for Defendant, Sweet Grass Farm, LLC

By: /s/ Mark K. Silver
Mark K. Silver, Esq.

Dated: August 24, 2022

SCHENCK PRICE SMITH & KING LLP

Mark K. Silver, Esq. (019752000)

220 Park Avenue

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Attorneys for Defendant, Sweet Grass Farm, LLC

<p>LAUREN KANAREK,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>MICHAEL BARISONE, SWEET GRASS FARMS, LLC, RUTH COX, JOHN DOES 1-30; ABC Corporations 1-20</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MORRIS COUNTY</p> <p>DOCKET NO.: MRS-L-2250-19</p> <p style="text-align: center;">Civil Action</p> <p style="text-align: center;">ORDER</p>
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THIS MATTER having been opened to the Court by Schenck, Price, Smith & King LLP, attorneys for Defendant Sweet Grass Farm, LLC, for an Order Compelling Plaintiff, Lauren Kanarek, to Appear for In-Person Deposition, by way of a Notice of Motion duly filed and served upon all counsel, and the Court having considered the papers submitted herein, and for good cause having been shown;

IT IS ON this ____ day of _____, 2022:

ORDERED that Defendant's Motion to Compel Plaintiff's In-Person Deposition is hereby **GRANTED**; and it is further

ORDERED that Plaintiff shall appear in-person on October 10, 2022 for deposition, and any continuing days until testimony is completed, at the law offices of Schenck Price Smith & King LLP, 220 Park Avenue, Florham Park, N.J.; and it is further

ORDERED that this Order shall remain in effect should the October 10, 2022 deposition be adjourned for good reason; and it is further

ORDERED that a copy of this Order shall be served on all counsel within seven (7) days of the date of this Order.

Hon.

____ Opposed
____ Unopposed

SCHENCK PRICE SMITH & KING LLP

Mark K. Silver, Esq. (019752000)
 220 Park Avenue
 P.O. Box 991
 Florham Park, New Jersey 07932
 (973) 539-1000
Attorneys for Defendant, Sweet Grass Farm, LLC

<p>LAUREN KANAREK,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>MICHAEL BARISONE, SWEET GRASS FARMS, LLC, RUTH COX, JOHN DOES 1-30; ABC Corporations 1-20</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MORRIS COUNTY</p> <p>DOCKET NO.: MRS-L-2250-19</p> <p style="text-align: center;">Civil Action</p> <p style="text-align: center;">CERTIFICATION OF MARK K. SILVER, ESQ. IN SUPPORT OF DEFENDANT SWEET GRASS FARM, LLC’S MOTION TO COMPEL PLAINTIFF’S IN-PERSON DEPOSITION</p>
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I, MARK K. SILVER, ESQ., of full age, do certify as follows:

1. I am an attorney-at-law of the State of New Jersey and a Partner with the law firm of Schenck, Price, Smith & King LLP, attorneys for Defendant Sweet Grass Farm, LLC (“SGF”). I am the attorney responsible for handling this matter. As such, I have personal knowledge of the facts set forth herein.
2. I make this Certification in support of SGF’s Motion to Compel Plaintiff’s In-Person Deposition on October 10, 2022.
3. SGF comes before this Court seeking an Order compelling Plaintiff, Lauren Kanarek, to appear in-person for deposition on October 10, 2022.
4. On July 27, 2022, SGF issued a deposition notice to appear, in person, for a deposition to take place on October 10, 2022. (A true and accurate copy of the Notice is attached hereto at “**Exhibit A**”).

5. After a meet and confer and a subsequent email exchange, counsel for Plaintiff advised counsel for SGF that Plaintiff would not be produced for an in-person deposition. She would only be produced for a remote deposition via Zoom.

6. An impasse on this issue has been reached and SGF makes the instant application.

7. A picture of the undersigned counsel's conference room is attached at "**Exhibit B**".

I hereby certify, pursuant to Rule 1:4-4(b), that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

SCHENCK PRICE SMITH & KING LLP
Attorneys for Defendant, Sweet Grass Farm, LLC

By: /s/ Mark K. Silver
Mark K. Silver

Dated: August 24, 2022

SCHENCK PRICE SMITH & KING LLP

Mark K. Silver, Esq. (019752000)

220 Park Avenue

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Attorneys for Defendant, Sweet Grass Farm, LLC

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**DEFENDANT SWEET GRASS FARM, LLC'S BRIEF IN SUPPORT OF MOTION TO
COMPEL PLAINTIFF'S IN-PERSON DEPOSITION**

OF COUNSEL AND ON THE BRIEF:

Mark K. Silver, Esq. (019752000)

220 Park Avenue

P.O. Box 991

Florham Park, New Jersey 07932

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INTRODUCTION AND FACTS

Defendant, Sweet Grass Farm LLC (“SGF”) comes before this Court seeking an Order compelling Plaintiff Lauren Kanarek (“Kanarek”) to appear in New Jersey for an in-person deposition.

By way of background, what started as a simple landlord/tenant dispute ultimately escalated into violence.

SGF’s majority owners are Bonnie and John Lundberg. The Lundbergs are an elderly couple in their 80s who had a love of horses. Many years ago, the Lundbergs met and became friendly with Michael Barisone (“Barisone”), a former Olympian and world class trainer of horses in the sport of “dressage”. Barisone was looking to open a training facility in New Jersey and John Lundberg was looking for someone to train him in dressage. The Lundbergs, through their corporation, SGF, purchased farmland located at 411 W. Mill Road, Long Valley, New Jersey (“the Property”). SGF entered into a very crude lease agreement with Barisone that permitted him to build a world class equestrian facility on the Property as well as buy equity into SGF.

Lauren Kanarek was a student/client of Barisone. Although not allowed pursuant to the terms of Barisone’s lease with SGF, Barisone entered into an “oral barter arrangement” with Kanarek and her boyfriend, Robert Goodwin (“Goodwin”), wherein they would be allowed to: 1) live on the New Jersey Property; 2) board their five (5) horses; and 3) receive training from Michael Barisone for \$5,000 and the services of Robert Goodwin in renovating the Property. Given the fact that Kanarek did not have a lease with SGF her status for all times relevant hereto, amount to nothing more than a trespasser.

It is not clear exactly what started the problems between Kanarek/Goodwin and Barisone, but problems escalated quickly. Plaintiff's Complaint alleges that on August 8, 2019, Kanarek and Goodwin were shot by Michael Barisone on the Property owned by SGF. Earlier this year, in the attendant criminal case, Barisone was tried on two counts of attempted murder. The jury unanimously found Barisone not guilty with respect to Goodwin and not guilty by reason of insanity with respect to Kanarek.¹ This case was stayed pending resolution of the criminal trial, but pursuant to the Court's April 29, 2022 Order, discovery has resumed.

Although there are some attendant written discovery issues that may need Court intervention at a later date, the current issue before the Court is Kanarek's deposition.

On July 27, 2022, after conferring with counsel for the other co-defendants, SGF issued a deposition notice for the *in-person* deposition of Kanarek on October 10, 2022, and continuing day to day until completion. See Certification of Mark K. Silver, Esq. ("Silver Cert."), at Exhibit A. Given the facts that: 1) Kanarek does not currently live in New Jersey; and 2) the Morris County's Prosecutor's Office had to ask the Court systems of the State of New Jersey and the State of Florida to issue a subpoena compelling Kanarek's in-person appearance at Barisone's criminal trial, SGF anticipated some pushback from Plaintiff on this issue. Therefore, SGF's counsel reached out to Plaintiff's counsel to address the issue head on and in advance of the deposition date.

After a telephonic meet and confer and a subsequent email exchange, Plaintiff's counsel advised that Plaintiff would not appear for an *in-person* deposition and would only agree to be produced for a remote deposition. This motion follows.

¹ Your Honor may be aware of this case due to the local/national news coverage and the fact that the criminal trial was televised on the "Law and Crime" network. The entire criminal trial can be found on YouTube.

**DEFENDANTS ARE ENTITLED TO AN IN-PERSON
DEPOSITION OF THE PLAINTIFF**

SGF is entitled to an *in-person* deposition of the Plaintiff.² SGF has issued a valid deposition notice pursuant to R. 4:14-2. The burden is on Plaintiff to explain to this Court why she is not willing or able to comply. As SGF is unclear as to whether Plaintiff's objection to appear in-person is based more on convenience (she lives out of state) or alleged COVID concerns, SGF will address both.

With respect to any "convenience" argument, SGF submits that that issue should be self-evident. As Plaintiff chose to avail herself of this Court's jurisdiction, she should be required to appear in New Jersey for her deposition.

As to any alleged COVID concerns, SGF and its counsel takes COVID and its possible transmission as seriously as anyone. SGF is ready and willing to take the precautions necessary to protect the wellbeing of Plaintiff and all counsel. As evidenced by the photograph attached to the Silver Cert. at Exhibit B, SGF counsel's office is extremely large. All deposition participants can easily socially distance within the conference room and masks can be worn if that is so desired. However, any COVID concerns must also be real and not pretense for not wanting to appear for deposition. For example, Plaintiff testified live at the criminal trial, without a mask, over multiple days, in conditions a lot less socially distanced than those proposed by SGF.³ Similarly, upon information and belief, Plaintiff's counsel sat in the gallery during Plaintiff's testimony in conditions a lot less socially distanced than those proposed by SGF.

SGF recognizes that the pandemic caused the legal community to adapt and overcome. Through necessity, remote depositions were utilized so that the entire legal system did not come

² The date of the deposition is not an issue of concern for SGF. Although SGF has already confirmed that defense counsel is available the week of October 10, if the Plaintiff has an issue with the date, SGF is willing to work with Plaintiff to arrange a mutually convenient alternate date.

³ See <https://www.youtube.com/watch?v=nYiDVbTJxCg>

to a grinding halt. Remote depositions can and should be used when all parties agree to use them, but in this instance, the parties do not agree. The fact of the matter is that in exhibit intensive cases, remote depositions are not “easier”, they are in fact, more difficult.

SGF anticipates that Kanarek’s deposition will be a lengthy and exhibit intensive affair. Although Plaintiff has cast herself in the role of victim, one of Barisone’s primary arguments at the criminal trial was that whatever happened on August 7, 2019, occurred because Kanarek and Goodwin engaged in a series of actions that literally drove Barisone insane.⁴ As elicited at the criminal trial and through discovery to date, Kanarek/Goodwin’s actions include:

- Kanarek/Goodwin placed illegal listening devices around the Property for the express purpose of recording Barisone and others. They would then engage in conversations with Barisone repeating information that they learned via those recordings. This created paranoia in Barisone to the point where he hired a vendor to sweep the Property for listening devices.
- Similarly, Goodwin was an unlicensed electrician performing electrical work on the Property. Angry with Barisone, Goodwin reported his own unlicensed electrical work to the township and the fire department. As a result, Barisone was temporarily evicted from his own living quarters while Kanarek and Goodwin remained in the guest house.
- Kanarek launched a social media campaign against Barisone. In connection with the criminal case, the Morris County Prosecutor’s Office collected over 14,000+ pages of postings on Facebook by Kanarek related to Barisone. These posts contained numerous veiled and not so veiled threats of physical violence against Barisone.
- Kanarek filed a false claim against Barisone with *SafeSport*. *SafeSport* is the governing body for equestrian Olympian activities. In the world of equestrian sports, there can be nothing more damaging to a trainer’s reputation than a *SafeSport* investigation.

Kanarek/Goodwin became “the tenants from hell” and started provoking Barisone at every turn. Over the course of July and August of 2019, the police were called to the Property at

⁴ The jury’s verdict indicates they found Barisone’s arguments compelling.

least six (6) times. (Recordings of several of the 9-1-1 calls can be found here: https://www.youtube.com/watch?v=45R_MJsk5pU&t=92s).

In addition to: 1) Plaintiff's 14,000 pages of Facebook data obtained by the Morris County Prosecutor's Office; 2) alleged crime scene diagrams; 3) the hours of self-recorded audio tape leading up to the incident; 4) the illegal listening devices Kanarek and Goodwin placed on SGF's property; 5) Plaintiff's prior inconsistent statements; and 6) Plaintiff's medical records, Plaintiff has also made several hundred statements about the incident on social media and in public discussion forums. SGF intends to inquire about all of it, and there can be no argument that due to the various types of media (paper, audio, video, etc.) that will need to be employed at the deposition, it will be much more efficient for all participants to be in the same room. That is separate and apart from the fact that it will be easier to make a clean and clear record for future use if all parties are together.

For all the foregoing reasons, SGF seeks an Order compelling Plaintiff to appear in-person in New Jersey for her deposition.

Respectfully submitted,

/s/ Mark K. Silver

Mark K. Silver, Esq.

Dated: August 24, 2022

SCHENCK PRICE SMITH & KING LLP

Mark K. Silver, Esq. (019752000)

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Attorneys for Defendant, Sweet Grass Farm, LLC

<p>LAUREN KANAREK,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>MICHAEL BARISONE, SWEET GRASS FARMS, LLC, RUTH COX, JOHN DOES 1-30; ABC Corporations 1-20</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MORRIS COUNTY</p> <p>DOCKET NO.: MRS-L-2250-19</p> <p style="text-align: center;">Civil Action</p> <p style="text-align: center;">CERTIFICATION OF SERVICE</p>
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I, MARK K. SILVER, of full age, hereby certifies as follows:

1. I am an attorney-at-law in the State of New Jersey and Partner with the law firm of Schenck, Price, Smith & King LLP, attorneys for Defendant Sweet Grass Farm, LLC (“Defendant”) in the above-captioned matter.

2. I submit this Certification in support of Defendant’s Motion to Compel Plaintiff to Appear for In-Person Deposition.

3. I hereby certify that a true and accurate copy of Defendant’s Notice of Motion to Compel, Certification of Mark K. Silver, Esq., with exhibits, Brief in Support, Proposed Form of Order, and this Certification of Service were electronically filed with the Morris County Superior Court on August 24, 2022.

4. I further certify that a true and accurate copy of the aforementioned documents was served on all parties of record via electronic filing on August 24, 2022.

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

SCHENCK PRICE SMITH & KING LLP
Attorneys for Defendant, Sweet Grass Farm, LLC

/s/ Mark K. Silver

Mark K. Silver

Dated: August 24, 2022

EXHIBIT A

SCHENCK PRICE SMITH & KING LLP

Mark K. Silver, Esq. (019752000)

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Florham Park, New Jersey 07932

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Attorneys for Defendant, Sweet Grass Farm, LLC

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TO: Andrew L. O'Connor, Esq.
Nagel Rice, LLP
103 Eisenhower Parkway
Roseland, New Jersey 07068
Attorneys for Plaintiff

ON NOTICE TO: Christopher Deininger, Esq.
Deininger & Associates, LLP
415 Route 10, Suite 1
Randolph, New Jersey 07869

John P. Graves, Esq.
Graves Andrews, LLC
113 Washington St., Suite 1A
Morristown, New Jersey 07960

Lane M. Ferdinand, Esq.
Law Offices of Lane M. Ferdinand
505 Morris Avenue
Springfield, New Jersey 07081

COUNSEL:

PLEASE TAKE NOTICE that in accordance with Rule 4:14-2(a) of the Rules governing the Courts of the State of New Jersey, the testimony of Plaintiff, Lauren Kanarek, will be taken by deposition upon oral examination before a certified shorthand reporter of the State of New Jersey, on **October 10, 2022 at 9:00 A.M.**, and continuing from day to day until completed, excluding weekends and holidays, at Schenck, Price, Smith & King LLP, 220 Park Avenue, Florham Park, New Jersey 07932, with respect to all matters relevant to the subject matter involved in this litigation.

SCHENCK, PRICE, SMITH & KING LLP
Attorneys for Defendant, Sweet Grass Farm, LLC

Dated: July 27, 2022

By: /s/ Mark K. Silver
Mark K. Silver, Esq.

EXHIBIT B

