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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

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>	:	

**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:

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

PLEASE TAKE NOTICE that on September 9, 2022, 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 *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 *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: August 24, 2022

CERTIFICATION OF SERVICE

I, CHRISTOPHER L. DEININGER, ESQ., certify under penalty of perjury, that on AUGUST 24, 2022, I caused true and accurate copies of the defendants' **Notice of Motion with certification of service, Letter Brief, Proposed Form of Order, and Supporting Certifications (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.

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 _____, 2022,

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 *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 _____, 2022; 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 *SUBPOENA DUCES TECUM* on or before August 11, 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

01013

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(973) 879-1610; Fax (973) 361-1241
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>	:	
	:	

**CERTIFICATION OF CHRISTOPHER L. DEININGER, ESQ., IN
SUPPORT OF BARISONE’S MOTION AGAINST KIRBY KANAREK**

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

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

1. I am making this certification in support of the Barisone motion for relief against non-party witness KIRBY KANAREK, plaintiff’s mother. The statements I make herein are based upon my personal knowledge, unless noted otherwise.

2. On numerous occasions in the past, plaintiff and her mother have claimed, publicly and in other contexts, to have access to, possession of, custody of, and/or control of, audio recordings made surreptitiously on the premises of 411 W. Mill Road, Long Valley, New Jersey (“Sweet Grass Farm”), while Barisone was stay there in 2019.

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 personal 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 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.

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 SUBPOENA DUCES TECUM upon KIRBY KANAREK, on July 13, 2022, together with the appropriate payment of a witness fee.

7. The SUBPOENA DUCE TECUM was timely and properly served upon KIRBY KANAREK, whereupon she was obligated to appear and/or produce records on August 11, 2022, in the above-captioned action.

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

9. Based upon the foregoing, it is Barisone's position that KIRBY KANAREK is in contempt of the 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.

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

CHRISTOPHER L. DEININGER, ESQ.

Dated: August 24, 2022

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 you, Jonathan Kanarek and/or Robert Goodwin, including but not limited to any communications containing, and/or purporting to contain, any of the Audio Recordings and/or 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 August 11, 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: July 12, 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



20220712103539

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: 7/13/2022 7:46 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: 131-160 LBS. SKIN: WHITE HAIR: GRAY OTHER:

at HOME address:

4 WILSHIRE DRIVE LIVINGSTON NJ 07039

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

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

08/24/2022

Date

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

Deininger & Associates LLP

Attorneys at Law

Christopher L. Deininger

Member New York & New Jersey

415 Route 10, Suite 1

Randolph, NJ 07869

Tel 973-879-1610

Fax 973-361-1241

www.deiningerlaw.com

chris@deiningerlaw.com

August 24, 2022

VIA ECOURTS

Hon. Louis S. Sceusi, J.S.C.

Superior Court of New Jersey - Morris County

Morris County Courthouse, Washington & Court Streets

Morristown, New Jersey 07960

RE: Lauren Kanarek v. Michael Barisone, et al.

Docket No.: MRS-L-2250-19

Barisone Motion For Sanctions Against Non-Party Witness

Return Date: September 9, 2022

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 *subpoena duces tecum* I caused to be served back in July 2022.

ARGUMENT

Through GUARANTEED SUBPOENA, on July 13, 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 *subpoena* required Kirby Kanarek to appear/produce records by August 11, 2022. In contempt of the *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

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DEININGER & ASSOCIATES, LLP
Attorneys for the Barisone



By : _____
CHRISTOPHER L. DEININGER, ESQ.