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March 9, 2023

**Via Efile**

David J. Weaver, J.S.C.  
Morris County Civil Division  
P.O. Box 910  
Morristown, NJ 07963-0910

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

Dear Judge Weaver:

This office represents plaintiff Lauren Kanarek in the above-referenced matter. Kindly accept this Letter Brief in further support of plaintiff's Motion to Limit Deposition Testimony. Plaintiff has no objection to proceeding with Lauren's deposition on a date certain.

Defendants misstate plaintiff's position. Contrary to defendant Sweetgrass Farms' ("SGF") assertion, plaintiff does not seek to bar defendants SGF and Barisone from "asking questions about the incident that forms the basis of her Complaint." Rather, plaintiff only seeks to bar defendants SGF and Barisone from questioning Lauren on the

limited issue of her alleged provocation of Barisone; an issue which was already exhaustively investigated, has no relevance to any claim or defense in the civil action, and was only relevant in the criminal action as evidence of defendant Barisone's state of mind.

Defendant SGF correctly identifies the elements necessary to sustain a negligence claim: "(1) duty of care, (2) breach of that duty, (3) proximate cause, and (4) actual damages." Plaintiff has no objection to any deposition questioning on those elements. Further, contrary to defendant SGF's Opposition, plaintiff has no objection to defendant's questioning Lauren regarding the actual happening of the event and what transpired between the parties during the shooting. Plaintiff acknowledges that defendant Barisone claims he forgets shooting plaintiff, and plaintiff welcomes that questioning from defendant. Lauren is the victim of this violent attempted murder. She wants to tell her story.

Again, contrary to defendant SGF's assertions, plaintiff does not seek to limit Lauren's testimony on "unpleasant times in her life." Plaintiff only seeks to prohibit defendant from asking Lauren about her alleged provocation of Barisone. Defendant SGF emphasizes that plaintiff's alleged comparative fault is "one of SGF's **numerous defenses**." (emphasis added). Plaintiff does not seek to limit testimony on any of those other "numerous defenses." However, the issue of Lauren's alleged provocation of Barisone was addressed *ad naseum*, has been the subject of cross examination and expert testimony, and has been thoroughly explored by criminal defendant Barisone. Given defendant Barisone's thorough examination, there is no need for defendant

Barisone or defendant SGF to examine the alleged provocation issue any further. Neither defendant should get a second bite at that same apple.

In addition, neither defendant Barisone nor defendant SGF argue that Barisone was justified in shooting plaintiff. The law prohibits them from doing so. Accordingly, deadly force against Lauren was not a justifiable, plausible, or reasonable response from Barisone, despite the extent of any alleged provocation. Defendants acknowledge this legal absolute. Therefore, the issue of plaintiff's alleged provocation of Barisone, to which Lauren already testified, is irrelevant to any issue in this civil action. Of course, defendants have the absolute right to explore all other issues of liability and damages in their deposition of Lauren.

As to defendant Barisone's Counterclaim, it is without legal merit and plaintiff will seek its dismissal in due course. Notwithstanding, defendant Barisone already questioned plaintiff at length on her alleged provocation of Barisone and should not get another opportunity to go through the same exact areas in plaintiff's civil deposition. Defendant Barisone, in his criminal trial, with his current attorney sitting at counsel's table, went through numerous exhibits with Lauren and questioned her for hours, specifically on her alleged provocation. These areas should not be explored again in plaintiff's civil action deposition. Defendant Barisone had its opportunity and did a thorough job. The only reason to revisit these issues would be harass and embarrass plaintiff. Defendants cannot meritoriously argue that Lauren played a role in her own shooting. She did not.

Regarding credibility, defendants are free to use plaintiff's trial testimony to impeach her or attack her credibility throughout this civil litigation. However, exploring

the exact same issues in plaintiff's upcoming deposition is unnecessary and unduly burdensome.

Plaintiff's deposition testimony should be barred on the limited issue of provocation. The remainder of Lauren's deposition should proceed unhindered. Plaintiff restates her position that should the Court not completely bar this narrow line of questioning, plaintiff respectfully requests that the Court bar it temporarily to allow plaintiff to make her dispositive Motions. If, after dispositive Motions are decided, additional testimony of plaintiff is required, plaintiff will produce Lauren voluntarily for her redeposition.

Respectfully Submitted,



Gregg Alan Stone