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LAUREN KANAREK Plaintiff, v. MICHAEL BARISONE; SWEETGRASS FARMS, LLC; RUTH COX; JOHN DOES 1-30; ABC CORPORATIONS 1-20, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION-MORRIS COUNTY DOCKET NO.: MRS-L-2250-19 CIVIL ACTION NOTICE OF CROSS-MOTION TO QUASH DEFENDANTS' SUBPOENAS

TO: Mark K. Silver, Esq.
Schenk Price Smith & King
220 Park Avenue
PO Box 991
Florham Park, NJ 07932
Attorney for Defendant Sweetgrass Farms, LLC

Christopher L. Deininger, Esq.
Deininger & Associates, LLP
415 Route 10, Suite 1
Randolph, NJ 07869
Attorney for Defendant Michael Barisone

SIR:

PLEASE TAKE NOTICE that on Friday, September 23, 2022 at 9:00 a.m. in the forenoon or soon thereafter as counsel may be heard, the undersigned, attorney for plaintiff herein, shall apply to the Superior Court of New Jersey, Law Division, Morris County Courthouse for an Order quashing defendant Sweet Grass Farm, LLC's Subpoena dated July 26, 2022 and defendant Barisone's Subpoena dated July 12, 2022.

PLEASE TAKE FURTHER NOTICE that in accordance with the provisions of Rule 1:6-2, a proposed form of Order is annexed hereto, and it is requested that the matter be submitted to the Court for ruling on the papers herewith submitted.

PLEASE TAKE FURTHER NOTICE that the plaintiff shall rely on the annexed Letter Brief annexed hereto in support of the within application.

PLEASE TAKE FURTHER NOTICE that Plaintiff submits this matter for a ruling on the papers unless timely opposition papers are filed and served in which case Plaintiff requests oral argument.

NAGEL RICE, LLP
Attorney for Plaintiff

By: *Bruce H. Nagel*
BRUCE H. NAGEL

Dated: September 15, 2022

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LAUREN KANAREK **Plaintiff,** **v.** **MICHAEL BARISONE; SWEETGRASS FARMS, LLC; RUTH COX; JOHN DOES 1-30; ABC CORPORATIONS 1-20,** **Defendants.**	**SUPERIOR COURT OF NEW JERSEY** **LAW DIVISION-MORRIS COUNTY** **DOCKET NO.: MRS-L-2250-19** **CIVIL ACTION** **ORDER**

THIS MATTER having been opened to the court by way of application of Nagel Rice, LLP, (ANDREW L. O'CONNOR, Esq., appearing) attorneys for Plaintiff, the Court having considered the moving papers, any opposition papers, any arguments of counsel, and for good cause shown,

IT IS on this ___ day of September, 2022; ORDERED AS FOLLOWS:

1. The Subpoena served on behalf of defendant Sweet Grass, LLC dated July 26, 2022, be and the same is hereby quashed.

2. The Subpoena served on behalf of defendant Barisone dated July 12, 2022, be and the same is hereby quashed.

3. A true copy of this order shall be deemed served upon all counsel upon its posting by the Court on e-Courts.

_____
J.S.C.

OPPOSED: _____

UNOPPOSED: _____

NAGEL RICE, LLP

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*CERTIFIED BY THE SUPREME COURT OF NEW JERSEY AS A CIVIL TRIAL ATTORNEY
◇MEMBER OF NJ & NY BARS
◊ MEMBER OF NJ, NY & DC BARS

September 15, 2022

Via ECourts
Hon. Louis S. Sceusi J.S.C.
Superior Court of New Jersey
Morris County Courthouse
Washington and Court Streets
Morristown, NJ 07960

Re: Kanarek v. Barisone et.al
Docket No.: MRS-L-2250-19

Dear Judge Sceusi:

We represent Plaintiff in the above matter. Please accept this letter in opposition to defendant Sweetgrass Farms, LLC ("Sweetgrass") and Defendant Michael Barisone's ("Barisone") motion to hold Plaintiff's parents in contempt, and in support of Plaintiff's cross motion quash these subpoenas. These motions are currently returnable before Your Honor on September 23, 2022. This Court should deny Defendants' motion.

FACTUAL SUMMARY

Defendant Michael Barisone (hereinafter "Barisone" or "Defendant"), a medalist in the 2008 Summer Olympic Games in Beijing, agreed to train Plaintiff and her horses at his Long

Valley equestrian center. However, the relationship quickly soured, and following a long campaign of harassment and intimidation against Plaintiff, at approximately 2:15 pm on August 7, 2019, Defendant confronted Kanarek at the farmhouse at 411 W. Mill Road, Long Valley, New Jersey. During that conversation, Barisone took out a hand gun and shot Karanek in the chest multiple times at point-blank range.

Barisone was arrested, charged with multiple counts of attempted murder and weapons offenses. He recently went to trial, where is was found guilty of attempted murder of Plaintiff, but not criminally responsible due to insanity. In other words, the jury determined that he *did* attempt to murder Plaintiff, but that becuase he is so mentally instable that he was not criminally responsible for his attempt at murder.

It is undisputed that Defendant Barisone committed an assault and battery against Plaintiff, and also undisputed that Plaintiff suffered grievous injuries as a direct result of this assault and battery.

Due to the serious nature of the outrageous criminal actions of Defendant Barisone, as the Court is aware an extensive criminal trial has already occurred with regard to this incident. The Morris County Prosecutors Office conducted extensive discovery, and extensive materials were already gathers, and produced to

Defendant Barisone in the criminal case. The Defendants in this case then went on to produce those materials in this case.

For example, all audio recordings which were in any way germane to the incident at hand were already gathered by the Morris County Prosecutors Office, provided to Defendants in this case. These were then produced (again) but the Defendants in this very case as part of discovery. Likewise, Plaintiffs computers and phones were gathered, maintained, and produced by the Morris County Prosecutors to the Defendants in this case. Plaintiff's phone was taken by the prosecutor. This included all emails and texts which where in any way germane to this case. They were then produced to the Defendants, and the Defendants in this very case then produced those in discovery in this case.

Despite the fact that the Defendants in this case produced these very documents, Defendants served widely overbroad subpoenas, to Plaintiff's elderly parents, seeking these very documents and materials.

Most of the documents sought are not relevant to any issue in this case. Some of the documents sought do not exist. Some of the documents, which if they did exist, are protected by the attorney client privilege.

Given the absurd nature of the subpoenas, my office reached out to defense counsel, to point out the overboard nature of the

subpoenas, and try and address them. Phone calls and emails were sent. See, for example, email attached hererto as Exhibit "A". Defendant Barisone's attorney ignored our attempts to resolve these issues, and instead filed the instant motion, claiming "My subpoena has been ignored. I have received no response by Kirby Kanarek and/or anyone purporting to contact me on her behalf." This is just factually incorrect, and shows that there is no real interest in obtaining discovery, rather this is just an attempt to harass Plaintiff's parents.

As such, since these subpoenas are nothing more than an overbroad, fishing expedition solely done to harass Plaintiff's parents, and as such it is respectfully requested that the subpoenas be quashed.

LEGAL ARGUMENT

I. The Third Party Subpoenas Should Be Quashed.

A. Standard For Third Party Subpoenas.

In New Jersey our Courts have great interest in protecting third parties who receive subpoenas. Generally, while serving a subpoena on a non-party is sanctioned by the Rules, there are appropriate and necessary limits. See Berrie v. Berrie, 188 N.J. Super. 274, 282 (Ch. Div. 1983). Courts are empowered to quash subpoenas "if compliance would be unreasonable or oppressive." State v. Cooper, 2 N.J. 540, 557 (1949). "Discovery is intended to

lead to facts supporting or opposing an asserted legal theory; it is not designed to lead to formulation of a legal theory." Camden Cty. Energy Recovery Assocs. v. N.J. Dept. of Envtl. Prot., 320 N.J. Super. 59, 64 (App. Div. 1999), aff'd o.b., 170 N.J. 246 (2001).

When dealing with subpoenas, there will always be burdens levied on the individuals from whom information is sought. "When the burdens outweigh the benefits the tools of discovery become, intentionally or unintentionally, weapons of oppression. This possibility has become apparent when only parties are involved and deserves close scrutiny with respect to interests of a non-party. See Berrie, 188 N.J. Super. at 283. It is generally stated that the subject of a subpoena must be specified with reasonable certainty and there must be a substantial showing that the evidence sought to be adduced is relevant and material to the issues of the case. See State v. Cooper, 2 N.J. at 556 (emphasis added); Wasserstein v. Swern and Co., 84 N.J. Super. 1, 6-7 (App. Div. 1964).

N.J.R.E. 401 defines relevance as having a "tendency in reason to prove or disprove any fact of consequence to the determination of the action." In Simon v. Graham Bakery, 17 N.J. 525, 530 (1955), the Supreme Court held that the appropriate test to determine relevancy was its probative value respecting the points in issue.

See also State v. Hutchins, 241 N.J. Super. 353, 358 (App. Div. 1990). Therefore, the requirements of relevancy prohibit a party from engaging in a "fishing expedition" which was described by the Court in F.T.C. v. American Tobacco Co., 264 U.S. 298, 306 (1921), as a search through private papers "in the hope that something will turn up." In the determination of whether proffered evidence is relevant, the Court's inquiry should focus upon "the logical connection between the proffered evidence and a fact in issue." Furst v. Einstein Moomiy, Inc., 182 N.J. 1, 15 (2004)(citations omitted).

B. The Overly Broad Subpoenas Served On Third Parties Must Be Quashed.

The overly broad subpoenas at issue in this case were served on Plaintiff's parents, solely to try and harass Plaintiff's parents. To be clear, Plaintiff's parents are not parties to the case, and did not witness the shooting. A review of the subpoenas shows how ridiculous that actually are.

For example, to the subpoena issued by Barisone to Plaintiff's mother, the subpoena asked for:

> 1. Each and every audio recording in your possession, custody and/or control containing, and/or purporting to contain, a record of sound occurring on the premises …

Any and all audio recordings taken at the premises of the shooting which were in any way relevant to the incident were already gathered by the Morris County Prosecutor, produced to

Defendant Barisone in the criminal trial, and then again produced by Barisone himself in this very case. It is patently absurd now to then ask Plaintiff's elderly mother, to then produce back to Defendant the very audio records, that he just produced.

Likewise, the next request seeking transcriptions of the above-referenced recordings. Recordings which, again, Defendant already has, and that he himself produced in this matter. They have the recordings.

The next two requests seek the same as the prior two, but with video recordings, instead of audio recordings. For the above reasons the request is absurd.

The next request is telling of the motivation behind the subpoena.

5. Any and all electronic communications (including but not limited to emails, text messages, and/or shared files) between and among you, Johnathan Kanarek, and/or Robert Goodwin.

To be clear, this is seeking all text messages, between a non-Party husband and wife, for an undefined extended time period. This is patently absurd, and shows that these subpoenas are nothing more than a blatant fishing expedition in an attempt to harass the parents of the Plaintiff.

Likewise, the subpoena to Mr. Kanarek is equally unavailing. As a threshold matter, as Defendants are well aware, Mr. Kanarek has a law degree, and any texts he had with his daughter which in

any way relate to the incident are not only factually irrelevant to the case at hand, but potentially covered by the attorney-client privilege.

Further, all the emails and texts between Plaintiff and her father were already gathered by the Morris County Prosecutor as part of the criminal prosecution, and produced to the Defendants in that matter, and then produced by the defendants in this matter.

Further, texts between a father and a daughter, on sundry topics, are not relevant or germane to any issue in the case.

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 the Plaintiff, and the defendants already have the materials which they are seeking. Further, if it was discovery that the Defendants were actually seeking, they could first try and depose Mr. Kanarek, instead of issuing grossly overbroad subpoenas whose sole purpose is to harass Plaintiff and her family.

II. The Court Should Enter A Protective Order To Limit The Scope Of The Subpoenas To These Third Parties.

A. Standard For A Protective Order.

In New Jersey a party will meet the requirements for a protective order if it can satisfy R. 4:10-3, which provides "the court, for good cause shown or by stipulation of the parties, may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or

expense." R. 4:10-3. If good cause is shown, the Court has the power to enter an order that 1) discovery not be had; 2) discovery may be had only on specified terms and conditions; or 3) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters. R. 4:10-3(a)(b)(d). Good cause is "shown when it is specifically established that disclosure will cause clearly defined and serious injury. Broad allegations of harm, unsubstantiated by specific examples ... will not suffice." Cooper Hospital/University Med. Ctr. v. Sullivan, 183 F.R.D. 135, 143 (D.N.J. 1998) (citation and internal quotation marks omitted); see also Glenmede Trust Co. v. Thompson, 56 F.3d 476, 483 (3d Cir.1995); Pansy v. Borough of Stroudsburg, 23 F.3d 772, 786 (3d Cir.1994). Based on the actions of counsel thus far in this case, it is clear that Plaintiff is entitled to a protective order to narrow the scope of the subpeonas.

This is because the scope of discovery is limited to information that is "relevant to the subject matter involved in the pending action." R. 4:10-2(a). Evidence is relevant if it has the "tendency in reason to prove or disprove any fact or consequence to the determination of the action." N.J.R.E. 401; Payton v. New Jersey Turnpike Authority, 148 N.J. 524, 535 (1997). In deciding whether information may be obtained, courts have focused on the logical connection between the proffered evidence

and a fact in issue in order to determine whether the information is sought is relevant and therefore discoverable. See In re: Liquidation of Integrity Ins. Co., 165 N.J. 75, 82 (2000). For evidence to be relevant, the evidence must touch directly upon the issues raised by the pleadings. As set forth above, our Supreme Court, evidence is only relevant if it has probative value related to issues that remain in the case. Simon, supra, 17 N.J. at 530 (1955); State, supra, 241 N.J. Super. at 358.

This is because "discovery is intended to lead to facts supporting or opposing an asserted legal theory; it is not designed to lead to formulation of a legal theory." Camden Cty. Energy Recovery Assocs. v. N.J. Dept. of Envtl. Prot., 320 N.J. Super. 59, 64 (App. Div. 1999), aff'd o.b., 170 N.J. 246 (2001). Thus, evidence must have a "logical connection" to a "fact in issue" and cannot be sought as part of a fishing exhibition "in the hope that something will turn up." F.T.C., supra, 264 U.S. at 306; Furst, supra, 182 N.J. at 15. A party may resist information that is sought that does not appear to be "reasonably calculated to lead to the discovery of admissible evidence." See R. 4:10-2. To resist that information, a party may move for a protective order by showing good cause, which can be established to protect a party's privacy interests where disclosure thereof would not produce relevant information. See K.S. v. ABC Professional Corp., 330 N.J.

Super. 288, 291-292, 299 (App. Div.), leave to appeal denied, 174 N.J. 411 (2000). Specifically, a protective order is appropriate where the information sought is of minimal, if any relevance and is calculated to intimidate, oppress and harass a witness. See Serrano v. Underground Util. Corp., 407 N.J. Super. 253, 267, 382 (App. Div. 2009).

If any part of the subpoena is not quashed, and the Defendants can proffer any reason why said materials are in any way relevant to the case at hand, a protective order is appropriate the narrowly tailor their requests.

CONCLUSION

Based upon the foregoing, Plaintiff's motion to quash and for a protective order should be granted.

Respectfully,

Bruce H. Nagel

BRUCE H. NAGEL

EXHIBIT "A"

Andrew O'Connor

From: Andrew O'Connor
Sent: Friday, August 12, 2022 11:44 AM
To: chris@deiningerlaw.com

Chris,

Give me a call when you get a chance.

Andrew L. O'Connor, Esq.
Partner

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LAUREN KANAREK **Plaintiff,** **v.** **MICHAEL BARISONE; SWEETGRASS FARMS, LLC; RUTH COX; JOHN DOES 1-30; ABC CORPORATIONS 1-20,** **Defendants.**	**SUPERIOR COURT OF NEW JERSEY** **LAW DIVISION-MORRIS COUNTY** **DOCKET NO.: MRS-L-2250-19** **CIVIL ACTION** **CERTIFICATION OF FILING AND SERVICE**

On this date, I filed the original the within Notice of Motion to Quash Subpoena, Certification of Counsel, Brief and proposed form of Order, by causing same to be forwarded via electronic filing.

On this date, I also served a copy of the within Motion papers by causing same to be forward to all counsel via electronic filing.

I certify 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.

NAGEL RICE, LLP
Attorneys for Plaintiff

By: *Bruce H. Nagel*
BRUCE H. NAGEL

Dated: September 15, 2022