IN THE CIRCUIT COURT OF THE 9TH
JUDICIAL CIRCUIT, IN AND FOR
OSCEOLA COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

KAILYN LOWRY,

Plaintiff,

v.

BRIANA SOTO p/k/a BRIANA DE JESUS

Defendant.

Case No. 2021-CA-001817-OC

PLAINTIFF'S MOTION REQUESTING LEAVE TO FILE UNDER SEAL (REDACTED)

COMES NOW Plaintiff Kailyn Lowry ("Plaintiff") through her undersigned attorneys, and respectfully files this motion requesting leave to file under seal Plaintiff's Motion to Strike Defendant Briana Soto's ("Defendant") motion for protective order or in the alternative Response in Opposition to Defendant's motion for protective order, and in support thereof states and prays as follows:

1. Plaintiff took Defendant's deposition on Monday, March 7, 2022.

2. On March 8, 2022, Defendant filed a motion for protective order. See Filing # 145276351.

3. Defendant's motion for protective order hinges upon Plaintiff's alleged attempt of extracting sensitive testimony at Defendant's deposition relating to her sexual history with a third party without any confidentiality protection.

4. Plaintiff posits that none of the information claimed by Defendant (be it questions posed by Plaintiff or answers rendered by Defendant) is either sensitive or confidential. Consequently, Defendant's motion for protective order is frivolous and unwarranted.

5. Attached to this motion, is Plaintiff's Motion to Strike or in the alternative Response in Opposition to Defendant's Motion for Protective Order. In an abundance of caution, to avoid any claims of improper disclosure by Plaintiff of "confidential information," Plaintiff is filing her motion to strike and/or response in opposition with redacted portions of the items that Defendant claimed a protective order is needed. See attachment.

6. To be sure, Plaintiff submits to the Court that there is nothing in her motion to strike – or in the alternative, response in opposition – that should be denominated confidential.

7. Plaintiff requests that the Court conduct an in-camera inspection[1] of her motion to strike or in the alternative response in opposition, to determine whether the redacted sentences, phrases or words, merit the classification of "confidential." If they not – as Plaintiff posits – deserve such category, then Plaintiff, with leave of Court, will file this motion unredacted, to allow the public to have access to it as it is a record of the judicial branch of government.

WHEREFORE, Plaintiff respectfully requests that the Court, being fully advised in the premises, grant this motion for leave to file under seal her motion to strike or in the alternative response in opposition to Defendant's motion for protective order, along with any other relief the Court deems just and proper.

[1] This in-camera inspection can be performed by serving Plaintiff's motion by email to the Court.

Respectfully submitted,

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ATTACHMENT

IN THE CIRCUIT COURT OF THE 9TH JUDICIAL CIRCUIT, IN AND FOR OSCEOLA COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

KAILYN LOWRY,

Plaintiff,

v.

BRIANA SOTO p/k/a BRIANA DE JESUS

Defendant.

Case No. 2021-CA-001817-OC

PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S MOTION FOR PROTECTIVE ORDER, OR IN THE ALTERNATIVE, RESPONSE IN OPPOSITION

COMES NOW Plaintiff Kailyn Lowry ("Plaintiff") through her undersigned attorneys, and respectfully files this motion to strike Defendant Briana Soto's ("Defendant") motion for protective order or in the alternative a response in opposition to Defendant's motion for protective order, and in support thereof states and prays as follows:[1]

INTRODUCTION

The case at bar began on June 25, 2021, with the filing of the complaint against Defendant, where Plaintiff alleged that Defendant made an assortment of untrue statements about Plaintiff, with the purpose of causing harm to Plaintiff.

The parties have started the discovery process. As part of the discovery process, the parties took their respective depositions. Defendant took the deposition of Plaintiff on February 17, 2022, and Plaintiff took Defendant's deposition on Monday, March 7, 2022.

[1] Portions of this motion to strike or in the alternative, response in opposition are filed in redacted format, but upon the Court's directive, Plaintiff will file an unredacted copy of the same.

The following day after Defendant's deposition was taken, in an unwarranted move to curtail the orderly discovery process, Defendant filed a Motion for Protective Order. In said motion, Defendant's counsel made a series of distortions and misrepresentations of what transpired during the examination of Defendant, all with the purpose of requesting that relevant discovery be precluded or that testimony rendered by Defendant at her deposition be sealed from public disclosure.

Defendant's motion does not hold water. As such the Court should strike it from the record. In the alternative, Plaintiff requests that the Court deny Defendant's motion, imposing sanctions upon Defendant for filing a frivolous and vexatious motion forcing Plaintiff to unnecessarily spend time and financial resources in opposing the same.

STANDARD OF REVIEW

Florida Rule of Civil Procedure 1.280 (c), states in its pertinent part:

> (c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and *for good cause shown*, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; and (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court… (emphasis added).

The Florida Supreme Court held in *Rasmussen v. South Florida Blood Service, Inc.,* 500 So.2d 533 (Fla.1987), cited in *Alterra Healthcare Corp. v. Est. of Shelley*, 827 So. 2d 936, 945 (Fla. 2002) that:

In deciding whether a protective order is appropriate in a particular case, the court must balance the competing interests that would be served by granting discovery or by denying it. *North Miami General Hospital v. Royal Palm Beach Colony, Inc.,* 397 So.2d 1033, 1035 (Fla. 3d DCA 1981); *Dade County Medical Association v. Hlis,* 372 So.2d 117, 121 (Fla. 3d DCA 1979). Thus, the discovery rules provide a framework for judicial analysis of challenges to discovery on the basis that the discovery will result in undue invasion of privacy. This framework allows for broad discovery in order to advance the state's important interest in the fair and efficient resolution of disputes while at the same time providing protective measures to minimize the impact of discovery on competing privacy interests.

The rules of discovery provide sufficient means to limit the use and dissemination of discoverable information via protective orders, and it is the responsibility of the trial court to decide whether to employ those means in each case. *Bd. of Trustees of Internal Improvement Tr. Fund v. Am. Educ. Enterprises, LLC*, 99 So. 3d 450, 459 (Fla. 2012).

Under Fla. R. Civ. P. 1.140(f), a court may strike redundant, immaterial, impertinent or scandalous matter. In the instant case, Defendant's motion for protective order is plagued with scandalous and untrue assertions towards Plaintiff's comportment at Defendant's deposition that warrant for the totality of the motion to be stricken from the record. "The purpose of a motion to strike is to clean up the pleadings, remove irrelevant or otherwise confusing materials, and avoid unnecessary forays into immaterial matters. *Liberty Media Holdings, LLC v. Wintice Group, Inc*., No. 6:10–cv–44–Orl–19GJK, 2010 WL 2367227, *1 (M.D. Fla. June 14, 2010); *Hutchings v. Fed. Ins. Co.*, 2008 WL 4186994 at *2 (M.D. Fla. Sept. 8, 2008)," cited in *Blake v. Batmasian*, 318 F.R.D. 698, 700 (S.D. Fla. 2017). A matter is scandalous if it is both grossly disgraceful (or defamatory) and irrelevant to the action or defense. See Black's Law Dictionary.

ARGUMENT

As the Court is aware, Mr. Christopher Lopez ("Mr. Lopez), submitted an affidavit on behalf of the Defendant in this case. Mr. Lopez is also the father of two of Plaintiff's sons. The allegations of the complaint are based on remarks made by Defendant where Defendant claimed that Plaintiff had committed violent, physical crimes towards Mr. Lopez. Defendant also asserted that Plaintiff was arrested for breaking and entering into the home of Mr. Lopez's mother. These comments are false.

A deposition of Defendant occurred on Monday, March 7, 2021. This was a videotaped deposition. During her deposition, Defendant testified that Mr. Lopez was the **sole source** of a sizable portion of the defamatory information that is at issue in this case. Moreover, Defendant testified under oath that she learned of this information from Mr. Lopez during a trip he took to Miami where Defendant joined him, in April 2021. Mr. Lopez' affidavit filed with the Court also stated that he told Defendant the defamatory information during that trip.

To make matters worse, during the deposition, Defendant testified under oath that Mr. Lopez, **changed** his story about what happened at his mother's home on or about September 4, 2020, presumably after he submitted an affidavit on behalf of Defendant in this case. (Defendant was unable to confirm the timing of this change but she did testify that it was during the course of this litigation). Defendant further averred that Mr. Lopez informed her of this change in his narrative of events. The docket of this case shows that Defendant has not put the Court on notice of this change in testimony. It should be noted that the only affidavit that Defendant has submitted in this case from a third-party is that of Mr. Lopez.

Accordingly, at the deposition Plaintiff explored Defendant's reasonable reliance on Mr. Lopez's statements and whether Mr. Lopez might be a biased witness. Showing that the witness

is biased is a classic method of impeachment. See Fl. Stat. 90.608, Florida Evidence Code. There can be no question that Plaintiff is entitled to make specific inquiries to determine whether Mr. Lopez is a biased witness. Hence, while making a specific inquiry into the scope of the relationship between Mr. Lopez and Defendant and their joint visit to Miami in April of 2021, Plaintiff's counsel asked if the April 2021 visit was "[redacted]." Defendant's counsel took issue with the use of the word "[redacted]" to describe the visit, objected to it, and requested a confidentiality order even though Defendant had already responded [redacted]. Clearly, such a neutral question did not (and does not) require the issuance of a confidentiality order.

After Plaintiff had concluded with Defendant's examination, Defendant proceeded with redirect. On redirect, Defendant was questioned again about the nature of her visit with Mr. Lopez to Miami in April 2021. Remarkably, Defendant testified that she could not fully answer the question [redacted] without a confidentiality order in place. This testimony was followed by a line of leading questions where Defendant responded that her previous answer to Plaintiff's question was not "complete," in an attempt to avoid what Plaintiff deems was an admission that she had perjured herself.

As the Court can easily ascertain, [redacted] is highly **relevant** to this matter and asking Defendant about [redacted] is not harassing, at all. Hence, it does not warrant a confidentiality order. Moreover, this shows that Defendant's twisted description of Plaintiff's questioning as prying into matters of "Ms. Soto's sexual history" and "insist[ing] that every salacious detail would be properly a matter of public record" is overtly and intentionally misleading. Defendant's lack of candor towards the Court about the scope of the question posed

by Plaintiff at Defendant's deposition cannot be attributed to a mere, innocent mistake. Indeed, the professional disciplinary history of Defendant's counsel speaks for itself.

It is clear that Defendant's motion for protective order portrayed a very different and inaccurate picture of what transpired at her deposition. Under no circumstances did Plaintiff's examination of Defendant constitute an abuse of process or an abuse of the discovery process as Defendant has contended. The information Plaintiff sought of Defendant is at the very center of this litigation and it is relevant to this lawsuit.

In her motion Defendant failed to mention that on at least two other occasions during the deposition, Plaintiff granted Defendant's requests to designate certain testimony as confidential and/or attorneys' eyes only.

Lastly, Plaintiff respectfully posits that Defendant should be reminded that the parties are the litigants and not their respective legal representatives. Throughout her motion, Defendant and her attorney made multiple, uncalled for references to counsel for Plaintiff, either referring to her by her full name or as Ms. Lowry's counsel. Such references in a motion are improper and unbecoming of an officer of the Court and give additional grounds to strike Defendant's motion from the record. However, this should not come as a surprise to any person, given Defendant's disruptive behavior during the deposition, and the multiple attempts to shut it down and to derail it.

WHEREFORE, Plaintiff respectfully requests that the Court grant this motion to strike Defendant's motion for protective order, or in the alternative that the Court deny Defendant's motion for protective order, imposing sanctions upon Defendant for filing an unwarranted motion full of misleading assertions and showing lack of candor to the Court, and any other relief the Court deems just and proper.

Dated: March 17, 2022.

Respectfully submitted,

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