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

KAILYN LOWRY,

Plaintiff,

v.

BRIANA SOTO p/k/a BRIANA DE JESUS,

Defendant.

_____/

Case No. 2021-CA-001817 OC

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DEFENDANT BRIANA SOTO'S
REPLY IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

Defendant Briana Soto p/k/a Briana De Jesus ("Defendant") files this Reply in support of her motion for protective order and respectfully requests that this Court enter a protective order prohibiting the Plaintiff, Kailyn Lowry, from seeking discovery from Ms. Soto on the subject of her sexual relationship with a third party without any confidentiality protection. That is all she seeks – this Court to compel the Plaintiff to do what any decent human being would have agreed to do – to keep the details of her sexual history off the public record.

Defendant Soto filed her motion for a simple purpose – she asks this Court to protect her from needing to answer questions about her sexual history, publicly, in a case that has repeatedly and endlessly been reported upon in the press – especially when the Plaintiff has used this case as a vehicle for publicity. It is not a question of whether the press would report on the salacious details of Ms. Soto's sexual history if they were to become inscribed in a public filing in this matter – it is a matter of how many minutes it would take before the first such article would be published.[1]

[1] Ms. Soto does not say this to take issue with the press's reporting on this case. Instead, she is simply recognizing the realities of this litigation. Indeed, Ms. Soto's Motion for Protective Order alone has already been widely reported on. *See, e.g.,* Teresa Roca, "OH KAIL NO Teen Mom Briana DeJesus files protective order after Kailyn Lowry 'tries to expose her sexual history' in nasty lawsuit", THE SUN (Mar. 15, 2022) (available at: https://www.the-sun.com/entertainment/4901338/teen-mom-briana-dejesus-protective-order-kailyn-lowry/); "Briana DeJesus Files Motion to Keep Kail Lowry From Making Her Disclose Info About Her Sex Life; Wants Lawsuit

Ms. Lowry's opposition disingenuously tries to backtrack from the position that her counsel took – that questions about the Defendant's sexual history should be a matter of public record. This disingenuousness should not be approved of, but it is understandable. Anyone would be embarrassed to be called out for what she refused to do – to simply agree that questions about Ms. Soto's sexual history should be confidential. What could even begin to warrant an opposition to such a request?

It is dishonest to characterize the motion as Ms. Soto seeking to simply refuse any testimony on the subject of her sexual history. The opposition goes on at length about why the discovery is necessary for the resolution of the case and includes extensive argument as to why the requested testimony is relevant. Ms. Soto disagrees that it is relevant. It is not relevant to any issue in the case, at all.

Nevertheless, Ms. Soto did not file a protective order on the basis that the information is irrelevant.[2] Ms. Soto asked for nothing more than protection from providing the testimony *without any protective order in place*, which would preserve her dignity and save her from public harassment and embarrassment. With such protection in place, she would readily and willingly give such testimony, and the Motion made that clear.

Had Lowry's counsel simply stipulated to designating the testimony as confidential at Ms. Soto's deposition, this issue would not be before the Court at this time.[3] As to why Ms. Lowry would refuse to stipulate to reasonable confidentiality protections, we can only speculate.

Testimony Sealed So Kail Can't Use It To Embarrass Her (Exclusive Details!)", THE ASHLEY'S REALITY ROUNDUP (Mar. 15, 2022) (available at: https://www.theashleysrealityroundup.com/2022/03/15/briana-dejesus-files-motion-to-keep-kail-lowry-from-making-her-disclose-info-about-her-sex-life-wants-testimony-sealed-so-kail-cant-use-it-to-embarrass-her-exclusive-details/); Nora Donnellan, "Briana DeJesus Files for Order of Protection Against Kailyn Lowry", HEAVY (Mar. 17, 2022) (available at: https://heavy.com/entertainment/teen-mom/briana-dejesus-kailyn-lowry-lawsuit/); Breanna Bell, "Briana DeJesus Trying to Keep Sex Life Details out of Kailyn Lowry Lawsuit", POPCULTURE (Mar. 16, 2022) (available at: https://popculture.com/reality-tv/news/briana-dejesus-trying-to-keep-sex-life-details-out-of-kailyn-lowry-lawsuit/); Mona Wexler, "Teen Mom 2: Kail Lowry accused of 'prying into' Briana DeJesus' sexual history in defamation lawsuit", MONSTERS & CRITICS (Mar. 16, 2022) (available at: https://www.monstersandcritics.com/tv/reality-tv/teen-mom-2-kail-lowry-accused-of-prying-into-briana-dejesus-sexual-history-in-defamation-lawsuit/).

[2] She did, however, preserve the objection on the basis of relevance.

[3] Given that Ms. Lowry's counsel refused to stipulate to any confidentiality protections regarding this line of questioning, Ms. Soto declined to provide the requested testimony absent guidance from this Court. At the deposition, Ms. Lowry's counsel specifically reserved the question for later testimony.

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However, no stretch of the imagination can lead to the conclusion that the reason is ethical, professional, or honorable in nature.

In support of her outlandish position, Ms. Lowry attempts to distract the Court from her unreasonable position by arguing that Ms. Soto's Motion for Protective Order as an "unwarranted move to curtail the orderly discovery process," and that Ms. Soto should be sanctioned for daring to ask for protection from Ms. Lowry's abusive discovery demands. *See* Opposition Brief at 2. However, Florida law is clear that a Court may properly enter a protective order in order to "'protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.'" *Rasmussen v. S. Fla. Blood Serv., Inc.*, 500 So. 2d 533, 535 (Fla. 1987) (quoting Fla. R. Civ. P. 1.280(c)). Further, what would "curtail" the discovery process? Ms. Lowry's counsel left the deposition open for these questions to be answered. She could have just asked them during the deposition itself, had she agreed to designate the responses as confidential. She could have then sought the Court's intervention to lift the confidentiality designation, if she truly believed that the Court would agree that details about the Defendant's sexual history were properly matters of public record.

Ms. Soto did not choose to file this lawsuit, and it is unjust to impose on her the requirement of testifying as to her private sexual history without even the most basic confidentiality protections in place. If anything is deserving of confidentiality in this State, one's most intimate, personal conduct should qualify. Accordingly, Ms. Soto asks the Court to grant her motion. And if the Court is inclined to grant sanctions, it should do so in this circumstance against Lowry's counsel for turning this very simple issue into a matter of some expense and tension – when any reasonable attorney would have agreed to designate such responses as confidential. Refusing to do so was troubling enough. But, to disingenuously try to re-characterize her conduct in order to try to paint Ms. Soto as the unreasonable one here should draw the Court's special attention.

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Dated: March 18, 2022.

Respectfully Submitted,

/s/ Marc J. Randazza

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email through the Florida E-Filing Portal to counsel for the Plaintiff, Yadhira Ramirez-Toro, Steven G. Hurley, Hubert G. Menendez, TREMBLY LAW FIRM, 9700 South Dixie Highway, PH 1100, Miami, Florida 33156, yadhira@tremblylaw.com, steven@tremblylaw.com, service@tremblylaw.com, and Nicole Haff, ROMANO LAW PLLC, 55 Broad Street, 18th Floor, New York, NY 10004, nicole@romanolaw.com, on this 18th day of March 2022.

/s/ Marc J. Randazza
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DEFENDANT BRIANA SOTO'S OPPOSITION TO MOTION TO STRIKE

1.0 Introduction and Facts

Defendant Briana Soto respectfully requests that this Court deny the Plaintiff's Motion to Strike the Defendant's Motion for Protective Order.

At Defendant Briana Soto's deposition, Plaintiff Kailyn Lowry sought details relating to Ms. Soto's sexual history. Ms. Soto indicated that she would be willing to answer those questions, however, she would not do so in the absence of confidentiality designations prohibiting the public disclosure of her answers. Ms. Lowry's counsel refused to stipulate to that reasonable restriction, and stated that she wanted to keep the deposition open to revisit those questions. Therefore, Ms. Soto moved for a protective order – not one prohibiting the questions (even though that would be proper) but merely to keep the information from being a matter for public consumption.

In responding to the motion, Ms. Lowry asked the Court to strike Ms. Soto's motion from the record. The Motion to Strike is improper, without merit, and should be denied.

2.0 The Relevant Rule

The Florida Rules of Civil Procedure allow a party to "move to strike … redundant, immaterial, impertinent, or scandalous matter from any **pleading** at any time." *See* Fla. R. Civ. P. 1.140(f). (emphasis added) "A motion to strike matter as redundant, immaterial or scandalous should only be granted if the material is wholly irrelevant, can have no bearing on the equities and

no influence on the decision." *Pentecostal Holiness Church, Inc. v. Mauney*, 270 So. 2d 762, 769 (Fla. 4th DCA 1972) (citing *Westervelt v. Istokpoga Consol. Subdrainage Dist.*, 160 Fla. 535, 35 So. 2d 641 (1948); *Gossett v. Ullendorff*, 114 Fla. 159, 154 So. 177 (1934)); *see also Varnadoe v. Union Planters Mortg. Corp.*, 898 So. 2d 992 (Fla. 5th DCA 2005) (recognizing the "wholly irrelevant" standard).

3.0 Analysis

3.1 The Motion is not a "pleading" and not subject to the rule

First, Ms. Lowry moves to strike a *motion* filed by Ms. Soto, which is not a *pleading* under the Florida Rules of Civil Procedure. Pleadings are defined under the Florida Rules of Civil Procedure as: complaints, answers to complaints, answers to counterclaims, answers to crossclaims, third party complaints, and third party answers. *See* Fla. R. Civ. P. 1.100(a). Notably, Rule 1.100 separately defines motions as distinct from pleadings. *Cf.* Fla. R. Civ. P. 1.100(b). Accordingly, a motion is not a pleading and Ms. Lowry's motion necessarily fails.

3.2 Even if it were subject to the rule, the rule is not properly applied here

Second, despite abundant Florida case law interpreting and applying Fla. R. Civ. P. 1.140(f), Ms. Lowry's motion chooses to cite only federal case law which apply Federal Rule of Civil Procedure 12(f). As reflected above, a pleading may only be stricken under Rule 1.140(f) if it is "wholly irrelevant, can have no bearing on the equities and no influence on the decision." *Pentecostal Holiness Church*, 270 So. 2d at 769. Here, Ms. Soto's motion properly seeks relief in the form of a protective order under Fla. R. Civ. P. 1.280(c). It recites relevant facts and sets forth relevant argument. Accordingly, on substance, Ms. Lowry's motion should be denied.

3.3 The basis is no basis at all

Ms. Lowry argues that Ms. Soto's reference to Ms. Lowry's counsel's conduct during the deposition provides grounds for striking Ms. Soto's motion.

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Ms. Soto and her counsel agree that attorneys for the parties are merely advocates whose duty it is to advance their clients' interests.

However, some instances necessitate the differentiation between attorney and client where such differentiation is required to recount matters factually (*e.g.*, an attorney questioning a witness is factually distinct from a party herself questioning a witness). Ms. Lowry was not present at the deposition. Ms. Lowry did not make the decision to refuse to designate sensitive personal information as confidential. Ms. Lowry was not even consulted. The decision was attorney Haff's decision, and hers alone.

Regardless, if referring to the actions of an attorney in a filing is grounds for striking a motion, Ms. Lowry's own motion should likewise be stricken for the same reason. The vituperative (and frankly childish) nature of the arguments seeking the striking of the Motion for protective order is palpable. *See* Motion to Strike at 2 ("… Defendant's counsel made a series of distortions and misrepresentations …"); *see id*. at 5 ("Defendant's counsel took issue with the use of the word '[redacted]'…"; *id*. at 6 ("… the professional disciplinary history of Defendant's counsel speaks for itself.")

Meanwhile, let it not be lost on anyone that this could have been resolved with a simple agreement to treat the details of Ms. Soto's sexual history as they should – with the courtesy, class, and professionalism to simply agree that they would not be matters of public record.

4.0 Conclusion

The Motion to strike is baseless and frivolous, as it seeks to strike a *motion* under a Rule which only provides for the striking of *pleadings* under a standard that is completely inapplicable. However, even if it were applicable to this document, the arguments underlying it are legally, professionally, and morally bankrupt.

Ms. Soto asks this Court to deny Ms. Lowry's Motion to Strike.

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Dated: March 18, 2022.

Respectfully Submitted,

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/s/ Marc J. Randazza
Marc J. Randazza

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