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December 13, 2021

Via E-Court

Honorable Joseph Turula, J.S.C.
Superior Court of New Jersey
Hudson County Vicinage
583 Newark Avenue – 2nd Floor
Jersey City, New Jersey 07302

Re: Stacie Percella v. James M. Davis; City of Bayonne
Docket No: HUD-L-177-18
BG&S File No.: NJ-21-3020

Dear Judge Turula:

The undersigned represents Plaintiff Stacie Percella in the above captioned appeal. We respectfully submit this Reply letter brief under R.4:23-1, as the reply to the Defendants' submission of November 29, 2021. As such, and because of the Thanksgiving Holiday, the return date on the pending *Motion to Compel Depositions, More Specific Answers, Extension of Discovery by 120 days, and Requesting a Case Management Conference before Judge Rogers* was carried until Friday, December 17, 2021. We have offered a more than generous and easily adaptable as far back as July 2021. Defendants' counsel Sullivan refuses to consent to any extension or work out a schedule of depositions.

You may recall the Appellate Division remanded this politically explosive case back to Hudson County. That was done on Friday, May 28, 2021. Heretofore, the case has not had a Case Management Conference. We have attempted to schedule depositions; requested more specific answers from unanswered interrogatories.

As more specifically set forth in Plaintiff's Motion to Compel, para. 5:

“On or about October 17, 2019 and October 18, 2019, Gary Chmielewski, Bernadette D'Angelo (Nestico), James Davis, Gary La Pelusa, Donna Russo, Deborah Falciani and Joseph

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DeMarco were served Subpoenas Ad Testificandum and/or Notice to Take Deposition by Plaintiff's prior attorney, Elizabeth T. Foster, Esq. (see Exhibit A). Defendants' depositions were to be deposed on November 4, 5, and 6th of 2019. Defense counsel cancelled and refused to produce defendant and individual employees of the City of Bayonne for depositions. **Judge Bariso had set forth in his November 8, 2019 Order** that the depositions were to be completed no later than January 17, 2020 (see Exhibit B). Depositions were rescheduled for the first week of December 6-7, 2019. Defense counsel (Theresa Lentini was the previous attorney for Defendants) continually cancelled, adjourned and refused to produce defendant and individual employees of the City of Bayonne for depositions." *Id.*

Discovery is Mandated by New Jersey State Court Rules:

New Jersey's discovery rules are designed to eliminate the element of surprise by requiring litigants to disclose the facts underlying the claim or defense at issue. See Saia v. Bellizio, 103 N.J.Super.465, 468, (App.Div.), *aff'd.*, 53 N.J.24 (1968); McKenney v. Jersey City Medical Center, 167 N.J.359 (2001).

The search for truth in the furtherance of justice is of paramount importance. Caparella v. Bennett, 85 N.J.Super.567, 571 (App.Div.1964). This constitutive proposition of our system of justice is fashioned to ensure that the results are grounded in the facts of the matter, and not skill of counsel or craftiness of the parties. Lang v. Morgan's Home Equipment Corp., 6 N.J.333, 338 (1951); Wymbs v. Township of Wayne, 163 N.J.523, 543 (2000), quoting, Evtush v. Hudson Bus Transp. Co., 7 N.J.167, 173 (1951).

Concealment, surprise, or trial by ambush will not be countenanced. Plaza 12 Associates v. Carteret Borough, 280 N.J.Super.471, 477 (App.Div.1995). Trial date is currently February 22, 2022.

The relevance standard –that is, “evidence having a tendency in reason to prove or disprove any fact of consequence,” see, N.J.R.E.401, is broad enough on its own to encompass the materials sought. The discovery standard, which is broader still, encompasses anything that is not only relevant, but also that is reasonably calculated to lead to the discovery of admissible evidence. R.4:10-2(a); Payton v. N.J. Tpk. Auth., 148 N.J.524, 535-36 (1997).

The depositions are relevant and necessary to the Plaintiff's case in chief. It is clear as day what the Defendants' counsel appears to be doing: delay, delay, delay then do not produce the Deponents (this worked for them in December, 2019, and they think it will again). Concealment will not be countenanced.

We all do not need to be reminded that this is a sitting Mayor of the City of Bayonne “sexting” a female subordinate, while at work, after work, and late night. Instead of working toward a resolution, Defendants utilize each and every opportunity to “mix up” a 2013 U.S. District Court case with this State Case. The Defendants file 180 pages in their Response to deceptively and deflect the business at hand. Plaintiff Percella sat for her deposition; she is entitled to take the depositions of: Gary Chmielewski, Bernadette D'Angelo (Nestico), James

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Davis, Gary La Pelusa, Donna Russo, Deborah Falciani and Joseph DeMarco. Further, she is entitled to correct and complete answer to Interrogatories.

The Plaintiff's Request for Relief is clear; it is warranted; and consistent with New Jersey State Court Rules and Case Law. Thank you for your attention herein.

VFG:cah

VFG/ks

Very truly yours,
Vincent F. Gerbino, Esq. /s/
Vincent F. Gerbino, Esq.