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PHILIP GODLEWSKI

PLAINTIFF,

V.

BRIENNA L. DUBORGEL

DEFENDANT.

IN THE COURT OF COMMON
PLEAS
OF LACKAWANNA COUNTY

CIVIL ACTION - LAW

JURY TRIAL DEMANDED

NO.: CV-2023-1354

**DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR STAY OF WEALTH
DISCOVERY AND IMPOSITION OF RESTRICTIONS**

AND NOW COMES the Defendant, Brienna L. DuBorgel ("Defendant"), by and through her legal counsel, Fellerman and Ciarimboli Law PC, to hereby submit this Response to Plaintiff's Motion for Stay of Wealth Discovery and Imposition of Restrictions and in support thereof, avers as follows:

1. Admitted.
2. Admitted.
3. Admitted, however Defendant denies the claims and support underlying the referenced motion.
4. Denied as stated. Paragraph four (4) falsely implies that if portions of Plaintiff's Motion for Judgement on the Pleadings is granted as to the dismissal of certain claims made by

Defendant, Defendant's likelihood of recovering punitive damages would be greatly diminished. However, Defendant's punitive damages claim regarding her claims for Defamation and False Light are more than sufficient to establish "a prima facie basis for punitive damages" under Pa. R.C.P. 4003.7 and Pennsylvania law generally, as this Honorable Court has previously noted. Charlesworth v. Galacci, 2017 Pa. Dist. & Cnty. Dec. LEXIS 11163 citing Ogazaly v. American Honda Motor Co., Inc., 104 Lacka. Jur. 354, 360, 2003 WL 26131652, at *5 (Lacka. Co. 2003) ("*To secure financial wealth discovery under Rule 4003.7, the plaintiff must identify facts that establish a prima facie basis for the recovery of punitive damages under Pennsylvania law*"). See also Valentino v. Philadelphia Triathlon, LLC, 2016 PA Super 248, 150 A.3d 483, 488 (Pa. Super. 2016) (en Banc) and Milian v. Pennsylvania American Water Company, 25 Pa. D. & C. 5th 181, 186 (Lacka. Co. 2012). ("*Punitive damages are recoverable if the defendant had a subjective appreciation of the risk of harm to which the plaintiff was exposed, but nonetheless acted, or failed to act, in conscious disregard of that risk.*") Defendant has pled sufficient facts to meet the above stated threshold. See ¶¶36-52 of Defendant's Counterclaim.

5. Admitted, however Defendant denies that Plaintiff's Motion for Judgement on the Pleadings has any basis in law or fact.
6. Denied. Plaintiff's assertion that an unwritten Motion for Summary Judgement based on a ruling in Plaintiff's favor on an undecided Motion for Judgement on the Pleadings would dismiss all of Plaintiff's claims is highly speculative and has no basis in law or fact.

7. Admitted. Generally, however, there is no need for restrictions in this case given the prior Order which is attached here and the law of this Commonwealth which allows for said discovery in a case like this.
8. Admitted, however, Defendant requests that Plaintiff's request be denied. By way of further response, Plaintiff is currently in violation of the Order and has failed to properly file the Motion for Judgment on the Pleadings in accordance with the laws of this Commonwealth and/or the Local Lackawanna County Rules. Indeed, Plaintiff's Motion for Judgment on the Pleadings has not been scheduled for argument.
9. Admitted, however, Defendant requests that Plaintiff's request be denied. By way of further response, Plaintiff is currently in violation of the Order and has failed to properly file the Motion for Judgment on the Pleadings in accordance with the laws of this Commonwealth and/or the Local Lackawanna County Rules. Indeed, Plaintiff's Motion for Judgment on the Pleadings has not been scheduled for argument.

WHEREFORE, Defendant Brianna DuBorgel respectfully requests that this Honorable Court deny Plaintiff's Motion for Stay of Wealth Discovery and Imposition of Restrictions and enter an order to the following effect:

- A. Compel Plaintiff to respond to Defendant's Wealth Discovery requests within ten (10) days of the denial of Plaintiff's Motion for Stay of Wealth Discovery and Imposition of Restrictions.
- B. Place no additional restrictions on Defendant as it pertains to the referenced wealth discovery, as Plaintiff has provided no basis in the instant motion for the imposition of any restrictions.
- C. Such other resolution as the Court may deem fit.

Respectfully submitted,

FELLERMAN & CIARIMBOLI LAW, PC

Molly Dempsey Clark

By: _____
EDWARD J. CIARIMBOLI, ESQUIRE
MOLLY DEMPSEY CLARK, ESQUIRE
Attorneys for the Defendant

Date: January 23, 2024