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8 and 3 BROTHERS TACO SHOP, INC. dba TRES TAQUERIA

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF SAN DIEGO**

12 ZHALA TAWFIQ, *et al.*, ) Case No.: 37-2017-00019692-CU-FR-CTL  
13 )  
14 Plaintiffs, ) [IMAGED FILE]  
15 v. ) [Assigned to Hon. Timothy Taylor for all purposes]  
16 MISS MIDDLE EAST BEAUTY PAGEANT )  
17 USA, INC., a California non-profit corporation, *et al.*, ) PLAINTIFFS/CROSS-DEFENDANTS THREE  
18 ) BROTHERS TACO SHOP, INC.'S, PARIS  
19 Defendants. ) KARGAR'S, AND ZHALA TAWFIQ'S  
20 ) NOTICE OF MOTION AND MOTION TO  
21 ) STRIKE PURSUANT TO CODE OF CIVIL  
22 ) PROCEDURE SECTION 425.16;  
23 ) MEMORANDUM OF POINTS AND  
24 ) AUTHORITIES IN SUPPORT THEREOF  
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1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on December 22, 2017 1:30 PM, or as soon thereafter as  
3 the matter may be heard in Department 72 of the above-entitled court, Plaintiffs THREE  
4 BROTHERS TACO SHOP, INC., PARIS KARGAR and ZHALA TAWFIQ will and hereby  
5 do Move to Strike all Causes of Action against them pled in Cross-Complainants' First  
6 Amended Cross-Complaint with the exception of the Breach of Contract claims which are  
7 addressed via the concurrently filed Demurrer.

8 This special motion to strike is brought pursuant to Code of Civil Procedure section  
9 425.16 on the grounds that each of these causes of actions arise from THREE BROTHERS  
10 TACO SHOP, INC., PARIS KARGAR and ZHALA TAWFIQ's acts in furtherance of their  
11 right of petition or free speech under the United States or California Constitution in  
12 connection with a public issue. Moreover, THREE BROTHERS TACO SHOP, INC., PARIS  
13 KARGAR and ZHALA TAWFIQ are entitled to recover their attorney's fees and costs  
14 incurred in bringing this motion.

15 This special motion to strike is based upon this Notice, the attached Memorandum of  
16 Points and Authorities, the accompanying Declaration of Jimmie Davis Parker, Esq., all  
17 records and files herein, and such other and further documents and argument as may be  
18 presented at the hearing on this matter or considered by the Court.

19 DATED: November 6, 2017

LAW OFFICE OF JIMMIE DAVIS PARKER,  
APC

21  
22 

23 \_\_\_\_\_  
JIMMIE DAVIS PARKER, ESQ.

24 Attorney for Plaintiffs THREE BROTHERS TACO  
25 SHOP, INC., PARIS KARGAR, and  
26 ZHALA TAWFIQ  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiffs/Cross-Defendants bring this Special Motion to Strike (“Anti-SLAPP  
4 Motion”) pursuant to California Code of Civil Procedure section 425.16, to summarily  
5 dispose of Cross-Complainants’ First Amended Cross-Complaint (“FACC”).<sup>1</sup>

6 Defendants/Cross-Complainants are a sitting councilman for the City of El Cajon  
7 and his wife, BESSMON and JESSICA KALASHO, and two entities they fully own and  
8 control, the MIDDLE EASTERN CHAMBER OF COMMERCE fka SAN DIEGO EAST  
9 COUNTY CHALDEAN AMERICAN CHAMBER OF COMMERCE (“CHAMBER”) and the  
10 MISS MIDDLE EAST BEAUTY PAGEANT USA, INC. (“PAGEANT”), Defendants/Cross-  
11 Complainants collectively are referred hereafter as the “KALASHOS.”

12 Plaintiffs/Cross-Defendants are victims of the KALASHOS’ outrageous conduct  
13 consisting of fraud, harassment and defamation conducted both online and in person. In  
14 the mere five months since the filing of the Complaint, Plaintiffs have been able to secure  
15 overwhelming evidence from Facebook, Instagram, Cox Communications, AT&T, JotForm,  
16 and Charter Communications establishing that many of the serious allegations against the  
17 KALASHOS relating to alias Facebook accounts, fabricated poll results, defamatory  
18 statements and falsified nude photographs are indisputably true.

19 In response to Plaintiffs’ Complaint, Defendants answered, but also filed a plainly  
20 improper and retaliatory cross-action against all Plaintiffs asserting a variety of causes of  
21 actions, none of which have any legal merit and all of which addressed herein are based on  
22 protected conduct. The undersigned met and conferred on the numerous, clear and fatal  
23 deficiencies in the Cross-Complaint and requested it withdrawn citing obligations placed  
24 on members of the Bar under Code of Civil Procedure section 128.7, as well as, the evidence  
25 already obtained and shared in the matter. *See* Declaration of Jimmie Davis Parker, Esq. in

26 \_\_\_\_\_  
27 <sup>1</sup> With the exception of Cross-Complainants’ Breach of Contract causes of action against Zhala Tawfiq as these causes of  
28 action are addressed by Cross-Defendant Tawfiq’s concurrently filed Demurrer. Additionally, Plaintiff/Cross-Defendant  
Lina Charry is separately represented and will be responding under different cover.

1 support of Cross-Defendants’ Motion to Strike Pursuant to Section 425.16 of the Code of  
2 Civil Procedure (“Parker Decl.”) at ¶2, Ex. A. Counsel for the KALASHOS, Mr. Liosi,  
3 informed the undersigned that he would address the deficiencies via an Amended Cross-  
4 Complaint, however, the FACC failed to address the numerous insufficiencies identified  
5 and is now the pleading at issue in the instant Motion.<sup>2</sup> *Id.*

6 **II. THE FACC’S UNAMBIGUOUS, RETALIATORY ATTACK ON PROTECTED**  
7 **CONDUCT**

8 The KALASHOS are apparently self-aware that they base their countersuit on clearly  
9 protected conduct but, nonetheless bring it before this Court and subject Cross-Defendants  
10 to the harassment, cost and uncertainty of improperly initiated legal proceedings, as the  
11 FACC is prefaced:

12 Defendants’ [sic], for their cross-complaint against Plaintiffs, allege as follows,  
13 fully understanding that Plaintiffs have the right to speak to the media and  
14 voice their good-faith allegations, as well as set forth their good-faith  
15 allegations in their Complaint. (FACC at p. 3:1-4)

16 The KALASHOS’ ostensive admissions that they have sued the Plaintiffs/Cross-  
17 Defendants for protected conduct are found throughout the FACC.

18 **a. The KALASHOS’ Allegations Against Three Brothers Taco Shop, Inc.**  
19 **(“Tres”)**

20 **The entirety of KALASHOS’ allegations against Tres are as follows:**

21 Allegedly, two (2) days after an associate of the Kalasho’s [sic], Mr. Louis  
22 Jabaro, was denied by the principle [sic] of 3 Brothers Taco Shop, Mr. Durad  
23 Hallak, to post campaign signs on behalf of Defendant Bessmon Kalasho,  
24 Defendant Middle Eastern Chamber of Commerce posted on its Facebook  
25 page a poll seeking votes for “The Best Mexican Food in El Cajon Contest.”  
According to Plaintiffs, the poll was “fabricated” and some of the voters were  
using fake Facebook profiles created by Defendants in order to supposedly  
defame the restaurant in an act of retaliation, as the restaurant scored very low  
in the polls and garnered more than a few negative comments against it. But,

---

26 <sup>2</sup>Additionally, Defendants/Cross-Complainants make several key binding judicial admissions via their First Amended  
27 Cross-Complaint in regard to the various aspects of the conduct at issue in the action. “Facts established by pleadings as  
28 judicial admissions are conclusive concessions of the truth of those matters, are effectively removed as issues from the  
litigation, and may not be contradicted, by the party whose pleadings are used against him or her.” *Myers v. Trendwest  
Resorts, Inc.* (2009), 178 Cal. App. 4th 735, 746. [internal citations and quotations omitted.]

1 it is hard to imagine that only one El Cajon business denied the posting of  
2 campaign signs on behalf of Defendant Bessmon Kalasho. So, where are the  
3 other “fabricated” polls targeting other El Cajon businesses that denied the  
4 posting of campaign signs on behalf of Defendant Bessmon Kalasho? (FACC  
¶19).

5 Plaintiff 3 Brothers Taco Shop is seeking actual damages, general damages and  
6 punitive damages, on the now mere circumstantial speculation that the  
7 “fabricated” poll was created by Defendant Bessmon Kalasho and/or  
8 Defendant Jessica Kalasho, or by someone on their behalf. (FACC ¶20).

9 Upon those grounds, the KALASHOS sue Cross-Defendant Tres for Intentional  
10 Infliction of Emotional Distress and Intentional Interference with Prospective Economic  
11 Relations as follows:

12 **If Plaintiffs 3 Brothers Taco Shop, Inc., dba Tres Taqueria, allegation that**  
13 **the “Best Mexican Food in El Cajon Contest” Facebook poll was fabricated,**  
14 **proves to be false, then** such an allegation was clearly designed to inflict  
15 severe emotional distress on Defendant Bessmon Kalasho, as well as his wife,  
16 Defendant Jessica Kalasho, and did... **If the court and jury find accordingly,**  
17 then Defendants should be rightfully compensated for their harm caused by  
18 the outrageous statements/allegations made by Plaintiffs [sic] 3 Brothers Taco  
19 Shop, Inc., dba Tres Taqueria, especially **if the poll in question proves to be**  
20 **legitimate.** (FACC ¶43).

21 **If Plaintiffs 3 Brothers Taco Shop, Inc., dba Tres Taqueria’s allegation that**  
22 **the “Best Mexican Food in El Cajon Contest” Facebook poll was fabricated,**  
23 **proves to be false, then** their business principles [sic] engaged in an obvious  
24 and carefully-crafted method to disrupt the future business relationships of  
25 Defendant Bessmon Kalasho and the “Miss Middle East Beauty Pageant.”  
26 (FACC ¶44).

27 As to the restaurant, Defendants/Cross-Complainants are outright suing Tres for the  
28 allegations it has made in the Complaint and equivocate on if those allegations are even  
false.<sup>3</sup> Notwithstanding the fact that the KALASHOS otherwise fail to state a claim against  
Tres, the basis of their suit against it is completely grounded on statements that are protected

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<sup>3</sup> Insofar as Defendants/Cross-Complainants are asserting a misnamed claim for wrongful use of civil proceedings, a key element of which is that a suit **has been terminated** in one’s favor; of course, this has not occurred in the pending action. *See Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 731; *see also* CACI 1501. “Wrongful Use of Civil Proceedings.”

1 under the litigation privilege codified at Civil Code section 47(b) and additionally are  
2 subject to the burden shifting of maintaining the action pursuant to California’s anti-SLAPP  
3 provisions as further discussed herein.

4 **b. The KALASHOS’ Allegations Against Zhala Tawfiq**

5 The KALASHOS sue Zhala Tawfiq for Intentional Infliction of Emotional Distress  
6 and Intentional Interference with Prospective Economic Relations. The entirety of the factual  
7 allegations in support of their causes of action read:

8 Plaintiff Tawfiq **spoke to the media about her experience with the pageant,**  
9 **which, admittedly, is her right,** where she mentioned, among other things, to  
10 the *San Diego Reader*, that **(i) the “Miss Middle East Beauty Pageant U.S.A.,**  
11 **Inc.” was a fraud** and **(ii) she had discovered a fake Instagram account,**  
**which featured falsified nude photos of her, strongly implying that**  
**Defendants likely did the Instagram posting.** (FACC ¶4) [emphasis added.]

12 The statements that the KALASHOS assert form the basis of their causes of action  
13 against Tawfiq are clearly protected recitations of the allegations contained in the Complaint  
14 against them, and, as such, their causes of action are irreparably fatally-flawed.<sup>4</sup> See Civ.  
15 Code §§ 47(b), (d); see also, *Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 912-913.

16 The KALASHOS’ Intentional Infliction of Emotional Distress Cause of Action as to  
17 Tawfiq reads in pertinent part:

18 Plaintiff Tawfiq, given her intentional and outrageous statements made to the  
19 press about Defendant Bessmon Kalasho and the “Miss Middle East Pageant,”  
20 **which, admittedly, she has the right to do,** certainly caused Defendant  
21 Bessmon Kalasho to suffer severe emotional distress in that his political career,  
22 his livelihood, and his character and standing in the community have all been  
23 tarnished by Plaintiff Tawfiq’s [sic] false statements made to the *San Diego*  
*Reader*. Given the gravity of Plaintiff Tawfiq’s statements, severe emotional  
24 distress suffered by Defendant Bessmon Kalasho can certainly be reasonably  
25 inferred; and who should be expected to endure it? **Notably, Defendant’s**

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26 <sup>4</sup> Plaintiffs’ First Amended Complaint provides: “On or about April 7, 2017, amid the contractual dispute, Defendant  
27 DOE 1 published four photos of Plaintiff’s likeness on the bodies of nude women via a public Instagram profile entitled:  
28 zhala\_tawfiq\_fanpage. Upon information and belief, DOE 1 is a named Defendant and/or was acting upon the direction  
of a named Defendant and/or was working in concert with a named Defendant.” See Plaintiffs’ First Amended Complaint  
at ¶¶ 31-32. Moreover, the Second Cause of Action against the KALASHOS is for fraud in relation to their conduct vis-  
à-vis Ms. Tawfiq and the Pageant. *Id.* at ¶¶ 25-28, 60-69.

1           **understand that Plaintiff Tawfiq has the right to speak to the press, but not**  
2           **the right to lie to the press. (FACC ¶28) [emphasis added.]**

3           And the KALASHOS' Intentional Interference with Prospective Economic Relations  
4 Cause of Action as to Tawfiq reads in pertinent part:

5           Plaintiff Tawfiq's false statements to the San Diego Reader were an obvious  
6           and carefully-crafted method to disrupt the future business relationships of  
7           Defendant Bessmon Kalasho and the "Miss Middle East Beauty Pageant." In  
8           fact, the recently-held 2017 Pageant saw sponsorships drop out, ticket sales  
9           decline; and it is the first time the pageant has lost money. Plaintiff Tawfiq  
10          accomplished her mission. Therefore, the Defendants should be rightly  
11          compensated for the harm they suffered because of Plaintiff Tawfiq's  
12          statements. **Again, Defendants' understand that Plaintiff Tawfiq has the**  
13          **right to speak to the press, but not the right to lie to the press. (FACC ¶29)**  
14          **[emphasis added.]**

15          Notwithstanding the fact that COUNCILMAN KALASHO is a public figure and the  
16          statements attributed to Ms. Tawfiq are true, a plain recitation of the allegations in a pending  
17          lawsuit is clearly protected conduct under the First Amendment as contemplated by  
18          California's Anti-SLAPP statute and related litigation privilege doctrine. *See* Code Civ. Proc.  
19          § 425.16; *see also* Civ. Code §§ 47(b), (d). As discussed further herein, the claims against Ms.  
20          Tawfiq should be stricken pursuant to the remedy provided to Defendants facing retaliatory  
21          suits under California's Anti-SLAPP statute.

22                           **c. The KALASHOS' Allegations Against Paris Kargar**

23          The entirety of the allegations against Paris Kargar is as follows: Paragraphs 13-15 of  
24          the FACC recite the allegations made by Ms. Kargar in her Complaint against the  
25          KALASHOS (with several key judicial admissions) and then goes on, in paragraphs 16-18,  
26          to make some dubious assertions in an apparent attempt to impeach those allegations.  
27          Upon those grounds, the KALASHOS sue Plaintiff/Cross-Defendant Kargar for Intentional  
28          Infliction of Emotional Distress and Intentional Interference with Prospective Economic  
29          Relations, in pertinent part, as follows:

30                           **If Plaintiff Kargar's serious allegations, grounded in married-man**  
31                           **Defendant Bessmon Kalasho's sexual misconduct, as previously stated, **prove****  
32                           **to be false, then they were clearly designed to inflict severe emotional distress**

1 on Defendant Bessmon Kalasho, as well as his wife, Defendant Jessica  
2 Kalasho, and did... **If the court and jury find accordingly**, then Defendants  
3 should be rightfully compensated for their harm caused by the outrageous  
4 statements/allegations made by Plaintiff Kargar **if they, indeed, prove to be**  
5 **untrue.** (FACC ¶ 40) [emphasis added.]

6 **If Plaintiff Kargar’s intentional and serious allegations prove to be false**, as  
7 previously stated, **then** they were an obvious and carefully-crafted method to  
8 disrupt the future business relationships of Defendant Bessmon Kalasho and  
9 the “Miss Middle East Beauty Pageant.” (FACC ¶ 41) [emphasis added.]

10 As in the case with Tres, Cross-Complainants are outright suing Ms. Kargar for the  
11 allegations she has made against them in the Complaint, and again, notably equivocate on  
12 if those allegations are even false. Notwithstanding the fact that the KALASHOS otherwise  
13 fail to state a claim, the basis of their suit against Ms. Kargar is completely grounded on  
14 conduct that is protected under the litigation privilege codified at Civil Code section 47(b)  
15 and are furthermore subject to the instant Motion to Strike as further discussed herein.

16 **III. LEGAL ANALYSIS**

17 **a. Legal Standard for Motions to Strike Under Section 425.16**

18 Section 425.16 of the Code of Civil Procedure provides for a special motion to strike  
19 any cause of action “arising from any act of that person in furtherance of [the] right of  
20 petition or free speech under the United States or California Constitution in connection with  
21 a public issue.” *G.R. v. Intelligato* (2010) 185 Cal. App. 4th 606, 611 (quoting Code Civ. Proc.  
22 § 425.16(a)). “The Legislature enacted the anti-SLAPP statute to protect [defendants] from  
23 interference with the valid exercise of their constitutional rights, particularly the right of  
24 freedom of speech and the right to petition the government for the redress of grievances.”  
25 *Id.* (internal quotes omitted).

26 “In analyzing a section 425.16 motion, the court engages in a two-step process.” *Id.*  
27 “First, the court decides whether the defendant has made a threshold showing that the  
28 challenged cause of action is one arising from protected activity.” *Id.* “A defendant can  
meet his or her burden of showing that the challenged cause of action arises from protected  
activity by demonstrating the acts underlying the plaintiffs cause of action fit within one of

1 the categories of section 425.16, subdivision (e).” *Id.* (alterations omitted). Section 425.16(e)  
2 lists four categories of protected activity: “(1) any written or oral statement or writing made  
3 before a legislative, executive, or judicial proceeding, or any other official proceeding  
4 authorized by law, (2) any written or oral statement or writing made in connection with an  
5 issue under consideration or review by a legislative, executive, or judicial body, or any other  
6 official proceeding authorized by law, (3) any written or oral statement or writing made in  
7 a place open to the public or a public forum in connection with an issue of public interest,  
8 or (4) any other conduct in furtherance of the exercise of the constitutional right of petition  
9 or the constitutional right of free speech in connection with a public issue or an issue of  
10 public interest.” *Id.*

11 Once the defendant meets the threshold showing that the conduct arises from  
12 protected activity, as has been demonstrated here, “the burden then shifts, and the plaintiff  
13 must show a probability of prevailing on the claim. **The plaintiff must demonstrate the**  
14 **complaint is both legally sufficient and is supported by a prima facie showing of facts**  
15 sufficient to sustain a favorable judgment if the evidence submitted by the plaintiff is given  
16 credit.” *Id.* [emphasis added.] The KALASHOS’ suit is on its face a retaliatory action  
17 squarely aimed at protected conduct and under the weight of the evidence available to all  
18 parties, it is an unethical and abusive filing.

19 **b. Cross-Defendants’ Challenged Conduct Arises from Protected Activity**

20 As discussed in Sections II and III (a), *supra*, the entirety of the KALASHOS’  
21 countersuit is based on either a mere recitation of the allegations of the Complaint to the  
22 press or the allegations in the Complaint themselves. The comments Plaintiff/Cross-  
23 Defendant Tawfiq allegedly made to the *San Diego Reader* are protected under subsections  
24 (e)(3) and (e)(4) of Section 425.16<sup>5</sup> and Cross-Complainants’ other claims that are based upon

25 \_\_\_\_\_  
26 <sup>5</sup> It is axiomatic that the dispute and the issues surrounding the dispute rise to the broadly construed “public interest”  
27 requirement under the anti-SLAPP statute. *See, Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 479.  
28 The allegations made against the sitting City Councilman of the City of El Cajon and his wife are serious, abhorrent,  
outrageous and have spurred an investigation from the California Attorney General’s Office into the KALASHOS’  
conduct, has resulted in the voiding of a publicly-held El Cajon City Council vote due to an conflict of interest with

1 the Plaintiffs'/Cross-Defendants' allegations in their complaint are protected under  
2 subsections (e)(1) and (e)(2) of Section 425.16 (moreover all of the conduct challenged by the  
3 Cross-Complainants is protected by Civil Code sections 47(b) and/or (d)).

4 Both "the First Amendment and Civil Code section 47, subdivision (d) [protect] a fair  
5 and true report of legal proceedings." *Colt v. Freedom Communications, Inc.* (2003) 109 Cal.  
6 App. 4th 1551, 1558; *see also* Cal. Civ. Code § 47(d) (protecting any fair and true  
7 communication to a public journal of a judicial proceeding). A communication is "fair and  
8 true" if it captures the substance, sting or gist of the proceeding it summarizes. *Id.*  
9 Accordingly, the privilege absolutely protects a party's public statements that accurately  
10 describe the contents of a filed complaint. *See GetFugu, Inc. v. Patton Boggs, LLP.* (2013) 220  
11 Cal. App. 4th 141, 155; *see also, Abraham v. Lancaster Cmty. Hosp.* (1990) 217 Cal. App. 3d 796,  
12 823.

13 In the instant case, Defendants/Cross-Complainants cite a report in the *San Diego*  
14 *Reader* that merely recites the allegations made in the underlying action. Because the  
15 allegedly actionable statements are fair and true summaries of Plaintiffs' suit, they are  
16 absolutely privileged under Section 47(d) of the Civil Code and are moreover subject to the  
17 burden shifting provided by Code of Civil Procedure sections 425.16(e)(3) and (4).

18 Similarly, Civil Code section 47(b) provides immunity to all causes of action (with  
19 the exception of malicious prosecution/wrongful initiation of civil proceedings) in  
20 connection with any statements made in judicial proceedings; in the instant case, the  
21 allegations in the pleadings themselves are the premise of the countersuit and, as such, the  
22 countersuit cannot be maintained. *See Rubin v. Green* (1993) 4 Cal.4th 1187, 1204. The  
23 conduct of Tawfiq, Kargar and Tres challenged by Cross-Complainants arises directly from

24 \_\_\_\_\_  
25 COUNCILMAN KALASHO that was uncovered by the filing of the instant suit and, additionally, has been the topic of  
26 numerous media reports in the *East County Magazine, San Diego Reader, The San Diego Union Tribune, The Los Angeles*  
27 *Times*, and local news outlets NBC 7, ABC 10 and others; additionally, at least one citizen has called for COUNCILMAN  
28 KALASHO's resignation at public comment relating to the allegations put forward by Cross-Defendants. *See, e.g.,* Paul  
*Kruze, Kalasho Objects to Citizen Calling for His Resignation; El Cajon Council Bans Feeding of Homeless in Parks*  
*Over Hepatitis Concerns* (November 1, 2017), available at <http://www.eastcountymagazine.org/kalasho-objects-citizen-calling-his-resignation-el-cajon-council-bans-feeding-homeless-parks-over> (last visited Nov. 1, 2017).

1 protected activity under California's anti-SLAPP statute and thus the KALASHOS bear the  
2 burden of establishing both the legal sufficiency of their claims and a *prima face* showing of  
3 factual support; a burden that they cannot satisfy.

4 **c. The KALASHOS Cannot Meet Their Burden of Showing Viable Legal**  
5 **Claims**

6 The KALASHOS cannot show any likelihood of prevailing on their claims because,  
7 *inter alia*<sup>6</sup>, (1) as fully discussed *supra*, the challenged conduct is protected by the litigation  
8 privilege doctrine and (2) the gravamen of the Cross-Complaint is that the allegations the  
9 Plaintiffs/Cross-Defendants have made against the KALASHOS in their First Amended  
10 Complaint are false, however, the allegations are true and well-supported.

11 Plaintiffs have been able to secure substantial evidence in support of their case. The  
12 evidence gathered thus far proves: (1) the falsified nude photographs of Plaintiff Tawfiq  
13 were published from the home of a known cohort of the KALASHOS in Cerritos, California  
14 while JESSICA KALASHO, a resident of El Cajon, was with said individual in the same area  
15 on the same weekend, (2) three different falsified Facebook profiles that published  
16 defamatory statements against Plaintiffs Lina Charry and Tres were accessed nearly two  
17 hundred times from the KALASHOS' El Cajon residence over the period of several years  
18 including the logins that resulted in the deletion of the accounts (spoiling key evidence in  
19 direct defiance of a litigation hold notice), and (3) polls represented by the KALASHOS to  
20 have been conducted by the CHAMBER via Jotform were completely fabricated and were  
21 employed as merely a pretense to defame Plaintiffs Charry and Tres. *See generally* Parker  
22 Decl.

23 **i. Tres' Well-Supported Allegations Against the KALASHOS**

24 Plaintiff/Cross-Defendant Tres alleges that on or about October 12, 2016, an associate  
25 of the KALASHOS approached the Mexican restaurant and asked its principal for  
26 \_\_\_\_\_

27 <sup>6</sup> Among the many deficiencies in the FACC, the various causes of action for intentional infliction of emotional distress  
28 and intentional interference with prospective economic relations lack the requisite factual pleading necessary to identify  
any actionable conduct, damages suffered or causation of those damages.

1 permission to post COUNCILMAN KALASHO's campaign signs. *See* Plaintiffs' First  
2 Amended Complaint ("FAC") at ¶¶36-43. Mr. Duraid Hallack, the principal of Tres, denied  
3 the request. *Id.* Less than a week later, the CHAMBER (fully owned and controlled by the  
4 KALASHOS) publicly posted on their Facebook page a "poll" soliciting votes for "The Best  
5 Mexican Food in El Cajon Contest" via a link to Jotform. *Id;* *see also* Parker Decl., at ¶¶3-4,  
6 Exs. B, C.

7 On October 18, 2016, the CHAMBER publicly posted a graphic with the alleged  
8 results of their 48-hour poll which ranked 15 restaurants and proclaimed Tres "the worst  
9 Mexican food in El Cajon." *See* Parker Decl., at ¶¶3-4, Exs. B, C. The CHAMBER represented  
10 that the published poll results reflected the opinion of "hundreds" of voters. *Id.* Mr. Hallack  
11 immediately suspected that the poll was a pretense to defame the restaurant in retaliation  
12 for not posting COUNCILMAN KALASHO's campaign signs days earlier and  
13 memorialized those concerns publicly.<sup>7</sup> His suspicion proved to be correct as information  
14 subpoenaed from Jotform, the company that hosted the poll, proved that the poll was a  
15 complete farce. *See* Parker Decl., at ¶5, Ex. D. The information provided establishes that the  
16 poll **received only 1 vote** prior to the KALASHOS' public representation that Tres was voted  
17 the worst Mexican restaurant in town by "hundreds" of voters; thus, indisputably exposing  
18 the "poll" as a charade to defame the restaurant ostensibly in retaliation for not posting  
19 COUNCILMAN KALASHO's campaign signs in the weeks before the election. *Id.*

20 As if the fabricated poll and public declaration that Tres is the worst Mexican  
21 restaurant in town was not enough, evidence obtained via subpoena to Facebook and Cox  
22 Communications indisputably establishes that the KALASHOS then took to their weapon  
23 of choice, fake Facebook profiles, to further their retaliatory scheme. *Id.* at ¶7, Exs. F-I. The  
24 KALASHOS under the aliases of "Ben George, and "Robert Forbes" posted comments on  
25

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26  
27 <sup>7</sup> Mr. Hallack's refusal to post KALASHO campaign signs per their request on October 12, 2016 and his suspicions that  
28 the subsequent "poll" was merely a pretense to defame the restaurant in retaliation for not posting COUNCILMAN  
KALASHOS' campaign signs was contemporaneously memorialized by Mr. Hallack via his Facebook post of October  
19, 2016, attached to the Parker Declaration as Exhibit E. *See* Parker Decl., at ¶6, Ex. E.

1 the CHAMBER’s Facebook page claiming that they got ill from the food at Tres – a dagger  
2 for any restaurant trying to compete in a notoriously difficult industry and *per se*  
3 defamatory.<sup>8</sup>

4 On October 19, 2016, the KALASHOS wrote on the CHAMBER’s Facebook page  
5 under the “Forbes” profile: “I ate at TRES and got really really sick. I don’t know how  
6 Hollywood Casino Jamul-San Diego has them in their food court area. Don’t think they will  
7 last long.” *Id.* at ¶8, Ex. J. The KALASHOS then switched profiles to Mr. “George” and  
8 expressed nearly identical concerns: “I went to TRES and ordered rolled tacos. They were  
9 dry and I got really sick and ended up with food poisoning. If you guys want, I can do a  
10 video about my experience and you guys can share it. Hollywood Casino Jamul-San Diego  
11 better wake up.” *Id.* at ¶8, Ex. K. To which the KALASHOS, under the auspices of the  
12 CHAMBER’s actual profile, responded to Mr. “George’s” offer: “We aren’t interested in  
13 doing a video to bash restaurants. We wish every restaurant prosperity and success in our  
14 community. We hope that the ones who polled near the bottom will strive to improve rather  
15 than bash this post, the chamber or our polling.” *Id.* The fact that the KALASHOS engaged  
16 in the charade of conversation ostensibly to allay concerns that the poll was fixed, when the  
17 evidence establishes that the KALASHOS were actually carrying on the conversation with  
18 themselves (notwithstanding the fact that the poll was a farce), is a particularly disturbing  
19 aspect of the ruse.

20 The KALASHOS targeted Tres for having the audacity to refuse COUNCILMAN  
21 KALASHO’s request to post his campaign signs, in other words, for it exercising its First  
22 Amendment Rights and free agency to act, participate and support whomever it wants for  
23 public office. The KALASHOS’ conduct in this regard is antithetical to American notions of  
24 a free democracy and is absolutely reprehensible. While this evidence is sufficient to

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25  
26 <sup>8</sup> While Cross-Defendant Lina Charry is separately represented and will be responding under different cover, it is  
27 important to note that the same *modus operandi* of using fake profiles and fabricated polls was employed by the  
28 KALASHOS in their scheme against her. The evidence in support of her claims is the same: the offending Facebook  
profiles are the same fake profiles that attacked Tres and the poll results, also hosted on JotForm, were similarly fabricated  
as a pretense to defame Ms. Charry as the worst attorney in San Diego.

1 support a MSJ on liability in Tres’ favor, the issue currently before this Court is whether the  
2 Cross-Complainants can show a likelihood of prevailing on the claims they have advanced  
3 against the Cross-Defendants, and under the immense weight of the evidence gathered thus  
4 far, the answer is surely no.

5 **ii. Zhala Tawfiq’s Well-Supported Allegations Against the**  
6 **KALASHOS**

7 As with Tres, the KALASHOS cannot show a likelihood of prevailing on their claims  
8 against Tawfiq because the truth of her alleged statement to the *San Diego Reader* (that the  
9 PAGEANT is liable for fraud and the KALASHOS published falsified nude images of her)  
10 is well-supported by evidence.

11 **It is Undisputed that Tawfiq Was Never Provided the Entirety of the \$2,000 Cash Prize**  
12 **Promised to Her as the Winner of the 2016 Pageant**

13 Plaintiff Tawfiq sued the KALASHOS for fraud relating to their failure to provide her  
14 with all the prizes they promised her as winner of the KALASHOS’ 2016 “Miss Middle East  
15 USA” Beauty Pageant. *See* FAC at ¶¶25-35, 56-69. This cause of action, which is the mirror  
16 of the Breach of Contract cross-claim, is more fully addressed by Cross-Defendants’  
17 concurrently filed Demurrer, however, at bottom, the KALASHOS promised the winner of  
18 the beauty pageant, among other things, a \$2,000 cash prize<sup>9</sup> (admitted by Defendants in  
19 their First Amended Cross Complaint and putative contract) and instead, **three days after**  
20 **she won the contest**, they provided her with an contract offering her the **\$2,000 cash prize**  
21 explicitly conditioned on executing the contract and completing various terms of apparent  
22 employment. *See* FACC, at ¶3 (repeated references to the proffered consideration to the  
23 putative contract as “prize money”); *see also* Parker Decl., at ¶11, Exs. L, P (the putative  
24 contract also refers to the consideration as “prize money” and Tawfiq as “the first-place  
25 winner” of the Pageant). The FACC and the plain terms of the putative contract establish  
26 that the PAGEANT promised Tawfiq a \$2,000 **prize** for winning the contest but instead of  
27 providing her the promised prize, they handed her a contract that stated she would forfeit

28 <sup>9</sup> The \$2,000 cash prize does not even come from the KALASHOS or the PAGEANT as it was donated by a local attorney.  
*See* Parker Decl., at ¶10.

1 her prize unless she satisfactory completed a year employment with the Pageant **without**  
2 **offering any additional consideration.** *Id.* This fact pattern is a classic bait-and-switch  
3 fraud. Ms. Tawfiq did not audition for a job; she participated in a beauty pageant that  
4 advertised a \$2,000 cash prize and she won. She is entitled to her prize and not to be  
5 subjected to the KALASHOS' whims for a year in order to receive her prize money.

6 This indisputable fact pattern supports Tawfiq's fraud claim as well as illustrates the  
7 fatal flaw in the PAGEANTS' Breach of Contract claims against Tawfiq. The putative  
8 contract at issue is unenforceable as it lacks valid consideration because the \$2,000 cash prize  
9 was already owed by the KALASHOS to Tawfiq for winning the pageant. It is well-  
10 established that doing what one is already legally bound to do is not valid consideration.  
11 *See* Cal. Civ. Code § 1605; *see also In re Estate of Bray* (1964) 230 Cal.App.2d 136, 142. As such,  
12 the PAGEANTS' consideration is illusory, the PAGEANTS' failure to deliver the prize  
13 money as promised and instead subject Tawfiq to an unenforceable forfeiture contract  
14 supports Tawfiq's allegations of fraud against the PAGEANT and further demonstrates that  
15 the Cross-Complaints cannot meet their burden of establishing any likelihood of succeeding  
16 on the merits of their counter-claims as to Tawfiq.

17 **The KALASHOS and DOE Created and Published**  
18 **Falsified Nude Images of Zhala Tawfiq**

19 Plaintiff/Cross-Defendant Zhala Tawfiq also alleges that on April 7, 2017 in the midst  
20 of a dispute with the KALASHOS over the vague terms of the putative contract, the  
21 KALASHOS and/or a cohort(s), published four falsified nude images of her on Instagram  
22 under the alias account "Zhala\_Tawfiq\_Fanpage" and the evidence gathered in the mere  
23 five months since making the allegation has done nothing but corroborate the claim. *See*  
24 FAC at ¶¶31-32; *see also* Parker Decl., at ¶¶ 12-14, Exs. M - P.

25 In response to subpoena, Instagram identified the IP address of the culprit who  
26 published the falsified nudes of Ms. Tawfiq as a Charter Communications account with the  
27 IP address of 47.41.199.154. *See* Parker Decl., at ¶12-14, Exs. N-P. Plaintiffs obtained an  
28 Order from this Court on October 3, 2017 directing Charter Communications to produce

1 information responsive to an outstanding subpoena identifying the account holder of the  
2 targeted IP address. *See* ROA #49. In response, Charter Communications identified the  
3 subscriber as Elie Malouf of Cerritos, California. *See* Parker Decl. ¶13, Ex. O. Mr. Elie  
4 Malouf is the father of Stephanie Malouf who also resides at the same residence that was  
5 identified by Charter Communications. *Id.* at ¶14.

6 Stephanie Malouf is a close friend of the KALASHOS and former winner of their  
7 beauty pageant. *Id.* at ¶14., Ex. P (Jessica Kalasho Deposition Transcript at 18:17-24). While  
8 the identity of the culprit as a friend of the KALASHOS and former pageant winner provides  
9 strong evidence that the KALASHOS are culpable as charged for the falsified nudes, the  
10 strongest evidence of their culpability is that **JESSICA KALASHO testified at her**  
11 **deposition that she was with Ms. Malouf in the Cerritos area the weekend the nude**  
12 **images were published from Ms. Malouf’s Cerritos home.** *Id.* at ¶14., Ex. P (Jessica  
13 Kalasho Deposition Transcript, at 119:5-24).<sup>10</sup> Plaintiffs are eager to add Ms. Malouf to the  
14 suit and obtain her explanation under oath on how the falsified nude images came to be and  
15 how they were uploaded to Instagram from her home. Nonetheless, it is sufficient to say  
16 that nothing discovered thus far exonerates the KALASHOS and instead everything thus  
17 far corroborates Ms. Tawfiq’s allegations, as such, the KALASHOS cannot show a likelihood  
18 of prevailing on the claims presented in their countersuit against Tawfiq that her claims are  
19 a fabrication.

20 **iii. Paris Kargar’s Well-Supported Allegations Against the**  
21 **KALASHOS**

22 Ms. Kargar, another contestant in the KALASHOS’ beauty pageant alleges fraud,  
23 negligent and intentional infliction of emotional distress against the KALASHOS. While  
24 much of the evidence in support of her position will come from her own testimony and that  
25 of other contestants, the KALASHOS make a judicial admission in their FACC which  
26

27 <sup>10</sup> It is additionally noteworthy that the KALASHOS are regular users of photoshop, as is apparent from the CHAMBER’s  
28 marketing materials and was confirmed via the deposition testimony of JESSICA KALASHO. *See* Parker Decl. at ¶14.,  
Ex. P (Jessica Kalasho Deposition Transcript at 83:14-24).

1 directly undermines their countersuit alleging that they have been damaged by her  
2 fabricated claims.

3       However, paragraph 14 of the FACC provides:

4       Additionally, Plaintiff Kargar stated that she was shocked, appalled and  
5 humiliated when Defendant Bessmon Kalasho stated, during a particular  
6 pageant rehearsal, "Your boobs are moving too much. Do it again." **Plaintiff**  
7 **Kargar took this comment completely out-of-context and severely**  
8 **overreacted. Defendant Bessmon Kalasho, as did other present pageant staff**  
9 **at the very same time, was merely telling Plaintiff Kargar the correct and**  
10 **classy way to walk down the runway, without bouncing her breasts up and**  
11 **down.**<sup>11</sup> [emphasis added.]

12       While Ms. Kargar alleges several other instances of harassment during the course of  
13 the competition resulting in emotional distress in her Complaint, the KALASHOS admit  
14 that at least one of those instances did occur. The KALASHOS, by judicial admission, create  
15 an issue of fact for the jury, **not on if the offending comment was ever made, but if it was**  
16 **sufficient to inflict emotional distress under the circumstances.** The facts pled in the  
17 FACC directly undermines their theory of liability against Kargar and instead bolster her  
18 claims of harassment at the hands of COUNCILMAN KALASHO. As evidenced by their  
19 own filing, the KALASHOS cannot carry their burden of a likelihood of prevailing on their  
20 claim against Ms. Kargar.

#### 21       IV.       CONCLUSION

22       For the foregoing reasons, Cross-Defendants' Motion to Strike pursuant to California  
23 Code of Civil Procedure section 425.16 should be granted and Cross-Defendants should be  
24 awarded their attorneys' fees and costs.

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25  
26 <sup>11</sup> Paragraph 51 of Plaintiffs' FAC reads: "BESSMON KALASHO's outrageous conduct toward Ms. KARGAR did not  
27 end there, during a rehearsal where the contestants were practicing their walk, BESSMON KALASHO stopped KARGAR  
28 in front of all of the contestants and others and stated: 'Your boobs are moving too much. Do it again.' While BESSMON  
KALASHO leered at her, he ordered KARGAR to walk in front of the group three more times, each time, commenting  
on her breasts. KARGAR was shocked, appalled and humiliated by his conduct."

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Respectfully Submitted,

DATE: November 6, 2017

LAW OFFICE OF JIMMIE DAVIS PARKER, APC



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JIMMIE DAVIS PARKER, ESQ.

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TAWFIQ