

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 07/20/2018

TIME: 01:30:00 PM

DEPT: C-72

JUDICIAL OFFICER PRESIDING: Timothy Taylor

CLERK: Kelly Breckenridge

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: O. Godoy

CASE NO: **37-2017-00019692-CU-FR-CTL** CASE INIT.DATE: 05/31/2017

CASE TITLE: **Zhala Tawfiq vs Miss Middle East Beauty Pageant USA Inc [Imaged]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Fraud

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**EVENT TYPE:** Discovery Hearing

MOVING PARTY: Lina Charry

CAUSAL DOCUMENT/DATE FILED: Motion - Other An Order Deeming All Objections Waived/Order Compelling Verified Responses to Form Interrogatories Set One and Set Two, 06/21/2018

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**APPEARANCES**

No Appearance by all parties

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Prior to calendar call, plaintiff's counsel submit(s) on the Court's tentative ruling.

The Court CONFIRMS the tentative ruling as follows:

**Ruling on Plaintiff Charry Discovery Motion**

*Tawfiq v. Miss Middle East Beauty Pageant*, Case No. 2017-19692

July 20, 2018, 1:30 p.m., Dept. 72

**1. Overview and Procedural Posture.**

This is a dispute over what happened (and didn't happen) after plaintiff Zhala Tawfiq was "crowned ... 'Miss Middle East USA 2016,' [and] provided ... with a crown, sash, trophy and oversized check for \$2,000." ROA 1, paragraph 13. Plaintiff alleges the proprietor of the pageant, Mr. Kalasho, essentially pulled a "bait and switch" as to the promised prize money, and then, when she complained, posted nude pictures purporting to be her and awarded the crown to someone else. *Id.*, paragraphs 14-17. The complaint for fraud, IIED and defamation was filed May 31, 2017. The case was assigned to Judge Trapp, but plaintiff challenged her whereupon the case was reassigned to Dept. 72. ROA 9, 11.

The first amended complaint (FAC) (which added new plaintiffs Three Brothers Taco Shop, Paris Kargar, and Lina Charry, several counts, and several new defendants) was filed July 24, 2017. ROA 16. Defendants answered and cross-complained on August 14, 2017. ROA 20-22. The cross-complaint was later amended (ROA 31). The first amended cross-complaint (FACC) alleges claims for breach of

contract, breach of the implied covenant, IIED, "cyber-harassment," defamation, and two species of the interference tort.

At a CMC in late September, 2017, the court set the case for trial in August of 2018. ROA 44-48.

The parties appeared on the *ex parte* calendar in early October, 2017 regarding a third party subpoena. ROA 33, 38, 49.

In November of 2017, the original plaintiff and the new plaintiffs filed the second amended complaint (SAC) by stipulation. ROA 56-58. The SAC advances claims for unfair competition, fraud, NIED, IIED, and defamation.

The following motions were set for December 22, 2017:

- A. Plaintiffs/cross-defendants' special motion to strike the FACC (ROA 60-61);
- B. Plaintiffs/cross-defendants' demurrer to the FACC (ROA 62-63);
- C. Plaintiffs/cross-defendants' motion to compel responses to form interrogatories and production demands (ROA 68, 70);
- D. Plaintiffs/cross-defendants' motion to compel third party Matrix Video to produce videos (ROA 69, 70).

All four motions were unopposed. Plaintiffs/cross-defendants filed a notice of non-opposition. ROA 77-78. The court published a detailed tentative ruling (ROA 82-86); despite filing no opposition, counsel for defendants/cross-complainants appeared at the hearing and offered argument. The court confirmed the tentative ruling which, among other things, granted the special motion to strike the cross-complaint. ROA 94. A judgment of dismissal was thereafter entered on the cross-complaint with respect to the moving cross-defendants. ROA 88.

On February 2, 2018, the court denied the pro forma motion under section 473(b) by the cross-complainant. ROA 110.

Subsequently before the court was another special motion to strike the FACC and demurrer to the FACC, this time by plaintiff Lina Charry. ROA 105-106. Defendants again filed no opposition. ROA 122. Also calendared for the same day was a motion by the original plaintiffs for attorneys' fees under Code of Civil Procedure section 425.16 for having prevailed on the SLAPP motion last December 22. ROA 96-98. Again, no opposition was filed. ROA 123.

The court, on February 16, 2018, granted the second special motion to strike, found the demurrer moot, and granted the motion for attorneys' fees. ROA 119-121, 128, 130. A judgment of dismissal was thereafter entered on the cross-complaint with respect to the second set of moving cross-defendants. ROA 137.

Kalasho thereafter filed an untimely 170.6 challenge. ROA 129.

Cross-defendant Charry, who prevailed on the second special motion to strike, sought an award of attorneys' fees. ROA 151. There was no opposition. ROA 158. The court published a tentative ruling

on April 19, 2018, heard argument from the moving party on April 20, 2018, and took the motion under submission. The court thereafter decided the motion. ROA 180.

Another discovery motion was decided by the court on May 4, 2018. ROA 184. Soon thereafter, plaintiffs sought a trial continuance (ROA 187), and the court granted very reluctantly vacated the trial and set a CMC for July 6, 2018. ROA 197-98.

On June 29, 2018, the court ruled on the original plaintiffs' motion for deemed admissions. ROA 220, 224. The court imposed monetary sanctions in the amount of \$2,035.00. *Ibid.*

At the July 6, 2018 CMC, the court re-set the trial for November, 2108. ROA 230.

Presently before the court is yet another unopposed discovery motion, this time from Charry. ROA 213. The motion is directed at defendants Bessmon Kalasho, Jessica Kalasho, Miss Middle East Beauty Pageant, and Middle Eastern Chamber of Commerce (defendants).

The motion seeks: (1) an order compelling defendants to respond, without objections, to Charry's first and second set of form interrogatories; (2) an order establishing admissions regarding Charry's first set of requests for admissions; and (3) monetary sanctions, \$5260.00, representing attorney time in making the motion, preparing reply, and attending the hearing, along with the filing fee. The motion provides June 20, 2018 service by US Mail (as well as electronic mail) on counsel for defendants in accordance with Code of Civil Procedure section 1005(b). It is unopposed.

## **2. Applicable Standards.**

The court incorporates part 2F of the minutes for December 22, 2017 (ROA 94) and part 2 of the minutes for June 29, 2018 (ROA 224).

## **3. Discussion and Ruling.**

The motion is granted.

Defendants must respond to plaintiff Charry's first and second set of form interrogatories in writing, under oath and without objections, within 10 days of this ruling. The form interrogatories were served on defendants on August 26, 2017 and May 3, 2018, respectively. Defendants failed to respond to the interrogatories, and the time to respond to the interrogatories has expired. See ROA 212, Hasso declaration, paragraphs 3-8.

The requests for admissions served by plaintiff Charry on defendants on May 3, 2018 are deemed admitted. Defendants failed to respond to the requests for admissions, and the time to respond has expired. *Id.*, paragraphs 7-8.

Sanctions are granted against defendants in the sum of \$2600.00. The amount of sanctions sought is excessive given the discovery dispute is not complicated and reply briefing was unnecessary. Sanctions are payable within 30 days of this ruling.

Because defendants failed to file any opposition to the motion, the court is entitled to consider that lack of opposition to be an admission the motion is meritorious. See *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410. Further, by failing to oppose the motion, defendants have failed to preserve for

appeal a challenge to the granting of the motion. *In re Carrie W.* (2003) 110 Cal.App.4th 746, 755; *Broden v. Marin Humane Society* (1999) 70 Cal.App.4th 1212, 1226-1227, fn. 13; see also *Duarte v. Chino Comm. Hospital* (1999) 72 Cal.App.4th 849, 856; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-85.

**IT IS SO ORDERED.**



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Judge Timothy Taylor