

1 JIMMIE DAVIS PARKER, ESQ. (SBN: 252023)
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
05/22/2018 at 09:50:00 AM
Clerk of the Superior Court
By Jessica Pascual, Deputy Clerk

7 Attorney for Plaintiffs Zhala Tawfiq,
8 Paris Kargar, and 3 Brothers Taco Shop, Inc. dba Tres Taqueria

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

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|----|---------------------------------|---|--|
| 11 | ZHALA TAWFIQ, et al. |) | Case No.: 37-2017-00019692-CU-FR-CTL |
| | |) | [IMAGED FILE] |
| 12 | Plaintiffs, |) | |
| | v. |) | [Assigned to Hon. Timothy Taylor for all purposes] |
| 13 | MISS MIDDLE EAST BEAUTY PAGEANT |) | PLAINTIFFS ZHALA TAWFIQ, PARIS |
| | USA, INC., et al., |) | KARGAR, AND THREE BROTHERS TACO |
| 14 | Defendants. |) | SHOP's NOTICE OF MOTION AND |
| | |) | MOTION TO DEEM FACTS ADMITTED |
| 15 | |) | AND FOR MONETARY SANCTIONS |
| 16 | ELIE MALOUF, et al. |) | Complaint Filed: May 31, 2017 |
| | |) | Trial Date: August 10, 2018 |
| 17 | Cross-complainants, |) | |
| | v. |) | Date: June 29, 2018 |
| 18 | |) | Time: 1:30 PM |
| 19 | RAMI ATTALLAH |) | Location: C-72 |
| | |) | |
| 20 | Defendant. |) | |
| 21 | |) | |
| 22 | |) | |
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| 24 | |) | |
| 25 | |) | |

1 **TO CLERK OF THE COURT, HONORABLE JUDGE, ALL PARTIES AND THEIR**
2 **RESPECTIVE COUNSEL OF RECORD:**

3 PLEASE TAKE NOTICE that on June 29, 2018 at 1:30 PM or as soon thereafter as the
4 matter may be heard in Department 72 of the above-entitled court, Plaintiffs ZHALA
5 TAWFIQ, PARIS KARGAR and THREE BROTHERS TACO SHOP, INC. (hereinafter
6 "Plaintiffs"), will and hereby move, the Court for an order under the California Civil
7 Discovery Act, Sections 2023.010, *et seq.*, specifically, 2033.280 of the Code of Civil Procedure
8 that the truth of all specified matters, and the genuineness of all specified documents, in
9 their Request For Admissions to Kalasho Defendants (Set Two), served on Defendants
10 BESSMON KALASHO, JESSICA KALASHO, MISS MIDDLE EAST BEAUTY PAGEANT
11 USA, INC., dba "Miss Middle East USA Beauty Pageant"; MIDDLE EASTERN CHAMBER
12 OF COMMERCE fka SAN DIEGO EAST COUNTY CHALDEAN AMERICAN CHAMBER
13 OF COMMERCE (collectively the "Kalasho Defendants"), via U.S. Mail and electronic
14 service, on April 4, 2018, be deemed admitted, and for monetary sanctions against the
15 Kalasho Defendants and their attorney(s) in the amount of \$2,035. The motion is made on
16 the grounds that the Kalasho Defendants failed to serve a timely response to the moving
17 party's above-described Request for Admissions.

18 This motion is based on this notice of motion; on the Declaration of Jimmie Davis
19 Parker, Esq. ISO Plaintiffs' Motion to Deem Facts Admitted and for Monetary Sanctions
20 (hereinafter "Parker Decl.") and the copies of the Requests for Admissions with proofs of
21 service; the memorandum of points and authorities filed herewith; on the records and file
22 herein; and on such evidence as may be presented at the hearing of the motion.

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Respectfully Submitted,

DATE: May 22, 2018

LAW OFFICE OF JIMMIE DAVIS
PARKER, APC



JIMMIE DAVIS PARKER, ESO.
4241 Arden Way
San Diego, CA 92103
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Email: jdparker@gmail.com
Attorney for Plaintiffs THREE
BROTHERS TACO SHOP, INC., PARIS
KARGAR and ZHALA TAWFIO

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 This motion seeks relief under Civil Discovery Act for the Kalasho Defendants’
4 wholesale failure to respond to Plaintiffs’ Request for Admissions Set Two.

5 On April 4, 2018, the undersigned served the requests for admissions at issue on the
6 Kalasho Defendants redundantly by mail, by electronic service **and** upon both, Counsel of
7 Record, Mr. Liosi, and putative counsel, Mr. Finigan.¹ See Declaration of Jimmie Davis
8 Parker Filed ISO of Motion to Deem Facts Admitted (“Parker Decl.”) at ¶2, Exhs. A, B. The
9 time for the Kalasho Defendants to serve a timely response expired on May 9, 2018. The
10 moving party has received no response to date (Parker Decl. at ¶3); no further meet and
11 confer is required when there has been no response provided. See *St. Mary v. Superior Court*
12 (*Schellenberg*) (2014) 223 Cal.App.4th 762, 777-778, citing Weil & Brown, Cal. Practice Guide:
13 Civil Procedure Before Trial (The Rutter Group 2013), ¶ 8:1371, p. 8G-25.

14 Plaintiffs seek an order that the genuineness of any documents and the truth of any
15 matters specified in the requests be deemed admitted², and that the Kalasho Defendants
16 and/or their attorney pay the moving party \$2,035³ in monetary sanctions as required by
17 statute, as the relief requested is mandatory. Code Civ. Proc. §§ 2033.280(b), (c); *St. Mary v.*
Superior Court (2014) 223 Cal.App.4th 762, 774-776.

18 **II. LEGAL ARGUMENT**

19 **A. The Kalashos’ Failure to Respond Requires the Court Order the Genuineness of**
20 **Documents and the Truth of Matters Encompassed Within the Request**

21 If a party to whom requests for admission have been directed fails to serve a timely
22 response, the requesting party may move for an order that the genuineness of any
23 documents and the truth of any matters specified in the requests be deemed admitted. Code
24

25 ¹ The instant motion was also served redundantly. See Proof of Service filed concurrently herewith.

26 ² The RFA seeks admissions for 92 Requests (bringing the total requests outstanding to 109). The RFA was
27 accompanied by a declaration of counsel as required under 2033.030, as the complexity of the case, number of parties
28 and causes of action necessitated the number of RFAs. See Parker Decl., ¶4, Exh. C.

³ Undersigned’s rate has already been deemed reasonable by this Court at \$395/hr. See ROA 127. The undersigned
estimates five hours incurred in drafting and presenting the motion (assuming no response) and \$60 in filing fees
totaling \$2,035. See Parker Decl., ¶4.

1 Civ. Proc. § 2033.280(b). In the event of the wholesale failure to respond to RFA's, the Court
2 is required to make the requested order for deemed admissions. Code Civ. Proc. §
3 2033.280(c); *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 774-776.

4 In this case, the time for the responding party to serve a timely response expired on
5 May 9, 2018, and no response has been served at this time. Parker Decl., ¶3. Indeed, the
6 attorneys for the Kalasho Defendants have not responded to any telephonic or email
7 communication (nor Motions) from the undersigned since early February 2018, in essence
8 refusing to participate in the case at all. *Id.* In the face of Kalasho Defendants' non-response
9 to Plaintiffs' Request for Admission to Kalasho Defendants Set (Two), California Code of
10 Civil Procedure section 2033.280(c) mandates the Court make the requested order that the
11 genuineness of any documents and the truth of any matters specified in the requests be
12 deemed admitted.

13 **B. Under California Law, the Court Must Impose a Monetary Sanction on the**
14 **Party Whose Failure to Serve a Timely Response Necessitated the Motion for Deemed**
15 **Admissions.**

16 The court must impose a CCP § 2023.030 monetary sanction on the party, attorney,
17 or both, whose failure to serve a timely response to requests for admission necessitated a
18 motion for deemed admissions. Code Civ. Proc. § 2033.280(c). *St. Mary v. Superior Court*
19 (2014) 223 Cal.App.4th 762, 776. ("The court must also impose monetary sanctions upon the
20 party and/or the attorney for the failure to serve a timely response to the RFAs."). As a
21 result of the Kalasho Defendants' failure to respond to the Request for Admissions to
22 Kalasho Defendants Set (Two) described above, the moving party has necessarily incurred
reasonable expenses in the amount of \$2,035. Parker Decl., ¶5.

23 **III. CONCLUSION**

24 For the aforementioned reasons, Plaintiffs respectfully request that the Court issue
25 relief in the proposed form filed concurrently herewith.
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Respectfully Submitted,

DATE: May 22, 2018

LAW OFFICE OF JIMMIE DAVIS
PARKER, APC



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