

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:16-cv-24346-UU

DESTINI FEAGIN,

Plaintiff,

v.

MARLIN CHINN, *et al.*,

Defendants. .

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**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

THIS CAUSE comes before the Court upon Defendant's Motion to Compel Discovery from Plaintiff Following her Complete Failure to Respond (D.E. 42) and Defendant's Motion to Compel and for Sanctions Following Plaintiff's Failure to Appear for her Duly-Noticed Deposition (D.E. 44). The Honorable John J. O'Sullivan, United States Magistrate Judge, issued a Report and Recommendation, (D.E. 50), on June 8, 2017, recommending that Defendant's Motion to Compel Discovery from Plaintiff Following her Complete Failure to Respond (D.E. 42) be DENIED and Defendant's Motion to Compel and for Sanctions (D.E. 44) be GRANTED. Magistrate Judge O'Sullivan further recommended that this case be be DISMISSED.

Parties' objections to the Report were due by June 22, 2017, and neither party has filed objections. *See LoConte v. Dugger*, 847 F.2d 145 (11th Cir. 1988), *cert. denied*, 488 U.S. 958 (1988) (holding that failure to file timely objections bars the parties from attacking factual findings on appeal). The matter is thus ripe for disposition.

THIS COURT has made a *de novo* review of the entire file and record herein, and, being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that United States Magistrate Judge O'Sullivan's Report and Recommendation, (D.E. 50), is RATIFIED, AFFIRMED and ADOPTED. Defendant's Motion to Compel Discovery from Plaintiff Following her Complete Failure to Respond (D.E. 42) is DENIED. Defendant's Motion to Compel and for Sanctions (D.E. 44) is GRANTED. This case is DISMISSED WITHOUT PREJUDICE. It is further

ORDERED AND ADJUDGED that this case is CLOSED for administrative purposes.

DONE AND ORDERED in Chambers at Miami, Florida, this 23d day of June, 2017.

  
UNITED STATES DISTRICT JUDGE

cc:  
counsel of record via cm/ecf

*Pro se* Plaintiff

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 16-24346-CIV-UNGARO/O'SULLIVAN

DESTINI FEAGIN,

Plaintiff,

v.

MARLIN CHINN, et al.,

Defendants.

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**REPORT AND RECOMMENDATION**

THIS CAUSE comes before the Court on the Defendant's Motion to Compel Discovery from Plaintiff Following Her Complete Failure to Respond (DE #42, 4/12/17) and the Defendant's Motion to Compel and for Sanctions Following Plaintiff's Failure to Appear for Her Duly-Noticed Deposition (DE # 44, 4/14/17). This matter was referred to the undersigned by the Honorable Ursula Ungaro, United States District Court Judge for the Southern District of Florida, pursuant to 28 U.S.C. § 636(b). Having held a show cause hearing in this matter on June 8, 2017 and for the reasons stated on the record, the undersigned respectfully RECOMMENDS that the Defendant's Motion to Compel Discovery from Plaintiff Following Her Complete Failure to Respond (DE #42, 4/12/17) be **DENIED as moot**, the Defendant's Motion to Compel and for Sanctions Following Plaintiff's Failure to Appear for Her Duly-Noticed Deposition (DE # 44, 4/14/17) be **GRANTED** and that the plaintiff's case be **DISMISSED** as a sanction for her failure to respond to the defendants' discovery requests, her failure to appear at her deposition, and her failure to file responses to the defendants' discovery motions in this matter.

## BACKGROUND

On May 16, 2017, the undersigned issued a Show Cause Order after the plaintiff failed to respond to the instant motions. See Show Cause Order, and Notice of Hearing (DE# 46, 5/16/17) (hereinafter "Show Cause Order"). The Show Cause Order required the plaintiff to file a memorandum of law with this Court:

addressing why the aforementioned motions should not be granted and why the plaintiff should not be held in contempt of court and/or her pleadings stricken for her failure to respond to the defendants' discovery requests, her failure to appear at her deposition, and her failure to file responses to the defendants' discovery motions in this matter.

Id. at 1. The Show Cause Order also set a show cause hearing before the undersigned for June 8, 2017 and required the plaintiff to:

appear at the hearing and be prepared to discuss why she failed to respond to the motions, why she failed to respond to the discovery requests, why she failed to appear at her deposition, and why her case should not be dismissed and why she should not be held in contempt.

Id. at 2. The Show Cause Order warned the plaintiff that:

the failure of the plaintiff to appear in person before the undersigned for the aforementioned hearing or the failure of the plaintiff to file the aforementioned memorandum, may result in a recommendation that the plaintiff be held in contempt of Court and sanctions be imposed, including, but not limited to, her case being dismissed, attorney's fees being assessed against the plaintiff, monetary fines being assessed against the plaintiff, and/or incarceration of the plaintiff.

Id. A copy of the Show Cause Order was provided to the plaintiff by email and by U.S. mail.

The plaintiff failed to file a written response to the instant motion. On June 8, 2017, the Court held a show cause hearing. The plaintiff failed to appear at that hearing.

### **STANDARD OF REVIEW**

Federal Rule of Civil Procedure 37 grants a district court the authority to impose sanctions for the failure to make disclosures or cooperate in discovery. Rule 37 also allows a district court to dismiss an action if a party fails to obey an order to provide or permit discovery. FED. R. CIV. P. 37(b)(2)(A)(v). The dismissal of a claim or the entry of a default as a sanction for violating a discovery order is a drastic remedy which should only be employed where lesser sanctions would be insufficient. See Malautea v. Suzuki Motor Co., Ltd., 987 F.2d 1536, 1542 (11th Cir. 1993) (stating that “the severe sanction of a dismissal or default judgment [under Rule 37] is appropriate only as a last resort, when less drastic sanctions would not ensure compliance with the court's orders.”) (citing Navarro v. Cohan, 856 F.2d 141, 142 (11th Cir. 1988)).

### **ANALYSIS**

The defendants seeks the dismissal of the plaintiff's case as a sanction for her failure to respond to the defendants' discovery requests, her failure to appear at her deposition, and her failure to file responses to the defendants' discovery motions in this matter. As noted above, the dismissal of a claim or the entry of a default as a sanction for violating a discovery order is a drastic remedy which should only be employed where lesser sanctions would be insufficient. See Malautea, 987 F.2d at 1542 (citing Navarro, 856 F.2d at 142). In Phipps v. Blakeney, 8 F.3d 788, 790 (11th Cir.1993), the Eleventh Circuit stated that “[d]ismissal with prejudice is the most severe Rule 37 sanction,” but it “may be appropriate when a plaintiff's recalcitrance is due to wilfulness, bad faith or fault.”

The record establishes that the plaintiff failed to respond to the defendants' discovery requests, failed to appear at her deposition and failed to file responses to the defendants' discovery motions in this matter. The plaintiff has also failed to comply with this Court's Show Cause Order (DE# 46) by failing to file a memorandum of law with this Court and failing to appear at the duly noticed show cause hearing on June 8, 2017. The undersigned concludes that the sanction sought by the defendant is warranted under the facts of this case.

### **RECOMMENDATION**<sup>1</sup>

In accordance with the foregoing, the undersigned respectfully recommends that Defendant's Motion to Compel Discovery from Plaintiff Following Her Complete Failure to Respond (DE #42, 4/12/17) be **DENIED as moot** and the Defendant's Motion to Compel and for Sanctions Following Plaintiff's Failure to Appear for Her Duly-Noticed Deposition (DE # 44, 4/14/17) be **GRANTED**. The plaintiff's case should be **DISMISSED**.

The parties have fourteen (14) days from the date of receipt of this Report and Recommendation within which to serve and file written objections, if any, with the Honorable Ursula Ungaro, United States District Court Judge. Failure to file objections timely shall bar the parties from a de novo determination by the District Judge of an issue covered in the Report and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report except upon grounds of plain error if necessary in the interest of justice. See 28 U.S.C. § 636(b)(1);

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<sup>1</sup> The defendants shall immediately serve a copy of this Order on the plaintiff by email and file a notice of compliance with the Court.

Thomas v. Arn, 474 U.S. 140, 149 (1985); Henley v. Johnson, 885 F.2d 790, 794 (1989); 11th Cir. R. 3-1 (2016).

RESPECTFULLY SUBMITTED at the United States Courthouse, Miami, Florida  
this **8th** day of June, 2017.

  
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JOHN J. O'SULLIVAN  
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:  
United States District Judge Ungaro  
All Counsel of Record

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