

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 21-7145-GW-JEMx	Date	November 22, 2021
Title	<i>Genevieve Morton v. Twitter, Inc., et al.</i>		

Present: The Honorable GEORGE H. WU, UNITED STATES DISTRICT JUDGE

Javier Gonzalez  
Deputy Clerk

Terri A. Hourigan  
Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:  
Jennifer Holliday

Attorneys Present for Defendants:  
Eve A. Zelinger

**PROCEEDINGS: TELEPHONIC HEARING ON TWITTER DEFENDANTS' MOTION TO DISMISS [24]**

The Court's Tentative Ruling is circulated and attached hereto. Court hears oral argument. The parties are to meet and confer, and attempt to resolve some or all of the motion to dismiss. If resolution is not reached, Plaintiff will have until November 29, 2021 to file an opposition. Defendants will reply by December 15, 2021. The Court continues the Motion to December 30, 2021 at 8:30 a.m.

Plaintiff's Application for Entry of Default [83, 85], and Motion for Default Judgment [84], in CV 20-10434, are vacated and taken off-calendar.

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Initials of Preparer JG : 11

*Genevieve Morton v. Twitter, Inc. et al.*; Case No. 2:21-cv-07145-GW-(JEMx);  
*Genevieve Morton v. Twitter, Inc. et al.*; Case No. 2:20-cv-10434-GW-(JEMx);  
Tentative Rulings on: (1) Defendants’ Motion to Dismiss (ECF No. 24) (21-cv-07145); and (2) Plaintiff’s Motion for Default Judgment (ECF No. 84) (20-cv-10434).

## I. Background

Plaintiff Genevieve Morton brought this copyright infringement and privacy action against Defendants Twitter, Inc.; Magic Pony Technology, Inc; Tweetdeck, Inc.; and Twitter International Company after she discovered unauthorized, nude photographs of herself on the Twitter platform. *See* Complaint (“Compl.”) ¶¶ 13-47, ECF No. 1. This is the second action brought by Plaintiff against Twitter and related entities concerning the unauthorized posting of Plaintiff’s photos on Twitter by third-party users.

Before the Court is Defendants’ motion to dismiss. *See* Defendants’ Motion to Dismiss (“Mot.”), ECF No. 24. Instead of filing an Opposition, Plaintiff has moved for default judgment against Twitter in the related, consolidated action, *Genevieve Morton v. Twitter, Inc. et al.*, Case No. 2:20-cv-10434-GW-(JEMx), Motion for Default Judgment (“Default”), ECF No. 84. Defendants have filed a Reply, *see* ECF No. 26.

### A. Procedural Background

Plaintiff Morton first filed an action against Defendant Twitter, Inc. and SpyIRL.com in November 2020, accusing SpyIRL.com of posting unauthorized images of Plaintiff on the Twitter platform to promote and sell pornography. *See Genevieve Morton v. Twitter, Inc. et al.*, Case No. 2:20-cv-10434-GW-(JEMx) (“*Morton I*”), ECF No. 2. Defendant Twitter moved to dismiss all of the claims except for the copyright infringement claim based on Section 230 of the Communications Decency Act (“CDA”), *see* ECF No. 19, and the Court granted Twitter’s motion. *See Morton I*, ECF No. 30. The parties then submitted a Joint Rule 26(f) Report, *see Morton I*, ECF No. 27, and the Court issued a scheduling order, *see Morton I*, ECF No 30, setting a discovery cutoff for October 15, 2021.

In September 2021, Plaintiff Morton filed the instant action against Defendant Twitter, Inc. and other affiliates, Twitter International Company; Tweetdeck, Inc.; and Magic Pony Technology, Inc, regarding the posting of unauthorized images of Plaintiff on the Twitter platform by a third-party user, “@city\_tits.” *See* Compl. ¶¶ 20-27. This Court consolidated the two actions, *see* ECF No. 21, and set a new scheduling order for the consolidated cases, *see* ECF

No. 22. In the scheduling order, the Court directed all counsel to make future filings in *Morton I*, which was to serve as the lead case. *Id.*

Defendants submitted a motion to dismiss in the instant action, aiming to dismiss Defendant Twitter International Company for lack of personal jurisdiction; dismissing all causes of action against Defendants Twitter International Company, Tweetdeck, Inc.; and Magic Pony Technology, Inc. for failure to state a claim; and dismissing the cause of action for false light as barred by Section 230 of the CDA. *See generally* Mot. Plaintiff, citing the instruction in the Court's scheduling order to make all future filings in *Morton I*, chose not to file an Opposition to the motion to dismiss in the instant action and instead filed a motion for default judgment in *Morton I*. Defendants submitted their Reply, asserting that Plaintiff's failure to provide an Opposition should be deemed consent to the granting or denial of the motion. *See* C.D. Cal. L. Civ. R. 7-12; Reply at 1.

## **II. Discussion**

This procedural issue should have been resolved by the parties before requiring the Court's intervention. Currently before the Court is Defendants' motion to dismiss in the instant case and Plaintiff's motion for default judgment in *Morton I*. There is no opposition filed, resulting in an unacceptable waste of the Court's time and resources.

To start, Plaintiff's motion for default judgment is denied because it is clear that Defendants are not in default. At most, Defendants erred by electing to file their motion to dismiss in the instant action following the Court's instruction to file all future filings in *Morton I*, *see* ECF No. 22.<sup>1</sup> Once Plaintiff discovered that Defendants had mistakenly filed the motion to dismiss on the wrong docket, Plaintiff could have met and conferred with Defendants and asked them to remedy the procedural snafu while proceeding to file her Opposition. Instead, Plaintiff drafted and filed a substantive motion for default judgment, including a full analysis of the *Eitel* factors that, shockingly, concluded that a default judgment granting Plaintiff over \$10 million dollars was appropriate based on Twitter's procedural error. *See* Default at 15-25. Furthermore, Plaintiff failed to comply with the requirements Fed. R. Civ. P. 55(b)(2) by refusing to serve Defendants with written notice of the application when Defendants have undoubtedly made an appearance through their representatives in this action. The Court therefore finds default

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<sup>1</sup> Defendants explain that they filed the motion to dismiss in the docket for the instant case because ECF functionality requires that motions to dismiss be linked to the previously filed document to which they relate, which was the Complaint in the instant docket. *See* Reply at 2 n.2.

judgment inappropriate and inapplicable as Defendants are actively defending this action.

Regarding the pending motion to dismiss, the Court is unclear how this situation could have arisen if the parties had complied with the meet and confer requirements of Local Rule 7-3, which requires the parties to “thoroughly” discuss the substance of any contemplated motion and any potential resolution. Defendants claim that they reached out to Plaintiff’s counsel to request a meet and confer on three separate occasions, on October 11, 12, and 13, but Plaintiff’s counsel never responded. *See* Declaration of Rebecca E. Davis ¶¶ 1-5. Plaintiff’s counsel does not provide a declaration but asserts that Defendants “did not observe Local Rule 7-3 in conducting a meet and confer in advance of the deadline yet capriciously filed a Partial Motion to Dismiss without concurrently filing an Answer.”<sup>2</sup> *See* Mot. at 12. Plaintiff’s counsel’s story is inconsistent, however, because in other parts of briefing she states that she asked Defendants to schedule a meeting as early as mid-September, but asserts that “Defendants did not respond or suggest the required Local Rule 7-3 meeting until the middle of the day of the deadline on October 11.” *See id.* at 9. The Court notes that the deadline to answer was October 18, not October 11, so Defendants were in compliance with Local Rule 7-3 by requesting a meet and confer on October 11, one week in advance of the hearing. The Court therefore cannot understand Plaintiff’s counsel’s justification for refusing to meet and confer.<sup>3</sup> *See* ECF No. 22.

The behavior of Plaintiff’s counsel in failing to comply with Local Rule 7-3 or Fed. R. Civ. P. 55(b)(2) and filing an unnecessary motion for default application instead of a substantive opposition appears to the Court to have been an improper tactic for harassment or unnecessary delay that could possibly be sanctionable under Rule 11(b).<sup>4</sup> The Court orders Plaintiff’s counsel to come prepared to explain why she apparently ignored Defendants’ requests for a meet and

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<sup>2</sup> It is also unclear why Defendants would have agreed to a meet and confer in mid-September when there is no indication they had completed their motion to dismiss.

<sup>3</sup> Plaintiff complains that Defendants did not schedule a meet and confer in response to her request in mid-September. It is unclear to the Court, however, why a meet and confer would have been appropriate at that time because there is no indication that Defendants had their motion to dismiss prepared for thorough discussion by then.

<sup>4</sup> The Court notes that this is not the first instance where the actions of Plaintiff’s counsel have been called into question. Plaintiff’s counsel also filed an *ex parte* application for a temporary restraining order (“TRO”) on the *Morton I* docket at 1 am late on a Friday night/early Saturday morning over a year after initiating the *Morton I* action and a month after filing the Complaint in the instant action. Leaving aside the suspicious timing of the filing of the TRO, Plaintiff was also accused in that instance of failing to properly provide notice to Defendants as required by Local Rule 7-19.1 and failing to properly serve Defendants with the TRO as required by this Court’s standing orders. *See Morton I*, Opposition to Plaintiff’s Application for Temporary Restraining Order at 3-4 n.1, ECF No. 68. Defendants did not explicitly request sanctions in that instance for “Plaintiff’s abuse of the *ex parte* process,” but left the issue to the Court’s discretion. *Id.* at 2.

confer and why she was inconsistent in her representations to the Court that Defendants had not made an attempt to meet and confer with her. The Court would further ask Plaintiff's counsel to come prepared to provide a justification for her refusal to file an opposition, leaving the Court unable to resolve the motion to dismiss on the day of the scheduled hearing. It appears to the Court that the parties could have resolved the procedural issue had Plaintiff complied with Local Rule 7-3 or Fed. R. Civ. P. 55(b)(2) before her filings and not wasted the Court's time and resources. Plaintiff's counsel shall explain her repeated flouting of procedural rules and use of tactics that appear to be causing unnecessary delay at the upcoming hearing.