

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL IN AND FOR MIAMI-DADE
COUNTY, FLORIDA

V N.V.,

Plaintiff,

v.

I I a/k/a I M 3,

Defendant.

CASE NO: 15-15952 CA

**ORDER ON V 'S FIFTH MOTION FOR DEFAULT AS
SANCTION FOR DEFENDANT'S REPEATED DISCOVERY VIOLATIONS**

THIS CAUSE having come on to be heard on Plaintiff V 's Fifth Motion for Default as Sanction for Defendant's Repeated Discovery Violations, and the Court being duly advised in the premises, it is hereupon ORDERED AND ADJUDGED that:

1. The Motion is GRANTED.
2. The Court grants Plaintiff's attorney's fees for the multiple court appearances and motions on Defendant's discovery failures, strikes Defendant's answer, and enters a default against Defendant, after consideration of the *Kozel* factors. Fla. R. Civ. P. 1.340 and 1.380; *Ledo v. Seavie Res., LLC*, 149 So. 3d 707, 710 (affirming order striking pleadings as discovery sanction under *Kozel v. Ostendorf*, 629 So. 2d 817 (Fla. 1993)).

3. In support and consideration of the *Kozel* factors, the Court finds that the Defendant has failed to appear at this September 14, 2016 hearing on this motion, and failed to appear at her July 21, 2016 deposition despite being duly noticed and mutually coordinated, after failing to timely respond to every discovery request, including Plaintiff's September 2015 request for admissions, October 2015 request for production, December 2015 interrogatories, April 2016 interrogatories and requests for production, and May 2016 requests to finish deposition. The Court has already heard four prior motions to compel discovery and sanction,

repeatedly admonished Defendant, and entered sanctions against her, but Defendant still fails to comply with discovery rules and deadlines, at significant cost to Plaintiff.

The *Kozel* factors weigh in favor of strong sanctions, including striking Defendant's answer and entering default, as follows:

1. Defendant's disobedience of discovery orders is willful after four orders, and despite these orders, Defendant did not notify Plaintiff of her non-appearance at deposition or provide any excuse thereafter;
2. The Court has repeatedly admonished and sanctioned Defendant;
3. Defendant was personally involved in disobeying discovery orders and rules, including personally failing to appear for deposition without notification or excuse;
4. The delay has prejudiced Plaintiff by allowing Defendant to hold and use Plaintiff's money for an extended period, despite admitting in interrogatories that she owes the money to Plaintiff;
5. Defendant cannot justify the repeated noncompliance, failed to notify Plaintiff that she would not appear at deposition or hearings, and has provided no excuse; and
6. This delay and repeated court hearings are causing problems of judicial administration, creating multiple unnecessary hearing and preventing discovery and due process.

Thus, Florida law supports strong sanctions, including striking Defendant's answer and entering default. *Kozel* at 818.

DONE AND ORDERED in Chambers at Dade County, Florida on September 13, 2016.

CIRCUIT COURT JUDGE

Bronwyn Catherine Miller
Circuit Court Judge

Cc: counsels of record (Andrew J. Bernhard, Esq., and

z, Esq.)