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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IGLESIA NI CRISTO,
Plaintiff,
v.
LUISITO E CAYABYAB, et al.,
Defendants.

Case No. 18-cv-00561-BLF (SVK)

**ORDER GRANTING IN PART
PLAINTIFF’S MOTION TO COMPEL**

Re: Dkt. Nos. 81, 84, 85

Plaintiff Iglesia Ni Cristo moves to compel Defendant H2O Now USA (“Defendant H2O”) and Defendants Luisito E. Cayabyab and Rolando Dizon, Jr. (“Defendants Cayabyab and Dizon”) to respond to Plaintiff’s outstanding discovery requests. ECF 81. The Parties’ dispute arises out of Defendants’ motions to strike portions of Plaintiff’s amended complaint (ECF 53) under California’s Strategic Lawsuit Against Public Participation statute (Cal. Civ. P. Code § 425.16). ECF 58; ECF 73 (“anti-SLAPP motions”). The Honorable Beth Labson Freeman extended Plaintiff’s deadline to file oppositions to Defendants’ anti-SLAPP motions and motions to dismiss to April 22, 2019, to allow this Court time to rule on the instant motion to compel. ECF 82. The hearing date for Defendants’ motions remains May 16, 2019. *Id.*

Plaintiff specifically seeks responses to special interrogatories and requests for production¹ “to move litigation along in this case and to oppose the pending Anti-SLAPP motions.” ECF 81 at 4. Defendant H2O and Defendants Cayabyab and Dizon both filed oppositions to Plaintiff’s

¹ Plaintiff also propounded requests for admissions. ECF 81 at 9 n.2. Plaintiff does not seek to compel responses to those requests and instead asserts that Defendant H2O’s and the Defendants Cayabyab and Dizon’s failure to respond to those requests means that the Court should deem those requests admitted. *Id.* As noted below in Section II(B) the Court finds that Defendants have not waived their right to object to or otherwise respond to Plaintiffs’ discovery requests, including requests for admissions.

1 motion to compel (ECF 84; ECF 85), and the Court held a hearing on March 7, 2019. For the
2 reasons stated at the hearing and set forth below, the Court finds that discovery is not stayed, and
3 Plaintiff is entitled to the discovery of information essential to opposing Defendants’ anti-SLAPP
4 motions.

5 **I. LEGAL BACKGROUND**

6 **A. The Two Steps of Anti-SLAPP Motion Analysis**

7 When evaluating an anti-SLAPP motion, the Court engages in a two-step analysis. First,
8 the Court determines whether the plaintiff challenges “an act in furtherance of protected
9 expression.” *Metabolife Int’l, Inc. v. Wornick*, 264 F.3d 832, 840 (9th Cir. 2001). If so, the Court
10 proceeds to the second step, where “the plaintiff must show a ‘reasonable probability’ of
11 prevailing in its claims for those claims to survive dismissal.” *Id.* (citations omitted). The Court
12 will grant an anti-SLAPP motion (1) if “a plaintiff presents an insufficient legal basis for the
13 claims” or (2) “when no evidence of sufficient substantiality exists to support a judgment for the
14 plaintiff.” *Id.* (citations and internal quotation marks omitted). Thus, an anti-SLAPP motion can
15 challenge either the legal sufficiency or the factual sufficiency of a claim. *See Planned*
16 *Parenthood Fed’n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828, 834 (9th Cir. 2018).

17 Whether a defendant’s motion challenges the legal or factual sufficiency of a claim
18 determines the standard of review that the Court applies. For instance, “when an anti-SLAPP
19 motion to strike challenges only the legal sufficiency of a claim, a district court should apply the
20 Federal Rule of Civil Procedure 12(b)(6) standard and consider whether a claim is properly
21 stated.” *Id.* In contrast, “when an anti-SLAPP motion to strike challenges the factual sufficiency
22 of a claim, then the Federal Rule of Civil Procedure 56 standard will apply.” *Id.*

23 **B. Permitted Discovery under Ninth Circuit Law**

24 Section 425.16(g) provides for an automatic stay of discovery upon the filing of an anti-
25 SLAPP motion. Cal. Civ. P. Code § 425.16(g). However, the Ninth Circuit has recognized that
26 this provision collides with the Federal Rules of Civil Procedure when a defendant challenges the
27 factual sufficiency of a claim. *See Metabolife*, 264 F.3d at 846–47. Section 425.16(g)’s discovery
28 stay conflicts with Federal Rule of Civil Procedure 56, which requires that the Court allow

1 discovery “where the nonmoving party has not had the opportunity to discover information that is
2 essential to its opposition.” *Id.* at 846 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250
3 n.5 (1986)) (internal quotation marks omitted). In implementing *Metabolife*’s holding, several
4 courts have adopted Federal Rule of Civil Procedure 56(f)’s standard that discovery must be
5 essential to the plaintiff’s opposition. *Price v. Stossel*, 590 F. Supp. 2d 1262, 1270 (C.D. Cal.
6 2008); *see also Heller v. NBCUniversal, Inc.*, No. CV-15-09631-MWF-KS, 2016 WL 6583048, at
7 *10 (C.D. Cal. June 29, 2016) (holding that “[a]ll discovery must be strictly limited to” the issue
8 raised by the anti-SLAPP motion). Indeed, following *Planned Parenthood*, the Ninth Circuit
9 affirmed the denial of a request to conduct discovery prior to granting an anti-SLAPP motion
10 where the plaintiff failed to “provide an affidavit or declaration outlining why he needed
11 additional discovery” or offer “any facts that he hopes to discover that could defeat” an argument
12 in the defendants’ motion. *Khai v. Cty. of Los Angeles*, 730 F. App’x 408, 410–11 (9th Cir. 2018).
13 Accordingly, a Court must only provide a plaintiff an opportunity to seek discovery regarding
14 “essential” information for her opposition of an anti-SLAPP motion challenging the factual
15 sufficiency of her claim(s).

16 Lastly, the Ninth Circuit has also recognized that the anti-SLAPP statute does not apply to
17 claims asserted under federal law. *Hilton v. Hallmark Cards*, 599 F.3d 894, 901 (9th Cir. 2010).

18 **II. Analysis**

19 **A. Plaintiff’s Right to Discovery to Oppose Defendants’ Anti-SLAPP Motions**

20 The Parties dispute (1) whether Plaintiff is entitled to discovery in light of § 425.16(g) and
21 Defendants’ anti-SLAPP motions and (2) the proper scope of such discovery.

22 Plaintiff contends that there is no discovery stay in the case pursuant to *Planned*
23 *Parenthood*. ECF 81 at 5. Defendants counter that at the initial case management conference and
24 hearing on Defendants’ motions to dismiss and anti-SLAPP motions against Plaintiff’s original
25 complaint on July 26, 2018, Judge Freeman indicated that Plaintiff would have to file a motion for
26 leave to take discovery in the event Defendants brought an anti-SLAPP motion against the
27 amended complaint. ECF 84 at 2; ECF 85 at 2, 11. Although Judge Freeman did refer to a motion
28 for leave to take discovery (ECF 48 at 33:8–20; 39:19–23), Judge Freeman also noted that there is

1 no “discovery stay . . . in federal court for when anti-SLAPP motions are pending.” *Id.* at 42:1–3.
2 The case management order (ECF 46) also does not reflect a stay of discovery, nor have
3 Defendants moved for either a stay or a protective order. Accordingly, discovery is not stayed in
4 this matter.

5 The Court next turns to whether Plaintiff is entitled to discovery on an expedited timeline
6 for the purpose of responding to Defendants’ anti-SLAPP motions. Plaintiff argues that both
7 Defendant H2O and Defendants Cayabyab and Dizon attach declarations to their anti-SLAPP
8 motions and contends that both motions challenge the factual sufficiency of Plaintiff’s claims.
9 ECF 81 at 7–8. As a result, Plaintiff argues that *Planned Parenthood* mandates that the Court
10 provide Plaintiff the opportunity to conduct discovery. *Id.* Both Defendant H2O and Defendants
11 Cayabyab and Dizon contend that their anti-SLAPP motions only challenge the legal sufficiency
12 of Plaintiff’s claims, so no discovery is warranted. ECF 84 at 1; ECF 85 at 8.

13 As noted above, whether a plaintiff must submit evidence to support her claims in response
14 to an anti-SLAPP motions is tied to whether that motion challenges the legal sufficiency or factual
15 sufficiency of the plaintiff’s claims. *See Planned Parenthood*, 890 F.3d at 834. When a plaintiff
16 faces a factual sufficiency challenge, the Court must provide the plaintiff with the “opportunity to
17 discover information that is essential to its opposition.” *Metabolife*, 264 F.3d at 846 (quoting
18 *Liberty Lobby*, 477 U.S. at 250 n.5) (internal quotation marks omitted). In that situation, a
19 plaintiff is entitled to discovery regarding “essential” information for her opposition of an anti-
20 SLAPP motion.

21 The issue of whether Defendants’ anti-SLAPP motions challenge the legal sufficiency of
22 Plaintiff’s claims, the factual sufficiency of those claims, or both, goes to the disposition of
23 Defendants’ motions and is therefore properly reserved for Judge Freeman. This Court need not
24 determine the nature of Defendants’ challenges. Rather, the issue before this Court is whether the
25 discovery Plaintiff seeks is “essential” to Plaintiff’s opposition of Defendants’ anti-SLAPP
26 motions. Plaintiff’s motion to compel seeks responses to 134 requests for production and 58
27 interrogatories. *See* ECF 81-2. However, as discussed at length in the March 7, 2019 hearing,
28 Plaintiff fails to identify specific factual challenges to Plaintiff’s claims and the information in

1 Defendants' possession essential to opposing those factual challenges. Absent such a showing,
2 Plaintiff does not have a right to discovery prior to Judge Freeman's ruling on Defendants' anti-
3 SLAPP motions. *See Khai*, 730 F. App'x at 410–11. Accordingly, Plaintiff must identify the
4 specific discovery essential to opposing Defendants' anti-SLAPP motions. To this end, the Court
5 ordered Plaintiff to submit a proposed discovery plan to Defendants and the Court by March 8,
6 2019 at 5:30 p.m., and today the Court has provided additional, interim direction as to that plan.
7 ECF 93.

8 **B. Discovery Regarding Issues Beyond Defendants' Anti-SLAPP Motions**

9 As discussed above, discovery is not stayed, and the anti-SLAPP statute does not apply to
10 claims asserted under federal law. *Hilton*, 599 F.3d at 901. As a result, Defendants remain
11 obligated to respond to properly served discovery requests regarding Plaintiff's federal claims.
12 Plaintiff contends that Defendants' alleged failure to respond to Plaintiff's discovery requests
13 precludes Defendants from now asserting objections to those requests. ECF 81 at 8–11.
14 However, the Court finds that in light of the discussions at the hearing before Judge Freeman
15 noted above, Defendants' refusal to respond to Plaintiff's discovery requests without a motion was
16 not entirely unfounded. Accordingly, as discussed with the Parties at the March 7, 2019 hearing,
17 the clock will be reset as to discovery not essential for the anti-SLAPP motions.

18 Accordingly, the Court **ORDERS** that the Parties meet and confer regarding a schedule for
19 addressing the discovery requests that go to issues beyond the information essential to responding
20 to Defendants' anti-SLAPP motions. This schedule should include an agreement as to the
21 deadline for Defendants' responses to Plaintiff's outstanding discovery requests, taking the
22 schedule for the pending motions into account.

23 **III. Conclusion**

24 For the foregoing reasons, the Court **ORDERS** as follows:

- 25 • Plaintiff is to provide the Court and Defendants a discovery plan, identifying any
26 interrogatory requests or requests for production that Plaintiff seeks to respond to
27 Defendants' anti-SLAPP motions, in accordance with ECF 93.
- 28 • The Court also finds that there is no discovery stay in this case. Accordingly, after the

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issues regarding discovery for the anti-SLAPP motions are resolved, the Parties are to meet and confer regarding a schedule for addressing the discovery requests that go to issues beyond the information essential to responding to Defendants’ anti-SLAPP motions. This schedule should include an agreement as to the deadline for Defendants’ responses to Plaintiff’s outstanding discovery requests which takes into account the pending motions.

- As noted at the hearing, the Court grants Defendant H2O’s request to reserve its right to seek sanctions in connection with this dispute. The remaining requests for sanctions are **DENIED**. ECF 81 at 12; ECF 85 at 14.

SO ORDERED.

Dated: March 11, 2019



SUSAN VAN KEULEN
United States Magistrate Judge