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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MIGUEL SILLAS, MARIA SILLAS,  
and JOSE SILLAS,

Plaintiffs,

v.

CITY OF LOS ANGELES, a municipal  
corporation; EDGAR MEJIA,  
MATTHEW MENDEZ, HAINER  
HERNANDEZ, MICHAEL MARINO,  
VINCENZO AVERAIMO, ALEX  
FRANCO, DANIEL HUGHES, JOSE  
TEJEDA, JOHN PADILLA, JEREMY  
MASSEY, DANIEL KAMINSKI,  
ARSHAVIR SHALDJIAN, RYAN  
SCHATZ, PATRICK FOREMAN,  
RODOLFO RODRIGUEZ, and DOES  
1-10, inclusive,

Defendants.

CASE NO. CV17-08691-FMO (AFMx)

Hon. Fernando M. Olguin  
Mag. Judge Alexander F. MacKinnon  
Action Filed: December 1, 2017  
Trial Date: September 17, 2019

**CERTIFICATION OF FACTS  
AND ORDER TO SHOW CAUSE  
WHY LIZETTE MADERA SILLAS  
SHOULD NOT BE HELD IN  
CONTEMPT**

Nonparty Lizette Madera Sillas (“Madera Sillas”) has failed to appear for a deposition and failed to appear in Court to address why she should not be held in contempt for her failure to appear for a deposition. As discussed below, the Court

1 certifies the following facts and orders Ms. Madera Sillas to appear before the District  
2 Judge to show cause why she should not be adjudged in contempt for failure to  
3 comply with a deposition subpoena and associated order. **Ms. Madera Sillas is**  
4 **warned that her failure to comply with this Order may result in contempt**  
5 **sanctions including deposition fees, attorney's fees, and/or her arrest by the**  
6 **United States Marshals Service.**

### 8 STATEMENT OF CERTIFIED FACTS

9 Lizette Madera Sillas is the wife of plaintiff Miguel Sillas. (ECF No. 93, Inlow  
10 Decl., ¶ 4.) Defendants jointly noticed the deposition of Lizette Madera Sillas for the  
11 first time for August 16, 2018. She was personally served with a deposition notice  
12 and a subpoena for the deposition. (ECF No. 93, Exhibit B, Inlow Decl., ¶ 5).  
13 However, Madera Sillas failed to appear, and a notice of non-appearance was taken.  
14 (ECF No. 93, Exhibit C, Inlow Decl., ¶ 6.) On August 16, 2018, plaintiffs' counsel  
15 Diane Bang stated that her firm was representing Madera Sillas. (ECF No. 93, Inlow  
16 Decl., ¶ 6.)

17 Defendants duly re-noticed the deposition of Lizette Madera Sillas for  
18 September 24, 2018, but she failed to appear for a second time. (ECF No. 93, Exhibit  
19 D, Inlow Decl., ¶ 7.) Following this non-appearance, plaintiffs' counsel wrote an e-  
20 mail to defense counsel stating that they were no longer representing Madera Sillas.  
21 (ECF No. 93, Exhibit E, Inlow Decl., ¶ 8.)

22 On September 28, 2018, the parties filed a joint stipulation requesting an order  
23 compelling Lizette Madera Sillas to appear at her deposition on October 26, 2018.  
24 (ECF No. 77.) This Magistrate Judge signed the Order on September 28, 2018. (ECF  
25 No. 78.) On October 4, 2018, Lizette Madera Sillas was duly served with the new  
26 deposition notice, subpoena and copy of the Court order compelling her deposition  
27 for October 26, 2018. (ECF No. 93, Exhibit F, Inlow Decl., ¶ 10.) Despite the Court  
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1 order, Madera Sillas again failed to appear for her deposition on October 26, 2018.  
2 (ECF No. 93, Exhibit G, Inlow Decl., ¶ 11.)

3 On December 17, 2018, the defendants filed an ex parte application for an  
4 Order to Show Cause as to why Madera Sillas should not be held in contempt for her  
5 failure to appear for her duly noticed deposition and the court ordered deposition.  
6 (ECF No. 93.) Plaintiffs did not oppose the ex parte application. On December 19,  
7 2018, the Magistrate Judge ordered Madera Sillas to appear before the Magistrate  
8 Judge on January 15, 2019 to show cause why she should not be held in contempt.  
9 (ECF No. 94.) Defendants were ordered to serve the notice of the OSC hearing on  
10 Madera Sillas. (ECF No. 94.)

11 Defendants deposed Francisca Madera, the mother of Lizette Madera Sillas,  
12 on August 16, 2018. During her deposition, Francisca Madera testified that Lizette  
13 currently lived with her. Francisca further testified that Lizette had always lived with  
14 her parents and she had seen Lizette that morning, August 16, 2018, one of the dates  
15 on which Lizette had also been subpoenaed for deposition. (ECF No. 98.)

16 LAPD Officer Ferrato and Detective Lin went to Madera Sillas' stated address  
17 on Isabel Street on December 27, 2018. Her mother, Francisca Madera, answered  
18 the door and said she had not seen her daughter since December 24, 2018 and that  
19 Lizette did not have a cell phone. The detectives left a copy of the court order and  
20 their business card with Francisca Madera. (ECF No. 99.) On December 28, 2018,  
21 LAPD Detective Brian Hun found a phone number for Lizette Madera Sillas in an  
22 unrelated police report. When he called the number, a female Hispanic answered  
23 and said it was the wrong number. (ECF No. 99.) On December 28, 2018,  
24 Detectives Lin and Hun went back to the residence on Isabel Street. They again  
25 spoke with Francisca Madera who refused to provide them with Lizette's contact  
26 information or reveal her whereabouts. Francisca did tell them that she had given  
27 the court order to her daughter Lizette Madera Sillas. (ECF No. 99.)  
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1 28 U.S.C. § 636(e)(6); *see also* Assignment of Duties to Magistrate Judges, C.D. Cal.  
2 Gen. Order 05-07 (2005). In certifying the facts under § 636(e), the magistrate  
3 judge’s role is to determine whether the moving party can assert sufficient evidence  
4 to establish a prima facie case of contempt. *See Proctor v. State Gov’t of N.C.*, 830  
5 F.2d 514, 521 (4th Cir. 1987).

6 In the Ninth Circuit, a party alleging that another person should be held in civil  
7 contempt must establish by clear and convincing evidence that the alleged contemnor  
8 “violated the court order,” “beyond substantial compliance,” “not based on a good  
9 faith. and reasonable interpretation of the order.” *Labor/Community Strategy Ctr. v.*  
10 *L.A. Cty. Metro. Transp. Auth.*, 564 F.3d 1115, 1123 (9th Cir. 2009) (quoting *In re*  
11 *Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir.  
12 1993)). Once that prima facie showing is made, the burden shifts to the alleged  
13 contemnor to “produce evidence explaining [her] noncompliance.” *United States v.*  
14 *Ayres*, 166 F.3d 991, 994 (9th Cir. 1999) (citing *Chairs v. Burgess*, 143 F.3d 1432,  
15 1436 (11th Cir. 1998)). In making a contempt determination, a court may consider  
16 “the witness’[s] history of non-compliance and the extent to which the witness failed  
17 to comply during the pendency of the motion for contempt.” *Martinez v. City of*  
18 *Avondale*, 2013 WL 5705291, at \*4 (D. Ariz. Oct. 18, 2013).

19 A nonparty’s noncompliance with a subpoena may warrant contempt  
20 sanctions. *Pennwalt Corp.*, 708 F.2d at 494 n.5; *LHF Productions, Inc. v. Doe*, 2016  
21 WL 6208269, at \*2 (D. Or., Oct. 21, 2016). Such sanctions may include the cost of  
22 the failed deposition and show-cause motion. *LHF Productions*, 2016 WL 6208269,  
23 at \*2-3. Upon a finding of a willful failure to comply with a court order, a contemnor  
24 may be jailed until compliance with the district court’s order. *S.E.C. v. Elmas Trading*  
25 *Corp.*, 824 F.2d 732 (9th Cir. 1987) (“When the petitioners carry ‘the keys of their  
26 prison in their own pockets,’ the action is ‘essentially a civil remedy.’”) (quoting  
27 *Shillitani v. United States*, 384 U.S. 364, 368 (1965)); *Martinez*, 2013 WL 5705291,  
28 at \*4. A civil contempt order must be accompanied by a “purge” condition, meaning

1 that it must give the contemnor an opportunity to comply with the order before  
2 payment of the fine or other sanction becomes due. *Koninklijke Philips Elec. N.V. v.*  
3 *KXD Technology, Inc.*, 539 F.3d 1039, 1042-43 (9th Cir. 2008); *Martinez v. City of*  
4 *Pittsburg*, 2012 WL 699462, at \*3 (N.D. Cal. Mar. 1, 2012); *see also Shell Offshore*  
5 *Inc. v. Greenpeace, Inc.*, 815 F.3d 623, 629 (9th Cir. 2016) (“the ability to purge is  
6 perhaps the most definitive characteristic of coercive civil contempt”).

7 Here, Defendants have shown by clear and convincing evidence that Madera  
8 Sillas failed to comply with two deposition subpoenas, the Magistrate Judge’s later  
9 order to appear for her deposition, and the Magistrate Judge’s order for a show cause  
10 hearing. Madera Sillas was personally served with the first deposition notice and  
11 subpoena, but she nevertheless failed to appear for the deposition or otherwise  
12 respond to the notice and subpoena. Madera Sillas’ attorney was duly served with  
13 the second deposition notice and subpoena, but Madera Sillas again failed to appear.  
14 Madera Sillas was also personally served with the Court’s September 28, 2018, order  
15 compelling her to appear for her deposition, but she did not comply. Finally, the  
16 evidence strongly indicates that Madera Sillas was given notice of the hearing and  
17 order to show cause, but she failed to appear for the January 15, 2019 hearing. For  
18 these reasons, the undersigned certifies the facts stated above.

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20 **ORDER**

21 **IT IS THEREFORE ORDERED** that Lizette Madera Sillas appear before  
22 the Honorable Fernando M. Olguin in Courtroom 6D, Sixth Floor, United States  
23 District Court, 350 W. 1st Street, Los Angeles, California, 90012, on Thursday,  
24 February 28, 2019, at 10 a.m., to show cause why she should not be adjudged in  
25 contempt by reason of the facts certified herein. Should Ms. Madera Sillas arrange  
26 with either of Defendants’ counsel (Laura E. Inlow of Collinson, Daehnke, Inlow &  
27 Greco, 21515 Hawthorne Blvd., Suite 800, Torrance, CA 90503; 424-212-7777;  
28 [laura.inlow@cdiglaw.com](mailto:laura.inlow@cdiglaw.com) or Lisa Lee, Deputy City Attorney, 200 N. Main Street,

1 6th Fl., City Hall East, Los Angeles, CA 90012; 213-978-7032; [lisa.lee@lacity.org](mailto:lisa.lee@lacity.org))  
2 to have her deposition taken before February 28, 2019, the parties shall notify the  
3 Court immediately, the February 28, 2019 hearing will be vacated, and Ms. Madera  
4 Sillas will not need appear.

5 **Lizette Madera Sillas is again warned that her failure to comply with this**  
6 **Order may result in contempt sanctions including deposition fees, attorney's**  
7 **fees, and/or her arrest by the United States Marshals Service.** Defendant City of  
8 Los Angeles is directed to personally serve a signed copy of this Order on Lizette  
9 Madera Sillas as soon as practicable at 2020 Isabel Street, Los Angeles, California  
10 90065, or at any other address where she may be located. Defendant City of  
11 Los Angeles shall promptly file a return of service upon service of this Order.

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13 DATED: 1/29/2019

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16 ALEXANDER F. MacKINNON  
17 UNITED STATES MAGISTRATE JUDGE  
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