



1 motion deadline as March 15, 2010, and the dispositive motion deadline as February 16, 2010. Trial  
2 is scheduled for July 26, 2010.

3 On February 15, 2010, the parties participated in mediation. Although Defendant agreed to  
4 Plaintiff's settlement terms, Plaintiff withdrew from mediation, refused to sign a settlement  
5 agreement and refused to the accept the terms of the settlement she proposed.

6 On February 16, 2010, Plaintiff filed an *ex parte* motion for an extension of time and  
7 extension of discovery deadlines. The Court granted the motion, giving Plaintiff an additional  
8 twenty (20) days to provide discovery responses. However, the Court denied Plaintiff's request to  
9 extend the dates in the Scheduling Order.

10 On February 19, 2010, Plaintiff and her counsel filed a substitution of attorney form.  
11 Plaintiff requested that the Court approve her substitution pro per in place of her counsel.  
12 Subsequently, Plaintiff's counsel filed a motion to withdraw as attorney of record. On March 2,  
13 2010, the Court granted counsel's motion to withdraw. The Order substituted Plaintiff in as counsel  
14 pro se.

15 On March 8, 2010, Defendant filed the instant motion to compel Plaintiff to attend her  
16 videotaped deposition. Plaintiff reportedly failed to attend her deposition on March 4, 2010.

17 As Plaintiff failed to appear for deposition, no joint statement was required, but any response  
18 was due at least 7 days before the hearing. Local Rule 251(e). Plaintiff did not file a response.

## 19 DISCUSSION

### 20 A. Motion to Compel Discovery

21 Federal Rule of Civil Procedure 37 allows a party to move for an order compelling disclosure  
22 or discovery. Fed. R. Civ. P. 37(a)(1). Rule 37 also authorizes a court, on motion, to order sanctions  
23 if "a party . . . fails, after being served with proper notice, to appear for that person's deposition."  
24 Fed. R. Civ. P. 37(d)(1)(A)(i).

25 On February 16, 2010, Defense counsel noticed Plaintiff's deposition for March 2, 2010.  
26 Declaration of Jason H. Borchers ("Borchers Dec.") ¶ 2 and Exhibit A. On February 17, 2010, an  
27 amended notice set the deposition for March 4, 2010. Borchers Dec. ¶ 3 and Exhibit B. The timing  
28

1 of the deposition was based on conversations with Plaintiff's former counsel. At some point,  
2 counsel for the parties stipulated to hold off on deposition until after mediation. Borchers Dec. ¶ 4.

3 On March 3, 2010, Plaintiff reportedly left a message for defense counsel indicating that she  
4 would not be attending the deposition because she did not have legal representation. She did not  
5 provide alternative dates or state when she would be retaining counsel. Borchers Dec. ¶ 5.

6 As Plaintiff failed to appear for her deposition, the motion to compel is GRANTED. Plaintiff  
7 SHALL APPEAR for her videotaped deposition on April 9, 2010 at 9:00 a.m. at the location set  
8 forth in the notice of deposition.

9 B. Sanctions

10 Defendant requests that the Court order Plaintiff to pay reasonable attorney fees. If the  
11 motion to compel is granted, the Court must, after giving an opportunity to be heard, require the  
12 party whose conduct necessitated the motion to pay the movant's reasonable expenses incurred in  
13 making the motion, including attorney's fees. Fed. R. Civ. P. 37(a)(5)(A). The Court must not order  
14 payment if, among other things, circumstances make an award of expenses unjust. Fed. R. Civ. P.  
15 37(a)(5)(A)(iii). In this instance, the Court declines to award expenses because Plaintiff is  
16 proceeding pro se in this matter and she has agreed to attend her deposition.

17 CONCLUSION

18 Based on the above, Defendant's Motion to Compel Deposition of Plaintiff Cynthia  
19 Barrientos is GRANTED. Plaintiff SHALL APPEAR for her videotaped deposition on April 9, 2010  
20 at 9:00 a.m. at the location set forth in the notice of deposition to be issued by Defendant.

21 Additionally, Defendant's motion for the imposition of sanctions is DENIED.

22  
23 IT IS SO ORDERED.

24 Dated: April 1, 2010

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE