

1 On December 10, 2009, the Court issued an order to show cause why the action should not
2 be dismissed for Plaintiff and her counsel's failure to attend the mandatory Scheduling Conference.
3 The Court discharged the order and issued a Scheduling Conference Order on February 3, 2010.
4 The discovery deadline is October 15, 2010. Trial is currently set for March 28, 2011.

5 Defendants filed the instant motion to compel Plaintiff's deposition on September 3, 2010.
6 Plaintiff has not responded to the motion or otherwise contacted Defendants or the Court.

7 DISCUSSION

8 A. Motion to Compel Discovery

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

13 On August 4, 2010, Defense counsel Susan Moore noticed Plaintiff's deposition for August
14 18, 2010. Declaration of Susan Moore ("Moore Dec.") ¶ 1, Exh. A. Plaintiff was served at her
15 attorney's address of record. Moore Dec., ¶ 3. Plaintiff did not appear for her deposition. Moore
16 Dec., ¶ 4.

17 On August 18, 2010, Ms. Moore emailed Plaintiff's counsel in an attempt to work out a
18 continued date. Moore Dec., ¶ 5, Exh. C. Sharon Lapin, Plaintiff's attorney, has not responded.
19 Moore Dec., ¶ 6.

20 Plaintiff's deposition was therefore properly noticed and she has set forth no cause for failing
21 to attend. Accordingly, Defendants motion to compel Plaintiff's deposition is GRANTED. Plaintiff
22 SHALL appear for her deposition within twenty (20) days of the date of service of this order, at a
23 date and time, during regular business hours, to be chosen by Defendants.

24 B. Sanctions

25 Pursuant to Federal Rule of Civil Procedure 37(d), Defendants are entitled to sanctions for
26 Plaintiff's failure to attend her deposition.

27 Defendants request sanctions in the amount of \$795.00, the amount her firm has spent in
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1 bringing this motion. Moore Dec., ¶ 9.

2 Plaintiff's unexplained failure to attend her properly noticed deposition also caused
3 Defendants to incur additional attorney time and reporter costs.

4 The Court therefore GRANTS Defendants' request for sanctions in the amount of \$795.00,
5 as well as attorney time and reporter costs associated with the August 18, 2010, deposition. The
6 sanctions are imposed JOINTLY against Plaintiff and her counsel, Sharon Lapin.

7 Defendants SHALL submit a declaration setting forth the attorneys' fees and costs from the
8 deposition within ten (10) days of the date of service of the order. The Court will then issue an order
9 setting forth the total amount of sanctions.

10 IT IS SO ORDERED.

11 **Dated: September 27, 2010**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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