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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

MARSHALL LOSKOT,

No. 2:13-cv-0496-MCE-CMK

Plaintiff,

vs.

ORDER

AKAGAMO, INC.,

Defendant.

_____ /

Pending before the court is plaintiff's motion for evidentiary sanctions (Doc. 15).

A hearing on the motion was held on July 23, 2014, before the undersigned in Redding, California. Attorney Jason Singleton appeared on behalf of plaintiff; attorney Michael Welch appeared telephonically on behalf of defendant.

Plaintiff moves for the imposition of fact establishing sanctions based on the failure of Tony Morales, the CEO of Akagamo, Inc., to appear at his deposition as ordered by the court. Defendant objects to the imposition of sanctions as plaintiff was informed prior to the deposition that Mr. Morales was incapable of attending the deposition at the time scheduled due to his incarceration.

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1 Rule 37(d) allows for sanctions to be imposed for a party's failure to attend its
2 deposition. Fed. R. Civ. Proc. 37(d). Sanctions are to be awarded unless the failure was
3 substantially justified. Fed. R. Civ. Proc. 37(d)(3). The court finds Mr. Morales' incarceration
4 substantial justification for missing his deposition, despite the court's order to appear. In
5 addition, defense counsel offered to produce Mr. Morales for his deposition upon his release
6 from jail, but this offer was not accepted. The court therefore finds no basis upon which to grant
7 plaintiff's motion to impose fact establishing sanctions.

8 In addition to discussion of the motion, the parties entered into a stipulation of
9 dismissal on the record. Rule 41 allows for a dismissal of an action, with or without a court
10 order, based on the parties' stipulation. The parties stipulated on the record for a dismissal of
11 this action with prejudice. Fed. R. Civ. Proc. 41(a). The court accepted the stipulated dismissal,
12 and this action will be dismissed with prejudice.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. Plaintiff's motion for evidentiary sanctions (Doc. 15) is denied;
- 15 2. This action is dismissed with prejudice pursuant to the parties' stipulation
16 for dismissal; and
- 17 3. The Clerk of the Court is directed to close this case.

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19 DATED: July 24, 2014

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21 **CRAIG M. KELLISON**
22 UNITED STATES MAGISTRATE JUDGE
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