

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK OTTOVICH, et al.,

Plaintiffs,

v.

CITY OF FREMONT, et al.,

Defendants.

No. C 09-4181 MMC

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION FOR ORDER DIRECTING
PLAINTIFF TO APPEAR FOR
DEPOSITION AND IMPOSING
SANCTIONS**

Before the Court is defendants' "Motion for Order Directing Plaintiff to Appear for Deposition and for Sanctions," filed October 24, 2012. Plaintiff has not filed opposition. Defendants filed a reply on November 14, 2012. Having read and considered the papers submitted in support of the motion, the Court deems the motion appropriate for decision on the moving papers, hereby VACATES the hearing scheduled for December 7, 2012, and rules as follows.

Defendants move the Court, pursuant Rule 37 of the Federal Rules of Civil Procedure, for an order (1) directing plaintiff to appear for a deposition at a time set by this Court; and (2) imposing upon plaintiff sanctions in the form of (a) attorneys' fees and (b) dismissal of plaintiff's complaint if he fails to appear at said deposition. See Fed. R. Civ. Pro. 37(a) (providing party may move for "order compelling disclosure or discovery" after "certification that the movant has in good faith conferred or attempted to confer with the person . . . failing to make . . . discovery"); Fed. R. Civ. Pro. 37(d)(1) (providing that a Court may order sanctions if "a party . . . fails, after being served with proper notice, to

1 appear for that person's deposition").

2 In support of their motion, defendants have submitted a declaration setting forth the
3 following: Between September 2011 and October 2012, plaintiff's deposition was noticed
4 and scheduled five times, and, in each instance, plaintiff cancelled the deposition close to
5 the scheduled date. (See Helfrich Decl., filed Oct. 24, 2012, ¶¶ 5-15.) On the last such
6 occasion, in an effort to secure plaintiff's attendance and for plaintiff's convenience,
7 defendants had arranged to hold the deposition in the City of Fremont rather than in
8 counsel's San Francisco office. (See id. ¶ 12.)¹

9 Good cause appearing, (1) to the extent defendants seek an order directing plaintiff
10 to appear at a deposition set by the Court, the motion is hereby GRANTED, and
11 defendants are hereby DIRECTED to submit, no later than November 28, 2012, a form of
12 order containing a proposed date, time and location for plaintiff's deposition; (2) to the
13 extent defendants seek sanctions in the form of attorneys' fees, the motion is hereby
14 GRANTED, and plaintiff is hereby ORDERED to pay to defendants the sum of \$1960,
15 constituting the fees defendants reasonably incurred in the preparation and filing of the
16 instant motion and reply.

17 To the extent defendants seek sanctions in the form of an order dismissing plaintiff's
18 complaint unless plaintiff appears at the deposition set by the Court, the motion is
19 premature and is hereby DENIED without prejudice.

20 **IT IS SO ORDERED.**

21 Dated: November 16, 2012


MAXINE M. CHESNEY
United States District Judge

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26 _____
27 ¹ On November 14, 2012, defendants filed a "Reply," in which, *inter alia*, they state
28 plaintiff, after the filing of the instant motion, once again agreed to a deposition date and
then again cancelled. To the extent the reply raises new facts to which plaintiff has not had
an opportunity to respond, the Court has not relied on such additional showing in ruling
herein.