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**** E-filed December 3, 2010 ****

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MARIA A. GARVIN, et al.,
Plaintiffs,
v.
LINDA TRAN, et al.,
Defendants.

No. C07-01571 HRL

ORDER (1) CONTINUING HEARING ON PLAINTIFFS’ MOTION TO COMPEL THE DEPOSITION OF JESUS CHAVEZ AND (2) REQUIRING JESUS CHAVEZ TO SHOW CAUSE WHY HE SHOULD NOT BE SANCTIONED

[Re: Docket No. 211]

BACKGROUND

Plaintiffs have been trying to take the deposition of defendant Jesus Chavez (“Chavez”) for nearly two years. During that time, Plaintiffs properly noticed his deposition four times; Chavez purportedly was incarcerated for two of depositions (and so they were cancelled), but he simply failed to appear for the other two depositions. (Docket No. 212, ¶¶ 2-4, Exs. A & B; Docket No. 207, ¶ 2-6, Ex. A.)

Plaintiffs now move the Court for an order compelling Chavez’s deposition. (Docket No. 211 (“MTC”).) Chavez filed an untimely opposition brief (which more closely resembles an unsworn declaration of his counsel than it does a brief) (Docket No. 213), and oral argument was heard on November 30, 2010.

United States District Court
For the Northern District of California

1 **DISCUSSION**

2 Plaintiffs argue that Chavez should be compelled to show up for his deposition or default
3 judgment should be entered against him. (MTC at 6-7.) Pursuant to Rule 30, a party may depose
4 any other party without leave of court. FED. R. CIV. P. 30(a)(1). Chavez is a defendant in this
5 action, so Plaintiffs have the right to depose him.

6 Chavez's failure to attend his properly noticed deposition is indicative of his larger disregard
7 for this action as a whole. At oral argument, his counsel represented that he had not communicated
8 with Chavez for some time and acknowledged that Chavez does not appear to take seriously his
9 obligations in this litigation. It is not surprising, then, that despite being ordered to do so, Chavez
10 also failed to appear at the mandatory settlement conference held on August 4, 2010. (Docket Nos.
11 183 & 202.)

12 In short, Chavez has repeatedly failed to cooperate with the discovery process in this action,
13 has acted in violation of court order, and has shirked his responsibilities as a litigant in federal court.
14 As such, the Court orders Chavez to appear **in person** before it on **December 9, 2010** to explain his
15 actions to date and to show cause why the Court should not strike his answer (Docket No. 82) or
16 sanction him in some other manner. Should Chavez fail to appear in person on December 9 (or
17 provide good cause for hearing the matter on a different date), the Court will deem his non-
18 appearance as a further basis for sanctioning him.

19 **CONCLUSION**

20 Based on the foregoing, the Court CONTINUES Plaintiffs' motion to compel to December 9
21 at 10:00 a.m. The Court further ORDERS Chavez to appear **in person** before the Court on
22 **December 9, 2010 at 10:00 a.m.** in Courtroom 2, Fifth Floor, United States District Court, 280
23 South First Street, San Jose, California to explain his actions to date and to show cause why the
24 Court should not strike his answer or sanction him in some other manner.

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26 **IT IS SO ORDERED.**

27 Dated: December 3, 2010

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HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

1 **C07-01571 HRL Notice will be electronically mailed to:**

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14 **5:07-cv-01571-HRL Please see [General Order 45 Section IX C.2 and D](#); Notice has NOT been electronically mailed to:**

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18 **Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.**

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