

1 **** E-filed December 13, 2010 ****

2
3
4
5
6
7 **NOT FOR CITATION**
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 **MARIA A. GARVIN, et al.,**

No. C07-01571 HRL

12 **Plaintiffs,**

13 **v.**

14 **LINDA TRAN, et al.,**

15 **Defendants.**

**ORDER (1) DISCHARGING ORDER
TO SHOW CAUSE AND (2)
GRANTING PLAINTIFFS' MOTION
TO COMPEL THE DEPOSITION OF
JESUS CHAVEZ**

[Re: Docket Nos. 211 & 217]

16 _____ /
17 **BACKGROUND**

18 Plaintiffs have been trying to take the deposition of defendant Jesus Chavez ("Chavez") for
19 nearly two years. During that time, Plaintiffs properly noticed his deposition four times; Chavez
20 purportedly was incarcerated for two of depositions (and so they were cancelled), but he simply
21 failed to appear for the other two depositions. Docket No. 212, ¶¶ 2-4, Exs. A & B; Docket No.
22 207, ¶ 2-6, Ex. A.

23 Plaintiffs now move the Court for an order compelling Chavez's deposition. Docket No.
24 211 ("MTC"). Chavez filed an untimely opposition brief (which more closely resembles an
25 unsworn declaration of his counsel than it does a brief). Docket No. 213. Oral argument was heard
26 on November 30, 2010, after which the Court issued an order continuing Plaintiffs' motion to
27 compel and requiring Chavez to appear personally on December 9 to explain his actions and show
28

1 cause why the Court should not strike his answer or sanction him in some other manner. Docket
2 No. 217.

3 **DISCUSSION**

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

8 Chavez's failure to attend his properly noticed deposition is indicative of his larger disregard
9 for this action as a whole. At oral argument, his counsel represented that he had not communicated
10 with Chavez for some time and acknowledged that Chavez does not appear to take seriously his
11 obligations in this litigation. It is not surprising, then, that despite being ordered to do so, Chavez
12 also failed to appear at the mandatory settlement conference held on August 4, 2010. Docket Nos.
13 183 & 202. In short, Chavez has repeatedly failed to cooperate with the discovery process in this
14 action, has acted in violation of court order, and has shirked his responsibilities as a litigant in
15 federal court.

16 At the hearing on December 9, Chavez said that he has so far failed to appear for his
17 deposition because he has been busy with "issues." Such a vague excuse is not a valid reason for
18 not participating in discovery. Nevertheless, the Court will not strike Chavez's answer or sanction
19 him at this time. However, as the Court stated at the December 9 hearing, Chavez shall appear for
20 deposition on Monday, January 10, 2011 at 10:00 a.m. at Plaintiffs' counsel's office at 152 North
21 Third Street, Third Floor, San Jose, California, 95112. Should Chavez again fail to appear for
22 deposition without a compelling reason, the Court will strike his answer. While fact discovery
23 remains closed in this case, Plaintiffs may propound follow-up discovery if Chavez's deposition
24 testimony provides a reasonable basis for doing so.

25 **CONCLUSION**

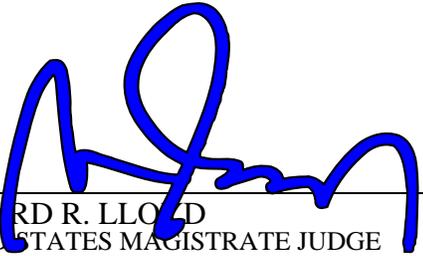
26 Based on the foregoing, the Court GRANTS Plaintiffs' motion to compel. Chavez shall
27 appear for deposition on Monday, January 10, 2011 at 10:00 a.m. at Plaintiffs' counsel's office at
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

152 North Third Street, Third Floor, San Jose, California, 95112. The Court's December 3 order to show cause is DISCHARGED.

IT IS SO ORDERED.

Dated: December 13, 2010



HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

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

2 Alisha Mei Yuk Louie alouie@sideman.com
3 Annette D. Kirkham annettek@lawfoundation.org, teresam@lawfoundation.org
4 Cindy Hamilton hamiltonc@gtlaw.com, sandiferc@gtlaw.com, svlitdock@gtlaw.com
5 Jessica Lynn Fry jessicaf@lawfoundation.org, nuemig@lawfoundation.org
6 Karen Rosenthal rosenthalk@gtlaw.com, sandiferc@gtlaw.com, svlitdock@gtlaw.com
7 Kimberly Pederson kimp@lawfoundation.org, teresam@lawfoundation.org
8 Kyra Ann Kazantzis kyrak@lawfoundation.org
9 Leo B. Siegel k9esq@flash.net
10 Michael E. Stone mikeestone@yahoo.com
11 Shawn Robert Parr shawn@parrlawgroup.com, donna@parrlawgroup.com
12 William Cornelius Last , Jr wclast@lastlawfirm.com
13 William J. Goines goinesw@gtlaw.com, sandiferc@gtlaw.com, svlitdock@gtlaw.com

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

15 Raya Ghajar
16 1101 Salerno Drive
17 Campbell, CA 95008

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.**

19
20
21
22
23
24
25
26
27
28