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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

ROBERT ESTORGA,
Plaintiff,

v.

SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY,
Defendant.

Case No. [16-cv-02668-BLF](#)

**ORDER COMPELLING DEPOSITIONS
OF PLAINTIFFS SMITH AND JOVEL;
GRANTING MOTION FOR
SANCTIONS AS TO PLAINTIFFS
SMITH AND JOVEL**

[Re: ECF 87]

Before the Court is Defendant Santa Clara Valley Transportation Authority’s (“Defendant”) Motion for Dismissal with Prejudice of Plaintiffs Smith, Williams, Cadimas-Rosa, Jovel, and Gomez (“Plaintiffs”) and/or Sanctions. Mot., ECF 87. These five plaintiffs are bus operators either employed or formerly employed by Defendant and compose part of the larger group of plaintiffs in this matter. *Id.* at 3. Defendant requests dismissal or sanctions due to Plaintiffs’ failure “to appear for [noticed] depositions.” *Id.* at 2–3.

Prior to the motion hearing (“Hearing”) on October 4, 2018, Defendant withdrew Plaintiff Williams from the motion, *see* ECF 95, and the parties stipulated to dismiss with prejudice Plaintiff Gomez from the action, *see* ECF 96. In addition, on the record at the motion hearing on October 4, 2018, the parties agreed that Plaintiff Cadimas-Rosa would be voluntarily dismissed with prejudice from the action, without sanctions, per subsequent filing. Thus, the Court’s present order concerns only Plaintiffs Smith and Jovel.

I. PLAINTIFF SMITH

Defendant asserts that it properly noticed Plaintiff Smith (“Smith”) for deposition, and that Smith (through her attorney) claimed she was unable to attend the scheduled deposition, and did not provide alternative dates, despite repeated offers by Defendant. Mot. at 2. Counsel for plaintiff notes that Smith lives in Las Vegas, Nevada, and that she only worked for Defendant for a few days. Opp. at 3, ECF 88. On the record at the Hearing, counsel for plaintiff further

1 indicated that Smith had moved to a new address in the Las Vegas area.

2 As stated on the record at the Hearing, the Court declines to dismiss Plaintiff Smith from
3 the case. Defendant has not demonstrated that Smith engaged in “repeated and flagrant” discovery
4 abuses that would warrant dismissal. *See Henry v. Gill Industries, Inc.*, 983 F.2d 943, 946 (9th
5 Cir. 1993). However, the Court hereby **COMPELS** the deposition of Plaintiff Smith, **to take**
6 **place telephonically on Tuesday, October 9, 2018**, with Plaintiff Smith to appear at a location
7 within a reasonable distance of her place of residence, not to exceed 50 miles. In addition, as
8 stated on the record at the Hearing, the Court hereby **AWARDS** sanctions for attorney’s fees
9 against Plaintiff Smith **in the amount of \$600**, for failure to appear at the previously noticed
10 deposition and failure to reasonably participate in discovery. *See also* Defendant’s Decl. ¶ 20
11 (outlining costs to Defendant), ECF 87-1. Said sanctions are due and payable to Defendant Santa
12 Clara Valley Transportation Agency within 14 days.

13 If Plaintiff Smith fails to appear at the deposition on October 9, 2018, absent withdrawal
14 from the case or justifiable excuse, the Court may consider dismissal or further sanctions. Counsel
15 for plaintiff is to provide Smith with written notice of the Court’s present order and Smith’s
16 upcoming deposition on October 9, 2018. If counsel for plaintiff is unable to contact Smith,
17 counsel for plaintiff is directed to notify Defendant no later than 24 hours prior to the deposition
18 start time on October 9, 2018.

19 **II. PLAINTIFF JOVEL**

20 Defendant also asserts that it properly noticed Plaintiff Jovel (“Jovel”) for deposition, and
21 that Jovel (through her attorney) claimed she was unable to attend the scheduled deposition, and
22 did not provide alternative dates, despite repeated offers by Defendant. Mot. at 2. Jovel has
23 indicated that she may wish to withdraw from the lawsuit. *Id.* However, on the record at the
24 Hearing, counsel for plaintiff noted that there has been no contact with Jovel since prior to
25 Defendant’s filing of the present motion.

26 The Court declines to dismiss Plaintiff Jovel from the case. Defendant has not
27 demonstrated that Jovel engaged in “repeated and flagrant” discovery abuses that would warrant
28 dismissal. *See Henry*, 983 F.2d at 946. However, the Court hereby **COMPELS** the deposition of

1 Plaintiff Jovel, **to take place telephonically on Tuesday, October 9, 2018.** In addition, as stated
2 on the record at the Hearing, the Court hereby **AWARDS** sanctions for attorney's fees against
3 Plaintiff Jovel **in the amount of \$600**, for failure to appear at the previously noticed deposition
4 and failure to reasonably participate in discovery. *See also* Defendant's Decl. ¶ 20 (outlining costs
5 to Defendant), ECF 87-1. Said sanctions are due and payable to Defendant Santa Clara Valley
6 Transportation Agency within 14 days.

7 If Plaintiff Jovel fails to appear at the deposition on October 9, 2018, absent withdrawal
8 from the case or justifiable excuse, the Court may consider dismissal or further sanctions. Counsel
9 for plaintiff is to provide Jovel with written notice of the Court's present order and Jovel's
10 upcoming deposition on October 9, 2018. If counsel for plaintiff is unable to contact Jovel,
11 counsel for plaintiff is directed to notify Defendant no later than 24 hours prior to the deposition
12 start time on October 9, 2018.

13 **III. CONCLUSION**

14 For the foregoing reasons, the Court rules as follows:

- 15 1. The Court **COMPELS** the telephonic deposition of Plaintiff Smith on Tuesday,
16 October 9, 2018. The Court further **AWARDS** sanctions against Plaintiff Smith in the
17 amount of \$600.
- 18 2. The Court **COMPELS** the telephonic deposition of Plaintiff Jovel on Tuesday, October
19 9, 2018. The Court further **AWARDS** sanctions against Plaintiff Jovel in the amount
20 of \$600.
- 21 3. Failure to comply with the Court's present order may result in dismissal with prejudice
22 or further sanctions. Counsel for plaintiff is directed to notify Defendant no later than
23 24 hours before the depositions on October 9, 2018, if counsel for plaintiff is unable to
24 contact Smith or Jovel.

25 **IT IS SO ORDERED.**

26 Dated: October 4, 2018



BETH LABSON FREEMAN
United States District Judge