

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 14-CV-61605-BLOOM/VALLE**

RAUL AGUILAR,

Plaintiff,

vs.

UNITED FLOOR CREW, INC.,  
DENNIS LARIOS, PRESIDENTE  
SUPERMARKET #18, and  
PRESIDENTE SUPERMARKET #27,

Defendants.

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**ORDER GRANTING DEFENDANTS'  
MOTION TO COMPEL AND FOR SANCTIONS**

THIS MATTER is before the Court on Defendants United Floor Crew, Inc. and Dennis Larios' (the "UFC Defendants") Motion to Compel and for Sanctions ("Motion") (ECF No. 50). The Court has reviewed the Motion, Plaintiff's Response (ECF No. 52), the UFC Defendants' Reply (ECF No. 53), and is otherwise duly advised in the premises.

**I. BACKGROUND**

This is a Fair Labor Standards Act ("FLSA")<sup>1</sup> case in which Plaintiff has sued Defendants under federal and state law to recover alleged unpaid minimum and overtime wages. *See* Second Amended Complaint (ECF No. 30). On March 3, 2015, the UFC Defendants noticed Plaintiff's deposition for Monday, March 23, 2015 at 10:00 a.m. in the UFC Defendants' counsel's office. (ECF No. 50-1). All the required deposition participants were present at that date and time, except Plaintiff. (ECF No. 50 at 1). Indeed, the UFC Defendants' counsel, Plaintiff's counsel, the Presidente Defendants' counsel, a court reporter, and an interpreter all were present in the UFC

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<sup>1</sup> 29 U.S.C. §§ 201 *et seq.*

Defendants' counsel's office on March 23, 2015 at 10:00 a.m. for the deposition. *Id.* Only Plaintiff was missing. *Id.* After waiting forty minutes for Plaintiff to arrive, the UFC Defendants' counsel concluded the deposition. *Id.* at 1-2; *see also* Certificate of Nonappearance (ECF No. 50-2).

As a result of Plaintiff's failure to appear for his deposition, the UFC Defendants' counsel claims that he lost an hour of his time and his clients incurred court reporter and translator fees totaling \$323.50. (ECF No. 50-3). The UFC Defendants thus move for an order compelling Plaintiff to appear at his rescheduled deposition on April 9, 2015 in the UFC Defendants' counsel's office, as well as an award of their fees and costs for the missed deposition and filing this Motion. (ECF No. 50 at 2). Plaintiff opposes the Motion.

## **II. DISCUSSION**

Under Federal Rule of Civil Procedure 37(d)(1)(A)(i), a court may order sanctions if "a party . . . fails, after being served with proper notice, to appear for that person's deposition." Additionally, "the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust." FED. R. CIV. P. 37(d)(3).

In this case, Plaintiff does not argue that the deposition was improperly noticed. Nor does Plaintiff dispute that he failed to appear for his deposition. What Plaintiff argues, instead, is that he did not fail to appear "in a sanctionable manner." (ECF No. 52 at 2). According to Plaintiff, he was merely "lost and in continuous communication with [his counsel] trying to find the building," and that Plaintiff's counsel found him "approximately 1 hour and 15 minutes past the scheduled deposition time," but by that time defense counsel said it was too late to go forth with the deposition. *Id.* at 1-2. Taking Plaintiff at his word, that still does not change the fact that Plaintiff never showed up for his deposition, that the deposition participants waited forty minutes for

Plaintiff to arrive, and that the UFC Defendants incurred fees and costs in connection with the missed deposition. The undersigned thus concludes that Plaintiff's failure to appear was not substantially justified and that the circumstances make the award of expenses just.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that the UFC Defendants' Motion to Compel and for Sanctions is **GRANTED**. Plaintiff shall pay the UFC Defendants **\$500.00 by May 2, 2015** to defray their fees and costs in connection with the missed deposition and the filing of their Motion.

In addition, Plaintiff shall appear for deposition at the UFC Defendants' counsel's office on April 9, 2015 at a time to be agreed upon by the parties.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Florida, on April 2, 2015.



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ALICIA O. VALLE  
UNITED STATES MAGISTRATE JUDGE

Copies provided to:  
The Honorable Beth Bloom  
All counsel of record