

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

MIGUEL ANGEL CORBACHO  
DAUDINOT

Plaintiff,

CASE NO.: 1:13-cv-22589-KMW

v.

YASIEL PUIG VALDES and  
MARITZA VALDES GONZALEZ,

Defendants.

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**DEFENDANTS' RULE 37 MOTION FOR SANCTIONS  
AND MEMORANDUM OF LAW IN SUPPORT**

Defendants, Yasiel Puig Valdes (a/k/a Yasiel Puig) and Maritza Valdes Gonzalez, pursuant to Fed. R. Civ. P. 37(d), move for sanctions against plaintiff, Miguel Angel Corbacho, for twice failing to appear for a properly noticed deposition and for failing to provide a date certain for the scheduling of his deposition. The grounds for this motion are set forth in the following memorandum of law.

**Memorandum of Law**

**The Facts**

On June 25, 2014, undersigned counsel, pursuant to Fed. R. Civ. P. 30, served a notice for the taking of plaintiff's deposition. Along with the notice, undersigned counsel sent an email to plaintiff's counsel explaining:

Hello, Kenia. Please see the attached notice for the taking of your client's deposition. **I've noticed the deposition for August 7, but I'm obviously willing to work with you on dates that make sense for both of us. Let me know, please.** Also, please let me know whether I'll need to arrange for an interpreter.

(The notice and counsel's email are attached as Exhibit A.) (Emphasis supplied.)

Plaintiff did not appear for his duly noticed deposition on August 7. Nor did he move for a protective order. Nor did his counsel call or write to undersigned counsel to advise that plaintiff was not going to appear, or to request that the deposition be rescheduled. Plaintiff simply ignored the deposition notice.

On August 12, 2014, undersigned counsel served a second notice for the taking of plaintiff's deposition and again wrote to plaintiff's counsel:

Hello, Kenia. With August 7 having come and gone, attached is a second notice for the taking of your client's deposition. **I've noticed the deposition for September 12, but, as with the previous notice, I'm happy to work with you on dates that make sense for both of us. Let me know, please.** Also, please let me know whether I'll need to arrange for an interpreter.

(The second notice of taking deposition and counsel's email are attached as Exhibit B.) (Emphasis supplied.)

Plaintiff again failed to appear for his deposition, or to move for a protective order, or to so much as call or write to request that the deposition be rescheduled. Plaintiff simply ignored a properly served deposition notice. Again.

On September 16, 2014, undersigned counsel again wrote to plaintiff's counsel:

Hello. Twice now I've noticed your client for deposition. Both times your client failed to show. On neither occasion did your client move for a protective order, nor did you reach out to propose alternative dates for your client's deposition (as I invited you to do when I noticed the depositions initially).

**Please get back to me by no later than September 25, 2014 with a date certain in October for your client's deposition. If I do not hear from you by the 25<sup>th</sup>, I'll have no choice but to file a Rule 37 motion. I trust it won't come to that.**

(Counsel's email is attached as Exhibit C.) (Emphasis supplied.)

In response to defense counsel's request for a date certain in October for the taking of plaintiff's deposition, plaintiff accused undersigned counsel of not serving the deposition notices "in good faith," noting that plaintiff's counsel was "inundated with excessive amounts of work" and requesting "leeway until after December to schedule [plaintiff's] deposition." Undersigned counsel responded:

All I asked below was for a date certain in October for the taking of your client's deposition. If, due to your work schedule, there isn't a single day in the month of October when you're available for your client's deposition, then please provide me some options in early November (I, too, have scheduling constraints I need to work around).

**Telling me that I'm going to have to wait "until after December" to get a date from you for your client's deposition simply is not reasonable. Again, I'd appreciate it if you'd please provide me by September 25 with a date certain (if it can't be October, then early November) when I can depose your client.**

(This email exchange between counsel is attached as Exhibit D.) (Emphasis supplied.)

Plaintiff's counsel responded on September 16, 2014 pointing out that she had a trial in mid-November and offering: "Let's agree to something in December then?"

Undersigned counsel responded the next day:

Kenia, if your work schedule precludes you from having the deposition before December, then, **yes, let's do it in December. Please let me know by September 25, when in December I'll be able to take your client's deposition** so that I can notice it accordingly (and please keep in mind that I will be out for the holidays from December 22 through January 2).

(This email exchange between counsel is attached as Exhibit E.) (Emphasis supplied.)

As of the date of this motion, plaintiff has yet to provide a date certain for the taking of his deposition in December, or any explanation for why such a date has not been provided.

## The Law

Rule 37(d)(1)(A)(i) of the Federal Rules of Civil Procedure provides that: “The court where an action is pending may, on motion, order sanctions if a party...fails, after being served with proper notice, to appear for that person’s deposition.”

Rule 37(d)(3) sets forth the sanctions that may be awarded for a party’s failure to appear at its deposition. Those sanctions include the striking of the party’s pleadings, dismissal of the action and the awarding of attorneys’ fees. A court’s authority to impose sanctions for refusal to comply with discovery orders is broad. *S.E.C. v. Utsick*, 373 Fed. Appx. 924, 926-7 (11th Cir. 2010) (finding that the striking of pleadings and the imposition of attorney’s fees and costs as a sanction for failing to appear for deposition was not an abuse of discretion by the court - even where the party to be deposed was a foreign national who feared arrest should he enter the United States for deposition in Miami); *Allstate Ins. Co. v. Palterovich*, 04-21402-CIV, 2008 WL 2741119 (S.D. Fla. 2008) (finding that plaintiff’s repeated failure to attend his properly noticed depositions warranted the imposition of sanctions in the form of a default judgment).

## Conclusion

For the foregoing reasons, defendants move for an order dismissing this action as a sanction for plaintiff’s failure (twice) to appear for his duly noticed deposition. In the alternative, defendants request the entry of an order compelling defendant to appear for deposition during the first two weeks of December, 2015. Additionally, defendants request that they be awarded their reasonable expenses, including attorney’s fees, in pursuing this motion.

**Certification of Counsel**

Pursuant to Fed. R. Civ. P. 37(d)(1)(B), undersigned counsel certifies that, in an effort to avoid court action on this matter, he made a good faith attempt to schedule a reasonable and mutually convenient deposition date with plaintiff's counsel, but was unable to do so. (See Exhibits. A-E.)

Respectfully submitted,

**SANTINI LAW**

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By: /s/ Sean R. Santini

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## **CERTIFICATE OF SERVICE**

I hereby certify that on October 9, 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: /s/ Averil Andrews  
Averil Andrews

## **SERVICE LIST**

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