

**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.

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

Defendants, Yasiel Puig Valdes (a/k/a Yasiel Puig) and Maritza Valdes Gonzalez, submit this reply memorandum in support of their Rule 37 Motion for Sanctions (the "sanctions motion") (ECF No. 52).

Argument

For over four months, defendants have been requesting a date for the taking of plaintiff's deposition. Plaintiff's response to the sanctions motion (ECF No. 54) still does not provide such a date. Nor, for that matter, does it provide a single valid argument for why plaintiff ought not be sanctioned for twice failing to appear for his deposition.

Plaintiff's first argument against the sanctions motion is that defendants did not comply with Local Rule 7.1's "meet and confer" requirement. (ECF No. 54 at 4-5.) This argument is a canard. Defendants' counsel repeatedly asked for plaintiff's deposition date and warned that continued failure to provide such a date would result in a sanctions motion. (See ECF No. 52 at Ex. C.)

Plaintiff next argues that plaintiff's deposition was "unilaterally set," suggesting that compliance with the deposition notices was therefore unnecessary. (ECF No. 54 at 2 and 7.) This argument is wrong as a matter of fact and as a matter of law. Both times that defendants noticed plaintiff's deposition, defendants specifically noted that they were "willing to work on dates that would make sense for both of us." (ECF No. 52 at Exs. A and B.) Plaintiff simply ignored defendants' invitation to find a mutually convenient date for the taking of plaintiff's deposition. Indeed, and as noted above, plaintiff has yet to provide a date for his deposition.

Moreover, even if defendants had "unilaterally set" plaintiff's deposition, this does not entitle plaintiff to simply ignore the deposition notices. If plaintiff had a problem with the dates chosen for his deposition (and if defendants, having been apprised of the problem, refused to reschedule), plaintiff's remedy was to seek a protective order from the Court. (See Fed. R. Civ. P. 26(c)(1)(B).) The rules of civil procedure do not allow parties to simply ignore deposition notices.

Plaintiff's response makes two additional factual assertions that merit a reply. First is plaintiff's claim that "the parties had tentatively reached an agreement" to conduct plaintiff's deposition in December. (ECF No. 54 at 3 and 4.) What really transpired – as borne out by the emails attached to the sanctions motion – is that defendants' counsel agreed to push plaintiff's deposition to December (as an accommodation to plaintiff's counsel's trial schedule), but specifically asked plaintiff's counsel to "[p]lease 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." Plaintiff never responded.

Equally misleading is plaintiff's claim that the sanctions motion was filed "without warning." (ECF No. 54 at 4.) On September 15, 2014, defendants notified plaintiff, in

writing, that they would file this motion if they did not hear from plaintiff by September 25 regarding a date certain for plaintiff's deposition. (ECF No. 52 at Ex. C.) September 25 came and went without any proposed deposition dates from Plaintiff. So did October 25 and still no date for plaintiff's deposition.

Plaintiff next attempts to avoid sanctions by accusing defendants' counsel of acting in bad faith (for having the temerity to want to depose plaintiff). Ignoring for now the inflammatory (and decidedly false) accusations in plaintiff's response regarding undersigned counsel, suffice it to note that defendants have no knowledge of plaintiff's status. Hence the repeated efforts to communicate with plaintiff's counsel about the scheduling of plaintiff's deposition.

Plaintiff's long-winded excuses and accusations of bad faith do not excuse plaintiff's failure to provide deposition dates, thus warranting the imposition of sanctions. See *Clark v. Keen*, 346 Fed. Appx. 441, 442 (11th Cir. 2009) (upholding the court's decision to dismiss the case when "in their responses to the Defendants' attempts to schedule depositions, [plaintiffs] did not offer any reasons why they could not provide depositions at the suggested times.")

Conclusion

For these reasons, and for the reasons set forth in ECF No. 52, 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 weeks of December 8 or 15,

2015.¹ Additionally, defendants request that they be awarded their reasonable expenses, including attorney's fees, in pursuing this motion.

Respectfully submitted,

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¹ Initially, defendants had requested that the deposition be scheduled during the first two weeks of December. (See ECF No. 52 at 4.) This past Friday, however, undersigned counsel received word that he is scheduled for a one-week trial before District Court Judge Patricia Seitz, commencing on December 1, 2015.

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 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
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