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ALLOWED. The opposition offers no valid explanation or excuse for the plaintiff's failure to appear for the deposition. Not merely motion for protective order was sought. This egregiously negligent conduct cannot be countenanced. This case is hereby ordered dismissed. So ordered.

*Michael P. Jensen
VADJ
4-11-14*

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Nicholas Mavis,
Plaintiff
Diversified Consultants, Inc., and
DOES 1-10, inclusive,
Defendants

Civil Action No. 3:13-cv-30087-KPN

DEFENDANT'S MOTION TO DISMISS AND FOR SANCTIONS

INTRODUCTION

Pursuant to Fed. R. Civ. P. 37(b) and (d), the defendant Diversified Consultants, Inc. ("DCI") moves: (1) to dismiss the complaint due to the plaintiff's refusal to appear for his own properly scheduled deposition; and (2) for sanctions. For the following reasons, this suit should be dismissed and the plaintiff ordered to pay all costs and attorney's fees associated with the plaintiff's non-compliance and this Motion.

PERTINENT UNDISPUTED FACTS

Defense counsel served a deposition notice on plaintiff's counsel on February 24, 2014. The notice scheduled the plaintiff's deposition at the Boston office of defense counsel for March 18. (O'Connor Aff. Ex. A)¹ The plaintiff lives less than 100 miles from the Boston location of the deposition. After an exchange of emails with plaintiff's counsel about the place of the deposition, defense counsel on March 7 served another copy of the notice along with a cover letter that, among other things, offered to move the deposition to a Westwood to a location 25 miles and 30 minutes closer to the plaintiff's home. (O'Connor Aff. Ex. B) Plaintiff's counsel

¹All citations are to exhibits to the accompanying Affidavit of John J. O'Connor.