

1 that [Decedent] was harmed by [Defendant's] conduct.” See *Doc. # 80* at 4. The Ninth Circuit
2 remanded, noting that “allowing further discovery is now within the discretion of the district court.”
3 *Id.* at 5, n.2.

4 Defendant now seeks sanctions under Federal Rule of Civil Procedure 37(d)(1)(A)(i), which
5 provides that a court may order sanctions if “a person designated under rule 30(b)(6) [...] fails, after
6 being served with the proper notice, to appear for that person’s deposition.” Defendant argues (1)
7 that the emotional distress damages in this case should be judicially established as non-existent, or,
8 alternatively, (2) that the deposition transcript of Avila should be the only evidence allowed at trial
9 on the issue of emotional distress damages. As a basis for sanctions, Defendant claims that
10 Plaintiffs failed to provide a knowledgeable witness in Avila for Defendant’s Rule 30(b)(6)
11 deposition. The Ninth Circuit found, however, that Avila’s deposition testimony was sufficient for
12 a jury to conclude that Decedent suffered emotional damages. The Court therefore finds that
13 sanctions under Rule 37 are not warranted. Under the Court’s November 21, 2012 Scheduling
14 Order (#94), both parties are free to conduct additional discovery regarding Plaintiffs’ emotional
15 damages claim until the discovery cutoff on March 13, 2013. Accordingly,

16 **IT IS HEREBY ORDERED** that Defendant’s Motion for Sanctions Pursuant to FRCP 37
17 (#91) is **denied**.

18 DATED this 18th day of December, 2012.

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21 GEORGE FOLEY, JR.
22 United States Magistrate Judge
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