

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSE MELENDEZ,

Plaintiff,

v.

GULF VESSEL MANAGEMENT, et al.,,

Defendant.

CASE NO. C09-1100

ORDER ON MOTION TO COMPEL
PLAINTIFF'S ATTENDANCE

The above-entitled Court, having received and reviewed

1. Defendant's Motion to Compel Plaintiff to Attend a Deposition and Independent Medical Exam in the State of Washington (Dkt. No. 45)
2. Plaintiff Jose Melendez' Opposition to Motion to Compel Deposition and Independent Medical Exam in the State of Washington (Dkt. No. 56)
3. Reply in Support of Motion to Compel Plaintiff to Attend a Deposition and Independent Medical Exam in the State of Washington (Dkt. No. 61)

and all attached declarations and exhibits, makes the following ruling:

1 IT IS ORDERED that, if Plaintiff fails to appear to complete his deposition or to present
2 himself for an independent medical examination, Defendant may file a motion to dismiss.

3 IT IS FURTHER ORDERED that Plaintiff's counsel shall confirm Plaintiff's appearance
4 with Defendants' counsel in advance of the dates scheduled for the IME and the completion of
5 his deposition. Failure to contact Defendant's counsel in advance, or failure of Plaintiff to
6 appear following confirmation, will result in the shifting of costs to Plaintiff's counsel.

7 The Court will not order Plaintiff to attend the completion of his deposition or an IME
8 since to do so would be contrary to the deportation order to which he is subject. Jordan Decl.,
9 Ex. 9. However, having initiated this lawsuit, Plaintiff is obligated to prosecute it in good faith
10 and to meet the legitimate requests of the opposing party; e.g., completion of his deposition and
11 submission to an independent medical examination in the forum state.

12 Defendants may schedule the remainder of the deposition and the IME at a reasonable
13 place and time. Plaintiff's counsel will contact Defendant's counsel to confirm Plaintiff's
14 appearance in advance of the deposition and the IME; failure to notify defense counsel in
15 advance of whether Plaintiff will appear, or the failure of Plaintiff to appear following
16 confirmation, will result in a shifting of costs to Plaintiff's counsel. Should Plaintiff choose to
17 not appear at either of those proceedings, the Court will entertain a motion to dismiss this lawsuit
18 for failure to prosecute and participate in good faith.

19 The clerk is ordered to provide copies of this order to all counsel.

20 Dated October 28, 2010.

21 

22 Marsha J. Pechman
23 United States District Judge
24