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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 LAWRENCE M. BECKER, as fiduciary
7 of the Xerox Corporation Savings Plan
8 and Xerox Corporation Retirement
9 Income Guarantee Plan,

Plaintiff,

v.

10 CARMEN STEPHANIE MAYS-
11 WILLIAMS, et al.,

Defendants.

CASE NO. C11-5830 BHS

ORDER GRANTING
DEFENDANT'S DISCOVERY
MOTION

13
14 This matter comes before the Court on Defendant Carmen Stephanie Mays-
15 Williams's ("Mays-Williams") motion for relief from case schedule, to compel, and for
16 discovery sanctions (Dkt. 67). The Court has considered the pleadings filed in support of
17 and in opposition to the motion and the remainder of the file and hereby grants the
18 motion for the reasons stated herein.

19 **I. PROCEDURAL HISTORY**

20 On April 28, 2015, the Court issued a scheduling order setting August 24, 2015 as
21 the deadline for discovery motions and September 21, 2015 as the discovery deadline.
22 Dkt. 61.

1 On August 28, 2015, Mays-Williams sent Defendant Asa Williams, Jr.’s (“Asa
2 Jr.”) counsel a notice of deposition scheduling a deposition for September 11, 2015. Dkt.
3 68-2. Initially the parties worked toward a mutually acceptable date for the deposition.
4 See Dkt. 68-4. Mays-Williams sent notice of the deposition of Asa Jr. to his counsel for a
5 September 11, 2015 deposition date to accommodate the August vacation schedule and
6 prior work commitments of Asa Jr.’s counsel. However, Asa Jr.’s counsel refused to
7 have his client attend any deposition based on Washington’s deadman statute. Dkt. 68-5.

8 On September 21, 2015, Mays-Williams filed the instant motion requesting relief
9 from the Court’s deadlines, an order to compel the deposition of Asa Jr., and for
10 sanctions. Dkt. 67. On October 5, 2015, Asa Jr. responded. Dkt. 71. On October 9,
11 2015, Mays-Williams replied. Dkt. 74.

12 II. DISCUSSION

13 A party may depose any other party without leave of court, and attendance may be
14 compelled by subpoena. Fed. R. Civ. P. 30(a). A party’s failure to appear for a
15 deposition is sanctionable conduct that can, in extreme circumstances, result in dismissal
16 of the party failing to attend. Fed. R. Civ. P. 37(d). In other words, failure to attend a
17 properly noted deposition is inexcusable absent sufficient cause.

18 In this case, it is undisputed that Asa Jr. failed to attend a deposition that was
19 compelled by subpoena. Although Asa Jr. argues that the deposition was somehow not
20 timely, Mays-Williams served the notice before the Court’s discovery deadline. Now,
21 Asa Jr. defends this motion asserting that, though the discovery deadline was September
22 21, 2015 (after the scheduled deposition date), the discovery *motion* deadline had expired

1 on August 24, 2015. This conduct raises doubt as to Asa Jr.'s counsel's good faith when
2 it appears that counsel for Mays-Williams was willing to accommodate the schedule of
3 Asa Jr.'s counsel. Instead, Asa Jr. objected to the deposition not only because Mays-
4 Williams missed the deadline for a discovery motion, but also because he argues that
5 there can be no relevant evidence gained from Asa Jr.'s deposition. This later argument
6 is completely without merit. Asa Jr.'s other arguments in support of his failure to attend
7 are also without merit. Therefore, the Court grants Mays-Williams's motion to compel
8 and defers ruling on sanctions against Asa Jr.'s counsel. If there are any further
9 unjustified positions taken by him, the Court will revisit this request.

10 **III. ORDER**

11 Therefore, it is hereby **ORDERED** that Mays-Williams's motion for relief from
12 case schedule, to compel, and for discovery sanctions (Dkt. 67) is **GRANTED in part**
13 and **DENIED in part** as stated herein.

14 Dated this 3rd day of November, 2015.

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BENJAMIN H. SETTLE
17 United States District Judge