

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Flores v. County of Kern

No. 1:24-cv-00995-KES-CDB (E.D. Cal. July 8, 2025) · No. 1:24-cv-00995-KES-CDB · Decided July 8, 2025

SUMMARY

The United States District Court for the Eastern District of California resolved an informal discovery dispute concerning Plaintiff Malissa Flores's failures to appear for two noticed depositions. The Court granted a final limited extension for Plaintiff to complete her deposition, warned that further noncompliance could result in sanctions or dismissal, and ordered her to pay Defendants \$2,777.15 in reasonable expenses. The Court declined at that time to award attorney's fees.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	July 8, 2025
DOCKET	1:24-cv-00995-KES-CDB
DISPOSITION	other
PROCEDURAL POSTURE	The court adjudicated an informal discovery dispute concerning Defendants' request for terminating and other sanctions based on Plaintiff's failures to appear for two duly noticed depositions.
STANDARD OF REVIEW	The court applied Federal Rule of Civil Procedure 37 to determine the appropriate discovery sanctions and expenses.
PRECEDENTIAL VALUE	unpublished, nonprecedential district court order

TOPICS

- discovery dispute
- sanctions
- costs
- attorney fees
- civil procedure

PRACTICE AREAS

- civil procedure
- discovery sanctions

QUESTIONS PRESENTED

1. What sanctions and remedial relief were appropriate for Plaintiff's failures to appear for duly noticed depositions?
2. Whether Defendants were entitled under Federal Rule of Civil Procedure 37 to recover reasonable expenses caused by Plaintiff's failures to appear.
3. Whether Defendants were entitled at that time to recover attorney's fees in addition to deposition-related costs.

HOLDINGS

1. The court granted one final limited extension for Plaintiff to complete her deposition and warned that failure to comply with the order could result in additional sanctions, including evidentiary sanctions and dismissal.
2. Under Federal Rule of Civil Procedure 37, Plaintiff was required to pay Defendants \$2,777.15 for reasonable expenses caused by her failures to appear for deposition.
3. The court declined at that point to award Defendants attorney's fees.

KEY QUOTATIONS

"the court "must require the party failing to act ... to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust."" (at 2)

"the total amount of \$2,777.15 reflects Defendants' reasonably incurred costs resulting from Plaintiff's failure to appear for her depositions." (at 3)

FACTUAL BACKGROUND

Plaintiff Malissa Flores failed to appear for an original duly noticed deposition and then failed to appear for a re-noticed deposition. Defendants sought terminating and other sanctions, as well as financial sanctions for the resulting deposition-related expenses. The parties agreed to a remedy short of terminating or evidentiary sanctions, and Defendants documented \$2,777.15 in court reporter and videographer costs.

PROCEDURAL HISTORY

The parties submitted their discovery dispute to the court under its informal discovery dispute procedure. After a video conference on July 8, 2025, the parties largely agreed to a remedy short of terminating or evidentiary sanctions. The court granted one final limited extension to complete Plaintiff's deposition, ordered Plaintiff to pay \$2,777.15 in reasonable expenses, and declined at that time to award attorney's fees.

DISPOSITION

other

CASES CITED

- Lanier v. San Joaquin Valley Officials Ass'n, No. 1:14-cv-01938-EPG, 2016 WL 4764669, at *8 (E.D. Cal. Sept. 12, 2016)
- Jones v. Frazesn, No. 2:09-cv-02758 RCT, 2009 WL 3254905, at *3 (E.D. Cal. Oct. 8, 2009)
- Lugo v. Sham, No. C00-11-4MMC(JL)(JCS), 2001 WL 348984, at *4 (N.D. Cal. Apr. 5, 2001)
- Roth v. AIG, No. 2:24-cv-01124-TLN-CKD, 2025 WL 216266, at *3 (E.D. Cal. Jan. 16, 2025)
- MG Premium Ltd. v. Does, No. CV 21-8533-MCS (KKx), 2023 WL 4291526, at *6-7 (C.D. Cal. June 1, 2023)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 MALISSA FLORES, Case No. 1:24-cv-00995-KES-CDB 12 Plaintiff,
ORDER RE REQUEST FOR 13 v. RESOLUTION OF DISCOVERY DISPUTE 14 COUNTY OF
KERN, et al., (Docs. 23, 24) 15 Defendants. 16 17 Pending before the Court is a discovery dispute
that the parties have agreed to submit to the 18 Court for adjudication through the Court's informal
discovery dispute procedure.

(Docs. 23, 24). 19 The dispute involves the request by Defendants County of Kern, Isaac Azura,
Dylan Rice, and 20 Yousef Abou Harb ("Defendants") for terminating and other sanctions
following the failures by 21 Plaintiff Malissa Flores ("Plaintiff") to appear for her original, duly
noticed deposition and a re- 22 noticed deposition following her first failure to appear.

Id. 23 The parties appeared via video teleconference (Zoom) for an informal discovery dispute 24
conference on July 8, 2025. Plaintiff appeared through counsel Gregory Paul Peacock and 25
Defendants appeared through counsel Kimberly L. Marshall. (Doc. 25). During the conference, 26
counsel for the parties largely agreed upon a remedy proposed by the Court that is short of 27
terminating or evidentiary sanctions.

28 Accordingly, without objection from the parties and for the reasons set forth and preserved 1 on
the record, the Court will grant one final limited extension of time within which to complete 2
Plaintiff's deposition. See (Doc. 21) (granting a 14-day extension of time upon the close of 3
nonexpert discovery to complete Plaintiff's deposition following her first failure to appear).

The 4 Court again cautions Plaintiff that her failure to make herself available for deposition in
violation 5 of this Order may be grounds for sanctions, including evidentiary sanctions (see Lanier
v. San 6 Joaquin Valley Officials Ass'n, No. 1:14-cv-01938-EPG, 2016 WL 4764669, at *8 (E.D.
Cal. Sept. 7 12, 2016)), and dismissal of his action. E.g., Jones v. Frazesn, No. 2:09-cv-02758
RCT, 2009 WL 8 3254905, at *3 (E.D.

Cal. Oct. 8, 2009) (dismissing action upon plaintiff's failure to appear for 9 continued deposition;
Lugo v. Sham, No. C00-11-4MMC(JL)(JCS), 2001 WL 348984, at *4 (N.D. 10 Cal. Apr. 5, 2001)
(same). Cf. Roth v. AIG, No. 2:24-cv-01124-TLN-CKD, 2025 WL 216266, at 11 *3 (E.D. Cal.

Jan. 16, 2025) (evidentiary sanctions not warranted where plaintiff's single failure to appear for deposition occurred more than three months before close of fact discovery and plaintiff had not previously been warned by the court that a failure to appear would result in sanctions).

Defendants also have requested the Court impose financial sanctions against Plaintiff for her failures to appear for deposition. When a discovery motion is "granted in part and denied in part, the court... may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion." Fed. R. Civ. P. 37(a)(5)(C).

In addition, when a party "fails, after being served with proper notice, to appear for that person's deposition," the court "must require the party failing to act... to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust." Fed.

R. Civ. P. 37(d)(3). Without objection from the parties and for the reasons set forth and preserved on the record, the Court finds under Rule 37 that the total amount of \$2,777.15 reflects Defendants' reasonably incurred costs resulting from Plaintiff's failure to appear for her depositions. See (Docs. 24, 25) (documenting court reporter and videographer costs).

Although Defendants also seek recovery of attorney's fees, for the reasons set forth and preserved on the record and without objection from counsel for Defendants, the Court declines at this point to award attorney's fees. See, e.g., *MG Premium Ltd. V. Does*, No. CV 21-8533-MCS (KKx), 2023 WL 4291526, at *6-7 (C.D. Cal. June 1 | 8, 2023) (awarding attorney's fees and costs for court reporter, videographer, and transcript preparation resulting from plaintiff's failure to appear for deposition).

3 | Conclusion and Order 4 Accordingly, it is HEREBY ORDERED: 5 1. No later than 3:00pm on July 8, 2025, counsel for Plaintiff SHALL: 6 a. Obtain Plaintiff's availability to appear for deposition no later than July 11, 2025; 7 and 8 b. Initiate meet and confer efforts with counsel for Defendants to schedule Plaintiff's 9 deposition. 10 2. No later than July 11, 2025, Plaintiff SHALL appear for and complete her deposition.

11 3. No later than July 17, 2025, Defendants SHALL apply to the Court for any relief from the 12 scheduling order to reopen expert discovery, as necessary, only following good faith efforts 13 to meet/confer with Plaintiff about mutually agreeable parameters for a limited reopening 14 of expert discovery relating to topics newly revealed during Plaintiff's forthcoming 15 deposition.

16 4. Plaintiff SHALL pay to Defendants the sum of \$2,777.15 as reasonable expenses pursuant 17 to Federal Rule of Civil Procedure 37(a)(5)(C), (d)(3) within 21 days of the date of this 18 order. 19 | IT IS SO ORDERED. Dated: _ July 8, 2025 | br Pr 21 UNITED STATES MAGISTRATE JUDGE 22 23 24 25 26 27 28

