

**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

OPINION

Flores v. County of Kern

PER CURIAM.

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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 12 appear for deposition occurred more than three months before close of fact discovery and plaintiff 13 had not previously been warned by the court that a failure to appear would result in sanctions). 14 Defendants also have requested the Court impose financial sanctions against Plaintiff for 15 her failures to appear for deposition. When a discovery motion is "granted in part and denied in 16 part, the court ... may, after giving an opportunity to be heard, apportion the reasonable expenses 17 for the motion." Fed. R. Civ. P. 37(a)(5)(C). In addition, when a party "fails, after being served 18 with proper notice, to appear for that person's deposition," the court "must require the party failing 19 to act ... to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the 20 failure was substantially justified or other circumstances make an award of expenses unjust." Fed. 21 R. Civ. P. 37(d)(3). 22 Without objection from the parties and for the reasons set forth and preserved on the record, 23 the Court finds under Rule 37 that the total amount of \$2,777.15 reflects Defendants' reasonably 24 incurred costs resulting from Plaintiff's failure to appear for her depositions. See (Docs. 24, 25) 25 (documenting court reporter and videographer costs). Although Defendants also seek recovery of 26 attorney's fees, for the reasons set forth and preserved on the record and without objection from 27 counsel for Defendants, the Court declines at this point to award attorney's fees. See, e.g., MG 28 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 2 || 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
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