

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA**

|                  |   |                   |
|------------------|---|-------------------|
| AF HOLDINGS, LLC | : |                   |
|                  | : |                   |
| Plaintiff,       | : |                   |
|                  | : |                   |
| v.               | : | Civil Action No.  |
|                  | : | 2:12-cv-00262-WCO |
| RAJESH PATEL,    | : |                   |
|                  | : |                   |
| Defendant.       | : |                   |

**Defendant’s Motion for Sanctions for Mark Lutz’s Failure to Appear at his Deposition**

COMES NOW, Rajesh Patel, by and through counsel, filing this **Defendant’s Motion for Sanctions for Mark Lutz’s Failure to Appear at his Deposition**, requesting the following relief pursuant to Fed. R. Civ. P. Rule 37(b)(2)(A) and (d):

- (a) An order directing that Plaintiff be prohibited from opposing Defendant’s motions for sanctions (ECF # 16, 30); and
- (b) An order directing that the following facts are deemed admitted in this action: (1) The assignment agreement at issue in this case contains the forged signature of Alan Cooper and Raymond Rogers;
- (c) An order granting further discovery in order to obtain the deposition of Mr. Lutz until it is obtained;
- (d) An order dismissing Plaintiff’s motions for sanctions (ECF # 20, 21);

- (e) An order treating Mr. Lutz's failure to appear at the deposition as a contempt of Court and requiring Plaintiff and Plaintiff's counsel to pay \$500 per day until Mr. Lutz purges himself of contempt by appearing at a deposition scheduled between the parties' attorneys; and
- (f) An order awarding attorneys' fees and expenses incurred in connection with Defense counsel attending the scheduled deposition, costs of hiring a court reporter, and any other related attorneys' fees and expenses.

Respectfully Submitted September 5, 2013:

/s/ Blair Chintella

Blair Chintella  
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**Memorandum of Law**

On July 22, 2013, Defendant served a Notice of Deposition of Mark Lutz on Plaintiff, ECF # 43, a true and correct copy of which are located at ECF # 44-2, and the deposition was to take place on August 21, 2013. Mr. Lutz did not attend his deposition, as shown by the attached transcript of attached hereto.

**Argument and Citation to Authority**

A court may, on motion, award sanctions if “a party or a party’s officer, director, or managing agent, . . . fails, after being served with proper notice, to appear for that person’s deposition.” Fed. R. Civ. P. Rule 37(d)(1)(A)(i). If a Courts finds that sanctions are appropriate, it can impose the sanctions set forth by Rule 37(b)(2)(A)(i) to (vi). Also, instead of or in addition, it must award expenses and reasonable attorneys’ fees to the party that noticed the deposition against the non-compliant “party or attorney . . . or both.” Rule 37(a)(5).

A failure to attend is not excused on the grounds that the discovery sought was objectionable. Rule 37(d)(2). Before utilizing Rule 37(d), the moving party must make a good faith attempt to confer with the party failing to produce the discovery. Rule 37(d)(1)(B).

Here, Defendant served a notice to depose Mark Lutz and Mr. Lutz failed to attend his deposition. Defense counsel called Plaintiff's counsel multiple times to resolve this issue but never received a response, and still has not received a response regarding Mr. Lutz's non-attendance. Therefore, an order sanctioning as described in the attached proposed order would be appropriate here. Also, sanctions including expenses and attorneys' fees against Plaintiff, Plaintiff's attorney, and Mr. Lutz jointly and severally would be appropriate.

### **Conclusion**

Mr. Lutz refused to attend his own deposition despite a notice of the deposition being properly served. Therefore, sanctions including attorneys' fees and expense are appropriate here.

Respectfully Submitted September 5, 2013:

/s/ Blair Chintella  
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**Local Rule 7.1(D) Certification**

I hereby certify that **Defendant's Motion for Sanctions for Mark Lutz's Failure to Appear at his Deposition** and the accompanying **Memorandum of Law** comply with LR 5.1B.

Dated September 5, 2013:

Respectfully Submitted:

/s/ Blair Chintella

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|                  | : |                   |
| Defendant.       | : |                   |

**FRCP 37(a)(1) and LR 37.1 Certification**

I hereby certify that on the dates described in the attached declaration I tried to meet and confer with counsel for Plaintiff to discuss Mr. Lutz's non-attendance at his deposition but never received a response.

Dated September 5, 2013:

Respectfully Submitted:

/s/ Blair Chintella

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|                  | : |                   |
| Defendant.       | : |                   |

**Certificate of Service**

I hereby certify that on September 5, 2013, I served **Defendant's Motion for Sanctions for Mark Lutz's Failure to Appear at his Deposition** on Plaintiff by filing it through the CM/ECF, which will notify Jacques Nazaire, attorney for Plaintiff.

Dated September 5, 2013:

Respectfully Submitted:

          /s/ Blair Chintella            
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