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7 **IN THE UNITED STATES DISTRICT COURT FOR THE**
8 **EASTERN DISTRICT OF CALIFORNIA**

9 **RANDY DeSHAZIER,**

10 **Plaintiff,**

11 **v.**

12 **HANFORD POLICE OFFICER DALE**
13 **WILLIAMS, BADGE No. 121;**
14 **HANFORD POLICE OFFICER MITCH**
15 **SMITH, BADGE No. 39; POLICE**
16 **SERGEANT RUSSELL HILYAND; and**
17 **CITY OF HANFORD, CALIFORNIA,**

18 **Defendants.**

CV F 06-0591 AWI SMS

ORDER ON PLAINTIFFS'
COUNSEL'S APPLICATION
FOR RELIEF FROM COURT'S
ORDER OF DECEMBER 26,
2007, AWARDING
MONETARY SANCTIONS

Doc. # 70

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21 On October 15, 2007, the Magistrate Judge issued findings of fact and
22 recommendations of law ("F&R's") that recommended terminating sanctions and
23 compensatory monetary sanctions based on the failure of Plaintiff's attorney, Kevin Little
24 ("Little"), to comply with discovery procedures. On December 26, 2007, the court issued an
25 order modifying in part the F&R's so that terminating sanctions were not applied as
26 recommended but adopting the Magistrate Judge's recommendation for monetary sanctions
27 against Little. The monetary sanctions were assessed to compensate Defendants for costs and
28 attorney fees resulting from Little's failure to timely provided notice of his inability to attend
scheduled depositions. In the court's order of December 26, 2007, the court noted that

1 where, as here, the failure of a party or their attorney to attend a deposition is not
2 substantially justified, the court is obliged to impose monetary sanctions to compensate both
3 costs and attorney fees occasioned by the unjustified non-compliance. Fed. Rule Civ. Pro.
4 37(d).

5 Little requests that the court modify or vacate its prior order awarding monetary
6 sanctions based on Little's present inability to pay. The court, having previously found
7 Little's non-compliance with discovery procedures was substantially not justified, has no
8 legal basis for any modification to its prior order. As noted, the imposition of monetary
9 sanctions in such circumstances to compensate for unnecessary costs and attorney fees
10 pursuant to Rule 37(d) is mandatory. While the parties are free to make whatever
11 accommodations they will, the court has no choice but to deny Little's request.
12

13 Little's request to vacate or modify the court's order of December 26, 2007, imposing
14 of monetary sanctions is hereby DENIED.
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16 IT IS SO ORDERED.

17 **Dated: January 12, 2009**

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE