

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

RANDY DeSHAZIER,) CV F 06-0591 AWI SMS
Plaintiff,)
v.)
HANFORD POLICE OFFICER DALE) ORDER ON PLAINTIFFS'
WILLIAMS, BADGE No. 121;) COUNSEL'S APPLICATION
HANFORD POLICE OFFICER MITCH) FOR RELIEF FROM COURT'S
SMITH, BADGE No. 39; POLICE) ORDER OF DECEMBER 26,
SERGEANT RUSSELL HILYAND; and) 2007, AWARDING
CITY OF HANFORD, CALIFORNIA,) MONETARY SANCTIONS
Defendants.)

Doc. # 70

On October 15, 2007, the Magistrate Judge issued findings of fact and recommendations of law (“F&R’s”) that recommended terminating sanctions and compensatory monetary sanctions based on the failure of Plaintiff’s attorney, Kevin Little (“Little”), to comply with discovery procedures. On December 26, 2007, the court issued an order modifying in part the F&R’s so that terminating sanctions were not applied as recommended but adopting the Magistrate Judge’s recommendation for monetary sanctions against Little. The monetary sanctions were assessed to compensate Defendants for costs and 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.

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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

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

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