IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

HORST ERNST WILHELM,

Plaintiff, No. CIV S-08-0210 FCD GGH

vs.

SAMUEL M. YOTT, et al.,

Defendants. ORDER

_____/

Previously pending on this court's law and motion calendar for February 5, 2009, was defendant Horst Anton Wilhelm's motion to compel plaintiff's deposition and for monetary sanctions. Joseph Cooper appeared telephonically for moving defendant Horst Anton Wilhelm. Plaintiff did not file an opposition, did not participate in the joint statement, and did not appear at the hearing. Having heard oral argument and reviewed defendant's motion, the court now issues the following order.

Plaintiff has once again failed to oppose a discovery motion brought by this defendant, and his counsel has once again failed to appear at oral argument. Plaintiff was previously warned in this court's order of January 13, 2009 that failure to appear at his deposition would be viewed with disfavor, and that failure to comply with that order might result in a recommendation that the case be dismissed.

Accordingly, IT IS ORDERED that:

1. Defendant's motion to compel deposition and for sanctions, filed December 30, 2008 (docket #37), is granted.

2. Plaintiff's deposition is re-noticed for March 2, 2009 at 10:00 a.m. Both plaintiff's counsel and his client shall personally appear for the deposition in the jury deliberation room of the undersigned's courtroom. Failure to appear may well be grounds for contempt.

3. The matter of defendant's request for monetary sanctions will be addressed following the date set for plaintiff's deposition.[1]

DATED: February 10, 2009

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

GGH:076/Wilhelm0210.san2

[1] Defendant has re-noticed his motion for terminating sanctions for March 26, 2009 at 10:00 a.m.