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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

CHARLES AUSTIN PARKS,
CDCR #K-72151,

Plaintiff,

v.

R. TAIT, et al.,

Defendants.

Case No. 08-CV-1031-H (JMA)

**ORDER DENYING AS MOOT
PLAINTIFF’S MOTION TO COMPEL
RESPONSES TO INTERROGATORIES
AND DENYING REQUEST FOR
SANCTIONS [Doc. 66]**


On June 15, 2010, Plaintiff Charles Austin Parks (“Plaintiff”) filed a motion to compel responses to interrogatories from Defendants Tait, Davis, Huff and Berry (“Defendants”) and a request for sanctions pursuant to Fed. R. Civ. P. 37. (Doc. 66.) On July 2, 2010, Defendants filed a response to the motion to compel and an opposition to the request for sanctions. (Doc. 68.) In the response, Defendants’ counsel acknowledges that he inadvertently failed to serve Defendants’ interrogatory responses by the April 2, 2010 deadline set by the Court in its March 25, 2010 Order due to a calendaring error. Steele Decl. in Supp. of Defs.’ Resp., ¶¶ 8-9, 11. Upon realizing this, Defendants’ counsel served the overdue responses, without objection, on June 25,

1 2010. Id., ¶ 12 & Ex. A. As the subject discovery responses have now been served,
2 Plaintiff's motion to compel interrogatory responses is **DENIED AS MOOT.**

3 Under Fed. R. Civ. P. 37(a)(5), if a motion to compel discovery is granted or, as
4 here, if the discovery sought is provided after the filing of a motion to compel, "the court
5 must, after giving an opportunity to be heard, require the party . . . whose conduct
6 necessitated the motion, the party or attorney advising that conduct, or both to pay the
7 movant's reasonable expenses incurred in making the motion, including attorney's
8 fees," unless the conduct was "substantially justified" or "other circumstances make an
9 award of expenses unjust." Fed. R. Civ. P. 37(a)(5)(A). Here, however, Plaintiff is not
10 entitled to sanctions under Rule 37. Because he is proceeding pro se, he is not entitled
11 to attorney's fees. See, e.g., Johnson v. Runnels, 2010 WL 760712, at *2 (E.D. Cal.
12 2010) (citing Kay v. Ehrler, 499 U.S. 432, 435 (1991)); see also Fosselman v. Gibbs,
13 2010 WL 1446661, at *1 (N.D. Cal. 2010). Plaintiff is also not entitled to the payment of
14 any "reasonable expenses" as he has not demonstrated that he incurred any actual
15 costs in bringing his motion. See, e.g., Lee v. Walters, 172 F.R.D. 421, 436 (D. Or.
16 1997); Johnson, 2010 WL 760712, at *2. Accordingly, Plaintiff's request for sanctions is
17 **DENIED.**

18 **IT IS SO ORDERED.**

19 DATED: July 27, 2010

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21 Jan M. Adler
22 U.S. Magistrate Judge
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