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

MICHAEL BAKER,

Plaintiff,

No. 2: 09-cv-2757 MCE KJN P

vs.

PEREZ, et al.,

Defendants.

ORDER

_____ /

On December 1, 2011, the undersigned granted plaintiff fourteen days to file a motion to compel and for sanctions regarding defendants' failure to provide him with documents requested in a request for production of documents. On December 5, 2011, plaintiff filed a motion to compel and a separate motion for sanctions. On December 13, 2011, defendants filed an opposition. For the following reasons, plaintiff's motions to compel and for sanctions are denied.

On August 24, 2011, the undersigned issued a 27 page order granting in part and denying in part plaintiff's motion to compel. On October 12, 2011, the undersigned granted in part and denied in part plaintiff's request for reconsideration of the August 24, 2011 order. In granting the motion for reconsideration, the undersigned ordered defendants to file a further response to request for production of documents no. 10.

1 In the pending motion to compel, plaintiff argues that defendants did not provide
2 an adequate further response to request for production of documents no. 10. Request no. 10
3 sought all documents regarding medication/distribution policies in effect at High Desert State
4 Prison (“HDSP”). In their opposition to the original motion to compel, defendants stated that
5 they had provided plaintiff with hundreds of documents and had nothing more to add. In the
6 request for reconsideration, plaintiff stated that in response to request for production of
7 documents no. 10, defendants provided Operational Procedure # 744 regarding pain
8 management. Plaintiff stated that attachment C was missing from this document. In the order
9 granting the request for reconsideration, defendants were ordered to file supplemental briefing
10 addressing whether there was an attachment C to Operational Procedure # 744.

11 In their supplemental briefing, defendants stated that Operational Procedure # 744
12 did not have an attachment C. Attached as an exhibit to defendants’ supplemental briefing was a
13 copy of Operational Procedure # 744. This document referred to several attachments, including
14 an Attachment C. In the pending motion to compel, plaintiff requests that defendants be ordered
15 to provide him with the Attachment C referred to in Operational Procedure # 744. Plaintiff also
16 requests that defendants be sanctioned for not previously providing this document.

17 In their opposition to the pending motion to compel, defendants state that they
18 have now provided plaintiff with Attachment C after obtaining it from the litigation coordinator.
19 Accordingly, plaintiff’s motion to compel is denied.

20 Regarding the request for sanctions defendants state, in relevant part, that when
21 defense counsel first reviewed Operational Procedure # 744, he did not see any attachments or
22 exhibits to this document. Defendants state that defense counsel was not aware of what plaintiff
23 was seeking until the court highlighted what he was looking for in the December 1, 2011 order.

24 The undersigned does not find that defendants acted in bad faith in responding to
25 plaintiff’s request for production of documents no. 10. Plaintiff’s original motion to compel
26 addressed 53 requests for admissions, nine requests for production of documents and 24

1 interrogatories. In responding to plaintiff's voluminous discovery requests, defendants
2 inadvertently failed to provide one document. Nothing in the record suggests that defendants
3 intentionally withheld Attachment C to Operational Procedure # 744. Accordingly, the motion
4 for sanctions is denied.


5 On December 5, 2011, plaintiff filed a motion to enforce the October 12, 2011
6 order. This motion also seeks to compel defendants to produce Attachment C. This motion is
7 denied because defendants have now produced Attachment C.

8 Accordingly, IT IS HEREBY ORDERED that:

9 1. Plaintiff's motion to compel and motion for sanctions (Dkt. Nos. 88 and 89)
10 are denied;

11 2. Plaintiff's motion to enforce the court order (Dkt. No. 90) is denied.

12 DATED: December 30, 2011

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15 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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