

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BEEPER VIBES, INC.,

Case No. 3:10-cv-473

Plaintiff,

Judge Timothy S. Black

vs.

SIMON PROPERTY GROUP, INC., *et al.*,

Defendants.

**ORDER DENYING DEFENDANTS' MOTION TO COMPEL (Doc. 24) AS
MOOT**

This civil action is pending before the Court on Defendants' motion to compel (Doc. 24) and Plaintiff's responsive memorandum (Doc. 27). After filing the motion to compel, the Court *sua sponte* set the action for an informal dispute conference pursuant to S.D. Ohio Civ. R. 37.1.¹ At the conference, Plaintiff agreed to submit all outstanding discovery. Subsequently, both parties confirmed that the outstanding discovery at issue in the motion to compel was provided. Accordingly, the motion to compel (Doc. 24) is **DENIED** as **MOOT**.

The only issue left outstanding is Defendants' request for fees. Defendant requests that the Court award reasonable expenses, including attorney fees, incurred in bringing the motion to compel. Rule 37(A)(5) of the Federal Rules of Civil Procedure requires the awarding of reasonable expenses, including attorneys' fees, in the event a motion to

¹ Had Defendants initially contacted the Court pursuant to S.D. Ohio Civ. R. 37.1, they would not have incurred any additional expense in preparing a motion to compel, and the issue would have been resolved expeditiously.

compel is granted or the requested discovery is provided after the filing of the motion. Fed. R. Civ. P. 37(A)(5). However, the Court shall not order payment if: (i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action; (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or (iii) other circumstances make an award of expenses unjust. *Id.*

Given the circumstances of this case, and Plaintiff's prompt production of all outstanding discovery requests, the Court finds that an award of fees would be unjust and therefore declines to award them in this context.

IT IS SO ORDERED.

Date: 8/27/12

s/ Timothy S. Black
Timothy S. Black
United States District Judge