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UNITED STATES DISTRICT COURT  
For the Northern District of California

UNITED STATES DISTRICT COURT  
Northern District of California  
Oakland Division

JAMES ELLIS JOHNSON,  
Plaintiff,  
v.  
UNITED STATES OF AMERICA,  
Defendant.

No. C 10-00647 LB

**ORDER DENYING PLAINTIFF’S  
MOTION FOR AN ORDER  
FORFEITING DEFENDANT’S RIGHT  
TO FILE A SUMMARY JUDGMENT  
MOTION AND THAT DEFENDANT  
PAY 20% OF PLAINTIFF’S  
MEDICAL BILLS NOT COVERED BY  
MEDICARE**

Plaintiff James Johnson brought this medical malpractice action against defendant United States (the “Government”) under the Federal Tort Claims Act, 28 U.S.C. §§ 1346, 2671-80. Complaint, ECF No. 1.<sup>1</sup> He alleges that he underwent surgery at the United States Department of Veterans Affairs (“VA”) Medical Center in San Francisco, California on December 19, 2005 and was discharged two days later. *Id.* ¶¶ 8-9. Two days was too soon, he says, and as a result, he suffered injury. *Id.* ¶ 11.

Mr. Johnson has now filed a motion requesting that the court (1) “forfeit” the Government’s right to file a motion for summary judgment and (2) order the Government to pay the 20% of his medical bills that Medicare does not cover. Motion, ECF No. 83. In support of his motion, Mr. Johnson contends that the Government has engaged in a conspiracy to prevent him from obtaining

<sup>1</sup> Citations are to the Electronic Case File (“ECF”) with pin cites to the electronic page number at the top of the document, not the pages at the bottom.

1 medical records that he plans to use with respect to an upcoming expert report.<sup>2</sup> *See id.* The  
2 Government has, according to Mr. Johnson, informed his doctors who are not affiliated with the VA  
3 that it would not pay for his medical care outside of the VA system on a fee basis. *See id* at 2-4. As  
4 a result, he has to pay for his “outside” medical treatment through Medicare, which only covers 80%  
5 of the costs. *Id* at 2. In addition, the Government somehow has “undermined” his ability to get the  
6 medical information he needs. *Id.* at 3.

7 As the Government points out in opposition, Mr. Johnson has failed to provide admissible facts  
8 in support of his “conspiracy” claim or cite any law in support of the extraordinary relief he seeks.<sup>3</sup>  
9 Opposition, ECF No. 84. Indeed, Mr. Johnson’s motion, which he signed under penalty of perjury,  
10 is replete with hearsay and unsubstantiated, conclusory statements. *See, generally*, Motion, ECF No.  
11 83. Moreover, even if the Government no longer will pay for his “outside” medical care on a fee  
12 basis (although Mr. Johnson has submitted no evidence on this point), the court is at a loss to  
13 understand how this would prevent Mr. Johnson from obtaining discovery.

14 Under the circumstances and the record before it, the court refuses to grant either of Mr.  
15 Johnson’s requests. His motion is DENIED.

16 This disposes of ECF No. 83.

17 **IT IS SO ORDERED.**

18 Dated: October 13, 2011

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LAUREL BEELER  
United States Magistrate Judge

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24 <sup>2</sup> Previously, this court continued the deadlines for this case because Mr. Johnson needed  
25 additional time to conduct discovery. Order, ECF No. 80. Discovery is ongoing, and the current  
expert discovery deadline is November 3, 2011. *Id.*

26 <sup>3</sup> Either in lieu of or perhaps as a reply, Mr. Johnson filed a document containing brief  
27 descriptions of various federal cases in which plaintiffs were awarded medical damages. Response,  
28 ECF No. 85. None of these cases, though, relate to or support Mr. Johnson’s request that the court  
deny the Government its right to file a motion for summary judgment or order the Government to  
pay 20% of his “outside” medical bills.