

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROBERT SILER,

Plaintiff,

CIVIL ACTION NO. 08-CV-15077-DT

vs.

DISTRICT JUDGE PATRICK J. DUGGAN

W. BALDWIN, et al.,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendants.

ORDER DENYING PLAINTIFF'S MOTION TO COMPEL DISCOVERY (DOCKET NOS. 60, 67) AND GRANTING PLAINTIFF'S MOTION TO AMEND (DOCKET NO. 68)

This is a civil rights action filed pursuant to 42 U.S.C. § 1983 by a Michigan state prisoner. Plaintiff claims that his Eighth Amendment rights were violated when he was denied necessary medical treatment after he fell out of bed and hit his head on the concrete floor. Plaintiff filed a Motion to Compel Discovery pursuant to Fed. R. Civ. P. 34(b) on September 10, 2009. (Docket no. 60). On October 22, 2009 Plaintiff filed a Motion to Amend his Motion to Compel Discovery. (Docket no. 68). Plaintiff also filed an amended Motion to Compel Discovery pursuant to Fed. R. Civ. P. 37(a). (Docket no. 67). Defendant Baldwin responded to the motions on November 24, 2009. (Docket no. 71). Plaintiff filed a Reply Brief on September 14, 2009. (Docket no. 73). All pretrial matters have been referred to the undersigned for decision. (Docket no. 11). The Court dispenses with oral argument pursuant to E.D. Mich. LR 7.1(e). The motions are now ready for ruling.

Plaintiff states in his Motion to Amend that his original Motion to Compel was filed pursuant to Federal Rule of Civil Procedure 34(b) and not Rule 37(a). He seeks to amend his Motion to

Compel to reflect that it is filed pursuant to Rule 37(a). In all other material respects the two Motions to Compel are identical. Plaintiff's Motion to Amend will be granted.

Plaintiff states in his amended Motion to Compel that he served the Court Clerk with a Request for Production of Documents on July 20, 2009, and asked the Court Clerk to serve the discovery requests on the Defendants. He states that he has not been served with responses to the discovery requests and moves for an order compelling the Defendants to respond. Defendant Baldwin, the only remaining Defendant who has been served in this matter, argues in response that she has not been served with discovery requests in this case.

28 U.S.C. § 1915(a) permits the Court to waive certain fees attendant to litigation but does not authorize the Court to finance or pay for a party's discovery expenses. *Coates v. Kafczynski*, No. 2:05-cv-3, 2006 WL 416244, *2 (W.D. Mich. Feb. 22, 2006). *See also Vartinelli v. Caruso*, No. 07-12388, 2008 WL 4056316, *2 (E.D. Mich. Aug. 26, 2008) (citing *Johnson v. Hubbard*, 698 F.2d 286, 289 (6th Cir. 1983) for the proposition that there is no constitutional or statutory requirement to waive an indigent prisoner Plaintiff's costs of discovery); *Tabron v. Grace*, 6 F.3d 147, 159 (3d Cir. 1993) (no statute authorizes courts to commit federal monies for payment of the necessary expenses in a civil suit brought by an indigent litigant). Plaintiff must therefore bear his own discovery expenses.

Plaintiff is advised that discovery is normally conducted among the parties without the Court's involvement. This Court has recommended that the claims against Defendant Baldwin be dismissed. Some Defendants however have not yet been served with process in this case. If Plaintiff will seek discovery from these Defendants after they have been served with process, he should serve his discovery requests upon Defendants' counsel as is required by the Federal Rules

of Civil Procedure. For the reasons stated, the Court will deny Plaintiff's amended Motion to Compel without prejudice.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Amend (docket no. 68) is **GRANTED**.

IT IS FURTHER ORDERED Plaintiff's amended Motion to Compel (docket no. 67) is **DENIED** without prejudice.

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of fourteen days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. § 636(b)(1).

Dated: January 25, 2010

s/ Mona K. Majzoub _____
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon Robert Siler and Counsel of Record on this date.

Dated: January 25, 2010

s/ Lisa C. Bartlett _____
Case Manager