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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RICHARD H. WARREN,  
  
Plaintiff,  
  
v.  
  
STATE OF WASHINGTON,  
DEPARTMENT OF CORRECTIONS,  
STAFFORD CREEK CORRECTIONS  
CENTER, ERIC JACKSON, DAN  
VAN OGLE, PAT GLEBE, CUS  
SHANAHAN, WILLIAM COPLAND,  
and ABRAM CLARK,  
  
Defendants.

NO. C11-5686 BHS/KLS

**ORDER**

Before the Court are several motions filed by Plaintiff (ECF Nos. 22, 23, 24, 25, 27 and 28) and Defendant’s motion to strike (ECF No. 29). Having reviewed the motions, responses, and balance of the record, the Court finds and **ORDERS as follows:**

**BACKGROUND**

Plaintiff alleges that Defendants discriminated against him when they denied him access to the Religious Services Building. ECF No. 5. He also alleges that Defendants failed to provide him with adequate medical treatment when they transferred him to another facility while he was undergoing medical treatment for Hepatitis C. *Id.* at 5-6. Plaintiff also alleges that his property was withheld until he was willing to pay for its shipping. *Id.* at 6.

1 **DISCUSSION**

2 **A. ECF Nos. 22, 24 and 28 – Motions for Discovery at Defendant’s Expense**

3 In ECF Nos. 22 and 24, Plaintiff requests an Order from the Court requiring the  
4 Defendants to disclose witnesses, produce documents, respond to requests for admission,  
5 schedule depositions, and answer interrogatories. ECF Nos. 22 and 24. Plaintiff is advised  
6 that (1) an Order is not required to conduct discovery and (2) discovery requests are not filed  
7 with the Court. Plaintiff must direct his discovery requests to the parties pursuant to the rules  
8 of discovery. In the event the discovery requests are not complied with, Plaintiff must confer  
9 with opposing counsel in a good faith attempt to resolve the discovery dispute. Finally, if the  
10 attempt to confer is unsuccessful, Plaintiff may file a motion to compel, which shall include a  
11 certification that he, in good faith, conferred or attempted to confer with the person or party  
12 failing to make the discovery in an effort to secure the information or material without court  
13 intervention in accordance with Fed. R. Civ. P. 37(a)(2)(B). Only after all of these steps have  
14 been complied with may Plaintiff file a motion with the Court.  
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17 In the foregoing motions, Plaintiff asks that the cost of discovery be borne by the  
18 Defendants. ECF Nos. 22 and 24. In another motion, Plaintiff asks for a general assessment of  
19 all costs, which are unspecified, but which are to include: “court costs, lawyers costs, copy  
20 costs, witness fees, medical second opinion, transport and housing fees, court housing fees and  
21 courthouse fees, witness trial, travel, expenses, and room and board costs and fees, witness lost  
22 wage compensation costs, and outside of DOC medical second opinion, examination and  
23 testing at Defendants’ expense.” ECF No. 28.  
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1           There is nothing in the Federal Rules entitling Plaintiff to shift his costs of discovery or  
2 any other cost of litigating his case to Defendants. Plaintiff must bear the costs of litigating his  
3 case. The expenditure of public funds on behalf of an indigent litigant is proper only when  
4 authorized by Congress, and the *in forma pauperis* statute does not authorize the expenditure  
5 of public funds for the purposes sought by Plaintiff in his motions. *See Tedder v. Odel*, 890  
6 F.2d 210 (9th Cir.1989) (citations omitted). Accordingly, these motions are denied.  
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8       **B.     ECF No. 23 and 25 – Motions for Medical Examination**

9           In these motions, Plaintiff seeks an “outside of DOC medical second opinion” and  
10 “transport and housing to a primary or secondary hospital” for the purpose of obtaining the  
11 second medical opinion. ECF Nos. 23 and 25.

12           Pursuant to Rule 35 of the Federal Rules of Civil Procedure, a district court may, under  
13 appropriate circumstances, order a party to submit to a physical examination at the request of  
14 an opposing party. However, Rule 35 “does not vest the Court with authority to appoint an  
15 expert to examine a party wishing an examination of himself.” *Smith v. Carroll*, 602 F. Supp.  
16 2d 521, 526 (D. Del. 2009); *see also, e.g., Baker v. Hatch*, 2010 WL 3212859, \*3 (E.D. Cal.  
17 2010) (finding no authority under Rule 35(a) to grant *pro se* prisoner plaintiff’s request for  
18 medical examination); *Adams v. Epps*, 2008 WL 4861926, \*1 (S.D. Miss. 2008) (same);  
19 *Cabrera v. Williams*, 2007 WL 2682163, \*2 (D. Neb. 2007) (same).  
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21           Plaintiff appears to be seeking a “second opinion” at Defendants’ expense because he  
22 disagrees with the medical treatment he has received. If Plaintiff wishes to hire an expert to  
23 provide him with a second opinion, he is free to do so. As noted above, Plaintiff is responsible  
24 for his litigation costs. Therefore, this motion is denied.  
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1 **C. ECF No. 27- Motion for Transport and Housing for Plaintiff at Trial**

2 In this motion, Plaintiff requests an order for his transport and housing during the trial  
3 of this case. ECF No. 27. This motion is premature. This case is not currently set for trial.  
4 None of the pretrial deadlines set in this case have passed. *See* Pretrial Scheduling Order dated  
5 November 29, 2011 (discovery completed by June 1, 2012; dispositive motions due by  
6 September 7, 2012; and, Joint Status Report due by December 7, 2012). ECF No. 20.  
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8 There are also no motions currently pending before the Court that would require  
9 Plaintiff's presence. In addition, unless otherwise ordered by the Court, all motions will be  
10 decided by the Court without oral argument and counsel and parties shall not appear on the  
11 date a motion is noted. CR 7(b) (4) Local Rules W.D. Wash. Plaintiff may file his request for  
12 transport at a later time if it is determined that a trial is necessary and if so, to what extent  
13 travel may be required. This motion is denied.  
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15 **D. Defendants' Motion to Strike (ECF No. 29)**

16 In this motion, Defendants move to strike Plaintiff's Case History and Dated  
17 Interferone Injection Chart (ECF No. 19), Declaration of Service by Mail (ECF No. 17) and  
18 Response to Defendant's Answer and Jury Demand (ECF No. 21).

19 Plaintiff filed his complaint on September 8, 2011. ECF No. 5. On November 21,  
20 2011, Plaintiff filed a "Declaration of Service by Mail" which had various letters attached  
21 regarding public disclosure requests, as well as letters from the ACLU and Columbia Legal  
22 Services regarding legal assistance. ECF No. 17. On November 13, 2011, Defendants filed  
23 their Answer to the complaint. ECF No. 18. This was followed by numerous pleadings from  
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1 the Plaintiff, including Plaintiff's Case History and Response to the Defendants' Answer to  
2 Complaint and Jury Demand. ECF Nos. 19 and 21.

3 Fed. R. Civ. P. 7(a) allows a complaint and an answer. Fed. R. Civ. P. 7(a). A reply is  
4 permitted where there is a counter claim. *Id.* An answer by a co-defendant is permitted where  
5 there is a cross claim. *Id.* The rule provides "no other pleadings shall be allowed except that  
6 the Court may order a reply to an answer. . . ."

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8 The federal rules are clear on what pleadings are permitted. The federal rules do not  
9 provide for a reply from the Plaintiff nor has the Court ordered the Plaintiff to file a reply.  
10 Plaintiff's Case History and "Declaration of Service by Mail" (to attach and submit various  
11 letters to the court) are similarly not allowed. If Plaintiff wishes to have such matters reviewed  
12 by the Court, he may submit them as part of properly filed motions. This motion is granted.

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14 Accordingly, it is **ORDERED**:

- 15 (1) Plaintiff's motions (ECF Nos. 22, 23, 24, 25, 27, and 28) are **DENIED**.  
16 (2) Defendant's motion (ECF No. 29) is **GRANTED**.  
17 (3) The Clerk shall send copies of this Order to Plaintiff and counsel for  
18 Defendants.

19 **DATED** this 27th day of January, 2012.

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22 Karen L. Strombom  
23 United States Magistrate Judge  
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