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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MICHAEL LOUIS FOSTER,

Plaintiff,

v.

A. ENENMOH,

Defendant.

CASE NO. 1:08-cv-01849-LJO-SKO PC

ORDER DENYING MOTION FOR
APPOINTMENT OF EXPERT WITNESS,
AND DENYING MOTION TO DEFER
RULING ON PRELIMINARY INJUNCTION

(Docs. 51 and 52)

Plaintiff Michael Louis Foster, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on December 3, 2008. This action is proceeding on Plaintiff’s second amended complaint, filed on September 17, 2009, against Defendant Enenmoh for violation of the Eighth Amendment.

On February 3, 2012, Plaintiff filed a motion seeking the appointment of an expert witness to assist him in obtaining a preliminary injunction, and a motion requesting the Court defer its ruling on his motion for a preliminary injunction pending the obtainment of an appointed expert to review his motion and provide assistance with it. Defendant filed an opposition on February 22, 2012.

Plaintiff is not entitled to the appointment of an expert witness based on his in forma pauperis status, as the statute does not authorize such an expenditure on Plaintiff’s behalf. 28 U.S.C. § 1915; Tedder v. Odel, 890 F.2d 210, 211-12 (9th Cir. 1989) (citing United States v. MacCollum, 426 U.S. 317, 321, 96 S.Ct. 2086 (1976)).

The Court does have discretion under Federal Rule of Evidence 706 to appoint an expert witness and to apportion costs. Fed. R. Evid. 706; Ford ex rel. Ford v. Long Beach Unified School

1 Dist., 291 F.3d 1086, 1090 (9th Cir. 2002); Walker v. American Home Shield Long Term Disability
2 Plan, 180 F.3d 1065, 1071 (9th Cir. 1999). However, the Court requires no special assistance in
3 deciding the issues, Ford ex rel. Ford, 291 F.3d at 1090; Walker, 180 F.3d at 1071, and where, as
4 here, the cost would likely be apportioned to the government, courts should exercise caution. The
5 Court has a burgeoning docket of civil rights cases filed by prisoners proceeding pro se and in forma
6 pauperis. The facts of this case are no more extraordinary and the legal issues involved no more
7 complex than those found in the majority of the cases now pending before the Court.

8 Accordingly, Plaintiff's motion for the appointment of an expert witness is HEREBY
9 DENIED and his motion to defer a ruling on his motion for a preliminary injunction is DENIED as
10 moot.

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IT IS SO ORDERED.

Dated: April 6, 2012

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE