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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JIMMY MCDONALD,
Plaintiff,

v.

CANO, CLARK, RODRIGUEZ,
and ROBERTS,
Defendants.

Case No. 1:09-cv-00730-SKO PC

ORDER DENYING RULE 35 MOTION
FOR MEDICAL EXAMINATION OR
FOR PRODUCTION OF X-RAYS

(Doc. 118)

Plaintiff Jimmy McDonald, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on April 24, 2009. This action for damages is proceeding against Defendants Cano, Clark, Rodriguez, and Roberts for acting with deliberate indifference to a substantial risk of harm to Plaintiff's health and/or safety, in violation of the Eighth Amendment of the United States Constitution. This matter is set for jury trial on September 17, 2013.

On April 1, 2013, Plaintiff filed his second motion seeking to be examined by an outside doctor, pursuant to Federal Rule of Civil Procedure 35. If his motion is denied, Plaintiff seeks an order for the production of all x-rays for use at trial. Defendants did not file a response.

Rule 35 provides that a court "may order a party whose mental or physical condition . . . is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner." Fed. R. Civ. P. 35. Rule 35 does not contemplate authorizing Plaintiff to seek his own

1 physical examination at government expense. *See Tedder v. Odel*, 890 F.2d 210, 211-12 (9th Cir.
2 1989) (“[T]he expenditure of public funds [on behalf of an indigent litigant] is proper only when
3 authorized by Congress. . . .”) (citation and internal quotation marks omitted). Therefore,
4 Plaintiff’s motion is denied. To the extent Plaintiff’s motion may be construed as seeking the
5 appointment of an expert witness pursuant to Federal Rule of Evidence 706, that issue was raised
6 by Plaintiff in his pretrial statement and it is addressed in section XVI of the pretrial order.

7 Plaintiff’s motion for the production of x-rays is also denied. Discovery is closed and the
8 Court has previously denied Plaintiff’s requests that it be reopened. Fed. R. Civ. P. 16(b)(4);
9 *Zivkovic v. Southern California Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002). (Docs. 59, 80,
10 103, 121.)

11 Accordingly, based on the foregoing, Plaintiff’s motion a medical examination or, in the
12 alternative, the production of x-rays, is HEREBY ORDERED DENIED.

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14 IT IS SO ORDERED.

15 Dated: August 1, 2013

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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