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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 LEONARD RANSOM, JR.,

12 Plaintiff,

13 v.

14 DANNY HERRERA and RICKY  
15 BRANNUM,

16 Defendants.

Case No. 1:11-cv-01709-LJO-EPG (PC)

ORDER DENYING PLAINTIFF'S  
MOTIONS FOR A COURT-APPOINTED  
EXPERT WITNESS

(ECF NOS. 189 & 190)

17 **I. BACKGROUND**

18 Leonard Ransom, Jr. ("Plaintiff"), is a state prisoner proceeding *pro se* in this civil  
19 rights action filed pursuant to 42 U.S.C. § 1983. This action is now proceeding "on Plaintiff's  
20 Second Amended Complaint (ECF No. 72), against defendants Brannum and Herrera on  
21 Plaintiff's Fourteenth Amendment procedural due process claim, Fourteenth Amendment  
22 substantive due process claim under Devereaux, retaliation claim, section 1983 malicious  
23 prosecution claim, and conspiracy claim." (ECF No. 77, p. 2).

24 On July 30, 2018, Plaintiff filed a motion for a Court-appointed expert specializing in  
25 the field of corrections practices and procedures (ECF No. 189), and a motion for a Court-  
26 appointed expert specializing in the field of clinical psychology (ECF No. 190). Defendants  
27 filed their opposition to the motions on October 22, 2018. (ECF No. 213). Plaintiff's motions  
28 are now before the Court.

1 **II. APPOINTMENT OF EXPERT WITNESSES**

2 1. Plaintiff’s Motion for Expert Specializing in Corrections Practices and Procedures<sup>1</sup>

3 Pursuant to Federal Rule of Evidence 706(a), Plaintiff requests a Court-appointed expert  
4 specializing in the field of corrections practices and procedures. (ECF No. 189, p. 1).

5 Plaintiff argues that, in order to establish a due process violation, he must establish,  
6 through expert testimony, what correctional officers similarly situated to Defendants would  
7 have been required to do under relevant California Department of Corrections and  
8 Rehabilitation (“CDCR”) regulations. (Id. at 3). Additionally, Plaintiff argues that it is his  
9 responsibly to establish that his placement in administrative segregation was the natural and  
10 proximate consequence of Defendants filing a false Rules Violation Report (“RVR”) and false  
11 criminal charges against Plaintiff. (Id.).

12 Thus, Plaintiff needs “the Court to issue an order for an appointment of Court-  
13 Appointed Expert, pursuant to Rule 706(a) of the Federal Rules of Evidence, to review [his]  
14 prison Central File and evaluate the documentation entered from the period of March 4, 2009  
15 through February 2012, and identify the various CDCR 128 Chronos, and determine  
16 compliance with the requirements of policies and procedures regarding the issues before the  
17 Court, and to provide the Court with a report of the findings, and provide expert testimony, at  
18 trial, with respect to these issues.” (ECF No. 189, p. 4).

19 Plaintiff also needs “the expert to give testimony, before the jury, outlining the specific  
20 meaning of the **MEMORANDUM**, dated March 18, 2009, entitled UTILIZATION AND  
21 MANAGEMENT OF ADMINISTRATIVE SEGREGATION BEDS..., which formed the  
22 basis for [his] release from administrative segregation, on June 10, 2010, as outlined in the  
23 CDCR 128G dated May 19, 2018 (Ex. ‘C’), and the CDC 128-G, Dated June 3, 2010 (Ex.  
24 ‘D’).” (ECF No. 189, p. 4).

25 Finally, Plaintiff needs “an expert appointed, in the field of correctional operations and  
26 procedures and practices, to demonstrate that [his] solitary confinement, from March 29, 2011

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28 <sup>1</sup> In the motion, Plaintiff states that he has not yet received mental health records or his central file. (ECF No. 189, p. 5). If Plaintiff still has not received those records, he should file a separate motion related to that issue.

1 through November 1, 2011, allegedly as a result of the pending RVR's, which KVSP staff were  
2 responsible for adjudicating, was a consequence of the Defendant's conduct, and the delay used  
3 to obscure the connection to the Defendant's." (Id.).

4 Plaintiff states that he is "in need of an expeditious appointment of a Court-Appointed  
5 Expert to assist in preparation of [his] case, to resolution." (Id. at 5).

6 2. Plaintiff's Motion for Expert Specializing in Clinical Psychology

7 Pursuant to Federal Rule of Evidence 706(a), Plaintiff requests a Court-appointed expert  
8 specializing in the field of clinical psychology. (ECF No. 190, p. 1). Plaintiff needs "the Court  
9 to issue an order for an appointment of a Court-appointed Expert, pursuant to Rule 706(a) of  
10 the Federal Rules of Evidence, to review [his] mental health records, and evaluate any mental  
11 deficiencies identified, with respect to decompensation of [his] mental health, during the period  
12 of March 29, 2011 through October 31, 2011, and to provide the Court with a report of the  
13 findings, and provide expert testimony at trial." (ECF No. 190, p. 4). Plaintiff wants to use this  
14 testimony (along with other evidence) to establish "that short and long term solitary  
15 confinement has damaging effects on inmates confined in solitary confinement." (Id. at 3).

16 Plaintiff states that he is in immediate need of a Court-appointed expert "to assist in  
17 preparation of [his] case to resolution." (Id. at 4).

18 Finally, Plaintiff argues that he needs an expert appointed because he has not yet  
19 received his mental health records, and he has no idea where they are. (Id.).

20 3. Defendants' Opposition

21 Defendants argue that "Plaintiff is requesting that experts be appointed who can  
22 advocate his side of the case, not provide neutral opinions to the court." (ECF No. 213, p. 2).  
23 As Rule 706 only allows appointment of experts to assist the Court, Plaintiff's motions should  
24 be denied. (Id. at 2-3).

25 4. Legal Standards

26 The Court has the discretion to appoint an expert pursuant to Rule 706(a) of the Federal  
27 Rules of Evidence. See Walker v. American Home Shield Long Term Disability Plan, 180  
28 F.3d 1065, 1071 (9th Cir. 1999). In relevant part, Rule 706(a) states that, "[o]n a party's

1 motion or on its own, the court may order the parties to show cause why expert witnesses  
2 should not be appointed...” Fed. R. Evid. 706(a). While the Court has the discretion to  
3 appoint an expert and to apportion costs, including the apportionment of costs to one side, Fed.  
4 R. Evid. 706(c)(2); Ford ex rel. Ford v. Long Beach Unified School Dist., 291 F.3d 1086, 1090  
5 (9th Cir. 2002), Rule 706 is not a means to avoid the *in forma pauperis* statute’s “prohibition  
6 against using public funds to pay for the expenses of witnesses,” Manriquez v. Huchins, 2012  
7 WL 5880431, at \*12 (E.D. Cal. 2012), nor does Rule 706 “contemplate court appointment and  
8 compensation of an expert witness as an advocate for one of the parties,” Faletogo v. Moya,  
9 2013 WL 524037, at \*2 (S.D. Cal. 2013).

10 “Where a party has filed a motion for appointment of a neutral expert under Rule 706,  
11 the court must provide a reasoned explanation of its ruling on the motion. Several factors guide  
12 the court’s decision. First, and most importantly, the court must consider whether the opinion  
13 of a neutral expert will promote accurate fact finding. The court may also consider the ability  
14 of the indigent party to obtain an expert and the significance of the rights at stake in the case.  
15 Expert witnesses should not be appointed where they are not necessary or significantly useful  
16 for the trier of fact to comprehend a material issue in a case.” Johnson v. Cate, 2015 WL  
17 5321784, at \*2 (E.D. Cal. 2015) (citations omitted).

## 18 5. Discussion

19 Plaintiff’s motions will be denied. First, Plaintiff has failed to show that an expert is  
20 “necessary or significantly useful for the trier of fact to comprehend a material issue in [this]  
21 case.” Johnson, 2015 WL 5321784, at \*2. As described below, Plaintiff only explains how a  
22 neutral expert will benefit his case. Plaintiff never explains how the neutral expert would assist  
23 the Court or the jury in comprehending a material issue in this case.<sup>2</sup>

24 Second, Plaintiff appears to be requesting that the Court appoint an expert for him—not  
25 a neutral expert. In both of Plaintiff’s motions, instead of explaining how a *neutral* expert

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27 <sup>2</sup> In one of his motions, Plaintiff does argue that the appointment of Richard Subia as an expert witness  
28 “would greatly assist the Court, and the jury, in resolving this case, at trial.” (ECF No. 189, p. 5). However,  
Plaintiff does not explain how appointment of the expert would assist the Court or the jury in comprehending a  
material issue in this case.

1 would promote accurate fact finding, Plaintiff lays out what he believes he needs to prove in  
2 order to prevail, and explains why he needs an expert to prove those things. In fact, Plaintiff  
3 explicitly states in both motions that he is asking for an expert to assist in the preparation of *his*  
4 case. Appointing an expert witness to assist Plaintiff in the preparation of his case would be an  
5 improper use of Rule 706(a). Faletogo, 2013 WL 524037, at \*2 (S.D. Cal. 2013) (Rule 706(a)  
6 “does not contemplate court appointment and compensation of an expert witness as an advocate  
7 for one of the parties.”). Thus, Plaintiff’s motions will be denied.

8 While not dispositive to the Court’s analysis, the Court notes that Plaintiff has  
9 conducted extensive discovery in this case. For example, Plaintiff requested, and the Court  
10 approved (ECF No. 94), the issuance of four third-party subpoenas for documents,  
11 electronically stored information, and other tangible things. In ruling on motions to quash two  
12 of the subpoenas, the Court ordered the production of communications, as well as other  
13 documents, related to the retention (or release) of Plaintiff in administrative segregation. (ECF  
14 Nos. 151, 155, & 157). Additionally, the Court ordered the parties to exchange initial  
15 disclosures (ECF No. 79) and required the parties to exchange certain relevant documents (ECF  
16 No. 88). Thus, Plaintiff already has in his possession documents that he can use to help prove  
17 his case.

18 **III. ORDER**

19 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff’s motion for a Court-  
20 appointed expert specializing in the field of corrections practices and procedures (ECF No.  
21 189) and motion for a Court-appointed expert specializing in the field of clinical psychology  
22 (ECF No. 190) are DENIED.

23 IT IS SO ORDERED.

24 Dated: November 15, 2018

25 /s/ Eric P. Grogan  
26 UNITED STATES MAGISTRATE JUDGE