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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHARLES A. MILLER,
Plaintiff,
vs.
CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,
Defendants.

1:12-cv-00353-DAD-EPG-PC
ORDER DENYING MOTION FOR
APPOINTMENT OF EXPERT WITNESS
TO ASSIST THE COURT WITH
SCREENING OF PLAINTIFF'S
COMPLAINT
(ECF No. 52.)

I. BACKGROUND

Charles A. Miller ("Plaintiff") is a state prisoner proceeding *pro se* with this civil rights action pursuant to 42 U.S.C. § 1983. This action was initiated by civil complaint filed by Plaintiff in the Fresno County Superior Court on June 15, 2010 (Case #10CECG02100). On March 8, 2012, defendants Adonis, Griffith, Gutierrez, Igbinosa, Medina, and Mendez ("Removing Defendants") removed the case to federal court and requested the court to screen the complaint under 28 U.S.C. § 1915A. (ECF Nos. 1, 2.) On March 8, 2012, defendants California Department of Corrections and Rehabilitation ("CDCR"), Ahmed, Anderson, Chudy, Duenas, Eddings, Pascual, and Walker ("Consenting Defendants") joined in the Notice of Removal of Action. (ECF No. 4.)

1 On October 17, 2013, the Court dismissed the Complaint for violation of Rule 8(a) of
2 the Federal Rules of Civil Procedure, with leave to amend. (ECF No. 32.) On December 2,
3 2013, Plaintiff filed the First Amended Complaint. (ECF No. 35.) On June 19, 2014, the Court
4 issued an order striking the First Amended Complaint for Plaintiff's failure to comply with the
5 Court's order of October 17, 2013. (ECF No. 40.) Plaintiff was granted leave to file a Second
6 Amended Complaint. (Id.) On August 13, 2014, Plaintiff filed the Second Amended
7 Complaint. (ECF No. 44.)

8 The Court screened the Second Amended Complaint pursuant to 28 U.S.C. § 1915A
9 and issued an order on June 29, 2015, requiring Plaintiff to either file a Third Amended
10 Complaint or notify the Court of his willingness to proceed on the claims found cognizable by
11 the Court. (ECF No. 46.) On July 31, 2015, Plaintiff filed the Third Amended Complaint,
12 which awaits the Court's screening. (ECF No. 49.)

13 On March 9, 2016, Plaintiff filed a motion for the Court to appoint an expert witness to
14 assist the Court in screening the medical claim in his Third Amended Complaint. (ECF No.
15 52.)

16 **II. APPOINTMENT OF EXPERT WITNESS**

17 **A. Legal Standards**

18 The Court has the discretion to appoint an expert pursuant to Rule 706(a) of the Federal
19 Rules of Evidence. In relevant part, Rule 706 states that “[o]n a party's motion or on its own,
20 the court may order the parties to show cause why expert witnesses should not be appointed . .
21 .” Fed. R. Evid. 706(a); Walker v. American Home Shield Long Term Disability Plan, 180
22 F.3d 1065, 1071 (9th Cir. 1999). Pursuant to Rule 702, “a witness who is qualified as an expert
23 by knowledge, skill, experience, training or education may testify in the form of an opinion or
24 otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the
25 trier of fact to understand the evidence or to determine a fact in issue . . .” Fed. R. Evid. 702.
26 While the Court has the discretion to appoint an expert and to apportion costs, including the
27 appointment of costs to one side, Fed. R. Evid. 706; Ford ex rel. Ford v. Long Beach Unified

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1 School Dist., 291 F.3d 1086, 1090 (9th Cir. 2002); Walker, 180 F.3d at 1071, where the cost
2 would likely be apportioned to the government, the Court should exercise caution.

3 “Where a party has filed a motion for appointment of a neutral expert under Rule 706,
4 the court must provide a reasoned explanation of its ruling on the motion. Several factors guide
5 the court’s decision. First, and most importantly, the court must consider whether the opinion
6 of a neutral expert will promote accurate fact finding. The court may also consider the ability
7 of the indigent party to obtain an expert and the significance of the rights at stake in the case.
8 Expert witnesses should not be appointed where they are not necessary or significantly useful
9 for the trier of fact to comprehend a material issue in a case.” Johnson v. Cate, No. 1:10-CV-
10 00803-AWI, 2015 WL 5321784, at *2 (E.D. Cal. Sept. 10, 2015) (citing Gorton v. Todd, 793
11 F.Supp.2d. 1171, 1178-84 (E.D.Cal. 2011)). The determination to appoint an expert rests
12 solely in the court’s discretion and is to be informed by such factors as the complexity of the
13 matters to be determined and the court’s need for a neutral, expert review. See Ledford v.
14 Sullivan, 105 F.3d 354, 358–59 (7th Cir.1997).

15 **B. Plaintiff’s Motion**

16 Plaintiff requests the Court to appoint an impartial medical expert witness (orthopedic
17 surgeon, consultant, and/or specialist) – pursuant to Rule 706 of the Federal Rules of evidence
18 and Gorton v. Todd, 793 F.Supp.2d 1171, 2001 (E.D. Cal. 2011), to assist the Court with the
19 screening of his Third Amended Complaint. Plaintiff argues that the medical claims in his
20 complaint are complex and an expert witness is needed to show that his claims are not
21 frivolous. Plaintiff argues that an expert would assist the Court by providing “an unbiased view
22 of the potential merit of plaintiff’s medical care (and delay) claims in this case alleged in the
23 Third Amended Complaint.” (ECF No. 52 at 2:4-5.) Plaintiff suggests that Defendants should
24 compensate the appointed expert, pursuant to Rule 706(b). Plaintiff requests the issuance of an
25 order to show cause directed to Defendants, requiring them to state any and all reasons why a
26 medical expert should not be appointed and why Defendants should not be required to bear the
27 costs.

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1 **C. Discussion**

2 As noted above, “[e]xpert witnesses should not be appointed where they are not
3 necessary or significantly useful for the trier of fact to comprehend a material issue in a case.”
4 Johnson, 2015 WL 5321784, at *2 (citing Gorton, 793 F.Supp.2d. 1171); Fed. R. Evid. 706.
5 Plaintiff’s motion for the Court to appoint an expert witness shall be denied because (1) in
6 screening Plaintiff’s Third Amended Complaint, the Court will not act as a trier of fact, and (2)
7 an expert witness is not necessary or useful to assist the Court in screening Plaintiff’s medical
8 claim.

9 In screening the complaint, the Court *assumes the truth* of Plaintiff’s well-pleaded
10 factual allegations and then determines whether the facts plausibly give rise to an entitlement to
11 relief. Ashcroft v. Iqbal, 556 U.S. 662, 664 (2009) (emphasis added). Thus, during screening
12 of a complaint, the Court assumes the truth of the plaintiff’s factual allegations and does not act
13 as a trier of fact.

14 Plaintiff argues that his medical claims in the Third Amended Complaint are complex
15 and that an expert witness would be useful to enlighten the Court about “complex issues of
16 responsibility for, and causation of, further injury to the plaintiff’s right knee (and the
17 consequential pain/suffering resulting) due to delay of reasonably serious and necessary care by
18 an orthopedic surgeon and what steps CDCR defendants could/should have taken to provide
19 plaintiff with care/treatment in a more expeditious way.” (ECF No. 52 at 2-3.) The Court
20 disagrees that Plaintiff’s claims are complex, and Plaintiff has not explained why these issues
21 are so complex that an expert witness is needed.

22 Plaintiff suggests that the Court is unable able to determine how and whether the
23 applicable standard of care was deviated from, or to appreciate the effect it had on Plaintiff.
24 However, knowledge or understanding of the standard of care is not required for the Court to
25 decide whether Plaintiff states an Eighth Amendment medical claim. In order to state a claim
26 for violation of the Eighth Amendment, Plaintiff must allege sufficient facts to support a claim
27 that the named defendants “[knew] of and disregard[ed] an excessive risk to [Plaintiff’s] health
28” Farmer, 511 U.S. at 837. The Court does not find that specialized knowledge is

1 necessary to evaluate whether Plaintiff states a claim that Defendants violated Plaintiff's Eighth
2 Amendment rights. Accordingly, Plaintiff's motion shall be denied.

3 **III. CONCLUSION**

4 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motion for the
5 Court to appoint an expert witness, filed on March 19, 2016, is DENIED.

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7 IT IS SO ORDERED.

8 Dated: July 6, 2016

9 /s/ Eric P. Groj
10 UNITED STATES MAGISTRATE JUDGE