



1 Without a reasonable method of securing and compensating counsel, the Court will seek  
2 volunteer counsel only in the most serious and exceptional cases. In determining whether  
3 “exceptional circumstances exist, the district court must evaluate both the likelihood of success of  
4 the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the  
5 complexity of the legal issues involved.” *Id.* (internal quotation marks and citations omitted).

6 The court does not find the required exceptional circumstances in this case. Even  
7 assuming Plaintiff is not well versed in the law and that he has made serious allegations which, if  
8 proved, would entitle him to relief, his case is not exceptional. This Court is faced with similar  
9 cases almost daily. Further, at this stage in the proceedings, the Court cannot make a  
10 determination that Plaintiff is likely to succeed on the merits, and based on a review of the record  
11 in this case, the Court does not find that Plaintiff cannot adequately articulate his claims. *Id.*

### 12 **III. Plaintiff’s Motion for Appointment of Expert Witness**

13 Federal Rule of Evidence 706 (“Rule 706”) provides for court appointment of an expert  
14 witness upon a party’s motion or on its own volition. “If scientific, technical, or other specialized  
15 knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a  
16 witness qualified as an expert by knowledge, skill, experience, training, or education, may testify  
17 thereto in the form of an opinion or otherwise . . .” Fed. R. Evid. 702. The Court has the  
18 discretion to appoint an expert and to apportion costs, including the apportionment of costs to one  
19 side. Fed. R. Evid. 706; *Ford ex rel. Ford v. Long Beach Unified School Dist.*, 291 F.3d 1086,  
20 1090 (9th Cir. 2002); *Walker v. American Home Shield Long Term Disability Plan*, 180 F.3d  
21 1065, 1071 (9th Cir. 1999). However, where the costs would likely be apportioned to the  
22 government, the Court should exercise caution.

23 Plaintiff’s *pro se, in forma pauperis* status alone is not grounds for the appointment of an  
24 expert witness to assist Plaintiff with his case and Rule 706 is not meant to provide an avenue to  
25 avoid the *in forma pauperis* statute and its prohibition against using public funds to pay for the  
26 expenses of witnesses. *Manriquez v. Huchins*, No. 1:09-cv-00456-LJO-BAM PC, 2012 WL  
27 5880431, at \*12 (E.D. Cal. Nov. 21, 2012). Nor does Rule 706 contemplate court appointment  
28 and compensation of an expert witness as an advocate for Plaintiff. *Faletogo v. Moya*, No.

1 12cv631 GPC (WMc), 2013 WL 524037, at \*2 (S.D. Cal. Feb. 23, 2013) (quotation marks  
2 omitted).

3 The appointment of an expert witness under Rule 706 is intended to benefit the trier of  
4 fact, not a particular litigant. *Faletogo*, 2013 WL 524037, at \*2; *Bontemps v. Lee*, No. 2:12-cv-  
5 0771 KJN P, 2013 WL 417790, at \*3-4 (E.D. Cal. Jan. 31, 2013); *Honeycutt*, 2011 WL 6301429,  
6 at \*1; *Wilds*, 2011 WL 737616, at \*4; *Gamez v. Gonzalez*, No. 08cv1113 MJL (PCL), 2010 WL  
7 2228427, at \*1 (E.D. Cal. Jun. 3, 2010). The medical issue in this case is not of such complexity  
8 so as to require the assistance of a neutral expert at this time. *Ford*, 291 F.3d at 1090; *Walker*,  
9 180 F.3d at 1071.

10 **IV. Order**

11 Accordingly, it is HEREBY ORDERED that Plaintiff's motion for the appointment of  
12 counsel and expert witness, filed on March 1, 2018, (Doc. 94), is DENIED, without prejudice.

13 IT IS SO ORDERED.

14 Dated: March 6, 2018

15 /s/ Sheila K. Oberto  
16 UNITED STATES MAGISTRATE JUDGE