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7 **UNITED STATES DISTRICT COURT**  
8 **EASTERN DISTRICT OF CALIFORNIA**  
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10 PHILLIP SANDERS,

11 Plaintiff,

12 v.

13 MATTHEW *et al.*,

14 Defendant.  
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1:15-cv-00395-LJO-EPG

**ORDER DENYING MOTION FOR  
COURT APPOINTED EXPERT  
WITNESS WRITTEN DEPOSITON**

(ECF No. 48)

17 **I. BACKGROUND**

18 Phillips Sanders (“Plaintiff”), appearing *pro se* and *in forma pauperis*, filed a Complaint  
19 on March 12, 2015, alleging civil rights violations pursuant to 42 U.S.C. § 1983 against  
20 numerous defendants. (ECF No. 1.) The Court dismissed the Complaint with leave to amend on  
21 January 22, 2016. (ECF No. 8.) On February 22, 2016, Plaintiff filed a Motion for  
22 Reconsideration and a Notice of Appeal to the United States Court of Appeals for the Ninth  
23 Circuit (“Ninth Circuit”). (ECF Nos. 11, 12.) On March 4, 2016, while the appeal and motion  
24 for reconsideration were pending, Plaintiff filed a First Amended Complaint (“FAC”). (ECF  
25 No. 17.) On March 9, 2016, Plaintiff’s motion for reconsideration was denied. (ECF No. 18.)  
26 The Ninth Circuit dismissed Plaintiff’s appeal on April 7, 2016, and issued a mandate on May  
27 2, 2016. (ECF Nos. 19, 20). On June 23, 2016, the Court dismissed the FAC with leave to  
28 amend. (ECF No. 21.)

1 On August 1, 2016, Plaintiff filed a Second Amended Complaint (“SAC”). (ECF No.  
2 23.) The SAC contains eleven claims against fourteen defendants, and allegations stemming  
3 from an incident on or about July 17, 2013, when Plaintiff was arrested for assault with a  
4 deadly weapon and a domestic violence offense. *Id.* at 3. Plaintiff alleges that the officers,  
5 Matthew and Sturgeon, lacked probable cause to make the arrest because the officers knew at  
6 the time of the arrest that the domestic violence accuser had fabricated her accusations. *Id.* at  
7 15. Plaintiff also alleges that the arresting officers used excessive force during the arrest by  
8 applying handcuffs too tightly causing pain from low blood circulation, arm twisting, and  
9 rough housing. *Id.* On December 12, 2016, the Court adopted findings and recommendations  
10 recommending that the action proceed against Matthew and Sturgeon on Plaintiff’s unlawful  
11 arrest and excessive force claims, and dismissed all other claims and defendants. (ECF No. 25.)

12 Now before the Court is Plaintiff’s Motion Requesting Court Appointed Expert Witness  
13 Written Deposition. (ECF No. 48.)

## 14 **II. DISCUSSION**

15 Plaintiff argues that the police reports, phone event reports, and 911 CD concerning his  
16 arrest were fabricated. (ECF No. 48.) Plaintiff states it became obvious after closer review that  
17 the 911 phone event reports gave contradicting times, suggesting they were fabricated. *Id.*  
18 Plaintiff also lists in details various purported contradictions he has identified. Plaintiff requests  
19 the appointment of an expert witness to identify any fabrication. *Id.*

20 Pursuant to Fed. R. Evid. 702, “a witness who is qualified as an expert by knowledge,  
21 skill, experience, training or education may testify in the form of an opinion or otherwise if: (a)  
22 the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to  
23 understand the evidence or to determine a fact in issue . . . .” The Court has discretion to  
24 appoint a neutral expert pursuant to Rule 706(a) of the Federal Rules of Evidence. *See Students*  
25 *of California Sch. for the Blind v. Honig*, 736 F.2d 538, 549 (9th Cir. 1984), *vacated on other*  
26 *grounds*, 471 U.S. 148 (1985). In relevant part, Rule 706 states that “[o]n a party’s motion or  
27 on its own, the court may order the parties to show cause why expert witnesses should not be  
28 appointed . . . .” Fed. R. Evid. 706(a); *see also Walker v. American Home Shield Long Term*

1 *Disability Plan*, 180 F.3d 1065, 1071 (9th Cir. 1999). Where a party has filed a motion for  
2 appointment of a neutral expert witness pursuant to Rule 706, the court must provide a  
3 reasoned explanation of its ruling on the motion. *See Gorton v. Todd*, 793 F.Supp.2d. 1171,  
4 1178-79 (E.D. Cal. 2011). “[E]xpert witnesses should not be appointed under Rule 706 where  
5 not necessary or significantly useful for the trier of fact to comprehend a material issue in a  
6 case. . . . [T]here also must be some evidence, admissible or otherwise, that demonstrates a  
7 serious dispute that could be resolved or understood through expert testimony.” *Id.* at 1181.  
8 The determination to appoint a neutral expert rests solely in the court’s discretion. *See*  
9 *McKinney v. Anderson*, 924 F.2d 1500, 1511 (9th Cir.1991), *vacated on other grounds sub.*  
10 *nom. Helling v. McKinney*, 502 U.S. 903 (1991); *see also Sanders v. York*, 446 F. App’x 40, 43  
11 (9th Cir. 2011).

12 At this time, there are no pending matters on which the Court may require special  
13 assistance from a neutral expert witness, such as to understand a dispute on a motion for  
14 summary judgment. Furthermore, an expert witness is not necessary to assist the Court in  
15 understanding the evidence or determining a fact in issue in this action. Fed. R. Evid. 702.  
16 Plaintiff’s allegations are no more complex than those found in a majority of excessive force or  
17 unlawful arrest cases pending before this Court. Moreover, Plaintiff has amply identified what  
18 he believes are obvious fabrications and contradictions in the records pertaining to his arrest.  
19 The Court, when appropriate, is well situated to determine whether Plaintiff’s arrest was  
20 unlawful in light of Plaintiff’s arguments. Accordingly, Plaintiff’s motion for the appointment  
21 of an expert witness is denied.

22 **III. CONCLUSION**

23 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff’s motion requesting  
24 Court Appointed Expert Witness Written Deposition, (ECF No. 48), is DENIED.  
25 IT IS SO ORDERED.

26 Dated: October 20, 2017

27 /s/ Eric P. Groj  
28 UNITED STATES MAGISTRATE JUDGE

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