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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ISAAC DA'BOUR DAWSON,
Plaintiff,
vs.
CDCR, et al.,
Defendants.

1:15-cv-01867-DAD-GSA-PC

ORDER DENYING REQUESTS FOR
ATTORNEY'S FEES, APPOINTMENT
OF COUNSEL, AND APPOINTMENT
OF EXPERT WITNESS
(ECF No. 51.)

ORDER REQUIRING PLAINTIFF TO
FILE OPPOSITION OR STATEMENT
OF NON-OPPOSITION TO
DEFENDANTS' MOTION TO
DISMISS
(ECF No. 27.)

FOURTEEN-DAY DEADLINE

I. BACKGROUND

On August 18, 2017, the court entered findings and recommendations, recommending that this case be dismissed for Plaintiff's failure to comply with the court's orders requiring him to file an opposition to Defendants' motion to dismiss. (ECF No. 50.) On August 28, 2017, Plaintiff filed objections to the findings and recommendations, asserting that he filed an

1 opposition to the motion to dismiss after the court issued its order on July 24, 2017.¹ (ECF No.
2 51.) Plaintiff also requested attorney fees, appointment of counsel, and appointment of an
3 expert witness. (Id.)

4 **II. REQUESTS FOR COUNSEL, EXPERT WITNESS, AND ATTORNEY FEES**

5 **A. Request for Appointment of Counsel**

6 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.
7 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require an attorney to
8 represent Plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court
9 for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional
10 circumstances the court may request the voluntary assistance of counsel pursuant to section
11 1915(e)(1). Rand, 113 F.3d at 1525.

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

17 In the present case, the court does not find the required exceptional circumstances. At
18 this stage of the proceedings, the court cannot make a determination that Plaintiff is likely to
19 succeed on the merits. Defendants have filed a motion to dismiss this case, which is pending
20 and may result in the dismissal of the case. Moreover, based on the court’s record, Plaintiff is
21 able to adequately articulate his claims and respond to the court’s orders. Plaintiff’s claims,
22 arising from allegations of an improper strip search and retaliation, do not appear complex.
23 Therefore, Plaintiff’s request for appointment of counsel shall be denied. Plaintiff is advised
24 that he is not precluded from renewing the motion for appointment of counsel at a later stage of
25 the proceedings.

26
27 ¹ On July 24, 2017, the court issued an order striking Plaintiff’s opposition filed on July 20,
28 2017, for lack of signature, and required Plaintiff to submit a new opposition bearing his signature within fourteen
days. (ECF No. 40.)

1 **B. Request for Appointment of Expert Witness**

2 The court has the discretion to appoint an expert pursuant to Rule 706(a) of the Federal
3 Rules of Evidence. In relevant part, Rule 706 states that “[o]n a party’s motion or on its own,
4 the court may order the parties to show cause why expert witnesses should not be appointed . .
5 .” Fed. R. Evid. 706(a); Walker v. American Home Shield Long Term Disability Plan, 180
6 F.3d 1065, 1071 (9th Cir. 1999). Pursuant to Rule 702, “a witness who is qualified as an expert
7 by knowledge, skill, experience, training or education may testify in the form of an opinion or
8 otherwise if: (a) the expert’s scientific, technical, or other specialized knowledge will help the
9 trier of fact to understand the evidence or to determine a fact in issue . . .” Fed. R. Evid. 702.
10 While the court has the discretion to appoint an expert and to apportion costs, including the
11 appointment of costs to one side, Fed. R. Evid. 706; Ford ex rel. Ford v. Long Beach Unified
12 School Dist., 291 F.3d 1086, 1090 (9th Cir. 2002); Walker, 180 F.3d at 1071, where the cost
13 would likely be apportioned to the government, the court should exercise caution. Moreover,
14 Rule 706 is not a means to avoid the in forma pauperis statute and its prohibition against using
15 public funds to pay for the expenses of witnesses, Manriquez v. Huchins, 2012 WL 5880431,
16 *12 (E.D.Cal. 2012), nor does Rule 706 contemplate court appointment and compensation of
17 an expert witness as an advocate for Plaintiff, Faletogo v. Moya, 2013 WL 524037, *2
18 (S.D.Cal. 2013).

19 Here, Plaintiff requests the court to appoint an expert witness to represent Plaintiff.
20 While the court is cognizant of the challenges an IFP litigant such as Plaintiff faces in retaining
21 an expert witness, the IFP statute does not grant the court the authority to appoint expert
22 witnesses on behalf of a party. 28 U.S.C. § 1915; See also Pedraza v. Jones, 71 F.3d 194, 196
23 (5th Cir. 1995). Moreover, Rule 706 is not meant for the appointment of an expert witness as
24 an advocate for Plaintiff.

25 Plaintiff has not explained why he believes an expert witness is needed in this case.
26 The court considers whether an expert witness would assist the court in understanding the
27 evidence or to determining a fact in issue. Fed. R. Evid. 702. Here, Plaintiff’s allegations are
28 no more complex than those found in a majority of cases alleging an improper strip search or

1 retaliation pending before this court. The court does not require an expert witness to determine
2 whether Defendants improperly strip-searched Plaintiff or retaliated against him. Therefore,
3 Plaintiff's request for the appointment of an expert witness shall be denied.

4 **C. Request for Attorney's Fees**

5 Plaintiff also requests attorney's fees. Plaintiff is not entitled to attorney's fees, because
6 he is representing himself in this action. Because Plaintiff is not represented by an attorney, he
7 is not entitled to recover attorney's fees, even if he prevails in this action. See Friedman v.
8 Arizona, 912 F.2d 328, 333 n.2 (9th Cir. 1990), superseded by statute as state in Warsoldier v.
9 Woodford, 418 F.3d 989 (9th Cir. 2005); Gonzalez v. Kangas, 814 F.2d 1411, 1412 (9th Cir.
10 1987); see also Rickley v. Cnty. of Los Angeles 654 F.3d 950, 954 (9th Cir. 2011) ("The Court
11 accordingly adopted a per se rule, categorically precluding an award of attorney's fees under §
12 1988 to a pro se attorney-plaintiff.") Therefore, Plaintiff's request for attorney fees shall be
13 denied.

14 **III. PLAINTIFF'S OPPOSITION**

15 Plaintiff asserts that he filed an opposition to Defendants' motion to dismiss after the
16 court issued its order on July 24, 2017. However, the court has no record of an opposition filed
17 by Plaintiff following the July 24, 2017, order. (Court Docket.) Plaintiff shall be granted
18 fourteen days in which to file a new opposition, or statement of non-opposition, bearing his
19 signature.

20 The August 18, 2017, findings and recommendations shall not be vacated. If Plaintiff
21 fails to file a new opposition within fourteen days, this case shall be referred to the district
22 judge for further proceedings.

23 **IV. CONCLUSION**

24 Based on the foregoing, IT IS HEREBY ORDERED that:

- 25 1. Plaintiff's request for the appointment of counsel is DENIED, without prejudice;
- 26 2. Plaintiff's request for the appointment of an expert witness is DENIED;
- 27 3. Plaintiff's request for attorney's fees is DENIED;

