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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN FRATUS,
Plaintiff,
v.
MAZYCK, et al.,
Defendants.

No. 2:16-cv-0076-KJM-EFB P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in an action brought under 42 U.S.C. § 1983. He requests appointment of counsel and a medical expert. As explained below, the requests are denied without prejudice.

District courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney to voluntarily to represent such a plaintiff. *See* 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether “exceptional circumstances” exist, the court must consider the likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). Having considered those factors, the court finds there are no exceptional circumstances in this case.

1 Plaintiff also requests a medical expert for the purpose of assisting the trier of fact in
2 understanding the evidence in this case. Federal Rule of Evidence 706 authorizes the court to
3 appoint a neutral expert witness and apportion the fee among the parties. Where, as here, one
4 party is indigent, the court has discretion to apportion the entire fee to the other side. *McKinney*
5 *v. Anderson*, 924 F.2d 1500, 1511 (9th Cir. 1991), *vacated and remanded on other grounds by*
6 *Helling v. McKinney*, 502 U.S. 903 (1991). At this early stage in the proceedings, however, there
7 is no evidence before the court requiring interpretation. Accordingly, plaintiff's request is denied
8 without prejudice as premature.

9 Accordingly, IT IS HEREBY ORDERED that plaintiff's requests for the appointment of
10 counsel and a medical expert (ECF Nos. 40 & 41) are denied without prejudice.

11 DATED: July 27, 2017.

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13 EDMUND F. BRENNAN
14 UNITED STATES MAGISTRATE JUDGE
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