1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 MILORAD OLIC, No. 2:16-cv-0720 JAM AC P 12 Plaintiff. 13 v. **ORDER** 14 JEFFREY BEARD, et al., 15 Defendants. 16 17 Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 18 U.S.C. § 1983 and has requested appointment of an expert witness. ECF No. 37. 19 Federal Rule of Evidence 706 authorizes the appointment of a neutral expert witness, with 20 expenses shared by the parties. The appointment of an independent expert witness pursuant to 21 Rule 706 is within the court's discretion, Walker v. Am. Home Shield Long Term Disability Plan, 22 180 F.3d 1065, 1071 (9th Cir. 1999), and may be appropriate when "scientific, technical, or other 23 specialized knowledge will assist the trier-of-fact to understand the evidence or decide a fact in 24 issue," Ledford v. Sullivan, 105 F.3d 354, 358-59 (7th Cir. 1997). However, the statute 25 authorizing plaintiff's in forma pauperis status does not authorize the expenditure of public funds 26 for expert witnesses. See 28 U.S.C. § 1915; Tedder v. Odel, 890 F.2d 210, 211-12 (9th Cir. 27 1989) (per curiam) (expenditure of public funds on behalf of indigent litigant is proper only when authorized by Congress); Boring v. Kozakiewicz, 833 F.2d 468, 474 (3d Cir. 1987) (no provision 28 1

to pay fees for expert witnesses). The federal courts have uniformly held that an indigent prisoner litigant must bear his own costs of litigation, including witnesses. <u>Tedder</u>, 890 F.2d at 211 (in forma pauperis statute, 28 U.S.C. § 1915, does not authorize waiver of fees or expenses for an indigent's witnesses).

In this case, it appears that plaintiff is seeking to have the court appoint an expert witness to advocate on his behalf, which is not authorized by Rule 706. Even if plaintiff is truly seeking a neutral expert, the court does not find that the issues in this case are complicated such that the testimony of a neutral expert would be warranted, and the request is therefore denied. To the extent the expenses of an expert retained on behalf of a prisoner litigant may be recovered if preauthorized and arranged by counsel appointed by this court's Pro Bono Panel, plaintiff has not demonstrated extraordinary circumstances to warrant appointment of counsel. The court will therefore decline to appoint counsel for the purpose of obtaining an expert witness.

Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for appointment of an expert witness (ECF No. 37) is denied.

DATED: May 22, 2019

ALLISON CLAIRE

UNITED STATES MAGISTRATE JUDGE