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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CONDALEE MORRIS,
Plaintiff,
v.
D. SANDOVAL, et al.,
Defendants.

Case No. [12-cv-06132-JD](#)

ORDER DENYING MOTIONS

Re: Dkt. Nos. 262, 264

Plaintiff, a state prisoner, proceeds with a pro se civil rights complaint under 42 U.S.C. § 1983 and trial is scheduled for May 22, 2017. Plaintiff has filed a motion requesting funds to appoint an expert witness and for the appointment of co-counsel. Plaintiff’s request for funds is denied for the same reasons set forth in the Court’s prior order (Docket No. 261).

The Ninth Circuit has held that a district court may ask counsel to represent an indigent litigant only in “exceptional circumstances,” the determination of which requires an evaluation of both (1) the likelihood of success on the merits, and (2) the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). The Court has already appointed counsel for plaintiff on two separate occasions. Plaintiff did not want the counsel that was appointed the first time (Docket Nos. 152-155) and plaintiff demanded that the second counsel also withdraw so he could represent himself pro se (Docket No. 211). The Court has limited resources in requesting attorneys to represent pro se plaintiffs and plaintiff has failed to demonstrate exception circumstances to warrant the third appointment of counsel.

To the extent plaintiff seeks the Court to appoint an expert witness pursuant to Federal Rule of Evidence 706, the request is denied. In a civil rights action such as this, Rule 706(b)

1 contemplates that the expert would be paid by the parties, but here the defendants would have to
2 bear the entire cost because plaintiff is proceeding in forma pauperis. There is no showing that it
3 is appropriate or fair to require the defendants to bear the sole burden of paying an expert witness
4 to present plaintiff's point of view.

5 **CONCLUSION**

- 6 1. Plaintiff's motion for funds and to appoint counsel (Docket No. 262) is **DENIED**.
7 2. Plaintiff's motion for reconsideration (Docket No. 264) is **DENIED** for the reasons
8 set forth in the Court's prior order (Docket No. 253).

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10 **IT IS SO ORDERED.**

11 Dated: April 25, 2017

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15 JAMES DONATO
16 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

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4 CONDALEE MORRIS,
5 Plaintiff,
6 v.
7 D. SANDOVAL, et al.,
8 Defendants.

Case No. [12-cv-06132-JD](#)

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11
12 That on April 25, 2017, I SERVED a true and correct copy(ies) of the attached, by placing
13 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
15 receptacle located in the Clerk's office.

16
17 Condalee Morris ID: #:V96203
18 Calif. State Prison, Sacramento
19 P.O. Box 290066
20 Represa, CA 95671

21 Dated: April 25, 2017

22
23 Susan Y. Soong
24 Clerk, United States District Court

25
26 By: 
27 LISA R. CLARK, Deputy Clerk to the
28 Honorable JAMES DONATO