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CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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7 **UNITED STATES DISTRICT COURT**  
8 **SOUTHERN DISTRICT OF CALIFORNIA**  
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10 ROBERT SCOFIELD,

11 Plaintiff,

12 vs.

13 BALL, et al.,

14 Defendants.

CASE NO. 11cv378-BEN  
(WMc)

**ORDER DENYING  
PLAINTIFF'S MOTION FOR  
COURT APPOINTED  
MEDICAL EXPERT**

**(ECF No. 101)**

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17 Plaintiff, Robert Scofield, proceeds *pro se* in this civil rights action under 42  
18 U.S.C. § 1983.<sup>1</sup> Plaintiff's claims concern the conditions of his confinement at R.J.  
19 Donovan Correctional Facility ("RJD"), Centinela State Prison ("CEN"), New  
20 Folsom State Prison ("NFSP"), High Desert State Prison ("HDSP"), Salinas Valley  
21 State Prison ("SVSP"), and Calipatria State Prison ("CSP"). Plaintiff alleges  
22 members of the medical staff at the various institutions listed above, as well as  
23 California Department of Corrections and Rehabilitation ("CDCR") inmate appeals  
24 employees, violated his Eighth Amendment rights because they failed to inform him  
25 he tested positive for Hepatitis C and failed to treat him for Hepatitis C.

26 Presently before the Court is Plaintiff's request for the Court to appoint him a  
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28 <sup>1</sup> The Court permitted Plaintiff to proceed *in forma pauperis* ("IFP") under Federal Rule of Civil Procedure 4(c)(3) for purposes of service only. (ECF No. 28).

1 medical expert. (ECF No. 101).

2 The Court has the discretion to appoint an expert pursuant to Rule 706(a) of  
3 the Federal Rules of Evidence. In relevant part, Rule 706 states “[o]n a party’s  
4 motion or on its own, the court may order the parties to show cause why expert  
5 witnesses should not be appointed . . .” Fed. R. Evid. 706(a); *Walker v. American*  
6 *Home Shield Long Term Disability Plan*, 180 F.3d 1065, 1071 (9th Cir. 1999).  
7 Under Rule 702, “a witness who is qualified as an expert by knowledge, skill,  
8 experience, training or education may testify in the form of an opinion or otherwise  
9 if: (a) the expert’s scientific technical, or other specialized knowledge will help the  
10 trier of fact to understand the evidence or to determine a fact in issue . . .” Fed. R.  
11 Evid. 702.

12 Plaintiff requests the appointment and funding of a medical expert because he  
13 is indigent and he allegedly needs the expert to provide testimony and opinions to  
14 help him refute Defendants’ experts. (ECF No. 101). However, Rule 706 is not a  
15 means to avoid the *in forma pauperis* statute and its prohibition against using public  
16 funds to pay for the expenses of witnesses. *Manriquez v. Huchins*, No.  
17 1:09-cv-00456-LJO-BAM PC, 2012 WL 5880431, \* 12 (E.D. Cal. November 21,  
18 2012). Also, Rule 706 does not contemplate court appointment and compensation of  
19 an expert witness as an advocate for Plaintiff. *Brooks v. Tate*, No. 1:11-cv-01503  
20 AWI-DLB PC, 2013 WL 4049043, \*1 (E.D. Cal. Aug. 7, 2013) (denying  
21 appointment of medical expert on behalf of state prisoner in section 1983 action);  
22 *Gorrell v. Sneath*, 2013 WL 3357646, \* 1 (E.D.Cal. Jul. 3, 2013) (purpose of  
23 court-appointed expert is to assist the trier of fact, not to serve as an advocate for a  
24 particular party).

25 In addition, the Court cannot conclude at this stage of the litigation that a  
26 neutral expert will be important to the finder of fact because of the medical issues  
27 involved. Indeed, Plaintiff’s allegations in this case not so complicated as to require  
28 the appointment of an expert witness to assist the Court and/or a jury. *Brooks*, 2013

1 WL 4049043 at \*1. The crux of Plaintiff's constitutional claim is that the  
2 Defendants failed to inform him he tested positive for Hepatitis C and failed to treat  
3 him for Hepatitis C. Plaintiff claims Defendants failed to act with deliberately  
4 indifference to Plaintiff's serious medical needs. A trier of fact does not require a  
5 medical expert to make such a determination.

6 Accordingly, Plaintiff's motion is **DENIED** without prejudice.

7 **IT IS SO ORDERED.**

8 DATED: November 21, 2013

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11 Hon. William McCurine, Jr.  
12 U.S. Magistrate Judge  
13 United States District Court  
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