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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 MOTION FOR
SUMMARY JUDGMENT**

Re: Dkt. Nos. 169, 172

Plaintiff, a state prisoner, proceeds with a pro se civil rights complaint under 42 U.S.C. § 1983. On June 11, 2014, the previous judge assigned to this case granted in part and denied in part defendants’ motion for summary judgment. Docket No. 88. The case proceeds on an Eighth Amendment excessive force claim against defendant Blair, an Eighth Amendment deliberate indifference claim against defendants Espinosa and Sandoval, and an Eighth Amendment medical claim against defendant Nunley. The case was referred to mediation, but the case did not settle. Counsel was appointed for plaintiff and the case was scheduled for trial. Later the order appointing counsel was vacated and the case continued with plaintiff proceeding pro se and preparing for trial. On June 18, 2015, plaintiff filed a motion for summary judgment, to refer the case to settlement, and to appoint counsel. On July 15, 2015, the previous judge issued a recusal order and the case was reassigned to the undersigned.

The Court’s June 11, 2014, order regarding summary judgment found disputed facts as to the remaining defendants and claims. Plaintiff presents the same facts in his motion for summary judgment that the Court considered in the prior motion. Defendants filed an opposition presenting the same facts and argue that summary judgment should be denied because there remain material issues of fact in dispute. For the same reasons set forth in the prior order concerning summary

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judgment, plaintiff's motion is denied because there remain material issues of fact in dispute.

Plaintiff has also filed a motion requesting a referral to mediation and appointment of counsel. Docket No. 172. Yet, the body of the motion does not discuss the appointment of counsel. Counsel was previously appointed but the order was vacated at plaintiff's request. The Court can refer this case for the possibility of the appointment of counsel, but plaintiff must indicate that he indeed wants counsel appointed for trial. The Court has limited resources to appoint counsel and can only make an appointment if the plaintiff desires counsel and will cooperate.


For the foregoing reasons, the Court hereby orders as follows:

1. Plaintiff's motion for summary judgment (Docket No. 169) is **DENIED**.

2. Plaintiff's motion for mediation and appointment of counsel (Docket No. 172) is **DENIED** without prejudice. Within **fourteen (14) days** of service of this order plaintiff must file an order indicating if he seeks the appointment of counsel. The Court will decide on the referral to mediation after the counsel issue has been determined.

IT IS SO ORDERED.

Dated: October 22, 2015



JAMES DONATO
United States District Judge

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 CONDALEE MORRIS,

5 Plaintiff,

6 v.

7 D. SANDOVAL, et al.,

8 Defendants.

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

CERTIFICATE OF SERVICE

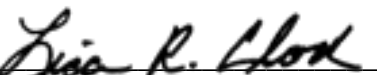
9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11
12 That on October 22, 2015, I SERVED a true and correct copy(ies) of the attached, by
13 placing 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: October 22, 2015

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