

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 OMAR REYNOSO,

No. C 11-4525 CW (PR)

4 Plaintiff,

ORDER DENYING CONTINUANCE;  
GRANTING LIMITED EXTENSION OF  
TIME TO OPPOSE MOTION FOR  
SUMMARY JUDGMENT; GRANTING

5 v.

6 CHIEF MEDICAL OFFICER DR. MICHAEL  
SAYRE, et al.,

FILING OF AMENDMENT TO  
COMPLAINT; DENYING MOTION FOR  
APPOINTMENT OF COUNSEL; DENYING  
RULE 35 MOTION FOR COURT-ORDERED  
MEDICAL EXAMINATION

7 Defendants.  
8

9 \_\_\_\_\_/ (Docket nos. 13, 16, 27, 29, 30)

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11 Pending before the Court are several motions filed by  
12 Plaintiff in this pro se prisoner civil rights action alleging  
13 deliberate indifference to his serious medical needs.

14 A. Motions for Continuance and Extension of Time

15 On December 7, 2012, Defendants filed a motion for summary  
16 judgment. Subsequently, Plaintiff filed a motion to compel  
17 discovery, which Defendants have opposed. Plaintiff's opposition  
18 to the motion for summary judgment is due February 7, 2013; his  
19 reply to the opposition to the motion to compel is due January 17,  
20 2013.

21 Plaintiff moves for a continuance to file his opposition to  
22 the motion for summary judgment until resolution of the motion to  
23 compel and receipt of additional discovery; Defendants have  
24 opposed the motion. The Court having reviewed the parties'  
25 arguments, Plaintiff's motion to continue the date for filing his  
26 opposition to Defendants' motion for summary judgment is DENIED,  
27 as he has not identified any discovery that is essential to  
28 justify his opposition to the motion for summary judgment. See  
Fed. R. Civ. P. 56(d). If the motion to compel is granted in his

1 favor, he may move to file a supplemental opposition to the motion  
2 for summary judgment.

3 Plaintiff's request for a limited extension of time to file  
4 his opposition is GRANTED. He shall file his opposition to the  
5 motion for summary judgment by no later than March 1, 2013.  
6 Defendants shall file a reply no later than fourteen days from the  
7 date the opposition is filed.

8 B. Motion to Amend Complaint

9 After Defendants answered the complaint, Plaintiff filed a  
10 motion to amend the complaint to correct the spelling of the name  
11 of Defendant Dr. Adams to Dr. Adam, and of potential witness Dr.  
12 Eccugby to Dr. Ikegbu. Leave to amend the complaint is GRANTED;  
13 the complaint is deemed amended with the information detailed in  
14 the motion.

15 C. Motion for Appointment of counsel

16 Plaintiff seeks the appointment of counsel to represent him  
17 in this action. There is no constitutional right to counsel in a  
18 civil case unless an indigent litigant may lose his physical  
19 liberty if he loses the litigation. Rand v. Rowland, 113 F.3d  
20 1520, 1525 (9th Cir. 1997). The court may ask counsel to  
21 represent an indigent litigant under 28 U.S.C. § 1915 only in  
22 "exceptional circumstances," the determination of which requires  
23 an evaluation of both (1) the likelihood of success on the merits,  
24 and (2) the ability of the plaintiff to articulate his claims pro  
25 se in light of the complexity of the legal issues involved. See  
26 id. at 1525. Both of these factors must be viewed together before  
27 reaching a decision on a request for counsel under § 1915. See  
28 id. Here, it is too early in the proceedings for the Court to

1 determine Plaintiff's likelihood of success on the merits and he  
2 has been able to articulate his claims adequately in light of the  
3 complexity of the legal issues involved. Accordingly, the motion  
4 for the appointment of counsel is DENIED without prejudice.

5 D. Motion for Court-Ordered Medical Examination

6 Plaintiff has filed a motion for a Court-ordered medical  
7 examination by a non-prison doctor. Federal Rule of Civil  
8 Procedure 35 provides, in relevant part:

9 The Court where the action is pending may order a party  
10 whose mental or physical condition - including blood  
11 group - is in controversy to submit to a physical or  
12 mental examination by a suitably licensed or certified  
13 examiner.

14 Fed. R. Civ. P. 35(a)(1).

15 Plaintiff argues he needs to have an examination by a non-  
16 prison doctor because of Defendants' inaccurate medical diagnoses  
17 and the alleged "hostile environment" that has been created by the  
18 filing of this lawsuit. Although a district court, pursuant to  
19 Rule 35, may, under appropriate circumstances, order a party to  
20 submit to a physical examination at the request of an opposing  
21 party, Rule 35 "does not vest the Court with authority to appoint  
22 an expert to examine a party wishing an examination of himself."  
23 Smith v. Carroll, 602 F. Supp. 2d 521, 526 (D. Del. 2009); see,  
24 e.g., Baker v. Hatch, 2010 WL 3212859, \*3 (E.D. Cal. 2010)  
25 (finding no authority under Rule 35(a) to grant pro se prisoner  
26 plaintiff's request for medical examination). Accordingly,  
27 Plaintiff's request for a Court-ordered examination by a non-  
28 prison doctor pursuant to Rule 35 is DENIED. Plaintiff is not  
precluded, however, from retaining his own expert medical witness  
to examine him and render a medical opinion.

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This Order terminates Docket nos. 13, 16, 27, 29 and 30.

IT IS SO ORDERED.

Dated: 1/8/2013

  
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CLAUDIA WILKEN  
United States District Judge