IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAIME IGNASCIO ESTRADA,

Plaintiff,

v.

C. MALO CLINES,

Defendant,

No. C 10-4832 LHK (PR)

ORDER DENYING MOTION FOR STAY OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; DENYING PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL

(Docket Nos. 46, 47)

Plaintiff, a state prisoner proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against prison officials. On February 16, 2012, Defendant filed a motion for summary judgment. (Doc. No. 48.) Plaintiff filed a motion to stay Defendant's motion for summary judgment, as well as a motion for appointment of counsel.

Plaintiff's motion for appointment of counsel is DENIED for want of exceptional circumstances. Plaintiff asks for counsel so that counsel can find a medical expert to support his case. Pursuant to Rule 702 of the Federal Rules of Evidence, "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Fed. R. Evid. 702. Under Rule 706, the Court may on its own motion, or on the motion of a party appoint an expert witness. Fed. R. Evid. 706(a). At this point in the proceedings, the Court finds it is premature to decide whether appointment of a medical expert is warranted. Specifically, until the Court has had the opportunity to review the arguments and evidence submitted by the parties on summary judgment, no determination can be made that the issues are so complex as to require the testimony of an expert to

assist the trier of fact.

Plaintiff's request for a stay is DENIED. Plaintiff wished to stay the proceedings pending the Court's ruling on his motion for appointment of counsel. Because the Court has now ruled on his motion for appointment of counsel, Plaintiff's request for a stay is denied as moot.

This order terminates docket nos. 46 and 47.

IT IS SO ORDERED.

DATED: 4/5/12

Lucy H. Koh

LUCY H. KOH
United States District Judge

United States District Court
For the Northern District of California