

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

GILBERTO G. MUNOZ, an  
individual,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting  
Commissioner of the Social Security  
Administration,

Defendant.

CASE NO. 10CV1003-MMA (NLS)

**ORDER DENYING  
PLAINTIFF'S REQUEST FOR  
APPOINTMENT OF COUNSEL**

[Doc. No. 102]

On March 18, 2013, Plaintiff Gilberto Munoz ("Plaintiff") filed a motion seeking the appointment of counsel. [Doc. No. 102.] Plaintiff has requested court-appointed counsel on three previous occasions. [Doc. Nos. 3, 11, 23.] A jury trial to decide the amount of damages, if any, Plaintiff should be awarded for impermissible medical inquiries made by Defendant is scheduled to begin on April 30, 2013. For the following reasons, the Court **DENIES** Plaintiff's motion.

The Constitution provides no right to appointment of counsel in a civil case. *See Lassiter v. Dept. of Social Services*, 452 U.S. 18, 25 (1981). However, a district court may appoint counsel "[u]pon application by the complainant and in such circumstances as the court may deem just . . . ." 42 U.S.C. § 2000e-(5)(f)(1)(B). "Three factors are relevant to a trial court's determination of whether to appoint counsel: (1) the plaintiff's financial resources; (2) the efforts made by the plaintiff to secure counsel on his or her own; and (3) the merit of the plaintiff's claim."

1 *Bradshaw v. Zoological Society of San Diego*, 662 F.2d 1301, 1318 (9th Cir. 1981).

2       Regarding the first factor, Plaintiff has not shown that he lacks the financial  
3 resources to hire an attorney. His motion indicates that he is employed by the  
4 County of San Diego and earns approximately \$1,800 per month. He further states  
5 that he is unable to find an attorney willing to represent him on terms he can afford.  
6 However, Plaintiff fails to detail the financial arrangements offered to him, so the  
7 Court cannot effectively analyze whether he can afford an attorney.

8       Regarding the second factor, Plaintiff has not shown that he made sufficient  
9 efforts to secure counsel. A party seeking appointment of counsel need not “exhaust  
10 the legal directory,” but is required to show that he made a “reasonably diligent  
11 effort under the circumstances to obtain counsel.” *Bradshaw*, 662 F.2d at 1319.  
12 Plaintiff states he has contacted three attorneys, but “due to the short amount of time  
13 [between now and trial], [they] are either unwilling to take the case, set too many  
14 conditions, and ask for too much up front. They also spend too much time just  
15 criticizing how Plaintiff has handled his case.” [Mot. at 4.] It is clear from  
16 Plaintiff’s motion that he cannot obtain representation due in part to his own  
17 tardiness. Trial of this matter is scheduled to begin on April 30, 2013, but Plaintiff  
18 failed to contact potential counsel until March 5, March 7, and March 13,  
19 respectively. Furthermore, Plaintiff was aware that the case would reach trial as  
20 early as November 26, 2012, when the Court granted partial summary judgment in  
21 his favor. He could have sought representation then in order to afford counsel the  
22 maximum amount of preparation time prior to the trial date, yet failed to do so.  
23 Thus, under the circumstances, the Court finds that Plaintiff failed to make a  
24 reasonably diligent effort to obtain counsel.

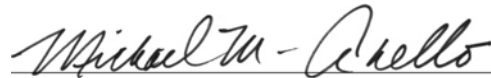
25       Finally, with respect to the third factor, the Court notes that while Plaintiff’s  
26 claims may have merit this does not outweigh the findings on the previous two  
27 factors.

28       In any event, it appears that Plaintiff has a sufficient grasp of his case, the legal

1 issues involved, and is able to adequately articulate the basis of his claims. Plaintiff has  
2 represented himself throughout the duration of the case, and is capable of doing so in  
3 a non-complex, one-issue trial. The Court finds that the circumstances here do not  
4 warrant appointing counsel to represent Plaintiff. Accordingly, the Court **DENIES**  
5 Plaintiff's request for appointment of counsel.

6 **IT IS SO ORDERED.**

7 DATED: March 19, 2013

8 

9 Hon. Michael M. Anello  
10 United States District Judge  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28