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

LOFOFORA EVA CONTRERAZ also
known as Mike Contreras,

Plaintiff,

vs.

KEN SALAZAR, Secretary of the
United States Department of Interior;
M. SHARON BLACKWELL, Deputy
Commissioner of Indian Affairs; Does
1, Acting Deputy Assistant Secretary,
Policy and Economic Development,
and DOES 1-10, inclusive,

Defendants.

CASE NO. 11cv265-GPC(PCL)

**ORDER GRANTING PLAINTIFF’S
MOTION TO STAY
PROCEEDINGS, DENYING
PLAINTIFF’S MOTION FOR
WITHHELD FUNDS AND
DENYING PLAINTIFF’S MOTION
FOR APPOINTMENT OF
COUNSEL**

[Dkt. No. 52.]

Before the Court is Plaintiff Lofofora Eva Contreras (“Plaintiff”)’s Motion to Stay the Proceedings, Motion for Permission to Use Funds for an Attorney, and Plaintiff’s alternate Motion for Appointment of Counsel. (Dkt. No. 52.) Based on the reasoning below, the Motion to Stay the Proceedings is GRANTED; the Motion for Permission to Withdraw Funds is DENIED; and the Motion for Appointment of Counsel is also DENIED.

Background

Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis*. On August 9, 2012 the Court granted in part and denied in part Defendant’s Motion to Dismiss

1 Plaintiff's first amended complaint. (Dkt. No. 40.) The Court granted Plaintiff 30 days
2 leave to file a second amended complaint. (Id.) Plaintiff did not file a second amended
3 complaint within the time allotted. On October 22, 2012, the case was transferred to
4 the undersigned judge. (Dkt. No. 42.) On April 15, 2013, the Court set a hearing to
5 show cause for dismissal for want of prosecution pursuant to Local Civil Rule 41.1.
6 (Dkt. No. 43.) A hearing was held on May 17, 2013 with no appearances or response
7 to the order to show cause. (Dkt. No. 44.) The Court ordered the case dismissed
8 without prejudice for want of prosecution. (Id.) On June 4, 2013, Plaintiff filed a
9 motion to vacate judgment and *ex parte* motion for a stay. (Dkt. No. 47.) Plaintiff
10 showed good cause and the judgement was vacated and *ex parte* motion to stay granted
11 for 90 days. (Dkt. No. 48.) Plaintiff was given until October 1, 2013 to file a second
12 amended complaint. (Id.) Plaintiff did not file a second amended complaint but filed
13 the instant motion, including a Motion to Stay the Proceedings on October 1, 2013.
14 (Dkt. No. 52.)

15 **Motion to Stay Proceedings**

16 Plaintiff filed this Motion to Stay due to difficulty with prison mail reception,
17 multiple prison transfers, time spent in the Dept. of Mental Health – where she is not
18 allowed her legal property– and lack of access to the law library. (Dkt. No. 52.)
19 Plaintiff also claims she has not received a copy of the August 2012 Order, (Dkt. No.
20 40), issued by Judge Gonzalez. Plaintiff claims that without this order she cannot
21 proceed. Good cause appearing, the Court GRANTS Plaintiff's Motion to Stay for 60
22 days and directs the Clerk of the Court to provide Plaintiff a copy of Docket No. 40.

23 **Motion for Permission to Use Funds for Attorney**

24 Plaintiff requests permission to use her funds from Indian gaming revenue to hire
25 an attorney. (Dkt. No. 52.) However, the revenue allocation plan, adopted by
26 Plaintiff's tribe, includes a provision that restricts members from receiving their funds
27 while they are incarcerated for the conviction of crime. (Dkt. No. 40.) Members
28 cannot receive these funds until they cure the conditions of their incarceration. (Id.)

1 Plaintiff has petitioned the Indian Gaming Regulatory Act and the Department of the
2 Interior for these funds, but her requests have been denied due to the incarceration
3 restriction. (Id.) Plaintiff challenges this incarceration restriction in her initial
4 complaint. (Dkt. No. 1.)

5 This motion concerns the merits of Plaintiff’s complaint, specifically her
6 challenge of the revenue allocation plan with its incarceration restriction. Accordingly,
7 this issue will not be decided here and Plaintiff’s motion to use funds for an attorney
8 is DENIED.

9 **Motion to Appoint Counsel**

10 Plaintiff also moves for appointment of counsel. “[T]here is no absolute right to
11 counsel in civil proceedings.” Hedges v. Resolution Trust Corp. (In re Hedges), 32
12 F.3d 1360, 1363 (9th Cir. 1994) (citation omitted). However, “[t]itle 28 U.S.C §
13 1915(e)(1) permits the district court, in its discretion, to ‘request an attorney to
14 represent any person unable to afford counsel.’” Solis v. County of Los Angeles, 514
15 F.3d 946, 958 (9th Cir. 2008) (quoting 28 U.S.C. § 1915(e)(1)); see also Agyeman v.
16 Corr. Corp. of Am., 390 F.3d 1101, 1103 (9th Cir. 2004). Such discretion may be
17 exercised upon a showing of exceptional circumstances. See Terrell v. Brewer, 935
18 F.2d 1015, 1017 (9th Cir. 1991); Burns v. County of King, 883 F.2d 819, 823 (9th Cir.
19 1989). “To show exceptional circumstances the litigant must demonstrate the
20 likelihood of success and complexity of the legal issues involved.” Burns, 883 F.2d at
21 823 (citation omitted); Hedges, 32 F.3d at 1363; Wood v. Housewright, 900 F.2d 1332,
22 1335 (9th Cir. 1990).

23 In this case, the circumstances are not exceptional. Plaintiff has litigated this case
24 for over two years without counsel. She has a sufficient grasp of the case and the legal
25 issues involved. Plaintiff adequately articulates these issues. This case does not rise to
26 the level of complexity required for appointment of counsel. Accordingly the Court
27 DENIES Plaintiff’s Motion for Appointment of Counsel.

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Conclusion

Accordingly, Plaintiff's Motion to Stay is GRANTED for a period of sixty (60) days. Plaintiff's Motion for Permission to Use Funds for an Attorney is DENIED. Plaintiff's alternate Motion for Appointment of Counsel is DENIED. The Court DIRECTS the Clerk of Court to mail Plaintiff a copy of the August 2012 Order Dkt. No. 40.

IT IS SO ORDERED.

DATED: October 30, 2013


HON. GONZALO P. CURIEL
United States District Judge