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**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA**

<b>KRISHNA REDDY,</b>	)	<b>1:12-CV-2061 AWI SAB</b>
	)	
<b>Plaintiff,</b>	)	<b>ORDER DENYING MOTION</b>
<b>v.</b>	)	<b>FOR RECONSIDERATION</b>
	)	
<b>PRECYSE SOLUTIONS LLC, et al.,</b>	)	<b>(Document #10)</b>
	)	
<b>Defendants.</b>	)	
_____	)	

**BACKGROUND**

Plaintiff Krishna Reddy (“Plaintiff”) filed a complaint in this action and is appearing pro se and has been granted permission to proceed in forma pauperis. On April 12, 2013, the Magistrate Judge assigned to this action screened Plaintiff’s complaint and found that it stated some cognizable causes of action. The Magistrate Judge ordered Plaintiff to either file an amended complaint or notify the Court within thirty days that she was willing to proceed on the cognizable causes of action.

On May 8, 2013, Plaintiff filed a motion to appoint counsel, a motion for additional time to respond to the April 12, 2013 order, and a motion for permission to file pleadings electronically. On May 10, 2013, the Magistrate Judge assigned to this action denied Plaintiff’s motion for counsel and to file pleadings and other papers electronically. The Magistrate Judge granted Plaintiff’s motion for an extension of time.

1 On May 30, 2013, Plaintiff filed a motion for reconsideration by the assigned District  
2 Court Judge of the Magistrate Judge’s May 10, 2013 ruling. Plaintiff contends that she is  
3 entitled to counsel because she has met the requirements set forth by statute and she should be  
4 allowed to file electronically.

### 5 LEGAL STANDARD

6 The court reviews a motion to reconsider a Magistrate Judge’s ruling under the “clearly  
7 erroneous or contrary to law” standard set forth in 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P.  
8 72(a). “A finding is ‘clearly erroneous’ when although there is evidence to support it, the  
9 reviewing court on the entire evidence is left with the definite and firm conviction that a mistake  
10 has been committed.” United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948).

### 11 DISCUSSION

#### 12 A. Appointment of Counsel

13 Plaintiff requests reconsideration of the Magistrate Judge’s order denying the  
14 appointment of counsel. As explained in the Magistrate Judge’s May 10, 2013 order, there is no  
15 constitutional right to the appointment of counsel in employment discrimination cases. Ivey v.  
16 Bd. of Regents of Univ. of Alaska, 673 F.2d 266, 269 (9<sup>th</sup> Cir. 1982). Title VII authorizes the  
17 appointment of counsel “[u]pon application by the complainant and in such circumstances as the  
18 court may deem just.” 42 U.S.C. § 2000e–5(f)(1)(B). In reviewing an application for counsel,  
19 the Court “is required to assess: (1) the plaintiff’s financial resources, (2) the efforts made by the  
20 plaintiff to secure counsel, and (3) whether the plaintiff’s claim has merit.” Bradshaw v.  
21 Zoological Soc’y of San Diego, 662 F.2d 1301, 1318 (9<sup>th</sup> Cir. 1981) (citing Caston v. Sears,  
22 Roebuck & Co., 556 F.2d 1305, 1308–10 (5<sup>th</sup> Cir. 1977) and Luna v. Int’l Ass’n of Machinists &  
23 Aerospace Workers, 614 F.2d 529, 531 (5<sup>th</sup> Cir. 1980)). The plaintiff has the burden of proof and  
24 must meet all three factors. Castner v. Colorado Springs Cablevision, 979 F.2d 1417, 1421 (10<sup>th</sup>  
25 Cir. 1992). In addition to the three Bradshaw factors, the Court may consider the plaintiff’s  
26 ability to proceed pro se. See Terrell v. Brewer, 935 F.2d 1015, 1017 (9<sup>th</sup> Cir. 1991) (finding 28

1 U.S.C. § 1915(e)(1) only allows the court to appoint counsel if exceptional circumstances are  
2 present); Bradshaw, 662 F.2d at 1318 n.43 (holding other factors may be taken into account when  
3 appointing counsel if they are consistent with 42 U.S.C. § 2000e-5(f)'s policy).

4 The first factor requires the Court to review Plaintiff's financial resources. As found by  
5 the Magistrate Judge, Plaintiff meets the first factor because she has been granted permission to  
6 proceed in forma pauperis.

7 In assessing whether Plaintiff's efforts to obtain counsel were reasonably diligent, a court  
8 may review the plaintiff's skill in obtaining counsel, the number of attorneys that the plaintiff  
9 contacted, the availability of counsel in the geographical area who represent employment  
10 discrimination claimants, and the reasons that each attorney refused to take the case. See, e.g.,  
11 Castner v. Colorado Springs Cablevision, 979 F.2d 1417, 1422 (10<sup>th</sup> Cir. 1992); Luna v.  
12 International Ass'n of Machinists and Aerospace Workers Local No. 36, 614 F.2d 529, 531 (5<sup>th</sup>  
13 Cir. 1980). While the Magistrate Judge found this factor was met based on Plaintiff's assertion  
14 that she had contacted 25 attorneys, on reconsideration, it is unclear if Plaintiff has met this  
15 factor. Plaintiff provides no information or evidence concerning the attorneys she contacted,  
16 whether these attorneys' specialize in employment discrimination cases on behalf of employees,  
17 how she contacted the attorneys, what information she gave the attorneys, and the exact reason  
18 given when they refused to represent her. Regardless, the Court agrees with the Magistrate Judge  
19 that the third factor has not been met, and counsel can be denied irrespective of whether  
20 additional information concerning the contacted attorneys is provided.

21 The third factor requires the Court to address the merits of Plaintiff's action. Plaintiff  
22 contends that because the Magistrate Judge screened her action and found service appropriate,  
23 she has sufficiently shown that her action has merit. In Bradshaw, the Ninth Circuit found that  
24 when an administrative agency, such as the EEOC, who charged with enforcing employment  
25 statutes, has made a determination that there is reasonable cause to believe that the plaintiff was  
26 the victim of discrimination, the court ordinarily needs to make no further inquiry before  
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1 appointing counsel. Bradshaw, 662 F.2d at 1320. In this action, the EEOC did not find  
2 reasonable cause to believe Plaintiff had been the victim of discrimination. Rather, the EEOC  
3 merely found that it was unable to conclude whether there was a violation of federal employment  
4 statutes and issued a right to sue letter. The Magistrate Judge's finding that the complaint states  
5 a claim as to some causes of action was merely made pursuant to the Court's screening, as set  
6 forth in 28 U.S.C. § 1915(e)(2)(B). The Magistrate Judge's ruling only found that some of the  
7 complaint's causes of action state a claim pursuant to Rule 8(a) of the Federal Rules of Civil  
8 Procedure. Rule 8(a) requires "a short and plain statement of the claim showing that the pleader  
9 is entitled to relief." Fed.R.Civ.P. 8(a)(2). The Magistrate Judge's finding that some of the  
10 complaint's causes of action comply with Rule 8(a) is merely a judicial finding that Plaintiff has  
11 set forth sufficient factual allegations, if accepted as true, to state a claim that is plausible on its  
12 face. See Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009). Such a finding is far different than a  
13 finding that there is reasonable cause to believe that the plaintiff will win on the merits of her  
14 claim because she has proved she was the victim of discrimination. Thus, neither the EEOC's  
15 findings nor the Magistrate Judge's finding that the complaint states a claim under Rule 8 is  
16 sufficient.

17 Finally, the Court agrees with the Magistrate Judge that Plaintiff seems quite capable of  
18 continuing to pursue this action pro se. Plaintiff is able to gather and present crucial facts, as  
19 evidenced by her detailed 43 page complaint, previously filed motions, and pending motion for  
20 reconsideration. Further, Plaintiff has filed previous employment discrimination lawsuits, and,  
21 as such, she is familiar with court procedures and the relevant law. Thus, the Court cannot find  
22 that the Magistrate Judge committed clear error in finding Plaintiff not entitled to counsel  
23 pursuant to 28 U.S.C. § 200e-5(f).

#### 24 **B. Plaintiff's Request to File Electronically**

25 Plaintiff requests reconsideration of the Magistrate Judge's order denying her motion to  
26 file documents electronically through the Court's electronic case management/filing system  
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