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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

DEBRA BERRY,

Plaintiff,

v.

YOSEMITE COMMUNITY COLLEGE  
DISTRICT, a Public Educational  
Institution, Junior College, *et al.*,

Defendants.

Case No. 1:16-cv-00411-LJO-EPG

**ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL**

(ECF No. 36)

Debra Berry (“Plaintiff”) is proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983 and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. Plaintiff filed the Complaint commencing this action on March 25, 2016. (ECF No. 1). This action now proceeds on the following claims: (1) Fourteenth Amendment Equal Protection against Defendants Jordan, Bambrosia, Carol, McCarthy, and Marks, in their individual capacities and official capacities; (2) First Amendment retaliation against Defendant Marks in his individual capacity; (3) intentional discrimination in violation of Title VI against Yosemite Community College District (“YCCD”) and Modesto Junior College (“MJC”); and (4) retaliation in violation of Title VI against YCCD and MJC. (ECF Nos. 10, 11).

1 On July 13, 2018, Plaintiff filed a motion for appointment of counsel. (ECF No. 36).  
2 Plaintiff contends that appointment of counsel is necessary in this action because of (1) the nature  
3 of the civil constitutional violations, (2) the complexity of the civil constitutional violations, and  
4 (3) the expectation of a settlement conference. *Id.*

5 Pursuant to 28 U.S.C. § 1915(e)(1), the Court may appoint counsel to an indigent party in  
6 a civil case. However, the appointment of counsel is not a constitutional right, and the Court  
7 cannot require an attorney to represent a party. *See Rand v. Rowland*, 113 F.3d 1520, 1525 (9th  
8 Cir. 1997), *withdrawn in part on other grounds*, 154 F.3d 952 (9th Cir. 1998); *Mallard v. United*  
9 *States District Court for the Southern District of Iowa*, 490 U.S. 296, 298 (1989). Without a  
10 reasonable method of securing and compensating counsel, the Court will seek the voluntary  
11 assistance of counsel only in the most serious and exceptional circumstances. *Rand*, 113 F.3d at  
12 1525. In determining whether exceptional circumstances exist, “a district court must evaluate  
13 both the likelihood of success of the merits [and] the ability of the [plaintiff] to articulate his  
14 claims pro se in light of the complexity of the legal issues involved.” *Id.* (internal quotation  
15 marks and citations omitted).

16 Here, despite the complexity of the legal issues involved in this action, Plaintiff has  
17 displayed the ability to articulate her claims. Moreover, the Court is unable to evaluate Plaintiff’s  
18 likelihood of success on the merits at this juncture. The non-expert discovery deadline in this  
19 action is November 16, 2018, (ECF No. 28), and the parties are in the process of exchanging  
20 discovery. In addition, a settlement conference has not been scheduled in this action. (ECF No.  
21 35). Therefore, the Court declines presently to seek the voluntary assistance of counsel. Plaintiff  
22 may, however, request the appointment of counsel at a later time.

23 For the foregoing reasons, IT IS ORDERED that Plaintiff’s motion for appointment of  
24 counsel is DENIED without prejudice.  
25 IT IS SO ORDERED.

26 Dated: July 16, 2018

27 /s/ Eric P. Gray  
28 UNITED STATES MAGISTRATE JUDGE

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