

1 Regents, 673 F. 2d 266 (9th Cir. 1982). Moreover, “counsel may be designated under section
2 1915(d) only in ‘exceptional circumstances’ . . . [which] requires an evaluation of both ‘the
3 likelihood of success on the merits [and] the ability of the petitioner to articulate his claims pro se
4 in light of the complexity of the legal issues involved.’” Wilborn v. Escalderon, 789 F.2d 1328,
5 1331 (9th Cir. 1986) (internal citations omitted).

6 III. Analysis

7 Regarding the Bradshaw factors, because plaintiffs are proceeding in forma pauperis, the
8 first factor, which relates to their financial condition, is a fortiori resolved in their favor.

9 As to the second Bradshaw factor, plaintiffs do not provide the efforts they made to obtain
10 counsel, if any. Plaintiffs only state that “they have tried to contact numerous attorneys” and
11 “[a]ll of them state that the lack of ability to pay a retainer is the reason for them not taking on the
12 Plaintiffs’ case.” (ECF No. 31 at 1–2.) However, plaintiffs provided no evidence to support this
13 conclusory statement. Plaintiffs should make reasonable efforts to meet with attorneys, and
14 provide a declaration that complies with 28 U.S.C. § 1746 that documents their efforts to retain
15 them and why they refused to take their case. In other words, plaintiffs must provide some form
16 of evidence supporting their efforts to obtain counsel for the court to consider their motion. This
17 factor therefore weighs against granting plaintiffs’ motion to appoint counsel.

18 Nonetheless, even if the court were to consider the remaining factors, plaintiffs’ motion
19 fails. As to the third Bradshaw factor evaluating plaintiffs’ likelihood of success on the merits,
20 plaintiffs argue that Magistrate Judge Gregory G. Hollows stated they have a “credible case” and
21 have a “colorable chance of success.” (ECF No. 31 at 3.) However, plaintiffs merely continue to
22 rely on the allegations in their complaint which at best state the bare elements of a prima facie
23 case, and no more. Plaintiffs offer no further argument “to the effect that [they have] any
24 requisite likelihood of success.” Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997),
25 withdrawn in part on reh’g en banc, 154 F.3d 952 (9th Cir. 1998).¹ Although plaintiffs claim
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27 ¹ See Rand v. Rowland, 154 F.3d 952, 954 n.1 (9th Cir. 1998) (“Part II.C. of the panel opinion,
28 concerning appointment of counsel, is not affected by our en banc review and is not
withdrawn.”).

1 some discovery difficulties, including having to appear for their depositions, this does not
2 establish the likelihood of success on the merits of their case. At this juncture, following the
3 close of all fact discovery except plaintiffs' depositions, plaintiffs should be able to identify the
4 source(s) of evidence that they believe will allow them to prevail. This factor also weighs against
5 granting plaintiffs' motion.

6 Turning to the Wilborn standard, plaintiffs are incorrect that they have "jumped the
7 'exceptional circumstances' hurdle" on the ground that their application to proceed in forma
8 pauperis was granted. (See ECF No. 37 at 2.) The "exceptional circumstances" standard is met
9 through evaluation of the likelihood of success on the merits and the ability of plaintiffs to
10 articulate their claims in light of the complexity of the legal issues involved. Wilborn, 789 F.2d
11 at 1331 (quoting Weygtandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)). As noted above,
12 plaintiffs have not satisfied the requirement that they are likely to succeed on the merits.

13 Regarding the complexity of the legal issues involved, that plaintiffs must appear for their
14 depositions is not sufficient grounds to meet the exceptional circumstances threshold or establish
15 that this case is complex. See Wilborn, 789 F.2d at 1331 (explaining that "[a]lthough discovery
16 was essential . . ., the need for such discovery does not necessarily qualify the issues involved as
17 'complex'"). Indeed, if that were the case, every pro se plaintiff would be entitled to have
18 counsel appointed given that most litigation cases involve depositions. Id. ("If all that was
19 required to establish successfully the complexity of the relevant issues was a demonstration of the
20 need for development of further facts, practically all cases would involve complex legal issues.");
21 see also Thornton v. Schwarzenegger, No. 10CV01583 BTM RBB, 2011 WL 90320, at *7 (S.D.
22 Cal. Jan. 11, 2011) (explaining that "[f]actual disputes and anticipated cross-examination of
23 witnesses do not indicate the presence of complex legal issues warranting a finding of exceptional
24 circumstances" (citing Rand, 113 F.3d at 1525)). As noted by Judge Hollows,

25 The concerns plaintiffs have raised may be mitigated by the
26 acquisition or review of one of the many federal practice guides
27 regarding procedures before trial available on the market for
28 purchase or available for study in the State Court Law Library or
the Law Library available in this courthouse which can be entered
at the lobby level of the building. There is a librarian on duty in the
court library who can assist them in locating the materials they

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require.
(ECF No. 20 at 2–3.)

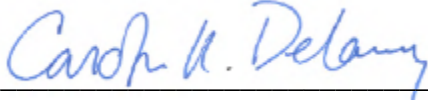
Finally, plaintiffs have demonstrated that they are more than capable of articulating their claims and appear to be prosecuting this matter adequately on their own. In that regard, the court notes that plaintiffs have worked in the legal field for at least ten years and are therefore even more capable of litigating their case pro se compared to other pro se plaintiffs. *See About Modoc Legal Services*, MODOC LEGAL SERVICES, <https://modoclegal.com/index.php/about-us> (last visited Oct. 23, 2019) (stating that Modoc Legal Services is “[r]un by William and Stacey Ramirez” and has “over a decade of experience in the legal field”).

In sum, plaintiffs have not established their efforts to obtain counsel, a likelihood of success on the merits, that their case is complex, or that they are unable to articulate their claims.

IV. Conclusion

For these reasons, plaintiffs’ motion to appoint counsel (ECF No. 31) is DENIED without prejudice.²

Dated: October 23, 2019



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

15 ramirez632.counsel

² The court set a deadline of October 30, 2019 for the parties to complete plaintiffs’ depositions. This deadline remains in effect notwithstanding this motion or any other motion plaintiffs file. In other words, plaintiffs must comply with this deadline and complete their depositions by October 30, 2019 or be subject to any and all sanctions available. *See* Local Rule 110 (“Failure of counsel or of a party to comply with these Rules or with any order of the Court may be grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or within the inherent power of the Court.”).