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2 UNITED STATES DISTRICT COURT  
3 NORTHERN DISTRICT OF CALIFORNIA  
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5 ALFRED LAM, et al.,

6 Plaintiffs,

No. C 10-4641 PJH

7 v.

**ORDER DENYING MOTION FOR  
RECONSIDERATION**

8 CITY AND COUNTY OF SAN  
9 FRANCISCO, et al.,

10 Defendants.

11 On September 17, 2014, plaintiffs filed a “motion for reconsideration of appointing  
12 pro bono counsels to assist plaintiffs’ ongoing litigation process.” As an initial matter, the  
13 court will construe this motion as a renewed motion for appointment of pro bono counsel,  
14 as the court denied, without prejudice, plaintiffs’ previous motion for appointment of pro  
15 bono counsel on July 25, 2014.

16 The court’s previous order noted that plaintiff’s motion was “deficient in several  
17 respects,” and took the “opportunity to advise plaintiffs as to what they need to address in  
18 any renewed motion for appointment of counsel.” See Dkt. 83. The court then noted that  
19 “there is no constitutional right to appointed counsel for employment discrimination claims.”  
20 Id. at 2. However, the court does have discretion to appoint volunteer counsel in certain  
21 limited circumstances.

22 In Title VII cases, the court must assess three factors: (1) the plaintiff’s financial  
23 resources, (2) the efforts made by the plaintiff to secure counsel, and (3) whether the  
24 plaintiff’s claim has merit. Bradshaw v. Zoological Soc. of San Diego, 662 F.3d 1301, 1318  
25 (9th Cir. 1981). In section 1983 cases, the court may ask counsel to represent an indigent  
26 client (who is proceeding *in forma pauperis*) only in “exceptional circumstances,” the  
27 determination of which requires an evaluation of both (1) the likelihood of success on the  
28 merits, and (2) the ability of the plaintiff to articulate his claims pro se in light of the

1 complexity of the legal issues involved.” Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.  
2 1991).


3 In its previous order, the court noted that the standards were not identical, but that  
4 each required the indigence of the plaintiffs. Because plaintiffs’ motion did not provide the  
5 court with information regarding the financial resources of each plaintiff, and because none  
6 of the plaintiffs had filed IFP applications but had instead paid the filing fee, the court  
7 advised plaintiffs that “any renewed motion must be accompanied by a declaration from  
8 each plaintiff who seeks pro bono representation, setting forth the information requested in  
9 the IFP applications available on the court’s website and from the Clerk’s Office.” Dkt. 83  
10 at 3. Plaintiffs’ renewed motion states only that plaintiff Chen receives approximately  
11 \$1100 per month in pension income, and provides no specific financial information  
12 regarding plaintiffs Lam and Leiato, except to say that Lam was told by the Legal Help  
13 Center that neither he nor Leiato qualified for pro bono services as their incomes were too  
14 high. This showing falls far short of the detailed financial information required by the IFP  
15 application. As a result, the court cannot properly assess the financial resources of the  
16 plaintiffs, and thus, cannot make a determination as to whether appointment of counsel is  
17 warranted under either Bradshaw or Terrell. On that basis alone, plaintiffs’ motion is  
18 DENIED.

19 In addition, under either Bradshaw or Terrell, the court is required to assess the  
20 merits of plaintiffs’ legal claims. In its previous order, the court noted that plaintiffs had not  
21 “explain[ed] how this case would likely be decided differently than their first case, Lam v.  
22 CCSF, C 08-4702, in which the court granted summary judgment for defendants based on  
23 similar claims, which judgment was affirmed by the Ninth Circuit.” Dkt. 83 at 3-4. The court  
24 advised plaintiffs that the “declaration in support of any renewed motion must address this  
25 issue.” Id. at 4. In the present motion, plaintiffs state only that they “had good faith to  
26 believe that the related case #08-4702 would be reversed by Ninth Circuit Court of Appeal,  
27 based on, but not limited to the credibility issues of intentional concealed, wrongful or false  
28 information from their declaration or deposition provided by individual defendants and

1 disclosed or non-disclosed witnesses.” Dkt. 92 at 3. While this explains that plaintiffs  
2 believed that the grant of summary judgment in their previous case would be reversed, it  
3 does not “explain how this case would likely be decided differently than their first case,” as  
4 the court required. Thus, the court cannot assess whether plaintiffs’ claims in the present  
5 case have merit, which provides an independent basis for DENYING plaintiffs’ renewed  
6 motion.

7 **IT IS SO ORDERED.**

8 Dated: September 19, 2014

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11 PHYLLIS J. HAMILTON  
12 United States District Judge  
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