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\*\*E-Filed 11/16/09\*\*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

VITALY G. MARCHENKO,

Plaintiff,

v.

JOHN McHUGH, Secretary of the Army,

Defendant.

Case Number C 09-03673 JF (PVT)

ORDER<sup>1</sup> DENYING REQUEST FOR  
APPOINTMENT OF COUNSEL

[Docket No. 4]

On August 11, 2009, Plaintiff Vitaly G. Marchenko (“Plaintiff”) filed a complaint pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5, alleging that the United States Army (“the Army”) unlawfully terminated him in retaliation for his complaints regarding unequal compensation based on gender and national origin. The complaint also alleged breach of contract, wrongful discharge, and management malpractice. On October 21, Plaintiff filed his First Amended Complaint (“FAC”). The FAC alleges the Title VII violation, wrongful termination, and management malpractice, but amends the original complaint to dismiss the breach of contract claim and to allege violation of the Equal Pay Act. Plaintiff has filed a request for appointment of counsel.

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<sup>1</sup> This disposition is not designated for publication in the official reports.

1 Counsel may be appointed in Title VII cases “in such circumstances as the court may  
2 deem just.” 42 U.S.C. § 2000e-5. In determining whether to appoint counsel, the Court must  
3 assess three factors: (1) the plaintiff’s financial resources; (2) the efforts made by the plaintiff to  
4 secure counsel; and (3) whether the plaintiff’s claims have merit. *Bradshaw v. Zoological*  
5 *Society of San Diego*, 662 F.2d 1301, 1318 (9th Cir. 1981).

6 After weighing the above factors, the Court concludes that appointment of counsel is not  
7 warranted at this time. Plaintiff stated in his application that he “ha[s] made numerous,  
8 documented, but unsuccessful attempts to find an attorney who would take [his] case on a  
9 contingency basis” and that he has been unable to find a job and cannot afford an attorney.  
10 Plaintiff does not, however, provide the Court with any documentation of either his attempts to  
11 find an attorney or his financial resources. Without this information, the Court cannot conclude  
12 that appointment of counsel would be appropriate. Accordingly, Plaintiff’s request will be  
13 denied without prejudice.

14 **ORDER**

15 Good cause therefore appearing, IT IS HEREBY ORDERED that Plaintiff’s request for  
16 appointment of counsel is DENIED without prejudice.

17  
18 DATED: November 16, 2009

19   
20 JEREMY FOGEL  
21 United States District Judge

1 Copies of this Order have been served upon the following persons:

2 Vitaly G Marchenko  
3 9633 Sunland Place  
4 Sunland, CA 91040

5 Claire T. Cormier    [claire.cormier@usdoj.gov](mailto:claire.cormier@usdoj.gov)  
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