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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ADIL HIRAMANNEK, et al.,  
Plaintiffs,  
v.  
L. MICHAEL CLARK, et al.,  
Defendants.

Case No. 5:13-cv-00228-RMW

**ORDER DENYING MOTION TO  
APPOINT COUNSEL AND SERVE  
COMPLAINT ON U.S. ATTORNEY  
GENERAL**

Re: Dkt. No. 500

In this case alleging discrimination based on disability and race, pro se plaintiffs Roda and Adil Hirananeek, mother and son, move the court to appoint counsel for Ms. Hirananeek for their upcoming trial against defendants Superior Court of California, County of Santa Clara<sup>1</sup> and Beth Miller. Dkt. No. 500. Plaintiffs also move to have this court serve plaintiffs' complaint on the U.S. Department of Justice as the real party in interest in plaintiffs' claims under the Americans with Disabilities Act ("ADA").<sup>2</sup> The court rules as follows.

**I. MOTION TO APPOINT COUNSEL**

Ms. Hirananeek asks that the court appoint counsel to represent her at trial in her claim

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<sup>1</sup> After plaintiffs filed their motion, the court granted summary judgment for the defendant on the claims against the Superior Court. Dkt. Nos. 546, 570.

<sup>2</sup> Despite the fact that no party filed an opposition to plaintiffs' motion, plaintiffs also filed a "reply" in support of their motion on February 25, 2016 that raised new arguments that were not part of plaintiffs' initial ex parte application. *See* Dkt. No. 554.

1 alleging racial discrimination and violations of the ADA.<sup>3</sup> Ms. Hiranek argues that she is  
2 medically disabled and has spent most of her life outside the United States. Accordingly, she  
3 argues, she will not be able to articulate her claims in light of the complexity of the issues  
4 involved. Ms. Hiranek is proceeding in forma pauperis, and she argues that she has tried  
5 unsuccessfully to obtain representation.

6 There is no constitutional right to counsel in a civil case unless an indigent litigant may  
7 lose her physical liberty if she loses the litigation. *Lassiter v. Dep't of Social Services*, 452 U.S.  
8 18, 25 (1981). However, a court “may request an attorney to represent any person unable to afford  
9 counsel.” 28 U.S.C. § 1915(e)(1). The court may ask counsel to represent an indigent litigant  
10 under § 1915 only in “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir.  
11 2009). The determination of whether to appoint counsel requires an evaluation of the likelihood of  
12 success on the merits and the ability of the plaintiff to articulate her claims pro se in light of the  
13 complexity of the legal issues involved. *Harrington v. Scribner*, 785 F.3d 1299, 1309 (9th Cir.  
14 2015). The need for discovery does not necessarily qualify the issues involved in a case as  
15 “complex.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). Moreover, mere  
16 difficulty in articulating one’s claims pro se is not necessarily sufficient to require the appointment  
17 of counsel. *Id.*

18 The key issues remaining in this case are straightforward. This court’s summary judgment  
19 rulings disposed of all of Ms. Hiranek’s ADA claims. *See* Dkt. No. 546, 570. Plaintiffs’ racial  
20 discrimination claim (which Ms. Hiranek shares with Mr. Hiranek) relates to plaintiffs’  
21 allegation that defendant Miller once refused to let plaintiffs use a courthouse bathroom because of  
22 their race. *See* Dkt. No. 94-1 ¶¶ 795-96. The proof that Mr. Hiranek and Ms. Hiranek will  
23 offer in support of their race discrimination claim will likely be identical. The papers that Ms.  
24 Hiranek has submitted to date regarding the ADA claims suggest that she should have no  
25 difficulty articulating the basis for the relatively simple racial discrimination claim set for trial.  
26 This case is thus distinguishable from *Reed v. Illinois*, in which a district court declined to dismiss  
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28 <sup>3</sup> Mr. Hiranek apparently does not request the appointment of counsel for himself.

1 an ADA complaint that arose when a state court did not appoint counsel for a plaintiff whose  
2 “nervous system disorder resulted in involuntary jerky movements, impaired her speech, [caused]  
3 anxiety, contortions characterized as aggression, inability to recall and/or articulate words,  
4 grunting noises, screaming, and otherwise [made her] appear[ ] out of order.” *Reed v. Illinois*, 119  
5 F.Supp.3d 879, 881 (N.D. Ill. 2015). Ms. Hirananeck’s disabilities do not appear to be so severe  
6 that she would be unable to present evidence at trial, and, to the extent that she asserts that her  
7 disabilities will interfere with her ability to present evidence, the court is willing to make  
8 reasonable accommodations to mitigate any hardship. *See Palmer*, 560 F.3d at 970.

9 Plaintiffs’ motion acknowledges that likelihood of success on the merits is a factor that  
10 courts consider in determining whether to appoint counsel, but Ms. Hirananeck did not even  
11 attempt to explain why she expects to succeed on the merits of her claims. Dkt. No. 500 at 6-7.  
12 The court also notes that while plaintiffs’ racial discrimination claim survived review under 28  
13 U.S.C. § 1915(e)(2), plaintiffs have attempted to assert 48 claims since the start of this litigation,  
14 all but five of which were stricken or dismissed, and one of which was adjudicated in favor of  
15 defendants. *See, e.g.*, Dkt. Nos. 94-1, 19, 98, 546, 570. This factor thus weighs against the  
16 appointment of counsel.<sup>4</sup>

17 The court concludes that appointment of counsel is not warranted at this time. The court  
18 will discuss the best way to move forward with the parties at the next case management  
19 conference.

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22 <sup>4</sup> Much of the contact with the state court employees that gave rise to Roda and Adil Hirananeck’s  
23 allegations in the instant case arose from the dissolution of the marriage of Adil Hirananeck and  
24 his ex-wife Kamal and the court-ordered sale of a family home purchased during the marriage,  
25 where Roda also lived. *See, e.g.*, Dkt. No. 94-1 ¶ 45 (describing Roda Hirananeck’s involvement in  
26 Santa Clara County Superior Court case numbers 1-09-CV-147737, 1-10-CV-163310, and  
27 1-09-FL-149682). In 2010, the Superior Court declared Adil Hirananeck a vexatious litigant in  
28 case number 1-09-FL-149682. *See* Dkt. No. 94-1 ¶¶ 547, 898-99. After plaintiffs filed the instant  
case, Mr. Hirananeck filed two additional federal lawsuits alleging 13 claims against 15  
government employees and entities. *See Pierce et al v. Cantil-Sakauye et al.*, Case No.  
3:13-cv-01295-JSW; *Hirananeck v. California Judicial Council et al.*, Case No.  
5:15-cv-04377-RMW. Mr. Hirananeck also unsuccessfully attempted to remove a state criminal  
case against him to federal court. *The People of the State of California v. Hirananeck*, Case No.  
5:14-cv-04640-BLF.

1                   **II.       MOTION TO SERVE THE U.S. DEPARTMENT OF JUSTICE**

2                   Plaintiffs argue that the Attorney General of the United States is authorized under 28  
3 C.F.R. Part 35, Subpart F, to determine whether public entities comply with Title II of the ADA.  
4 As there are no remaining ADA claims in this case, plaintiffs’ request is denied as moot.

5                   Even if plaintiffs were to move for reconsideration of the court’s summary judgement  
6 orders on their ADA claims, the court would not find plaintiffs’ arguments for serving the  
7 Department of Justice persuasive. It is true that the Department of Justice may accept complaints  
8 under the ADA, but plaintiffs cite no authority requiring a U.S. District Court to serve a civil  
9 complaint under Title II on the Department of Justice. *See, e.g.*, 28 C.F.R. § 35.170(c) (“An  
10 individual may file a complaint with any agency that he or she believes to be the appropriate  
11 agency designated under subpart G of this part.”); *see also* 28 C.F.R. § 35.190 (listing designated  
12 agencies referenced in Section 35.170(c)). Moreover, none of the authorities plaintiffs cite,  
13 including 42 U.S.C. § 12117, § 12188, and 15 U.S.C. 1125, suggest that the U.S. Attorney General  
14 is a real party in interest in claims under Title II. None of the cited statutes even relate to Title II.  
15 Moreover, plaintiffs’ citations to 28 U.S.C. § 2403 and cases that rely on that statute are  
16 inappropriate because defendant here did not claim that the ADA was unconstitutional.

17                   Accordingly, plaintiffs’ request to serve their complaint on the U.S. Attorney General is  
18 denied with prejudice.

19                   **IT IS SO ORDERED.**

20 Dated: April 8, 2016

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23 Ronald M. Whyte  
24 United States District Judge