

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ZION GRAE-EL, et al.,

11 Plaintiff,

12 v.

13 CITY OF SEATTLE, et al.,

14 Defendant.

CASE NO. C21-1678JLR

ORDER

15 **I. INTRODUCTION**

16 Before the court is a motion for court-appointed counsel brought by *pro se*
17 Plaintiffs Zion Grae-El, Caprice Strange, and minor children A.G., A.S., Z.A.G., E.A.D.,
18 and E.M.D. (Mot. (Dkt. # 12).)¹ Plaintiffs include with their motion an application to
19 proceed *in forma pauperis*. (*See id.* at 6-10.) Defendants the City of Seattle, Ryoma

20
21 _____
22 ¹ Plaintiffs also filed an “amended” motion for court-appointed counsel on December 30,
2021. (Am. Mot. (Dkt. # 19).) The filing makes the same request and appears to contain the
same information and arguments as the initial motion. (*Compare* Mot., *with* Am. Mot.)

1 Nichols, and Daina Boggs oppose the appointment of counsel. (Resp. (Dkt. # 18).)² The
2 court has reviewed Plaintiffs' motions, the relevant law, and the balance of the record.
3 For the reasons stated below, the court DENIES both motions.³

4 II. ANALYSIS

5 Generally, civil litigants have no right to have counsel appointed, *Palmer v.*
6 *Valdez*, 560 F.3d 965, 970 (9th Cir. 2009), or to proceed *in forma pauperis*, 28 U.S.C.
7 § 1915(a). If “exceptional circumstances” warrant, a court may permit an indigent
8 litigant to proceed with a claim *in forma pauperis*, *Wilborn v. Escalderon*, 789 F.2d 1328,
9 1331 (9th Cir. 1986), or appoint counsel pursuant to 28 U.S.C. § 1915(e)(1), *Palmer*, 560
10 F.3d at 970. Whether the circumstances are exceptional enough to warrant appointed
11 counsel requires an evaluation of both the likelihood of success on the merits and the
12 ability of the plaintiff to articulate their claims *pro se* in light of the complexity of the
13 legal issues involved. *Wilborn*, 789 F.2d at 1331. Neither of these considerations is
14 dispositive; instead, they must be viewed together. *Id.*

15 Plaintiffs' application to proceed *in forma pauperis* is accompanied by an
16 accounting of their monthly income and expenses, which reveals that their monthly
17 expenses are nearly equal to their approximately \$4,600 monthly income. (*See id.* at
18 6-10.) However, *in forma pauperis* status is generally granted only where there is reason
19 to think that the payment of court costs will imperil the plaintiff's ability to pay for the
20

21 ² The remaining named Defendants did not submit a response. (*See generally* Dkt.)

22 ³ Plaintiffs request oral argument in their amended motion. (*See* Mot. at 1.) Because the court finds that oral argument would not aid its disposition of this motion, it declines to schedule argument. *See* Local Rules W.D. Wash. LCR 7(b)(4).

1 “necessities of life.” *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir. 2015). As
2 this matter was removed to federal court by Defendants, no filing fee is implicated. Even
3 if a fee were due, however, the court would deny Plaintiffs’ motion because it does not
4 appear from their affidavit that they lack sufficient income to pay any fees or costs
5 associated with their case. Accordingly, the court DENIES Plaintiffs’ application to
6 proceed *in forma pauperis*.

7 Plaintiffs are also unable to establish that “exceptional circumstances” warrant the
8 appointment of counsel. In particular, their motion fails to show that, in light of the
9 complexity of the legal issues involved, they are unable to articulate their claims *pro se*.
10 Indeed, their filings to date demonstrate the opposite—that they are quite capable of
11 articulating their claims and bringing coherent motions before the court. (*See generally*
12 Dkt.) Plaintiffs even represent that, should this case advance to trial, they “do not
13 anticipate needing any legal representation” at that point. (*See Mot.* at 4.) Finally,
14 Plaintiffs point to several factors, including expert testimony they believe will support
15 their case, as a reason to conclude they are likely to succeed on the merits. (*See id.*)
16 Plaintiffs’ anticipated use of expert testimony provides further reason to think they are
17 able to prosecute their case without court appointed counsel. At this early phase of the
18 case, however, the court cannot conclude that Plaintiffs are likely to succeed on the
19 merits of their case.

20 Accordingly, Plaintiffs have not demonstrated that this case involves the type of
21 exceptional circumstances that warrant appointment of counsel by the court. For the
22 same reason, the court determines that Plaintiffs’ request for court-appointed counsel

1 should not be passed on to the pro bono screening committee for further review. *See*
2 General Order No. 16-20, Section 3(c) (Dec. 8, 2020) (In re Amended Plan for the
3 Representation of Pro Se Litigants in Civil Rights Actions).

4 **III. CONCLUSION**

5 Based on the foregoing, the court DENIES Plaintiffs' motions to proceed *in forma*
6 *pauperis* and for court-appointed counsel (Dkt. # 12). For the same reasons, the court
7 also DENIES Plaintiffs' amended motion for court-appointed counsel (Dkt. # 19).
8 Unless Plaintiffs retain counsel, they will be responsible for pursuing this case *pro se*.
9 Materials to assist *pro se* litigants are available on the United States District Court for the
10 Western District of Washington's website. Although the court affords some leeway to
11 *pro se* litigants, Plaintiffs must comply with case deadlines, the Federal Rules of Civil
12 Procedure, and the Western District of Washington's Local Rules, which can also be
13 found on the Western District of Washington's website.

14 Dated this 10th day of January, 2022.

15 

16
17 JAMES L. ROBART
United States District Judge