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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

|                    |   |                                 |
|--------------------|---|---------------------------------|
| JOHN DURAN,        | ) | 1:07-cv-01209-AWI-SMS           |
|                    | ) |                                 |
| Plaintiff,         | ) | FINDINGS AND RECOMMENDATION TO  |
|                    | ) | DENY PLAINTIFF'S APPLICATION TO |
| v.                 | ) | PROCEED IN FORMA PAUPERIS (DOC. |
|                    | ) | 2)                              |
|                    | ) |                                 |
| LORI MACIAS-PRICE, | ) |                                 |
| et al.,            | ) |                                 |
|                    | ) |                                 |
| Defendants.        | ) |                                 |
|                    | ) |                                 |
|                    | ) |                                 |

Plaintiff is proceeding pro se with an action for damages and other relief concerning alleged civil rights violations. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Rules 72-302 and 72-304.

Pending before the Court is the Plaintiff's application to proceed in forma pauperis, filed on August 20, 2007.

In the application, Plaintiff states that he is employed and makes \$3025 per month; he owns a home and lists two cars, although one belongs to his spouse. He has a savings account with \$76.00; his only dependent is his spouse. He received unspecified amounts of worker's compensation payments when he was off work

1 from May 2006 through February 2007.

2 Title 28 U.S.C. § 1915(a)(1) provides that any court of the  
3 United States may authorize the commencement, prosecution of  
4 defense of any civil or criminal suit, action, proceeding, or any  
5 appeal therein, without prepayment of fees or security therefor,  
6 by a person who submits an affidavit that includes a statement of  
7 all assets the person possesses and that the person is unable to  
8 pay such fees or give security therefor. Id.; Floyd v. United  
9 States Postal Service, 105 F.3d 274, 275-77 (6<sup>th</sup> Cir. 1997),  
10 modified on other grounds in Callihan v. Schneider, 178 F.3d 800,  
11 801 (6<sup>th</sup> Cir. 1999).

12 Section 1915(a) does not require that the litigant be  
13 destitute; rather, a party must not be required to choose either  
14 to abandon a potentially meritorious claim or to forego the  
15 necessities of life. Potnick v. Eastern State Hospital, 701 F.2d  
16 243, 244 (2<sup>nd</sup> Cir. 1983) (citing Adkins v. E.I. DuPont de Nemours  
17 & Co., Inc., 335 U.S. 331, 339, (1948)). Plaintiff here has not  
18 demonstrated that he is unable to pay or guarantee costs without  
19 sacrificing the necessities of life. Cf. Sears, Roebuck & Co. v.  
20 Charles W. Sears Real Estate, Inc., 865 F.2d 22, 23-24 (2<sup>nd</sup> Cir.  
21 1988) (poverty not established where the party had \$20,000 net  
22 annual income).

23 Accordingly, it IS RECOMMENDED that Plaintiff's application  
24 to proceed in forma pauperis BE DENIED, and that Plaintiff BE  
25 ORDERED to pay the \$350.00 filing fee within thirty days or face  
26 dismissal of the action.

27 This report and recommendation is submitted to the United  
28 States District Court Judge assigned to the case, pursuant to the

1 provisions of 28 U.S.C. § 636 (b) (1) (B) and Rule 72-304 of the  
2 Local Rules of Practice for the United States District Court,  
3 Eastern District of California. Within thirty (30) days after  
4 being served with a copy, any party may file written objections  
5 with the Court and serve a copy on all parties. Such a document  
6 should be captioned "Objections to Magistrate Judge's Findings  
7 and Recommendations." Replies to the objections shall be served  
8 and filed within ten (10) court days (plus three days if served  
9 by mail) after service of the objections. The Court will then  
10 review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636  
11 (b) (1) (C). The parties are advised that failure to file  
12 objections within the specified time may waive the right to  
13 appeal the District Court's order. Martinez v. Ylst, 951 F.2d  
14 1153 (9th Cir. 1991).

15  
16 IT IS SO ORDERED.

17 **Dated:** August 24, 2007

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE