

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MIKAELLA C. ALFARO,

Plaintiff,

No. 2:12-cv-2739-JAM-EFB PS

vs.

SANTA ANA STATE PRISON,

Defendant.

FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff, proceeding in pro se, has requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.¹ Dckt. No. 2. Plaintiff has submitted an affidavit in support of her application to proceed *in forma pauperis*, as required by 28 U.S.C. § 1915(a)(1). *Id.*

Pursuant to federal statute, a filing fee of \$350.00 is required to commence a civil action in federal district court. 28 U.S.C. § 1914(a). The court may authorize the commencement of an action without prepayment of fees and costs or security therefor, by a person who submits an affidavit showing that he is unable to pay such costs or give security therefor. 28 U.S.C. § 1915(a)(1). An *in forma pauperis* applicant must demonstrate that because of her poverty, she cannot meet court costs and still provide herself and her dependents with the necessities of life.

¹ This matter was referred to the undersigned under Local Rule 302(c)(21), pursuant to 28 U.S.C. § 636(b)(1).

1 *Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1307 (11th Cir. 2004) (affidavit is sufficient if
2 it represents that the litigant is “unable to pay for the court fees and costs, and to provide
3 necessities for himself and his dependents”) (citing *Adkins v. E.I. Du Pont de Nemours & Co.*,
4 335 U.S. 331, 339-40 (1948)); *see also, Sears, Roebuck & Co. v. Charles W. Sears Real Estate,*
5 *Inc.*, 865 F.2d 22, 23 (2d Cir. 1988) (denying *in forma pauperis* status where applicant had a net
6 income of approximately \$20,000).

7 Plaintiff’s affidavit indicates that she receives \$1107.00 per month in disability and
8 \$4658.00 in gifts or inheritance per month, and that she has \$75,000.00 in a checking or savings
9 account. Dckt. No. 2. Based on those averments, the court finds that plaintiff has failed to
10 demonstrate that she has insufficient assets to pay the filing fee and costs and provide the
11 necessities of life for herself.

12 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff’s application to proceed
13 *in forma pauperis* be DENIED, and that plaintiff be given thirty days in which to pay the filing
14 fee of \$350.00.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 “Objections to Magistrate Judge’s Findings and Recommendations.” The parties are
20 advised that failure to file objections within the specified time may waive the right to appeal the
21 District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*,
22 951 F.2d 1153, 1157 (9th Cir. 1991).

23 DATED: November 13, 2012.

24 
25 EDMUND F. BRENNAN
26 UNITED STATES MAGISTRATE JUDGE