

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ZACH TUCK,

Plaintiff,

v.

CAPITOL ONE BANK, et al.,

Defendants.

Case No.: 3:17-cv-01555-BEN-AGS

**ORDER DENYING RENEWED  
APPLICATION TO PROCEED IN  
FORMA PAUPERIS**

On August 1, 2017, Plaintiff Zach Tuck ("Tuck") filed this case against Defendants for alleged violations of the Telephone Consumer Practices Act ("TCPA"), the federal Fair Debt Collection Practices Act ("FDCPA"), the California Rosenthal Fair Debt Collection Practices Act ("Rosenthal Act"), and Fair Credit Reporting Act ("FCRA"). Tuck moves to proceed *in forma pauperis* ("IFP"). (Doc. Nos. 2, 5.) For the reasons stated below, the Court **DENIES without prejudice** Tuck's Application to proceed IFP.

**STATEMENT OF FACTS**

On August 1, 2017, Tuck, a non-prisoner, proceeding pro se, filed a Complaint in this case asserting the aforementioned violations against Defendants Capitol One Bank ("Capital One"), Portfolio Recovery Associates, LLC. ("Portfolio"), ARS National Services, Inc. ("ARS"), First Source Advantage, LLC. ("First Source"), Trans Union,

1 LLC. (“Trans Union”), Equifax Information Solutions, LLC. (“Equifax”), and Experian  
2 (“Experian”). (Doc. No. 1.) Concurrent with his Complaint, Plaintiff filed an  
3 Application for Leave to Proceed *in forma pauperis* (“IFP”). (Doc. No. 2.) The IFP  
4 Application stated that Tuck had no income, no assets, and \$600 in monthly expenses,  
5 including \$350 in rent. (*Id.* at 4-6.)

6 Upon review of Tuck’s first IFP application, the Court found that it did not satisfy  
7 the “particularity, definiteness, and certainty” standard and set it for a hearing on  
8 September 1, 2017 so Plaintiff could show cause why the Court should grant his IFP  
9 Application. (Doc. No. 4.) Subsequently, Tuck submitted an amended Application for  
10 IFP (Doc. No. 5), but failed to appear at the scheduled hearing. In light of him filing an  
11 amended IFP Application, the Court excuses his failure to appear. However, Plaintiff is  
12 cautioned that attendance at court hearings is not voluntary and future failures to appear  
13 may result in sanctions, up to and including dismissal.

#### 14 LEGAL STANDARD

15 Generally, all parties instituting a civil action in this Court must pay a filing fee.  
16 See 28 U.S.C. § 1914(a); Civ. L. Rule 4.5(a). However, pursuant to 28 U.S.C. § 1915(a),  
17 the court may authorize the commencement, prosecution or defense of any suit without  
18 payment of fees if the plaintiff submits an affidavit, including a statement of all his or her  
19 assets, showing that he or she is unable to pay the filing fees or costs. “An affidavit in  
20 support of an IFP application is sufficient where it alleges that the affiant cannot pay the  
21 court costs and still afford the necessities of life.” *Escobedo v. Applebees*, 787 F.3d  
22 1226, 1234 (9th Cir. 2015.) “[A] plaintiff seeking IFP status must allege poverty with  
23 some particularity, definiteness and certainty. *Id.* (internal quotation marks omitted).  
24 The granting or denial of leave to proceed IFP in civil cases is within the sound discretion  
25 of the district court. *Venerable v. Meyers*, 500 f.2d 1215, 1216 (9th Cir. 1974) (citations  
26 omitted).

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**DISCUSSION**

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2 The Court now considers Plaintiffs Amended Application for IFP. Tuck attempts  
3 to correct the deficiencies of his first application by providing a declaration containing a  
4 lengthy account of his current family situation and asserts that he is still unemployed, but  
5 is looking for regular work. (Doc. No. 5-1 at 2.) After reviewing the Amended IFP  
6 Application, the Court finds that it once again fails to demonstrate with sufficient  
7 “particularity, definiteness and certainty” that Plaintiff lacks the means to pay the filing  
8 fee. Of note, the Court found the Amended IFP Application contained several  
9 inconsistencies that conflict with his initial IFP application. Some of the new information  
10 that conflicts with the Original IFP Application includes:

- 11 - Plaintiff owns two classic cars (*Id.* at 2), neither of which was listed in the  
12 Original IFP Application. Tuck claims both cars are currently inoperative  
13 and it would not “be cost effective” to sell them in their current condition.  
14 (*Id.* at 4.) He also claims that he has experience restoring classic vehicles  
15 which he has sold in the past. (*Id.* at 3.) Plaintiff claims he was so good at  
16 restoring vehicles that he was shipping cars to buyers in other countries.  
17 (*Id.*)
- 18 - Plaintiff does not pay rent to his mother, or presumably, anyone else. (*Id.* at  
19 2.) Yet, he claimed to be paying rent or making home-mortgage payments  
20 of \$350 per month in the Original IFP Application. (Doc. No. 2 at 4.) In the  
21 Amended IFP Application, Tuck alleges that he helps pay his mothers  
22 monthly mortgage payment of \$1,376 when he is able to do so. (Doc. No. 5  
23 at 4.) Tuck does not provide any information about how often he has helped  
24 his mother with the mortgage payment, nor when the last time was.
- 25 - Plaintiff claims he trades “care giving for [his] mom for cash and credit card  
26 purchases, gas, food and other things [he] need[s] throughout the month.”  
27 (Doc. No. 5-1 at 4.) Janice Tuck, Plaintiffs mother claims she has loaned  
28 her son money and provided him with housing for several months. (Doc.

1 No. 5-2 at 2.) She further claims to have loaned him \$600 to \$900 per  
2 month, sometimes more, which was not listed in the Original IFP  
3 Application. (*Id.*)

4 - Ms. Tuck also alleges Plaintiff does odd jobs and yard work for their  
5 neighbors and repairs his friends cars in exchange for cash. (*Id.*) Again, not  
6 listed in the Original IFP Application.

7 In addition to the foregoing, Tuck's declaration includes vague references to "one  
8 or more" consumer credit cases filed in this Court. In fact, Plaintiff has filed 5 similar  
9 cases in the past eight months.<sup>1</sup> Notably, in each of these cases, Plaintiff applied to  
10 proceed IFP while stating various amounts of monthly expenses in his IFP applications.  
11 As Judge Bashant recently noted, Plaintiff's family "appear to have developed a cottage  
12 industry suing their creditors for violations of the TCPA, the FDCPA and the FCRA. "In  
13 each case, the parties request to proceed IFP, listing liabilities that far exceed assets.  
14 Curiously, however, despite the fact that they have received settlements from  
15 approximately a dozen different defendants, their assets and cash in their bank accounts  
16 remained unchanged." *Tuck v. Pacer Serv. Ctr. U.S. Cts.*, Case No. 17cv1720-BAS-  
17 KSC, 2017 WL 4050356, at \*1 (S.D. Cal. Sept. 12, 2017). Judge Bashant then listed  
18 eleven cases in this district where Roy Tuck, Deborah Tuck, and their son Richard  
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21 <sup>1</sup> Tuck currently has three open cases: *Tuck v. Nat'l Credit Adjusters et al.*, No.  
22 17cv00884-DMS-BGS (S.D. Cal.) (Complaint filed on May 1, 2017, and application to  
23 proceed IFP filed on May 1, 2017 remains pending.); *Tuck v. Capitol One Bank et al.*,  
24 No. 17cv01555-BEN-AGS (S.D. Cal.) (Complaint filed on May 1, 2017, and application  
25 to proceed IFP filed May 1, 2017 and Amended IFP application filed Aug. 11, 2017  
26 remains pending and the topic of this order.); *Tuck v. Wells Fargo Bank et al.*, No.  
27 17cv01595-JAH-JLB (S.D. Cal.) (Complaint filed on Aug. 8, 2017, and application to  
28 proceed IFP was denied on Oct. 20, 2017.); and two closed cases: *Tuck v. Collection at  
Law Inc. et al.*, No. 17cv01556-CAB-BLM (S.D. Cal.) (Complaint filed on Aug. 1, 2017,  
and application to proceed IFP denied on Oct. 26, 2017.); and *Tuck v. Paypal Credit*, No.  
17cv01577-AJB-JMA (S.D. Cal.) (Complaint filed on Aug. 4, 2017, and application to  
proceed IFP denied on Oct. 30, 2017.)

1 Caruso settled with defendants during the past two years. The address Tuck listed in his  
2 Complaint here is the same address used by the plaintiffs in each of the eleven cases, and  
3 at least ten additional cases have been filed in this district over the past two years by the  
4 same plaintiffs at this address.<sup>2</sup>

5 In light of the foregoing, the Court remains unpersuaded that Plaintiff lacks the  
6 funds to pay the filing fee and “still afford the necessities of life.” *Escobedo*, 787 F.3d at  
7 1234. Considering the discrepancies between Tuck’s two IFP applications, the number of  
8 other cases filed and later “settled” or “dismissed” in this Court by Plaintiff and others  
9 using the Vista address, the Court does not find Plaintiff to be credible in his claims of  
10 poverty and assertions that he is unable to afford the filing fee. Moreover, Plaintiff’s  
11 admissions as to income received from his mother, combined with what appear to be  
12 minimal living expenses, indicates that Plaintiff is in fact able to afford the filing fee.

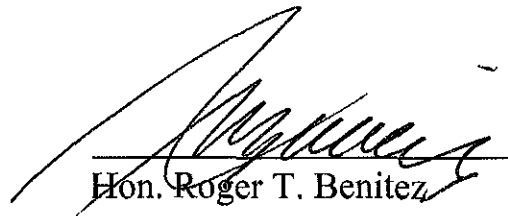
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16 <sup>2</sup> These cases include: *Caruso v. Nat’l Recovery Agency*, No. 16cv534-WQH-JMA  
17 (Complaint filed on Mar. 2, 2016, and notice of voluntary dismissal with prejudice filed  
18 on Aug. 22, 2016.); *Caruso v. Cal. Bus. Bureau*, No. 16cv587-WQH-JMA (Complaint  
19 filed on Mar. 8, 2016, and case closed on Sept. 22, 2016 after joint motions to dismiss  
20 filed as to each defendant.); *Caruso v. Cal. Recovery Bureau*, No. 16cv902-BTM-DHB  
21 (Complaint filed on Apr. 14, 2016, and case settled at early neutral evaluation  
22 conference.); *Caruso v. Nat’l Recovery Agency*, No. 16cv1679-BAS-WVG (Complaint  
23 filed on June 29, 2016, and motion for judgment on pleadings granted on Apr. 28, 2017.);  
24 *Tuck v. HCC Sur. Grp. et al.*, 16cv230-CAB-DHB (S.D. Cal.) (Complaint filed on Jan.  
25 29, 2016, and unopposed motion to dismiss granted on Oct. 19, 2016); *Tuck v. HCC Sur.*  
26 *Grp. et al.*, No. 16cv231-CAB-DHB (S.D. Cal.) (Complaint filed on Jan. 29, 2016, and  
27 unopposed motion to dismiss granted on Oct. 19, 2016); *Tuck v. Merch. Credit Ass’n*, No.  
28 17cv626-BAS-MDD (S.D. Cal.) (Complaint filed on Mar. 28, 2016, and case settled on  
Aug. 22, 2017.); *Tuck v. Credit One Bank*, No. 17cv 1346-WQH-BLM (S.D. Cal.)  
(Complaint filed on July 3, 2017, and case *sua sponte* dismissed for failure to sign the  
complaint.); *Tuck v. Credit One Bank*, No. 17cv1363-JLS-WVG (S.D. Cal.) (Complaint  
filed on July 3, 2017, and case has settled with settlement disposition conference set for  
Nov. 29, 2017.); *Tuck v. States Recovery Sys., Inc.*, No. 17cv1813-GPC-NLS (S.D. Cal.)  
(Complaint filed on Sept. 7, 2017, and IFP denied on Oct. 5, 2017.)



**IT IS SO ORDERED.**

Dated: December 19, 2017



Hon. Roger T. Benitez  
United States District Judge

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