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6	UNITED STATES DISTRICT COURT
7	EASTERN DISTRICT OF CALIFORNIA
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9	JOHN DURAN,) 1:11cv01698 AWI DLB
10 11)) FINDINGS AND RECOMMENDATIONS) REGARDING DENIAL OF APPLICATION TO) PROCEED IN FORMA PAUPERIS
12	v.)
	HSBC BANK, et al.,
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15	Defendants.
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17	Plaintiff John Duran ("Plaintiff"), proceeding pro se, filed this action on October 11,
18	2011. On October 18, 2011, Plaintiff submitted an application to proceed in forma pauperis.
19	Title 28 U.S.C. § 1915(a)(1) provides that any court of the United States may authorize
20	the commencement, prosecution of defense of any civil or criminal suit, action, proceeding, or
21	any appeal therein, without prepayment of fees or security therefor, by a person who submits an
22	affidavit that includes a statement of all assets the person possesses and that the person is unable
23	to pay such fees or give security therefor.
24	It has been held that "one need not be absolutely destitute to obtain benefits of the in
25	forma pauperis statute." Jefferson v. U.S.A., 277 F.2d 723, 724 (9th Cir.1960). Yet, a "showing
26	of something more than mere hardship must be made." Martin v. Gulf States Utilities Co., 221
27	F.Supp. 757, 759 (W.D.La.1963). And wherever upon the spectrum a complainant may fall, "it
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is proper and indeed essential for the supporting affidavits to state the facts as to affiant's poverty
 with some particularity, definiteness and certainty." <u>Jefferson</u>, 277 F.2d at 725.

In his application, Plaintiff states that he is employed at the California Substance Abuse
Treatment Center in Corcoran, California. According to his attached pay statement, he earns
approximately \$45,000 gross income per year. Plaintiff owns a home and two cars and supports
only his spouse.

Accordingly, the Court finds that Plaintiff has not demonstrated that he is unable to pay or guarantee costs without sacrificing the necessities of life.

RECOMMENDATION

Accordingly, the Court HEREBY RECOMMENDS that Plaintiff's application be DENIED and that Plaintiff be ORDERED to pay the \$350.00 filing fee.

These Findings and Recommendations will be submitted to the Honorable Anthony W. Ishii, pursuant to the provisions of <u>Title 28 U.S.C. § 636(b)(l)</u>. Within **thirty (30) days** after being served with these Findings and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. <u>Martinez v. Ylst</u>, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: <u>November 2, 2011</u>

/s/ Dennis L. Beck UNITED STATES MAGISTRATE JUDGE

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