

1 respond.

2 **II. DISCUSSION**

3 The *in forma pauperis* statute, 28 U.S.C. § 1915, distinguishes unincarcerated
4 indigent people from incarcerated ones. Under § 1915(a)(1), a non-prisoner plaintiff may
5 file suit without prepaying fees, provided he or she submits an affidavit demonstrating
6 “that the person is unable to pay such fees or give security therefor.” Escobedo v.
7 Applebees, -- F.3d --, at *5 (9th Cir. 2015); Ingle v. Cir. City Stores, Inc., 328 F.3d 1165,
8 1177 (9th Cir. 2003). An indigent prisoner, by contrast, is not exempt from prepayment.
9 28 U.S.C. § 1915(b)(1). Instead, the prisoner must submit a copy of his or her trust
10 account statement, make an initial upfront payment, followed by subsequent monthly
11 installments, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(1)-(2).
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14 Most circuits agree that a released prisoner may proceed under the non-prisoner
15 provisions of the IFP statute after submitting an updated poverty affidavit, although there
16 is disagreement about whether the prisoner remains liable for the portions of the fee
17 owed prior to release. Compare DeBlasio v. Gilmore, 315 F.3d 396, 398 (4th Cir.
18 2003)(finding that “a released prisoner should not have to shoulder a more difficult
19 financial burden than the average indigent plaintiff in order to continue his lawsuit,” and
20 concluding that IFP status should be determined with reference to post-incarceration
21 financial circumstances); In re Prison Litig. Reform Act, 104 F.3d 1131, 1139 (6th Cir.
22 1997)(citing McGann v. Soc. Sec. Admin. Comm’r, 96 F.3d 28, 30 (2d Cir. 1996) to
23 conclude that “a released prisoner may litigate without further prepayment of fees upon
24 satisfying the poverty affidavit requirement applicable to all non-prisoners”); Brown v.
25 Eppler, 725 F.3d 1221, 1231 (10th Cir. 2013)(finding lower court had discretion to
26 determine extent of prisoner’s obligation on portions of fee not paid prior to release); with
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1 Robbins v. Switzer, 104 F.3d 895, 898 (7th Cir. 1997)(indigent ex-prisoner liable for
2 portions of fee owed while incarcerated; then is subject to § 1915(a)(1)); In re Smith, 114
3 F.3d 1247, 1251 (D.C. Cir. 1997)(same); see also Kellogg v. California, No. C 10-05802
4 2011 WL 768691, at *6 (N.D. Cal. Feb. 28, 2011) (terminating plaintiff’s § 1915(b)
5 application before ruling on it due to plaintiff’s release, but offering him the opportunity to
6 resubmit an application under § 1915(a)(1)); but see Gay v. Tex. Dep’t of Corr., State
7 Jail Div., 117 F.3d 240, 242 (5th Cir. 1997)(finding that prisoners who have been
8 released remain subject to prepayment obligation, and requiring full payment of fee upon
9 release).

11 Here, the Court finds that the approach set forth by the McGann and DeBlasio
12 courts seems most consistent with the statutory scheme: only indigent prisoners are
13 required to *prepay* their fee; a released prisoner is not a prisoner, so assuming he
14 remains indigent, his obligation to pre-pay should cease as well. Therefore, the Court
15 agrees that as a non-prisoner, Plaintiff may no longer be subject to the prepayment
16 requirement. He must, however, submit an updated IFP application if he wishes to
17 continue to proceed *in forma pauperis* under § 1915(a)(1).

19 Revocation of Plaintiff’s current IFP status, however, is not required. Other than
20 Plaintiff’s retention of counsel (possibly on a contingent fee basis), the court has before it
21 no evidence that Plaintiff is no longer a pauper. A trial court has “particularly broad
22 discretion” to grant or deny a prisoner-litigant pauper status. O’Loughlin v. Doe, 920 F.2d
23 614, 616 (9th Cir. 1990). Moreover, a prisoner’s application for IFP status is not
24 automatically moot just because the prisoner is subsequently released. See Moore v.
25 Maricopa Cnty. Sheriff’s Office, 657 F.3d 890, 892 (9th Cir. 2011).

27 However, the Court must dismiss an action if it determines that “the allegation of
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1 poverty is untrue.” 28 U.S.C. § 1915(e)(2)(A); see Thomas v. Gen. Motors Acceptance
2 Corp., 288 F.3d 305, 306 (7th Cir. 2002); Samonte v. Frank, 517 F.Supp.2d 1238, 1244
3 (D. Hawai’i 2007); Whitsitt v. Amazon.com, No. 2:14-cv-416 2014 WL 897044, at *1
4 (E.D. Cal. Mar. 6, 2014). Here, Plaintiff’s status has changed profoundly. Circumstances
5 that undoubtedly contributed to his impoverishment, i.e., imprisonment, no longer exist.
6 If Plaintiff wishes to continue to proceed IFP, he shall submit an application for IFP
7 status that reflects his current financial circumstances.

9 III. CONCLUSION & RECOMMENDATION

10 Plaintiff’s IFP status should not be revoked simply because Plaintiff has been
11 released from prison. Accordingly, the Court HEREBY RECOMMENDS that:

- 12 1) Defendants’ motion to revoke Plaintiff’s IFP status (ECF No. 68) be DENIED;
- 13 2) Plaintiff shall have **thirty (30) days** from the date these findings and
14 recommendations are adopted to :
 - 15 a. Submit an updated financial affidavit in accordance with 28 U.S.C. §
16 1915(a)(1); or
 - 17 b. Pay his outstanding obligation on the \$400 filing fee in full; and
- 18 3) Failure to submit updated financial information or pay the filing fee shall result
19 in dismissal of the action without prejudice for failure to prosecute and failure
20 to obey a court order.
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22 These Findings and Recommendations are submitted to the United States District
23 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
24 **fourteen (14) days** after being served with these Findings and Recommendations, any
25 party may file written objections with the Court and serve a copy on all parties. Such a
26 document should be captioned “Objections to Magistrate Judge’s Findings and
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1 Recommendations.” Any reply to the objections shall be served and filed within fourteen
2 (14) days after service of the objections. The parties are advised that failure to file
3 objections within the specified time may result in the waiver of rights on appeal.

4 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923
5 F.2d 1391, 1394 (9th Cir. 1991)).
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8 IT IS SO ORDERED.

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10 Dated: June 30, 2015

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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