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6	UNITED STATES DISTRICT COURT	
7	EASTERN DISTRICT OF CALIFORNIA	
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9	NOEL LEMUS,	1:14-cv-02030-KJM-GSA
10	Plaintiff,	
11	v.	FINDINGS AND RECOMMENDATIONS
12	COUNTY OF MERCED and DEFENDANT OFFICER DOES 1	REGARDING PLAINTIFF'S MOTION TO PROCEED IN FORMA PAUPERIS
13	THROUGH 50,	
14	Defendant.	(Doc. 2)
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18	I. INTRODUCTION	
19	Plaintiff Noel Lemus ("Plaintiff"), represented by counsel, filed this action on December	
20	19, 2014 (Doc. 1) and requests to proceed in forma pauperis ("IFP") (Doc. 2). For the reasons that	
21	follow, the undersigned RECOMMENDS that Plaintiff's application be DENIED.	
22	II. DISCUSSION	
23	a. Legal Standard	
24	An indigent party may be granted permission to proceed "in forma pauperis" after	
25		ability to pay the requested fees. 28 U.S.C. § 1915(a).
26	The determination whether a party can proceed	ed IFP is a "matter within the discretion of the trial
27	court and in civil actions for damages should be allowed only in exceptional circumstances."	
28	Schweitzer v. Scott, 469 F.Supp. 1017, 1019 (C.D. Cal. 1979), quoting Weller v. Dickinson, 314	
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1 F.2d 598, 600 (9th Cir. 1963) ("a court should be more willing to entertain an application of this 2 nature in a criminal proceeding, or a Title VII proceeding, than, say, in a civil action for money 3 damages"). When examining an application for IFP status, "even-handed care must be employed 4 to assure that federal funds are not squandered to underwrite, at public expense, either frivolous 5 claims or the remonstrances of a suitor who is financially able, in whole or in material part, to 6 pull his own oar." Temple v. Ellerthorpe, 586 F.Supp. 848, 850 (D. R.I. 1984) ("petitioners with 7 modest cash reserves are not paupers within the intendment of 28 U.S.C. § 1915(a) for the 8 purpose of filing fees, initial service of process costs and the like").

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b. Plaintiff Does Not Qualify Under 28 U.S.C. § 1915(a)

10 Plaintiff represents that, until June 2014, he was employed by the City of Gilroy and 11 earned over \$9,000 per month. Up until October 23, 2014, he was also receiving biweekly 12 payments of \$2,145 for worker's compensation. His wife, who is currently employed by the 13 Gilroy Unified School District, earns \$2,859 per month. Notably, Plaintiff also maintains at least 14 two separate bank accounts, but declines in his application to state the current balance in either 15 account. (Doc. 2.) The only currently existing debts burdening plaintiff are a Capitol One charge 16 card with a balance of \$1,500 (requiring a monthly payment of \$150) and a Xerox credit line with 17 a balance of \$6,000 (requiring a monthly payment of \$145). Id.

18 Based on these representations, the Court finds that Plaintiff is not entitled to proceed 19 without prepayment of the \$400 filing fee. Up until October 2014 (just two months before this 20 suit was filed), Plaintiff and his wife were receiving over \$6,000 per month (2 biweekly payments 21 of \$2,145 plus a monthly salary of \$2,859). These facts, coupled with Plaintiff's relative lack of 22 significant debt, do not support his application.

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Notably, Plaintiff does not state the balance of either of his two bank accounts in his 24 request for IFP status, another factor that weighs against the grant of the application. U.S. v. 25 Shadley, No. 2:09-MC-80 WBS GGH, 2010 WL 2509910, at *1 (E.D. Cal. June 17, 2010) (denying request to proceed IFP where applicant "failed to adequately document her financial 26 27 status").

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In sum, very little suggests that this case should fall within the "exceptional

1	circumstances" justifying IFP status.	
2	III. RECOMMENDATION	
3	Based on the foregoing, the Court recommends that:	
4	1. Plaintiff's Application to Proceed In Forma Pauperis be denied; and,	
5	2. Plaintiff be required to submit the filing fee of \$400.	
6	These findings and recommendations will be submitted to the Honorable Kimberly J.	
7	Mueller pursuant to the provisions of Title 28 of the United States Code section 636(b)(1). Within	
8	fifteen (15) days after being served with these findings and recommendations, the parties may file	
9	written objections with the Court. The document should be captioned "Objections to Magistrate	
10	Judge's Findings and Recommendations." The parties are advised that failure to file objections	
11	within the specified time may waive the right to appeal the District Court's order. <i>Martinez v</i> .	
12	<i>Ylst</i> , 951 F.2d 1153 (9th Cir. 1991).	
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14	IT IS SO ORDERED.	
15	Dated: January 6, 2015 /s/ Gary S. Austin UNITED STATES MAGISTRATE JUDGE	
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