

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”).

9 **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.

23 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)
26 (denying request to proceed IFP where applicant “failed to adequately document her financial
27 status”).

28 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. *Martinez v.*
12 *Ylst*, 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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