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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

BRYAN RUSSELL PENDERGAST,	)	Case No.: 1:16-cv-00552 - JLT
	)	
Plaintiff,	)	ORDER TO PLAINTIFF TO SHOW CAUSE
	)	WHY HIS MOTION TO PROCEED IN FORMA
v.	)	PAUPERIS SHOULD NOT BE DENIED
	)	
CAROLYN W. COLVIN,	)	
Acting Commissioner of Social Security,	)	
	)	
Defendant.	)	
	)	
	)	

The Court may authorize the commencement of an action without prepayment of fees “by a person who submits an affidavit that includes a statement of all assets such person . . . possesses [and] that the person is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a). Thus, an action may proceed despite a failure to prepay the filing fee only if leave to proceed in forma pauperis is granted by the Court. *See Rodriguez v. Cook*, 169 F.3d 1176, 1177, 1178 (9th Cir. 1999).

The Ninth Circuit has held “permission to proceed in forma pauperis is itself a matter of privilege and not a right; denial of an in forma pauperis status does not violate the applicant’s right to due process.” *Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984) (citing *Weller v. Dickson*, 314 F.2d 598, 600 (9th Cir. 1963)). In addition, the Court has broad discretion to grant or deny a motion to proceed IFP. *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990); *Weller*, 314 F.2d at 600-01. In making a determination, the Court “must be careful to avoid construing the statute so narrowly that a

1 litigant is presented with a Hobson’s choice between eschewing a potentially meritorious claim or  
2 foregoing life’s plain necessities.” *Temple v. Ellerthorpe*, 586 F.Supp. 848, 850 (D.R.I. 1984).

3 Plaintiff attests that he is not employed and has not been employed for the past twelve months.  
4 (Doc. 1 at 1) However, Plaintiff reports that his wife is employed and “earns \$3500 a month.” (*Id.*)  
5 He reports their monthly expenses include rent, transportation, utilities, student loans, medication, and  
6 groceries. (*Id.*) The income reported exceeds the expenses by more than \$500 per month, and  
7 Plaintiff has \$1,200 in a checking account. (*Id.* at 1-2)

8 **ORDER**

9 As noted above, Plaintiff has not demonstrated an inability to provide himself with life’s  
10 necessities while still paying court costs. Thus, the Court **ORDERS**: Within 21 days, Plaintiff  
11 **SHALL** show cause in writing why his motion to proceed in forma pauperis should not be denied.

12 **Plaintiff is advised that her failure to respond timely to this order will result in a**  
13 **recommendation that his motion to proceed in forma pauperis be denied.**

14  
15 IT IS SO ORDERED.

16 Dated: April 21, 2016

/s/ Jennifer L. Thurston  
17 UNITED STATES MAGISTRATE JUDGE