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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GEORGE E. JACOBS,

 Plaintiff,

 v.

CDCR,

 Defendant.

Case No. 1:17-cv-01599-SKO (PC)

**ORDER DISCHARGING ORDER TO SHOW
CAUSE REGARDING UNTRUE ALLEGATION
OF POVERTY IN PLAINTIFF’S APPLICATION
TO PROCEED *IN FORMA PAUPERIS*

(Docs. 2, 5)**

BACKGROUND

Plaintiff, George E. Jacobs, is a state prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”), proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983, which he filed on December 4, 2017. (Doc. 1.) Along with the Complaint, Plaintiff filed an application to proceed *in forma pauperis* (“IFP”). (Doc. 2.) Plaintiff’s application contained certification from the Substance Abuse and Treatment Facility (“SATF”) as well as a copy of Plaintiff’s CDCR trust account statement. (*Id.*) Upon review, Plaintiff’s trust account reflects an increase from ten-thousand dollars (\$10,000) to over thirty-six-thousand dollars (\$36,000) in the months prior to the date that he filed this action.

On December 11, 2017, an order issued for Plaintiff to show cause (“OSC”) within twenty-one (21) days why this action should not be dismissed based on his untrue poverty allegation in his IFP application. (Doc. 5.) Plaintiff filed a timely response. (Doc. 7.) The Court accepts Plaintiff’s explanation. The OSC is discharged and Plaintiff is ordered to pay the \$400

1 filing fee in full and a statement withdrawing his IFP application.

2 **DISCUSSION**

3 **I. Legal Standard**

4 As stated in the OSC, an indigent party may be granted permission to proceed *in forma*
5 *pauperis* upon submission of an affidavit showing inability to pay the required fees. 28 USC §
6 1915(a). The determination as to whether a plaintiff is indigent and therefore unable to pay the
7 filing fee falls within the court’s sound discretion. *California Men’s Colony v. Rowland*, 939
8 F.2d 854, 858 (9th Cir. 1991) (reversed on other grounds). Proceeding “*in forma pauperis* is a
9 privilege not a right.” *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965). The determination
10 whether a party can proceed *in forma pauperis* is a “matter within the discretion of the trial court
11 and in civil actions for damages should be allowed only in exceptional circumstances.” *Weller v.*
12 *Dickinson*, 314 F.2d 598, 600 (9th Cir. 1963).

13 “The trial court must be careful to avoid construing the statute so narrowly that a litigant
14 is presented with a Hobson’s choice between eschewing a potentially meritorious claim or
15 foregoing life’s plain necessities.” *Temple v. Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I. 1984),
16 citing *Potnick v. Eastern State Hospital*, 701 F.2d 243, 244 (2d Cir. 1983) (per curiam); *Carson v.*
17 *Polley*, 689 F.2d 562, 586 (5th Cir. 1982). “But, the same even-handed care must be employed to
18 assure that federal funds are not squandered to underwrite, at public expense, either frivolous
19 claims or the remonstrances of a suitor who is financially able, in whole or in material part, to
20 pull his own oar.” *Temple*, 586 F. Supp. at 850, citing *Brewster v. North American Van Lines,*
21 *Inc.*, 461 F.2d 649, 651 (7th Cir. 1972).

22 In Plaintiff’s response to the OSC, he states that he honestly answered the questions on the
23 IFP application form (including the sum of money in his account), that he has the money to pay
24 the filing fee for this action, and will do so. (Doc. 7.) Plaintiff alleges that he thought he had to
25 file an IFP application with any new case that he filed since he has always done so in the past, and
26 asks this Court for directions on how to make a payment using monies in his trust account. (*Id.*)

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