

1 Cir. 1991) (reversed on other grounds).

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

11 Proceeding “*in forma pauperis* is a privilege not a right.” *Smart v. Heinze*, 347 F.2d 114,
12 116 (9th Cir. 1965). A party need not be completely destitute to proceed *in forma pauperis*.
13 *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339-40 (1948). However, “[i]f an
14 applicant has the wherewithal to pay court costs, or some part thereof, without depriving himself
15 and his dependents (if any there be) of the necessities of life, then he should be required, in the
16 First Circuit’s phrase, to ‘put his money where his mouth is.’” *Williams v. Latins*, 877 F.2d 65
17 (9th Cir. 1989) (affirming district court denial of *in forma pauperis* where in past 12 months,
18 plaintiff received a sum of \$5,000 settling a civil action and no indication it was unavailable to
19 plaintiff) (citing, *Temple*, 586 F.Supp. at 851(quoting *In re Stump*, 449 F.2d 1297, 1298 (1st Cir.
20 1971) (*per curiam*)).

21 In sum, to proceed *in forma pauperis*, a plaintiff need not demonstrate that he is
22 completely destitute, but his poverty must prevent him from paying the filing fee and providing
23 his dependents with the necessities of life. See *Adkins v. E.I. DuPont de Nemours & Co.*, 335
24 U.S. 331, 339-40 (1948). A ““showing of something more than mere hardship must be made.””
25 *Nastrom v. New Century Mortg. Corp.*, No. 11-cv-1998, 2011 WL 7031499, at *1 (E.D. Cal. Dec.
26 7, 2011) (quoting *Martin v. Gulf States Utilities Co.*, 221 F.Supp. 757, 759 (W.D. La.1963)),
27 report and recommendation adopted by, 2012 WL 116563 (E.D. Cal. Jan.12, 2012). Plaintiff
28 indicates on his application that his biological son and stepson live with him. While Plaintiff’s

1 sons may have lived with Plaintiff prior to his arrest and incarceration, they certainly are not
2 residing with him at the correctional facility. If they are minors, or have other disabilities which
3 prohibit them from living on their own, they would have been placed with other family members
4 or social services when Plaintiff was taken into custody. Further, Plaintiff is currently held at the
5 Community Correctional Facility in Delano, CA, the City of Delano is paying for his necessities
6 of daily life. *Williams*, 877 F.2d 65.

7 Plaintiff had an average of \$300.00 in his account in each of the six months preceding the
8 filing of this action and has \$7,000.00 in mutual funds from which he may pay the filing fee for
9 this action. Thus, Plaintiff's application to proceed *in forma pauperis* should be denied.

10 RECOMMENDATION

11 Accordingly, the Court RECOMMENDS that Plaintiff's application to proceed *in forma*
12 *pauperis*, filed on September 13, 2018 (Doc. 2), be **DENIED** and that Plaintiff be required to pay
13 the \$400.00 filing fee to proceed in this action. The Clerk of the Court is directed to randomly
14 assign a district judge to this action.

15 These Findings and Recommendations will be submitted to the United States District
16 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within 21**
17 **days** after being served with these Findings and Recommendations, Plaintiff may file written
18 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
19 Findings and Recommendations." Plaintiff is informed that failure to file objections within the
20 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,
21 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

22
23 IT IS SO ORDERED.

24 Dated: September 21, 2018

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE