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8	UNITED STATES DISTRICT COURT	
9	EASTERN DISTRICT OF CALIFORNIA	
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11	TROY ALEXANDER SANDERS,	Case No. 1:18-cv-01285-JLT (PC)
12	Plaintiff,	FINDINGS AND RECOMMENDATIONS
13	v.	TO DENY PLAINTIFF'S MOTION TO PROCEED IN FORMA PAUPERIS
14	GAINES, et al.,	(Doc. 2)
15	Defendants.	21-DAY DEADLINE
16		CLERK TO ASSIGN A DISTRICT JUDGE
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18	Plaintiff filed a motion to proceed in forma pauperis along with this civil rights action	
19	pursuant to 42 U.S.C. § 1983. In his application, Plaintiff indicates that his average monthly	
20	account balance for each of the six months prior to the date of his declaration was \$300.00 and	
21	that he has approximately \$7,000.00 in mutual funds. Plaintiff has more than sufficient funds to	
22	be required to pay the filing fee in full to proceed in this action.	
23	I. Legal Standard	
24	An indigent party may be granted permission to proceed in forma pauperis upon	
25	submission of an affidavit showing inability to pay the required fees. 28 USC § 1915(a). The	
26	determination as to whether a plaintiff is indigent and therefore unable to pay the filing fee falls	
27	within the court's sound discretion. California Men's Colony v. Rowland, 939 F.2d 854, 858 (9th	
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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 First Circuit's phrase, to 'put his money where his mouth is."" Williams v. Latins, 877 F.2d 65 16 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

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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)(l). 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 IT IS SO ORDERED. 23 Dated: **September 21, 2018** /s/ Jennifer L. Thurston 24 UNITED STATES MAGISTRATE JUDGE 25 26 27 28

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