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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Patricia Gutierrez

Plaintiff,

v.

ANDREW SAUL, Commissioner of Social Security,

Defendant.

CASE NUMBER: 1:21-cv-00181-GSA

**FINDINGS AND
RECOMMENDATIONS TO DENY
APPLICATION TO PROCEED IN
FORMA PAUPERIS AND TO
REQUIRE FILING FEE PAYMENT,
AND DIRECTING CLERK OF COURT
TO RANDOMLY ASSIGN A UNITED
STATES DISTRICT JUDGE**

(Doc. 2)

On February 12, 2021 Plaintiff filed a complaint in this Court and applied to proceed without prepayment of fees (*in forma pauperis*) pursuant to 28 U.S.C. § 1915. Docs. 1–2.

I. Legal Standard

In order to proceed without prepayment of the filing fee, Plaintiff must submit an affidavit demonstrating that he “is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a)(1). “To proceed in forma pauperis is a privilege not a right.” *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965). In enacting the in forma pauperis statute, “Congress intended to guarantee that no citizen shall be denied an opportunity to commence, prosecute, or defend an action, civil or criminal, in any court of the United States, solely because . . . poverty makes it impossible . . . to pay or secure the costs of litigation.” *Denton v. Hernandez*, 504 U.S. 25, 31 (1992) (internal quotations and citations omitted).

The determination whether a party may proceed in forma pauperis is a “matter within the

1 discretion of the trial court . . .” *Weller v. Dickinson*, 314 F.2d 598, 600 (9th Cir. 1963). To proceed
2 in forma pauperis, a plaintiff need not demonstrate that he is completely destitute, but his poverty
3 must prevent him from paying the filing fee and providing himself and his dependents (if any) with
4 the necessities of life. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339–40 (1948).
5 Although there is no bright line rule, courts look to the federal poverty guidelines developed each
6 year by the Department of Health and Human Services. *See, e.g., Lint v. City of Boise*, No. CV09-
7 72-S-EJL, 2009 WL 1149442, at *2 (D. Idaho Apr. 28, 2009) (and cases cited therein).

8 **II. Findings**

9 Plaintiff’s application reflects no employment, minimal cash on hand and no other liquid
10 assets. However, Plaintiff’s application also reflects that she has no dependents and that her spouse
11 receives income of \$3,415 per month (\$40,980) per year, which is substantially more than the 2021
12 federal poverty guideline for a household of two (\$17,420 per year). *See* 2021 Poverty Guidelines,
13 <https://aspe.hhs.gov/poverty-guidelines> (last visited February 17, 2021). This suggests an ability
14 to pay the \$402 filing fee without sacrificing the necessities of daily life.

15 **III. Recommendation**

16 Accordingly, it is RECOMMENDED that Plaintiff’s application to proceed in forma
17 pauperis be denied (Doc. 2).

18 The Clerk of Court is DIRECTED to randomly assign this case to a United States District
19 Judge for resolution of these findings and recommendations pursuant to the provisions of Title 28
20 U.S.C. § 636(b)(1). Within fourteen (14) days from the filing of these findings and
21 recommendations, Plaintiff may file written objections with the court. L.R. 304(b). Such a
22 document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.”
23 Plaintiff is advised that failure to file objections within the specified time may result in the waiver
24 of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter v.*
25 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

26
27 IT IS SO ORDERED.

28 Dated: February 17, 2021

/s/ Gary S. Austin

UNITED STATES MAGISTRATE JUDGE

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