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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

J.E.S., by *guardian ad litem*, KATRINA M.
MARTINEZ,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

No. 1:21-cv-000784-NONE-SAB

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DENYING
PLAINTIFF'S APPLICATION TO
PROCEED *IN FORMA PAUPERIS*

(Doc. Nos. 2, 5, 6)

FOURTEEN DAY DEADLINE

Plaintiff J.E.S., by his *guardian ad litem* Katrina M. Martinez, filed a complaint in this action on May 14, 2021, challenging a final decision of the Commissioner of Social Security denying disability benefits. (Doc. No. 1.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Plaintiff did not pay the filing fee in this action and instead filed an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (Doc. No. 2.) On May 17, 2021, an order issued finding that plaintiff's application to proceed *in forma pauperis* did not demonstrate entitlement to proceed in this action without prepayment of fees. (Doc. No. 5.) Plaintiff was ordered to either file a long form application to proceed without prepayment of fees or pay the filing fee within twenty days. (*Id.*) Plaintiff, who is represented by counsel, did not file a long

1 form application to proceed without prepayment of fees, pay the filing fee, or otherwise respond
2 to the May 17, 2021 order.

3 Accordingly, on June 22, 2021, the magistrate judge filed findings and recommendations
4 recommending that plaintiff’s application to proceed *in forma pauperis* be denied. (Doc. No. 6.)
5 The findings and recommendations were served on plaintiff and contained notice that any
6 objections thereto were to be filed within fourteen days from the date of service. (*Id.* at 3.) The
7 period for filing objections has passed and no objections have been filed.

8 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
9 *de novo* review of this case. “To satisfy the requirements of 28 U.S.C. § 1915, applicants must
10 demonstrate that because of poverty, they cannot meet court costs and still provide themselves,
11 and any dependents, with the necessities of life.” *Soldani v. Comm’r of Soc. Sec.*, Case No. 1:19-
12 cv-00040-JLT, 2019 WL 2160380, at *1 (E.D. Cal. Jan. 31, 2019). Many courts look to the
13 federal poverty guidelines set by the United States Department of Health and Human Services as
14 a guidepost in evaluating *in forma pauperis* applications. *See Martinez v. Kristi Kleaners, Inc.*,
15 364 F.3d 1305, 1307 n.5 (11th Cir. 2004); *Boulas v. United States Postal Serv.*, No. 1:18-cv-
16 01163-LJO-BAM, 2018 WL 6615075, at *1 (E.D. Cal. Nov. 1, 2018) (applying federal poverty
17 guidelines to *in forma pauperis* application). However, the poverty guidelines should not be
18 considered in a vacuum; rather, courts are to consider income in the context of overall expenses
19 and other factors, including savings and debts. *See, e.g., Boulas*, 2018 WL 6615075, at *1 n.1
20 (denying *in forma pauperis* where income exceeded expenses); *Lintz v. Donahoe*, No. 2:14-CV-
21 0224-JAM-DAD, 2014 WL 1338782, at *1 (E.D. Cal. Apr. 2, 2014) (recommending denial of *in*
22 *forma pauperis* status where plaintiff had \$3,000 in savings even though expenses exceeded
23 income). Where the applicant’s income exceeds expenses by a notable amount, it may be
24 appropriate to deny *in forma pauperis* status. *Lopez-Ruiz v. Tripler Army Med. Ctr.’s*
25 *Postdoctoral Fellowship in Clinical Psychology*, No. CV. 11-0066 JMS/BMK, 2011 WL
26 486952, at *1 (D. Haw. Feb. 4, 2011) (denying *in forma pauperis* status where the applicant’s
27 income was \$21,600, with possibly one dependent, which was above the relevant federal poverty
28 guideline of \$16,760, and the applicant’s income exceeded their monthly expenses).

1 Here, the findings and recommendations accurately reflect the record by indicating that
2 Ms. Martinez has reported income of \$3,200 per month (or \$38,400 per year). (Doc. No. 6 at 2;
3 *see also* Doc. No. 2 at 2.) As the findings and recommendations indicate, the 2021 Poverty
4 Guidelines for the 48 contiguous states for a household of four is \$26,500.00. *2021 Poverty*
5 *Guidelines*, <https://aspe.hhs.gov/poverty-guidelines> (last visited July 7, 2021). Without the
6 information that could have been provided in a long form application, the court is unable to
7 determine the extent to which the reported income is offset by expenses or debts. As a result,
8 based on the information before it, the court concludes that the findings and recommendations
9 are supported by the record and by proper analysis.

10 Accordingly,

- 11 1. The findings and recommendations, filed June 22, 2021, (Doc. No. 6), are
12 ADOPTED IN FULL;
- 13 2. Plaintiff's application to proceed *in forma pauperis* is DENIED;
- 14 3. The **four hundred and two dollar (\$402.00) filing fee** for this action SHALL BE
15 PAID within **fourteen (14) days** of the date of entry of this order; and
- 16 4. Failure to comply with this order will result in this action being dismissed.

17 IT IS SO ORDERED.

18 Dated: July 12, 2021

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21 UNITED STATES DISTRICT JUDGE
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