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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN NICHOLS, aka JACK NICHOLS,)	
)	
Plaintiff,)	2:07-cv-02759-GEB-EFB
)	
v.)	<u>ORDER GRANTING</u>
)	<u>PLAINTIFF'S MOTION FOR</u>
)	<u>PERMISSION TO APPEAL IN</u>
COUNTY OF SACRAMENTO, CHERYL)	<u>FORMA PAUPERIS</u>
CRESON, STEVEN PEDRETTI, KEITH)	
FLOYD, GEORGIA COCHRAN, CARL)	
MOSHER, THOR LUDE, HAROLD BIXLER,)	
and JOHN HALLIMORE,)	
)	
Defendants.)	
)	

Plaintiff John Nichols ("Plaintiff") moves for permission to appeal the May 3, 2010 judgment in forma pauperis.

I. BACKGROUND

Plaintiff's Complaint alleged four claims arising out of the termination of his employment with the County of Sacramento. The Court granted Defendants' motion for summary judgment, and judgment was entered accordingly on May 3, 2010. Plaintiff is appealing the judgment in pro per.

Plaintiff filed a Motion for Permission to Appeal In Forma Pauperis on June 1, 2010. The affidavit filed in support of said motion was unsigned and undated. Therefore, his motion was denied

1 without prejudice. Plaintiff subsequently filed a memorandum in
2 support of his motion, with a signed and dated affidavit attached.

3 **II. DISCUSSION**

4 A party may seek leave from the district court to proceed in
5 forma pauperis on appeal under Federal Rule of Appellate Procedure 24
6 and 28 U.S.C. § 1915, when he or she is financially unable to pay the
7 costs associated with the appeal. The requesting party must file a
8 motion in the district court, accompanied by an affidavit that: 1)
9 evidences in detail the party's inability to pay or give security for
10 fees and costs; 2) claims an entitlement to redress; and 3) states the
11 issues the party intends to present on appeal. Fed. R. App. P.
12 24(a)(1); 28 U.S.C. § 1915(a)(1).

13 To obtain leave to proceed in forma pauperis, the moving
14 party must show his or her economic eligibility and that the appeal is
15 not frivolous. See Coppedge v. U.S., 369 U.S. 438, 444-445 (1962),
16 citing 28 U.S.C. § 1915(a). "For purposes of section 1915, an appeal
17 is frivolous if it lacks any arguable basis in law or fact." Sherman
18 v. Yolo County Chief Prob. Officer, No. 02:06-cv-02415, 2008 WL
19 5282844, at * 1 (E.D. Cal. Dec. 18, 2008) (citing Neitzke v. Williams,
20 490 U.S. 319, 325 (1989) and Franklin v. Murphy, 745 F.2d 1221, 1225
21 (9th Cir. 1984)).

22 The determination of the moving party's indigency falls
23 within the district court's discretion. Cal. Men's Colony v. Rowland,
24 939 F.2d 854, 858 (9th Cir. 1991), rev'd on other grounds, 506 U.S. 194
25 (1993). "One need not be absolutely destitute to obtain benefit of the
26 in forma pauperis statute." Jefferson v. U.S., 277 F.2d at 725. "[A]n
27 affidavit is sufficient which states that one cannot because of his
28 poverty pay or give security for the costs and still be able to

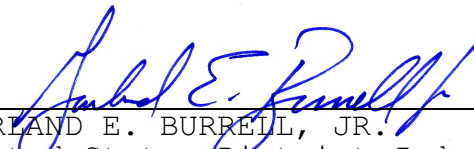
1 provide himself and dependants with the necessities of life." Adkins
2 v. E.I. Du Pont de Nemours & Co., 335 U.S. 331, 339 (1948). Where the
3 supporting affidavits comply with the statute, they should ordinarily
4 be accepted, especially if unopposed. Jefferson v. U.S., 277 F.2d at
5 725.

6 Here, Plaintiff states that the issues he intends to present
7 on appeal include,

8 By granting the defendants motion for summary
9 judgment based upon procedural errors of
10 Plaintiffs attorney, finding that submitted
11 material facts were unsubstantiated, and not
12 considering all facts submitted the order denied
13 plaintiff his right to present his material facts
14 to a jury of his [peers] as the ultimate finder of
15 fact.....

16 (Pl's Aff. 1.) Plaintiff explains his financial status declaring he is
17 currently unemployed, and his unemployment insurance "will be
18 exhausted next month." (Pl's Aff. ¶ 12.) Plaintiff also declares
19 although he and his spouse own a home, they owe well more than its
20 value. (Id.) Further, Plaintiff declares their monthly expenses will
21 exceed their combined income by approximately \$1,800 once Plaintiff's
22 unemployment benefits cease. Plaintiff has shown his financial
23 eligibility and that the appeal is not frivolous. Therefore, his
24 motion to proceed on appeal in forma pauperis is granted.

25 Dated: June 15, 2010

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GARLAND E. BURRELL, JR.
United States District Judge