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

MICHAEL L. BUESGENS,

Plaintiff,

v.

BEVERLY HART, et al.,

Defendants.

No. C 09-80045 SI

Related Case: No. C 09-80039 MISC SI

**ORDER DENYING PLAINTIFF'S
MOTION TO PROCEED IFP**

13 Plaintiff has filed an application for leave to proceed *in forma pauperis* (“IFP”), evidently on
14 appeal.

15 IFP applications are reviewed under a two-part analysis under 28 U.S. C. § 1915. This analysis
16 looks first to whether a plaintiff meets the requisite financial status to be permitted to proceed in federal
17 court without first paying a filing fee. 28 U.S.C. § 1915(a)(1). The second stage of the analysis
18 examines a plaintiff’s complaint to ensure that it states cognizable, non-frivolous claims. 28 U.S.C.
19 § 1915(e)(2)(B)(i)-(ii). The Court may, “at any time,” dismiss an IFP claim if it determines that “the
20 allegation of poverty is untrue,” or the complaint “(i) is frivolous or malicious; (ii) fails to state a claim
21 on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from
22 such relief.” 28 U.S.C. § 1915(e)(2)(B); *see Cato v. United States*, 70 F. 3d 1103, 1106 (9th Cir. 1995)
23 (noting that a court may dismiss an action under § 1915 if the “complaint neither identifies any
24 constitutional or statutory right that was violated nor asserts any basis for federal subject matter
25 jurisdiction . . .”).

26 Courts treat the second prong of the analysis similarly to a motion to dismiss filed by a
27 defendant. If it is “clear that no relief could be granted under any set of facts that could be proved
28 consistent with the [plaintiff’s] allegations,” then it is proper to dismiss an IFP. *See Ascon Properties*,

1 *Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1152 (9th Cir. 1989) (applying standard of review for motions to
2 dismiss under Federal Rule of Civil Procedure 12(b)(6)). Also similar to a motion to dismiss, all
3 material allegations in an IFP complaint are taken as true and construed in the light most favorable to
4 the plaintiff. *See NL Ind., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986). A pro se litigant bringing
5 an IFP suit is entitled to notice and an opportunity to amend the complaint to overcome any deficiency
6 unless it is clear that no amendment could cure the defect. *See Cato*, 70 F.3d at 1106.

7 For the reasons set forth in this Court's prior orders, this Court finds that plaintiff's appeal is
8 without merit. Accordingly, plaintiff's application to proceed IFP is DENIED. The Clerk shall
9 forward to the court of appeals the case file with this order. *See United States v. Asrar*, 116 F.3d
10 1268, 1270 (9th Cir. 1997).

11 **IT IS SO ORDERED.**

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13 Dated: April 7, 2009

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16 SUSAN ILLSTON
17 United States District Judge
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