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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
By: [Signature]
DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DOUGLAS GILBERT,

Plaintiff,

v.

WATSON LABORATORIES,
QUALITEST PHARMACEUTICALS,
et al.,

Defendants.

CASE NO: 07-CV-2023 W (WMC)

ORDER GRANTING MOTION
TO PROCEED IN FORMA
PAUPERIS AND DISMISSING
AMENDED COMPLAINT
WITHOUT PREJUDICE

On October 18, 2007, Plaintiff Douglas Gilbert commenced this action against Watson Laboratories and Qualitest Pharmaceuticals. Along with the Complaint, Plaintiff also filed a motion to proceed *in forma pauperis* ("IFP") and a motion for appointment of counsel. Because Plaintiff failed to identify any living expenses as part of his IFP motion, the Court denied the motion and dismissed the case. The motion was denied without prejudice, however, in order to give Plaintiff an opportunity to submit an amended IFP motion with the missing information.

Plaintiff has now filed an amended IFP motion and motion for appointment of counsel. For the reasons outlined below, the Court **GRANTS** the IFP motion, but **DISMISSES THE AMENDED COMPLAINT WITHOUT PREJUDICE.**

1 I. IFP MOTION.

2 The determination of indigency falls within the district court's discretion. California
3 Men's Colony v. Rowland, 939 F.2d 854, 858 (9th Cir. 1991), *reversed on other grounds*, 506
4 U.S. 194 (1993) ("Section 1915 typically requires the reviewing court to exercise its sound
5 discretion in determining whether the affiant has satisfied the statute's requirement of
6 indigency.").

7 It is well-settled that a party need not be completely destitute to proceed in forma
8 pauperis. Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339-40 (1948). To
9 satisfy the requirements of 28 U.S.C. § 1915(a), "an affidavit [of poverty] is sufficient which
10 states that one cannot because of his poverty pay or give security for costs ... and still be
11 able to provide himself and dependents with the necessities of life." Id. at 339. At the
12 same time, however, "the same even-handed care must be employed to assure that federal
13 funds are not squandered to underwrite, at public expense, ... the remonstrances of a suitor
14 who is financially able, in whole or in material part, to pull his own oar." Temple v.
15 Ellerthorpe, 586 F.Supp. 848, 850 (D.R.I. 1984).

16 District courts, therefore, tend to reject IFP applications where the applicant can pay
17 the filing fee with acceptable sacrifice to other expenses. See, e.g., Stehouwer v.
18 Hennessey, 851 F.Supp. 316, (N.D.Cal. 1994), *vacated in part on other grounds*, Olivares v.
19 Marshall, 59 F.3d 109 (9th Cir. 1995) (finding that district court did not abuse discretion
20 in requiring partial fee payment from prisoner with \$14.61 monthly salary and \$110 per
21 month from family); Allen v. Kelly, 1995 WL 396860 at *2 (N.D. Cal. 1995) (Plaintiff
22 initially permitted to proceed in forma pauperis, later required to pay \$120 filing fee out of
23 \$900 settlement proceeds); Ali v. Cuyler, 547 F.Supp. 129, 130 (E.D. Pa. 1982) (in forma
24 pauperis application denied: "plaintiff possessed savings of \$450 and the magistrate
25 correctly determined that this amount was more than sufficient to allow the plaintiff to pay
26 the filing fee in this action."). Moreover, the facts as to the affiant's poverty must be stated
27 "with some particularity, definiteness, and certainty." United States v. McQuade, 647 F.2d
28 938, 940 (9th Cir. 1981).

1 Having read and considered the papers submitted, the Court finds that Plaintiff
2 meets the requirements for IFP status under 28 U.S.C. § 1915. Plaintiff's application
3 establishes that he receives a monthly income \$1,483. (IFP Mt. at ¶3.) Plaintiff also has
4 \$35 in his checking account, and owns an un-financed 1977 Buick Electra. (Id. at ¶¶4, 6.)
5 In terms of expenses, Plaintiff identifies approximately \$700 in monthly living expenses,
6 which does not include costs for medications, insurance, etc.... (Id., Attachment.) Based
7 on these facts, the Court finds that Plaintiff is entitled to proceed IFP.

8 9 II. SUBJECT-MATTER JURISDICTION.

10 District courts are under a continuing duty to establish their own subject-matter
11 jurisdiction and are obliged to inquire *sua sponte* whenever a doubt arises as to its existence.
12 See Fed. R. Civ. P. 12(h)(3) (“Whenever it appears by suggestion of the parties or otherwise
13 that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.”);
14 Augustine v. United States, 704 F.2d 1074, 1077 (9th Cir. 1983); Arbaugh v. Y&H Corp.,
15 126 S.Ct. 1235, 1240 (2006). Lack of jurisdiction is presumed until the party asserting
16 jurisdiction proves otherwise. Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S.
17 375, 377 (1994); Bradbury v. Dennis, 310 F.2d 73, 74 (10th Cir.1962) (“We start with the
18 presumption against diversity jurisdiction, and the burden is and always has been upon the
19 one asserting it to affirmatively sustain it.”). Whether subject-matter jurisdiction exists is
20 a question of law for the court. Nike Inc. v. Commercial Iberica de Exclusiones Deportivas,
21 20 F.3d 987, 990 (9th Cir. 1994).

22 Federal Rule of Civil Procedure 8(a)(1) requires each pleading to include “a short
23 and plain statement of the grounds for the court’s jurisdiction. . . .” Fed.R.Civ.P. 8(a)(1).
24 Plaintiff’s Complaint appears to assert a state-based claim for personal injury arising out
25 of his use of the medication prednisone. There are no allegations, however, relating to the
26 Court’s jurisdiction. Accordingly, the Complaint does not comply with Rule 8(a)(1) and
27 must be dismissed.

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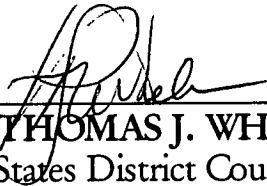
1 **III. CONCLUSION & ORDER.**

2 For the reasons addressed above, the Court **GRANTS** Plaintiff's motion to proceed
3 IFP [Doc. No. 6], but **DISMISSES THE CASE WITHOUT PREJUDICE**. If Plaintiff
4 wants to continue to pursue this case in federal court, he must file a "Second Amended
5 Complaint" on or before **February 8, 2008** that includes a "short and plain statement of
6 the grounds for the court's jurisdiction."

7 In light of the Court's dismissal, Plaintiff's motion for appointment of counsel [Doc.
8 No. 7] is **DENIED** as moot.

9
10 **IT IS SO ORDERED.**

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13 **DATE: January 10, 2008**


14 **HON. THOMAS J. WHELAN**
15 United States District Court
16 Southern District of California
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