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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TARYN L. JONES, an individual,
Plaintiff,

v.

GARY DEAN LOBEL, et al.,
Defendants.

Case No. 14-cv-1754 BAS (BGS)

ORDER:
**(1) GRANTING PLAINTIFF’S
MOTION TO PROCEED
IFP (ECF 3); AND**
**(2) DENYING PLAINTIFF’S
APPLICATION FOR
EMERGENCY
PRELIMINARY
INJUNCTION (ECF 2)**

On July 25, 2014, Plaintiff Taryn L. Jones commenced this action against Defendants Gary Dean Lobel and Lobel Financial Corp. ECF 1. On the same day, she also filed a motion seeking leave to proceed *in forma pauperis* (“IFP”) (ECF 3) and an application for an emergency preliminary injunction (ECF 2). For the reasons outlined below, the Court **GRANTS** Jones’ IFP motion and **DENIES** application for an emergency preliminary injunction.

I. Leave to proceed *in forma pauperis* is granted.

The determination of indigency falls within the district court’s discretion. *Cal. Men’s Colony v. Rowland*, 939 F.2d 854, 858 (9th Cir. 1991), *rev’d on other*

1 grounds, 506 U.S. 194 (1993) (holding that “Section 1915 typically requires the
2 reviewing court to exercise its sound discretion in determining whether the affiant
3 has satisfied the statute’s requirement of indigency”). It is well-settled that a party
4 need not be completely destitute to proceed *in forma pauperis*. *Adkins v. E.I.*
5 *DuPont de Nemours & Co.*, 335 U.S. 331, 339-40 (1948). To satisfy the
6 requirements of 28 U.S.C. § 1915(a), “an affidavit [of poverty] is sufficient which
7 states that one cannot because of his poverty pay or give security for costs . . . and
8 still be able to provide himself and dependents with the necessities of life.” *Id.* at
9 339. At the same time, however, “the same even-handed care must be employed to
10 assure that federal funds are not squandered to underwrite, at public expense, . . . the
11 remonstrances of a suitor who is financially able, in whole or in material part, to pull
12 his own oar.” *Temple v. Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I. 1984).

13 District courts, therefore, tend to reject IFP applications where the applicant
14 can pay the filing fee with acceptable sacrifice to other expenses. *See e.g.*,
15 *Stehouwer v. Hennessey*, 841 F. Supp. 316, 321 (N.D. Cal. 1994), *vacated in part on*
16 *other grounds, Olivares v. Marshall*, 59 F.3d 109 (9th Cir. 1995) (finding that a
17 district court did not abuse its discretion in requiring a partial fee payment from a
18 prisoner who had a \$14.61 monthly salary and who received \$110 per month from
19 family). Moreover, “*in forma pauperis* status may be acquired and lost during the
20 course of litigation.” *Wilson v. Dir. of Div. of Adult Insts.*, No. CIV S-06-0791,
21 2009 WL 311150, at *2 (E.D. Cal. Feb. 9, 2009) (citing *Stehouwer*, 841 F. Supp. at
22 321); *see also Allen v. Kelly*, 1995 WL 396860, at *2 (N.D. Cal. June 29, 1995)
23 (holding that a plaintiff who was initially permitted to proceed *in forma pauperis*
24 should be required to pay his \$120 filing fee out of a \$900 settlement). In addition,
25 the facts as to the affiant’s poverty must be stated “with some particularity,
26 definiteness, and certainty.” *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir.
27 1981).

28 Here, Jones lists her take-home pay as \$2,595.62 as an employee of Sharp

1 Health Care. She attests that she supports her three daughters fully, and her monthly
2 expenses total nearly her entire monthly income. She has no bank accounts or
3 outstanding debts listed. Her primary expenses seem reasonably frugal to support a
4 four-person household, and it appears she would be required to undergo significant
5 hardship to pay the filing fee at this time. Accordingly, Jones' motion to proceed *in*
6 *forma pauperis* is **GRANTED** at this time.

7 **II. Jones' application for an emergency preliminary injunction is denied.**

8 The standard for issuing a TRO is similar to the standard for issuing a
9 preliminary injunction and requires that the party seeking relief show either "(1) a
10 combination of likelihood of success on the merits and the possibility of
11 irreparable harm, or (2) that serious questions going to the merits are raised and the
12 balance of hardships tips sharply in favor of the moving party." *Homeowners*
13 *Against the Unfair Initiative v. Calif. Building Industry Assoc.*, 2006 WL 5003362,
14 *2, 2006 U.S. Dist. LEXIS 97023, *4 (S.D.Cal. Jan. 26, 2006) (citing *Immigrant*
15 *Assistance Project of the L.A. County of Fed'n of Labor v. INS*, 306 F.3d 842, 873
16 (9th Cir.2002)). "[T]hese two formulations represent two points on a sliding scale
17 in which the required degree of irreparable harm increases as the probability of
18 success decreases." *Dep't Parks & Rec. of Calif. v. Bazaar Del Mundo, Inc.*, 448
19 F.3d 1118, 1123 (9th Cir.2006) (citations omitted). The underlying purpose of a
20 TRO is to preserve the status quo and prevent irreparable harm before a
21 preliminary injunction hearing may be held. *Granny Goose Foods*, 415 U.S. at
22 439, 94 S.Ct. 1113 (1974); *see also Reno Air Racing Ass'n v. McCord*, 452 F.3d
23 1126, 1130–31 (9th Cir.2006).


24 Federal Rule of Civil Procedure 65(b) provides that a court may issue a TRO
25 without notice to the adverse party in limited circumstances where "specific facts
26 in an affidavit or a verified complaint clearly show that immediate and irreparable
27 injury, loss, or damage will result to the movant." Fed. R. Civ. P. 65(b)(1)(A). The
28 movant must also certify in writing any efforts made to give notice and the reasons

1 why it should not be required. Fed. R. Civ. P. 65(b)(1)(B). Although the
2 restrictions imposed are stringent, they “reflect the fact that our entire
3 jurisprudence runs counter to the notion of court action taken before reasonable
4 notice and an opportunity to be heard has been granted both sides of a dispute.”
5 *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers*, 415 U.S.
6 423, 438–39, 94 S.Ct. 1113, 39 L.Ed.2d 435 (1974).

7 In this case, Jones has failed to properly attempt to provide Lobel with an
8 opportunity to respond to her application. Our judicial system requires that parties
9 provide notice to an adverse party if it is at all possible. Here, the Court finds that
10 Jones has not adequately explained why notice to the opposing party could not
11 have been provided. Accordingly, her application for an emergency preliminary
12 injunction is **DENIED**.

13 **IT IS SO ORDERED.**

14
15 **DATED: August 14, 2014**


Hon. Cynthia Bashant
United States District Judge