

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

LAURA DIAZ,

Plaintiff,

vs.

ARA, INC., also known as ASSET
RECOVERY ASSOCIATES, INC.,
and DOES 1 through 25

Defendants.

CASE NO. 14cv2018-WQH-NLS

ORDER

HAYES, Judge:

The matter before the Court is the Motion to Proceed in Forma Pauperis (“Motion to Proceed IFP”) filed by Plaintiff Laura Diaz. (ECF No. 2).

On August 27, 2014, Plaintiff, represented by Alex Asil Mishiri, Esq. of the Mashiri Law Firm, initiated this action by filing the Complaint (ECF No. 1) and the Motion to Proceed IFP (ECF No. 2). The Complaint alleges violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, the California Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §§ 1788, 1812, *et seq.*, and violations of the Telephone Consumer Protection Act, 47 U.S.C. § 277.

I. Motion to Proceed IFP

All parties instituting a civil action, suit, or proceeding in a district court of the United States, other than a petition for writ of habeas corpus, must pay a filing fee of \$400.00. *See* 28 U.S.C. § 1914(a); S.D. Cal. Civ. L.R. 4.5. An action may proceed

1 despite a party's failure to pay only if the party is granted leave to proceed in forma
2 pauperis pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177
3 (9th Cir. 1999). "To proceed in forma pauperis is a privilege not a right." *Smart v.*
4 *Heinze*, 347 F.2d 114, 116 (9th Cir. 1965).

5 In her affidavit, Plaintiff states that she is employed and her take-home pay is
6 \$1,200, but did not indicate the pay period. (ECF No. 2 at 2). Plaintiff further states that
7 she has received money through Medi-Cal within the past 12 months. *Id.* Plaintiff
8 owns a 2001 BMW X5, which is not financed, a 2014 Harley Davidson motorcycle, and
9 no other assets of value. *Id.* at 2-3. Plaintiff states that she has a single bank account
10 with a balance of approximately \$200.00. *Id.* Plaintiff has regularly monthly expenses
11 as follows: \$800 per month in rent, \$50 per month in gas and electric, and \$100 per
12 month for her phone. *Id.* At 3. Plaintiff also has 2 children and contributes 100% in
13 support. *Id.* at 3.

14 The Court has reviewed the affidavit and finds that it is sufficient to show that
15 Plaintiff is unable to pay the fees or post securities required to maintain this action. The
16 Court grants the Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a).

17 **II. Initial Screening of Complaint**


18 A complaint filed by any person proceeding in forma pauperis pursuant to 28
19 U.S.C. § 1915(a) is also subject to mandatory review and sua sponte dismissal to the
20 extent it "is frivolous or malicious; fails to state a claim on which relief may be granted;
21 or seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C.
22 § 1915(e)(2)(B)(i)-(iii); *see Lopez v. Smith*, 203 F.3d 1122, 1126 (9th Cir. 2000) (en
23 banc). Upon review of the allegations in the Complaint, the Court finds they are
24 sufficient to satisfy the requirements of section 1915(e)(2)(B). However, Plaintiff is
25 advised that this Order will not be construed as a denial of a 12(b)(6) motion to dismiss
26 or expressing an opinion as to whether the Complaint would survive such a motion. *See*
27 *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007) ("[T]he sua sponte
28 screening and dismissal procedure is cumulative of, and not a substitute for, any

1 subsequent Rule 12(b)(6) motion that the defendant may choose to bring.”).

2 **III. Conclusion**

3 IT IS HEREBY ORDERED that the Motion to Proceed IFP (ECF No. 2) is
4 GRANTED. The Clerk of Court shall issue a summons and provide Plaintiff with the
5 summons, certified copies of both this Order and the Complaint, and a blank U.S.
6 Marshal Form 285. Plaintiff shall complete the U.S. Marshal Form 285, and forward
7 the Form 285 and the designated copies of this Order and the Complaint to the U.S.
8 Marshal. The U.S. Marshal shall serve a copy of the Complaint and summons upon
9 Defendants as directed by Plaintiff on the U.S. Marshal Form 285.

10 DATED: September 4, 2014

11 
12 **WILLIAM Q. HAYES**
13 United States District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28