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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEBORAH LYNN RIEGEL,

Plaintiff,

v.

CAROLYN W. COLVIN,
Commissioner of the Social Security
Administration

Defendant.

CASE NO: 15-CV-1342 W (MDD)

ORDER:

(1) DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS*
[DOC. 2]; AND

(2) DISMISSING COMPLAINT
WITHOUT PREJUDICE

On June 18, 2015, Plaintiff Deborah Lynn Riegel (“Plaintiff”) commenced this action against Carolyn W. Colvin, Acting Commissioner of Social Security, for judicial review of a final administrative decision denying disability benefits. (*See Compl.* [Doc. 1].) Along with the Complaint, Plaintiff also filed a motion to proceed *in forma pauperis* (“IFP”). (*See IFP Mot.* [Doc. 2].) For the reasons outlined below, the Court **DENIES** Plaintiff’s IFP motion and **DISMISSES** Plaintiff’s Complaint **WITHOUT PREJUDICE**.

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1 The determination of indigency falls within the district court’s discretion. Cal.
2 Men’s Colony v. Rowland, 939 F.2d 854, 858 (9th Cir. 1991), *rev’d on other grounds*, 506
3 U.S. 194 (1993) (“[28 U.S.C. §] 1915 typically requires the reviewing court to exercise
4 its sound discretion in determining whether the affiant has satisfied the statute’s
5 requirement of indigency.”). It is well settled that a party need not be completely
6 destitute to proceed IFP. Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331,
7 339–40 (1948); *see also* Olivares v. Marshall, 59 F.3d 109, 112 (9th Cir. 1995) (“[T]he
8 filing fee, while discretionary, should not take the prisoner’s last dollar.”). Rather, to
9 satisfy the requirements of 28 U.S.C. § 1915(a), an affidavit need only state that one
10 cannot “because of his poverty pay or give security for the costs . . . and still be able to
11 provide himself and dependents with the necessities of life.” Adkins, 335 U.S. at 339
12 (internal quotation marks omitted). At the same time, however, the court must “assure
13 that federal funds are not squandered to underwrite, at public expense, . . . the
14 remonstrances of a suitor who is financially able, in whole or in material part, to pull his
15 own oar.” Temple v. Ellerthorpe, 586 F. Supp. 848, 850 (D.R.I. 1984).

16 District courts therefore tend to reject IFP applications where the applicant can
17 pay the filing fee with acceptable sacrifice to other expenses. *See, e.g., Olivares*, 59 F.3d
18 at 112 (district court did not abuse discretion in requiring partial fee payment from
19 prisoner who consistently spent \$35 a month on “comforts” such as candy and name
20 brand toiletries from the prison commissary); Ali v. Cuyler, 547 F. Supp. 129, 130 (E.D.
21 Pa. 1982) (IFP application denied because “plaintiff possessed savings of \$450 and the
22 magistrate correctly determined that this amount was more than sufficient to allow the
23 plaintiff to pay the filing fee in this action”). Moreover, “*in forma pauperis* status may be
24 acquired and lost during the course of litigation.” Wilson v. Dir. of Div. of Adult Insts.,
25 2009 WL 311150, at *2 (E.D. Cal. Feb. 9, 2009) (citation omitted); *see also* Allen v.
26 Kelly, 1995 WL 396860, at *2 (N.D. Cal. June 29, 1995) (holding that a plaintiff who
27 was initially permitted to proceed *in forma pauperis* should be required to pay his \$120
28 filing fee out of a \$900 settlement). Furthermore, the facts as to the affiant’s poverty

1 must be stated “with some particularity, definiteness, and certainty.” United States v.
2 McQuade, 647 F.2d 938, 940 (9th Cir. 1981).

3 Having read and considered Plaintiff’s application, the Court finds that Plaintiff
4 fails to meet the requirements set out in 28 U.S.C. § 1915 for IFP status. Plaintiff is
5 currently employed; her take-home wages amount to \$575 each month. (*IFP Mot.* ¶ 2.)
6 She also lists her husband’s disability income, which amounts to \$1,300 per month. (*Id.*
7 ¶ 3.) Plaintiff does not have a checking or savings account, nor does she own any real
8 estate, stocks, bonds, or securities. (*Id.* ¶¶ 4–5, 7.) Plaintiff and her husband do,
9 however, own two vehicles: a 2004 Toyota Matrix and a 2005 Ford Focus. (*Id.* ¶ 6.) The
10 current value of the vehicles is not stated in Plaintiff’s motion, but it appears that
11 Plaintiff and her husband own the vehicles outright. (*See id.*) Plaintiff does not list any
12 dependents. (*Id.* ¶ 6–8.) Furthermore, with regard to expenses, Plaintiff’s motion lists
13 monthly expenses totaling \$1,705. Specifically, Plaintiff states that she allocates her
14 household income toward the following expenses and in the following amounts: \$830
15 for rent; \$180 for utilities; \$70 for car insurance; \$200 for car maintenance and fuel;
16 \$400 for groceries; and \$25 for laundry.

17 Based on the details given by Plaintiff, she has a net-positive monthly household
18 source of money of approximately \$170. In addition, the details provided in Plaintiff’s
19 motion indicate that Plaintiff’s monthly household income places her above the 2015
20 poverty threshold.¹ Therefore, as it stands, the Court cannot conclude that paying the
21 court filing fees would impair Plaintiff’s ability to obtain the necessities of life. See
22 Adkins, 335 U.S. at 339. Furthermore, Plaintiff and her husband also appear to own
23 two vehicles. In the absence of more detailed information regarding the value of the
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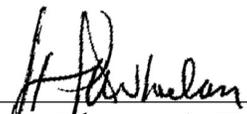
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26 ¹ According to the figures supplied by Plaintiff, her annual household income amounts
27 to \$22,500. According to the poverty guidelines promulgated by the United States Department
28 of Health and Human Services, the poverty threshold for two-person households in the forty-
eight contiguous states is \$15,930. See United States Department of Health and Human
Services, *2015 Poverty Guidelines*, <http://aspe.hhs.gov/poverty/15poverty.cfm> (last visited August
3, 2015).

1 vehicles, the Court cannot conclude that Plaintiff, because of her poverty, is unable to
2 give security for the cost of filing her Complaint and still be able to provide herself and
3 her husband with the necessities of life. See id.; see also Azzun v. Kan. Dep't of Health
4 and Env't, 2009 WL 5171778 (D. Kans. Dec. 22, 2009) (citing cases for the dual
5 propositions that “[a] court may consider [an] applicant’s assets, not merely his or her
6 income, in determining the applicant’s ability to pay the filing fee,” and that “[f]ederal
7 courts have historically looked to assets, such as equity in real estate, in determining
8 eligibility to proceed *in forma pauperis*”).

9 In light of the foregoing, the Court **DENIES** Plaintiff’s motion to proceed IFP
10 (Doc. 2), and **DISMISSES** the Complaint **WITHOUT PREJUDICE** . Pursuant to this
11 order, Plaintiff is granted 30 days’ leave to pay the filing fee required to maintain this
12 action pursuant to 28 U.S.C. § 1914, or to submit additional documentation regarding
13 her financial status. **IF PLAINTIFF CHOOSES TO FILE ADDITIONAL**
14 **INFORMATION REGARDING HER POVERTY, SHE MUST ATTACH A COPY**
15 **OF THIS ORDER.** Additionally, Plaintiff is reminded that an IFP application is made
16 under penalty of perjury, and any false statements may result in dismissal of her claims,
17 imprisonment of not more than five years, or a fine. See 18 U.S.C. §§ 1621, 3571.

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19 **IT IS SO ORDERED.**

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21 DATED: August 4, 2015

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25 Hon. Thomas J. Whelan
26 United States District Judge
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