

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 REJEANNE BERNIER, an individual,
12 and HANS CROTEAU, an individual,
13 **Plaintiffs,**
14 v.
15 TRAVELERS PROPERTY CASUALTY
16 INSURANCE COMPANY, et al.,
17 **Defendants.**

Case No.: 17cv1028-MMA (BLM)

**ORDER GRANTING PLAINTIFFS'
MOTIONS FOR LEAVE TO
APPEAL IN FORMA PAUPERIS**

[Doc. Nos. 14, 15]

18 Before the Court is Plaintiff Rejeanne Bernier’s (“Bernier”) and Plaintiff Hans
19 Croteau’s (“Hans”) motions for leave to proceed *in forma pauperis* (“IFP”) on appeal
20 pursuant to Federal Rule of Appellate Procedure 24(a)(1). Doc. Nos. 14, 15. Having
21 considered Plaintiffs’ motions, the relevant law, and the record in this case, the Court
22 **GRANTS** Plaintiffs’ motions.

23 **PROCEDURAL BACKGROUND**

24 On May 18, 2017, Plaintiffs, proceeding *pro se*, commenced this action by filing a
25 complaint for breach of contract and breach of the covenant of good faith and fair
26 dealing. Doc. No. 1. Pursuant to receipt number CAS091226, Plaintiffs paid the \$400.00
27 filing fee. *Id.* On June 12, 2017, Defendant Travelers Property Casualty Insurance
28

1 (1) Except as stated in Rule 24(a)(3), a party to a district-court action who
2 desires to appeal in forma pauperis must file a motion in the district court.
3 The party must attach an affidavit that:

- 4 (A) shows in the detail prescribed by Form 4 of the Appendix of Forms
5 the party's inability to pay or to give security for fees and costs;
6 (B) claims an entitlement to redress; and
7 (C) states the issues that the party intends to present on appeal.

8 The determination of whether a plaintiff is indigent, and therefore unable to pay
9 the filing fee, falls within the court's sound discretion. *Cal. Men's Colony v. Rowland*,
10 939 F.2d 854, 858 (9th Cir. 1991), *reversed on other grounds*, 506 U.S. 194 (1993). A
11 party need not be completely destitute to be eligible for IFP status. *Adkins v. E.I. DuPont*
12 *de Nemours & Co.*, 335 U.S. 331, 339-40 (1948). The affidavit supporting an IFP motion
13 is sufficient if it alleges facts showing that the plaintiff, because of poverty, cannot pay or
14 give security for court costs and still be able to provide herself and her dependents with
15 "the necessities of life." *Id.* at 339.

16 ANALYSIS

17 After reviewing Plaintiffs' affidavits in support of their motions to proceed IFP on
18 appeal, the Court finds that they have made an adequate showing that they lack the
19 financial resources or assets to pay or give security for court costs and still be able to
20 provide the necessities of life for themselves. Plaintiff Bernier indicates she receives
21 \$4,980.87 in retirement, such as social security, pensions, annuities, and insurance, and
22 \$1,317.70 in disability, such as social security insurance payments. Doc. No. 14 at 3.
23 However, she specifies that her "retirement is assigned" to her consolidated debts, and
24 therefore her total monthly income is only \$1,317.70. *Id.* at 3, 8. She also indicates that
25 she has \$15.43 in her checking account and the value of her home is \$83,000.00. *Id.* at 5.
26 Plaintiff Bernier states that her total monthly expenses amount to \$1,527.75. *Id.* at 6-8.
27 Plaintiff Hans indicates he has no monthly income, owns a 1997 Dodge Caravan valued
28 at \$600, and has \$400 in monthly expenses. Doc. No. 15 at 3-8. Accordingly, the
affidavits supporting Plaintiffs' IFP motions sufficiently show that Plaintiffs cannot pay
or give security for court costs and still be able to provide themselves with the necessities

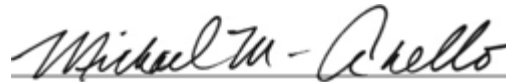
1 of life. *See Adkins*, 335 U.S. at 339. Moreover, Plaintiffs' IFP motions claim an
2 entitlement to redress and specifies the issues they wish to present on appeal. *See Doc.*
3 *Nos. 14, 15; see also Fed. R. App. P. 24(a)(1)(B)-(C).* Specifically, Plaintiffs claim the
4 pre-filing order, entered by this Court on November 29, 2017, is not narrowly tailored
5 and is overbroad. *Doc. Nos. 14 at 2, 15 at 2.*

6 **CONCLUSION**

7 For the foregoing reasons, the Court **GRANTS** Plaintiffs' motions for leave to
8 appeal IFP.

9 **IT IS SO ORDERED.**

10 Dated: January 2, 2018



11 Hon. Michael M. Anello
12 United States District Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28