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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LEON-QIYAM POGUE, et al.,
Plaintiffs,
v.
SAN DIEGO SUPERIOR COURT,
et al.,
Defendants.

Case No. 17-cv-01091-BAS-JMA

ORDER:

- (1) DENYING PLAINTIFFS' MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS (ECF No. 2); AND
- (2) DENYING PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER (ECF No. 3)

20 Plaintiffs Leon-Qiyam Pogue, Jeff Sikking, and Barbara Sikking are
21 proceeding pro se—without an attorney. They filed a complaint on May 26, 2017,
22 against (1) the San Diego Superior Court, (2) Richardson Griswold, a receiver
23 appointed by the San Diego Superior Court, and (3) Agent Salazar, an employee with
24 the City of San Diego’s Code Enforcement Division. Plaintiffs seek injunctive relief
25 related to a public nuisance abatement action brought against Mr. Sikking and Mrs.
26 Sikking in state court. They also filed a motion for leave to proceed in forma pauperis
27 (“IFP”—without prepaying court fees or costs—and a document that the Court will
28 broadly construe as a request for a temporary restraining order.

1 For the following reasons, the Court **DENIES** Plaintiffs' (i) motion to proceed
2 IFP and (ii) request for a temporary restraining order.

3 **I. MOTION FOR LEAVE TO PROCEED IFP**

4 Under 28 U.S.C. § 1915, a litigant who because of indigency is unable to pay
5 the required fees or security to commence a legal action may petition the court to
6 proceed without making such payment. The determination of indigency falls within
7 the district court's discretion. *Cal. Men's Colony v. Rowland*, 939 F.2d 854, 858 (9th
8 Cir. 1991) (holding that "Section 1915 typically requires the reviewing court to
9 exercise its sound discretion in determining whether the affiant has satisfied the
10 statute's requirement of indigency"), *rev'd on other grounds*, 506 U.S. 194 (1993).
11 It is well-settled that a party need not be completely destitute to proceed IFP. *Adkins*
12 v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339–40 (1948). To satisfy the
13 requirements of 28 U.S.C. § 1915(a), "an affidavit [of poverty] is sufficient which
14 states that one cannot because of his poverty pay or give security for costs . . . and
15 still be able to provide himself and dependents with the necessities of life." *Id.* at 339.
16 At the same time, however, "the same even-handed care must be employed to assure
17 that federal funds are not squandered to underwrite, at public expense . . . the
18 remonstrances of a suitor who is financially able, in whole or in material part, to pull
19 his own oar." *Temple v. Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I. 1984).

20 District courts, therefore, tend to reject IFP applications where the applicant
21 can pay the filing fee with acceptable sacrifice to other expenses. See, e.g., *Stehouwer*
22 v. *Hennessey*, 841 F. Supp. 316, 321 (N.D. Cal. 1994) (finding that the district court
23 did not abuse its discretion in requiring a partial fee payment from a prisoner who
24 had a \$14.61 monthly salary and who received \$110 per month from family), vacated
25 in part on other grounds by *Olivares v. Marshall*, 59 F.3d 109 (9th Cir. 1995).
26 Moreover, "in forma pauperis status may be acquired and lost during the course of
27 litigation." *Wilson v. Dir. of Div. of Adult Insts.*, No. CIV S-06-0791, 2009 WL
28 311150, at *2 (E.D. Cal. Feb. 9, 2009) (citing *Stehouwer*, 841 F. Supp. at 321); see

1 also Allen v. Kelly, 1995 WL 396860, at *2 (N.D. Cal. June 29, 1995) (holding that
2 a plaintiff who was initially permitted to proceed in forma pauperis should be
3 required to pay his \$120 filing fee out of a \$900 settlement). Further, the facts as to
4 the affiant's poverty must be stated "with some particularity, definiteness, and
5 certainty." United States v. McQuade, 647 F.2d 938, 940 (9th Cir. 1981).

6 "In addition, although only one filing fee needs to be paid per case, if multiple
7 plaintiffs seek to proceed in forma pauperis, each plaintiff must qualify for IFP
8 status." Anderson v. California, No. 10-cv-2216 MMA AJB, 2010 WL 4316996, at
9 *1 (S.D. Cal. Oct. 27, 2010); accord, e.g., Seligman v. Hart, No. 12-cv-3067-LAB
10 BGS, 2013 WL 371991, at *1 (S.D. Cal. Jan. 15, 2013); Darden v. Indymac Bancorp,
11 Inc., No. S-09-2970 JAM DAD PS, 2009 WL 5206637, at *1 (E.D. Cal. Dec. 23,
12 2009).

13 In this case, there are three Plaintiffs—Mr. Pogue, Mr. Sikking, and Mrs.
14 Sikking.¹ (ECF No. 1.) They have not paid the filing fee. Plaintiffs have, however,
15 submitted a single IFP application. (ECF No. 2.) This application is signed by only
16 Mr. Pogue, and it does not contain any information about either Mr. Sikking or Mrs.
17 Sikking. Consequently, the Court is unable to discern whether Mr. Sikking and Mrs.
18 Sikking qualify to proceed IFP. Although Plaintiffs may proceed without paying the
19 single filing fee required for this case, they cannot do so unless each Plaintiff
20 qualifies for IFP status. That is, each Plaintiff must submit an appropriate IFP
21 application that is signed by that Plaintiff and includes financial information that is
22 specific to that person. Because the filing fee has not been paid and only one Plaintiff
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25 ¹ Mr. Sikking and Mrs. Sikking have not provided the Court with a current address. Under
26 Civil Local Rule 83.11(a), a "person who is appearing propria persona, (without an attorney) (i.e.
27 pro se) must appear personally for such purpose and may not delegate that duty to any other person,
28 including husband or wife, or another party on the same side appearing without an attorney." Further,
any "party proceeding pro se must keep the court and opposing parties advised as to [the
party's] current address." Civ. L.R. 83.11(b). Thus, the Court will direct Plaintiffs below to provide
it with a current address for Mr. Sikking and Mrs. Sikking.

1 has submitted information regarding an inability to pay the filing fee, the Court
2 **DENIES** Plaintiffs' request to proceed IFP (ECF No. 2).

3 **II. TEMPORARY RESTRAINING ORDER**

4 Plaintiffs have also filed a "Temporary Restraining Order (TRO) Checklist."
5 (ECF No. 3.) This document is a form required by another court, the U.S. District
6 Court for the Eastern District of California, when a party files a motion for a TRO in
7 that court. (See *id.*) There is no motion, memorandum of points and authorities,
8 supporting declaration, or proposed order submitted with this checklist. (See *id.*) That
9 said, in light of Plaintiffs' pro se status, the Court will broadly construe this filing as
10 a request for a TRO.

11 Federal Rule of Civil Procedure 65(b) governs temporary restraining orders.
12 This rule provides:

13 **(1) Issuing Without Notice.** The court may issue a temporary restraining
14 order without written or oral notice to the adverse party or its attorney
15 only if:

16 **(A)** specific facts in an affidavit or a verified complaint clearly
17 show that immediate and irreparable injury, loss, or damage will
18 result to the movant before the adverse party can be heard in
19 opposition; and

20 **(B)** the movant's attorney certifies in writing any efforts made to
21 give notice and the reasons why it should not be required.

22 Fed. R. Civ. P. 65(b)(1). This rule's "stringent restrictions . . . on the availability of
23 ex parte temporary restraining orders reflect the fact that our entire jurisprudence
24 runs counter to the notion of court action taken before reasonable notice and an
25 opportunity to be heard has been granted both sides of a dispute." *Granny Goose*
26 Foods, Inc. v. Bhd. of Teamsters, 415 U.S. 423, 438–39 (1974). "Consistent with this
27 overriding concern, courts have recognized very few circumstances justifying the

1 issuance of an ex parte TRO.” *Reno Air Racing Ass’n., Inc. v. McCord*, 452 F.3d
2 1126, 1131 (9th Cir. 2006).

3 Here, Plaintiffs do not demonstrate that they have provided notice of their
4 request for a TRO to each of Defendants. In their filing, Plaintiffs state they asked
5 “the receiver,” presumably Defendant Griswold, to “inform the court that a receiver
6 was not required at this time” and to “stipulate that if he did not inform the state court
7 that the basis for appointing a receiver in the first place was based upon false
8 statements [and] insufficient evidence . . . , then we had [no] other available remedy
9 than to seek [a] federal TRO.” (ECF No. 3.) This showing does not establish that
10 each of Defendants has received adequate notice of Plaintiffs’ request or that there is
11 a justifiable reason for issuing a TRO without notice. See *McCord*, 452 F.3d at 1131
12 (noting an ex parte TRO may be appropriate when it is impossible to provide notice
13 to the adverse party because the party cannot be located in time for a hearing or the
14 identity of the party is unknown); see also Fed. R. Civ. P. 65(b)(1)(B). Further, the
15 Court finds Plaintiffs have not set forth “specific facts” that “clearly show that
16 immediate and irreparable injury, loss, or damage will result to [Plaintiffs] before
17 [Defendants] can be heard in opposition.” See Fed. R. Civ. P. 65(b)(1)(A). They also
18 have not shown injunctive relief is otherwise appropriate. Accordingly, the Court
19 **DENIES** their request for a TRO.

20 **III. CONCLUSION**

21 In light of the foregoing, the Court **DENIES** Plaintiffs’ application to proceed
22 IFP (ECF No. 2). To continue with this case, Plaintiffs must either pay the filing fee
23 or Mr. Sikking and Mrs. Sikking must each also file an appropriate application to
24 proceed IFP. Further, the Court **DENIES** Plaintiffs’ request for a TRO (ECF No. 3).
25 Last, the Court directs Plaintiffs to provide it with a current address for Mr. Sikking
26 and Mrs. Sikking in accordance with Civil Local Rule 83.11(b).

27 **IT IS SO ORDERED.**

28 **DATED: May 30, 2017**


Hon. Cynthia Bashant
United States District Judge