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

TIMOTHY LEE CASS,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security
Administration,

Defendant.

Case No.: 17-CV-1364 W (NLS)

**ORDER DENYING MOTION TO
PROCEED IN FORMA PAUPERIS
[DOC. 2]**

Plaintiff Timothy Lee Cass filed this action on July 5, 2017, seeking review of the denial of his application for disability insurance benefits under the Social Security Act. (*Compl.* [Doc. 1].) He thereafter filed the pending motion to proceed *in forma pauperis* (“IFP”) under 28 U.S.C. § 1915. (*Pl.’s Mot.* [Doc. 2].) The Court decides the matter on the papers submitted pursuant to Civ. L.R. 7.1(d)(1). For the reasons outlined below, the Court **DENIES** the IFP motion. [Doc. 2.]

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1 **I. LEGAL STANDARD**

2 The determination of indigency falls within the district court’s discretion.
3 California Men’s Colony v. Rowland, 939 F.2d 854, 858 (9th Cir. 1991), *reversed on*
4 *other grounds*, 506 U.S. 194 (1993) (“Section 1915 typically requires the reviewing court
5 to exercise its sound discretion in determining whether the affiant has satisfied the
6 statute’s requirement of indigency.”).

7 It is well-settled that a party need not be completely destitute to proceed in forma
8 pauperis. See Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339–40 (1948).
9 To satisfy the requirements of 28 U.S.C. § 1915(a), “an affidavit [of poverty] is sufficient
10 which states that one cannot because of his poverty pay or give security for costs . . . and
11 still be able to provide himself and dependents with the necessities of life.” Id. at 339
12 (internal quotations omitted). At the same time, however, “the same even-handed care
13 must be employed to assure that federal funds are not squandered to underwrite, at public
14 expense, . . . the remonstrances of a suitor who is financially able, in whole or in material
15 part, to pull his own oar.” Temple v. Ellerthorpe, 586 F. Supp. 848, 850 (D.R.I. 1984).
16 “[T]he greater power to waive all fees includes the lesser power to set partial fees.”
17 Olivares v. Marshall, 59 F.3d 109, 111 (9th Cir. 1995).

18 The facts as to the affiant’s poverty must be stated “with some particularity,
19 definiteness, and certainty.” United States v. McQuade, 647 F.2d 938, 940 (9th Cir.
20 1981) (internal quotation omitted). District courts tend to reject IFP applications where
21 the applicant can pay the filing fee with acceptable sacrifice to other expenses. See, e.g.,
22 Allen v. Kelly, 1995 WL 396860 at *2 (N.D. Cal. 1995) (initially permitting Plaintiff to
23 proceed in forma pauperis but later requiring him to pay \$120 filing fee out of \$900
24 settlement proceeds); Ali v. Cuyler, 547 F. Supp. 129, 130 (E.D. Pa. 1982) (“[P]laintiff
25 possessed savings of \$450 and the magistrate correctly determined that this amount was
26 more than sufficient to allow the plaintiff to pay the filing fee in this action . . .”).

1 Permission to proceed IFP is “a matter of privilege and not right[.]” Franklin v. Murphy,
2 745 F.2d 1221, 1231 (9th Cir. 1984), and “ ‘in forma pauperis status may be acquired and
3 lost during the course of litigation.’ ” Baize v. Lloyd, 2014 WL 6090324, at *1 (S.D.
4 Cal. Nov. 13, 2014) (quoting Wilson v. Dir. of Div. of Adult Insts., 2009 WL 311150, at
5 *2 (E.D. Cal. Feb. 9, 2009)).

6 7 **II. DISCUSSION**

8 According to his declaration, Cass earns a gross \$5529.29 per month, and his
9 spouse \$659.00 per month—both from retirement income. (*Pl. 's Mot.* [Doc. 2] 2.) This
10 yields a total of \$6188.29/month. (*See id.*) He owns \$350,000 equity in his home, other
11 real estate worth \$27,500, and two vehicles worth \$500 and 700, respectively. (*See id.*
12 [Doc. 2] 3.) Cass declares that he has a sum total of \$250.00 in any financial institution.
13 (*See id.* [Doc. 2] 2.)

14 According to Cass' declaration, no one relies on him or his spouse for support.
15 (*Pl. 's Mot.* [Doc. 2] 3.) Yet Cass declares that he and his spouse spend \$1,726.00
16 monthly on rent or a home mortgage payment, in addition to \$1,850.00 each month on
17 utilities, \$1,400.00 monthly on food, \$450.00 monthly on clothing, and \$50.00 monthly
18 in taxes. (*See id.* [Doc. 2] 4–5.) These figures yield monthly expenses in the amount of
19 \$5,476.00. (*See id.*)

20 The filing fee for an ordinary civil action is \$400. It is not clear what individual
21 payments might comprise a \$1,850 monthly utilities budget. Nor does the motion
22 elucidate why Cass and his spouse could not deduct from a \$1,400 monthly food budget
23 or a \$450 monthly clothes budget to pay a \$400 filing fee without sacrificing the
24 necessities of life. See Adkins, 335 U.S. at 339–40; 28 U.S.C. § 1915.

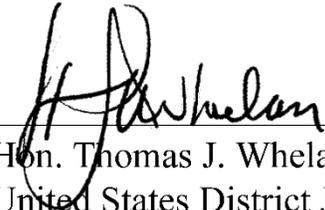
25 The motion will be denied.
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1 **III. CONCLUSION & ORDER**

2 For the reasons addressed above, the Court **DENIES** Plaintiff's motion to proceed
3 IFP. [Doc. 2.]

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5 **IT IS SO ORDERED.**

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7 Dated: July 12, 2017

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10 Hon. Thomas J. Whelan
11 United States District Judge