

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

TAM PHAN NGUYEN, <p style="text-align: right;">Plaintiff,</p> v. NANCY BERRYHILL, Acting Commissioner of Social Security, <p style="text-align: right;">Defendant.</p>	
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Case No.: 17cv1406-MMA (NLS)

**ORDER GRANTING MOTION TO
 PROCEED *IN FORMA PAUPERIS***

 [Doc. No. 4]

On July 12, 2017, Plaintiff Tam Phan Nguyen filed this social security appeal pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), challenging the denial of his application for disability benefits. Doc. No. 1. Plaintiff simultaneously filed a motion to proceed *in forma pauperis* (“IFP”). Doc. No. 2. The Court denied Plaintiff’s motion without prejudice for lacking requisite information. Plaintiff now files a renewed application to proceed IFP. For the reasons set forth below, the Court **GRANTS** Plaintiff’s motion to proceed IFP.

DISCUSSION

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$400. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). “To proceed *in forma pauperis* is a privilege not a right.” *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965). A party need not be completely destitute to proceed *in forma pauperis*. *Adkins v.*

1 *E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339–40 (1948). But “the same even-
2 handed care must be employed to assure that federal funds are not squandered to
3 underwrite, at public expense, either frivolous claims or the remonstrances of a suitor
4 who is financially able, in whole or in material part, to pull his own oar.” *Temple v.*
5 *Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I. 1984).

6 Plaintiff states that he receives \$194.00 in food stamps, and \$269.00 in general
7 relief loans per month. Plaintiff is unemployed and has been unemployed for at least the
8 past two years. He only has \$50.00 in cash, and has no bank accounts. He lives with his
9 parents, but his Plaintiff’s total monthly expenses still amount to \$463.00. Plaintiff’s
10 affidavit sufficiently shows he is unable to pay the fees or post securities required to
11 maintain this action. As such, the Court **GRANTS** Plaintiff’s motion to proceed in forma
12 pauperis. The Court has also reviewed Plaintiff’s complaint, and concludes it is not
13 subject to *sua sponte* dismissal under 28 U.S.C. section 1915(e)(2)(B).

14 Accordingly, the Court hereby **ORDERS** as follows:

15 1. The Clerk shall issue a summons as to Plaintiff’s complaint [Doc. No. 1]
16 upon Defendant and shall forward it to Plaintiff along with a blank U.S. Marshal Form
17 285. In addition, the Clerk shall provide Plaintiff with a certified copy of this Order and
18 a certified copy of his Complaint and the summons. Upon receipt of this “IFP Package,”
19 Plaintiff is directed to complete the Form 285 as completely and accurately as possible,
20 and to return it to the U.S. Marshal according to the instructions provided by the Clerk in
21 the letter accompanying his IFP package. Upon receipt, the U.S. Marshal shall serve a
22 copy of the complaint and summons upon Defendant as directed by Plaintiff on the form.
23 All costs of service shall be advanced by the United States. See 28 U.S.C. § 1915(d);
24 Fed. R. Civ. P. 4(c)(3).

25 2. Defendant shall reply to the complaint within the time provided by the
26 applicable provisions of Federal Rule of Civil Procedure 12(a).

27 3. Plaintiff shall serve upon Defendant or, if appearance has been entered by
28 counsel, upon Defendant’s counsel, a copy of every further pleading or other document

1 submitted for consideration of the Court. Plaintiff shall include with the original paper to
2 be filed with the Clerk of the Court a certificate stating the manner in which a true and
3 correct copy of any document was served on the Defendant or counsel of Defendant and
4 the date of service. Any paper received by a district judge or magistrate judge which has
5 not been filed with the Clerk or which fails to include a Certificate of Service may be
6 disregarded.

7 **IT IS SO ORDERED.**

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9 Date: July 27, 2017



10 Hon. Michael M. Anello
11 United States District Judge
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