

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CARMINE B. FUDGE,

Plaintiff,

V.

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

Defendant.

Case No.: 17-CV-1423 W (JMA)

ORDER GRANTING MOTION TO
PROCEED IFP [DOC. 2] AND
REFERRING TO MAGISTRATE FOR
REPORT & RECOMMENDATION

On July 13, 2017, Plaintiff Carmine B. Fudge (“Plaintiff”) filed a complaint seeking review of the denial of his claim for disability insurance benefits under the Social Security Act. Along with the complaint, Plaintiff filed a motion to proceed in forma pauperis (“IFP”) [Doc. 2].

I. INTRODUCTION

The determination of indigency falls within the district court's discretion.

California Men's Colony v. Rowland, 939 F.2d 854, 858 (9th Cir. 1991), *reversed on other grounds*, 506 U.S. 194 (1993) (“Section 1915 typically requires the reviewing court to

1 exercise its sound discretion in determining whether the affiant has satisfied the statute's
2 requirement of indigency.").

3 It is well-settled that a party need not be completely destitute to proceed in forma
4 pauperis. Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339-40 (1948). To
5 satisfy the requirements of 28 U.S.C. § 1915(a), "an affidavit [of poverty] is sufficient which
6 states that one cannot because of his poverty pay or give security for costs ... and still be
7 able to provide himself and dependents with the necessities of life." Id. at 339. At the
8 same time, however, "the same even-handed care must be employed to assure that federal
9 funds are not squandered to underwrite, at public expense, ... the remonstrances of a suitor
10 who is financially able, in whole or in material part, to pull his own oar." Temple v.
11 Ellerthorpe, 586 F.Supp. 848, 850 (D.R.I. 1984).

12 District courts, therefore, tend to reject IFP applications where the applicant can pay
13 the filing fee with acceptable sacrifice to other expenses. See, e.g., Stehouwer v. Hennessey,
14 851 F.Supp. 316, (N.D.Cal. 1994), *vacated in part on other grounds*, Olivares v. Marshall, 59
15 F.3d 109 (9th Cir. 1995) (finding that district court did not abuse discretion in requiring
16 partial fee payment from prisoner with \$14.61 monthly salary and \$110 per month from
17 family); Allen v. Kelly, 1995 WL 396860 at *2 (N.D. Cal. 1995) (Plaintiff initially
18 permitted to proceed in forma pauperis, later required to pay \$120 filing fee out of \$900
19 settlement proceeds); Ali v. Cuyler, 547 F.Supp. 129, 130 (E.D. Pa. 1982) (in forma
20 pauperis application denied: "plaintiff possessed savings of \$450 and the magistrate
21 correctly determined that this amount was more than sufficient to allow the plaintiff to pay
22 the filing fee in this action."). Moreover, the facts as to the affiant's poverty must be stated
23 "with some particularity, definiteness, and certainty." United States v. McQuade, 647 F.2d
24 938, 940 (9th Cir. 1981).

25 Having read and considered the papers submitted, the Court finds that based on the
26 current record, Plaintiff meets the requirements for IFP status under 28 U.S.C. § 1915.
27 According to his declaration, Plaintiff does not have sufficient income to support himself.

1 He receives \$337 a month in public assistance, and \$194 in food stamps. (Motion ¶ 1.) He
2 has no other income. (Id.) Plaintiff's monthly expenses total \$354, of which he allocates
3 only \$110 per month to utilities / housing, and \$194 in food. (Id. ¶ 8.) He also does not
4 allocate any payments for transportation, and does not have any possessions of significant
5 value. (Id. ¶¶ 8, 5.) Therefore, Plaintiff's IFP motion is **GRANTED**.

6

7 **II. CONCLUSION & ORDER**

8 For the reasons addressed above, the Court **GRANTS** Plaintiff's motion to proceed
9 IFP [Doc. 2]. In light of the Court's ruling on the IFP motion, the Court orders as follows:

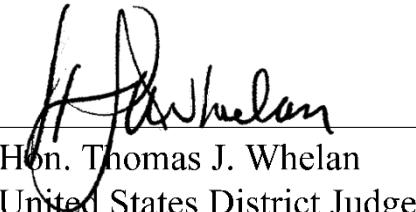
10 1. The United States Marshal shall serve a copy of the Complaint filed on July
11 13, 2017 and an accompanying summons upon Defendant as directed by
12 Plaintiff on U.S. Marshal Form 285. All costs of service shall be advanced by
13 the United States.
14 2. Defendant shall respond to the Complaint within the time provided by the
15 applicable provisions of the Federal Rules of Civil Procedure.
16 Additionally, the Court hereby **REFERS** all matters arising in this case to
17 United States Magistrate Judge Jan M. Adler for a Report &
18 Recommendation in accordance with 28 U.S.C. § 636(b)(1)(B) and Local
19 Rule 72.1(c)(1)(c).

20 If the parties seek to file motions, they shall contact the chambers of Judge Adler to
21 secure scheduling, filing, and hearing dates. All motion(s) for summary judgment must be
22 filed and served no later than 120 days after the Government files its answer.

23 **IT IS SO ORDERED.**

24 Dated: August 21, 2017

25
26
27



Hon. Thomas J. Whelan
United States District Judge