

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

ROY TUCK,

Plaintiff,

v.

PACER SERVICE CENTER U.S.
COURTS, *et al.*,

Defendants.

Case No. 17-cv-1720-BAS-KSC
**ORDER DENYING MOTION TO
PROCEED IN FORMA
PAUPERIS**

On August 24, 2017, Roy Tuck filed this case against Defendants for alleged violations of the Telephone Consumer Protection Act (“TCPA”), the federal Fair Debt Collection Practices Act (“FDCPA”), Fair Credit Reporting Act (“FCRA”) and the California Rosenthal Fair Debt Collection Practices Act (“Rosenthal Act”). (ECF No. 1.) Mr. Tuck moves to proceed *in forma pauperis* (“IFP”). (ECF No. 2.) For the reasons stated below, the Court DENIES WITHOUT PREJUDICE Mr. Tuck’s Motion.

I. STATEMENT OF FACTS

Roy Tuck and his wife Deborah Tuck, together with their son Richard Caruso and mother-in-law Clarice Tuck, appear to have developed a cottage industry suing

1 their creditors for violations of the TCPA, the FDCPA and the FCRA. In each case,
2 the parties request to proceed IFP, listing liabilities that far exceed assets. Curiously,
3 however, despite the fact that they have received settlements from approximately a
4 dozen different defendants, their assets and cash in their bank accounts remained
5 unchanged. A short list of examples includes:

- 6 1) *Roy Tuck v. Receivables Performance Mgmt., Inc.*, Case No. 15-cv-
7 1377-DMS-WVG (S.D. Cal.), settled on October 7, 2015 (ECF No. 7);
- 8 2) *Roy Tuck v. DirectTV*, Case No. 16-cv-0160-JLS-KSC (S.D. Cal.), Joint
9 Motion to Dismiss filed on August 16, 2017 (ECF No. 28);
- 10 3) *Roy Tuck v. Encore Capital Group, Midland Credit Mgmt., Inc.,*
11 *Midland Funding LLC, HSBC Bank, Verizon Wireless, Experian Info.*
12 *Solutions Inc., Capital One Bank*, Case No. 16-cv-293-DMS-MDD
13 (S.D. Cal.), Joint Motion to Dismiss with respect to Encore and both
14 Midland defendants filed on April 11, 2016 (ECF No. 7), Joint Motion
15 to Dismiss with respect to Celco Partnership d/b/a/ Verizon Wireless
16 filed on August 24, 2016 (ECF No. 45), settled with Experian on
17 September 19, 2016 (ECF No. 47), agreed to dismiss HSBC Bank on
18 October 13, 2016 (ECF No. 50), and settled with Capital One Bank on
19 October 27, 2016 (ECF No. 54);
- 20 4) *Roy Tuck v. Merrick Bank Corp, Equifax Inc., Trans Union LLC,*
21 *Experian Info. Solutions Inc.*, Case No. 16-cv-877-BEN-KSC (S.D.
22 Cal.), reached a settlement with Experian on August 17, 2016 (ECF No.
23 19), Joint Motion to Dismiss Trans Union filed on August 23, 2016 (ECF
24 No. 17), and reached a settlement agreement with remaining defendants
25 October 19, 2016 (ECF No. 25);
- 26 5) *Deborah Tuck v. Midland Credit Mgmt., Inc.*, Case No. 15-cv-2036-
27 MMA-MDD (S.D. Cal.), Joint Motion to Dismiss filed on April 12,
28 2016 (ECF No. 14);

- 1 6) *Deborah Tuck v. Am. Capitol Enterprises*, Case No. 15-cv-2042-CAB-
2 RBB (S.D. Cal.), Notice of Voluntary Dismissal filed on December 20,
3 2015 (ECF No. 9);
- 4 7) *Deborah Tuck v. Portfolio Recovery Assoc., LLC, HSBC Bank NA,*
5 *Equifax Inc., Trans Union LLC, Experian Info. Solutions Inc.*, Case No.
6 16-cv-684-JAH-BGS (S.D. Cal.), Joint Motion to Dismiss Trans Union
7 on August 23, 2016 (ECF No. 32), settled with Experian on September
8 19, 2016 (ECF No. 33), agreed to dismiss HSBC Bank on October 13,
9 2016 (ECF No. 37), and settled with Portfolio Recovery Associates on
10 April 20, 2017 (ECF No. 63);
- 11 8) *Deborah Tuck v. Merrick Bank Corp., Equifax Inc., Trans Union LLC,*
12 *Experian Info. Solutions Inc.*, Case No. 16-cv-917-JAH-MDD (S.D.
13 Cal.), reached an agreement with Experian on August 22, 2016 (ECF
14 No. 8) and notified of settlement with remaining defendants on October
15 19, 2016 (ECF No. 14);
- 16 9) *Deborah Tuck v. Calvary Portfolio Services*, Case No. 16-cv-918-AJB-
17 MDD (S.D. Cal.), settled on November 2, 2016 (ECF No. 15);
- 18 10) *Richard Caruso v. Encore Capital Group, Midland Credit Mgmt. Inc.,*
19 *Midland Funding LLC, T-Mobile, Equifax Inc.*, Case No. 16-cv-586-
20 BAS-BGS (S.D. Cal.), settled with T-Mobile on May 17, 2016 (ECF No.
21 11) and settled with Equifax on November 2, 2016 (ECF No. 15); and
- 22 11) *Richard Caruso v. Merchants Credit Ass'n, Equifax Inc., Trans Union*
23 *LLC, Experian Info. Solutions Inc.*, Case No. 16-cv-895-BAG-AGS
24 (S.D. Cal.), settled with Experian and Equifax on July 21, 2016 (ECF
25 No. 11).

26 **II. ANALYSIS**

27 Under 28 U.S.C. §1915(a), a litigant who is unable to pay the fee or give
28 security needed to commence a legal action because of indigency may petition a court

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

16 District courts, therefore, tend to reject IFP applications where the applicant
17 can pay the filing fee with acceptable sacrifice to other expenses. *See e.g., Stehouwer*
18 *v. Hennessey*, 841 F. Supp. 316, 321 (N.D. Cal. 1994), *vacated in part on other*
19 *grounds by, Olivares v. Marshall*, 59 F.3d 109, 112 (9th Cir. 1995) (finding that the
20 district court did not abuse its discretion in requiring a partial fee payment from a
21 prisoner who had a \$14.61 monthly salary and who received \$100 per month from
22 his family). Moreover, “[i]n forma pauperis status may be acquired and lost during
23 the course of litigation.” *Wilson v. Dir. of Div. of Adult Institutions*, No. CIV
24 S-06-0791, 2009 WL 311150, at *2 (E.D. Cal. Feb. 9, 2009) (citing *Stehouwer*, 841
25 F. Supp. at 321); *see also Allen v. Kelly*, Nos. C-91-1635-VRW,
26 C-93-1479-VRW, C-94-4162-VRW, 1995 WL 396860, at *2 (N.D. Cal. June 29,
27 1995) (holding that a plaintiff who was initially permitted to proceed IFP should be
28 required to pay his \$120 filing fee out of a \$900 settlement). Finally, the facts as to

1 the affiant's poverty must be stated "with some particularity, definiteness, and
2 certainty." *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981).

3 In his motion to proceed IFP, Mr. Tuck admits receiving some settlements in
4 his previously filed cases but adds that they "have been meager at best." (ECF No.
5 2.) However, by this court's reckoning, Mr. Tuck and his wife have received
6 settlements from at least fifteen defendants, some to settle multiple cases. If the
7 settlements exceed the \$400 filing fee, then it may be that the Tucks can afford to
8 "pull their own oar" and it would not be appropriate to waive the filing fee. Therefore,
9 the court DENIES WITHOUT PREJUDICE the Motion for IFP status (ECF No. 2).

10 If Mr. Tuck chooses to refile the motion to proceed IFP, he should specifically
11 list the settlement amounts from each of the following defendants and explain why
12 these settlement amounts cannot be used to pay the filing fee in this case:

- 13 • American Capitol Enterprises (Case No. 15-cv-2042);
- 14 • Calvary Portfolio Services (Case No. 16-cv-918);
- 15 • Capital One Bank (Case No. 16-cv-293);
- 16 • DirecTV (Case No. 16-cv-160);
- 17 • Encore Capital Group (Case No. 16-cv-293);
- 18 • Equifax (Case Nos. 16-cv-684, 16-cv-877, 16-cv-917);
- 19 • Experian Information Solutions Inc. (Case Nos. 16-cv-293, 16-cv-684,
20 16-cv-877, 16-cv-917);
- 21 • HSBC Bank (Case Nos. 16-cv-293, 16-cv-684);
- 22 • Merrick Bank Corp. (Case Nos. 16-cv-877, 16-cv-917);
- 23 • Midland Credit Management, Inc. (Case Nos. 16-cv-293; 15-cv-2036);
- 24 • Midland Funding LLC (Case No. 16-cv-293);
- 25 • Portfolio Recovery Associates (Case No. 16-cv-684);
- 26 • Receivables Performance Management (Case No. 15-cv-1377);
- 27 • Trans Union LLC (Case Nos. 16-cv-684, 16-cv-877, 16-cv-917);
- 28 • Verizon Wireless (Case No. 16-cv-293); and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


- Any other court settlement received by him or his wife.

III. CONCLUSION

For the reasons stated above, the Court **DENIES** Mr. Tuck's Motion to Proceed IFP, (ECF No. 2), and **DISMISSES WITHOUT PREJUDICE** the Complaint. Pursuant to this order, Plaintiff is granted leave for thirty days to pay the filing fee required to maintain this action pursuant to 28 U.S.C. § 1914, or to submit additional documentation regarding his financial status. **IF PLAINTIFF CHOOSES TO FILE ADDITIONAL INFORMATION REGARDING HIS POVERTY, HE MUST ATTACH A COPY OF THIS ORDER.** Plaintiff is advised to use Form AO 239 and include the information requested by the Court above should he choose to file additional documentation regarding his financial status. Finally, Plaintiff is reminded that an IFP application is made under **penalty of perjury**, and any false statements may result in dismissal of his claims, imprisonment of not more than five years, or a fine. See 18 U.S.C. §§ 1621, 3571.

IT IS SO ORDERED.

DATED: September 12, 2017


Hon. Cynthia Bashant
United States District Judge