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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 Raymond Pacello, Jr.,

12 Plaintiff,

13 v.

14 Amy Jo Pacello,

15 Defendant.

Case No.: 17cv1931-CAB-KSC

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

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17 On, September 22, 2017, Plaintiff Raymond Pacello (“Plaintiff”) filed a Notice of
18 Removal, wherein he seeks to remove a state court dissolution proceeding (the “state
19 action”). [Doc. No. 1.] Plaintiff also filed a request to proceed *in forma pauperis*
20 (“IFP”). [Doc. No. 2.] For the following reasons, Plaintiff’s motion is **DENIED**.

21 Generally, all parties instituting a civil action in this court must pay a filing fee.
22 *See* 28 U.S.C. § 1914(a); CivLR 4.5(a). But, pursuant to 28 U.S.C. § 1915(a), the court
23 may authorize the commencement, prosecution or defense of any suit without payment of
24 fees if the plaintiff submits an affidavit, including a statement of all his or her assets,
25 showing that he or she is unable to pay filing fees or costs. “An affidavit in support of an
26 IFP application is sufficient where it alleges that the affiant cannot pay the court costs
27 and still afford the necessities of life.” *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th
28 Cir. 2015). “[A] plaintiff seeking IFP status must allege poverty with some particularity,

1 definiteness and certainty.” *Id.* (internal quotation marks omitted). The granting or
2 denial of leave to proceed in forma pauperis in civil cases is within the sound discretion
3 of the district court. *Venerable v. Meyers*, 500 F.2d 1215, 1216 (9th Cir. 1974) (citations
4 omitted).

5 In his IFP application, Plaintiff states that he has a monthly income of \$2,256.00
6 per month. [Doc. No. 2 at 2.] He also states that he has \$600 in cash. *Id.* Finally,
7 Plaintiff states that his monthly expenses are \$1,970.00. [Doc. No. 2 at 5.] Given that
8 Plaintiff’s monthly income exceeds his monthly expenses by almost \$300, the Court is
9 not persuaded Plaintiff lacks the funds to pay the filing fee and “still afford the
10 necessities of life.” *Escobedo*, 787 F.3d at 1234. Therefore, the Court **DENIES**
11 Plaintiff’s application to proceed *in forma pauperis*. Further, the Court cautions Plaintiff
12 that the right to remove a case from state to federal court is vested exclusively in the
13 defendant in a case. 28 U.S.C. §1441(a). Here, Plaintiff is also the Plaintiff/Petitioner in
14 the state court action. Moreover, if Plaintiff is attempting to remove the more recent
15 TRO proceedings in the state court action, proceedings that are ancillary to an action
16 pending in state court cannot be removed to federal court if the underlying claim is being
17 litigated in state court. *GE Betz, Inc. v. Zee Co., Inc.*, 718 F.3d 615, 623 (7th Cir. 2013).

18 Plaintiff shall have until **October 11, 2017**, to pay the entire filing fee. If the filing
19 fee is not paid by October 11, 2017, the Clerk of the Court shall **CLOSE** the case without
20 further order from the Court.

21 **IT IS SO ORDERED.**

22 Dated: September 29, 2017

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25 Hon. Cathy Ann Bencivengo
26 United States District Judge
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