

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 JOE E. III: COLLINS,

12 Plaintiff,

13 v.

14 UNITED STATES NAVY,

15 Defendant.
16
17

Case No.: 17cv2451-MMA (BGS)

**ORDER DENYING PLAINTIFF'S
MOTION TO PROCEED IN FORMA
PAUPERIS**

[Doc. No. 2]

18 On December 7, 2017, Plaintiff, proceeding *pro se*, filed this action against the
19 United States Navy. *See* Doc. No. 1. Plaintiff simultaneously filed a motion to proceed
20 *in forma pauperis* (“IFP”). *See* Doc. No. 2. For the reasons set forth below, the Court
21 **DENIES** Plaintiff’s motion to proceed IFP.

22 **DISCUSSION**

23 All parties instituting any civil action, suit or proceeding in a district court of the
24 United States, except an application for writ of habeas corpus, must pay a filing fee of
25 \$400. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to
26 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C. §
27 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). “To proceed *in*
28 *forma pauperis* is a privilege not a right.” *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir.

1 1965). A party need not be completely destitute to proceed *in forma pauperis*. *Adkins v.*
2 *E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339–40 (1948). But “the same even-
3 handed care must be employed to assure that federal funds are not squandered to
4 underwrite, at public expense, either frivolous claims or the remonstrances of a suitor
5 who is financially able, in whole or in material part, to pull his own oar.” *Temple v.*
6 *Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I. 1984).

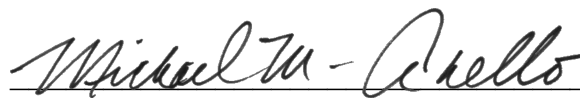
7 Plaintiff failed to sign the affidavit in support of his IFP application, and therefore
8 has not certified under penalty of perjury that he is unable to pay the costs associated with
9 initiating this action. This alone is sufficient grounds to deny Plaintiff’s application.
10 Furthermore, Plaintiff indicates on the application that his average monthly income is
11 approximately \$3,700, but his total monthly expenses are \$90. As such, it does not
12 appear that Plaintiff is entitled to the relief he requests.

13 **CONCLUSION**

14 Accordingly, the Court **DENIES** Plaintiff’s motion to proceed IFP and
15 **DISMISSES** this action without prejudice for failure to prepay the \$400 filing fee
16 required by 28 U.S.C. § 1914(a). Plaintiff may re-open his case by paying the \$400
17 statutory and administrative filing fee within **fourteen (14) days** from the date this Order
18 is filed. If Plaintiff fails to pay the \$400 filing fee within 14 days, this action will remain
19 dismissed without prejudice pursuant to 28 U.S.C. § 1914(a), and without further Order
20 of the Court.

21 **IT IS SO ORDERED.**

22 DATE: December 13, 2017

23 
24 HON. MICHAEL M. ANELLO
25 United States District Judge
26
27
28