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

DWIGHT BANKS,  
  
Plaintiff,  
  
v.  
  
PEDRO SALGADO dba MARCY'S  
MEXICAN FOOD, et al.,  
  
Defendants.

Case No.: 18-cv-0415 W (AGS)

**ORDER GRANTING MOTION TO  
PROCEED IFP [DOC. 2]**

On February 22, 2018, Plaintiff Dwight Banks filed a complaint against Defendant for violations of the American’s with Disabilities Act, among other claims. Along with the complaint, Plaintiff filed a motion to proceed in forma pauperis (“IFP”) [Doc. 2].

**I. DISCUSSION**

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

1 to exercise its sound discretion in determining whether the affiant has satisfied the  
2 statute’s 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  
6 which states that one cannot because of his poverty pay or give security for costs ... and  
7 still be able to provide himself and dependents with the necessities of life.” *Id.* at 339.  
8 At the same time, however, “the same even-handed care must be employed to assure that  
9 federal funds are not squandered to underwrite, at public expense, ... the remonstrances of  
10 a suitor who is financially able, in whole or in material part, to pull his own oar.” Temple  
11 v. Ellerthorpe, 586 F.Supp. 848, 850 (D.R.I. 1984).

12 District courts, therefore, tend to reject IFP applications where the applicant can  
13 pay the filing fee with acceptable sacrifice to other expenses. *See, e.g., Stehouwer v.*  
14 Hennessey, 851 F.Supp. 316, (N.D.Cal. 1994), *vacated in part on other grounds,*  
15 Olivares v. Marshall, 59 F.3d 109 (9th Cir. 1995) (finding that district court did not  
16 abuse discretion in requiring partial fee payment from prisoner with \$14.61 monthly  
17 salary and \$110 per month from family); Allen v. Kelly, 1995 WL 396860 at \*2 (N.D.  
18 Cal. 1995) (Plaintiff initially permitted to proceed in forma pauperis, later required to pay  
19 \$120 filing fee out of \$900 settlement proceeds); Ali v. Cuyler, 547 F.Supp. 129, 130  
20 (E.D. Pa. 1982) (in forma pauperis application denied: “plaintiff possessed savings of  
21 \$450 and the magistrate correctly determined that this amount was more than sufficient to  
22 allow the plaintiff to pay the filing fee in this action.”). Moreover, the facts as to the  
23 affiant’s poverty must be stated “with some particularity, definiteness, and certainty.”  
24 United States v. McQuade, 647 F.2d 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 receives \$826 per month in disability, and has  
28 monthly expenses of \$1,218. (*IFP App.* [Doc. 2] ¶¶ 1, 8.) Additionally, according to his

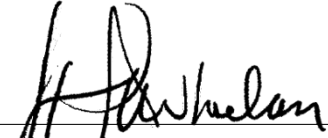
1 declaration, Plaintiff does not have any assets. (*Id.* ¶ 4.) Therefore, Plaintiff's IFP  
2 motion will be granted.

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4 **II. CONCLUSION & ORDER**

5 For the reasons addressed above, the Court **GRANTS** Plaintiff's motion to proceed  
6 IFP [Doc. 2]. However, the Court further **ORDERS** Plaintiff to reimburse the filing fee  
7 from any recovery obtained in this case, whether through settlement or trial.

8 **IT IS SO ORDERED.**

9 Dated: March 14, 2018

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12 Hon. Thomas J. Whelan  
13 United States District Judge  
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