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

DWIGHT BANKS,  Plaintiff,  v.  KIMPTON HOTEL & RESTAURANT GROUP, LLC; KHP II SAN DIEGO HOTEL, LLC; and DOES 1-10,  Defendants.
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Case No.: 18cv424-MMA-WVG

**ORDER GRANTING PLAINTIFF’S  
MOTION TO PROCEED IN FORMA  
PAUPERIS**

[Doc. No. 2]

On February 23, 2018, Plaintiff Dwight Banks (“Plaintiff”) filed this action against Defendants Kimpton Hotel & Restaurant Group, LLC, KHP II San Diego Hotel, LLC, and Does 1-10 (collectively, “Defendants”) for negligence and violations of the Americans With Disabilities Act (“ADA”) and the Unruh Civil Rights Act. Doc. No. 1 (“Compl.”). Plaintiff simultaneously filed a motion for leave to proceed *in forma pauperis* (“IFP”). Doc. No. 2.

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$400. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). “To proceed *in*

1 *forma pauperis* is a privilege not a right.” *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir.  
2 1965). A party need not be completely destitute to proceed *in forma pauperis*. *Adkins v.*  
3 *E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339–40 (1948). But “the same even-  
4 handed care must be employed to assure that federal funds are not squandered to  
5 underwrite, at public expense, either frivolous claims or the remonstrances of a suitor  
6 who is financially able, in whole or in material part, to pull his own oar.” *Temple v.*  
7 *Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I. 1984).

8 Plaintiff indicates that he receives \$826.00 per month in disability pay and has no  
9 bank accounts or assets. Doc. No. 2 at 2-3. Additionally, Plaintiff is unemployed and  
10 has been unemployed for at least the past two years. *Id.* at 2. Plaintiff’s total monthly  
11 expenses amount to \$1,218.00, which exceeds his total monthly income. *See id.* at 2, 5.  
12 Thus, Plaintiff’s affidavit sufficiently shows that he lacks the requisite financial resources  
13 to pay the filing fee. As such, the Court **GRANTS** Plaintiff’s motion to proceed IFP.  
14 Doc. No. 2. The Court has also reviewed Plaintiff’s Complaint, and concludes that it is  
15 not subject to *sua sponte* dismissal under 28 U.S.C. § 1915(e)(2)(B).

16 Accordingly, the Court hereby **ORDERS** as follows:

17 1. The Clerk shall issue a summons as to Plaintiff’s complaint (Doc. No. 1)  
18 upon Defendants and shall forward it to Plaintiff along with a blank U.S. Marshal Form  
19 285. In addition, the Clerk shall provide Plaintiff with a certified copy of this Order and  
20 a certified copy of her Complaint and the summons. Upon receipt of this “IFP Package,”  
21 Plaintiff is directed to complete the Form 285 as completely and accurately as possible,  
22 and to return it to the U.S. Marshal according to the instructions provided by the Clerk in  
23 the letter accompanying his IFP package. Upon receipt, the U.S. Marshal shall serve a  
24 copy of the complaint and summons upon Defendants as directed by Plaintiff on the  
25 form. All costs of service shall be advanced by the United States. *See* 28 U.S.C. §  
26 1915(d); Fed. R. Civ. P. 4(c)(3).

27 2. Defendants shall reply to the complaint within the time provided by the  
28 applicable provisions of Federal Rule of Civil Procedure 12(a).

1           3. Plaintiff shall serve upon Defendants or, if appearance has been entered by  
2 counsel, upon Defendants' counsel, a copy of every further pleading or other document  
3 submitted for consideration of the Court. Plaintiff shall include with the original paper to  
4 be filed with the Clerk of the Court a certificate stating the manner in which a true and  
5 correct copy of any document was served on the Defendants or counsel of Defendants  
6 and the date of service. Any paper received by a district judge or magistrate judge which  
7 has not been filed with the Clerk or which fails to include a Certificate of Service may be  
8 disregarded.

9           **IT IS SO ORDERED.**

10 Dated: February 26, 2018



Hon. Michael M. Anello  
United States District Judge

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