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

HAROLD THOMAS,

Plaintiff,

v.

NANCY BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

Case No.: 18-CV-0700 W (JLB)

**ORDER GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS
[DOC. 2] AND REFERRING TO
MAGISTRATE FOR REPORT &
RECOMMENDATION**

Plaintiff Harold Thomas filed this action on April 9, 2018, seeking review of the denial of his application for disability insurance benefits and supplemental security income under the Social Security Act. (*Compl.* [Doc. 1].) He thereafter filed the pending motion to proceed *in forma pauperis* (“IFP”) under 28 U.S.C. § 1915. (*Pl.’s Mot.* [Doc. 2].)

The Court decides the matter on the papers submitted. For the reasons outlined below, the Court **GRANTS** the IFP motion. [Doc. 2.]

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1 **I. LEGAL STANDARD**

2 The determination of indigency falls within the district court’s discretion.
3 California Men’s Colony v. Rowland, 939 F.2d 854, 858 (9th Cir. 1991), *reversed on*
4 *other grounds*, 506 U.S. 194 (1993) (“Section 1915 typically requires the reviewing court
5 to exercise its sound discretion in determining whether the affiant has satisfied the
6 statute’s requirement of indigency.”).

7 It is well-settled that a party need not be completely destitute to proceed in forma
8 pauperis. See Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339–40 (1948).
9 To satisfy the requirements of 28 U.S.C. § 1915(a), “an affidavit [of poverty] is sufficient
10 which states that one cannot because of his poverty pay or give security for costs . . . and
11 still be able to provide himself and dependents with the necessities of life.” Id. at 339
12 (internal quotations omitted). At the same time, however, “the same even-handed care
13 must be employed to assure that federal funds are not squandered to underwrite, at public
14 expense, . . . the remonstrances of a suitor who is financially able, in whole or in material
15 part, to pull his own oar.” Temple v. Ellerthorpe, 586 F. Supp. 848, 850 (D.R.I. 1984).
16 “[T]he greater power to waive all fees includes the lesser power to set partial fees.”
17 Olivares v. Marshall, 59 F.3d 109, 111 (9th Cir. 1995).

18 The facts as to the affiant’s poverty must be stated “with some particularity,
19 definiteness, and certainty.” United States v. McQuade, 647 F.2d 938, 940 (9th Cir.
20 1981). District courts tend to reject IFP applications where the applicant can pay the
21 filing fee with acceptable sacrifice to other expenses. See, e.g., Allen v. Kelly, 1995 WL
22 396860 at *2 (N.D. Cal. 1995) (initially permitting Plaintiff to proceed in forma pauperis
23 but later requiring him to pay \$120 filing fee out of \$900 settlement proceeds); Ali v.
24 Cuyler, 547 F. Supp. 129, 130 (E.D. Pa. 1982) (“[P]laintiff possessed savings of \$450
25 and the magistrate correctly determined that this amount was more than sufficient to
26 allow the plaintiff to pay the filing fee in this action”). Permission to proceed IFP is
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1 “a matter of privilege and not right[.]” Franklin v. Murphy, 745 F.2d 1221, 1231 (9th Cir.
2 1984), and “ ‘in forma pauperis status may be acquired and lost during the course of
3 litigation.’ ” Baize v. Lloyd, 2014 WL 6090324, at *1 (S.D. Cal. Nov. 13, 2014)
4 (quoting Wilson v. Dir. of Div. of Adult Insts., 2009 WL 311150, at *2 (E.D. Cal. Feb. 9,
5 2009)).

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7 **II. DISCUSSION**

8 Thomas has satisfied his burden of demonstrating that he is entitled to IFP status.
9 According to his declaration, he receives \$1000/month from employment and
10 \$150/month from child support. (*Pl. 's Mot.* [Doc. 3] 1–2.) He declares no income from
11 a spouse. (*Id.*) His monthly expenses total \$770 (\$150/month for food, and \$20/month
12 for laundry and dry cleaning, \$300/month for his car, and \$300/month for his credit card).
13 (*Id.* [Doc. 3] 4–5.) He has \$60 in his bank account. (*Id.* [Doc. 3] 2.) He declares that he
14 is homeless, and that he supports his seven-month-old son. (*Id.* [Doc. 3] 3, 5.)

15 The filing fee for an ordinary civil action is \$400. Based on the foregoing, Thomas
16 has demonstrated that he lacks the means to pay the filing fee without sacrificing the
17 necessities of life. See Adkins, 335 U.S. at 339–40. Accordingly, Thomas demonstrates
18 entitlement to IFP status. See 28 U.S.C. § 1915.

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1 **III. CONCLUSION & ORDER**

2 For the reasons addressed above, the Court **GRANTS** Plaintiff's motion to proceed
3 IFP. [Doc. 2.] In light of the Court's ruling on the IFP motion, the Court orders as
4 follows:

5 1. The United States Marshal shall serve a copy of the Complaint filed
6 on April 9, 2018 and an accompanying summons upon Defendants as
7 directed by Plaintiff on U.S. Marshal Form 285. All costs of service shall be
8 advanced by the United States.

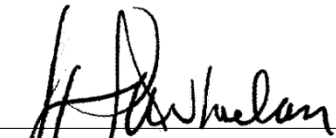
9 2. Defendant shall respond to the Complaint within the time provided by
10 the applicable provisions of the Federal Rules of Civil Procedure.

11 Additionally, the Court hereby **REFERS** all matters arising in this case to United
12 States Magistrate Judge Jill L. Burkhardt for a Report & Recommendation in accordance
13 with 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.1(c)(1)(c).

14 If the parties seek to file motions, they shall contact the chambers of Judge
15 Burkhardt to secure scheduling, filing, and hearing dates. All motion(s) for summary
16 judgment must be filed and served no later than **120 days** after the Government files its
17 answer.

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19 **IT IS SO ORDERED.**

20 Dated: April 11, 2018

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23 Hon. Thomas J. Whelan
24 United States District Judge
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