

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

11 JOHN DAVID MARTIN,

12 Plaintiff,

13 v.

14 MARLON D. MITCHELL, CHRISTINA  
15 PURTEE, MARGARITA SERRANO,  
16 and DOES 1-50

17 Defendants.  
18

Case No.: 20-CV-2366 JLS (AGS)

**ORDER DENYING MOTION TO  
PROCEED IFP**

(ECF No. 2)

19 Plaintiff John David Martin has filed a Complaint alleging various Constitutional  
20 rights and fair credit reporting violations against employees of the San Diego County  
21 Department of Child Support Services (ECF No. 1). Plaintiff also filed a Motion for Leave  
22 to Proceed *in Forma Pauperis* (“IFP”) (“Mot.,” ECF No. 2). For the reasons set forth  
23 below, the Court **DENIES** Plaintiff’s Motion to Proceed IFP with leave to pay the filing  
24 fee.

25 Under 28 U.S.C. § 1915(a), the Court may authorize a plaintiff to pursue a case  
26 without payment of the filing fee. Whether an affiant has satisfied § 1915(a) falls within  
27 “the reviewing court[’s] . . . sound discretion.” *California Men’s Colony v. Rowland*, 939  
28 F.2d 854, 858 (9th Cir. 1991), *rev’d on other grounds*, 506 U.S. 194 (1993). A party need

1 not “be absolutely destitute” to proceed IFP. *Adkins v. E.I. DuPont de Nemours & Co.*,  
2 335 U.S. 331, 339 (1948). “Nonetheless, a plaintiff seeking IFP status must allege poverty  
3 ‘with some particularity, definiteness, and certainty.’” *Escobedo v. Applebees*, 787 F.3d  
4 1226, 1234 (9th Cir. 2015) (citing *United States v. McQuade*, 647 F.3d 938, 940 (9th Cir.  
5 1981). “An affidavit in support of an IFP application is sufficient where it alleges that the  
6 affiant cannot pay the court costs and still afford the necessities of life.” *Id.* “But, the same  
7 even-handed care must be employed to assure that federal funds are not squandered to  
8 underwrite, at public expense, either frivolous claims or the remonstrances of a suitor who  
9 is financially able, in whole or in part, to pull his own oar.” *Temple v. Ellerthorp*, 586 F.  
10 Supp. 848, 850 (D. R.I. 1984).

11 In *Escobeda*, for example, the filing fees constituted 40% of the plaintiff’s monthly  
12 income before factoring in her expenses. *Escobedo*, 787 F.3d at 1235. Taking into account  
13 the plaintiff’s rent and debt payments, the filing fee would have required the entirety of  
14 two months’ worth of her remaining funds, meaning that the plaintiff “would have to forgo  
15 eating during those sixty days, to save up to pay the filing fee.” *Id.* Under those  
16 circumstances, the Ninth Circuit determined that paying the filing fee would constitute a  
17 significant financial hardship to the plaintiff. *Id.* Accordingly, the court reversed the  
18 magistrate judge’s ruling denying the plaintiff IFP status. *Id.* at 1236.

19 Here, the Court concludes that Plaintiff has not met his burden of demonstrating that  
20 payment of the filing fee would constitute an undue financial hardship. The IFP application  
21 indicates that Plaintiff’s average monthly income is \$3,100 of veteran’s disability  
22 compensation. (Mot. at 2, 5.) Plaintiff indicates he has \$54 in a checking account and  
23 other assets valued at \$147. (*Id.* at 2–3.) Plaintiff also states he is “awaiting a hearing in  
24 [his] claim for disability (SSDI).” (*Id.* at 5.) Plaintiff states his total monthly debts and  
25 obligations is \$2,783. (*Id.* at 5.) The amount of money Plaintiff indicates he expects to  
26 continue to receive on a monthly basis exceeds his monthly debts and obligations by more  
27 than \$300. Before factoring in expenses, the filing fee constitutes less than 13% of  
28 Plaintiff’s monthly income.

1 Based on this information, the Court finds Plaintiff has not shown he cannot pay the  
2 court costs and still afford the necessities of life. The amount of money Plaintiff indicates  
3 he expects to receive on a monthly basis exceeds his expected monthly debts and  
4 obligations by enough that he could pay the one-time filing fee without impacting his  
5 regular expenses.

6 **CONCLUSION**

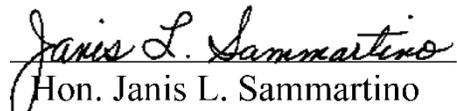
7 Accordingly, **IT IS HEREBY ORDERED** that:

- 8 1. Plaintiff's Motion to Proceed IFP (ECF No. 2) is **DENIED**;
- 9 2. Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE** for failure  
10 to prepay the filing fee mandated by 28 U.S.C. §1914(a); and
- 11 3. Plaintiff is **GRANTED** thirty (30) days from the date on which this Order is  
12 electronically docketed in which to reopen his case by paying the entire \$400 statutory and  
13 administrative filing fee.

14 If Plaintiff fails to pay the \$400 filing fee in full, this action will remain dismissed  
15 without prejudice pursuant to 28 U.S.C. § 1914(a), and without further Order of the Court.

16 **IT IS SO ORDERED.**

17 Dated: January 7, 2021

18   
19 Hon. Janis L. Sammartino  
20 United States District Judge  
21  
22  
23  
24  
25  
26  
27  
28