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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JEFFREY PETERSON, an individual,
Plaintiff,
v.
CHRISTOPHER LEAHY, BRETT
BURKETT, SAN DIEGO POLICE
DEPARTMENT, ZACHERY
BRADLEY, OFFICE OF CITY
ATTORNEY, EMILY GARSON,
JEFFREY JORDON in their individual
capacities,
Defendants.

Case No.: 3:21-cv-01116-GPC-MDD

**ORDER DENYING PLAINTIFF’S
MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS**

On June 15, 2021, Plaintiff Jeffrey Peterson (“Plaintiff”), proceeding *pro se*, filed the instant action against Defendants Christopher Leahy, Brett Burkett, San Diego Police Department, Zachery Bradley, Office of City Attorney, Emily Garson, and Jeffrey Jordon. Compl. 1, ECF No. 1 at 1. Plaintiff concurrently filed a motion to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a). ECF No. 2.

1 The Court decides the matter on the papers submitted and without oral argument
2 pursuant to Civil Local Rule 7.1.d.1. For the following reasons, the Court **DENIES**
3 Plaintiff's motion to proceed IFP.

4 **I. BACKGROUND**

5 Plaintiff claims he has been unlawfully surveilled and the victim of a conspiracy to
6 cover up misconduct by the San Diego Police Department ("SDPD") and the San Diego
7 City Attorney in retaliation for making a civil complaint against San Diego Police Officer
8 Christopher Leahy ("Leahy") in November 2011. ECF No. 1 at 9, 12. Plaintiff alleges he
9 was falsely convicted of a crime in 2010 and falsely arrested on March 29, 2014, in a
10 coordinated effort by Leahy and others in the SDPD. *Id.* at 9.

11 Plaintiffs' allegations include that the SDPD has been accessing his personal e-
12 mail accounts on his phone and laptop without a search warrant, *id.* at 12–13, that the
13 SDPD misled the state court to enable Leahy and his wife to obtain a restraining order
14 against Plaintiff, *id.* at 17, and that members of the SDPD have followed and harassed
15 him in California and Illinois, *id.* at 10–18, and that the SDPD, City Attorney, and City of
16 San Diego have continued to coordinate to intimidate him from pursuing justice for the
17 false arrest by Leahy, *id.* at 19–20.

18 **II. WHETHER PLAINTIFF HAS THE ABILITY TO PAY HIS FILING FEE**

19 All parties instituting any civil action, suit, or proceeding in a district court of the
20 United States, except an application for writ of habeas corpus, must pay filing and
21 administrative fees in the amount of \$402.¹ *See* 28 U.S.C. § 1914; CivLR 4.5.a. An action
22 may proceed despite a plaintiff's failure to prepay the entire fee only if he is granted
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25 ¹ In addition to the \$350 filing fee, there is a \$52 administrative fee for filing a civil action. This fee does
26 not apply to persons granted leave to proceed IFP. *See* Administrative Office of the United States
27 Courts, *District Court Miscellaneous Fee Schedule* (effective Dec. 1, 2020),
28 <https://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule>.

1 leave to proceed IFP under 28 U.S.C. § 1915(a)(1). *Andrews v. Cervantes*, 493 F.3d
2 1047, 1051 (9th Cir. 2007). “The granting or refusing of permission to proceed [IFP] is a
3 matter committed to the sound discretion of the district court.” *Smart v. Heinze*, 347 F.2d
4 114, 116 (9th Cir. 1965) (citing *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963)).

5 To proceed IFP under § 1915(a)(1), a plaintiff must submit an affidavit that
6 contains a complete statement of his assets and demonstrate his inability to pay the fee.
7 *Coleman v. Tollefson*, 575 U.S. 532, 535 (2015). The plaintiff need not demonstrate that
8 he is completely destitute. *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir. 2015)
9 (citing *Jefferson v. United States*, 277 F.3d 723, 725 (9th Cir. 1960)). However, district
10 courts tend to reject applications to proceed IFP “where the applicant can pay the filing
11 fee with acceptable sacrifice to other expenses.” *Scher v. Saul*, No. 20-CV-1665, 2020
12 WL 8617415, at *1 (S.D. Cal. Sept. 22, 2020) (citing *Stehouwser v. Hennessy*, 841
13 F.Supp. 316 (N.D. Cal. 1994), *vacated in part on other grounds*, *Oliveras v. Marshall*, 59
14 F.3d 109, 112 (9th Cir. 1995)); *see also Escobedo*, 787 F.3d at 1234 (citing *Adkins v. E.I.*
15 *DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948)) (“An affidavit in support of an
16 IFP application is sufficient where it alleges that the affiant cannot pay the court costs
17 and still afford the necessities of life.”). A court may take the full assets and funds
18 available to a petitioner under consideration when assessing sufficient need to proceed
19 IFP. *See, e.g., Ali v. Cuyler*, 547 F. Supp. 129, 130 (E.D. Pa. 1982) (denying IFP petition
20 where “plaintiff possessed savings of \$450” and affirming “this amount was more than
21 sufficient to allow the plaintiff to pay the filing fee in this action”); *Oliveras*, 59 F.3d at
22 112 (affirming imposition of \$30 partial filing fee for IFP petitioner who received \$310
23 from his family).

24 Here, Plaintiff has provided an affidavit to support his application to proceed IFP.
25 ECF No. 2. While Plaintiff does not list active employment since March 2021, Plaintiff
26 lists \$750 average employment income, \$1,000 in gifts, and \$250 from stimulus totaling
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1 \$2,000 in monthly income over the last twelve months. *See id.* at 1–2. Plaintiff also lists a
2 total of \$8,400 in two bank accounts. *Id.* at 2. Plaintiff’s average monthly expenses total
3 \$800, and he does not list any dependents. *See id.* at 4. While Plaintiff states that he
4 expects major changes to his monthly income or expenses or in his assets or liabilities
5 during the next 12 months, he indicates that these changes are “nothing definitive” and
6 provides no further details that suggest his financial situation is likely to worsen. *Id.* at 5.

7 Plaintiff reports recent monthly income and assets that surpass his monthly
8 expenses. *Compare Scher*, 2020 WL 8617415, at *1 (granting motion to proceed IFP
9 where plaintiff had \$0 in monthly income and \$4,000 in total assets against \$3,555 in
10 monthly expenses) and *Wilson v. Nat’l R.R. Passenger Corp.*, No. 20-CV-714, 2020 WL
11 8872288, at *1 (S.D. Cal. Apr. 16, 2020) (granting motion to proceed IFP where plaintiff
12 had \$1,400 in monthly income and \$60 in total assets against \$4,187 in monthly
13 expenses) with ECF No. 2 at 1–4 (\$2000 in monthly income and \$8,400 in total assets
14 against \$800 in monthly expenses). Even discounting Plaintiff’s monthly income and
15 considering his bank accounts alone, Plaintiff has sufficient funds from his bank accounts
16 to cover the \$402 filing fee, which is equivalent to only 5% of those assets and leave him
17 with almost \$8,000, covering about 10 months of expenses even if he is not currently
18 receiving income or monthly gifts. *See id.* at 1–4; *cf. Oliveras*, 59 F.3d at 112 (finding
19 plaintiff had “sufficient funds in his prison trust fund account to cover the partial fee”
20 when fee was about 10% of his savings). Plaintiff has not demonstrated that he would be
21 “unable to pay the filing fee without sacrificing the necessities of life.” *See Wilson*, 2020
22 WL 8872288, at *1.

23 Accordingly, the Court DENIES Plaintiff’s request to proceed *in forma pauperis*
24 pursuant 28 U.S.C. § 1915(a).

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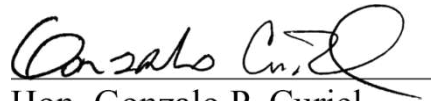
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1 **III. CONCLUSION**

2 For the reasons discussed above, the Court hereby **DENIES** Plaintiff's petition to
3 proceed *in forma pauperis* pursuant 28 U.S.C. § 1915(a) and **DISMISSES** the case
4 without prejudice. To have the case reopened, Plaintiff must pay the \$402 filing fee or
5 present adequate proof he cannot pay the filing fee no later than **September 28, 2021**.

6 **IT IS SO ORDERED.**

7 Dated: July 28, 2021

8 
9 Hon. Gonzalo P. Curiel
United States District Judge