

1 E.M.T.s 1–3. Mascorro alleges that he was sitting on a bench in Balboa Park when a park
2 ranger approached him and told him to leave. (Compl. at 2, ECF No. 1.) Two SDPD
3 officers subsequently approached Mascorro and ordered him to leave. (*Id.*) Mascorro did
4 not believe that he was in violation of any laws or park rules. (*Id.*) The SDPD officers
5 eventually arrested Mascorro for trespassing. (*Id.*) At that time, Mascorro requested
6 medical assistance, and the SDFD arrived on the scene. (*Id.*) The SDFD personnel did not
7 offer Mascorro with any care. (*Id.*) The SDPD officers placed Mascorro in a hot car for
8 25 to 40 minutes before transporting him to the SDPD headquarters and then to jail. (*Id.*)
9 Upon release from jail, Mascorro went to the hospital and found out that he had a broken
10 arm. (*Id.*)

11 Concurrent with the filing of the present action, Mascorro filed a motion for leave
12 to proceed *in forma pauperis* (“IFP”) (ECF No. 2) and a motion to appoint counsel (ECF
13 No. 3). On October 5, 2021, Mascorro filed a second civil rights action against the City of
14 San Diego, the SDPD, and SDPD officers, alleging that he was unlawfully detained,
15 searched, and arrested by the SDPD officers on or around October 6, 2020. *Mascorro v.*
16 *The City of San Diego, et al.*, 21-cv-01725-BAS-MDD. On October 18, 2021, the Court
17 entered an Order to Show Cause (“OSC”) on why the two actions should not be
18 consolidated, given the similarity in allegations and the parties involved. (OSC, ECF
19 No. 5.)

20 Mascorro responded to the OSC. (ECF No. 6.) In the same document, Mascorro
21 moves for unimpeded access to enter the court building to “access the Court Clerk in
22 person.” (*Id.* at 2.) Mascorro also seeks the Court’s leave to effect service on opposing
23 counsel by email, file court documents by email, and obtain access to the PACER system
24 free of charge. (*Id.* at 2.) Mascorro also moves for reconsideration of the Court’s denial
25 of counsel (*id.* at 1), which the Court construes as a supplemental motion to appoint
26 counsel.

27 The Court finds Mascorro’s motions suitable for determination on the papers
28 submitted and without oral argument. See Fed. R. Civ. P. 78(b); Civ. L.R. 7.1(d)(1).

1 **II. MASCORRO’S RESPONSE TO THE OSC**

2 Under Federal Rule of Civil Procedure 42(a), the Court may consolidate actions “if
3 actions before the court involve a common question of law or fact.” Mascorro’s response
4 to the Court’s OSC clarifies that although his two civil rights actions name the City of San
5 Diego and the SDPD as Defendants, the underlying incidents are different in time, involve
6 different individuals, and implicate separate legal issues. (ECF No. 6 at 2.) Given this
7 clarification, the Court will keep the two cases as separate actions.
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9 **III. MOTION TO PROCEED IFP**

10 Under 28 U.S.C. § 1915, a litigant who because of indigency is unable to pay the
11 required fees or security to commence a legal action may petition the court to proceed
12 without making such payment. The determination of indigency falls within the district
13 court’s discretion. *Cal. Men’s Colony v. Rowland*, 939 F.2d 854, 858 (9th Cir. 1991), *rev’d*
14 *on other grounds*, 506 U.S. 194 (1993) (holding that “Section 1915 typically requires the
15 reviewing court to exercise its sound discretion in determining whether the affiant has
16 satisfied the statute’s requirement of indigency”). It is well-settled that a party need not be
17 completely destitute to proceed IFP. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S.
18 331, 339–40 (1948). To satisfy the requirements of 28 U.S.C. § 1915(a), “an affidavit [of
19 poverty] is sufficient which states that one cannot because of his poverty pay or give
20 security for costs . . . and still be able to provide himself and dependents with the necessities
21 of life.” *Id.* at 339. At the same time, however, “the same even-handed care must be
22 employed to assure that federal funds are not squandered to underwrite, at public expense
23 . . . the remonstrances of a suitor who is financially able, in whole or in material part, to
24 pull his own oar.” *Temple v. Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I. 1984).

25 District courts, therefore, tend to reject IFP applications where the applicant can pay
26 the filing fee with acceptable sacrifice to other expenses. *See, e.g., Stehouwer v.*
27 *Hennessey*, 841 F. Supp. 316, 321 (N.D. Cal. 1994) (finding that a district court did not
28 abuse its discretion in requiring a partial fee payment from a prisoner who had a \$14.61

1 monthly salary and who received \$110 per month from family), *vacated in part on other*
2 *grounds, Olivares v. Marshall*, 59 F.3d 109 (9th Cir. 1995). Moreover, “*in forma pauperis*
3 status may be acquired and lost during the course of litigation.” *Wilson v. Dir. of Div. of*
4 *Adult Insts.*, No. CIV S-06-0791, 2009 WL 311150, at *2 (E.D. Cal. Feb. 9, 2009) (citing
5 *Stehouwer*, 841 F. Supp. at 321); *see also Allen v. Kelly*, 1995 WL 396860, at *2 (N.D.
6 Cal. June 29, 1995) (holding that a plaintiff who was initially permitted to proceed *in forma*
7 *pauperis* should be required to pay his \$120 filing fee out of a \$900 settlement). Finally,
8 the facts as to the affiant’s poverty must be stated “with some particularity, definiteness,
9 and certainty.” *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981).

10 Having read and considered Mascorro’s application, the Court finds that Mascorro
11 meets the requirements for IFP status under 28 U.S.C. § 1915. Mascorro is unemployed,
12 owns \$80 in PayPal debit card, and does not have any money in a bank account. (IFP Mot.
13 ¶¶ 2, 4, ECF No. 2.) Mascorro receives \$234 in public assistance and \$80 in gifts every
14 month but spends most of the monthly income to buy food and pay for laundry. (*Id.* ¶¶ 1,
15 8.) Further, Mascorro does not own any real estate, automobile, or any other significant
16 assets. (*Id.* ¶ 5.) Under these circumstances, the Court finds that requiring Mascorro to
17 pay the court filing fees would impair his or her ability to obtain the necessities of life. *See*
18 *Adkins*, 335 U.S. at 339.

19 In light of the foregoing, the Court **GRANTS** Mascorro’s application for leave to
20 proceed IFP. (ECF No. 2.) However, if it appears at any time in the future that Mascorro’s
21 financial picture has improved for any reason, the Court will direct Mascorro to pay the
22 filing fee to the Clerk of the Court. This includes any recovery Mascorro may realize from
23 this suit or others and any assistance Mascorro may receive from family or the government.

24 25 **IV. MOTION TO APPOINT COUNSEL**

26 “[T]here is no absolute right to counsel in civil proceedings.” *Hedges v. Resolution*
27 *Trust Corp.*, 32 F.3d 1360, 1363 (9th Cir. 1994). Thus, federal courts do not have the
28 authority “to make coercive appointments of counsel.” *Mallard v. U.S. Dist. Ct.*, 490 U.S.

1 296, 310 (1989); *see also United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569
2 (9th Cir. 1995).

3 Districts courts have discretion, however, pursuant to 28 U.S.C. § 1915(e)(1) to
4 “request” that an attorney represent indigent civil litigants upon a showing of “exceptional
5 circumstances.” *See Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th
6 Cir. 2004). “A finding of the exceptional circumstances of the plaintiff seeking assistance
7 requires at least an evaluation of the likelihood of the plaintiff’s success on the merits and
8 an evaluation of the plaintiff’s ability to articulate his claims ‘in light of the complexity of
9 the legal issues involved.’” *Agyeman*, 390 F.3d at 1103 (quoting *Wilborn v. Escalderon*,
10 789 F.2d 1328, 1331 (9th Cir. 1986)); *see also Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th
11 Cir. 1991).

12 Here, while the Court does not discount Mascorro’s hardships, including his
13 homelessness, lack of financial resources, and lack of government-issued identification,
14 Mascorro’s court filings establish that he is capable of legibly articulating the facts and
15 circumstances relevant to the claims raised in the Complaint. The Court thus declines to
16 exercise its limited discretion to request that an attorney represent him *pro bono* pursuant
17 to 28 U.S.C. § 1915(e)(1). *See Lassiter v. Dept. of Soc. Servs.*, 452 U.S. 18, 25 (1981);
18 *Agyeman*, 390 F.3d at 1103.

19 20 **V. MOTION TO ENTER COURT AND ACCESS ELECTRONIC SYSTEMS**

21 **A. Accessing Court Premises**

22 Mascorro requests the Court’s permission to access the courthouse without having
23 to present a government-issued identification, so that he can save the time and cost of filing
24 motions. The public interest in securing the courthouse by requiring all entrants present
25 government-issued identification outweighs Mascorro’s interest to save time or costs to
26 litigate his case. Further, the Court will grant Mascorro leave to file documents
27 electronically, which alleviates Mascorro’s hardship from filing documents by mail. Thus,
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1 the Court **DENIES** Mascorro's request for permission to enter the court premises without
2 presenting a government-issued identification.

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4 **B. Serving and Filing Documents by E-mail**

5 Mascorro seeks the Court's leave to file documents and receive notifications of court
6 filings by email. The Court construes this request as a request for permission to use the
7 Court's CM/ECF filing system to electronically file documents and receive electronic
8 notice of case-related transmissions. Mascorro has sufficiently stated that he has access to
9 the necessary equipment and software capabilities to electronically file documents. The
10 Court thus **GRANTS** Mascorro's motion to file documents and receive notifications using
11 the Court's CM/ECF system in accordance with ECF Administrative Policies and
12 Procedures.¹ **On or before December 22, 2021**, Mascorro must register as a CM/ECF
13 user with the Clerk's Office.

14 Mascorro also asks for the Court's permission to serve documents to opposing
15 counsel by email. The Court **DENIES** this request **WITHOUT PREJUDICE**. The Court
16 will reconsider this request once opposing counsel files an appearance.

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18 **C. Free Access to the PACER System**

19 Mascorro also moves for the Court's leave to gain free access to PACER, which the
20 Court will grant. The Court has already granted Plaintiff's application to proceed IFP and
21 finds that Mascorro falls within the class of users eligible for a fee exemption listed in the
22 Electronic Public Access fee schedule adopted by the Judicial Conference of the United
23 States. Mascorro has demonstrated that a fee exemption is necessary to avoid unreasonable
24 burdens in litigating this case. The Court therefore **GRANTS** Mascorro an exemption
25 from fees for PACER usage. This exemption covers only fees associated with filing and
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¹ Available at <https://www.casd.uscourts.gov/attorney/filing-procedures.aspx>.

1 accessing the electronic documents in this action. Mascorro shall not be exempt from the
2 payment of fees incurred in connection with other uses of the PACER system.²
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4 **IT IS SO ORDERED.**

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6 **DATED: December 8, 2021**

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8 **Hon. Cynthia Bashant**
9 **United States District Judge**

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² Mascorro is advised to review <https://pacer.uscourts.gov/my-account-billing/billing/options-access-records-if-you-cannot-afford-pacer-fees> regarding access to the PACER system.