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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT BLACKSHIRE, JR.,
Plaintiff,
v.
BUCA RESTAURANTS 2, INC., et al.,
Defendants.

Case No.: 21-cv-01505-JLS-WVG

**ORDER DENYING MOTIONS FOR
LEAVE TO PROCEED *IN FORMA
PAUPERIS* AND FOR
APPOINTMENT OF COUNSEL**

[ECF Nos. 2; 3]

Presently before the Court are pro se Plaintiff Robert Blackshire, Jr.’s motions for leave to proceed *in forma pauperis* (ECF Nos. 2; 2-1) and for appointment of counsel pursuant to 42 U.S.C. § 2000e-5(f)(1) (ECF No. 3). The Court construes Plaintiff’s pro se Complaint to assert, *inter alia*,¹ workplace discrimination claims pursuant to Title VII of the Civil Rights Act of 1964 against his employer, Defendant Buca Restaurants 2, Inc. (*See, e.g.*, ECF No. 1 at 10.) For the reasons set forth below, the Court **DENIES** Plaintiff’s motions without prejudice.

¹ Plaintiff also appears to assert claims against Ana Sepulveda for issuing a “fraudulent” right to sue letter on behalf of the Equal Employment Opportunity Commission (*see, e.g.*, ECF No. 1 at 6) and against the law firm Shegerian & Associates for leaving Plaintiff “without representation” (*see, e.g., id.* at 25).

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***I. Legal Standard**

All parties instituting a civil action, suit, or proceeding in a district court of the United States, other than a petition for writ of habeas corpus, must pay a filing fee. 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay the filing fee only if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a)(1). Section 1915(a)(1) provides that:

any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding . . . without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such [person] possesses that the person is unable to pay such fees or give security therefor.

28 U.S.C. § 1915(a)(1). As § 1915(a)(1) does not itself define what constitutes insufficient assets to warrant IFP status, the determination of indigency falls within the district court's discretion. *See Cal. Men's Colony v. Rowland*, 939 F.2d 854, 858 (9th Cir. 1991) ("Section 1915 typically requires the reviewing court to exercise its sound discretion in determining whether the affiant has satisfied the statute's requirement of indigency."), *reversed on other grounds* by 506 U.S. 194 (1993). "An affidavit in support of an IFP application is sufficient where it alleges that the affiant cannot pay the court costs and still afford the necessities of life." *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir. 2015) (citing *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948)). "One need not be absolutely destitute to obtain benefits of the [IFP] statute." *Jefferson v. United States*, 277 F.2d 723, 725 (9th Cir. 1960). "Nevertheless, a plaintiff seeking IFP status must allege poverty 'with some particularity, definiteness[,] and certainty.'" *Escobedo*, 787 F.3d at 1234.

II. Discussion

Plaintiff has not paid the \$402 filing fee required to maintain a civil action in this District and instead moves to proceed IFP. Plaintiff submits two form affidavits of assets for the Court's consideration. (ECF Nos. 2; 2-1.)

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1 In his Application to Proceed in District Court Without Prepaying Fees or Costs
2 (“First Form Affidavit”) (ECF No. 2), Plaintiff attests to the following: He is unemployed
3 and has \$3,000 in cash. (*Id.* ¶¶ 2–3.) His monthly expenses average \$3,021 for: mortgage
4 (\$1,551); utilities (\$250); home maintenance (\$100); food (\$250); laundry and dry-
5 cleaning (\$50); transportation (\$240); and homeowner’s insurance (\$580). (*Id.* ¶ 8.) He
6 does not expect any changes to his monthly income or expenses in the next twelve months,
7 and he estimates that he has spent or will be spending \$3,000 for expenses or attorneys’
8 fees² in conjunction with this case. (*Id.* ¶¶ 9–10.)

9 Plaintiff, however, failed to answer or provide a meaningful response to many
10 questions in the First Form Affidavit. Of note, when directed to attest to his total monthly
11 income, Plaintiff answered “N/A.” (*Id.* ¶ 1.) Additionally, when directed to list all his
12 assets—such as a home, other real estate, or motor vehicles—and their values, Plaintiff
13 answered “N/A.” (*Id.* ¶ 5.)

14 In his Motion and Declaration Under Penalty of Perjury In Support of Motion to
15 Proceed *In Forma Pauperis* (“Second Form Affidavit”) (ECF No. 2-1), Plaintiff attests to
16 the following: He is currently unemployed, but in the past twelve months he has received
17 money from “other sources.” (*Id.* ¶¶ 2; 3.) He does not have a checking, savings, IRA,
18 money market, or CDS account. (*Id.* ¶ 5.) He owns a 2017 Kia Sportage that is not
19 financed, but nevertheless, he owes \$9,000 on it. (*Id.* ¶ 6.)

20 Again, however, Plaintiff failed to answer many questions in the Second Form
21 Affidavit. Despite attesting that he receives money from “other sources,” Plaintiff failed
22 to describe the source(s) of this money, the amount received, and how much he expects to
23 continue to receive each month. (*Id.* ¶ 3.) When asked if he owns “any real estate, stocks,
24 bonds, securities, other financial instruments, or other valuable property,” Plaintiff
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27 ² Although Plaintiff attests that he has, or will, spend \$3,000 on expenses or attorneys’
28 fees in conjunction with this case, Plaintiff is proceeding pro se, and as addressed *infra*,
has requested appointment of pro bono counsel.

1 answered “Yes,” but failed to describe the property or state its value. (*Id.* ¶ 7.) Plaintiff
2 also left blank questions concerning his last employer (*id.* ¶ 2.b.), debts or current
3 obligations (*id.* ¶ 9), assets or items of value (*id.* ¶ 10), and how he pays for his day-to-day
4 expenses (*id.* ¶ 11).

5 Along with the First and Second Form Affidavits, Plaintiff also submits a form
6 “Request for Appointment of Counsel Under the Civil Rights Act of 1964, 42 U.S.C.
7 [§] 2000e[-](f)(1)” (“Request for Counsel”) (ECF No. 3). Although not provided for
8 purposes of proceeding IFP, Plaintiff attests to the following in the Request for Counsel:
9 He is unemployed, and in the past twelve months he has not received “any income from a
10 business, profession or other form of self-employment, or in the form of rent payments,
11 interest, dividends, retirement of annuity payments or other sources.” (*Id.* ¶¶ 8.A., 8.B.i.)
12 He has \$2,300 in a savings or checking account. (*Id.* ¶ 8.B.ii.) He owns “real estate, stocks,
13 bonds, notes, automobiles, or other valuable property.” (*Id.* ¶ 8.B.iii.) He is single and has
14 no dependents. (*Id.* ¶ 8.C.i.) He owns a home with a \$151,000 mortgage and pays \$1,551
15 per month in mortgage payments. (*Id.* ¶ 8.C.ii.) Including his mortgage payments, his
16 monthly expenses total \$4,023 for: thirteen credit cards (\$950); water and electricity
17 (\$600); food (\$450); a BMW (\$186); and a Kia Sportage (\$286). (*Id.*)

18 In light of the foregoing, the Court finds that Plaintiff does not allege poverty with
19 particularity, definiteness, or certainty, and, therefore, is not entitled to proceed IFP. For
20 one, Plaintiff’s First and Second Form Affidavits and Request for Counsel are incomplete;
21 Plaintiff either answered many questions in all three filings with “N/A” or did not respond
22 at all. Plaintiff’s incomplete affidavits and unknown financial status alone warrant denial
23 of his request to proceed IFP, for § 1915(a)(1) requires that Plaintiff attest to “*all assets*
24 [he] possess.” 28 U.S.C. § 1915(a)(1) (emphasis added).

25 Moreover, the Court is dubious as to the accuracy of the financial information
26 Plaintiff does attest too. For example, in the First Form Affidavit, Plaintiff attests that he
27 has only \$3,000 in cash, no savings account, and no income, but his monthly expenses
28 average \$3,021, including \$250 for utilities and \$250 for food. (ECF No. 2 ¶¶ 4, 8.) In

1 contrast, in the Request for Counsel—which is dated only three days after the First Form
2 Affidavit—Plaintiff attests that he has no income, \$2,300 in cash or in a savings/checking
3 account, and spends \$4,023 monthly, including \$600 for utilities and \$450 for food. (ECF
4 No. 3 ¶ 8.C.ii.) Plaintiff does not account for these discrepancies in his day-to-day
5 expenses, nor does he explain how he is able to afford \$3,000–\$4,000 in monthly expenses
6 when he has no income, no savings account, and minimal cash savings. Further, Plaintiff’s
7 Second Form Affidavit contradicts the First Form Affidavit and the Request for Counsel,
8 for Plaintiff attests in the Second Form Affidavit that in the past twelve months he has
9 received money from “other sources.” (ECF No. 2-1 ¶ 2.) Plaintiff, however, neither
10 describes what “other sources” he receives money from, nor discloses the amount of money
11 he receives.

12 Additionally, the First and Second Form Affidavits and Request for Counsel are
13 inconsistent as to the assets Plaintiff owns. For example, in the First Form Affidavit,
14 Plaintiff answered “N/A” when directed to list his assets and their values, seemingly
15 attesting that he does not own any assets, including real estate or motor vehicles. (ECF
16 No. 2 ¶ 5.) However, in the Second Form Affidavit, Plaintiff attests that he owns a 2007
17 Kia Sportage and at least one of the following types of assets: “real estate, stocks, bonds,
18 securities, other financial instruments, or other valuable property.” (ECF No. 2-1 ¶ 7.)
19 And in the Request for Counsel, Plaintiff attests that he owns a home and two motor
20 vehicles—a Kia Sportage and a BMW. (ECF No. 3 ¶ 8.C.ii.) From Plaintiff’s inconsistent
21 and incomplete attestations, the Court cannot glean whether Plaintiff is able to pay the
22 filing fee and “still afford the necessities of life.” *Escobedo*, 787 F.3d at 1234.

23 **III. Conclusion**

24 After reviewing the First and Second Form Affidavits and financial information
25 provided in the Request for Counsel, it is apparent to the Court that Plaintiff has not been
26 completely candid as to his financial status. Plaintiff’s inconsistent and incomplete
27 attestations do not demonstrate with “particularity, definiteness, or certainty” that Plaintiff
28 lacks the financial resources to pay the \$402 filing fee. Accordingly, Plaintiff’s request to

1 proceed IFP is **DENIED**. This denial, however, is without prejudice to Plaintiff refiling
 2 an IFP motion that accounts for all the above-noted discrepancies and demonstrates that
 3 Plaintiff is not abusing the IFP process, which could result in the dismissal of this action
 4 or other sanctions.³ *See Newsome v. Loterzstain*, No. 2:19-cv-0307-JAM-EFB P, 2020
 5 WL 4501813, at *3 (E.D. Cal. Aug. 5, 2020) (“[C]ourts routinely dismiss with prejudice
 6 cases upon finding that the plaintiff has intentionally withheld information that may have
 7 disqualified plaintiff from obtaining IFP status or has otherwise manipulated his finances
 8 to make it appear that a plaintiff is poorer than he actually is[.]”); *Tuck v. Capitol One*
 9 *Bank*, Case No.: 3:17-cv-01555-BEN-AGS, 2017 WL 6547739, at *3 (S.D. Cal. Dec. 20,
 10 2017) (“[E]ven if Plaintiff’s Amended IFP Application, viewed in isolation, might
 11 otherwise justify allowing him to proceed IFP, IFP ‘status is a privilege with may be denied
 12 when abused.’” (quoting *Toodle v. Jones*, 02:09-CV-0944, 2009 WL 2230704, at *1 (W.D.
 13 Pa. July 23, 2009))). The Court reminds Plaintiff that he signed the First and Second Form
 14 Affidavits and Request for Counsel under penalty of perjury that they are true and correct
 15 (ECF Nos. 2 at 1; 2-1 at 3; 3 at 7) and will likewise sign any renewed IFP motion under
 16 penalty of perjury. *See Tuck*, 2017 WL 6547739, at *3 (“Plaintiff is further reminded that
 17 an IFP application is made under penalty of perjury, and any false statements may result in
 18 a dismissal of claims . . .”).

19 **REQUEST FOR APPOINTMENT OF COUNSEL PURSUANT TO**

20 **42 U.S.C. § 2000e-5(f)(1)**

21 **I. Legal Standard**

22 “[T]here is no constitutional right to counsel in a civil case.” *Adir Int’l, LLC v. Starr*
 23 *Indem. & Liab. Co.*, 994 F.3d 1032, 1038–39 (9th Cir. 2021). Although Congress has
 24 specifically authorized district courts to appoint counsel for plaintiffs who, as Plaintiff
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 27 ³ Not only did Plaintiff sign the Second Form Affidavit “under penalty of perjury,”
 28 but with an “understand[ing] that a false statement . . . may result in the dismissal of [his]
 claims.” (ECF No. 2-1 at 3.)

1 seemingly is here, proceed under Title VII, *see* 42 U.S.C. § 2000e-5(f)(1),⁴ the court’s
2 “discretion under § 2000e-5(f)(1) in determining whether counsel should be appointed is
3 broad.” *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 269 (9th Cir. 1982). “Three
4 factors are relevant to the [district] court’s determination whether to appoint counsel [under
5 § 2000e-5(f)(1)]: (1) the plaintiff’s financial resources; (2) the efforts made by the plaintiff
6 to secure counsel on his own; and (3) the meritoriousness of plaintiff’s claim.” *Id.*

7 **II. Discussion**

8 After considering the three factors identified in *Ivey*, the Complaint, and the filings
9 before the Court, the Court finds that appointment of counsel is not warranted pursuant to
10 § 2000e-5(f)(1) at this time. First, Plaintiff has not demonstrated that he is financially
11 unable to retain an attorney. As discussed above, Plaintiff’s Request for Counsel and
12 affidavits made in support of his request to proceed IFP provide an incomplete depiction
13 of his financial status. Although leave to proceed IFP “requires a greater showing of
14 indigency than is required for appointment of counsel,” *Ivey*, 673 F.2d at 269, Plaintiff has
15 not demonstrated with any certainty that he is unable to afford counsel. Notably, Plaintiff
16 attests in the Second Form Affidavit that he has received money from “other sources” in
17 the past twelve months but does not disclose the amount of money he has received, whether
18 he will continue to receive it, or its source. (ECF No. 2-1 ¶ 3.) Plaintiff also attests to
19 owning a home and two vehicles and has a monthly expense budget of \$3,000–\$4,000.
20 (*See* ECF No. 3. ¶ 8.C.ii.)

21 Second, Plaintiff attests that he has contacted only a single law firm—Shegerian &
22 Associates—about representing him in this action, once on August 23, 2018, and again,
23 exactly three years later, on August 23, 2021. (*Id.* ¶ 4.) Although Plaintiff has expended
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26 ⁴ 42 U.S.C. § 2000e-5(f)(1) states in pertinent part that: “[u]pon application by the
27 complainant and in such circumstances as the court may deem just, the court may appoint
28 an attorney for such complainant and may authorize the commencement of the action
without the payment of fees, costs, or security.”

1 some effort to retain counsel, he has not diligently endeavored to do so. *Cf. Ivey*, 673 F.2d
2 at 269 (“The record also reveals that plaintiff contacted ten attorneys who refused to handle
3 the case, thus demonstrating that he was unable to secure counsel for appointment.”).
4 Moreover, in the Complaint, Plaintiff seems to allege that, at one point in time, Shegerian
5 & Associates agreed to represent him. (*See, e.g.*, ECF No. 1 at 24–25 (“Shegerian &
6 Associates [r]etainer agreement via email. Plaintiff signed it returned via email. . . .
7 Plaintiff Robert Blackshire Jr[.] was harmed by [c]o-conspirator defendant Shegerian &
8 Associates . . . left Plaintiff without representation abandonment.”).

9 And finally, Plaintiff has not demonstrated that the claims in his Complaint have
10 merit. In his Request for Counsel, Plaintiff provides only a single conclusory statement
11 that he has “a good case,” but does not otherwise address the merits of his claims. (*Id.*
12 ¶ 1.A.) Additionally, after its own review of the Complaint, the Court is not that Plaintiff’s
13 claims have sufficient merit to warrant appointment of counsel, especially when Plaintiff
14 has neither demonstrated that he is unable to afford counsel nor that he has made a
15 reasonable effort to retain counsel.

16 **III. Conclusion**

17 Plaintiff fails to demonstrate that he is unable to afford counsel, that he has diligently
18 endeavored to obtain counsel, or that his claims have sufficient merit to warrant
19 appointment of counsel. Accordingly, the Court **DENIES** Plaintiff’s request for
20 appointment of counsel pursuant to 42 U.S.C. § 2000e-5(f)(1) without prejudice.

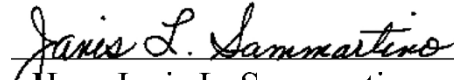
21 **CONCLUSION**

22 For the foregoing reasons, the Court **DENIES** Plaintiff’s request for leave to proceed
23 IFP (ECF Nos. 2; 2-1) and request for appointment of counsel pursuant to 42 U.S.C. §
24 2000e-5(f)(1) (ECF No. 3) without prejudice. No later than twenty-one days from the date
25 of this Order, Plaintiff shall either: (1) pay the \$402 filing fee required to maintain an action
26 in this District; or (2) file a renewed motion to proceed IFP that accounts for the
27 discrepancies identified by the Court and demonstrates that Plaintiff is not abusing the IFP
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1 process.⁵ *Plaintiff is hereby on notice that if he fails to pay the \$402 filing fee or file a*
2 *renewed IFP motion within twenty-one days from the date of this Order, the Court will*
3 *dismiss this action without prejudice.*

4 **IT IS SO ORDERED.**

5 Dated: January 3, 2022

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7 Hon. Janis L. Sammartino
8 United States District Judge
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25 ⁵ The Court reminds Plaintiff that, should he refile an IFP motion that sufficiently
26 assures the Court that he is entitled to IFP status and is not abusing the IFP process, his
27 Complaint will undergo mandatory pre-answer screening pursuant to 28 U.S.C.
28 § 1915(e)(2)(B). Under § 1915(e)(2)(B), the Court must *sua sponte* dismiss the Complaint,
or any portion of it, that is frivolous, malicious, fails to state a claim, or seeks damages
from defendants who are immune.