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6 UNITED STATES DISTRICT COURT  
7 SOUTHERN DISTRICT OF CALIFORNIA  
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9 STEVE KASSAB,

10 Plaintiff,

11 v.

12 UC SAN DIEGO HEALTH, et al.,

13 Defendant.

Case No.: 3:25-cv-00023-RBM-DDL

**ORDER:**

14 **(1) DENYING PLAINTIFF'S**  
15 **MOTION FOR LEAVE TO**  
16 **PROCEED IN FORMA PAUPERIS**

17 **(2) DISMISSING COMPLAINT ON**  
18 **SCREENING PURSUANT TO 28**  
19 **U.S.C. § 1915(e)(2)(B)(ii)**

[Docs. 1, 2]

20 On January 6, 2025, Plaintiff Steve Kassab ("Plaintiff") filed a Complaint against  
21 UC San Diego Health, Rachel Bent, Alice Kistenoff, Jack Hunt, Aaron Myers, Kush  
22 Vijay Bhatt, and Does 1 through 100 ("Complaint"). (Doc. 1 ("Compl.")). Along with  
23 his Complaint, Plaintiff filed a Motion for Leave to Proceed *In Forma Pauperis* ("IFP  
24 Motion"). (Doc. 2.)

25 **I. IFP MOTION**

26 **A. Legal Standard**

27 All parties instituting any civil action, suit, or proceeding in a district court of the  
28 United States, except an application for a writ of habeas corpus, must pay a filing fee of

1 \$405.<sup>1</sup> 28 U.S.C. § 1914(a). A court may authorize the commencement of a suit without  
2 prepayment of the filing fee if the plaintiff submits a signed affidavit “that includes a  
3 statement of all assets[,] which shows inability to pay initial fees or give security.” S.D.  
4 Cal. Civ. R. 3.2(a). The facts of an affidavit of poverty must be stated “with some  
5 particularity, definiteness, and certainty.” *Escobedo v. Applebees*, 787 F.3d 1226, 1234  
6 (9th Cir. 2015) (quoting *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)).  
7 The determination of indigency falls within the district court’s discretion. *Cal. Men’s*  
8 *Colony v. Rowland*, 939 F.2d 854, 858 (9th Cir. 1991), *rev’d on other grounds*, 506 U.S.  
9 194 (1993) (“Section 1915 typically requires the reviewing court to exercise its sound  
10 discretion in determining whether the affiant has satisfied the statute’s requirement of  
11 indigency.”).

## 12 **B. Discussion**

13 It is well-settled that a party need not be completely destitute to proceed IFP, but  
14 he must adequately prove his indigence. *Adkins v. E.I. DuPont de Nemours & Co.*, 335  
15 U.S. 331, 339–40 (1948). To satisfy the requirements of 28 U.S.C. § 1915(a), “[a]n  
16 affidavit in support of an IFP [motion] is sufficient where it alleges that the affiant cannot  
17 pay the court costs and still afford the necessities of life.” *Escobedo*, 787 F.3d at 1234  
18 (citing *Adkins*, 335 U.S. at 339); *see also McQuade*, 647 F.2d at 940 (an adequate  
19 affidavit should state supporting facts “with some particularity, definiteness and  
20 certainty”). No exact formula is “set forth by statute, regulation, or case law to determine  
21 when someone is poor enough to earn IFP status.” *Escobedo*, 787 F.3d at 1235.  
22 Consequently, courts must evaluate IFP requests on a case-by-case basis. *See id.* at  
23 1235–36 (declining to implement a general benchmark of “twenty percent of monthly  
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26 <sup>1</sup> In addition to the \$350 statutory fee, civil litigants must pay an additional administrative  
27 fee of \$55. *See* 28 U.S.C. § 1914(a); United States Courts, District Court Miscellaneous  
28 Fee Schedule § 14 (effective Dec. 1, 2023), <https://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule>. The additional \$55 administrative fee does not apply to persons granted leave to proceed IFP. *Id.*

1 household income”); *see also Cal. Men’s Colony*, 939 F.2d at 858 (requiring that district  
2 courts evaluate indigency based upon available facts and by exercise of their “sound  
3 discretion”), *rev’d on other grounds*, 506 U.S. 194 (1993) (citation omitted).

4 In his IFP Motion, Plaintiff declares he is unable to pay the costs of these  
5 proceedings. (Doc. 2 at 1.)<sup>2</sup> Plaintiff lists \$1,020.00 as his monthly income from  
6 disability and public assistance benefits. (*Id.* at 2.) Plaintiff owns a vehicle worth  
7 \$2,500.00. (*Id.* at 2–3.) Plaintiff spends \$100.00 per month on utilities, \$100.00 per  
8 month on home maintenance, \$100.00 per month on food, \$50.00 on clothing, \$50.00 per  
9 month on laundry and dry cleaning, \$50.00 on medical and dental expenses, \$150.00 per  
10 month on transportation, \$50 on recreation and entertainment, and \$350 on homeowner’s  
11 or renter’s insurance.<sup>3</sup> (*Id.* at 4.) Plaintiff also states that he has spent, or will be  
12 spending, \$2,204.00 on expenses or attorney fees in conjunction with this lawsuit. (*Id.* at  
13 5.) Plaintiff is not owed any money and does not have any dependents who rely on him  
14 for financial support. (*Id.* at 3.) Plaintiff does not anticipate any changes to his income  
15 or expenses in the next twelve months. (*Id.* at 5.)

16 The Court determines Plaintiff’s monthly income is \$1,020.00 and his monthly  
17 expenses are at least \$1,000.00. However, the Court is unable to determine with certainty  
18 the amount in Plaintiff’s checking account because the amount listed is illegible. (*See id.*  
19 at 2.) Without this information, the Court cannot fully determine Plaintiff’s financial  
20 status. Accordingly, Plaintiff’s IFP Motion is **DENIED WITHOUT PREJUDICE**. If  
21 Plaintiff wishes to proceed IFP, Plaintiff may file an amended IFP Motion providing clear  
22 and legible answers to all the questions in the Application **by February 14, 2025**.

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26 <sup>2</sup> The Court cites the paragraph numbers of the Complaint and the CM/ECF electronic  
27 pagination for other citations unless otherwise noted.

28 <sup>3</sup> The Court notes that Plaintiff indicates his monthly payment for rent or home-mortgage  
is \$0. (Doc. 2 at 4.)

1 **II. SCREENING UNDER 28 U.S.C. 1915(E)**

2 “Even were the Court to grant Plaintiff’s IFP Motion, Plaintiff’s complaint  
3 warrants dismissal pursuant to 28 U.S.C. § 1915(e)(2)’s required pre-answer screening.”  
4 *Toussaint v. Venante*, Case No. 3:22-cv-245 JLS (AGH), 2022 WL 891112, at \*2 (S.D.  
5 Cal. Mar. 25, 2022) (citations omitted). Every complaint filed pursuant to the IFP  
6 provisions of 28 U.S.C. § 1915 is subject to a mandatory screening by the Court under §  
7 1915(e)(2)(B). *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (“1915(e) not only  
8 permits but requires a district court to dismiss an [IFP] complaint that fails to state a  
9 claim.”) (citation omitted). Under that provision, the Court must dismiss complaints that  
10 are frivolous or malicious, fail to state a claim on which relief may be granted, or seek  
11 monetary relief from defendants who are immune from such relief. *See* 28 U.S.C. §  
12 1915(e)(2)(B). “The purpose of [screening] is ‘to ensure that the targets of frivolous or  
13 malicious suits need not bear the expense of responding.’” *Nordstrom v. Ryan*, 762 F.3d  
14 903, 920 n.1 (9th Cir. 2014) (citation omitted).

15 **A. Subject Matter Jurisdiction**

16 In addition to reviewing IFP complaints under § 1915, “[f]ederal courts have an  
17 independent obligation to ensure that they do not exceed the scope of their jurisdiction,  
18 and therefore they must raise and decide jurisdictional questions that the parties either  
19 overlook or elect not to press.” *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428,  
20 434 (2011). Courts address the issue of subject matter jurisdiction first, as “[t]he  
21 requirement that jurisdiction be established as a threshold matter ‘spring[s] from the  
22 nature and limits of the judicial power of the United States’ and is ‘inflexible and without  
23 exception.’” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94–95 (1998)  
24 (alteration in original) (quoting *Mansfield, C. & L.M. Ry. Co. v. Swan*, 111 U.S. 379, 382  
25 (1884)). “If the court determines at any time that it lacks subject-matter jurisdiction, the  
26 court must dismiss the action.” Fed. R. Civ. P. 12(h)(3).

27 “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins.*  
28 *Co. of Am.*, 511 U.S. 375, 377 (1994). “They possess only that power authorized by

1 Constitution and statute, which is not to be expanded by judicial decree.” *Id.* (citations  
2 omitted). “It is to be presumed that a cause lies outside this limited jurisdiction, . . . and  
3 the burden of establishing the contrary rests upon the party asserting jurisdiction.” *Id.*  
4 (internal citations omitted). Thus, a plaintiff bears the burden of establishing “subject  
5 matter jurisdiction.” *See Watson v. Chessman*, 362 F. Supp. 2d 1190, 1194 (S.D. Cal.  
6 2005) (“The court will not . . . infer allegations supporting federal jurisdiction; federal  
7 subject matter [jurisdiction] must always be affirmatively alleged.”) (citations omitted).  
8 Under Rule 8 of the Federal Rules of Civil Procedure, a pleading must include “a short  
9 and plain statement of the grounds for the court’s jurisdiction.” Fed. R. Civ. P. 8(a)(1).

10 The Court’s jurisdiction can arise in two ways: (1) as “federal question”  
11 jurisdiction under 28 U.S.C. § 1331; or (2) as “diversity of citizenship” jurisdiction”  
12 under 28 U.S.C. § 1332. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 501 (2006). Under  
13 federal question jurisdiction, “courts shall have original jurisdiction of all civil actions  
14 arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.  
15 “For a case to ‘arise under’ federal law, a plaintiff’s well-pleaded complaint must  
16 establish either (1) that federal law creates the cause of action or (2) that the plaintiff’s  
17 asserted right to relief depends on the resolution of a substantial question of federal law.”  
18 *K2 Am. Corp. v. Roland Oil & Gas, LLC*, 653 F.3d 1024, 1029 (9th Cir. 2011) (quoting  
19 *Peabody Coal Co. v. Navajo Nation*, 373 F.3d 945, 948 (9th Cir. 2004)). Under diversity  
20 jurisdiction, each plaintiff must be a citizen of a different state than each of the  
21 defendants, and the “amount in controversy” must exceed \$75,000. 28 U.S.C. § 1332(a);  
22 *see also Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996) (observing that the general-  
23 diversity statute permits federal district court jurisdiction over suits “between . . . citizens  
24 of different states.”). A plaintiff can allege the “citizenship” of individuals by stating  
25 where the individual is “domiciled,” or where the individual resides with the intention to  
26 remain.” *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

27 Here, the Complaint “is silent as to jurisdiction,” rendering it “subject to dismissal  
28 for violation of Rule 8.” *Toussaint*, 2022 WL 891112, at \*2. Instead, Plaintiff alleges

1 that “the State Superior Court is refusing to give Plaintiff access to the court, and is  
2 showing the appearance of bias despite receiving court orders. To protect the deadlines,  
3 Plaintiff is forced to file in the Federal Court of San Diego for the [S]outhern District.”  
4 (Compl. ¶ 21.) This allegation does not provide a proper basis for the Court’s jurisdiction  
5 under either federal question or diversity jurisdiction. Plaintiff has therefore failed to  
6 present any grounds for the Court’s jurisdiction.

7 Notwithstanding this deficiency and construing Plaintiff’s pro se Complaint  
8 liberally, the allegations also do not provide a sufficient basis for this Court to infer that  
9 subject matter jurisdiction exists. Facially, the Complaint does not invoke federal  
10 question jurisdiction based on Plaintiff’s six state law causes of action for: (1)  
11 negligence; (2) breach of fiduciary duty; (3) medical battery; (4) lack of informed  
12 consent; (5) medical malpractice; and (6) false imprisonment without arrest. (Compl. at  
13 6–12.) As Plaintiff’s claims are rooted in state law and Plaintiff does not allege violation  
14 of a constitutional right or of federal law, the Complaint does not entitle Plaintiff to the  
15 Court’s federal question jurisdiction under 28 U.S.C. § 1331. *See e.g., Genthner v.*  
16 *Chong*, Case No. 1:16-cv-01534-AWI-EPG, 2016 WL 6471124, at \*2 (E.D. Cal. Nov. 1,  
17 2016) (“Plaintiff’s claims are state claims for medical malpractice and do not invoke  
18 federal subject matter jurisdiction.”). Additionally, the Complaint does not contain  
19 sufficient facts to determine whether diversity jurisdiction exists, such as the amount of  
20 damages Plaintiff seeks and any of the Defendants’ citizenship. *Bautista v. Pan Am.*  
21 *World Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987) (“The essential elements of  
22 diversity jurisdiction, including the diverse residence of all parties, must be affirmatively  
23 alleged in the pleadings.”) (citation omitted).

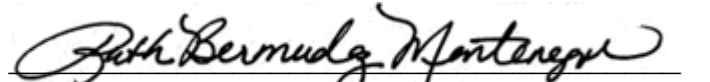
24 Accordingly, even if Plaintiff is entitled to proceed IFP, the Complaint must be  
25 **DISMISSED** for lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3) (“If the  
26 court determines at any time that it lacks subject-matter jurisdiction, the court must  
27 dismiss the action.”).

1 **III. CONCLUSION**

2 Based on the foregoing considerations, Plaintiff's IFP Motion (Doc. 2) is **DENIED**  
3 **WITHOUT PREJUDICE** and the Complaint is **DISMISSED WITHOUT**  
4 **PREJUDICE**. Plaintiff may file a renewed IFP Motion providing clear, legible, and  
5 complete answers to all the questions in the Application, as well as an amended  
6 complaint that cures the deficiencies identified above (*see* Section II.A), on or before  
7 **February 14, 2025**.

8 **IT IS SO ORDERED.**

9 DATE: January 29, 2025

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11 HON. RUTH BERMUDEZ MONTENEGRO  
12 UNITED STATES DISTRICT JUDGE  
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