

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

THOMAS T. MITCHAM,

Plaintiff,

v.

CWB MORTGAGE VENTURES, LLC,
et. al.,

Defendants.

Case No. 1:11-cv-00259-BLW

**MEMORANDUM DECISION AND
ORDER**

INTRODUCTION

The Court has before it Plaintiff's Application For In Forma Pauperis Status (Dkt.

1). For the following reasons, the Court will deny the Application.

ANALYSIS

Pursuant to federal statute, "any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, . . . without prepayment of fees or security therefor." 28 U.S.C. § 1915(a)(1). In order to qualify for *in forma pauperis* status, Plaintiff must submit an affidavit that includes a statement of all assets he possesses and that, "because of [his] poverty, [he] is unable to pay the costs of said proceeding or give security therefore, and that [he] believe[s] that [he is] entitled to relief." *Id.*

The affidavit is sufficient if it states that the plaintiff, because of his poverty, cannot “pay or give security for the costs” and still be able to provide himself and dependents “with necessities of life.” *Adkins v. E.I. DuPont de Numours & Co.*, 335 U.S. 331, 339 (1948). The affidavit must “state the facts as to affiant’s poverty with some particularity, definiteness and certainty.” *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (internal quotation omitted).

Here, Mitcham filed a complaint seeking declaratory relief, injunctive relief and a permanent injunction. The claims relate to two mortgage loan documents on his personal residence in the amounts of \$848,000.00 and \$105,894.00. Mitcham states that he is not employed, but he also states that he is a self-employed realtor, and that he made \$21,500.00 during the past 12 months. Apparently, Mitcham does not consider self-employed to mean employed. Regardless, he had an income of \$21,500.00 over the past 12 months. He also states that he has an interest in his personal residence, which he values at \$325,000.00. He does not indicate how much interest he has in the property, but based on the loan amounts and nature of this case, the Court assumes he has no equity in the residence. Mitcham also owns a Ford Explorer he values at \$3,200.00. He indicates that he has no dependents. *Application for In Forma Pauperis Status* (Docket No. 1).

Petitioner’s annual income of \$21,500.00 is almost exactly twice the guideline figure of \$10,890.00 for a single individual set forth in the United States Department of

Health and Human Services' 2011 Poverty Guidelines.¹ Under these circumstances, the Court does not find that Mitcham cannot “pay or give security for the costs” and still be able to provide himself “with necessities of life.” *Adkins*, 335 U.S. at 339. Accordingly, the Court will deny Mitcham’s Application.

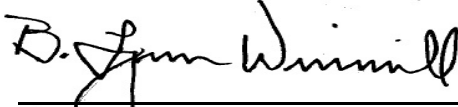
ORDER

IT IS ORDERED:

1. Plaintiff’s Application For In Forma Pauperis Status (Dkt. 1) is **DENIED**.
Plaintiff shall pay the Clerk of the Court the proper filing fees on or before **November 4, 2011** or this case will be dismissed in its entirety.

DATED: **October 4, 2011**





B. LYNN WINMILL
Chief U.S. District Court Judge

¹See <http://aspe.hhs.gov/poverty/09poverty.shtml>