

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

HOLLY FISHER f/k/a HOLLY
BRAIDED HAIR,

Plaintiff,

vs.

CU RECOVERY, INC.,

Defendant.

CV-14-98-BLG-SPW-CSO

**FINDINGS AND
RECOMMENDATION OF
UNITED STATES
MAGISTRATE JUDGE**

Before the Court is Plaintiff's Application to Proceed Without Prepayment of Fees and Affidavit. *ECF 1*. To qualify for in forma pauperis status, a civil litigant must demonstrate that he or she "cannot because of his poverty pay or give security for the costs and still be able to provide himself and dependents with the necessities of life." *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948); *Bulled v. Pallavicini*, 19 F.3d 1439 (9th Cir. 1994).

Plaintiff's affidavit reports the following financial information about her and her spouse: a combined monthly income of \$4,100; \$13.37 in a checking account; and a 2012 Chevy car worth approximately \$23,000. Plaintiff indicates that she has attended graduate school, and

that both she and her husband will be returning to school in the future. She indicates that their employment is temporary, so they plan to use the money earned to support themselves and their children while they attend school. *ECF 1 at 7.*

In light of the information in Plaintiff's affidavit regarding her current financial status, the Court cannot find that she is entitled to proceed in forma pauperis. *See Sears, Roebuck and Co. v. Charles W. Sears Real Estate, Inc.*, 865 F.2d 22, 23 (2nd Cir. 1988); *United States v. Valdes*, 300 F.Supp.2d 82 (D.D.C. 2004); *Failor v. Califano*, 79 F.R.D. 12, 13 (M.D. Pa. 1978).

The denial of a motion to proceed in forma pauperis is a final judgment, and a magistrate judge may not enter this final judgment absent consent of the parties. *See Tripathi v. Rison*, 847 F.2d 548 (9th Cir. 1988)(citing 298 U.S.C. § 636(c)). Accordingly,

IT IS RECOMMENDED that Plaintiff's Application to Proceed Without Prepayment of Fees and Affidavit (*ECF 1*) be DENIED, with leave to refile if the applicant believes that sufficiently particular, definite, and certain details can be provided to show that she cannot meet court costs and still provide herself and her dependents with the necessities of life.

Pursuant to 28 U.S.C. § 636(b)(3), Plaintiff may not file objections to these findings with the district court. *See Minetti v. Port of Seattle*, 152 F.3d 1113, 1114 (9th Cir. 1998).

DATED this 12th day of August, 2014.

/s/ Carolyn S. Ostby
United States Magistrate Judge