

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 09, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

VALENTIN BOVDYR,

Plaintiff,

v.

MATTHEW COZZA,

Defendant.

No. 2:22-cv-00022-MKD

ORDER DIRECTING PLAINTIFF
TO COMPLY WITH COURT'S
FEBRUARY 18, 2022 ORDER AND
DECLINING TO ADOPT REPORT
AND RECOMMENDATION

Before the Court is Magistrate Judge Goeke's March 25, 2022 Report and Recommendation, ECF No. 7, recommending that, due to Plaintiff's failure to pay the filing fee or submit a properly completed Application to Proceed *In Forma Pauperis* (IFP application), this Court 1) dismiss Plaintiff's Complaint without prejudice; and 2) Plaintiff be required to provide notice of the dismissal to all Defendant(s) he served. Plaintiff filed an objection to Report and Recommendation, stating he believed he did not need to include his spouse's income in the IFP application. ECF No. 8.

ORDER - 1

1 After reviewing the Report and Recommendation, Plaintiff's objection, and
2 relevant authorities, the Court directs that Plaintiff supplement his IFP application
3 consistent with the Court's February 18, 2022 Order within 14 days. There are
4 multiple deficiencies in Plaintiff's IFP application. An affidavit in support of
5 an IFP application is sufficient when it alleges that the affiant cannot pay the court
6 costs and still afford the necessities of life. *Adkins v. E.I. DuPont de Nemours &*
7 *Co.*, 335 U.S. 331, 339, 69 S.Ct. 85, 93 L.Ed. 43 (1948). When analyzing an IFP
8 application, a Court may consider a plaintiff's spouse's income when the spouse's
9 funds are available to the plaintiff. *See Escobedo v. Applebees*, 787 F.3d 1226,
10 1236 (9th Cir. 2015) (quoting *Lee v. McDonald's Corp.*, 231 F.3d 456, 459 (8th
11 Cir. 2000)). Plaintiff indicated that his spouse's income is available to him to pay
12 household expenses, but has not provided his spouse's income, nor has he provided
13 any specific information about the costs of his necessities of life. *See* ECF Nos. 2,
14 4. Plaintiff also did not indicate whether he is or has been a party to a lawsuit, not
15 including this lawsuit, in the last 10 years. *See* ECF Nos. 2, 4. If he has, Plaintiff
16 is required to provide, but has not yet provided, the required case number, court,
17 type of case, names of parties, and information regarding whether the case is still
18 pending or how it concluded. *See* ECF Nos. 2, 4.

19 While Plaintiff has already been given the opportunity to submit a new and
20 properly completed IFP application, ECF No. 4, Plaintiff argues he did not

1 understand that he was required to provide information on other members of his
2 household, ECF No. 8. Courts are to make reasonable allowances
3 for *pro se* litigants and are to construe *pro se* papers and pleadings
4 liberally. *McCabe v. Arave*, 827 F.2d 634, 640 n.6 (9th Cir. 1987). Given
5 Plaintiff's reported misunderstanding and his timely objection to the Report and
6 Recommendation, the Court will allow Plaintiff another opportunity to file a
7 complete IFP application.

8 Accordingly, **IT IS HEREBY ORDERED:**

- 9 1. The Court declines to adopt the Report and Recommendation.
- 10 2. Within fourteen (14) days of this Order, Plaintiff shall submit a new and
11 properly completed application to proceed *in forma pauperis* or pay the
12 full filing fee.

13 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order
14 and provide copies to counsel and *pro se* Plaintiff. The Clerk's Office is directed
15 to include a copy of the Court's February 18, 2022, ECF No. 4, with the copies
16 provided to the *pro se* Plaintiff.

17 DATED May 9, 2022.

18 s/Mary K. Dimke
19 MARY K. DIMKE
20 UNITED STATES DISTRICT JUDGE