

1 HONORABLE RONALD B. LEIGHTON
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 WENDIANE WOODBURN,

11 Plaintiff,

12 v.

13 INTERNAL REVENUE SERVICE,

Defendant.

CASE NO. C16-5962 RBL

ORDER DENYING MOTION FOR
LEAVE TO PROCEED IN FORMA
PAUPERIS

14 THIS MATTER is before the Court on Plaintiff Woodburn's Motion for Leave to
15 Proceed *in forma pauperis* [Dkt. #1], supported by her proposed complaint against the Fresno
16 office of the Internal Revenue Service. Woodburn seeks an Order compelling the IRS to process
17 tax refunds she claims she timely sought, for the 2009 and 2010 tax years. The refunds total
18 \$5049, and she also seeks punitive damages and compensation for pain and suffering.

19 A district court may permit indigent litigants to proceed *in forma pauperis* upon
20 completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). The court has broad
21 discretion in resolving the application, but "the privilege of proceeding *in forma pauperis* in civil
22 actions for damages should be sparingly granted." *Weller v. Dickson*, 314 F.2d 598, 600 (9th Cir.
23 1963), *cert. denied* 375 U.S. 845 (1963). The standard governing *in forma pauperis* eligibility

1 under 28 U.S.C. § 1915(a)(1) is “unable to pay such fees or give security therefor.” A person is
2 eligible if they are unable to pay the costs of filing and still provide the necessities of life. *See*
3 *Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 203 (1993)
4 (internal quotations omitted). Moreover, a court should “deny leave to proceed *in forma pauperis*
5 at the outset if it appears from the face of the proposed complaint that the action is frivolous or
6 without merit.” *Tripathi v. First Nat'l Bank & Trust*, 821 F.2d 1368, 1369 (9th Cir. 1987)
7 (citations omitted); *see also* 28 U.S.C. § 1915(e)(2)(B)(i). An *in forma pauperis* complaint is
8 frivolous if “it ha[s] no arguable substance in law or fact.” *Id.* (citing *Rizzo v. Dawson*, 778 F.2d
9 527, 529 (9th Cir. 1985); *see also* *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984)).

10 While the Court is sympathetic to Woodburn’s circumstances, she failed to provide
11 evidence of her indigency sufficient to merit leave to proceed *in forma pauperis*. Despite
12 substantial monthly expenses and negligible savings, Woodburn’s employment provides her with
13 a monthly salary of \$1,500 and an additional annual salary of \$14,400. She also possess \$18,000
14 in home equity. The Court allows litigants to proceed *in forma pauperis* only when they have
15 sufficiently demonstrated an inability to pay the filing fee. This generally includes incarcerated
16 individuals with no assets and persons who are unemployed and dependent on government
17 assistance. *See, e.g., Ilagan v. McDonald*, 2016 U.S. Dist. LEXIS 79889, at *2 (D. Nev. June 16,
18 2016) (granting petition based on unemployment and zero income); *Reed v. Martinez*, 2015 U.S.
19 Dist. LEXIS 80629, at *1, 2015 WL 3821514 (D. Nev. June 19, 2015) (granting petition for
20 incarcerated individual on condition that applicant provides monthly payments towards filing
21 fee). It does not include those whose access to the court system is not blocked by their financial
22 constraints, but rather are in a position of having to weigh the financial constraints pursuing a
23 case imposes. *See Sears, Roebuck & Co. v. Charles W. Sears Real Estate, Inc.*, 686 F. Supp. 385,
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1 388 (N.D. N.Y.), *aff'd*, 865 F.2d 22 (2d Cir. 1988) (denying petition to proceed IFP because
2 petitioner and his wife had a combined annual income of between \$34,000 and \$37,000).
3 Woodburn has a total annual income of approximately \$32,400. She has failed to demonstrate a
4 level of economic necessity similar to those who have received IFP status.

5 For this reason, Woodburn's Motion for Leave to Proceed *in forma pauperis* [Dkt. #1] is
6 DENIED. Woodburn shall pay the filing fee or voluntarily dismiss her claims within 21 days of
7 this order. Otherwise, her petition will be dismissed without further notice.

8 IT IS SO ORDERED.

9 Dated this 24th day of April, 2017.

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11 Ronald B. Leighton

12 Ronald B. Leighton
13 United States District Judge
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