

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Wescott v. Gray

No. 3:25-cv-00808-RBM-KSC (S.D. Cal. Sept. 4, 2025) · No. 3:25-cv-00808-RBM-KSC · Decided September 4, 2025

SUMMARY

The United States District Court for the Southern District of California grants Carl A. Wescott’s application to proceed in forma pauperis and motion for permission to receive electronic notices and file electronically as a pro se party. The court finds that the complaint adequately states claims for breach of contract, money had and received, and accounting, and adequately alleges diversity jurisdiction, then directs issuance and service of the summons and complaint.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Ruth Bermudez Montenegro
JURISDICTION	United States District Court for the Southern District of California
DECIDED	September 4, 2025
DOCKET	3:25-cv-00808-RBM-KSC
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff filed a verified complaint and applications to proceed in forma pauperis and to receive electronic notices and file electronically as a pro se party. The district court granted both applications after screening the complaint under 28 U.S.C. § 1915(e)(2).
STANDARD OF REVIEW	For IFP screening under 28 U.S.C. § 1915(e)(2)(B)(ii), the court applied the same standard as Federal Rule of Civil Procedure 12(b)(6), accepting well-pleaded factual allegations as true and determining whether the complaint stated a plausible claim for relief. Indigency was evaluated under the district court's sound discretion based on the available facts.
PRECEDENTIAL VALUE	unpublished district court order; precedential status unknown

TOPICS

- pleadings
- subject matter jurisdiction
- service of process
- civil procedure
- contracts

PRACTICE AREAS

civil procedure

contracts

commercial litigation

QUESTIONS PRESENTED

1. Whether Plaintiff demonstrated inability to pay the civil filing fee and was entitled to proceed in forma pauperis.
2. Whether the complaint stated claims upon which relief could be granted under the screening requirement of 28 U.S.C. § 1915(e)(2)(B).
3. Whether the complaint adequately alleged diversity jurisdiction under 28 U.S.C. § 1332(a).
4. Whether Plaintiff demonstrated the technical capability and agreed to comply with applicable requirements so as to receive permission to file electronically as a pro se party.

HOLDINGS

1. A plaintiff may proceed in forma pauperis when the submitted financial information adequately demonstrates that the plaintiff cannot pay court costs while still affording the necessities of life; Plaintiff met that standard.
2. The complaint survived screening under 28 U.S.C. § 1915(e)(2)(B) because it was not shown to be frivolous or malicious, did not seek monetary relief from immune defendants, and adequately stated claims for relief.
3. At the pleading stage, the complaint adequately alleged diversity jurisdiction because it alleged complete diversity between Plaintiff and Defendants and an amount in controversy exceeding \$75,000.
4. A pro se party may receive permission to file electronically when the party demonstrates the equipment and software capabilities necessary to e-file and agrees to follow the applicable court rules and policies; Plaintiff satisfied those requirements.

KEY QUOTATIONS

“The standard for determining whether a plaintiff has failed to state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.” (at 4)

“Where the plaintiff originally files in federal court, ‘the amount in controversy is determined from the face of the pleadings.’” (at 5)

FACTUAL BACKGROUND

Wescott alleged that he loaned Geoversity Foundation \$217,000 through monthly loans and a lump-sum payment, with Gray personally guaranteeing the loans. He alleged that he requested repayment in August 2024 and that repayment was refused. Wescott also alleged that he resided in Arizona, Gray resided in California, Geoversity was domiciled in San Diego County, California, and the amount in controversy was approximately \$217,000. For purposes of the IFP application, he asserted that he was unemployed, had limited assets, received \$292 per month in nutrition assistance, and had monthly expenses of approximately \$803.

PROCEDURAL HISTORY

Carl A. Wescott filed a diversity action asserting breach of contract, money had and received, and accounting claims against Nathan Gray, Geoversity Foundation, and Doe defendants. Along with the complaint, he applied to proceed without prepaying fees and moved for permission to receive electronic notices and file electronically. The court granted both requests, found that the complaint adequately stated claims and alleged diversity jurisdiction at the pleading stage, and directed the Clerk and United States Marshals Service to facilitate service.

DISPOSITION

other

CASES CITED

- Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000)
- Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339-40 (1948)
- Escobedo v. Applebees, 787 F.3d 1226, 1234-36 (9th Cir. 2015)
- United States v. McQuade, 647 F.2d 938, 940 (9th Cir. 1981)
- Cal. Men's Colony v. Rowland, 939 F.2d 854, 858 (9th Cir. 1991), rev'd on other grounds, 506 U.S. 194 (1993)
- Venable v. Meyers, 500 F.2d 1215, 1216 (9th Cir. 1974)
- Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010)
- Bretz v. Kelman, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)
- Segura v. City of San Diego, No. 3:22-cv-01029-RBM-AHG, 2022 WL 3130243, at *2 (S.D. Cal. July 28, 2022)
- Caterpillar Inc. v. Lewis, 519 U.S. 61, 67-68 (1996)
- Geographic Expeditions, Inc. v. Est. of Lhotka ex rel. Lhotka, 599 F.3d 1102, 1106 (9th Cir. 2010)
- Crum v. Circus Circus Enters., 231 F.3d 1129, 1131 (9th Cir. 2000)
- Wescott v. Google, LLC, No. 24-cv-01513-PHK, 2024 WL 3849345, at *2 (N.D. Cal. Aug. 15, 2024)

OPINION

Wescott v. Gray
PER CURIAM.
1 2 3 4 5
6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
8 9 CARL A. WESCOTT, Case No.: 3:25-cv-00808-RBM-KSC 10 Plaintiff, ORDER: 11 v.
(1) GRANTING PLAINTIFF’S
12 NATHAN GRAY; et al.,

APPLICATION TO PROCEED IN

13 Defendants. DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS [Doc. 14 2] 15

(2) GRANTING MOTION FOR

16

PERMISSION TO RECEIVE

17 ELECTRONIC NOTICING AND

FOR PERMISSION TO FILE

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ELECTRONICALLY AS A PRO SE

19 PARTY [Doc. 3] 20 21 Pending before the Court are Plaintiff Carl A. Wescott's ("Plaintiff") Application to 22 Proceed in District Court Without Prepaying Fees or Costs, i.e. an application to proceed 23 in forma pauperis ("IFP Application"), and Plaintiff's Motion for Permission to Receive 24 Electronic Noticing and for Permission to File Electronically as a Pro Se Party ("Motion 25 for Electronic Filing"). (See Docs. 2, 3.) For the reasons set forth below, Plaintiff's IFP 26 Application and Plaintiff's Motion for Electronic Filing are GRANTED. 27 /// 28 ///

1 I. BACKGROUND

2 A. Plaintiff's Complaint1 3 On April 3, 2025, Plaintiff filed a Verified Legal Complaint for Breach of Contract, 4 Money Had and Received, and Accounting ("Complaint") against Defendants Nathan 5 Gray, Geoversity Foundation2 ("Geoversity"), and DOES 1 through 25 (collectively, 6 "Defendants"). (Doc. 1 ["Compl."].)3) In his Complaint, Plaintiff alleges that he once was 7 wealthy, "had plenty of cash[,] and "invested over US \$2 million to purchase land for 8 conservation and preservation." (Id. ¶¶ 33, 39.) Specifically, he alleges that he lent 9 Defendant Geoversity a total of \$147,000 in monthly loans and an additional lump sum of 10 \$70,000 for a total of \$217,000. (Id. ¶¶ 30–31, 34–37.) Plaintiff alleges that Defendant 11 Gray personally guaranteed the loans. (Id. ¶ 38.) 12 Plaintiff alleges that he requested repayment of the loans in August 2024. (Id. ¶ 40.) 13 In an email dated October 14, 2024, Defendant Gray responded: 14 I remember very vividly why your records show 'loans' to Earth Train. Back in 2003 or 2004, all save two people resigned from the Earth Train board of 15 directors because they felt I was taking a foolish risk to invest so much cash 16 and personal capital banking on a promise that could not be legally recorded and enforced: I'm referring to our agreement that Earth Train would 17 eventually receive-as a tax deductible donation from you-50% of the land we 18 managed to secure for your Panamanian company. Again, the idea was that you would make the donation sometime in the future when you could take 19 advantage of highly increased land values, that is when you could benefit from 20 the hard work we invested in saving and restoring precious (and gorgeous) spots such as the Junglewood and the La Zahina areas. In just the Junglewood 21 area alone, we raised money and invested countless hundreds of volunteer 22 hours to plant over 7,000 trees. Later, without prior consultation with us, you sold all of that land and more to Colin for a multiple over what you paid for 23 24 25 1 This section summarizes the allegations set forth in

Plaintiff's Complaint, not conclusions of law or fact by the Court. 26 2 Plaintiff alleges that Defendant Geoversity Foundation was previously known as Earth 27 Train or Gateway Pacific Foundation. (Doc. 1 ["Compl."] at 1.) 3 Unless otherwise noted, the Court will cite to paragraph numbers for the Complaint and 28 1 it. And we received nothing from that deal. 2 For quite a while, we agreed to receive monthly payments from you as 3 compensation for our time and out-of-pocket costs involved in acquiring land for your company -but to record them as 'loans'. Again, the idea was to give 4 you a tax advantage: You could convert those 'loans' to a donation at a later 5 date when that would offer you a better tax advantage. We finally discontinued that practice at the insistence of our board. And when you sold 6 your holdings to Colin, that would have been a time to square at least that 7 arrangement with a donation. And once the sale was effected, that's how we recorded the land management and acquisition payments from you. 8 9 Carl, I wish you the best of luck getting through your present difficulties. The best we have to offer you and your boys is an ultimately positive rendering of 10 history -extraordinary achievements in the restoration and protection of 11 ecologically precious corridors of biodiversity. 12 (Doc. 1-2 (unaltered).) 13 B. Plaintiff's IFP Application 14 Along with his Complaint, Plaintiff filed an IFP Application. In his IFP Application, 15 Plaintiff asserts that he is unemployed and has \$158.97 in total. (Doc. 2 at 2.) Plaintiff 16 also asserts that he lives at his mother's townhome, does not have a car, and owns three 17 guitars worth \$150. (Id.) Plaintiff then claims that a named individual owes him \$2,000. 18 (Id.) Plaintiff also claims that he has average monthly expenses of \$803. (Id. at 4-5.) 19 Finally, Plaintiff attaches documentation indicating that he receives \$292 per month in 20 Nutrition Assistance. (Doc. 2-1 at 1.) 21 C. Plaintiff's Motion for Electronic Filing 22 In his Motion for Electronic Filing, Plaintiff "moves this Court for permission to file 23 electronically and to receive electronic noticing of Court filings, orders, and notices in the 24 matter captioned above." (Doc. 3 at 1.) Plaintiff asserts that he has reviewed the CM/ECF 25 Information Page and "understands the rules of e-filing." (Id. at 2.) Plaintiff also asserts 26 that he has access to a computer and the internet and has registered for PACER. (Id.) 27 Plaintiff consents to electronic service at CarlWescott2025@gmail.com and understands 28 "that abuse of the e-filing privileges may result in revocation of the right to e-file." (Id.)

1 II. DISCUSSION

2 A. Plaintiff's IFP Application 3 A motion to proceed in forma pauperis ("IFP") presents two issues for the Court's 4 consideration. First, the Court must determine whether an applicant properly shows an 5 inability to pay the \$4054 civil filing fee required by this Court. See 28 U.S.C. §§ 1914(a), 6 1915(a). To that end, an applicant must provide the Court with a signed affidavit "that 7 includes a statement of all assets[,] which shows [an] inability to pay initial fees or give 8 security." S.D. Cal. Civ. R. 3.2(a). Second, § 1915(e)(2)(B)(ii) requires the Court to 9 evaluate whether an applicant's complaint sufficiently states a claim upon which relief may 10 be granted. See *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) ("[S]ection 1915(e) 11 not only permits but requires a district court to dismiss an [IFP] complaint that fails to state 12 a claim.").

The Court addresses each issue in turn. 13 1. Plaintiff's Indigence 14 An applicant need not be completely destitute to proceed IFP, but he must adequately 15 prove his indigence. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339–40 16 (1948). An adequate affidavit should "allege[] that the affiant cannot pay the court costs 17 and still afford the necessities of life." *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th 18 Cir. 2015) (citing *Adkins*, 335 U.S. at 339); see also *United States v. McQuade*, 647 F.2d 19 938, 940 (9th Cir. 1981) (an adequate affidavit should state supporting facts "with some 20 particularity, definiteness and certainty") (citation omitted). No exact formula is "set forth 21 by statute, regulation, or case law to determine when someone is poor enough to earn IFP 22 status." *Escobedo*, 787 F.3d at 1235. Consequently, courts must evaluate IFP requests on 23 24 25 4 In addition to the \$350 statutory fee, civil litigants typically must pay an additional administrative fee of \$55. See 28 U.S.C. § 1914(a); United States Courts, District Court 26 Miscellaneous Fee Schedule § 14 (effective Dec. 1, 2023), 27 <https://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule>. However, the additional \$55 administrative fee does not apply to persons granted leave to 28 1 a case-by-case basis. See *id.* at 1235–36 (declining to implement a general benchmark of 2 "twenty percent of monthly household income"); see also *Cal. Men's Colony v. Rowland*, 3 939 F.2d 854, 858 (9th Cir. 1991) (requiring that district courts evaluate indigency based 4 upon available facts and by exercise of their "sound discretion"), *rev'd on other grounds*, 5 506 U.S. 194 (1993); *Venable v. Meyers*, 500 F.2d 1215, 1216 (9th Cir. 1974) ("The 6 granting or denial of leave to proceed [IFP] in civil cases is within the sound discretion of 7 the district court."). 8 Here, Plaintiff asserts that he is unemployed and receives only \$292 per month in 9 Nutrition Assistance. (Doc. 2 at 2; Doc. 2-1 at 1.) Plaintiff also asserts that he has average 10 monthly expenses of \$803. (Doc. 2 at 4–5.) Therefore, Plaintiff's monthly expenses 11 exceed his income, and the Court is persuaded that Plaintiff cannot pay the filing fee and 12 "still afford the necessities of life." *Escobedo*, 787 F.3d at 1234 (citation omitted). The 13 Court exercises its sound discretion and GRANTS Plaintiff's IFP Application. See *Cal. 14 Men's Colony*, 939 F.2d at 858 (requiring that district courts exercise their "sound 15 discretion").5 16 2. Screening Under 28 U.S.C. § 1915(e) 17 As discussed above, every complaint filed pursuant to the IFP provisions of 28 18 U.S.C. § 1915 is subject to mandatory screening by the Court under § 1915(e)(2)(B). 19 *Lopez*, 203 F.3d at 1127. Under this provision, the Court must dismiss complaints that are 20 (1) frivolous or malicious, (2) fail to state a claim on which relief may be granted, or (3) 21 seek monetary relief from defendants who are immune from such relief. See 28 U.S.C. 22 § 1915(e)(2)(B). Here, there is no indication that Plaintiff's claims are frivolous or 23 malicious, or that he seeks monetary relief from immune defendants. See 28 U.S.C. 24 25 26 5 While Plaintiff asserts that a named individual owes him \$2,000 (Doc. 2 at 2), it is unclear 27 when or if Plaintiff will receive this money, so the Court, in its sound discretion, will not consider it. See *Cal. Men's Colony*, 939 F.2d at 858 (requiring that district courts exercise 28 1 § 1915(e)(2)(B). Therefore, the Court turns to (a) whether Plaintiff fails to state a claim on 2 which relief may be granted and (b)

whether Plaintiff has adequately alleged diversity 3 jurisdiction. See *id.* 4 a) Failure to State a Claim 5 “The standard for determining whether a plaintiff has failed to state a claim upon 6 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of 7 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d 8 1108, 1112 (9th Cir. 2012). Rule 12(b)(6) requires a complaint to “contain sufficient 9 factual matter, accepted as true, to state a claim to relief that is plausible on its face.” 10 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation omitted). “[O]ur ‘obligation’ 11 remains, ‘where the petitioner is pro se ... to construe the pleadings liberally and to afford 12 the petitioner the benefit of any doubt.’” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) 13 (quoting *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)). 14 Here, Plaintiff asserts three causes of action for breach of contract, money had and 15 received, and accounting. (Compl. ¶¶ 55–74.) Plaintiff then alleges that he lent Defendant 16 Geoversity \$217,000, which was personally guaranteed by Defendant Gray. (*Id.* ¶¶ 30– 17 31, 34–38.) Plaintiff alleges that he requested repayment of the loans in August 2024 and 18 was refused. (*Id.* ¶ 40; Doc. 1-2.) Therefore, Plaintiff seeks approximately \$217,000 in 19 monetary damages. (Compl. ¶ 60, 67–68.) With these claims, Plaintiff has satisfied the 20 minimal pleading standards articulated above, particularly considering Plaintiff’s pro se 21 status. See *Segura v. City of San Diego*, Case No.: 3:22-cv-01029-RBM-AHG, 2022 WL 22 3130243, at *2 (S.D. Cal. July 28, 2022) (finding the plaintiff had satisfied the “minimal 23 pleading standards” under 28 U.S.C. § 1915(e)). 24 b) Diversity Jurisdiction 25 Federal courts have diversity jurisdiction when there is diversity of citizenship 26 among the parties and when the amount-in-controversy exceeds \$75,000. 28 U.S.C. § 27 1332(a); see, e.g., *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 67–68 (1996). There is diversity 28 of citizenship when the citizenship of each plaintiff is diverse from the citizenship of each 1 defendant. *Caterpillar Inc.*, 519 U.S. at 68. “Where the plaintiff originally files in federal 2 court, ‘the amount in controversy is determined from the face of the pleadings.’” 3 *Geographic Expeditions, Inc. v. Est. of Lhotka ex rel. Lhotka*, 599 F.3d 1102, 1106 (9th 4 Cir. 2010) (quoting *Crum v. Circus Circus Enterprises*, 231 F.3d 1129, 1131 (9th Cir. 5 2000)). “The amount in controversy alleged by the proponent of federal jurisdiction ... 6 controls so long as the claim is made in good faith.” *Id.* (citing same). 7 Here, Plaintiff alleges that he resides in Arizona, that Defendant Gray resides in 8 California, and that Defendant Geoversity is a nonprofit public charity domiciled in San 9 Diego County, California. (Compl. ¶¶ 1–3.) Plaintiff also alleges \$217,000 in damages. 10 (*Id.* ¶ 31.) Thus, at this stage, Plaintiff has adequately alleged that his citizenship is diverse 11 from the citizenship of Defendants and that the amount in controversy exceeds \$75,000. 12 See *Wescott v. Google, LLC*, Case No. 24-cv-01513-PHK, 2024 WL 3849345, at *2 (N.D. 13 Cal. Aug. 15, 2024) (finding that Plaintiff properly invoked federal diversity jurisdiction). 14 B. Motion for Electronic Filing 15 “Unless otherwise authorized by the [C]ourt, all documents submitted for filing to 16 the Clerk’s Office by parties appearing without an attorney must be in legible, paper form.” 17 CM/ECF Manual, § 2(b) (S.D. Cal. Jan. 22, 2025). “A pro se party seeking leave to 18 electronically file documents must ...

demonstrate the means to do so properly by stating 19 their equipment and software capabilities in addition to agreeing to follow all rules and 20 policies in the [CM/ECF Manual].” Id. The CM/ECF Manual refers readers to the Court’s 21 official website (www.casd.uscourts.gov) for the current CM/ECF technical specifications 22 and requirements, see id. at § 1(i), which include a computer; software to convert 23 documents from a word processor format to a portable document format; internet access; a 24 compatible internet browser; a scanner; and a PACER account, see United States District 25 Court for the Southern District of California, CM/ECF Information, 26 <https://www.casd.uscourts.gov/cmecf.aspx#undefined1> (last visited Sept. 2, 2025). 27 Here, by reviewing the CM/ECF Information Page, which includes a link to the 28 CM/ECF Manual, and affirming that he has regular access to the technical requirements 1 ||/necessary to e-file successfully, e.g., a computer and the internet, Plaintiff has 2 demonstrated that he has the means to electronically file documents. (See Doc. 3 at 1-2.) 3 || Accordingly, Plaintiff’s Motion for Leave to Electronically File Documents is 4 || GRANTED. 5 Hil. CONCLUSION 6 Based on the foregoing, Plaintiffs IFP Application and Plaintiffs Motion for 7 Electronic Filing are GRANTED. 8 The Clerk of the Court is DIRECTED to issue a summons as to 9 ||Complaint and forward it to Plaintiff along with a blank U.S. Marshals Form 285 for each 10 ||Defendant. In addition, the Clerk of the Court is DIRECTED to provide Plaintiff with 11 || certified copies of this Order and his Complaint so that he can serve Defendants. 12 Upon receipt of this “IFP Package,” Plaintiff is INSTRUCTED to complete the 13 Form USM-285s as completely and accurately as possible, including an address where 14 |}each Defendant may be served, and return them to the U.S. Marshal according to the 15 |/instructions provided with the IFP Package. The United States Marshals Service is then 16 || ORDERED to serve copies of the Complaint and summons upon the named Defendants 17 directed by Plaintiff on the Form 285s. The United States will advance all costs of 18 service. See 28 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3). 19 Defendants, once served, are ORDERED to respond to Plaintiff’s Complaint within 20 || the time period specified in the applicable provisions of Federal Rule of Civil Procedure 21 12(a). Plaintiff need take no additional action in this case until after he has served all 22 Defendants named in the Complaint and they have had an opportunity to respond. 23 IT IS SO ORDERED. 24 DATE: September 4, 2025 Rete
teres

6 ON. RUTH BERMBDEZ MONTENEGRO

UNITED STATES DISTRICT JUDGE

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