

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

David Alberts v. Broadway Tower Associates, L.P., a California
limited partnership, et al.

Alberts · No. 25-cv-2908-RSH-SBC · Decided November 24, 2025

SUMMARY

The United States District Court for the Southern District of California grants David Alberts’s motion to proceed in forma pauperis. The court finds that the complaint passes screening under 28 U.S.C. § 1915(e)(2), directs issuance of summonses, and orders the U.S. Marshals Service to serve the defendants. The order also sets requirements for defendants’ responses and the plaintiff’s service of subsequent filings.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Robert S. Huie
JURISDICTION	United States District Court for the Southern District of California
DECIDED	November 24, 2025
DOCKET	25-cv-2908-RSH-SBC
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff initiated a federal civil action, moved to proceed in forma pauperis, and sought authorization for service by the United States Marshals Service. The court granted IFP status, determined that the complaint passed statutory screening, and directed issuance of summonses and service.
STANDARD OF REVIEW	For screening under 28 U.S.C. § 1915(e)(2)(B)(ii), the court applied the same standard as a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), accepting factual allegations as true and asking whether the complaint stated a plausible claim for relief.
PRECEDENTIAL VALUE	Unpublished, nonprecedential district court order

TOPICS

- service of process
- pleadings
- motions to dismiss
- civil procedure

PRACTICE AREAS

civil procedure

federal courts

civil rights

QUESTIONS PRESENTED

1. Whether Plaintiff established sufficient financial need to proceed in forma pauperis under 28 U.S.C. § 1915(a)(1).
2. Whether the complaint was frivolous, malicious, failed to state a claim, or otherwise required dismissal under 28 U.S.C. § 1915(e)(2).
3. Whether the court should direct the Clerk and the United States Marshals Service to issue and effect service on the defendants on Plaintiff's behalf.

HOLDINGS

1. Plaintiff's motion to proceed in forma pauperis was granted because his complete application established the requisite level of financial need.
2. The complaint passed statutory screening and was not dismissed, without prejudice to Defendants' ability to raise arguments in a motion to dismiss.
3. Because Plaintiff was authorized to proceed in forma pauperis, the court directed the Clerk to issue summonses and the United States Marshals Service to serve the complaint and summonses on the named defendants.

KEY QUOTATIONS

“An affidavit in support of an IFP application is sufficient where it alleges that the affiant cannot pay the court costs and still afford the necessities of life[.]” (at 1)

“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 1-2)

“Rule 12(b)(6) requires a complaint to ‘contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” (at 2)

FACTUAL BACKGROUND

Plaintiff David Alberts initiated the action on October 28, 2025, proceeding pro se. He submitted an application to proceed in forma pauperis supported by financial information, and the court found that he demonstrated the requisite inability to pay the filing fee. After reviewing the complaint under the statutory IFP-screening requirement, the court determined that it passed screening.

PROCEDURAL HISTORY

On October 28, 2025, David Alberts filed the complaint and an application to proceed in forma pauperis. The court found that the application established sufficient financial need and that the complaint was not subject to

dismissal under 28 U.S.C. § 1915(e)(2). The court directed the Clerk and the U.S. Marshals Service to issue and effect service on the named defendants.

DISPOSITION

other

CASES CITED

- Moore v. Maricopa Cnty. Sheriff's Office, 657 F.3d 890, 892 (9th Cir. 2011)
- Rodriguez v. Cook, 169 F.3d 1176, 1177 (9th Cir. 1999)
- Escobedo v. Applebees, 787 F.3d 1226, 1234 (9th Cir. 2015)
- Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000)
- Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012)
- Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 DAVID ALBERTS, Case No.: 25-cv-2908-RSH-SBC 12 Plaintiff, ORDER
(1) GRANTING 13 v. PLAINTIFF’S MOTION TO PROCEED IN FORMA PAUPERIS, 14
BROADWAY TOWER ASSOCIATES, AND (2) DIRECTING U.S. L.P., a California limited
partnership, et 15 MARSHALS SERVICE TO EFFECT al., SERVICE 16 Defendants.

17 [ECF No. 2] 18 19 On October 28, 2025, plaintiff David Alberts, proceeding pro se, initiated
this action 20 and filed a motion to proceed in forma pauperis (“IFP”). ECF Nos. 1 (“Compl.”); 2.
21 I. MOTION TO PROCEED IFP 22 All parties instituting a civil action, suit, or proceeding in a
district court of the 23 United States, other than a petition for writ of habeas corpus, must pay a
filing fee.

28 24 U.S.C. § 1914(a). An action may proceed despite a party’s failure to pay the filing fee only
25 if the party is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a)(1). See Moore 26 v.
Maricopa Cnty. Sheriff’s Office, 657 F.3d 890, 892 (9th Cir. 2011) (“All persons, not 27 just
prisoners, may seek IFP status.”); Rodriguez v. Cook, 169 F.3d 1176, 1177 (9th Cir.

28 1 1999). A federal court may authorize the commencement of an action without the 2
prepayment of fees if the party submits an affidavit, including a statement of assets, 3 showing an
inability to pay the required filing fee. 28 U.S.C. § 1915(a). “An affidavit in 4 support of an IFP
application is sufficient where it alleges that the affiant cannot pay the 5 court costs and still afford
the necessities of life[.]” Escobedo v. Applebees, 787 F.3d 1226, 6 1234 (9th Cir.

2015). Here, Plaintiff's IFP application is complete and establishes the 7 requisite level of financial need. Plaintiff's application is therefore granted. 8 II. SCREENING PURSUANT TO 28 U.S.C. § 1915(e)(2) 9 A complaint filed by any person seeking to proceed IFP pursuant to 28 U.S.C. § 10 1915(a) is subject to sua sponte review and dismissal should the Court determine, inter alia, 11 that it is frivolous, malicious, or fails to state a claim upon which relief may be granted.

12 See 28 U.S.C. § 1915(e)(2)(B); see *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) 13 ("[S]ection 1915(e) applies to all in forma pauperis complaints, not just those filed by 14 prisoners."). "The standard for determining whether a plaintiff has failed to state a claim 15 upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule 16 of Civil Procedure 12(b)(6) standard for failure to state a claim." *Watson v. Carter*, 668 F.3d 1108, 1112 (9th Cir.

2012); see also *Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 2012) (noting that § 1915A screening "incorporates the familiar standard applied in 19 the context of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)"). 20 Rule 12(b)(6) requires a complaint to "contain sufficient factual matter, accepted as true, 21 to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 22 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Here, upon 23 review, the Court determines that the Complaint passes screening, without prejudice to any 24 arguments that Defendants may make on a motion to dismiss. 25 III. CONCLUSION 26 For the foregoing reasons: 27 1. Plaintiff's motion to proceed IFP [ECF No. 2] is GRANTED. 28 2.

The Court DIRECTS the Clerk to issue a summons as to Plaintiff's 1 Complaint [ECF No. 1] upon defendants Broadway Tower Associates LP; Kimball, Tirey 2 & St. John LLP; and Natalie D. Contreras, and forward it to Plaintiff along with three blank 3 U.S. Marshal Form 285s.

In addition, the Clerk will provide Plaintiff with a copy of this 4 Order, certified copies of the Complaint [ECF No. 1], and the summons so that he may 5 serve these Defendants. Upon receipt of the Clerk's "IFP Package," Plaintiff must complete 6 the U.S. Marshal Form 285s as completely and accurately as possible, include a physical 7 address where each Defendant may be found and subject to service, see S.D.

Cal. Civ. L.R. 8 4.1.c, and return them to the United States Marshal according to the instructions the Clerk 9 provides in the letter accompanying his IFP package. 10 3. The Court DIRECTS the U.S. Marshals Service to serve a copy of Plaintiff's 11 Complaint and summons upon defendants Broadway Tower Associates LP; Kimball, Tirey 12 & St. John LLP; and Natalie D. Contreras as

directed by Plaintiff on the USM Form 285s, 13 and to file executed waivers of personal service upon each Defendant with the Clerk of 14 Court as soon as possible after their return.

Should Defendants fail to return the U.S. 15 Marshal's requests for waiver of personal service within 90 days, the U.S. Marshal must 16 instead file the completed, but unexecuted Form USM 285 Process Receipt and Returns 17 with the Clerk of the Court, include the date the summons, Complaint and requests for 18 waiver were mailed, and indicate why service upon each Defendant was unsuccessful.

The 19 United States will advance all costs of service; however, if Defendants are located within 20 the United States, and fail without good cause to sign and return the waivers requested by 21 the Marshal on Plaintiff's behalf, the Court will impose upon Defendants any expenses 22 later incurred in making personal service. See 28 U.S.C. § 1915(d); Fed. R. Civ.

P. 4(c)(3), 23 (d)(2). 24 4. The Court ORDERS defendants Broadway Tower Associates LP; Kimball, 25 Tirey & St. John LLP; and Natalie D. Contreras, once served, to respond to Plaintiff's 26 Complaint, and any subsequent pleading Plaintiff may file in this matter in which they are 27 named as a Defendants, within the time provided by the applicable provisions of Federal 28 Rule of Civil Procedure 12(a) and 15(a)(3). 1 5.

The Court ORDERS Plaintiff, after service has been made by the U.S. 2 ||Marshals Service, to serve by mail upon defendants Broadway Tower Associates LP; 3 || Kimball, Tirey & St. John LLP; and Natalie D. Contreras, upon Defendants' counsel, a 4 ||copy of every further pleading, motion, or other document submitted for the Court's 5 ||consideration pursuant to Fed.

R. Civ. P. 5(b). Plaintiff must include with every original 6 ||document he seeks to file with the Clerk of the Court, a certificate stating the manner in 7 || which a true and correct copy of that document was served on Defendants or their counsel, 8 the date of that service. See S.D. Cal. CivLR 5.2. Any document received by the Court 9 || which has not been properly filed with the Clerk, or which fails to include a Certificate of 10 || Service upon Defendants or their counsel, may be disregarded.

11 IT IS SO ORDERED. 12 || Dated: November 24, 2025 3 S Ure 14 Hon. Robert S. Huie United States District Judge 15 16 17 18 19 20 21 22 23 24 25 26 27 28