

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Abera v. San Diego Pacificvu LLC

Abera · No. 3:25-cv-01437-RBM-DEB · Decided June 10, 2025

SUMMARY

The United States District Court for the Southern District of California denied Aman Abera’s application to proceed in forma pauperis, granting leave to file a renewed application, and dismissed the action without prejudice for failure to pay the civil filing fee. The court also denied the plaintiff’s temporary restraining order application and related emergency motion as moot because the complaint was dismissed. The order was entered on June 10, 2025.

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	June 10, 2025
DOCKET	3:25-cv-01437-RBM-DEB
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff filed a civil rights complaint, an application to proceed in forma pauperis, and an emergency application for a temporary restraining order. The district court denied the IFP application, dismissed the action without prejudice for failure to pay the filing fee, and denied the TRO application and related emergency motion as moot.
STANDARD OF REVIEW	The district court exercised discretion in determining whether Plaintiff adequately demonstrated indigency under 28 U.S.C. § 1915(a)(1).
PRECEDENTIAL VALUE	unpublished district court order
PARTIES	Aman Abera v. San Diego Pacificvu LLC, Greg Hinchy, J. William Hinchy, Tirey Kimball, St. John LLP, Charles Gregory Billinger, Nicole Marie Rivera, Peter F. Murray, Blaine K. Bowman, San Diego County Sheriff's Department, Does 1 through 50

TOPICS

civil procedure

injunctions

subject matter jurisdiction

remedies

PRACTICE AREAS

civil procedure

federal courts

injunctive relief

real estate

QUESTIONS PRESENTED

1. Whether Plaintiff adequately demonstrated indigency to proceed in forma pauperis under 28 U.S.C. § 1915(a)(1).
2. Whether the action should be dismissed without prejudice for failure to pay the required civil filing fee after denial of the IFP application.
3. Whether Plaintiff's temporary restraining order application and related emergency motion remained justiciable after dismissal of the Complaint.

HOLDINGS

1. An IFP application may be denied when the applicant's financial affidavit, considered under the totality of the available facts, does not adequately demonstrate an inability to pay the filing fee while affording the necessities of life. Plaintiff's reported income and expenses did not establish indigency.
2. When a plaintiff is denied IFP status and does not prepay the required civil filing fee, the action may be dismissed without prejudice, subject to the plaintiff's ability to proceed by paying the fee or submitting a properly supported renewed IFP application.
3. A temporary restraining order application is moot when the underlying complaint has been dismissed and no operative complaint remains on which to base the requested relief.

KEY QUOTATIONS

“Based on his affidavit of assets, Plaintiff has an annual household gross income of \$120,000 which is much higher than the 2025 federal poverty guideline for a household of one person (\$15,650).” (2)

“However, as Plaintiff’s Complaint has been dismissed, there is no operative complaint on which to base his TRO Application.” (3)

FACTUAL BACKGROUND

Plaintiff reported \$10,000 in monthly employment income and approximately \$2,970 in monthly expenses, with \$300 in a checking account and no dependents. He sought to proceed without prepaying the \$405 civil filing fee and requested an order halting enforcement of a writ of possession. The court concluded that the reported income substantially exceeded the listed expenses and that Plaintiff had not demonstrated indigency.

PROCEDURAL HISTORY

Plaintiff commenced the action on June 5, 2025, filing the Complaint, an IFP application, and a TRO application. He filed additional emergency motions the following day. The district court entered this order

denying IFP with leave to renew, dismissing the action without prejudice for failure to pay the \$405 civil filing fee, and denying the TRO-related requests as moot.

DISPOSITION

dismissed

CASES CITED

- 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)
- Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339-40 (1948)
- Kristine E. v. O'Malley, No. 24-CV-1182-GPC (MMP), 2024 WL 4442013, at *1 (S.D. Cal. Sept. 9, 2024)
- Temple v. Ellerthorpe, 586 F. Supp. 848, 850 (D.R.I. 1984)
- Alvarez v. Berryhill, No. 18-cv-2133 W (BGS), 2018 WL 6265021, at *1 (S.D. Cal. Oct. 1, 2018)
- D.C. Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983)
- Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923)
- Jones v. Fed. Corr. Ctr. Med. Dep't, No. 20-CV-1385 JLS (BLM), 2020 WL 6942519, at *4 (S.D. Cal. Nov. 25, 2020)
- Olajide v. Brown, Case No. 18-cv-03991-CRB, 2018 WL 3328227, at *3 (N.D. Cal. July 4, 2018)
- Barnes v. United Council of Hum. Servs., Case No. C 19-2848 SBA, 2019 WL 2270374, at *3 (N.D. Cal. May 28, 2019)
- Brodzki v. United States, No. 11-CV-2650 JLS WVG, 2012 WL 1610015, at *2 (S.D. Cal. May 8, 2012)

OPINION

Abera v. San Diego Pacificvu LLC

PER CURIAM.

1 2 3 4 5

6 UNITED STATES DISTRICT COURT

7 SOUTHERN DISTRICT OF CALIFORNIA

8 9 AMAN ABERA, Case No.: 3:25-cv-01437-RBM-DEB 10 Plaintiff, ORDER:

11 v. (1) DENYING PLAINTIFF’S IFP

APPLICATION WITH LEAVE TO

12 SAN DIEGO PACIFICVU LLC, et al.,

FILE A RENEWED APPLICATION

13 Defendants. [Doc. 2] 14

(2) DISMISSING CIVIL ACTION

15 WITHOUT PREJUDICE FOR

FAILURE TO PAY FILING FEES

16

17 (3) DENYING PLAINTIFF'S EX PARTE APPLICATION FOR

18

TEMPORARY RESTRAINING

19 ORDER AS MOOT [Doc. 3]

20 21 On June 5, 2025, Plaintiff Aman Abera ("Plaintiff") filed a Complaint against 22 Defendants
San Diego Pacificvu LLC, Greg Hinchy, J. William Hinchy, Tirey Kimball, 23 St. John LLP,
Charles Gregory Billinger, Nicole Marie Rivera, Peter F. Murray (in his 24 individual and official
capacity as a judicial officer), Blaine K. Bowman, the San Diego 25 County Sheriff's Department,
and Does 1 through 50 ("Complaint"). (Doc. 1.) Along with 26 his Complaint, Plaintiff filed an
Application to Proceed In Forma Pauperis ("IFP 27 Application"). (Doc. 2.) Plaintiff also filed an
Emergency Ex Parte Application for 28 Temporary Restraining Order and Order to Show Cause
("TRO Application"). (Doc. 3.) 1 The next day, Plaintiff filed an Emergency Notice of Imminent
Harm and Request for 2 Immediate Ruling on Pending TRO Application ("Emergency Motion")
(Doc. 4) and a 3 "Notice of Supplemental Authority and Renewed Request for Emergency Relief"
(Doc. 5). 4 For the reasons discussed below, the Court (1) DENIES Plaintiff's IFP Application 5
with leave to file a renewed application; (2) DISMISSES this action without prejudice; 6 and (3)
DENIES Plaintiff's TRO Application without prejudice as moot.

7 I. IFP APPLICATION

8 All parties instituting any civil action, suit, or proceeding in a District Court of the 9 United
States, except an application for writ of habeas corpus, must pay a filing fee of 10 \$405.1 See 28
U.S.C. § 1914(a). A court may authorize the commencement of a suit 11 without prepayment of
the filing fee if the plaintiff submits a signed affidavit "that includes 12 a statement of all assets[,]
which shows [an] inability to pay initial fees or give security." 13 S.D. Cal. Civ. R. 3.2(a). The
facts of an affidavit of poverty must be stated "with some 14 particularity, definiteness, and
certainty." *Escobedo v. Applebees*, 787 F.3d 1226, 1234 15 (9th Cir. 2015) (quoting *United States*
v. McQuade, 647 F.2d 938, 940 (9th Cir. 1981)). 16 The determination of indigency falls within
the district court's discretion. *Cal. Men's 17 Colony v. Rowland*, 939 F.2d 854, 858 (9th Cir.
1991), rev'd on other grounds, 506 U.S. 18 194 (1993) ("[§] 1915 typically requires the reviewing
court to exercise its sound discretion 19 in determining whether the affiant has satisfied the
statute's requirement of indigency."). 20 It is well-settled that a party need not be completely
destitute to proceed IFP, but he 21 must adequately prove his indigence. *Adkins v. E.I. DuPont de*
Nemours & Co., 335 U.S. 22 331, 339–40 (1948). To satisfy the requirements of 28 U.S.C. §
1915(a), "[a]n affidavit in 23 support of an IFP [motion] is sufficient where it alleges that the
affiant cannot pay the court 24 25 26 1 Civil litigants must pay an administrative fee of \$55 in
addition to the \$350 filing fee.

27 See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff. Dec. 1, 2023)). The additional \$55 administrative fee does not apply 28 1 costs and still afford the necessities of life.” Escobedo, 787 F.3d at 1234 (citing Adkins, 2 335 U.S. at 339); see also McQuade, 647 F.2d at 940 (an adequate affidavit should state 3 supporting facts “with some particularity, definiteness and certainty”). No exact formula 4 is “set forth by statute, regulation, or case law to determine when someone is poor enough 5 to earn IFP status.” Escobedo, 787 F.3d at 1235. Consequently, courts must evaluate IFP 6 requests on a case-by-case basis. See *id.* at 1235–36 (declining to implement a general 7 benchmark of “twenty percent of monthly household income”); see also *Cal. Men’s 8 Colony*, 939 F.2d at 858 (requiring that district courts evaluate indigency based upon 9 available facts and by exercise of their “sound discretion”), *rev’d on other grounds*, 506 10 U.S. 194 (1993) (citation omitted). 11 In his IFP Application, Plaintiff declares he is experiencing financial hardship. 12 (Doc. 2 at 5–6.) Plaintiff lists \$10,000 as his monthly income from employment and \$2,970 13 as his monthly expenses. (*Id.* at 1.) Specifically, Plaintiff declares that he spends \$2,100 14 per month on his rent or home-mortgage payment, \$230 per month on utilities, \$450 per 15 month on food, and \$40 per month on laundry and dry-cleaning. (*Id.* at 4.) Plaintiff is not 16 owed any money and does not have any dependents who rely on him for financial support. 17 (*Id.* at 3.) Plaintiff has \$300 in a checking account with USAA Banking and does not 18 anticipate any changes to his income or expenses in the next twelve months. (*Id.* at 2, 5.) 19 Moreover, Plaintiff declares that he worked for UBER and Lyft from November 20 2023 to January 2, 2025, where his gross monthly pay was up to \$7,500 and \$1,000 21 respectively.² (*Id.* at 2.) Based on his listed income, however, Plaintiff appears to have 22 sufficient funds to assist in paying the \$405 fee. In assessing whether a certain income 23 level meets the poverty threshold under § 1915(a)(1), one of the sources courts may look 24 to is the federal poverty guidelines developed each year by the Department of Health and 25 26 27 2 The Court notes that Plaintiff listed “\$7,50” as his gross monthly pay from his employment at UBER. (See Doc. 2 at 2.) Given that Plaintiff declares his gross monthly 28 1 Human Services. See, e.g., *Kristine E. v. O’Malley*, No. 24-CV-1182-GPC (MMP), 2024 2 WL 4442013, at *1 (S.D. Cal. Sept. 9, 2024). Plaintiff does not claim to have a spouse or 3 any dependent who rely on him for support. (Doc. 2 at 1–3.) Based on his affidavit of 4 assets, Plaintiff has an annual household gross income of \$120,000 which is much higher 5 than the 2025 federal poverty guideline for a household of one person (\$15,650). See 2025 6 Poverty Guidelines, <https://aspe.hhs.gov/poverty-guidelines> (last visited June 6, 2025). 7 Even considering monthly expenses, Plaintiff’s gross monthly income still 8 significantly exceeds his combined expenses. (Doc. 2 at 1, 4–5.) See *Temple v. 9 Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I. 1984) (noting that courts should not grant IFP 10 to an applicant who is “financially able, in whole or in material part, to pull his own oar”); 11 see also *Alvarez v. Berryhill*, No. 18-cv-2133 W (BGS), 2018 WL 6265021, at *1 (S.D. 12 Cal. Oct. 1, 2018) (noting that courts often reject IFP applications when applicants “can 13 pay the filing fee with acceptable sacrifice to other expenses”). The Court therefore 14 concludes that

Plaintiff has not alleged poverty “with some particularity, definiteness, and 15 certainty.” See Escobedo, 787 F.3d at 1234. Accordingly, Plaintiff’s IFP Application is 16 DENIED, and this action is DISMISSED without prejudice. If Plaintiff wishes to proceed 17 IFP, he may file a renewed IFP application that provides clear and legible answers and 18 sufficiently demonstrates indigency.³

19 II. TRO APPLICATION

20 In the TRO Application, Plaintiff requests this Court to “halt enforcement of a void 21 Writ of Possession.” (Doc. 3 at 2.) However, as Plaintiff’s Complaint has been dismissed, 22 there is no operative complaint on which to base his TRO Application. See *Jones v. Fed.* 23 24 25 3 The Court notes it is highly unlikely the Complaint, as alleged, would survive the mandatory screening pursuant to § 1915(e). Specifically, the Court doubts that it has 26 subject matter jurisdiction over this matter pursuant to the Rooker-Feldman doctrine which 27 states that federal courts lack jurisdiction to review state court rulings. See *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 28 | || *Corr. Ctr. Med. Dep’t*, No. 20-CV-1385 JLS (BLM), 2020 WL 6942519, at *4 (S.D. Cal. 2 || Nov. 25, 2020) (denying prisoner’s IFP motion and denying the motion for TRO as moot); 3 || *Olajide v. Brown*, Case No. 18-cv-03991-CRB, 2018 WL 3328227, at *3 (N.D. Cal. July 4 2018) (dismissing the complaint and thereby denying the TRO motion as moot); *Barnes* 5 || *v. United Council of Hum. Servs.*, Case No. C 19-2848 SBA, 2019 WL 2270374, at *3 6 || (N.D. Cal. May 28, 2019) (dismissing the complaint, denying the IFP application, and 7 || denying the TRO motion as moot); see also *Brodzki v. United States*, No. 11-CV-2650 JLS 8 || WVG, 2012 WL 1610015, at *2 (S.D. Cal. May 8, 2012) (dismissing the complaint and 9 || denying the IFP and TRO motions as moot). Thus, Plaintiff’s TRO Application is moot.

10 Ht. CONCLUSION

11 Based on the foregoing, the Court: 12 1. DENIES Plaintiff’s IFP Application (Doc. 2) with leave to file a renewed 13 application. 14 2. DISMISSES this action without prejudice based on Plaintiff’s failure to pay 15 the full \$405 civil filing fee required by 28 U.S.C. § 1914(a). 16 3. DENIES Plaintiff’s TRO Application (Doc. 3), and the related Emergency 17 Motion (Doc. 4), without prejudice as moot. 18 To proceed with this action, Plaintiff must either (a) prepay the entire \$405 civil 19 || filing fee in one lump sum, or (b) file a renewed IFP application providing clear and legible 20 answers. If Plaintiff chooses not to comply with this Order by either paying the \$405 civil 21 || filing fees or by submitting a properly supported IFP Application, this case will remain 22 || dismissed without prejudice without further order of the Court based on Plaintiff’s failure 23 comply with 28 U.S.C. § 1914(a). 24 IT IS SO ORDERED. 25 DATE: June 10, 2025 26 Get Bismude, Notary! D

17 HON. RUTH BERMUDEZ'MONTENEGRO

UNITED STATES DISTRICT JUDGE

