

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Pina v. Pina

No. 25-CV-386 JLS (SBC) (S.D. Cal. Mar. 24, 2025) · No. 25-CV-386 JLS (SBC) · Decided March 24, 2025

SUMMARY

The United States District Court for the Southern District of California denied without prejudice Marcelina Pina’s application to proceed in forma pauperis because the application contained inconsistencies and insufficient detail regarding her income and expenses. The court also dismissed her complaint without prejudice for failure to prepay the filing fee, granting her 30 days to pay the fee or submit a corrected application.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Janis L. Sammartino
JURISDICTION	United States District Court for the Southern District of California
DECIDED	March 24, 2025
DOCKET	25-CV-386 JLS (SBC)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff filed a complaint and an application to proceed in forma pauperis. The district court denied the application without prejudice and dismissed the complaint without prejudice for failure to prepay the filing fee.
STANDARD OF REVIEW	The district court exercises discretion in determining whether an applicant has sufficiently demonstrated indigency under 28 U.S.C. § 1915(a)(1).
PRECEDENTIAL VALUE	unknown

TOPICS

- civil procedure
- pleadings

PRACTICE AREAS

- civil procedure
- federal courts

QUESTIONS PRESENTED

1. Whether Plaintiff sufficiently demonstrated indigency to proceed in forma pauperis under 28 U.S.C. § 1915(a)(1).
2. Whether the complaint should be dismissed without prejudice for failure to prepay the filing fee required by 28 U.S.C. § 1914(a).

HOLDINGS

1. Plaintiff failed to allege with sufficient certainty that she could not pay the filing fee while affording the necessities of life, so the IFP application was properly denied without prejudice.
2. Because Plaintiff was not granted IFP status and did not prepay the required filing fee, the complaint was dismissed without prejudice under 28 U.S.C. § 1914(a).

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)

“Nevertheless, a plaintiff seeking IFP status must allege poverty ‘with some particularity, definiteness[,] and certainty.’” (at 2)

“Plaintiff is GRANTED an additional thirty (30) days from the date on which this Order is electronically docketed to either (1) pay the entire \$405 statutory and administrative filing fee, or (2) file a new IFP application alleging that she is unable to pay the requisite fee.” (at 3)

FACTUAL BACKGROUND

Plaintiff reported that her monthly income consisted exclusively of \$2,500 in child support, but her complaint alleged that no money had been collected from the child-support debt. Her IFP application listed food and utility expenses, left rent or mortgage information blank, reported zero total monthly income and expenses, and left numerous other questions unanswered. Based on these inconsistencies and omissions, the court could not determine whether Plaintiff was unable to pay the filing fee while meeting her basic necessities.

PROCEDURAL HISTORY

Marcelina Pina filed a civil complaint and an application to proceed without prepaying fees or costs. The district court found inconsistencies and omissions in the financial information provided, denied the IFP application without prejudice, and dismissed the complaint without prejudice under 28 U.S.C. § 1914(a). The court granted Plaintiff thirty days to pay the \$405 filing fee or submit a corrected IFP application.

DISPOSITION

dismissed

CASES CITED

- Cal. Men's Colony v. Rowland, 939 F.2d 854, 858 (9th Cir. 1991), reversed on other grounds by 506 U.S. 194 (1993)
- Escobedo v. Applebees, 787 F.3d 1226, 1234 (9th Cir. 2015)
- Adkins v. E.I. Du Pont de Nemours & Co., 335 U.S. 331, 339 (1948)
- Jefferson v. United States, 277 F.2d 723, 725 (9th Cir. 1960)
- Turner v. City of San Diego, No. 23-CV-29 TWR (NLS), 2023 WL 163492, at *1 (S.D. Cal. Jan. 10, 2023)
- Herta v. Wiblemo, No. 22-CV-1679-BAS-BGS, 2022 WL 17573923, at *2 (S.D. Cal. Nov. 7, 2022)

OPINION

Pina v. Pina

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10

11 MARCELINA PINA, Case No.: 25-CV-386 JLS (SBC)

12 Plaintiff,

ORDER (1) DENYING WITHOUT

13 v. PREJUDICE PLAINTIFF'S

APPLICATION TO PROCEED IN

14 MARTINE PINA,

DISTRICT COURT WITHOUT

15 Defendant. PREPAYING FEES OR COSTS AND

(2) DISMISSING WITHOUT

16

PREJUDICE PLAINTIFF'S

17 COMPLAINT

18 (ECF No. 2) 19 20 21 22 23 24 Presently before the Court is Plaintiff Marcelina Pina's
Complaint ("Compl.," ECF

25 No. 1) and Application to Proceed in District Court Without Prepaying Fees or Costs ("IFP

26 Appl.," ECF No. 2). Having carefully considered Plaintiff's Complaint, Application and 27 the
applicable law, the Court DENIES WITHOUT PREJUDICE Plaintiff's IFP 28 Application and
DISMISSES WITHOUT PREJUDICE Plaintiff's Complaint.

1 IN FORMA PAUPERIS APPLICATION

2 All parties instituting a civil action, suit, or proceeding in a district court of the 3 United States,
other than a petition for writ of habeas corpus, must pay a filing fee of \$405.1 4 28 U.S.C. §
1914(a). An action may proceed despite a party's failure to pay the filing fee 5 only if the party is
granted leave to proceed in forma pauperis ("IFP") pursuant to 28 U.S.C. 6 § 1915(a)(1).

7 Section 1915(a)(1) provides:

8 [A]ny court of the United States may authorize the commencement, prosecution or defense of
any suit, action or 9 proceeding . . . without prepayment of fees or security therefor, 10 by a person
who submits an affidavit that includes a statement of all assets such [person] possesses that the
person is unable to pay 11 such fees or give security therefor. 12 13 As § 1915(a)(1) does not itself
define what constitutes insufficient assets to warrant IFP 14 status, the determination of indigency
falls within the district court’s discretion. See Cal. 15 *Men’s Colony v. Rowland*, 939 F.2d 854,
858 (9th Cir. 1991) (“Section 1915 typically 16 requires the reviewing court to exercise its sound
discretion in determining whether the 17 affiant has satisfied the statute’s requirement of
indigency.”), reversed on other grounds 18 by 506 U.S. 194 (1993). “An affidavit in support of an
IFP application is sufficient where 19 it alleges that the affiant cannot pay the court costs and still
afford the necessities of life.” 20 *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir. 2015)
(citing *Adkins v. E.I. Du Pont 21 de Nemours & Co.*, 335 U.S. 331, 339 (1948)). “One need not be
absolutely destitute to 22 obtain benefits of the [IFP] statute.” *Jefferson v. United States*, 277 F.2d
723, 725 (9th Cir. 23 1960). “Nevertheless, a plaintiff seeking IFP status must allege poverty ‘with
some 24 particularity, definiteness[,] and certainty.’” *Escobedo*, 787 F.3d at 1234. 25 26 1 In
addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$55.
See 27 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee
Schedule, § 14 (eff.

28 Dec. 1, 2023)). The additional \$55 administrative fee does not apply to persons granted leave to
proceed

1 The Court cannot find that Plaintiff has alleged with sufficient certainty that she 2 would be
unable to afford the necessities of life should she be required to pay the requisite 3 filing fee.
Plaintiff indicates that her monthly income consists exclusively of \$2,500 in 4 child support, IFP
Appl. at 1, but the Court finds this assertion directly contradicted by the 5 Complaint, which
alleges that, “to this day not even a dollar was and has been collected 6 from the outstanding debt”
owed by the father of Plaintiff’s three children, Compl. at 5. It 7 is thus unclear if Plaintiff is
actually receiving any income each month, and if so, how 8 much she is receiving. Plaintiff further
indicates that she has monthly expenses of \$1,000 9 for food and \$200 for utilities, but she left
blank the space available to enter rent or 10 mortgage payments. IFP Appl. at 4. Despite the above
entries, Plaintiff lists \$0 as her total 11 monthly income and \$0 as her total monthly expenses, id.
at 2, 5, and she leaves blank 12 numerous other questions, all of which require a response. 13
“Without further explanation, ‘[i]t is not apparent how Plaintiff is obtaining the 14 necessities of
life, and in turn whether this source of funds—if it exists—can cover the 15 required filing fee in
this action.’” *Turner v. City of San Diego*,

16 No. 23-CV-29 TWR (NLS), 2023 WL 163492, at *1 (S.D. Cal. Jan. 10, 2023) (quoting
17 *Herta v. Wiblemo*, No. 22-CV-1679-BAS-BGS, 2022 WL 17573923, at *2 (S.D. Cal.
18 Nov. 7, 2022)). Given the internal and external inconsistencies presented by Plaintiff’s

19 IFP Application—and the lack of detail Plaintiff provides regarding her income and 20 expenses—the Court finds that Plaintiff has not satisfied her burden to show that her 21 financial condition warrants lifting the filing fee requirement. Accordingly, the Court 22 DENIES Plaintiff’s IFP Application. Said denial, however, is WITHOUT PREJUDICE 23 to Plaintiff refiling an IFP application that cures the above-noted deficiencies. If Plaintiff 24 wishes to refile her IFP application, she “should note that the IFP application specifically 25 instructs applicants not to leave any blanks, and to instead response [sic] ‘0,’ ‘none,’ or 26 ‘not applicable (N/A)’ as necessary.” Herta, 2022 WL 17573923, at *2. 27 /// 28 ///

1 CONCLUSION

2 In light of the foregoing, IT IS HEREBY ORDERED that: 3 1. Plaintiff’s IFP Application (ECF No.2) is DENIED WITHOUT 4 || PREJUDICE; 5 2. Plaintiffs Complaint (ECF No. 1) is DISMISSED WITHOUT 6 || PREJUDICE for failure to prepay the filing fee mandated by 28 U.S.C. § 1914(a); and 7 3. Plaintiff is GRANTED an additional thirty (30) days from the date on which 8 ||this Order is electronically docketed to either (1) pay the entire \$405 statutory and 9 || administrative filing fee, or (2) file a new IFP application alleging that she is unable to pay 10 |the requisite fee. Should Plaintiff fail to either pay the filing fee or file a new IFP 11 || application, the Court will convert this dismissal of Plaintiff’s Complaint into dismissal 12 || of this civil action without prejudice. 13 IT IS SO ORDERED. 14 | Dated: March 24, 2025 peach Jt, oe waite 15 on. Janis L. Sammartino 16 United States District Judge 17 18 19 20 21 22 23 24 25 26 27 28