

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

PAUL DESAI, a.k.a.)	
Pravin O. Desai, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 07-1076-JTM
)	
JOE VAUGHT, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

REPORT AND RECOMMENDATION

This matter is before the Court on Plaintiff Paul Desai’s “Application for Leave to File Action Without Payment of Fees, Costs, or Security” (IFP Application). (Doc. 2, sealed.) As discussed in the Court’s April 20, 2007, Order (Doc. 3), the application was deficient in several respects. It was thus taken under advisement and Plaintiffs were given until May 7, 2007, to submit more complete and accurate financial information in an affidavit to be signed by both Plaintiffs. Plaintiffs were specifically instructed that the Court would recommend to the assigned District Judge that the application for *IFP* status be denied if Plaintiffs chose not to comply with the Order and failed to file a Supplemental Affidavit containing the required information by that date. (*Id.*, at 6.)

Plaintiffs did not supply the required information by May 7, 2007, but

instead requested an extension of 45 days “to consult a legal counsel pertaining to meritorious claims of Plaintiffs as well as other matters” (Doc. 4.) The Court found this request to be reasonable and gave Plaintiffs until June 28, 2007, to consult with counsel, make the relevant determinations, and provide the Court with a Supplemental Affidavit filed under seal, to be signed by all Plaintiffs then named in the case, concerning details as to their sources and amounts of income as outlined in the Court’s April 20, 2007, Order. (Doc. 5.) Plaintiffs were again informed that the Court would recommend to the assigned District Judge that their application for *IFP* status be denied if they failed to provide the Court with the necessary information by the extended deadline. (*Id.*, at n. 1.)

The extended deadline has passed and, to date, Plaintiffs have not filed the required Supplemental Affidavit. Therefore, considering the incomplete and ambiguous nature of the financial information previously provided by Plaintiffs, the Court is unable to find that Plaintiffs are incapable of paying the requisite filing fee. Under these circumstances, the undersigned Magistrate Judge recommends that Plaintiff’s motion for *IFP* status be **DENIED**.¹

¹ A United States Magistrate Judge, on a plaintiff’s motion to proceed *in forma pauperis*, should issue a report and recommendation as to whether the plaintiff is entitled to IFP status, rather than denying motion outright, since denial would be the functional equivalent of involuntary dismissal. *Lister v. Department of Treasury*, 408 F.3d 1309, 1311-12 (10th Cir. 2005).

It is further recommended that Plaintiffs be given a period of time not to exceed thirty days to pay the filing fee in this case and if payment is not made within that time that the case be dismissed for lack of prosecution.

Dated at Wichita, Kansas, on this 17th day of July, 2007.

s/ DONALD W. BOSTWICK
DONALD W. BOSTWICK
United States Magistrate Judge