

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

**JAMES LEE LISTER,** )  
 )  
 **Plaintiff,** )  
 )  
 **v.** )  
 )  
 **CITY OF WICHITA,** )  
 )  
 **Defendants.** )  
 \_\_\_\_\_ )

**Case No. 20-1312-KHV-GEB**

**ORDER**

This matter is before the Court on Plaintiff James Lee Lister’s Motion to Proceed *In Forma Pauperis* (ECF No. 3, *sealed*) and supporting Affidavit of Financial Status (ECF No. 3-1 *sealed*). For the reasons outlined below, Plaintiff’s Motion (**ECF No. 3**) is **GRANTED**.

Under 28 U.S.C. § 1915(a), the Court has the discretion<sup>1</sup> to authorize the filing of a civil case “without prepayment of fees or security thereof, by a person who submits an affidavit that . . . the person is unable to pay such fees or give security thereof.” “Proceeding *in forma pauperis* in a civil case ‘is a privilege, not a right—fundamental or otherwise.’”<sup>2</sup> To determine whether a party is eligible to file without prepayment of the

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<sup>1</sup> *Barnett ex rel. Barnett v. Nw. Sch.*, No. 00-2499, 2000 WL 1909625, at \*1 (D. Kan. Dec. 26, 2000) (citing *Cabrera v. Horgas*, 173 F.3d 863, at \*1 (10th Cir. April 23, 1999)).

<sup>2</sup> *Id.* (quoting *White v. Colorado*, 157 F.3d 1226, 1233 (10th Cir. 1998)).

fee, the Court commonly reviews the party's financial affidavit and compares his or her monthly expenses with the monthly income disclosed therein.<sup>3</sup>

Both the Tenth Circuit Court of Appeals and this Court have a liberal policy toward permitting proceedings *in forma pauperis*.<sup>4</sup> After careful review of Plaintiff's description of his financial resources (ECF No. 3, *sealed*), and comparison of Plaintiff's listed monthly income (unemployed and receiving minimal unemployment and welfare benefits), to his listed monthly expenses, the Court finds he is financially unable to pay the filing fee.

**IT IS THEREFORE ORDERED** that Plaintiff's Motion to Proceed Without Prepayment of Fees (**ECF No. 3**) is **GRANTED**. The clerk of court is directed to undertake service of process under 28 U.S.C. § 1915(d) and Fed. R. Civ. P. 4(c)(3).

**IT IS FURTHER ORDERED** the service period under Fed. R. Civ. P. 4(m) is extended to **June 15, 2021**.

**IT IS SO ORDERED.**

Dated at Wichita, Kansas this 14th day of April 2021.

s/ Gwynne E. Birzer  
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GWYNNE E. BIRZER  
United States Magistrate Judge

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<sup>3</sup> *Alexander v. Wichita Hous. Auth.*, No. 07-1149-JTM, 2007 WL 2316902, at \*1 (D. Kan. Aug. 9, 2007) (citing *Patillo v. N. Am. Van Lines, Inc.*, No. 02-2162-JWL-DJW, 2000 WL 1162684, at \*1) (D. Kan. Apr. 15, 2002) and *Webb v. Cessna Aircraft*, No. 00-2229-JWL-DJW, 2000 WL 1025575, at \*1 (D. Kan. July 17, 2000)).

<sup>4</sup> *Mitchell v. Deseret Health Care Facility*, No. 13-1360-RDR-KGG, 2013 WL 5797609, at \*1 (D. Kan. Sept. 30, 2013) (citing, generally, *Yellen v. Cooper*, 828 F.2d 1471 (10th Cir. 1987)).