

19-7580

No. 19-

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

CONSTANTINE GUS CRISTO,

Petitioner,

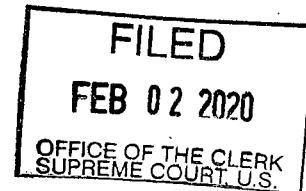
v.

COMMISSIONER OF INTERNAL REVENUE

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS
FOR THE NINTH CIRCUIT

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*



CONSTANTINE GUS CRISTO,

P.O. Box 2645

Valley Center, CA 92082

760.638.1772

cgcristo@protognosis.org

Petitioner pro se

110

PURSUANT TO Rule 39 of the Rules of the Supreme Court of the United States, Petitioner Constantine Gus Cristo requests leave to file the accompanying Petition for Writ of Certiorari without pre-payment of costs or fees, and to proceed *in forma pauperis*. In support thereof, Petitioner states:

1. In support of this motion, Petitioner states that because of his insolvency, he is unable to pay the costs of said proceedings or give security therefor, he submits the following financial declaration as Exhibit A.
2. On July 12, 2016, the Tax Court granted Petitioner's motion for the Tax Court to pay for a transcript of the court proceeding. A copy of the Court's Order is attached as Exhibit B.
3. On November 8, 2017, the District Court for the Southern District of California granted Petitioner's Motion to Proceed in a related case (*Cristo v. Charles Schwab Corporation, et al*, Case # 17-CV-1843-GPC(MDD)) in *forma pauperis*. A copy of the Court's Order is attached as Exhibit C.
4. On October 9, 2018, the Ninth Circuit granted Petitioner's Motion to Proceed in this case in *forma pauperis*. A copy of the Order is attached as Exhibit D.
5. On December 27, 2019, the District Court for the Southern District of California granted Petitioner's Motion to Proceed in a related case (*Cristo v. SEC, FINRA, et al*, Case # 19-CV-1910-GPC(MDD)) in *forma pauperis*. A copy of the Court's Order is attached as Exhibit E.

6. The Petition for Certiorari in the form prescribed by Rule 14 of the Rules of this Court, with Appendix attached, is submitted for filing along with this Motion.

Respectfully Submitted,

CONSTANTINE GUS CRISTO



Pro se
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EXHIBIT A

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Constantine G. Cristo, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ 0.00	\$ N/A	\$ 0.00	\$ N/A
Self-employment	\$ 0.00	\$	\$ 0.00	\$
Income from real property (such as rental income)	\$ 0.00	\$	\$ 0.00	\$
Interest and dividends	\$ 0.00	\$	\$ 0.00	\$
Gifts	\$ 150.00	\$	\$ 150.00	\$
Alimony	\$ 0.00	\$	\$ 0.00	\$
Child Support	\$ 0.00	\$	\$ 0.00	\$
Retirement (such as social security, pensions, annuities, insurance)	\$ 897.50	\$	\$ 897.50	\$
Disability (such as social security, insurance payments)	\$ 0.00	\$	\$ 0.00	\$
Unemployment payments	\$ 0.00	\$	\$ 0.00	\$
Public-assistance (such as welfare)	\$ 0.00	\$	\$ 0.00	\$
Other (specify): _____	\$ 0.00	\$	\$ 0.00	\$
Total monthly income:	\$ 1,047.50		\$ 1,047.50	

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$ _____
			\$ _____
			\$ _____

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$ _____
			\$ _____
			\$ _____

4. How much cash do you and your spouse have? \$ 100.00

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
Mission Fed. C.U. (checking)	\$ 500.00	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home
Value N/A

Other real estate
Value N/A

Motor Vehicle #1
Year, make & model N/A
Value _____

Motor Vehicle #2
Year, make & model N/A
Value _____

Other assets
Description Clothes
Value 100.00

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
N/A	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 0.00	\$ N/A
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 0.00	\$ _____
Home maintenance (repairs and upkeep)	\$ 0.00	\$ _____
Food	\$ 450.00	\$ _____
Clothing	\$ 0.00	\$ _____
Laundry and dry-cleaning	\$ 0.00	\$ _____
Medical and dental expenses	\$ 50.00	\$ _____

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ 50.00	\$ _____
Recreation, entertainment, newspapers, magazines, etc.	\$ 0.00	\$ _____
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ 0.00	\$ _____
Life	\$ 0.00	\$ _____
Health	\$ 461.02	\$ _____
Motor Vehicle	\$ 0.00	\$ _____
Other: _____	\$ 0.00	\$ _____
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ 0.00	\$ _____
Installment payments		
Motor Vehicle	\$ 0.00	\$ _____
Credit card(s)	\$ 0.00	\$ _____
Department store(s)	\$ 0.00	\$ _____
Other: _____	\$ 0.00	\$ _____
Alimony, maintenance, and support paid to others	\$ 0.00	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 0.00	\$ _____
Other (specify): phone _____	\$ 35.00	\$ _____
Total monthly expenses:	\$ 1,046.02	\$ _____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

Being wrongly accused of defrauding the federal government and the intentional violation of my constitutional rights has rendered me financially insolvent.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: February 1, 2020



(Signature)

EXHIBIT B

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CONSTANTINE GUS CRISTO,)
)
Petitioner,)
)
v.) Docket No. 2161-12.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

O R D E R

On February 29, 2016, a Pretrial Conference was held at the Oklahoma City, Oklahoma Trial Session of the Court. When the case was called, the Court and parties discussed the parties' ongoing efforts to enter into further stipulations of facts and stipulations of settled issues, and petitioner's position on the Stipulation of Facts filed May 14, 2013.

On June 11, 2016, petitioner filed a Motion for the Court to Pay the Expenses of a Transcript. On July 3, 2016, petitioner filed a First Supplemental Motion for the Court to Pay the Expenses of a Transcript.

After due consideration of petitioner's Motion for the Court to Pay the Expenses of a Transcript, as supplemented, in which there is a convincing showing that petitioner does not have the financial ability to pay for a copy of a transcript and, under the circumstances present in this case, it is

ORDERED that petitioner's motion, as supplemented, is granted, in that a copy of the transcript of the Pretrial Conference of this case at Oklahoma City, Oklahoma, on February 29, 2016, shall be forwarded to him with payment to be made by the Court to the United States Tax Court's reporting contractor.

**(Signed) Elizabeth Crewson Paris
Judge**

Dated: Washington, D.C.
July 8, 2016

EXHIBIT C

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CONSTANTINE GUS CRISTO,

CASE NO. 17cv1843-GPC(MDD)

Plaintiff

1

**THE CHARLES SCHWAB
CORPORATION; SCHWAB
HOLDINGS, INC.; CHARLES
SCHWAB & CO., INC.; CHARLES
SCHWAB BANK; and CHARLES
SCHWAB INVESTMENT
MANAGEMENT, INC.,**

Defendants.

ORDER

**(1) GRANTING PLAINTIFF'S
MOTION FOR
RECONSIDERATION AND
GRANTING PLAINTIFF'S
APPLICATION TO PROCEED IN
FORMA PAUPERIS**

**(2) DIRECTING U.S. MARSHAL
TO EFFECT SERVICE OF
SUMMONS AND AMENDED
COMPLAINT**

[Dkt. No. 5.]

Before the Court is Plaintiff's motion for reconsideration of his application to proceed *in forma pauperis*. (Dkt. No. 5.)

24 On September 25, 2017, the Court denied Plaintiff's application to proceed *in
25 forma pauperis* because he submitted a declaration reporting that he is currently
26 employed but did not indicate his gross monthly pay. (Dkt. No. 2 at 2.) In his motion,
27 he explains that he is the founder of the Protognosis Institute and is an employee who
28 has chosen not to take any income as it is a charitable organization. In consideration

1 of his lack of income from his position at Protognosis Institute, the Court GRANTS
2 Plaintiff's motion to reconsider the Court's order denying his application to proceed
3 in forma pauperis.

4 All parties instituting any civil action, suit, or proceeding in a district court of
5 the United States, except an application for writ of habeas corpus, must pay a filing fee
6 of \$400. See 28 U.S.C. § 1914(a).¹ An action may proceed despite a plaintiff's failure
7 to prepay the entire fee only if he is granted leave to proceed IFP pursuant to § 1915(a).
8 See Andrews v. Cervantes, 493 F.3d 1047, 1051 (9th Cir. 2007); Rodriguez v. Cook,
9 169 F.3d 1176, 1177 (9th Cir. 1999). The plaintiff must submit an affidavit
10 demonstrating his inability to pay the filing fee, and the affidavit must include a
11 complete statement of the plaintiff's assets. 28 U.S.C. § 1915(a)(1).

12 He reports retirement income of \$853.90/month, gifts of \$100/month and has
13 \$500 in his Charles Schwab account. (Dkt. No. 2.) However, he also has \$945.48 in
14 monthly living expenses. (Id. at 4-5.) Plaintiff further claims he has no real property,
15 vehicles or other assets. (Id. at 2-3.) Therefore, based on his declaration indicating no
16 surplus income, the Court GRANTS his application to proceed IFP.

17 Accordingly, IT IS HEREBY ORDERED that the Clerk shall issue a summons
18 as to Plaintiff's Amended Complaint [Dkt. No. 8] upon Defendants and shall forward
19 it to Plaintiff along with a blank U.S. Marshal Form 285 for the Defendants. In
20 addition, the Clerk shall provide Plaintiff with a certified copy of this Order and a
21 certified copy of his Complaint and the summons so that he may serve the Defendants.
22 Upon receipt of this "IFP Package," Plaintiff is directed to complete the Form 285s as
23 completely and accurately as possible, and to return them to the United States Marshal
24 according to the instructions provided by the Clerk in the letter accompanying his IFP
25 package. Upon receipt, the U.S. Marshal shall serve a copy of the Amended Complaint

26
27 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee
28 of \$50. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee
Schedule, § 14 (eff. Dec. 1, 2014)). The additional \$50 administrative fee does not apply to persons
granted leave to proceed IFP. Id.

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1 and summons upon the Defendants as directed by Plaintiff on the USM Form 285s. All
2 costs of service shall be advanced by the United States. See 28 U.S.C. § 1915(d); Fed.
3 R. Civ. P. 4(c)(3).

4 **IT IS SO ORDERED.**

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6 DATED: November 8, 2017

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HON. GONZALO P. CURIEL
United States District Judge

EXHIBIT D

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

OCT 9 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CONSTANTINE G. CRISTO,

Petitioner-Appellant,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent-Appellee.

No. 18-71788

Tax Ct. No. 2161-12

ORDER

Before: Peter L. Shaw, Appellate Commissioner.

The corrected motion to proceed in forma pauperis (Docket Entry Nos. 3 and 4) is granted. The Clerk shall amend the docket to reflect this status.

The Clerk shall file the opening brief at Docket Entry No. 7; the answering brief is due November 9, 2018; and the optional reply brief is due within 21 days after service of the answering brief.

EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CONSTANTINE GUS CRISTO,
Plaintiff,

v.
U.S. SECURITIES AND EXCHANGE
COMMISSION; FINANCIAL
INDUSTRY REGULATORY
AUTHORITY; JAY CLAYTON, in his
official capacity as Chairman of the U.S.
Securities and Exchange Commission;
WILLIAM BARR, in his official capacity
as United States Attorney General;
ROBERT W. COOK, President and Chief
Executive Officer of FINRA; SEC
employees DOE 1-20; and FINRA
employers DOE 1-20,

Defendants.

Case No.: 19cv1910-GPC(MDD)

**ORDER GRANTING PLAINTIFF'S
APPLICATION TO PROCEED IN
FORMA PAUPERIS**

[Dkt. No. 2.]

Plaintiff Constantine Gus Cristo (“Plaintiff”) filed a complaint for declaratory and injunctive relief challenging the constitutionality of the Securities and Exchange Commission’s arbitration proceedings. (Dkt. No. 1.) Accompanying the complaint is Plaintiff’s application to proceed in forma pauperis. (Dkt. No. 2.)

1 All parties instituting any civil action, suit, or proceeding in a district court of
2 the United States, except an application for writ of habeas corpus, must pay a filing fee
3 of \$400. *See 28 U.S.C. § 1914(a).*¹ An action may proceed despite a plaintiff's failure
4 to prepay the entire fee only if he is granted leave to proceed IFP pursuant to § 1915(a).
5 *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*,
6 169 F.3d 1176, 1177 (9th Cir. 1999). The plaintiff must submit an affidavit
7 demonstrating his inability to pay the filing fee, and the affidavit must include a
8 complete statement of the plaintiff's assets. 28 U.S.C. § 1915(a)(1).

9 Plaintiff reports retirement income of \$897.00/month, gifts of \$100/month and has
10 \$500 in his bank account. (Dkt. No. 2.) However, he also has \$1,046.02 in
11 monthly living expenses. (*Id.* at 4-5.) Plaintiff further claims he has no real property,
12 vehicles or other assets. (*Id.* at 2-3.) Therefore, based on his declaration indicating no
13 surplus income, the Court GRANTS his application to proceed IFP. Accordingly, IT IS
14 HEREBY ORDERED that,

15 1. The Clerk of Court is DIRECTED to issue a summons with respect to
16 Plaintiff's Complaint, [Dkt. No. 1], upon Defendants. The Clerk should then provide
17 Plaintiff with the summons. When sending the summons to Plaintiff, the Clerk of Court
18 should include with the summons: (a) one new blank U.S. Marshal Form 285 for
19 Defendants; (b) a letter instructing Plaintiff on how to complete this Form 285; (c) a
20 certified copy of the Order granting Plaintiff's motion to proceed in forma pauperis; and
21 (d) a certified copy of the Complaint, Dkt. No. 1. Together, the summons and additional
22 documents are Plaintiff's "IFP Package."

23 2. Plaintiff is DIRECTED to complete the following actions to aid the U.S.
24 Marshal in serving his Complaint:

25 _____
26
27 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50.
28 *See 28 U.S.C. § 1914(a)* (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14
(eff. Dec. 1, 2014)). The additional \$50 administrative fee does not apply to persons granted leave to
proceed IFP. *Id.*

1 a. First, upon receiving the IFP Package, Plaintiff must complete the IFP
2 package, including the U.S. Marshal Form 285, as accurately as possible.

3 b. Second, Plaintiff must return the completed IFP package and Form
4 285 to the U.S. Marshal according to the instructions provided by the Clerk's
5 letter.

6 c. Third, Plaintiff must include on the Form 285 an address where the
7 U.S. Marshal can serve Defendants. *See* S.D. Cal. CivLR 4.1.c.

8 3. Plaintiff is FURTHER DIRECTED to complete the following actions for all
9 of his future filings in this case:

10 a. Plaintiff must serve upon Defendants and their attorneys, if
11 Defendants obtain an attorney, a copy of every pleading or document that Plaintiff
12 files with the Court in this case.

13 b. For every future filing with the Court in his case, Plaintiff must
14 include a certificate of service which states:

15 i. How he served a true and correct copy of that filing on
16 Defendants, and

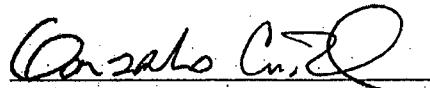
17 ii. The date when Defendants were served.

18 c. Any paper received by the Court which has not been properly filed
19 with the Clerk, or which fails to include a Certificate of Service, may be
20 disregarded.

21 4. Upon receipt, the U.S. Marshal is ORDERED to serve a copy of the
22 Complaint and summons upon Defendants as directed by Plaintiff on his completed U.S.
23 Marshal Form 285. All costs of service will be advanced by the United States. *See* 28
24 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3).

1
2 IT IS SO ORDERED.
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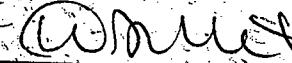
4 Dated: December 27, 2019
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Hon. Gonzalo P. Curiel
United States District Judge

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17 I hereby attest and certify on 12/27/19
18 That the foregoing document is a full, true and correct
19 copy of the original on file in my office and in my legal
20 custody.
21

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

22 By  Deputy
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