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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RHONDA WHITEROCK FRED,

Plaintiff,

vs.

No. CIV S- 10-0845 JAM GGH PS

WASHOE TRIBE OF NEVADA &
CALIFORNIA,

Defendant.

ORDER

_____ /

Plaintiff, proceeding in this action pro se, has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302(21), pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted an affidavit making the showing required by 28 U.S.C. § 1915(a)(1). Accordingly, the request to proceed in forma pauperis will be granted.

The determination that plaintiff may proceed in forma pauperis does not complete the required inquiry. Pursuant to 28 U.S.C. § 1915(e)(2), the court is directed to dismiss the case at any time if it determines the allegation of poverty is untrue, or the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant. The court cannot make this determination on the present record. Therefore, the court reserves decision on these issues until the record is sufficiently developed.

1 Plaintiff has requested appointment of counsel.

2 The district court has discretion under 28 U.S.C. § 1915(e)(1) to request counsel
3 to represent an indigent civil litigant. First, however, the court must evaluate both (1) the
4 likelihood of success on the merits and (2) the ability of the plaintiff to articulate his claims pro
5 se in light of the complexity of the legal issues involved. See, e.g., Terrell v. Brewer, 935 F.2d
6 1015, 1017 (9th Cir.1991). On the record before it, the court cannot find a likelihood of success
7 on the merits. See Franklin v. Murphy, 745 F.2d 1221, 1236 (9th Cir.1984) (motions to appoint
8 counsel granted only in exceptional circumstances and at discretion of trial court).

9 Good cause appearing, IT IS ORDERED that:

10 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

11 2. The Clerk of the Court is directed to issue forthwith, and the U.S. Marshal is
12 directed to serve within ninety days of the date of this order, all process pursuant to Fed. R. Civ.
13 P. 4, including a copy of this court's status order, without prepayment of costs.

14 3. The Clerk of the Court shall send plaintiff one USM-285 form for each
15 defendant, one summons, a copy of the complaint, an appropriate form for consent to trial by a
16 magistrate judge, and this court's status order.

17 4. Plaintiff is directed to supply the U.S. Marshal, within 15 days from the date
18 this order is filed, all information needed by the Marshal to effect service of process, and *shall*
19 *file a statement with the court that said documents have been submitted to the United States*
20 *Marshal*. The court anticipates that, to effect service, the U.S. Marshal will require at least:

- 21 a. One completed summons for each defendant;
- 22 b. One completed USM-285 form for each defendant;
- 23 c. One copy of the endorsed filed complaint for each defendant, with an
24 extra copy for the U.S. Marshal;
- 25 d. One copy of this court's status order for each defendant; and
- 26 e. One copy of the instant order for each defendant.

1 5. In the event the U.S. Marshal is unable, for any reason whatsoever, to
2 effectuate service on any defendant within 90 days from the date of this order, the Marshal is
3 directed to report that fact, and the reasons for it, to the undersigned.

4 6. The Clerk of the Court is directed to serve a copy of this order on the U.S.
5 Marshal, 501 "I" Street, Sacramento, Ca., 95814, Tel. No. (916) 930-2030.

6 7. Plaintiff's request for appointment of counsel is denied.

7 DATED: August 13, 2010

/s/ Gregory G. Hollows

8
9 GREGORY G. HOLLOWES,
UNITED STATES MAGISTRATE JUDGE

10 GGH:076/ifp.srv

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