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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 JESUS ESTEVEZ,
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Petitioner,

Case No.: 15cv2941 AJB (JLB)

**ORDER GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS
AND DENYING MOTION TO
APPOINT COUNSEL**

(Doc. Nos. 2, 4)

v.
UNITED STATES ATTORNEY'S
OFFICE FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
FEDERAL BUREAU OF PRISON,
WESTERN REGIONAL OFFICE,
UNITED STATES MARSHAL FOR
THE SOUTHERN DISTRICT OF
CALIFORNIA,

Respondents.

Presently before the Court is Jesus Estevez's ("Petitioner") motion for leave to proceed in forma pauperis and motion to appoint counsel. (Doc. Nos. 2, 4.) For the reasons set forth below, Petitioner's motion to proceed in forma pauperis is **GRANTED**, and his motion for appointment of counsel is **DENIED**.

A. Motion to Proceed In Forma Pauperis

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of

1 \$400. *See* 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff’s failure to
2 prepay the entire fee only if he is granted leave to proceed in forma pauperis (“IFP”)
3 pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th
4 Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner
5 who is granted leave to proceed IFP remains obligated to pay the entire fee in
6 “increments” or “installments,” *Bruce v. Samuels*, 136 S. Ct. 627, 629 (2016); *Williams v.*
7 *Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), and regardless of whether his action is
8 ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d
9 844, 847 (9th Cir. 2002).

10 Section 1915(a)(2) requires prisoners seeking leave to proceed IFP to submit a
11 “certified copy of the trust fund account statement (or institutional equivalent) for . . . the
12 6-month period immediately preceding the filing of the complaint.” 28 U.S.C. §
13 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified
14 trust account statement, the Court assesses an initial payment of 20% of (a) the average
15 monthly deposits in the account for the past six months, or (b) the average monthly
16 balance in the account for the past six months, whichever is greater, unless the prisoner
17 has no assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having
18 custody of the prisoner then collects subsequent payments, assessed at 20% of the
19 preceding month’s income, in any month in which his account exceeds \$10, and forwards
20 those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2);
21 *Bruce*, 136 S. Ct. at 629.

22 In support of his IFP motion, Petitioner has submitted a copy of his inmate
23 statement report demonstrating his inability to pay. (*See* Doc. No. 2 at 5.) Accordingly,
24 the Court finds Petitioner’s motion and supporting documents sufficient to show he is
25 “unable to pay” any initial partial filing fee pursuant to 28 U.S.C. § 1915(a)(a) and (b)(1)
26 at this time. *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a prisoner be
27 prohibited from bringing a civil action or appealing a civil action or criminal judgment
28 for the reason that the prisoner has no assets and no means by which to pay the initial

1 partial filing fee.”); *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d at 850 (finding that 28
2 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a prisoner’s IFP case
3 based solely on a “failure to pay . . . due to the lack of funds available to him when
4 payment is ordered.”).

5 Accordingly, the Court **GRANTS** Petitioner’s motion to proceed IFP, (Doc. No.
6 2), and declines to “exact” any initial filing fee because his inmate statement report
7 shows he “has no means to pay it.” *Bruce*, 136 S. Ct. at 629. The Court directs the
8 Secretary of the CDCR, or his designee, to collect the entire \$350 balance¹ of the filing
9 fees required by 28 U.S.C. § 1914 and to forward them to the Clerk of the Court pursuant
10 to the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1). *See id.*; *see*
11 *also Mills v. Warden, Calipatria State Prison*, No. 3:15CV2491, 2016 WL 3523087, at
12 *2 (S.D. Cal. June 28, 2016).

13 **B. Screening Pursuant to 28 U.S.C. § 1915**

14 When a plaintiff is afforded IFP status, 28 U.S.C. § 1915(e)(2) requires a court to
15 screen the complaint to ensure the action is not frivolous or malicious, does not fail to
16 state a claim upon which relief may be granted, or seek monetary relief from an immune
17 defendant. 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845 (9th Cir. 2001)
18 (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”); *Lopez v.*
19 *Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (noting section 1915(e) “not only permits but
20 requires” the court to sua sponte dismiss an *IFP* complaint that fails to state a claim).

21 Through his writ of mandate, Petitioner seeks disclosure of additional information
22 sought through Freedom of Information Act (“FOIA”) requests. (*See* Doc. No. 1.)
23 Congress enacted the Freedom of Information Act to “facilitate public access to
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26 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative
27 fee of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court
28 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 Government documents.” *U.S. Dep’t of State v. Ray*, 502 U.S. 164, 173 (1991). Under
2 FOIA, an agency must make government records available to the public upon a properly
3 made request. 5 U.S.C. § 552(a)(3)(A). However, the agency need not disclose
4 documents or information falling within any of nine statutory exemptions. 5 U.S.C. §
5 552(b)(1)–(9). Because of the “strong presumption in favor of disclosure,” the
6 exemptions are narrowly construed and the agency bears the burden of justifying the
7 withholding of information under an exemption. *Lahr v. Nat’l Transp. Safety Bd.*, 569
8 F.3d 964, 973 (9th Cir. 2009).

9 Petitioner asserts documents were wrongfully withheld despite his FOIA requests,
10 and attaches documentation demonstrating documents were withheld under exemptions
11 to FOIA. (*See* Doc. No. 1.) Upon review, the Court finds Petitioner’s pleading survives
12 the “low threshold”² for proceeding past the sua sponte screening required by 28 U.S.C.
13 §§ 1915(e)(2) and 1915A(b). *See Benhoff v. United States Dep’t of Justice*, No.
14 316CV01095, 2016 WL 3280423, at *3 (S.D. Cal. June 14, 2016) (citing *Wilhelm v.*
15 *Rotman*, 680 F.3d 1113, 1123 (9th Cir. 2012)).

16 C. Motion to Appoint Counsel

17 Petitioner has also filed a motion for appointment of counsel. (Doc. No. 4.)
18 Although a court, under 28 U.S.C. § 1915(d), can request counsel to represent a party
19 proceeding IFP, a court may do so only in exceptional circumstances. *Wilborn v.*
20 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221,
21 1236 (9th Cir. 1984); *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of
22 exceptional circumstances requires an evaluation of both the likelihood of success on the
23 merits and the ability of the plaintiff to articulate his claims *pro se* in light of the
24 complexity of the legal issues involved. *Wilborn*, 789 F.2d at 1331. Neither of these
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27 ² Notably, “the sua sponte screening and dismissal procedure is cumulative of, and not a
28 substitute for, any subsequent Rule 12(b)(6) motion that [any individual defendant] may
choose to bring.” *See Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007).

1 factors is dispositive and both must be viewed together before reaching a decision on
2 request of counsel under § 1915(d). *Id.*


3 The present action does not present exceptional circumstances such that
4 appointment of counsel is warranted. Petitioner asserts this matter involves “rough
5 agents” and “matters of national security [and] violations of international law,” but as
6 presently styled this matter requires no interaction with Government entities other than
7 through court filings. Additionally, Petitioner has adequately detailed his claim and
8 demonstrated his ability to pursue his FOIA claims, both before this Court and in prior
9 administrative reviews. For these reasons, the Court declines to appoint counsel to
10 represent Petitioner and his motion is **DENIED**.

11 **CONCLUSION**

12 For the reasons set forth above, Petitioner’s motion to proceed IFP is **GRANTED**.
13 Accordingly, the U.S. Marshal is directed to effect service upon Defendants on
14 Petitioner’s behalf. *See* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and
15 serve all process, and perform all duties in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (“[T]he
16 court may order that service be made by a United States marshal or deputy marshal . . . if
17 the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915.”).
18 Petitioner’s motion for appointment of counsel is **DENIED**.

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20 **IT IS SO ORDERED.**

21 Dated: August 30, 2016

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23 Hon. Anthony J. Battaglia
24 United States District Judge
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