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

EMILIO REYES,
Plaintiff,
v.
BUREAU OF INDIAN AFFAIRS
PACIFIC REGIONAL OFFICE,
Defendant.

Case No. 17-cv-1187 DMS (BGS)

**ORDER (1) GRANTING MOTION
TO PROCEED *IN FORMA
PAUPERIS* AND (2) DISMISSING
COMPLAINT WITHOUT
PREJUDICE FOR FAILING TO
STATE A CLAIM UPON WHICH
RELIEF CAN BE GRANTED
PURSUANT TO 28 U.S.C. §
1915(e)(2)(B)(ii)**

Plaintiff Emilio Reyes, a nonprisoner proceeding *pro se*, brought an action under the Freedom of Information Act (“FOIA”) against Defendant Bureau of Indian Affairs Pacific Regional Office. Plaintiff has not paid the \$400 civil filing fee required to commence this action, but rather, has filed a motion to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a).

A. Motion to Proceed IFP

Pursuant to 28 U.S.C. § 1915(a), a court may authorize the commencement of a suit without prepayment of fees if plaintiffs submit an affidavit, including a statement of all their assets, showing that they are unable to pay filing fees. *See* 28 U.S.C. § 1915(a). Here, Plaintiff has submitted an affidavit sufficiently showing that he lacks the financial resources to pay filing fees. Accordingly, Plaintiff’s

1 motion to proceed IFP is granted.

2 **B. *Sua Sponte* Screening**

3 Any complaint filed pursuant to the IFP provisions of 28 U.S.C. § 1915(a), is
4 subject to a mandatory and *sua sponte* review and dismissal by the Court, if it finds
5 the Complaint is “frivolous, malicious, failing to state a claim upon which relief may
6 be granted, or seeking monetary relief from a defendant immune from such relief.”
7 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001)
8 (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”).

9 Initially, Plaintiff seeks access to certain documents in Defendant’s
10 possession and production of a *Vaughn* index of documents withheld by Defendant
11 pursuant to FOIA.¹ The FOIA “provides for the mandatory disclosure of
12 information held by federal agencies, unless the requested material is exempt from
13 mandatory disclosure.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 220–
14 21 (1978). To state a claim under the FOIA, a plaintiff must show “that an agency
15 has (1) ‘improperly’; (2) ‘withheld’; (3) ‘agency records.’” *Kissinger v. Reporters*
16 *Comm. for Freedom of the Press*, 445 U.S. 136, 150 (1980) (quoting 5 U.S.C. §
17 552(a)(4)(B)). Here, there is no allegation that Defendant improperly withheld any
18 agency records when requested by Plaintiff in a timely fashion. Rather, Plaintiff
19 merely seeks certain documents in Defendant’s possession, where “[t]he precise
20 documents to which [P]laintiff seeks access are contained in an online request dated
21 April 1, 2016 to the Indian Affairs FOIA Office[.]” (Compl.) Moreover, Plaintiff
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24 ¹ The term “*Vaughn* Index” originated from *Vaughn v. Rosen*, 484 F.2d 820 (D.C.
25 Cir. 1973), where the court rejected an agency’s conclusory affidavit to the effect
26 that requested FOIA documents were subject to exemption. “The purpose of a
27 *Vaughn* Index is ‘to afford the FOIA requester a meaningful opportunity to contest,
28 and the district court an adequate foundation to review, the soundness of the
withholding.’” *Citizens Comm’n on Human Rights v. Food & Drug Admin.*, 45 F.3d
1325, 1328 (9th Cir. 1995) (quoting *Wiener v. FBI*, 943 F.2d 972, 977 (9th Cir.
1991)).

1 requests production of a *Vaughn* Index, contending “[it] would be particularly useful
2 in sharpening the issues and permitting the plaintiff to test the bases for the
3 government’s exemption claims.” (*Id.*) This is insufficient to state a claim under
4 the FOIA. Accordingly, the Court *sua sponte* dismisses the Complaint without
5 prejudice.

6 **IT IS SO ORDERED.**

7 Dated: June 26, 2017



8 Hon. Dana M. Sabraw
9 United States District Judge

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