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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. 17cv1189-WQH-BLM

ORDER

HAYES, Judge:

The matter before the Court is the Complaint filed by Plaintiff Emilio Reyes (“Plaintiff”) (ECF No. 1) and the Motion for Leave to Proceed In Forma Pauperis (“IFP”) (ECF No. 2) filed by Plaintiff.

On June 13, 2017, Plaintiff commenced this action under the Freedom of Information Act (“FOIA”). (ECF No. 1). Plaintiff has not paid the \$400 civil filing fee required to commence this action, but Plaintiff has filed the Motion for Leave to Proceed IFP pursuant to 28 U.S.C. § 1915. (ECF No. 2).

I. Motion for Leave to Proceed IFP (ECF No. 2)

All parties instituting a civil action, suit, or proceeding in a district court of the United States, other than a petition for writ of habeas corpus, must pay a filing fee of \$400.00. *See* 28 U.S.C. § 1914(a); CivLR 4.5. An action may proceed despite a party’s failure to pay only if the party is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). 28 U.S.C. § 1915(a) states,

1 any court of the United States may authorize the commencement,
2 prosecution or defense of any suit, action or proceeding, civil or criminal,
3 or appeal therein, without prepayment of fees or security therefor, by a
4 person who submits an affidavit that includes a statement of all assets such
prisoner possesses that the person is unable to pay such fees or give
security therefor. Such affidavit shall state the nature of the action,
defense or appeal and affiant's belief that the person is entitled to redress.

5 28 U.S.C. § 1915(a)(1).

6 In this case, after considering Plaintiff's motion and affidavit, the Court
7 concludes that Plaintiff cannot afford to pay the filing fee in this case and is eligible to
8 proceed IFP pursuant to 28 U.S.C. § 1915(a). The Motion for Leave to Proceed IFP
9 (ECF No. 2) is GRANTED.

10 **II. Initial Screening of the Complaint**

11 A complaint filed by any person proceeding IFP pursuant to 28 U.S.C. § 1915(a)
12 is subject to mandatory review and sua sponte dismissal to the extent it "is frivolous or
13 malicious; fails to state a claim on which relief may be granted; or seeks monetary relief
14 from a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B); *see*
15 *Lopez v. Smith*, 203 F.3d 1122, 1126 (9th Cir. 2000) (en banc). This screening standard
16 applies to all civil actions where a court grants IFP; *see Calhoun v. Stahl*, 254 F.3d 845,
17 845 (9th Cir. 2001) (per curiam) ("the provisions of 28 U.S.C. § 1915(e)(2)(B) are not
18 limited to prisoners").

19 In this case, the Complaint states that "plaintiff seeks access to documents in the
20 possession of the Bureau of Indian Affairs concerning FOIA BIA-2017-00004 seeking
21 1928 California Indian enrollment application #5691 for Margaret Alviso Domingues
22 and #5692 for Custodia Alviso Robles." (ECF No. 1 at 1). The Complaint states,

23 14 documents responsive to Plaintiffs FOIA request have been withheld
24 in full. A *Vaughn* index would be particularly useful in sharpening the
25 issues and permitting the plaintiff to test the bases for the government's
exemption claims. Therefore, plaintiff has requested the Court to require
the defendant to provide the plaintiff with an appropriate *Vaughn* index
within 20 days of the date of the Court's Order.

26 *Id.* at 2.

27 "FOIA 'was enacted to facilitate public access to Government documents.'" *Lahr v. Nat'l Transp. Safety Bd.*, 569 F.3d 964, 973 (9th Cir. 2009) (quoting *U.S. Dept.*

1 of *State v. Ray*, 502 U.S. 164, 173 (1991)). The purpose of a *Vaughn* index, a term
2 which originated from *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), “is to afford
3 the FOIA requester a meaningful opportunity to contest, and the district court an
4 adequate opportunity to review, the soundness of the withholding.” *Fiduccia v. U.S.*
5 *Dept. of Justice*, 185 F.3d 1035, 1042 (9th Cir. 1999) (quoting *Wiener v. F.B.I.*, 943
6 F.2d 972, 977 (9th Cir. 1991)). Under the FOIA statute, “federal jurisdiction is
7 dependent upon a showing that an agency has (1) ‘improperly’; (2) ‘withheld’; (3)
8 ‘agency records.’” *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S.
9 136, 150 (1980) (citation omitted). “FOIA’s waiver of immunity and jurisdictional
10 grant provides that district courts have ‘jurisdiction to enjoin the agency from
11 withholding agency records and to order the production of any agency records
12 improperly withheld from the complainant.” *Hajro v. U.S. Citizenship & Immigration*
13 *Servs.*, 811 F.3d 1086, 1101 (9th Cir. 2015) (quoting 5 U.S.C. § 552(a)(4)(B)). The
14 plaintiff in a FOIA action bears the burden of demonstrating that the court has
15 jurisdiction over the action. *Id.*

16 The Complaint states that documents Plaintiff has previously requested from the
17 Bureau of Indian Affairs “have been withheld in full[,]” and that “[a] *Vaughn* index
18 would be particularly useful” to Plaintiff. (ECF No. 1 at 2). The Complaint does not
19 allege that Defendant has “improperly withheld” any documents from Plaintiff. *Hajro*,
20 811 F.3d at 1101 (citation omitted). The Court concludes that Plaintiff’s Complaint
21 “fails to state a claim on which relief may be granted” under the FOIA statute. 28
22 U.S.C. § 1915(e)(2)(B)(ii). Therefore, the Court sua sponte dismisses the Complaint
23 (ECF No. 1) without prejudice.

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III. Conclusion

IT IS HEREBY ORDERED that the Motion for Leave to Proceed IFP (ECF No. 2) is GRANTED.

IT IS FURTHER ORDERED that the Complaint (ECF No. 1) is DISMISSED without prejudice. The Clerk of the Court is ordered to close this case.

DATED: July 25, 2017


WILLIAM Q. HAYES
United States District Judge