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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EMILIO REYES,

Plaintiff,

v.

BUREAU OF INDIAN AFFAIRS,
SOUTHERN CALIFORNIA AGENCY,

Defendant.

Case No.: 17cv1191-JLS (KSC)

**ORDER (1) GRANTING MOTION
TO PROCEED *IN FORMA*
PAUPERIS AND (2) DIRECTING
SERVICE**
(ECF No. 2)

Presently before the Court are Plaintiff Emilio Reyes’s Complaint for a *Vaughn* Index, (ECF No. 1), and Motion to Proceed *In Forma Pauperis* (“IFP Mot.”), (ECF No. 2). The Court first addresses Plaintiff’s IFP Motion and then evaluates Plaintiff’s Complaint.

IFP MOTION

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 \$400. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to prepay the entire fee only if he is granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). A federal court may authorize the commencement of an action without the prepayment of fees if the party

1 submits an affidavit, including a statement of assets, showing that she is unable to pay the
2 required filing fee. 28 U.S.C. § 1915(a).

3 In the present case, Plaintiff has submitted an affidavit indicating that his sole source
4 of income comes from his employment at Premier Dealer Services and totals \$2,500.00 per
5 month. (IFP Mot. 2.) However, Plaintiff has two nieces who allegedly rely on him for
6 support, (*id.* at 3), and Plaintiff’s expenses total approximately \$2,380.00 per month, (*id.*
7 at 3–5). Given the foregoing, the Court finds that Plaintiff’s application demonstrates he is
8 unable to pay the requisite fees and costs. *See Adkins v. E.I. DuPont de Nemours & Co.*,
9 335 U.S. 331, 339 (1948) (explaining that a plaintiff need not “be absolutely destitute to
10 enjoy the benefit of the statute”). Accordingly, the Court **GRANTS** Plaintiff’s IFP Motion.

11 **SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

12 The Court must screen every civil action brought pursuant to 28 U.S.C. § 1915(a)
13 and dismiss any case it finds “frivolous or malicious,” “fails to state a claim on which relief
14 may be granted,” or “seeks monetary relief against a defendant who is immune from relief.”
15 28 U.S.C. § 1915(e)(2)(B); *see also Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001)
16 (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”); *Lopez v.*
17 *Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e)
18 “not only permits but requires a district court to dismiss an in forma pauperis complaint
19 that fails to state a claim”).

20 As amended by the Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915(e)(2)
21 mandates that the court reviewing an action filed pursuant to the IFP provisions of § 1915
22 make and rule on its own motion to dismiss before directing the Marshal to effect service
23 pursuant to Federal Rule of Civil Procedure 4(c)(3). *See Fed. R. Civ. P. 4(c)(3); Navarette*
24 *v. Pioneer Med. Ctr.*, No. 12-cv-0629-WQH (DHB), 2013 WL 139925, at *1 (S.D. Cal.
25 Jan. 9, 2013).

26 All complaints must contain a “short and plain statement of the claim showing that
27 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
28 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere

1 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing
2 *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555 (2007)). “[D]etermining whether a complaint
3 states a plausible claim is context-specific, requiring the reviewing court to draw on its
4 experience and common sense.” *Iqbal*, 556 U.S. at 663–64 (citing *Twombly*, 550 U.S. at
5 556).

6 “When there are well-pleaded factual allegations, a court should assume their
7 veracity, and then determine whether they plausibly give rise to an entitlement of relief.”
8 *Iqbal*, 556 U.S. at 679. “[W]hen determining whether a complaint states a claim, a court
9 must accept as true all allegations of material fact and must construe those facts in the light
10 most favorable to the plaintiff.” *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); *see*
11 *also Andrews v. King*, 393 F.3d 1113, 1121 (9th Cir. 2005); *Barren v. Harrington*, 152
12 F.3d 1193, 1194 (9th Cir. 1998) (“The language of § 1915(e)(2)(B)(ii) parallels the
13 language of Federal Rule of Civil Procedure 12(b)(6).”).

14 “While factual allegations are accepted as true, legal conclusions are not.” *Hoagland*
15 *v. Astrue*, No. 1:12-cv-00973-SMS, 2012 WL 2521753, at *3 (E.D. Cal. June 28, 2012)
16 (citing *Iqbal*, 556 U.S. at 678). Courts cannot accept legal conclusions set forth in a
17 complaint if the plaintiff has not supported her contentions with facts. *Id.* (citing *Iqbal*, 556
18 U.S. at 679).

19 In the present case, Plaintiff requested certain documents under the Freedom of
20 Information Act (“FOIA”), which documents Defendant has allegedly “withheld in full.”
21 (Compl. 2.) Plaintiff now seeks a *Vaughn*¹ index in order to “permit[] the plaintiff to test
22

23 ¹ As the Ninth Circuit recently explained:

24 A “*Vaughn* index” is a document supplied by government agencies to opposing parties and
25 the court that identifies “each document withheld, the statutory exemption claimed, and a
26 particularized explanation of how disclosure of the particular document would damage the
27 interest protected by the claimed exemption,” and the index is designed to provide
28 reasoning against which the requester can offer effective advocacy and a basis for the court
to reach a reasoned decision. *Wiener v. FBI*, 943 F.2d 972, 977 (9th Cir. 1991). . . . The
term derives from the D.C. Circuit’s decision in *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir.
1973).

1 the bases for the government’s exemption claims.” (*Id.*) Plaintiff further specifies that
2 “[t]he precise documents to which [P]laintiff seeks access are contained in an online
3 request dated January 26, 2016 to the Indian Affairs FOIA Office.” (*Id.*) This provides
4 Defendant with sufficient information regarding Plaintiff’s claim, and is therefore
5 sufficient to survive the Court’s *sua sponte* screening.

6 CONCLUSION

7 Given the foregoing, the Court:

8 1. **GRANTS** Plaintiff leave to proceed IFP pursuant to 28 U.S.C. § 1915(a)
9 (ECF Nos. 1, 2).

10 2. **DIRECTS** the Clerk to issue a summons as to Plaintiff’s Complaint (ECF No.
11 1) and forward it to Plaintiff along with a blank U.S. Marshal Form 285 (“USM Form
12 285s”) for each named Defendant. In addition, the Clerk will provide Plaintiff with a
13 certified copy of this Order, a certified copy of his Complaint, and the summons so that he
14 may serve the Defendants. Upon receipt of this “IFP Package,” Plaintiff must complete the
15 USM Form 285s as completely and accurately as possible, include an address where each
16 named Defendant may be found and/or subject to service, and return them to the United
17 States Marshal according to the instructions the Clerk provides in the letter accompanying
18 his IFP package.

19 3. **ORDERS** the U.S. Marshal to serve a copy of the Complaint and summons
20 upon Defendants as directed by Plaintiff on the USM Form 285s provided to him. All costs
21 of that service will be advanced by the United States. *See* 28 U.S.C. § 1915(d); Fed. R. Civ.
22 P. 4(c)(3).

23 4. **ORDERS** Defendants, once they have been served, to reply to Plaintiff’s
24 Complaint within the time provided by the applicable provisions of Federal Rule of Civil
25 Procedure 12(a). *See* 42 U.S.C. § 1997e(g)(2).

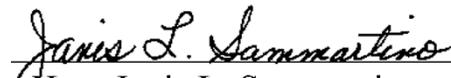
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28 *Hamdan v. U.S. Dep’t of Justice*, 797 F.3d 759, 769 n.4 (9th Cir. 2015).

1 5. **ORDERS** Plaintiff, after service has been effected by the U.S. Marshal, to
2 serve upon each Defendant, or if appearance has been entered by counsel, upon
3 Defendants' counsel, a copy of every further pleading, motion, or other document
4 submitted for the Court's consideration pursuant to Fed. R. Civ. P. 5(b). Plaintiff must
5 include with every original document he seeks to file with the Clerk of the Court, a
6 certificate stating the manner in which a true and correct copy of that document has been
7 was served on Defendants or their counsel, and the date of that service. *See* S.D. Cal. Civ.
8 L.R. 5.2. Any document received by the Court which has not been properly filed with the
9 Clerk or which fails to include a Certificate of Service upon the Defendants, or their
10 counsel, may be disregarded.

11 **IT IS SO ORDERED.**

12 Dated: June 20, 2017


Hon. Janis L. Sammartino
United States District Judge