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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 EMILIO REYES,

12 Plaintiff,

13 v.

14 UNITED STATES DEPARTMENT OF
15 THE INTERIOR, BUREAU OF INDIAN
16 AFFAIRS; UNITED STATES
17 DEPARTMENT OF THE INTERIOR,
18 OFFICE OF THE SOLICITOR; JESSICA
19 ROGERS, in her capacity as FOIA Public
20 Liaison of Indian Affairs; RYAN ZINKE,
in his official capacity and as Secretary of
the United States Department of the
Interior,

21 Defendants.

Case No.: 17-cv-1612-AJB-NLS

**ORDER GRANTING PLAINTIFF'S
IFP MOTION**

(Doc. No. 2)

22
23 The Court has reviewed plaintiff Emilio Reyes' complaint and motion to proceed in
24 forma pauperis, and for the reasons stated herein, **GRANTS** Reyes' motion.

25 **I. MOTION TO PROCEED IN FORMA PAUPERIS**

26 All parties instituting any civil action, suit, or proceeding in a district court of the
27 United States, except an application for writ of habeas corpus, must pay a filing fee of
28 \$400. 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay

1 the entire fee only if the plaintiff is granted leave to proceed IFP. 28 U.S.C. § 1915(a). *See*
2 *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). All IFP actions must include an
3 affidavit, signed under penalty of perjury, and a statement of all assets showing an inability
4 to pay initial fees or give security. CivLR 3.2.a.

5 Here, Reyes’ employment at Premier Dealer Services provides his sole income
6 source of \$2,500 per month. He calculates his monthly expenses total \$2,500, which is
7 partly allocated to supporting his two minor nieces. The Court finds Reyes’ application
8 demonstrates he is unable to pay the requisite fees and costs. *See Adkins v. E.I. DuPont de*
9 *Nemours & Co.*, 335 U.S. 331, 339 (1948) (stating that one need not be “absolutely
10 destitute to enjoy the benefit of the [IFP] statute”). Accordingly, the Court finds Reyes
11 meets the § 1915(a) requirements and **GRANTS** Reyes’ IFP motion.

12 **II. SCREENING PURSUANT TO 28 U.S.C. § 1915(e)**

13 Under 28 U.S.C. § 1915(e)(2), when reviewing an IFP motion, the Court must rule
14 on its own dismissal motion before the complaint is served. *Lopez v. Smith*, 203 F.3d 1122,
15 1127 (9th Cir. 2000). The Court must dismiss the complaint if it is frivolous, malicious,
16 fails to state a claim upon which relief may be granted, or seeks monetary relief from a
17 defendant immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *Lopez*, 203 F.3d at 1127
18 (“[§] 1915(e) not only permits but requires a district court to dismiss an [IFP] complaint
19 that fails to state a claim”). Accordingly, the Court “may dismiss as frivolous complaints
20 reciting bare legal conclusions with no suggestion of supporting facts” *Franklin v.*
21 *Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984) (citation omitted).

22 Here, Reyes seeks access to twenty responsive documents to his Freedom of
23 Information Act request. (Doc. No. 1 ¶¶ 46, 49.) Reyes alleges the Bureau of Indian Affairs
24 wrongly failed to release these documents, and that he has exhausted all administrative
25 remedies available in a good faith effort to procure them. (*Id.* ¶¶ 49-54, 55.) Reyes seeks
26 declaratory and injunctive relief. (*Id.* at 1, 11.) The Court recognizes Reyes necessarily
27 exhausted all his administrative remedies before bringing his instant claim, and that the
28 burden of proof rests with the Bureau to sustain its own actions. 5 U.S.C. § 552(a)(6)(A);

1 5 U.S.C § 552(a)(4)(B). Furthermore, the relief Reyes seeks is appropriate and within this
2 Court’s jurisdiction to grant. 5 U.S.C § 552(a)(6)(B). Therefore, the Court finds Reyes’
3 allegations provide Defendants with sufficient information regarding his claim; as such,
4 the complaint is sufficient to survive the Court’s sua sponte screening.

5 **III. MARSHAL SERVICE**

6 In cases involving an IFP plaintiff, a United States Marshal, upon order of the Court,
7 must serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3); *see also* 28 U.S.C. §
8 1915(d) (“The officers of the court shall issue and serve all process, and perform all duties
9 in such cases.”); *Benny v. Pipes*, 799 F.2d 489, 493 n.4 (9th Cir. 1986) (permitting “service
10 by a Marshal for,” *inter alia*, “a person proceeding *in forma pauperis*”).

11 Based on the Court’s ruling, the Court **DIRECTS** the Court Clerk to issue the
12 summons, provide Reyes with a certified copy of both this order and his complaint,
13 (Doc. No. 1), and forward them to Reyes along with a blank United States Marshal Service
14 Form 285 for each Defendant named in the complaint. Upon receipt of this “IFP Package,”
15 the Court **DIRECTS** Reyes to complete Form 285 and forward them to the U.S. Marshals.
16 Upon receipt, the U.S. Marshals will serve a copy of the complaint and summons upon
17 each Defendant as directed on Form 285. The United States will advance all costs of
18 service. *See* 28 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3).

19 **IV. CONCLUSION**

20 For the reasons set forth above, the Court **GRANTS** Plaintiff’s IFP motion,
21 (Doc. No. 2), and **DIRECTS** the Clerk of Court to issue a summons as to complaint.

22 **IT IS SO ORDERED.**

23 Dated: September 18, 2017

24 
25 Hon. Anthony J. Battaglia
26 United States District Judge
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