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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SEGUNDO T. URIAS, JR.,)	1:07-cv-01444-AWI-SMS
)	
Plaintiff,)	ORDER GRANTING PLAINTIFF'S
v.)	APPLICATION FOR LEAVE TO PROCEED
)	IN FORMA PAUPERIS (DOC. 2)
MICHAEL J. ASTRUE,)	
Commissioner of Social)	ORDER DISMISSING PLAINTIFF'S
Security,)	COMPLAINT WITH LEAVE TO FILE AN
)	AMENDED COMPLAINT NO LATER THAN
Defendant.)	THIRTY DAYS AFTER THE DATE OF
)	SERVICE OF THIS ORDER (DOC. 1)
)	

Plaintiff is proceeding with a civil action in this Court. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Rules 72-302(c)(15) and 72-304.

I. Application to Proceed in Forma Pauperis

Plaintiff filed an application to proceed in forma pauperis on October 4, 2007. Plaintiff has submitted a declaration that makes the showing required by § 1915(a). Accordingly, the request to proceed in forma pauperis IS GRANTED. 28 U.S.C. § 1915(a).

II. Screening the Complaint

In cases wherein the plaintiff is proceeding in forma pauperis, the Court is required to screen cases and shall dismiss the case at any time if the Court determines that the allegation

1 of poverty is untrue, or the action or appeal is frivolous or
2 malicious, fails to state a claim on which relief may be granted,
3 or seeks monetary relief against a defendant who is immune from
4 such relief. 28 U.S.C. 1915(e) (2).

5 Fed. R. Civ. P. 8(a) provides:

6 A pleading which sets forth a claim for relief,
7 whether an original claim, counterclaim, cross-
8 claim, or third-party claim, shall contain
9 (1) a short and plain statement of the grounds
10 upon which the court's jurisdiction depends,
11 unless the court already has jurisdiction and
12 the claim needs no new grounds of jurisdiction
13 to support it, (2) a short and plain statement
14 of the claim showing that the pleader is entitled
15 to relief, and (3) a demand for judgment for
16 the relief the pleader seeks. Relief in the
17 alternative or of several different types
18 may be demanded.

13 Local Rule 8-204 provides:

14 When an affirmative allegation of jurisdiction is
15 required pursuant to Fed. R. Civ. P. 8(a)(1), it
16 (i) shall appear as the first allegation of any
17 complaint, petition, counterclaim, cross-claim or
18 third party claim; (ii) shall be styled "Jurisdiction,"
19 (iii) shall state the claimed statutory or other
20 basis of federal jurisdiction, and (iv) shall state
21 the facts supporting such jurisdictional claim.

19 A complaint must contain a short and plain statement as required
20 by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a
21 flexible pleading policy, a complaint must give fair notice and
22 state the elements of the claim plainly and succinctly. Jones v.
23 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984).

24 Plaintiff's complaint states the following:

25 I am appealing the two denial decision of the
26 appellat courts because I am unable to work
27 due to injuries to my back. I would like the
28 courts to retroact my disability claim to 9/3/04.

27 It thus appears that the relief Plaintiff seeks is review of
28 a denial, or two denials, of a disability claim relating to back

1 injuries, and retroactive disability benefits to September 3,
2 2004.

3 However, the complaint is lacking important information.

4 III. Jurisdictional Allegations

5 Rule 8(a) requires a short and plain statement of the
6 grounds upon which the Court's jurisdiction depends. Plaintiff
7 names "Social Security" as the Defendant and thus clearly appears
8 to be seeking review of a decision by the Commissioner of Social
9 Security in which benefits relating to disability were denied.

10 The Court would have jurisdiction pursuant to 42 U.S.C. §
11 405(g), which provides in pertinent part:

12 Any individual, after any final decision of
13 the Commissioner of Social Security made after
14 a hearing to which he was a party, irrespective
15 of the amount in controversy, may obtain a review
16 of such decision by a civil action commenced within
17 sixty days after the mailing to him of notice of
18 such decision or within such further time as the
19 Commissioner of Social Security may allow. Such
20 action shall be brought in the district court of
21 the United States for the judicial district in which
22 the plaintiff resides, or has his principal place
23 of business, or, if he does not reside or have his
24 principal place of business within any such judicial
25 district, in the United States District Court for
26 the District of Columbia....The court shall have power
27 to enter, upon the pleadings and transcript of the
28 record, a judgment affirming, modifying, or reversing
the decision of the Commissioner of Social Security,
with or without remanding the cause for a rehearing.

Here, however, Plaintiff has failed to state the facts upon
which jurisdiction depends; Plaintiff has not clearly stated that
it was the Commissioner of Social Security who made a final
decision that denied him benefits. The Court will infer that by
indicating his Corcoran address on the complaint, Plaintiff is
alleging that he resides within the Eastern District of
California. However, Plaintiff has not alleged that a final

1 administrative decision was made in his case; rather, he refers
2 to two decisions of the appellate courts.

3 Further, Plaintiff has not identified the name of the
4 administrative proceeding or the date of the decision or of the
5 date upon which notice of the decision was mailed.

6 Because of this, the complaint is not clear enough to inform
7 the Defendant of which decision it is that Plaintiff seeks this
8 Court to review. Further, it is not clear that this Court has
9 jurisdiction to hear this case.

10 IV. Social Security Number

11 Local Rules of Practice of the United States District Court,
12 Eastern District of California, Rule 8-206, provides in pertinent
13 part:

14 Complaints under Titles II, XVI, and XVIII of the
15 Social Security Act, 42 U.S.C. §§ 405(g), 1383(c)(3),
16 and 1395ff... shall contain the following information
in addition to the matters otherwise required by the
Federal Rules of Civil Procedure and Local Rules:

17 (1) In actions involving claims for retirement,
18 survivors, disability, health insurance and
19 black lung benefits, the last four digits of
20 social security number of the worker on whose wage
record the application for benefits was filed
(who may or may not be the plaintiff), or

21 (2) In actions involving claims for supplemental
22 security income benefits, the last four digits of
social security number of the plaintiff.

23 It is possible that Plaintiff is seeking benefits that come
24 within this rule and that Plaintiff's complaint should contain
25 the last four digits of his social security number.

26 V. Proper Defendant

27 The proper defendant in an action pursuant to 42 U.S.C. §
28 405(g) is the Commissioner of Social Security, who is presently

1 Michael J. Astrue. 42 U.S.C. § 405(g) (referring to the
2 "Commissioner's answer"); Butler v. Apfel, 144 F.3d 622, 624 (9th
3 Cir. 1998). Plaintiff has named "Social Security" instead of
4 Michael J. Astrue, Commissioner of Social Security.

5 VI. Lack of Signature on the Complaint

6 Plaintiff's complaint lacks a signature.

7 Fed. R. Civ. P. 11(a) requires that every paper filed in an
8 action shall be signed by the attorney of record or by the party
9 if not represented by an attorney; an unsigned paper shall be
10 stricken unless omission of the signature is corrected promptly
11 after being called to the attention of the attorney or party.
12 Further, Local Rule 7-131(b) provides that all pleadings and non-
13 evidentiary documents shall be signed by the individual attorney
14 for the party presenting them or by the party involved if that
15 party is appearing in propria persona. Further, the name of the
16 person signing the document shall be typed underneath the
17 signature.

18 The Court could strike Plaintiff's complaint. However, in
19 the interest of the efficient administration of justice, the
20 Court hereby notifies Plaintiff of the defect; Plaintiff will be
21 given leave to file an amended complaint, and if Plaintiff does
22 file an amended complaint, it must bear Plaintiff's signature. If
23 an amended complaint is filed without a signature, then the Court
24 may strike both the original and the amended complaint.

25 VII. Leave to Amend the Complaint

26 If the Court determines that a complaint fails to state a
27 claim, leave to amend should be granted to the extent that the
28 deficiencies of the complaint can be cured by amendment. Lopez v.

1 Smith, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). A complaint,
2 or a portion thereof, should only be dismissed for failure to
3 state a claim upon which relief may be granted if it appears
4 beyond doubt that the Plaintiff can prove no set of facts,
5 consistent with the allegations, in support of the claim or
6 claims that would entitle him to relief. See Hishon v. King &
7 Spalding, 467 U.S. 69, 73 (1984), citing Conley v. Gibson, 355
8 U.S. 41, 45-46 (1957); see also Palmer v. Roosevelt Lake Log
9 Owners' Ass'n., Inc., 651 F.2d 1289, 1294 (9th Cir. 1981).

10 Dismissal of a pro se complaint for failure to state a claim is
11 proper only where it is obvious that the Plaintiff cannot prevail
12 on the facts that he has alleged and that an opportunity to amend
13 would be futile. Lopez v. Smith, 203 F.3d at 1128.

14 In summary, the Court finds it necessary to dismiss the
15 complaint in its entirety. By not adequately identifying the
16 decision, not stating the last four digits of his Social Security
17 number, and not naming the Commissioner as the Defendant,
18 Plaintiff has failed to state a cognizable claim against a proper
19 defendant and has failed to plead facts demonstrating
20 jurisdiction in this Court.

21 However, it is possible that Plaintiff can allege a set of
22 facts, consistent with the allegations, in support of the claim
23 or claims that would entitle Plaintiff to relief. Thus, the Court
24 will grant Plaintiff an opportunity to amend the complaint to
25 cure the deficiencies of this complaint by stating the necessary
26 information. Failure to cure the deficiencies will result in
27 dismissal of this action without leave to amend.

28 In addition, Plaintiff is informed that the Court cannot

1 refer to a prior pleading in order to make Plaintiff's amended
2 complaint complete. Local Rule 15-220 requires that an amended
3 complaint be complete in itself without reference to any prior
4 pleading. This is because, as a general rule, an amended
5 complaint supersedes the original complaint. See Loux v. Rhay,
6 375 F.2d 55, 57 (9th Cir. 1967). Once Plaintiff files an amended
7 complaint, the original pleading no longer serves any function in
8 the case. Therefore, in an amended complaint, as in an original
9 complaint, each claim and the involvement of each defendant must
10 be sufficiently alleged.

11 Accordingly, it IS ORDERED that

12 1) Plaintiff's application to proceed in forma pauperis IS
13 GRANTED; and

14 2) Plaintiff's complaint IS DISMISSED with leave to amend;
15 and

16 3) Plaintiff IS GRANTED thirty days from the date of service
17 of this order to file an amended complaint that complies with the
18 requirements of the pertinent substantive law, the Federal Rules
19 of Civil Procedure, and the Local Rules of Practice; the amended
20 complaint must bear the docket number assigned this case and must
21 be labeled "First Amended Complaint"; failure to file an amended
22 complaint in accordance with this order will be considered to be
23 a failure to comply with an order of the Court pursuant to Local
24 Rule 11-110 and will result in dismissal of this action.

25 IT IS SO ORDERED.

26 Dated: October 11, 2007

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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