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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JASON BLOUNT,

Plaintiff,

v.

ANDREW SAUL, COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No.: 21-cv-0679-BLM

**ORDER DENYING WITHOUT
PREJUDICE PLAINTIFF'S AMENDED
APPLICATION TO PROCEED IN
DISTRICT COURT WITHOUT
PREPAYING OF FEES OR COSTS AND
DISMISSING AMENDED COMPLAINT
WITH LEAVE TO AMEND**

[ECF No. 7]

The instant case was initiated on April 16, 2021 when Plaintiff filed this action pursuant to 42 U.S.C. § 405(g) of the Social Security Act ("Act") seeking judicial review of the administrative decision of the Commissioner of the Social Security Administration ("Defendant" or "Commission"), which denied Plaintiff's application for the supplemental security income ("SSI") benefits. ECF No. 1. That same day, Plaintiff filed an Application to Proceed in District Court without Prepaying Fees or Costs. ECF No. 2.

On April 21, 2021, the Court issued an Order Denying Without Prejudice Plaintiff's Application to Proceed in District Court Without Prepaying of Fees or Costs and Dismissing Complaint with Leave to Amend. ECF No. 5. The Court stated that it denied Plaintiff's request to proceed *in forma pauperis* ("IFP") because Plaintiff did not establish that he was unable to

1 pay the \$400 filing fee. The Court identified specific questions that Plaintiff failed to answer and
2 specific information that Plaintiff failed to provide. Id. at 3. The Court explained that it needed
3 the missing information to determine whether Plaintiff was entitled to IFP status and advised
4 Plaintiff that if he amended his Application he should answer all of the application's questions in
5 accordance with the instructions. Id. at 3. Similarly, the Court told Plaintiff that his complaint
6 was dismissed because he failed to satisfy the first of four elements necessary for a complaint
7 to survive a *sua sponte* screening. Id. at 4-5; see also Skylar v. Saul, 2019 WL 4039650, *1
8 (S.D. Cal. Aug. 27, 2019). Specifically, Plaintiff failed to establish that he exhausted his
9 administrative remedies pursuant to 42 U.S.C. § 405(g) and that this civil action was commenced
10 within sixty days after notice of a final decision from the Commissioner. See ECF No. 5 at 5.

11 On November 8, 2021, Plaintiff filed a new complaint and a new Application to Proceed
12 in District Court without Prepaying Fees or Costs. See Case No. 21-cv-1889-JLB. On December
13 14, 2021, Judge Burkhardt transferred Plaintiff's filings to the original case. Id. at ECF No. 4.
14 The Court is interpreting the new filings as amended pleadings in the original case. See Case
15 No. 21-cv-0679-BLM at ECF Nos. 6 & 7. The Court has reviewed the amended application and
16 complaint and finds Plaintiff did not correct the errors identified by the Court in its April 21, 2021
17 order. Accordingly, for the reasons set forth below, Plaintiff's amended Application to Proceed
18 in District Court without Prepaying Fees or Costs is **DENIED WITHOUT PREJUDICE**, and the
19 amended complaint is **DISMISSED WITH LEAVE TO AMEND**.

20 **Application to Proceed in District Court without Prepaying Fees or Costs**

21 All parties instituting any civil action, suit, or proceeding in a district court of the United
22 States, except an application for a writ of habeas corpus, must pay a filing fee. 28 U.S.C.
23 § 1915(a). An action may proceed despite a plaintiff's failure to prepay the entire fee only if
24 she is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a), which states:

25 [A]ny court of the United States may authorize the commencement, prosecution
26 or defense of any suit, action or proceeding ... without prepayment of fees or
27 security therefor, by a person who submits an affidavit that includes a statement
28 of all assets such [person] possesses that the person is unable to pay such fees or

1 give security therefor.

2 The determination of indigency falls within the district court's discretion. California Men's
3 Colony v. Rowland, 939 F.2d 854, 858 (9th Cir. 1991), reversed on other grounds by, 506 U.S.
4 194 (1993) ("Section 1915 typically requires the reviewing court to exercise its sound discretion
5 in determining whether the affiant has satisfied the statute's requirement of indigency."). It is
6 well-settled that a party need not be completely destitute to proceed IFP. Adkins v. E.I. DuPont
7 de Nemours & Co., 335 U.S. 331, 339-40 (1948). To satisfy the requirements of 28 U.S.C.
8 § 1915(a), "an affidavit [of poverty] is sufficient which states that one cannot because of his
9 poverty pay or give security for costs ... and still be able to provide for himself and dependents
10 with the necessities of life." Id. at 339. At the same time, "the same even-handed care must
11 be employed to assure that federal funds are not squandered to underwrite, at public expense,
12 ... the remonstrances of a suitor who is financially able, in whole or in material part, to pull his
13 own oar." Temple v. Ellerthorpe, 586 F. Supp. 848, 850 (D.R.I. 1984). District courts tend to
14 reject IFP applications where the applicant can pay the filing fee with acceptable sacrifice to
15 other expenses. See, e.g., Allen v. Kelley, 1995 WL 396860, at *2 (N.D. Cal. 1995) (Plaintiff
16 initially permitted to proceed IFP, later required to pay \$ 120 filing fee out of \$ 900 settlement
17 proceeds); Ali v. Cuyler, 547 F. Supp. 129, 130 (E.D. Pa. 1982) (IFP application denied because
18 the plaintiff possessed savings of \$ 450 and that was more than sufficient to pay the \$60 filing
19 fee). Moreover, the facts as to the affiant's poverty must be stated "with some particularity,
20 definiteness, and certainty." United States v. McQuade, 647 F.2d 938, 940 (9th Cir. 1981).

21 Plaintiff has not satisfied his burden of demonstrating that he is entitled to IFP status.
22 Initially, the Court notes that Plaintiff did not sign and date the affidavit, so Plaintiff's financial
23 information is not provided under the penalty of perjury as required. See ECF No. 6 at 1.
24 Second, Plaintiff did not answer all of the questions contained in the application. Id. at 1-5. In
25 fact, Plaintiff answered fewer questions and provided less financial information in his amended
26 application than he did in his original application. Compare Case No. 21-cv-0679-BLM, ECF No.
27 2, with Case No. 21-cv-1889-JLB, ECF No. 2. This is precisely the error identified in the Court's
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1 April 12, 2021 order and Plaintiff did not correct it. ECF No. 5 at 3. In the amended application,
2 Plaintiff states he is employed, making \$312.00 per month, receives \$430.00 in CalFresh
3 benefits, and has two dependent children but does not state whether he is married, whether
4 the children live with him, and whether he receives (or pays) child support or alimony. ECF No.
5 6 at 1-9. If Plaintiff is married, he has not provided any of the required information regarding
6 his spouse's assets. Id. While Plaintiff's amended application added banking information
7 (\$43.57 in a Navy Fed account), it omits almost all of the information regarding his living
8 expenses. See Id. at 2-4. Despite the Court's prior order, Plaintiff does not provide any
9 information regarding whether he owns a car or home, whether he pays rent, a mortgage, or
10 his utilities, and whether he has other expenses such as food, medical, or transportation. Id. at
11 4. Plaintiff merely states that he pays \$135 per month for motor vehicle insurance. Id. The
12 information provided in the amended application is insufficient and the Court is unable to
13 evaluate Plaintiff's financial situation. Accordingly, the Court finds that Plaintiff has not
14 established that he is unable to pay the \$400 filing fee and **DENIES** without prejudice Plaintiff's
15 amended application to proceed IFP. If Plaintiff files a Second Amended Application, he must
16 sign the affidavit on page 1 of the application and he must answer all questions in accordance
17 with the instructions set forth on the first page of the form.

18 **SUA SPONTE SCREENING PURSUANT TO 28 U.S.C. § 1915(e)(2) and § 1915(a)**

19 Complaints filed by any person proceeding IFP pursuant to 28 U.S.C. § 1915(a) are
20 subject to a mandatory *sua sponte* screening by the Court. Lopez v. Smith, 203 F.3d 1122,
21 1127 (9th Cir. 2000); see also Alamar v. Social Security, 2019 WL1258846, at *3 (S.D. Cal. Mar.
22 19, 2019). A complaint should be dismissed *sua sponte* if it is (1) "frivolous or malicious;" (2)
23 "fails to state a claim on which relief may be granted;" or (3) "seeks monetary relief against a
24 defendant who is immune from such relief." See 28 U.S.C. § 1915(e)(2); Lopez, 203 F.3d at
25 1126–27.

26 To survive, all complaints must contain "a short and plain statement of the claim showing
27 that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "[T]he pleading standard Rule 8
28 announces does not require 'detailed factual allegations,' but it demands more than an

1 unadorned, the-defendant-unlawfully-harmed-me-accusation.” Ashcroft v. Iqbal, 556 U.S. 662,
2 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Furthermore,
3 “recitals of elements of a cause of action, supported by mere conclusory statements do not
4 suffice.” Id. Instead, the plaintiff must state a claim that is plausible on its face, meaning “the
5 pleaded factual content allows the court to draw the reasonable inference that the defendant is
6 liable for the misconduct alleged.” Iqbal, 556 U.S. at 678 (2009) (quoting Twombly, 550 U.S.
7 at 556, 570)). “When there are well-pleaded factual allegations, a court should assume their
8 veracity, and then determine whether they plausibly give rise to an entitlement to relief.” Iqbal,
9 556 U.S. at 679. Social security appeals are not exempt from the general screening requirements
10 for IFP cases proceeding under § 1915(e). Montoya v. Colvin, 2016 WL 890922, at *2 (D. Nev.
11 Mar. 8, 2016) (citing Hoagland v. Astrue, 2012 WL 2521753, *1 (E.D. Cal. June 28, 2012)).

12 In the context of a social security appeal, courts within the Ninth District have established
13 four elements necessary for a complaint to survive a *sua sponte* screening:

14 First, the plaintiff must establish that she has exhausted her administrative
15 remedies pursuant to 42 U.S.C. § 405(g), and that the civil action was commenced
16 within sixty days after notice of a final decision. Second, the complaint must
17 indicate the judicial district in which the plaintiff resides. Third, the complaint must
18 state the nature of the plaintiff's disability and when the plaintiff claims she became
19 disabled. Fourth, the complaint must contain a plain, short, and concise statement
20 identifying the nature of the plaintiff's disagreement with the determination made
by the Social Security Administration and show that the plaintiff is entitled to relief.

21 Skylar, 2019 WL 4039650 at *1 (quoting Montoya, 2016 WL 890922 at *2). With regard to
22 element four, a complaint is insufficient if it merely states that the Commissioner was wrong in
23 denying a plaintiff benefits. See id.; see also Hoagland, 2012 WL 2521753 at *3 (“Every plaintiff
24 appealing an adverse decision of the Commissioner believes that the Commissioner was wrong.
25 The purpose of the complaint is to briefly and plainly allege facts supporting the legal conclusion
26 that the Commissioner’s decision was wrong.”). Instead, the “complaint . . . must set forth a
27 brief statement of facts setting forth the reasons why the Commissioner’s decision was wrong.”
28 Id. at *2.

1 Plaintiff's amended complaint is almost identical to Plaintiff's original complaint. Compare
2 Case No. 21-cv-0679-BLM, ECF No. 1, with Case No. 21-cv-1889-JLB, ECF No. 1. In its April 21,
3 2021 order, the Court found that Plaintiff had satisfied elements two, three, and four, and
4 directed Plaintiff to amend his complaint to show that he exhausted his administrative remedies
5 pursuant to 42 U.S.C. § 405(g) and that this civil action was commenced within sixty days after
6 notice of a final decision from the Commissioner. ECF No. 5 at 5. Plaintiff did not correct this
7 error in his amended complaint. ECF No. 7. This is a critical error that Plaintiff must fix. In
8 addition, Plaintiff's amended complaint does not include his name and address on the first page,
9 which prevents the Court from finding that Plaintiff has satisfied the second element by stating
10 that Plaintiff resides within the jurisdictional boundaries of this Court in San Diego, California.
11 See Id.

12 Accordingly, Plaintiff's amended complaint is **DISMISSED WITH LEAVE TO AMEND**.
13 If Plaintiff files a Second Amended Complaint, he must add information establishing that (1) he
14 exhausted his administrative remedies pursuant to 42 U.S.C § 405(g), (2) this civil action was
15 commenced within sixty days after notice of a final decision from the Commissioner, and (3) he
16 lives within the Southern District of California.

17 **CONCLUSION**

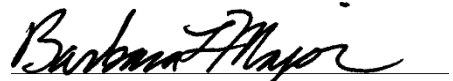
18 In accordance with the foregoing, the Court **DISMISSES** Plaintiff's amended complaint
19 with leave to amend and **DENIES** Plaintiff's amended IFP Application. If Plaintiff elects to file
20 a Second Amended Complaint, he must do so by **January 28, 2022**. The new complaint must
21 be entitled Second Amended Complaint and must be filed in Civil Case No. 21-cv-0679-BLM.
22 The Second Amended Complaint must correct the errors identified in this order. In addition,
23 Plaintiff must file a Second Amended Application to Proceed in District Court Without Prepaying
24 of Fees or Costs or pay the applicable filing fee when the Second Amended Complaint is filed,
25 and no later than **January 28, 2022**. If Plaintiff files a Second Amended Application to Proceed
26 in District Court Without Prepaying of Fees or Costs, he must sign the affidavit on page 1 and
27 answer all of the questions in the application.

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1 The instant case is **DISMISSED**. To have the case reopened, Plaintiff must, no later
2 than **January 28, 2022** (1) file a Second Amended Complaint which corrects the errors
3 identified in this order, and (2) pay the filing fee or file a Second Amended Application that
4 corrects the errors identified in this order.

5 **IT IS SO ORDERED.**

6 Dated: 12/21/2021


7 Hon. Barbara L. Major
8 United States Magistrate Judge
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