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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF CALIFORNIA
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8 ISIDRO CHAVEZ,

CASE NO. 1:12-cv-00657-SMS

9 Plaintiff,

ORDER DISMISSING COMPLAINT FOR
FAILURE TO STATE A CLAIM, WITH
LEAVE TO AMEND WITHIN THIRTY DAYS

10 v.

11 MICHAEL J. ASTRUE,
Commissioner of Social Security,

(Doc. 1)

12 Defendant.
13 _____/

14 **Screening Order**

15 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the
16 Court shall dismiss the case at any time if the Court determines that . . . the action or appeal . . .
17 fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

18 Plaintiff Isidro Chavez, proceeding *in forma pauperis*, by his attorneys, Milam Law, filed
19 a complaint on April 25, 2012. Because Plaintiff’s complaint fails to state a claim upon which
20 relief can be granted, 28 U.S.C. § 1915(e)(2)(B)(ii) requires this Court to dismiss it.

21 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
22 exceptions.” *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 512 (2002). Pursuant to Rule 8(a), a
23 complaint must contain “a short and plain statement of the claim showing that the pleader is
24 entitled to relief” Fed. R. Civ. P. 8(a). “Such a statement must simply give the defendant fair
25 notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Swierkiewicz*, 534 U.S.
26 at 512. Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of
27 the cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*,
28 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009), citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,

1 555 (2007). “Plaintiff must set forth sufficient factual matter accepted as true, to ‘state a claim that
2 is plausible on its face.’” *Iqbal*, 129 S.Ct. at 1949, quoting *Twombly*, 550 U.S. at 555. While
3 factual allegations are accepted as true, legal conclusions are not. *Iqbal*, 129 S.Ct. at 1949.

4 Although accepted as true, “[f]actual allegations must be [sufficient] to raise a right to relief
5 above the speculative level.” *Twombly*, 550 U.S. at 555 (citations omitted). A plaintiff must set
6 forth “the grounds of his entitlement to relief,” which “requires more than labels and conclusions,
7 and a formulaic recitation of the elements of a cause of action.” *Id.* at 555-56 (internal quotation
8 marks and citations omitted). To adequately state a claim against a defendant, a plaintiff must set
9 forth the legal and factual basis for his claim.

10 Plaintiff’s complaint, prepared by his attorney on a form that required only the insertion of
11 Plaintiff’s name and several relevant dates, fails to meet these pleading standards. The complaint
12 includes no specific facts whatsoever setting forth grounds for Plaintiff’s claim for relief. The
13 complaint is merely a form statement of legal conclusions. As such, the complaint fails to state a
14 claim on which relief may be granted.

15 “A short and plain statement of the claim showing that the pleader is entitled to relief”
16 contemplates a simple and straightforward, but complete, account of the relevant occurrences,
17 actors, and resulting damages. Should Plaintiff elect to amend his complaint, as this order permits
18 him to do, the complaint must allege sufficient facts, setting forth the legal and factual basis for his
19 claim that the Commissioner’s determination was not supported by substantial evidence.

20 **Conclusion and Order**

21 Plaintiff’s complaint fails to set forth facts establishing the grounds of his entitlement to
22 relief and alleges solely legal conclusions. The Court will provide Plaintiff with the opportunity to
23 file an amended complaint curing the deficiencies identified by the Court in this order. Plaintiff
24 may not change the nature of this suit by adding new, unrelated claims in the amended complaint.
25 *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

26 Plaintiff’s amended complaint should be brief, but must allege sufficient facts to establish
27 his cause of action. Fed. R. Civ. P. 8(a). Plaintiff should focus on setting forth, as briefly but
28 specifically as possible, the facts necessary to state a claim on which relief may be granted.

1 Plaintiff is advised that an amended complaint supercedes the original complaint, *Forsyth*
2 *v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997), *aff'd*, 525 U.S. 299 (1999); *King v. Atiyeh*,
3 814 F.2d 565, 567 (9th Cir. 1987), and must be “complete in itself without reference to the prior or
4 superceded pleading.” Local Rule 15-220. “All causes of action alleged in an original complaint
5 which are not alleged in an amended complaint are waived.” *King*, 814 F.2d at 567; *accord*
6 *Forsyth*, 114 F.3d at 1474.

7 Based on the foregoing, it is HEREBY ORDERED that:

- 8 1. Plaintiff’s complaint is dismissed with leave to amend for failure to state facts
9 sufficient to state a claim on which relief may be granted;
- 10 2. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an
11 amended complaint curing the deficiencies identified by the Court in this order; and
- 12 3. If Plaintiff fails to file an amended complaint within **thirty (30) days** from the date
13 of service of this order, this action will be dismissed with prejudice, pursuant to 28
14 U.S.C. § 1915(e)(2)(B)(ii), for failure to state a claim.

15
16 IT IS SO ORDERED.

17 **Dated:** April 30, 2012

18 /s/ Sandra M. Snyder
19 UNITED STATES MAGISTRATE JUDGE
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