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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

TAMMY LOUISE ORTA,

CASE NO. 1:12-cv-00837-SMS

Plaintiff,

v.

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

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

(Doc. 2)

Screening Order

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

Plaintiff Tammy Orta, proceeding *in forma pauperis*, by her attorneys, Law Offices of Lawrence D. Rohlfing, filed her complaint on May 22, 2012. Because Plaintiff’s complaint fails to state a claim upon which relief can be granted, 28 U.S.C. § 1915(e)(2)(B)(ii) requires this Court to dismiss it.

**I. Screening Requirement**

The statutory privilege of proceeding *in forma pauperis* is a privilege, not a right. *Williams v. Field*, 394 F.2d 329, 332 (9<sup>th</sup> Cir.), *cert. denied*, 393 U.S. 891 (1968); *Smart v. Heinze*, 347 F.2d 114, 116 (9<sup>th</sup> Cir.), *cert. denied*, (1965). “Indigence does not create a constitutional right to the expenditure of public funds and the valuable time of the courts in order to prosecute an action which is totally without merit.” *Phillips v. Mashburn*, 746 F.2d 782, 785

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1 (11<sup>th</sup> Cir. 1984). Accordingly, the statute requires the Court to screen any case in which a  
2 plaintiff proceeds *in forma pauperis*, as provided in 28 U.S.C. § 1915. Screening is required  
3 even if the plaintiff pursues an appeal of right, such as an appeal of the Commissioner’s denial of  
4 social security disability benefits. *See, e.g.*, 42 U.S.C. § 405(g) (establishing conditions under  
5 which a claimant of social security benefits may seek judicial review of the Commissioner’s  
6 determination). A court must dismiss any case, regardless of the fee paid, if the action or appeal  
7 is (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks  
8 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915 (e)(2)(B).

9 **II. Cognizable Claim**

10 In determining whether a complaint fails to state a cognizable claim, a court applies  
11 substantially the same standard applied in motions to dismiss pursuant to F.R.Civ.P. 12(b)(6).  
12 *Gutierrez v. Astrue*, 2011 WL 1087261 at \*1 (E.D.Cal. March 23, 2011) (No. 1:11-cv-00454-  
13 GSA). “The focus of any Rule 12(b)(6) dismissal . . . is the complaint.” *Schneider v.*  
14 *California Department of Corrections*, 151 F.3d 1194, 1197 n. 1 (9<sup>th</sup> Cir. 1998). A court must  
15 dismiss a complaint, or portion of a complaint, for failure to state a claim upon which relief can  
16 be granted if it appears beyond doubt that the plaintiff can prove no set of facts in support of his  
17 or her claim(s) that would entitle the plaintiff to relief. *Hishon v. King & Spalding*, 467 U.S.  
18 69, 73 (1984). When a court reviews a complaint under this standard, it must accept as true the  
19 complaint’s allegations (*Hospital Bldg. Co. v. Trustees of Rex Hospital*, 425 U.S. 738, 740  
20 (1976)), construe the pleadings in the light most favorable to the plaintiff (*Resnick v. Hayes*, 213  
21 F.3d 443, 447 (9<sup>th</sup> Cir. 2000)), and resolve all doubts in the plaintiff’s favor (*Jenkins v.*  
22 *McKeithen*, 395 U.S. 411, 421 (1969)).

23 **A. Short and Plain Statement**

24 The sufficiency of a complaint is first determined by referring to F.R.Civ.P. 8(a) which  
25 requires that a civil complaint contain:

- 26 (1) a short and plain statement of the grounds for the court’s jurisdiction,  
27 unless the court already has jurisdiction and the claim needs no new  
28 jurisdictional support;

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- 1 (2) a short and plain statement of the claim showing the pleader is entitled to relief; and
- 2
- 3 (3) a demand for the relief sought which may include relief in the alternative or different types of relief.

4 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited  
5 exceptions.” *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 512 (2002). A complaint appealing  
6 the Commissioner’s decision denying social security disability benefits is not exempt from the  
7 general rules of civil pleading. “While [42 U.S.C.] § 405(g) does not require that a complaint  
8 spell out the basis upon which relief might be granted, Rule 8(a) requires a civil plaintiff to assert  
9 the basis upon which he grounds his claim.” *Brown v. Astrue*, 2011 WL 3664429 at \*2 (D. N.H.  
10 August 19, 2011) (No. 11-cv-056-JL). The complaint must “must simply give the defendant fair  
11 notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Swierkiewicz*, 534  
12 U.S. at 512. In preparing her amended complaint, Plaintiff should state specifically why the facts  
13 of her situation did not support those of the ALJ’s legal conclusions that she contends were not  
14 supported by substantial evidence.

15 **B. Principles of Pleading**

16 **1. Factual Allegations and Legal Conclusions**

17 Determining a complaint’s sufficiency invokes two underlying principles of pleading.  
18 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,  
19 555 (2007). First, the Court must accept as true the well-pleaded factual allegations of the  
20 complaint. *Twombly*, 550 U.S. at 555. Detailed factual allegations are not required, but  
21 “[t]hreadbare recitals of the elements of the cause of action, supported by mere conclusory  
22 statements, do not suffice.” *Iqbal*, 556 U.S. at 678. “Plaintiff must set forth sufficient factual  
23 matter accepted as true, to ‘state a claim that is plausible on its face.’” *Iqbal*, 129 S.Ct. at 1949,  
24 quoting *Twombly*, 550 U.S. at 555.

25 Although accepted as true, “[f]actual allegations must be [sufficient] to raise a right to  
26 relief above the speculative level.” *Twombly*, 550 U.S. at 555 (*citations omitted*). A plaintiff  
27 must set forth “the grounds of his entitlement to relief,” which “requires more than labels and  
28 conclusions, and a formulaic recitation of the elements of a cause of action.” *Id.* at 555-56

1 (*internal quotation marks and citations omitted*). A complaint appealing the Commissioner's  
2 denial of disability benefits must set forth a brief statement of facts setting forth the reasons why  
3 the Commissioner's decision was wrong. *Brown*, 2011 WL 3664429 at \*3. *See also*  
4 *Demetriades v. Astrue*, 2011 WL 4079054 (W.D.Va. September 13, 2011) (No. 7:11-cv-00407)  
5 (dismissing case without prejudice for failure to state a plausible claim for relief as a result of  
6 insufficient factual allegations); *Ormsby v. Astrue*, 2011 WL 3625101 at \* 2, *adopted by* 2011  
7 WL 3625095 (M.D. Fla. August 4, 2011) (No. 6:11-cv-1262-ORL-22) (dismissing cursory  
8 complaint which alleged insufficient facts to state a cognizable claim).

9 While factual allegations are accepted as true, legal conclusions are not. *Iqbal*, 556 U.S.  
10 at 678. A court is "not bound to accept as true a legal conclusion couched as a factual  
11 allegation." *Id.* "Nor is the court required to accept as true allegations that are merely  
12 conclusory, unwarranted deductions of fact, or unreasonable inferences." *Sprewell v. Golden*  
13 *State Warriors*, 266 F.3d 979, 988 (9<sup>th</sup> Cir. 2001).

14 A legal conclusion is a statement such as, "Plaintiff is unable to engage in substantial  
15 gainful activity because of a medically determinable physical or mental impairment which has  
16 lasted or can be expected to last for a continuous period of not less than twelve months." Facts  
17 include such allegations as "Plaintiff has severe arthritis, peripheral neuropathy, and  
18 fibromyalgia"; "Plaintiff worked as auto mechanic until June 1, 1990"; and "Plaintiff was fired  
19 from her job when she became unable to grasp her tools."

## 20 **2. Plausible Claim for Relief**

21 The second underlying principle is that "only a complaint that states a plausible claim for  
22 relief survives a motion to dismiss." *Iqbal*, 556 U.S. at 679. To permit the Court to determine  
23 that a complaint states a plausible claim for relief, based on the reviewing court's judicial  
24 experience and common sense, the well-pleaded facts must permit the court "to infer more than a  
25 mere possibility . . . 'that the pleader is entitled to relief.'" *Id.*, *quoting* F.R.Civ.P. 8(a)(2). The  
26 Supreme Court explained:

27 In keeping with these principles a court considering a motion to dismiss can  
28 choose to begin by identifying pleadings that, because they are no more than  
conclusions, are not entitled to the assumption of truth. While legal conclusions

1 can provide the framework of a complaint, they must be supported by factual  
2 allegations. When there are well-pleaded factual allegations, a court should  
assume their veracity and then determine whether they plausibly give rise to an  
entitlement to relief.

3 *Iqbal*, 556 U.S. at 679.

4 *See also Cook v. Astrue*, 2012 WL 812380 at \*2 (E.D.Cal. March 9, 2012) (No. 1:12-cv-  
5 00347-GSA) (construing that the facts alleged in the complaint related to two legal conclusions);  
6 *Sanchez v. Astrue*, 2011 WL 1549307 (E.D. Cal. April 21, 2011) (No. 1:11-cv-00607-GSA).

7 This means that the Court cannot accept a legal conclusions set forth in a complaint if the  
8 plaintiff has not supported his or her contentions with facts. For example, if a plaintiff alleges  
9 only that he or she is not capable of performing past work without setting forth facts that prove  
10 that he or she cannot do that work, the Court cannot assume that the contention is true.

### 11 **C. Other Necessary Allegations**

12 Because the appeal provision set forth in 42 U.S.C. § 405(g) constitutes a waiver of  
13 sovereign immunity, courts must strictly construe the applicable time limit. *Bowen v. City of*  
14 *New York*, 476 U.S. 467, 479 (1986). *See also Fletcher v. Apfel*, 210 F.3d 510, 513 (5<sup>th</sup> Cir.  
15 2000) (affirming summary judgment in favor of the Commissioner for untimely filing of one  
16 day). Accordingly, a complaint appealing the Commissioner’s denial of an application for social  
17 security benefits must allege the dates of the plaintiff’s application(s) and the related denial(s).  
18 *Cook*, 2012 WL 812380 at \*3; *Sanchez*, 2011 WL 1549307 at \*2-3; *Gutierrez*, 2011 WL  
19 1087261 at \*3. A plaintiff must also allege that he or she appealed to the Appeals Council,  
20 setting forth the application date, the decision date, and the outcome. *Id.* *See also Pierre*, 2012  
21 WL 1066811 at \* 3 (requiring a plaintiff to allege facts supporting the conclusion that  
22 Commissioner rendered a final decision in the application below); *Ormsby*, 2011 WL 3625101 at  
23 \* 2.

### 24 **III. Conclusion and Order**

25 In rejecting Brown’s complaint appealing the Commissioner’s denying him benefits, the  
26 Court observed, “The complaint’s sole assertion of a basis for relief is that Brown feels the SSA  
27 decision was wrong.” *Brown*, 2011 WL 3664429 at \*2. Every plaintiff appealing an adverse  
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1 decision of the Commissioner believes that the Commissioner was wrong. The purpose of the  
2 complaint is to briefly and plainly allege facts supporting the legal conclusion that the  
3 Commissioner's decision was wrong. *Id.* at \*3. Plaintiff's amended complaint should do so.

4 Because the complaint fails to allege facts sufficient to state a claim upon which relief can  
5 be granted, this Court will dismiss it. The Court will provide Plaintiff with an additional  
6 opportunity to file an amended complaint curing the deficiencies identified by the Court in this  
7 order. Plaintiff must revise her complaint to allege facts sufficient to support a cognizable claim.  
8 Plaintiff may not change the nature of this suit by adding new, unrelated claims in the amended  
9 complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

10 Plaintiff's amended complaint should be brief, but must allege sufficient facts to establish  
11 her cause of action. Fed. R. Civ. P. 8(a). Plaintiff should focus on setting forth, as briefly but  
12 specifically as possible, the facts necessary to state a claim on which relief may be granted.  
13 Plaintiff must avoid including unnecessary language, as well as advocacy and argumentation  
14 more appropriate in her opening brief, which is to be submitted later.

15 Plaintiff is advised that an amended complaint supercedes all prior complaints, *Forsyth v.*  
16 *Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997), *aff'd*, 525 U.S. 299 (1999); *King v. Atiyeh*,  
17 814 F.2d 565, 567 (9th Cir. 1987), and must be "complete in itself without reference to the prior  
18 or superceded pleading." Local Rule 15-220. "All causes of action alleged in an original  
19 complaint which are not alleged in an amended complaint are waived." *King*, 814 F.2d at 567;  
20 *accord Forsyth*, 114 F.3d at 1474.

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

- 22 1. Plaintiff's complaint is dismissed with leave to amend for failure to state facts  
23 sufficient to state a claim on which relief may be granted;
- 24 2. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file  
25 an amended complaint curing the deficiencies identified by the Court in this order;  
26 and

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3. If Plaintiff fails to file an amended complaint within **thirty (30) days** from the date of service of this order, this action will be dismissed with prejudice, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), for failure to state a claim.

IT IS SO ORDERED.

**Dated: June 6, 2012**

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE