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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 AMENDED
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

On June 6, 2012, this Court dismissed Plaintiff’s complaint for failure to state a claim with leave to amend within thirty days. On June 21, 2012, Plaintiff, proceeding *in forma pauperis*, by her attorneys, Law Offices of Lawrence D. Rohlfing, filed an amended complaint. Doc. 7. Because Plaintiff’s amended complaint fails to allege facts sufficient 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 (9th Cir.), *cert. denied*, 393 U.S. 891 (1968); *Smart v. Heinze*, 347 F.2d 114, 116 (9th 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 (11th Cir. 1984). Accordingly, the statute requires the Court to screen any case in which a plaintiff proceeds *in forma pauperis*, as provided in 28 U.S.C. § 1915. Screening is required even if the plaintiff pursues an appeal of right, such as an appeal of the Commissioner’s denial of

1 social security disability benefits. *See, e.g.*, 42 U.S.C. § 405(g) (establishing conditions under
2 which a claimant of social security benefits may seek judicial review of the Commissioner’s
3 determination). A court must dismiss any case, regardless of the fee paid, if the action or appeal
4 is (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915 (e)(2)(B).

6 **II. Cognizable Claim**

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

20 **A. Short and Plain Statement**

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

- 23 (1) a short and plain statement of the grounds for the court’s jurisdiction,
24 unless the court already has jurisdiction and the claim needs no new
jurisdictional support;
- 25 (2) a short and plain statement of the claim showing the pleader is entitled to
26 relief; and

27
28 ¹ When the plaintiff does not proceed *in forma pauperis*, the screening function is entrusted to the
defendant(s), who may challenge the sufficiency of a complaint through a Rule 12(b)(6) motion.

1 (3) a demand for the relief sought which may include relief in the alternative
2 or different types of relief.

3 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
4 exceptions.” *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 512 (2002). A complaint appealing
5 the Commissioner’s decision denying social security disability benefits is not exempt from the
6 general rules of civil pleading. “While [42 U.S.C.] § 405(g) does not require that a complaint
7 spell out the basis upon which relief might be granted, Rule 8(a) requires a civil plaintiff to assert
8 the basis upon which he grounds his claim.” *Brown v. Astrue*, 2011 WL 3664429 at *2 (D.N.H.
9 August 19, 2011) (No. 11-cv-056-JL). The complaint must “must simply give the defendant fair
10 notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Swierkiewicz*, 534
11 U.S. at 512.

12 **B. Principles of Pleading**

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

14 Determining a complaint’s sufficiency invokes two underlying principles of pleading.
15 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,
16 555 (2007). First, the Court must accept as true the well-pleaded factual allegations of the
17 complaint. *Twombly*, 550 U.S. at 555. Detailed factual allegations are not required, but
18 “[t]hreadbare recitals of the elements of the cause of action, supported by mere conclusory
19 statements, do not suffice.” *Iqbal*, 556 U.S. at 678. “Plaintiff must set forth sufficient factual
20 matter accepted as true, to ‘state a claim that is plausible on its face.’” *Iqbal*, 129 S.Ct. at 1949,
21 quoting *Twombly*, 550 U.S. at 555.

22 Although accepted as true, “[f]actual allegations must be [sufficient] to raise a right to
23 relief above the speculative level.” *Twombly*, 550 U.S. at 555 (*citations omitted*). A plaintiff
24 must set forth “the grounds of his entitlement to relief,” which “requires more than labels and
25 conclusions, and a formulaic recitation of the elements of a cause of action.” *Id.* at 555-56
26 (*internal quotation marks and citations omitted*). A complaint appealing the Commissioner’s
27 denial of disability benefits must set forth a brief statement of facts setting forth the reasons why
28 the Commissioner’s decision was wrong. *Brown*, 2011 WL 3664429 at *3. *See also*

1 *Demetriades v. Astrue*, 2011 WL 4079054 (W.D.Va. September 13, 2011) (No. 7:11-cv-00407)
2 (dismissing case without prejudice for failure to state a plausible claim for relief as a result of
3 insufficient factual allegations); *Ormsby v. Astrue*, 2011 WL 3625101 at * 2, *adopted by* 2011
4 WL 3625095 (M.D. Fla. August 4, 2011) (No. 6:11-cv-1262-ORL-22) (dismissing cursory
5 complaint which alleged insufficient facts to state a cognizable claim).

6 The amended complaint indicates confusion regarding facts and legal conclusions. In
7 general legal usage, a *fact* is defined as:

8 **1.** Something that actually exists; an aspect of reality <it is a fact that all people
9 are mortal>. • Facts include not just tangible things, actual occurrences, and
10 relationships, but also states of mind such as intentions and opinions. **2.** An
11 actual or alleged event or circumstance, as distinguished from its legal effect,
12 consequence, or interpretation <the jury made a finding of fact>.

13 *Black's Law Dictionary* at 628 (8th ed. 1999).

14 In common use, a fact may be defined as “the quality of being actual,” “something that
15 has actual existence,” “an actual occurrence,” and “a piece of information presented as having
16 objective reality.” *Merriam-Webster's Collegiate Dictionary* at 416 (10th ed. 1996).

17 While factual allegations are accepted as true, legal conclusions are not. *Iqbal*, 556 U.S.
18 at 678. A court is “not bound to accept as true a legal conclusion couched as a factual
19 allegation.” *Id.* “Nor is the court required to accept as true allegations that are merely
20 conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Sprewell v. Golden*
21 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

22 A legal conclusion is a statement such as, “The determination that Plaintiff possesses the
23 residual functional capacity to perform work in the national and local economy is contrary to the
24 medical evidence.” Facts include such allegations as “Plaintiff has severe bilateral carpal tunnel
25 syndrome, peripheral neuropathy, and fibromyalgia”; “Plaintiff worked as auto mechanic until
26 June 1, 1990”; and “Plaintiff was fired from her job when she became unable to grasp her tools.”

26 **2. Plausible Claim for Relief**

27 The second underlying principle is that “only a complaint that states a plausible claim for
28 relief survives a motion to dismiss.” *Iqbal*, 556 U.S. at 679. To permit the Court to determine
that a complaint states a plausible claim for relief, based on the reviewing court’s judicial

1 experience and common sense, the well-pleaded facts must permit the court “to infer more than a
2 mere possibility ‘that the pleader is entitled to relief.’” *Id.*, quoting F.R.Civ.P. 8(a)(2). The
3 Supreme Court explained:

4 In keeping with these principles a court considering a motion to dismiss can
5 choose to begin by identifying pleadings that, because they are no more than
6 conclusions, are not entitled to the assumption of truth. While legal conclusions
7 can provide the framework of a complaint, they must be supported by factual
8 allegations. When there are well-pleaded factual allegations, a court should
9 assume their veracity and then determine whether they plausibly give rise to an
10 entitlement to relief.

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

12 *See also Cook v. Astrue*, 2012 WL 812380 at *2 (E.D.Cal. March 9, 2012) (No. 1:12-cv-
13 00347-GSA) (construing that the facts alleged in the complaint related to two legal conclusions);
14 *Sanchez v. Astrue*, 2011 WL 1549307 (E.D. Cal. April 21, 2011) (No. 1:11-cv-00607-GSA).

15 **III. Conclusion and Order**

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

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

Plaintiff’s second amended complaint should be brief, but must allege sufficient facts to
establish her cause of action. Fed. R. Civ. P. 8(a). Plaintiff should focus on setting forth, as

1 briefly but specifically as possible, the facts necessary to state a claim on which relief may be
2 granted. Plaintiff must avoid surplusage, as well as advocacy and argumentation more
3 appropriate in her opening brief, which is to be submitted later.

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

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

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

22
23 IT IS SO ORDERED.

24 **Dated: June 27, 2012**

25 /s/ Sandra M. Snyder
26 UNITED STATES MAGISTRATE JUDGE
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