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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MIGUEL A. FRANCO,

CASE NO. 1:12-cv-01267-SMS

Plaintiff,

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

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

(Doc. 6)

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 Miguel A. Franco, proceeding *in forma pauperis*, by his attorney, Law Offices of Rohlfig & Kalagian, LLP, filed his first amended complaint on August 22, 2012. Because Plaintiff’s first amended 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 (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

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

8 **II. Cognizable Claim**

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

21 **A. Short and Plain Statement**

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

- 24 (1) a short and plain statement of the grounds for the court’s jurisdiction, unless
25 the court already has jurisdiction and the claim needs no new jurisdictional
26 support;
27 (2) a short and plain statement of the claim showing the pleader is entitled to
28 relief; and
(3) a demand for the relief sought which may include relief in the alternative or
different types of relief.

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

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, 555
16 (2007). First, the Court must accept as true the well-pleaded factual allegations of the complaint.
17 *Twombly*, 550 U.S. at 555. Detailed factual allegations are not required, but “[t]hreadbare recitals
18 of the elements of the cause of action, supported by mere conclusory statements, do not suffice.”
19 *Iqbal*, 556 U.S. at 678. “Plaintiff must set forth sufficient factual matter accepted as true, to ‘state
20 a claim that is plausible on its face.’” *Iqbal*, 129 S.Ct. at 1949, quoting *Twombly*, 550 U.S. at 555.

21 Although accepted as true, “[f]actual allegations must be [sufficient] to raise a right to relief
22 above the speculative level.” *Twombly*, 550 U.S. at 555 (*citations omitted*). A plaintiff must set
23 forth “the grounds of his entitlement to relief,” which “requires more than labels and conclusions,
24 and a formulaic recitation of the elements of a cause of action.” *Id.* at 555-56 (*internal quotation*
25 *marks and citations omitted*). A complaint appealing the Commissioner’s denial of disability
26 benefits must set forth a brief statement of facts setting forth the reasons why the Commissioner’s
27 decision was wrong. *Brown*, 2011 WL 3664429 at *3. See also *Demetriades v. Astrue*, 2011 WL
28 4079054 (W.D.Va. September 13, 2011) (No. 7:11-cv-00407) (dismissing case without prejudice

1 for failure to state a plausible claim for relief as a result of insufficient factual allegations); *Ormsby*
2 *v. Astrue*, 2011 WL 3625101 at * 2, *adopted by* 2011 WL 3625095 (M.D. Fla. August 4, 2011) (No.
3 6:11-cv-1262-ORL-22) (dismissing cursory complaint which alleged insufficient facts to state a
4 cognizable claim).

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

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

16 **2. Plausible Claim for Relief**

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

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

Iqbal, 556 U.S. at 679.

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1 *See also Cook v. Astrue*, 2012 WL 812380 at *2 (E.D.Cal. March 9, 2012) (No. 1:12-cv-
2 00347-GSA) (construing that the facts alleged in the complaint related to two legal conclusions);
3 *Sanchez v. Astrue*, 2011 WL 1549307 (E.D. Cal. April 21, 2011) (No. 1:11-cv-00607-GSA). This
4 means that the Court cannot accept a legal conclusions set forth in a complaint if the plaintiff has not
5 supported his or her contentions with facts. For example, if a plaintiff alleges only that he or she is
6 not capable of performing past work without setting forth facts that prove that he or she cannot do
7 that work, the Court cannot assume that the contention is true.

8 **III. Conclusion and Order**

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

16 Because the first amended complaint fails to allege *facts* sufficient to state a claim upon
17 which relief can be granted, this Court will dismiss it. The Court will provide Plaintiff with an
18 additional opportunity to file a second amended complaint curing the deficiencies identified by the
19 Court in this order. Plaintiff must revise his complaint to allege facts sufficient to support a
20 cognizable claim.

21 Plaintiff’s second amended complaint should be brief, but must allege sufficient facts to
22 establish his cause of action. Fed. R. Civ. P. 8(a). Plaintiff should focus on setting forth, as briefly
23 but specifically as possible, the facts necessary to state a claim on which relief may be granted.
24 Plaintiff must avoid including unnecessary language, as well as advocacy and argumentation more
25 appropriate in his opening brief, which is to be submitted later.

26 Plaintiff is advised that an amended complaint supercedes all prior complaints, *Forsyth v.*
27 *Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997), *aff’d*, 525 U.S. 299 (1999); *King v. Atiyeh*, 814
28 F.2d 565, 567 (9th Cir. 1987), and must be “complete in itself without reference to the prior or

1 superceded pleading.” Local Rule 15-220. “All causes of action alleged in an original
2 complaint which are not alleged in an amended complaint are waived.” *King*, 814 F.2d at 567;
3 *accord Forsyth*, 114 F.3d at 1474.

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

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

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14 IT IS SO ORDERED.

15 **Dated:** August 30, 2012

16 /s/ Sandra M. Snyder
17 UNITED STATES MAGISTRATE JUDGE
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