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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 SECOND 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. 8)

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 second amended complaint on September 20, 2012. Because Plaintiff’s second 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

1 plaintiff proceeds *in forma pauperis*, as provided in 28 U.S.C. § 1915. Screening is required
2 even if the plaintiff pursues an appeal of right, such as an appeal of the Commissioner’s denial of
3 social security disability benefits. *See, e.g.*, 42 U.S.C. § 405(g) (establishing conditions under
4 which a claimant of social security benefits may seek judicial review of the Commissioner’s
5 determination). A court must dismiss any case, regardless of the fee paid, if the action or appeal
6 is (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks
7 monetary relief from a defendant who is immune from such relief. 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-
12 GSA). “The focus of any Rule 12(b)(6) dismissal . . . is the complaint.” *Schneider v.*
13 *California Department of Corrections*, 151 F.3d 1194, 1197 n. 1 (9th Cir. 1998). A court must
14 dismiss a complaint, or portion of a complaint, for failure to state a claim upon which relief can
15 be granted if it appears beyond doubt that the plaintiff can prove no set of facts in support of his
16 or her claim(s) that would entitled the plaintiff to relief. *Hishon v. King & Spalding*, 467 U.S.
17 69, 73 (1984). When a court reviews a complaint under this standard, it must accept as true the
18 complaint’s allegations (*Hospital Bldg. Co. v. Trustees of Rex Hospital*, 425 U.S. 738, 740
19 (1976)), construe the pleadings in the light most favorable to the plaintiff (*Resnick v. Hayes*, 213
20 F.3d 443, 447 (9th Cir. 2000)), and resolve all doubts in the plaintiff’s favor (*Jenkins v.*
21 *McKeithen*, 395 U.S. 411, 421 (1969)).

22 **A. Short and Plain Statement**

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

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

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. In preparing his amended complaint, Plaintiff should state specifically why the facts
12 of his situation did not support those of the ALJ’s legal conclusions that he contends where not
13 supported by substantial evidence.

14 **B. Principles of Pleading**

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

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

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

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

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

13 A legal conclusion is a statement such as, “A person of Plaintiff’s age is not expected to
14 make the vocational adjustment to sedentary work if he is unable to communicate in English.” A
15 factual statement is one such as, “Plaintiff, born September 20, 1952, is sixty years old.”

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
19 that a complaint states a plausible claim for relief, based on the reviewing court’s judicial
20 experience and common sense, the well-pleaded facts must permit the court “to infer more than a
21 mere possibility . . . ‘that the pleader is entitled to relief.’” *Id.*, *quoting* F.R.Civ.P. 8(a)(2). The
22 Supreme Court explained:

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

4 This means that the Court cannot accept a legal conclusions set forth in a complaint if the
5 plaintiff has not supported his or her contentions with facts. For example, if a plaintiff alleges
6 only that he or she is not capable of performing past work without setting forth facts that prove
7 that he or she cannot do 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 third amended complaint should do
15 so.

16 Because the second amended complaint fails to allege *facts* sufficient to state a claim
17 upon which relief can be granted, this Court will dismiss it. The Court will provide Plaintiff with
18 one additional opportunity to file an 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 third 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
23 briefly but specifically as possible, the facts necessary to state a claim on which relief may be
24 granted.

25 Plaintiff must avoid including unnecessary language, as well as advocacy and argumentation
26 more appropriate in his opening brief, which is to be submitted later.

27 Plaintiff is advised that an amended complaint supercedes all prior complaints, *Forsyth v.*
28 *Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997), *aff’d*, 525 U.S. 299 (1999); *King v. Atiyeh*,

1 814 F.2d 565, 567 (9th Cir. 1987), and must be “complete in itself without reference to the prior
2 or superceded pleading.” Local Rule 15-220. “All causes of action alleged in an original
3 complaint which are not alleged in an amended complaint are waived.” *King*, 814 F.2d at 567;
4 *accord Forsyth*, 114 F.3d at 1474.

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

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

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17 IT IS SO ORDERED.

18 **Dated:** October 2, 2012

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