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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROSE RIDDLE,

CASE NO. 1:12-cv-01680-SMS

Plaintiff,

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

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

(Doc. 1)

_____ /

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 Rose Riddle, proceeding *in forma pauperis*, by her attorney, Dellert Baird Law Offices, PLLC, filed her complaint on October 11, 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 (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

1 (11th 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 (9th 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 (9th 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;

- 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 (9th Cir. 2001).

14 A legal conclusion is a statement such as, “The final decision of the Administrative Law
15 Judge, review having been denied by the Appeals Council, is erroneous, was based on error of
16 law, and was not supported by substantial evidence.” Facts include such allegations as “Plaintiff
17 has severe arthritis, peripheral neuropathy, and fibromyalgia”; “Plaintiff worked as auto
18 mechanic until June 1, 1990”; and “Plaintiff was fired from her job when she became unable to
19 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 legal conclusions set forth in a complaint if the plaintiff
8 has not supported his or her contentions with facts. For example, if a plaintiff alleges only that
9 he or she is not capable of performing past work without setting forth facts that prove that he or
10 she cannot do that work, the Court cannot assume that the contention is true.

11 **III. Conclusion and Order**

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

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

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

27 ///

1 Plaintiff is advised that an amended complaint supercedes all prior complaints, *Forsyth v.*
2 *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
4 or superceded pleading.” Local Rule 15-220. “All causes of action alleged in an original
5 complaint which are not alleged in an amended complaint are waived.” *King*, 814 F.2d at 567;
6 *accord 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
11 an amended complaint curing the deficiencies identified by the Court in this order;
12 and
- 13 3. If Plaintiff fails to file an amended complaint within **thirty (30) days** from the
14 date of service of this order, this action will be dismissed with prejudice, pursuant
15 to 28 U.S.C. § 1915(e)(2)(B)(ii), for failure to state a claim.

16
17 IT IS SO ORDERED.

18 **Dated: October 16, 2012**

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