

1 Plaintiff has met this standard. Plaintiff has been unemployed since 1991. His wife
2 earns \$900 per month, so paying the fee would consume nearly 39 percent of his monthly
3 household income. His wife's income pays for food, rent, and living expenses. His only
4 valuable assets are a 23-year-old Honda Accord and \$50 in the bank. Though Plaintiff does
5 not support any children, the filing fee would consume a substantial portion of his household
6 income, so that he and his wife would likely be unable to purchase the necessities of life.
7 Ha's IFP Motion is, therefore, **GRANTED**.

8 **II. Initial Screening**

9 Under 28 U.S.C. § 1915(e), the Court must screen each civil action commenced
10 pursuant to 28 U.S.C. § 1915(a) and dismiss if the Court finds it is frivolous or malicious, fails
11 to state a claim upon which relief can be granted, or seeks monetary relief from an immune
12 defendant. 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 45 (9th Cir. 2001)
13 (“[T]he provisions of 28 U.S.C. § 915(e)(2)(B) are not limited to prisoners.”); *Lopez v. Smith*,
14 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (28 U.S.C. § 1915(e) “not only permits but
15 requires” the court to sua sponte dismiss an IFP complaint that fails to state a claim). The
16 Court finds that Plaintiff's claim is neither frivolous nor malicious, nor does it seek monetary
17 relief from an immune defendant. The Court now turns to the sufficiency of the complaint to
18 withstand a motion to dismiss.

19 To survive a motion to dismiss, a complaint must contain facts that, taken as true,
20 “state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S.
21 544, 570 (2007). A claim is plausible if the facts alleged allow the court to “draw the
22 reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v.*
23 *Iqbal*, 556 U.S. 662, 678 (2009). Plausibility means that, given the allegations in the
24 complaint, it is more than a “sheer possibility that a defendant has acted unlawfully.” *Id.*
25 Further, in determining plausibility, the court should lean on its “experience and common
26 sense” to assess the claim in its particular context. *Id.* at 663-64, *Twombly*, 550 U.S. at 556.

27 Plaintiff appeals to the Court from an administrative ruling denying him supplemental
28 security income (“SSI”) benefits. The complaint alleges generally that the plaintiff, a former

1 refugee¹, has been disabled since 2000 due to brain surgery, chronic leg and back pain,
2 head pain, and severe mental illness, including depression and memory loss as symptoms
3 of post-traumatic stress syndrome. The complaint provides the basis for the diagnosis, and
4 states that the Administrative Law Judge (“ALJ”) improperly disregarded the plaintiff’s
5 disabilities in denying SSI benefits. Plaintiff also claims the ALJ asked leading questions that
6 affected the fairness of the hearing, and that the ALJ yelled at him and intimidated his then-
7 attorney.

8 On the basis of these facts, the plaintiff alleges that: (1) the ALJ violated the
9 applicable Ninth Circuit standard, the Social Security Act, 42 U.S.C. § 405(g), and the
10 appropriate implementing regulations, 20 C.F.R. § 416.929 (1992), by not considering
11 medical evidence of plaintiff’s disability; (2) the ALJ violated the Commissioner’s
12 implementing regulations, 20 C.F.R. § 416.923, by not considering the cumulative impact of
13 the plaintiff’s impairments; (3) the ALJ did not give plaintiff a full and fair hearing, as required
14 under the Social Security Act, 42 U.S.C. § 1381 et. seq., and the Commissioner’s
15 implementing regulations, 20 C.F.R. § 416.927 (1992), because the ALJ did not give Ha’s
16 treating physician’s opinion sufficient weight; (4) the defendant did not provide a full and fair
17 hearing, violating the plaintiff’s Fifth Amendment due process rights; (5) the defendant did
18 not provide a full and fair hearing, violating the Administrative Procedure Act, 5 U.S.C. §
19 706(2)(A); (6) the ALJ did not base her decision on substantial evidence, violating the Social
20 Security Act, 42 U.S.C. § 1382c and 42 U.S.C. § 405(g); and (7) the purported interference
21 with plaintiff’s counsel violated the plaintiff’s Fifth Amendment due process rights.

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28 ¹ The Court is uncertain of the plaintiff’s background. The complaint states that the plaintiff “is a former
refugee from Iraq,” (Complaint, Doc. No. 1 at 2), while the plaintiff’s name and other documents filed with this
court indicate that the plaintiff is of Vietnamese ancestry, (Affidavit of Tho Van Ha, Doc. No. 1-1 at 4).

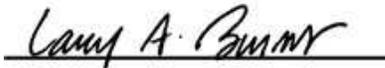
1 Accepting the pleaded facts as true, the Court finds that plaintiff states facts that
2 plausibly entitle him to relief. Therefore, the Court finds that plaintiff may proceed IFP and
3 that his pleadings survive the initial screening as required under 28 U.S.C. § 1915(e).

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5 **IT IS SO ORDERED.**

6 DATED: June 3, 2013

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HONORABLE LARRY ALAN BURNS
United States District Judge

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