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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 MELISSA TORRES,

12 Plaintiff,

13 v.

14 CAROLYN W. COLVIN, Commissioner
15 of Social Security,

16 Defendant.

Case No.: 16cv2791-JLS (BLM)

**ORDER GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*
AND DISMISSING WITHOUT
PREJUDICE PLAINTIFF'S
COMPLAINT**

(ECF No. 2)

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18 Presently before the Court is Plaintiff Melissa Torres's Motion to Proceed *In Forma*
19 *Pauperis* ("IFP Mot."). (ECF No. 2.) Plaintiff has filed an action requesting that this Court
20 review and reverse the Social Security Administration's ("SSA") denial of benefits.
21 (Compl. 1, ECF No. 1.)

22 **IFP MOTION**

23 All parties instituting any civil action, suit, or proceeding in a district court of the
24 United States, except an application for writ of habeas corpus, must pay a filing fee of
25 \$400. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay
26 the entire fee only if he is granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C.
27 § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). A federal court
28 may authorize the commencement of an action without the prepayment of fees if the party

1 submits an affidavit, including a statement of assets, showing that she is unable to pay the
2 required filing fee. 28 U.S.C. § 1915(a).

3 In the present case, Plaintiff has submitted an affidavit indicating that her sole source
4 of income is from disability payments in the amount of \$800 a month. (IFP Mot. 2.)
5 Plaintiff is not employed, nor has she been for the past two years, and Plaintiff has no cash
6 or other assets. (*Id.* at 2–3.) Plaintiff estimates her monthly expenses to be \$358, and notes
7 that her monthly income from disability payments is “about to stop” (*Id.* at 5.) Given
8 the foregoing, the Court concludes that Plaintiff’s application demonstrates she is unable
9 to pay the requisite fees and costs. Accordingly, the Court **GRANTS** Plaintiff’s Motion to
10 Proceed IFP.

11 **Screening Pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

12 The Court must screen every civil action brought pursuant to 28 U.S.C. § 1915(a)
13 and dismiss any case it finds “frivolous or malicious,” “fails to state a claim on which relief
14 may be granted,” or “seeks monetary relief against a defendant who is immune from relief.”
15 28 U.S.C. § 1915(e)(2)(B); *see also Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001)
16 (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”); *Lopez v.*
17 *Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e)
18 “not only permits but requires a district court to dismiss an in forma pauperis complaint
19 that fails to state a claim”).

20 As amended by the Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915(e)(2)
21 mandates that the court reviewing an action filed pursuant to the IFP provisions of § 1915
22 make and rule on its own motion to dismiss before directing the Marshal to effect service
23 pursuant to Federal Rule of Civil Procedure 4(c)(3). *See* Fed. R. Civ. P. 4(c)(3); *Navarette*
24 *v. Pioneer Med. Ctr.*, No. 12-cv-0629-WQH (DHB), 2013 WL 139925, at *1 (S.D. Cal.
25 Jan. 9, 2013).

26 All complaints must contain a “short and plain statement of the claim showing that
27 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
28 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere

1 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing
2 *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555 (2007)). “[D]etermining whether a complaint
3 states a plausible claim is context-specific, requiring the reviewing court to draw on its
4 experience and common sense.” *Iqbal*, 556 U.S. at 663–64 (citing *Twombly*, 550 U.S. at
5 556).

6 “When there are well-pleaded factual allegations, a court should assume their
7 veracity, and then determine whether they plausibly give rise to an entitlement of relief.”
8 *Iqbal*, 556 U.S. at 679. “[W]hen determining whether a complaint states a claim, a court
9 must accept as true all allegations of material fact and must construe those facts in the light
10 most favorable to the plaintiff.” *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); *see*
11 *also Andrews v. King*, 393 F.3d 1113, 1121 (9th Cir. 2005); *Barren v. Harrington*, 152
12 F.3d 1193, 1194 (9th Cir. 1998) (“The language of § 1915(e)(2)(B)(ii) parallels the
13 language of Federal Rule of Civil Procedure 12(b)(6).”).

14 “While factual allegations are accepted as true, legal conclusions are not.” *Hoagland*
15 *v. Astrue*, No. 1:12-cv-00973-SMS, 2012 WL 2521753, at *3 (E.D. Cal. June 28, 2012)
16 (citing *Iqbal*, 556 U.S. at 678). Courts cannot accept legal conclusions set forth in a
17 complaint if the plaintiff has not supported her contentions with facts. *Id.* (citing *Iqbal*, 556
18 U.S. at 679).

19 In social security appeals, a complaint challenging the denial of benefits “must
20 provide a statement identifying the basis of the plaintiff’s disagreement with the Social
21 Security Administration’s determination and must make a showing that the plaintiff is
22 entitled to relief.” *Montoya v. Colvin*, No. 2:16-cv-00454-RFB-NJK, 2016 WL 890922, at
23 *2 (D. Nev. Mar. 8, 2016) (collecting cases) (finding that the plaintiff failed to state a claim
24 for relief where the complaint merely alleged that the Commissioner’s decision to deny
25 benefits was wrong without explaining why, and instead simply recited the general

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1 standards governing review of that decision).¹ “The purpose of the complaint is to briefly
2 and plainly allege facts supporting the legal conclusion that the Commissioner’s decision
3 was wrong.” *Hoagland*, 2012 WL 2521753, at *3 (citing *Brown v. Astrue*, No. 11-cv-056-
4 JL, 2011 WL 3664429, at *3 (D.N.H. Aug. 19, 2011)).

5 In the present case, Plaintiff appeals the Commissioner’s decision denying Plaintiff’s
6 claim for disability benefits. (Compl. at 1.) However, Plaintiff states only the following
7 regarding her claim:

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9 I request review of my claim for Social Security disability benefits. The
10 administrative law judge issued a decision dated July 1, 2015 denying my
11 claim. The Social Security Administration Appeals Council denied my
12 request for review of the administrative law judge’s decision by notice dated
13 September 7, 2016. My social security number is

14 (Compl. at 1.) As set forth above, this statement insufficient to survive the *sua sponte*
15 screening required by 28 U.S.C. § 1915(e)(2). Accordingly, the Court **DISMISSES**
16 **WITHOUT PREJUDICE** Plaintiff’s complaint.

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25 ¹ The *Montoya* court listed the requirements for social security appeal complaints: (1) Plaintiff must
26 establish that he has exhausted his administrative remedies pursuant to 42 U.S.C. § 405(g) and that the
27 civil action commenced within 60 days after notice of final decision; (2) the complaint must list the judicial
28 district in which the Plaintiff resides; (3) the complaint must state how Plaintiff is disabled and when
Plaintiff became disabled; and (4) the complaint must contain a short and plain statement that identifies
why the Plaintiff disagrees with the Commissioner’s determination and show that the Plaintiff is entitled
to relief. 2016 WL 890922, at *2.

1 **CONCLUSION**

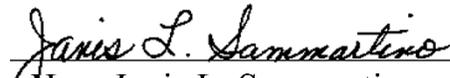
2 For the reasons stated above, the Court:

3 1. **GRANTS** Plaintiff's Motion to Proceed IFP pursuant to § 1915(a), (ECF No. 2),
4 and;

5 2. **DISMISSES WITHOUT PREJUDICE** Plaintiff's Complaint. Plaintiff **MAY**
6 **FILE** an amended complaint within forty-five days of the date on which this Order is
7 electronically docketed. *Should Plaintiff fail to file an amended complaint within the time*
8 *provided, the Court will enter a final order dismissing this civil action with prejudice.*

9 **IT IS SO ORDERED.**

10 Dated: March 20, 2017

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12 Hon. Janis L. Sammartino
13 United States District Judge
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