

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BETTY L. SIMS

Plaintiff,

v.

THE UNITED STATES SOCIAL
SECURITY ADMINISTRATION

Defendants.

Case No.: 17cv00294-JAH

**ORDER (1) GRANTING MOTION
FOR LEAVE TO PROCEED IN
FORMA PAUPERIS [Doc. No. 3];
AND (2) DISMISSING THE
COMPLAINT WITHOUT
PREJUDICE FOR FAILURE TO
STATE A CLAIM PURSUANT TO 28
U.S.C. § 1915(e)(2)(B)(ii) [Doc. No. 5]**

On October 14, 2016, Plaintiff Betty L. Sims, a non-prisoner proceeding pro se (“Plaintiff”), filed a claim against the United States Social Security Administration (“Defendant”) in the Superior Court of California, County of San Diego, Small Claims Division. See Doc. No. 2. On February 6, 2017, Plaintiff dismissed her small claim action without prejudice. Id. On February 14, 2017, Defendant, unaware that the underlying matter was dismissed, removed the action to this Court. See Doc. No. 1. Two days later,

1 on February 16, 2017, Defendant learned that Plaintiff dismissed her case, and notified the
2 Court of the same. See Doc. No. 2. On June 6, 2017, Plaintiff filed a motion for leave to
3 proceed in forma pauperis (“IFP”), pursuant to 28 U.S.C. § 1915(a). See Doc. No. 3. On
4 June 9, 2017, Plaintiff filed a document captioned “Amended Complaint,” requesting only
5 that the Court “preside over [this] case.” See Doc. No. 5 at 2. The Court construes this
6 filing as Plaintiff’s Complaint. On the same date, Plaintiff filed a document captioned
7 “DOCUMENT TITLE (e.g. NOTICE OF MOTION AND MOTION FOR STRIKING
8 PORTIONS OF COMPLAINT).” See Doc. No. 7. The Court construes this filing as a
9 supplement to the Complaint. Id.

10 After a careful review of the entire record, and for the reasons set forth below, the
11 Court (1) **GRANTS** Plaintiff’s motion for leave to proceed IFP, [doc. no 2]; (2)
12 **DISMISSES** Plaintiff’s entire Complaint, [doc. no. 7], without prejudice (and with leave
13 to amend) for failure to state a cognizable claim upon which relief may be granted; and (3)
14 **GRANTS** Plaintiff forty-five days leave to file an Amended Complaint which cures all the
15 deficiencies described in this Order. 28 U.S.C. § 1367(c)(3); *United Mine Workers of*
16 *America v. Gibbs*, 383 U.S. 715, 726 (1966).

17 **I. Plaintiff’s IFP Motion**

18 All parties instituting any civil action, suit, or proceeding in a district court of the
19 United States, except an application for writ of habeas corpus, must pay a filing fee of
20 \$400.¹ See 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff’s failure to
21 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C. §
22 1915(a). See *Andrews v. Cervantes*, 492 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*
23 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). Courts grant leave to proceed IFP when
24
25

26
27 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50.
28 See U.S.C. § 1914(a) (Judicial Conference of Fees, District Court Misc. Fee Schedule, § 14 (eff. Dec. 1,
2014)). The additional \$50 administrative fee does not apply to persons granted leave to proceed IFP. Id.

1 plaintiffs submit an affidavit, including a statement of all of their assets, showing the
2 inability to pay the statutory filing fee. See 28 U.S.C. § 1915(a).

3 In support of her IFP motion, Plaintiff has submitted an application to proceed in
4 district court without paying fees or costs. See Doc. No. 3. Plaintiff’s application indicates
5 that she is currently unemployed, and has earned no job-related income during the past two
6 years. Id. Additionally, Plaintiff receives no income from real property, investments,
7 retirement accounts, gifts, alimony, or child support. Id. Plaintiff’s sole source of income
8 is a disability payment in the amount of \$889.00. Id. Plaintiff’s average monthly expenses
9 are \$805.00. Id. Plaintiff indicates that she owns two checking accounts: one with \$0.00
10 balance, and the other with a \$40.00 balance. Id. Plaintiff also owns stock worth \$298.00.
11 Id. Plaintiff anticipates changes in the next twelve months, if she loses her social security
12 benefits. Id. Based on these representations, the Court finds Plaintiff has sufficiently shown
13 that she is unable to pay the fees required to commence her lawsuit. Therefore, the Court
14 **GRANTS** plaintiff’s motion for leave to proceed IFP.

15 **II. Sua Sponte Screening Pursuant to 28 U.S.C. § 1915(e)(2)(B)**

16 **A. Standard of Review**

17 Plaintiff seeks leave to proceed IFP, pursuant to 28 U.S.C. § 1915(a). See Doc. No.
18 2. Accordingly, her Complaint is subject to sua sponte review, and mandatory dismissal, if
19 it is “frivolous, malicious, fail[s] to state a claim upon which relief may be granted, or
20 seek[s] monetary relief from a defendant immune from such relief.” See 28 U.S.C. §
21 1915(e)(2)(B); *Coleman v. Tollefson*, 135 S. Ct. 1759, 1763 (2015) (pursuant to 28 U.S.C.
22 § 1915(e)(2) “the court shall dismiss the case at any time if the court determines that – (A)
23 the allegation of poverty is untrue; or (B) the action or appeal – (i) is frivolous or malicious;
24 [or] (ii) fails to state a claim on which relief may be granted.”)’ *Lopez v. Smith*, 203 F.3d
25 1122, 1127 (9th Cir. 2000) (en banc) (“[S]ection 1915(e) not only permits, but requires, a
26 district court to dismiss an in forma pauperis complaint that fails to state a claim.”).

27 “The standard for determining whether a plaintiff has failed to state a claim upon
28 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of

1 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d
2 1108, 1112 (9th Cir. 2012).

3 To survive a motion to dismiss, the complaint must contain “a short and plain
4 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).
5 Detailed factual allegations are not required, but [t]hreadbare recitals of the elements of a
6 cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v.*
7 *Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555
8 (2007)). “Determining whether a complaint states a plausible claim for relief [is]... a
9 context-specific task that requires the reviewing court to draw on its judicial experience
10 and common sense.” *Id.* The “mere possibility of misconduct” falls short of meeting this
11 plausibility standard. *Id.*; see also *Moss v. U.S. Secret Service*, 572 F. 3d 962, 969 (9th
12 Cir. 2009).

13 “When there are well-pleaded factual allegations, a court should assume their
14 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”
15 *Iqbal*, 556 U.S. at 679; see also *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)
16 (“[W]hen determining whether a complaint states a claim, a court must accept as true all
17 allegations of material fact and must construe those facts in light most favorable to the
18 plaintiff.”).

19 However, while the court “has an obligation where the petitioner is pro se... to
20 construe the pleadings liberally and to afford the petitioner the benefit of any doubt,” *Hebbe*
21 *v. Pliler*, 627 F.3d 338, 342 n.7 (9th Cir. 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026,
22 1027 n.1 (9th Cir. 1985)), it may not “supply essential elements of claims that were not
23 initially pled.” *Ivey v. Board of Regents of the University of Alaska*, 673 F.2d 266, 268 (9th
24 Cir. 1982).

25 **B. Plaintiff’s Allegations**

26 Here, the record reflects that Plaintiff is not entitled to relief. See Doc. No. 5.
27 Specifically, her Complaint fails to include “a short and plain statement of the claim” which
28 explains the facts at issue and the relief sought. *Iqbal*, 556 U.S. at 678. Indeed, Plaintiff’s

1 complaint merely states that she wants the Court to “preside over [her] case.” See Doc. No.
2 5. In Plaintiff’s supplemental briefing, she adds allegations of witness tampering by
3 Defendant, and disputes the denial of her benefits by the Social Security Administration.
4 See Doc. No. 7. The Court finds that the totality of these allegations fail to include “a short
5 and plain statement of the claim showing that the pleader is entitled to relief.” See Fed. R.
6 Civ. P. 8(a)(2). “Detailed factual allegations are not required,” *Iqbal*, 556 U.S. at 678,
7 however, it is unclear, for example, whether Plaintiff seeks this Court’s review of a final
8 decision from the Commissioner of Social Security.

9 **C. Leave to Amend**

10 A pro se litigant must be given leave to amend her pleading to state a claim unless it
11 is absolutely clear the deficiencies cannot be cured by amendment. See *Lopez*, 203 F.3d at
12 1130 (noting that leave to amend should be granted when a complaint is dismissed under
13 28 U.S.C. § 1915(e) “if it appears at all possible that the plaintiff can correct the defect[.]”).
14 Therefore, while the Court finds Plaintiff’s Complaint fails to state a claim upon which
15 relief can be granted and fails to properly state the relief sought, it will provide her a chance
16 to cure the pleading deficiencies discussed in this Order, if she can. See *Akhtar v. Mesa*,
17 698 F.3d 1202, 1212 (9th Cir. 2012) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th
18 Cir. 1992)).

19 **III. Conclusion and Order**

20 Based on the foregoing, the Court hereby:

- 21 1. **GRANTS** Plaintiff’s Motion to Proceed IFP, pursuant to 28 U.S.C. § 1915(a), [Doc
22 No. 3];
- 23 2. **DISMISSES** Plaintiff’s Complaint, without prejudice, pursuant to 28 U.S.C. §
24 1915(e)(2)(B)(ii), for failing to state a claim [Doc. No. 5]; and
- 25 3. **GRANTS** Plaintiff **forty-five (45) days leave to file an Amended Complaint**
26 **which cures all the deficiencies of pleading described in this Order.** Plaintiff is
27 cautioned, however, that should she choose to file an Amended Complaint, it must
28 be complete by itself, comply with the Federal Rules of Civil Procedure, including

1 Rule 8(a), and that any claim not realleged will be considered waived. See S.D. Cal.
2 CivLR 15.1; Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542,
3 1546 (9th Cir. 1989) (“[A]n amended pleading supersedes the original.”; Lacey v.
4 Maricopa Cnty., 963 F.3d 896, 928 (9th Cir. 2012) (noting that claims dismissed
5 with leave to amend which are not re-alleged in an amended pleading may be
6 “considered waived if not repld.”)

7 **IT IS SO ORDERED.**

8
9 DATED: July 21, 2017

10
11 
12 JOHN A. HOUSTON
13 United States District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28