

1
2
3
4
5
6
7
8
9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12

13 DEBORAH TUCK,

14 Plaintiff,

15 v.

16 CREDIT ONE BANK, et al.,

17 Defendants.
18

Case No.: 17cv1363-JLS (WVG)

**ORDER GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*
AND DIRECTING U.S. MARSHAL
TO EFFECT SERVICE**

(ECF No. 2)

19 Presently before the Court is Plaintiff Deborah Tuck's Motion for Leave to Proceed
20 *In Forma Pauperis* ("IFP Mot."), (ECF No. 2), filed concurrently with her Complaint for
21 damages and injunctive relief stemming from Defendants' alleged violations of the
22 Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 et seq.; Fair Debt
23 Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq.; Fair Credit Reporting Act
24 ("FCRA"), 15 U.S.C. § 1681 et seq.; and Rosenthal Fair Debt Collection Practices Act
25 ("RFDCPA"), California Civil Code § 1788 et seq., (ECF No. 1).

26 **IFP MOTION**

27 All parties instituting any civil action, suit, or proceeding in a district court of the
28 United States, except an application for writ of habeas corpus, must pay a filing fee of

1 \$400. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to prepay
2 the entire fee only if he is granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C.
3 § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). A federal court
4 may authorize the commencement of an action without the prepayment of fees if the party
5 submits an affidavit, including a statement of assets, showing that she is unable to pay the
6 required filing fee. 28 U.S.C. § 1915(a).

7 In the present case, Plaintiff has submitted an affidavit indicating that her sole
8 sources of monthly income constitute \$400 of monthly alimony payments and her spouse’s
9 \$476 of monthly disability benefits. (IFP Mot. 2–3.) Plaintiff is not employed, nor has she
10 been for the past two years, and Plaintiff and her spouse each have only \$250 in their
11 respective checking accounts. (*Id.* at 2.) Plaintiff estimates her monthly expenses total
12 \$1,445, (*see id.* at 4), and, although Plaintiff owns two automobiles together worth \$2,000,
13 (*id.* at 3), Plaintiff in a supplemental statement notes many further financial complications,
14 (Re: In Forma Pauperis Financial Explanation 1–2, ECF No. 2-1 (listing complications
15 which include that (1) Plaintiff’s is injured such that she “will be unable to work the rest
16 of [her] life[;]” (2) Plaintiff is the primary caregiver “for [her] husband[’]s 88[-]year[-]old
17 mother and 64[-]year[-]old sister[;]” and (3) Plaintiff and her husband’s “joint bank
18 account is presently overdrawn by . . . \$235[,]” which “happens more often than not when
19 [Plaintiff and her husband] need money desperately before the 1st of the month”). Given
20 the foregoing, the Court concludes that Plaintiff’s application demonstrates she is unable
21 to pay the requisite fees and costs. Accordingly, the Court **GRANTS** Plaintiff’s Motion to
22 Proceed IFP.

23 **SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

24 The Court must screen every civil action brought pursuant to 28 U.S.C. § 1915(a)
25 and dismiss any case it finds “frivolous or malicious,” “fails to state a claim on which relief
26 may be granted,” or “seeks monetary relief against a defendant who is immune from relief.”
27 28 U.S.C. § 1915(e)(2)(B); *see also Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001)
28 (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”); *Lopez v.*

1 *Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e)
2 “not only permits but requires a district court to dismiss an in forma pauperis complaint
3 that fails to state a claim”).

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

10 All complaints must contain a “short and plain statement of the claim showing that
11 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
12 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
13 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing
14 *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555 (2007)). “[D]etermining whether a complaint
15 states a plausible claim is context-specific, requiring the reviewing court to draw on its
16 experience and common sense.” *Iqbal*, 556 U.S. at 663–64 (citing *Twombly*, 550 U.S. at
17 556).

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

26 “While factual allegations are accepted as true, legal conclusions are not.” *Hoagland*
27 *v. Astrue*, No. 1:12-cv-00973-SMS, 2012 WL 2521753, at *3 (E.D. Cal. June 28, 2012)
28 (citing *Iqbal*, 556 U.S. at 678). Courts cannot accept legal conclusions set forth in a

1 complaint if the plaintiff has not supported her contentions with facts. *Id.* (citing *Iqbal*, 556
2 U.S. at 679).

3 In the present case, Plaintiff alleges sufficient factual matter to survive the *sua sponte*
4 screening. For example, Plaintiff alleges “sixteen illegal consumer debt collection calls to
5 her private emergency cell phone number[,]” even though Plaintiff allegedly “never
6 g[a]v[e] Defendant[s] . . . express written permission to call Plaintiff[’]s . . . emergency
7 cellular phone” and notified Defendants “numerous” times of Plaintiff’s “demand[] not to
8 call Plaintiff’s cell phone after receiving the very first illegally placed call.” (Compl. ¶¶ 33,
9 35, 41; *see also* Compl. Exs. A–D (written letters disputing debt).) This information, and
10 the rest of the information contained in the Complaint, is sufficient to put Defendants on
11 notice of the specific allegations against them and the relevant time period during which
12 the allegedly liability-creating events occurred.

13 However, the Court notes that this case appears very similar to at least seven other
14 cases filed by this exact same litigant in our district. *See, e.g., Tuck v. Midland Credit*
15 *Mgm’t Inc. et al*, 15cv2036-MMA (MDD); *Tuck v. Am. Capitol Enters. et al*, 15cv2042-
16 CAB (RBB); *Tuck v. HCC Surety Grp. et al.*, 16cv231-CAB (DHB); *Tuck v. Portfolio*
17 *Recovery Assocs., LLC et al.*, 16cv684-JAH (BGS); *Tuck v. Merrick Bank Corp. et al.*,
18 16cv917-JAH (MDD); *Tuck v. Cavalry Portfolio Servs. et al.*, 16cv918-AJB (MDD); *Tuck*
19 *v. Merchants Credit Ass’n*, 17cv626-BAS (MDD). And Plaintiff is cautioned that the
20 Court’s *sua sponte* screening is not a substitute for any dispositive motion any Defendant
21 may elect to file, including one under Federal Rule of Civil Procedure 12(b)(6).

22 CONCLUSION

23 Given the foregoing, the Court:

24 (1) **GRANTS** Plaintiff leave to proceed IFP pursuant to 28 U.S.C. § 1915(a)
25 (ECF Nos. 1, 2).

26 (2) **DIRECTS** the Clerk to issue a summons as to Plaintiff’s Complaint (ECF No.
27 1) and forward it to Plaintiff along with a blank U.S. Marshal Form 285 (“USM Form
28 285s”) for each named Defendant. In addition, the Clerk will provide Plaintiff with a

1 certified copy of this Order, a certified copy of her Complaint, and the summons so that
2 she may serve the Defendants. Upon receipt of this "IFP Package," Plaintiff must complete
3 the USM Form 285s as completely and accurately as possible, include an address where
4 each named Defendant may be found and/or subject to service, and return them to the
5 United States Marshal according to the instructions the Clerk provides in the letter
6 accompanying her IFP package.

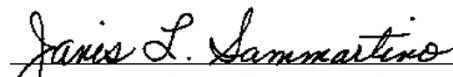
7 (3) **ORDERS** the U.S. Marshal to serve a copy of the Complaint and summons
8 upon Defendants as directed by Plaintiff on the USM Form 285s provided to her. All costs
9 of that service will be advanced by the United States. *See* 28 U.S.C. § 1915(d); Fed. R. Civ.
10 P. 4(c)(3).

11 (4) **ORDERS** Defendants, once they have been served, to reply to Plaintiff's
12 Complaint within the time provided by the applicable provisions of Federal Rule of Civil
13 Procedure 12(a). *See* 42 U.S.C. § 1997e(g)(2).

14 (5) **ORDERS** Plaintiff, after service has been effected by the U.S. Marshal, to
15 serve upon each Defendant, or if appearance has been entered by counsel, upon
16 Defendants' counsel, a copy of every further pleading, motion, or other document
17 submitted for the Court's consideration pursuant to Fed. R. Civ. P. 5(b). Plaintiff must
18 include with every original document she seeks to file with the Clerk of the Court, a
19 certificate stating the manner in which a true and correct copy of that document has been
20 was served on Defendants or their counsel, and the date of that service. *See* S.D. Cal. Civ.
21 L.R. 5.2. Any document received by the Court which has not been properly filed with the
22 Clerk or which fails to include a Certificate of Service upon the Defendants, or their
23 counsel, may be disregarded.

24 **IT IS SO ORDERED.**

25 Dated: August 1, 2017

26 
27 Hon. Janis L. Sammartino
28 United States District Judge