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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 NUBIA ELENA JAMMA,
12 Plaintiff,
13 v.
14 NANCY A. BERRYHILL, Acting
15 Commissioner of Social Security,
16 Defendant.
17

Case No.: 17cv1520-JLS (AGS)
**ORDER DIRECTING U.S.
MARSHAL SERVICE**
(ECF No. 5)

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19 On August 16, 2017, the Court granted Plaintiff Nubia Elena Jamma’s Motion to
20 Proceed *In Forma Pauperis* (“IFP”), but dismissed Plaintiff’s complaint for failure to
21 survive the *sua sponte* screening required by 28 U.S.C. § 1915(e)(2). (ECF No. 4.)
22 Specifically, Plaintiff merely provided recitations of law without any factual allegations.
23 (*Id.* at 4.) Plaintiff has now filed a First Amended Complaint (“FAC”) that purportedly
24 addresses these deficiencies. (ECF No. 5.)

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

26 The Court must screen every civil action brought pursuant to 28 U.S.C. § 1915(a)
27 and dismiss any case it finds “frivolous or malicious,” “fails to state a claim on which relief
28 may be granted,” or “seeks monetary relief against a defendant who is immune from relief.”

1 28 U.S.C. § 1915(e)(2)(B); *see also Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001)
2 (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”); *Lopez v.*
3 *Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e)
4 “not only permits but requires a district court to dismiss an in forma pauperis complaint
5 that fails to state a claim”).

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

12 All complaints must contain a “short and plain statement of the claim showing that
13 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
14 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
15 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing
16 *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555 (2007)). “[D]etermining whether a complaint
17 states a plausible claim is context-specific, requiring the reviewing court to draw on its
18 experience and common sense.” *Iqbal*, 556 U.S. at 663–64 (citing *Twombly*, 550 U.S. at
19 556).

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

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

6 In social security appeals, a complaint challenging the denial of benefits “must
7 provide a statement identifying the basis of the plaintiff’s disagreement with the Social
8 Security Administration’s determination and must make a showing that the plaintiff is
9 entitled to relief.” *Montoya v. Colvin*, No. 2:16-cv-00454-RFB-NJK, 2016 WL 890922, at
10 *2 (D. Nev. Mar. 8, 2016) (collecting cases) (finding that the plaintiff failed to state a claim
11 for relief where the complaint merely alleged that the Commissioner’s decision to deny
12 benefits was wrong without explaining why, and instead simply recited the general
13 standards governing review of that decision).¹ “The purpose of the complaint is to briefly
14 and plainly allege facts supporting the legal conclusion that the Commissioner’s decision
15 was wrong.” *Hoagland*, 2012 WL 2521753, at *3 (citing *Brown v. Astrue*, No. 11-cv-056-
16 JL, 2011 WL 3664429, at *3 (D.N.H. Aug. 19, 2011)).

17 In the present case Plaintiff seeks review of her Social Security Act (“SSA”) benefits
18 denial. (*See generally* FAC.) Plaintiff alleges that there is no substantial evidence in the
19 record to support the SSA Commissioner’s decision, (*id.* ¶¶ 9(a)–(b)), and that the evidence
20 in the record supports only the finding that Plaintiff is and has been continuously disabled
21 as defined in the Social Security Act, (*id.* ¶ 9(c)). Specifically, Plaintiff alleges that she was
22 found to have severe impairments of a depressive disorder and cognitive disorder, yet the
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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 ALJ found that she had the residual functional capacity to perform her past relevant work.
2 (*Id.* ¶¶ 9(d)–(f).) Plaintiff maintains that the ALJ failed to properly evaluate the medical
3 evidence and subjective complaints in making this finding. (*Id.* ¶ 9(f).) The Court finds that
4 the allegations in Plaintiff’s FAC are sufficient to survive the *sua sponte* screening required
5 by 28 U.S.C. § 1915(e)(2). *Cf. Harris v. Colvin*, No. SACV 14-0383-GW (RNB), 2014
6 WL 1095941, at *4 (C.D. Cal. Mar. 17, 2014) (concluding that the plaintiff had failed to
7 state a claim for relief where the complaint did not specify why the ALJ’s findings were
8 not supported by substantial evidence or the reasons why the proper legal standards were
9 not applied); *Montoya*, 2016 WL 890922, at *2 (dismissing for failure to state a claim under
10 screening duty and explaining that “Plaintiff fails to state the nature of his disability or
11 when it commenced, alleging only that ‘[Plaintiff] is, and at all times relevant to this action,
12 disabled as that term is defined in the Social Security Act.’ Moreover, Plaintiff alleges
13 merely that the Commissioner’s decision to deny her benefits was wrong without any
14 indication as to why it was wrong other than a recitation of the general standards that
15 govern this Court’s review of that decision” (first alteration in original)).

16 Plaintiff is therefore entitled to U.S. Marshal service on her behalf. 28 U.S.C.
17 § 1915(d) (“The officers of the court shall issue and serve all process, and perform all duties
18 in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (“[T]he court may order that service be made by
19 a United States marshal or deputy marshal . . . if the plaintiff is authorized to proceed in
20 forma pauperis under 28 U.S.C. § 1915.”). Plaintiff is cautioned, however, that “the *sua*
21 *sponte* screening and dismissal procedure is cumulative of, and not a substitute for, any
22 subsequent Rule 12(b)(6) motion that [a defendant] may choose to bring.” *Teahan v.*
23 *Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007).

24 CONCLUSION

25 Good cause appearing, **IT IS ORDERED** that:

26 1. The Clerk is **DIRECTED** to issue a summons as to Plaintiff’s FAC (ECF No.
27 5) upon Defendant and forward it to Plaintiff along with a blank U.S. Marshal Form 285
28 for the named Defendant. In addition, the Clerk is **DIRECTED** to provide Plaintiff with a

1 certified copy of this Order and a certified copy of her Complaint (ECF No. 1) and the
2 summons so that he may serve the named Defendant. Upon receipt of this “IFP Package,”
3 Plaintiff is **DIRECTED** to complete the Form 285 as completely and accurately as
4 possible, and to return it to the United States Marshal according to the instructions provided
5 by the Clerk in the letter accompanying the IFP package.

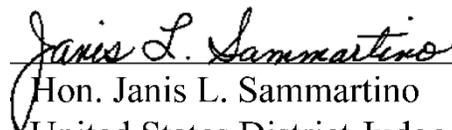
6 2. Upon receipt, the U.S. Marshal is **ORDERED** to serve a copy of the
7 Complaint and summons upon the named Defendant as directed by Plaintiff on the USM
8 Form 285. All costs of service will be advanced by the United States. *See* 28 U.S.C.
9 § 1915(d); Fed. R. Civ. P. 4(c)(3).

10 3. Defendant is thereafter **ORDERED** to reply to Plaintiff’s FAC within the time
11 provided by the applicable provisions of Federal Rule of Civil Procedure 12(a). *See* 42
12 U.S.C. § 1997e(g) (noting that once the Court has conducted its *sua sponte* screening
13 pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus has made a preliminary
14 determination based on the face on the pleading alone that Plaintiff has a “reasonable
15 opportunity to prevail on the merits,” the defendant is required to respond).

16 4. Plaintiff **SHALL SERVE** upon the Defendant or, if appearance has been
17 entered by counsel, upon Defendant’s counsel, a copy of every further pleading or other
18 document submitted for consideration by the Court. Plaintiff must include with the original
19 paper to be filed with the Clerk, a certificate stating the manner in which a true and correct
20 copy of the document was served on the Defendant, or counsel for Defendant, and the date
21 of that service. Any paper received by the Court which has not been properly filed with the
22 Clerk, or which fails to include a Certificate of Service, may be disregarded.

23 **IT IS SO ORDERED.**

24 Dated: August 29, 2017

25 
26 Hon. Janis L. Sammartino
27 United States District Judge
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