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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NANCY JEAN JOINER SOLOMON,
Plaintiff,
v.
NANCY A. BERRYHILL,
Defendant.

Case No.: 17-CV-2530 JLS (BGS)
**ORDER GRANTING MOTION TO
PROCEED IFP**
(ECF No. 2)

Presently before the Court is Plaintiff Nancy Jean Joiner Solomon’s Motion to Proceed In Forma Pauperis (“IFP”). (“IFP Mot.,” ECF No. 2.) For the following reasons the Court **GRANTS** Plaintiff’s IFP Motion.

IFP MOTION

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

1 unable to pay the required filing fee. 28 U.S.C. § 1915(a).

2 In support of her IFP Motion, Plaintiff has submitted an affidavit of her financial
3 status pursuant to 28 U.S.C. § 1915(a)(1) and Civil Local Rule 3.2. These statements show
4 that Plaintiff does not receive any income, (IFP Mot. 2),¹ and that she was last employed
5 in 2012, (*id.* at 2). Thus it appears that Plaintiff does not have the funds to pay the requisite
6 filing fee. Accordingly, the Court **GRANTS** Plaintiff’s Motion to Proceed IFP.

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

8 The Court must screen every civil action brought pursuant to 28 U.S.C. § 1915(a)
9 and dismiss any case it finds “frivolous or malicious,” “fails to state a claim on which relief
10 may be granted,” or “seeks monetary relief against a defendant who is immune from relief.”
11 28 U.S.C. § 1915(e)(2)(B); *see also Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001)
12 (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”); *Lopez v.*
13 *Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e)
14 “not only permits but requires a district court to dismiss an in forma pauperis complaint
15 that fails to state a claim”).

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

22 All complaints must contain a “short and plain statement of the claim showing that
23 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
24 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
25 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
26 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555 (2007)). “[D]etermining whether a
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28 ¹ Pin citations refer to the CM/ECF numbers electronically stamped at the top of each page.

1 complaint states a plausible claim is context-specific, requiring the reviewing court to draw
2 on its experience and common sense.” *Iqbal*, 556 U.S. at 663–64 (citing *Twombly*, 550
3 U.S. at 556).

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

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

17 Plaintiff’s Complaint adequately states a claim for judicial review of a denial of
18 Social Security benefits. (*See generally* Complaint (“Compl.”), ECF No. 1.) Specifically,
19 Plaintiff alleges that she has exhausted her administrative remedies with respect to her
20 denial of benefits and now seeks judicial review of this denial based on a failure to apply
21 proper legal standards and a lack of substantial evidence. (*Id.* at 2–5.) Taking the above
22 information in the light most favorable to Plaintiff, the Court concludes that Plaintiff has
23 pled sufficient factual information to allege a plausible claim for relief. Plaintiff is therefore
24 entitled to U.S. Marshal service on her behalf. 28 U.S.C. § 1915(d) (“The officers of the
25 court shall issue and serve all process, and perform all duties in [IFP] cases.”); Fed. R. Civ.
26 P. 4(c)(3) (“[T]he court may order that service be made by a United States marshal or
27 deputy marshal . . . if the plaintiff is authorized to proceed in forma pauperis under 28
28 U.S.C. § 1915.”). Plaintiff is cautioned, however, that “the *sua sponte* screening and

1 dismissal procedure is cumulative of, and not a substitute for, any subsequent Rule 12(b)(6)
2 motion that [a defendant] may choose to bring.” *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115,
3 1119 (S.D. Cal. 2007).

4 **CONCLUSION**

5 Good cause appearing, **IT IS HEREBY ORDERED** that:

6 1. Plaintiff’s IFP Motion (ECF No. 2) pursuant to 28 U.S.C. § 1915(a) is
7 **GRANTED**.

8 2. The Clerk is **DIRECTED** to issue a summons as to Plaintiff’s Complaint,
9 (ECF No. 1), upon Defendant and forward it to Plaintiff along with a blank U.S. Marshal
10 Form 285 for the named Defendant. In addition, the Clerk is **DIRECTED** to provide
11 Plaintiff with a certified copy of this Order and a certified copy of her Complaint (ECF No.
12 1) and the summons so that he may serve the named Defendant. Upon receipt of this “IFP
13 Package,” Plaintiff is **DIRECTED** to complete the Form 285 as completely and accurately
14 as possible, and to return it to the United States Marshal according to the instructions
15 provided by the Clerk in the letter accompanying the IFP package.

16 3. Upon receipt, the U.S. Marshal is **ORDERED** to serve a copy of the
17 Complaint and summons upon the named Defendant as directed by Plaintiff on the USM
18 Form 285. All costs of service will be advanced by the United States. *See* 28 U.S.C.
19 § 1915(d); Fed. R. Civ. P. 4(c)(3).

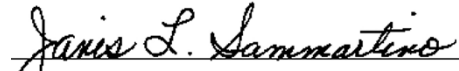
20 4. Defendant is thereafter **ORDERED** to reply to Plaintiff’s Complaint within
21 the time provided by the applicable provisions of Federal Rule of Civil Procedure 12(a).
22 *See* 42 U.S.C. § 1997e(g) (noting that once the Court has conducted its *sua sponte* screening
23 pursuant to 28 U.S.C. §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

26 5. Plaintiff **SHALL SERVE** upon the Defendant or, if appearance has been entered by
27 counsel, upon Defendant’s counsel, a copy of every further pleading or other document
28 submitted for consideration by the Court. Plaintiff must include with the original paper to

1 be filed with the Clerk, a certificate stating the manner in which a true and correct copy of
2 the document was served on the Defendant, or counsel for Defendant, and the date of that
3 service. Any paper received by the Court which has not been properly filed with the Clerk,
4 or which fails to include a Certificate of Service, may be disregarded.

5 **IT IS SO ORDERED.**

6 Dated: January 4, 2018


7 Hon. Janis L. Sammartino
8 United States District Judge

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