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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 OSCAR K.,

12 Plaintiff,

13 v.

14 ANDREW M. SAUL, COMMISSIONER
15 OF SOCIAL SECURITY,

16 Defendant.

Case No.: 3:20-cv-00673-LAB-RBM

**ORDER GRANTING PLAINTIFF'S
APPLICATION TO PROCEED IN
DISTRICT COURT WITHOUT
PREPAYING FEES OR COSTS**

17 **[Doc. 9]**

18
19 **I. INTRODUCTION**

20 On September 12, 2020, Plaintiff Oscar K. ("Plaintiff") filed an amended complaint
21 under 42 U.S.C. §§ 405(g) and 1383(c)(3) seeking judicial review of the Commissioner of
22 the Social Security Administration's ("Defendant" or "Commissioner") denial of disability
23 insurance benefits and supplemental security income under Titles II and XVI of the Social
24 Security Act ("the Act"). (Doc. 8.) Plaintiff did not pay the required filing fee and instead
25 filed an amended motion to proceed in forma pauperis ("IFP Motion").¹ (Doc. 9.)

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27 ¹ Plaintiff previously filed a complaint and motion to proceed in forma pauperis on April 7, 2020 ("April
28 7, 2020 IFP Motion"). (Docs. 1, 3.) On September 11, 2020, the undersigned issued a Report and
Recommendation ("R&R"), recommending that the initial complaint be dismissed with leave to amend
and the April 7, 2020 IFP Motion be denied without prejudice. (Doc. 7.) On September 12, 2020, Plaintiff

1 On April 8, 2020, Chief Judge Larry A. Burns issued an order staying civil cases
2 arising under 42 U.S.C. § 405(g) that were filed on or after March 1, 2020, due to the
3 ongoing COVID-19 public health emergency. *See* Or. of Chief Judge No. 21, sec. 6 (stating
4 in part “all civil cases filed on or after March 1, 2020 brought against the Commissioner .
5 . . are hereby stayed, unless otherwise ordered by the [Court].”). Initially, the Court held
6 its ruling on the IFP Motion in abeyance pursuant to the Chief Judge Order. But, the
7 COVID-19 pandemic has been ongoing for months and will continue for the foreseeable
8 future. At this time, the Court lifts the stay of this case for the limited of purpose of ruling
9 on the IFP Motion which will allow Plaintiff to proceed with effectuating service of the
10 summons and complaint to Defendant. Once service is complete, the undersigned will stay
11 the case again until such time as the Commissioner begins normal operations at the Office
12 of Appellate Hearings Operations and resumes preparation of Certified Administrative
13 Records. *See* Or. of Chief Judge No. 21 at sec. 6.

14 Having reviewed the complaint and IFP Motion, the Court finds that Plaintiff’s
15 complaint is sufficient to survive a sua sponte screening and further **GRANTS** Plaintiff’s
16 IFP Motion.

17 II. **DISCUSSION**

18 A. **Sua Sponte Screening**

19 Pursuant to 28 U.S.C. § 1915(a), a complaint filed by any person proceeding IFP is
20 also subject to a mandatory sua sponte screening. The Court must review and dismiss any
21 complaint which is frivolous or malicious, fails to state a claim, or seeks monetary relief
22 from a defendant who is immune. 28 U.S.C. § 1915(e)(2); *see also Lopez v. Smith*, 203
23 F.3d 1122, 1127 (9th Cir. 2000); *see also Alamar v. Soc. Sec.*, 19-cv-0291-GPC-LL, 2019
24 WL1258846, at *3 (S.D. Cal. Mar. 19, 2019).

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28 filed the instant amended complaint and amended IFP Motion. These September 12, 2020 filings rendered
the pending R&R and April 7, 2020 IFP Motion moot. Therefore, the undersigned withdrew the
September 11, 2020 R&R and accepted the instant IFP Motion in place of the April 7, 2020 IFP Motion.

1 To survive, complaints must contain “a short and plain statement of the claim
2 showing that the pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2). “[T]he pleading
3 standard Rule 8 announces does not require ‘detailed factual allegations,’ but it demands
4 more than an unadorned, the-defendant-unlawfully-harmed-me-accusation.” *Ashcroft v.*
5 *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
6 (2007)). And “[t]hreadbare recitals of elements of a cause of action, supported by mere
7 conclusory statements do not suffice.” *Id.* Instead, plaintiff must state a claim plausible
8 on its face, meaning “plaintiff pleads factual content that allows the court to draw the
9 reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556
10 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). “When there are well-pleaded factual
11 allegations, a court should assume their veracity, and then determine whether they
12 plausibly give rise to an entitlement to relief.” *Id.* at 679.

13 Social security appeals are not exempt from the general screening requirements for
14 IFP cases. *Montoya v. Colvin*, 16-cv-00454-RFB-NJK, 2016 WL 890922, at *2 (D. Nev.
15 Mar. 8, 2016) (citing *Hoagland v. Astrue*, 12-cv-00973-SMS, 2012 WL 2521753, at *1
16 (E.D. Cal. June 28, 2012)).

17 In social security appeals, courts within the Ninth Circuit have established four
18 requirements necessary for a complaint to survive a sua sponte screening:

19 First, the plaintiff must establish that she had exhausted her administrative remedies
20 pursuant to 42 U.S.C. § 405(g), and that the civil action was commenced within sixty
21 days after notice of a final decision. Second, the complaint must indicate the judicial
22 district in which the plaintiff resides. Third, the complaint must state the nature of
23 the plaintiff’s disability and when the plaintiff claims she became disabled. Fourth,
24 the complaint must contain a plain, short, and concise statement identifying the
nature of the plaintiff’s disagreement with the determination made by the Social
Security Administration and show that the plaintiff is entitled to relief.

25 *Skylar v. Saul*, 19-cv-1581-NLS, 2019 WL 4039650, at *1 (S.D. Cal. Aug. 27, 2019)
26 (quoting *Montoya*, 2016 WL 890922, at *2). As to the fourth requirement, a complaint is
27 insufficient if it merely alleges the Commissioner was wrong in denying plaintiff benefits.
28 *See Skylar*, 2019 WL 4039650, at *1; *see also Hoagland*, 2012 WL 2521753, at *3.

1 Instead, a complaint “must set forth a brief statement of facts setting forth the reasons why
2 the Commissioner’s decision was wrong.” *Skylar*, 2019 WL 4039650, at *2.

3 As to the first requirement, the complaint contains sufficient allegations that Plaintiff
4 exhausted his administrative remedies. Plaintiff filed an application for disability
5 insurance benefits which was subsequently denied. (*See* Doc. 8 at ¶ 2.) This became the
6 Commissioner’s final administrative decision. (*Id.*) Plaintiff timely filed the complaint
7 within sixty days of the Commissioner’s final decision. (*Id.*) As to the second requirement,
8 the complaint states Plaintiff “resides in San Diego, CA, within the jurisdiction of this
9 Court.” (*Id.* at ¶ 4.) As to the third requirement, Plaintiff alleges he “is disabled due to a
10 combination of severe physical and mental impairments . . .” including ataxia, spasmodic
11 torticollis, depression, and pain. (*Id.* at ¶¶ 6-7.) Plaintiff alleges his onset date of disability
12 is October 1, 2010. (*Id.* at ¶ 6.) Finally, Plaintiff alleges the Commissioner’s decision is
13 not supported by substantial evidence and contrary to law and regulation. (*Id.* at ¶ 7.)
14 Specifically, Plaintiff alleges the Commissioner failed to address Plaintiff’s ataxia,
15 spasmodic torticollis, depression, pain, and failed to give weight to specialists and treating
16 doctors. (*Id.*)

17 Based upon all of the foregoing, the Court finds Plaintiff has established the four
18 requirements necessary to survive a sua sponte screening.

19 **B. Application to Proceed IFP**

20 All parties instituting a civil action in a district court of the United States, except an
21 application for a writ of habeas corpus, must pay a filing fee. 28 U.S.C. § 1914(a). But a
22 litigant who, because of indigency, is unable to pay the required fees or security may
23 petition the Court to proceed without making such payment. 28 U.S.C. § 1915(a)(1). The
24 facts of an affidavit of poverty must be stated with some particularity, definiteness, and
25 certainty. *Escobedo v. Applebees*, 787 F.3d 1226, 1235 (9th Cir. 2015) (citing *United*
26 *States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1984)).

27 The determination of indigency falls within the district court’s discretion. *Rowland*
28 *v. Cal. Men’s Colony*, 939 F.2d 854, 858 (9th Cir. 1991), *rev’d on other grounds*, 506 U.S.

1 194 (1993). It is well-settled that a party need not be completely destitute to proceed in
2 forma pauperis. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339-40 (1948);
3 *see also Escobedo*, 787 F.3d at 1235. To satisfy the requirements of 28 U.S.C. §
4 1915(a)(1), “an affidavit [of poverty] is sufficient which states that one cannot because of
5 his poverty pay or give security for costs . . . and still be able to provide[] himself and
6 dependents with the necessities of life.” *Adkins*, 335 U.S. at 339 (internal quotations
7 omitted). Nevertheless, “the same even-handed care must be employed to assure that
8 federal funds are not squandered to underwrite, at public expense, . . . the remonstrances
9 of a suitor who is financially able, in whole or in material part, to pull his own oar.” *Temple*
10 *v. Ellerthorpe*, 586 F. Supp. 848, 850 (D. R.I. 1984) (internal citation omitted). Courts
11 tend to reject IFP motions where the applicant can pay the filing fee with acceptable
12 sacrifice to other expenses. *See, e.g., Allen v. Kelley*, C-91-1635-VRW, 1995 WL 396860,
13 at **2-3 (N.D. Cal. June 29, 1995) (Plaintiff initially permitted to proceed IFP, but later
14 required to pay \$120 filing fee out of \$900 settlement proceeds).

15 Here, Plaintiff has sufficiently demonstrated his entitlement to IFP status.
16 According to his affidavit, Plaintiff’s monthly income is \$190 from public assistance.
17 (Doc. 9 at 1-2.) Plaintiff has \$107 in cash, no savings, \$0 in monthly expenses, and he has
18 not worked for the past two years. (*Id.* at 2, 4-5.) Plaintiff did not list a spouse or any other
19 persons relying on him for support. (*Id.* at 1-5.) He lives with his disabled mother. (*Id.* at
20 5.) He does not expect major changes to his monthly income or expenses during the next
21 twelve months. (*Id.*) Plaintiff alleges that his disability prevents him from working. (*Id.*)

22 Plaintiff’s affidavit sufficiently demonstrated that he is unable to pay the required
23 \$400 filing fee without sacrificing the necessities of life. *See Adkins*, 335 U.S. at 339-340.
24 The Court concludes Plaintiff cannot afford to pay any filing fees at this time for this action.
25 Accordingly, Plaintiff’s IFP Motion is **GRANTED**.

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1 **III. CONCLUSION**

2 Accordingly, **IT IS HEREBY ORDERED:**

3 1. Plaintiff's IFP Motion is **GRANTED**.

4 2. The Clerk of Court is **DIRECTED** to issue a summons as to Plaintiff's
5 Amended complaint and forward it to Plaintiff along with a blank U.S. Marshals Form 285
6 for the named Defendant. In addition, the Clerk of Court is **DIRECTED** to provide
7 Plaintiff with certified copies of this Order and the amended complaint.

8 3. Upon receipt of these materials, Plaintiff is **DIRECTED** to complete Form
9 285 and forward the materials to the United States Marshals Service.

10 4. Upon receipt, the United States Marshals Service is **ORDERED** to serve a
11 copy of the amended complaint and summons upon Defendant as directed by Plaintiff on
12 Form 285. The United States will advance all costs of service. *See* 28 U.S.C. § 1915(d);
13 FED. R. CIV. P. 4(c)(3).

14 5. After service is complete, the undersigned will stay the case again and the stay
15 will automatically lift after Defendant files the Certified Administrative Record.

16 **IT IS SO ORDERED.**

17 Dated: September 16, 2020

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19 HON. RUTH BERMUDEZ MONTENEGRO
20 UNITED STATES MAGISTRATE JUDGE
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