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

JASON G.,  
  
Plaintiff,  
  
v.  
  
ANDREW M. SAUL, COMMISSIONER  
OF SOCIAL SECURITY,  
  
Defendant.

Case No.: 3:20-cv-01593-RBM

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

**[Doc. 2]**

**I. INTRODUCTION**

On August 17, 2020, Plaintiff Jason G. (“Plaintiff”) filed a complaint under 42 U.S.C. § 405(g) and § 1383(c)(3) seeking judicial review of the Commissioner of the Social Security Administration’s (“Defendant” or “Commissioner”) denial of disability insurance benefits and supplemental security income under Titles II and XVI of the Social Security Act (“the Act”). (Doc. 1.) Plaintiff did not pay the required filing fee and instead filed a motion to proceed in forma pauperis (“IFP Motion”). (Doc. 2.)

On April 8, 2020, Chief Judge Larry A. Burns issued an order staying civil cases arising under 42 U.S.C. § 405(g) that were filed on or after March 1, 2020, due to the ongoing COVID-19 public health emergency. *See* Or. of Chief Judge No. 21, sec. 6 (stating

1 in part “all civil cases filed on or after March 1, 2020 brought against the Commissioner .  
2 . . are hereby stayed, unless otherwise ordered by the [Court].”). Initially, the Court held  
3 its ruling on the IFP Motion in abeyance pursuant to the Chief Judge Order. But, the  
4 COVID-19 pandemic has been ongoing for months and will continue for the foreseeable  
5 future. At this time, the Court lifts the stay of this case for the limited of purpose of ruling  
6 on the IFP Motion which will allow Plaintiff to proceed with effectuating service of the  
7 summons and complaint to Defendant. Once service is complete, the Court will stay the  
8 case again until such time as the Commissioner begins normal operations at the Office of  
9 Appellate Hearings Operations and resumes preparation of Certified Administrative  
10 Records. *See* Or. of Chief Judge No. 21 at sec. 6.

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

## 14 II. **DISCUSSION**

### 15 A. **Application to Proceed IFP**

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

23 The determination of indigency falls within the district court’s discretion. *Rowland*  
24 *v. Cal. Men’s Colony*, 939 F.2d 854, 858 (9th Cir. 1991), *rev’d on other grounds*, 506 U.S.  
25 194 (1993). It is well-settled that a party need not be completely destitute to proceed in  
26 forma pauperis. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339-40 (1948);  
27 *see also Escobedo*, 787 F.3d at 1235. To satisfy the requirements of 28 U.S.C. §  
28 1915(a)(1), “an affidavit [of poverty] is sufficient which states that one cannot because of

1 his poverty pay or give security for costs . . . and still be able to provide[ ] himself and  
2 dependents with the necessities of life.” *Adkins*, 335 U.S. at 339 (internal quotations  
3 omitted). Nevertheless, “the same even-handed care must be employed to assure that  
4 federal funds are not squandered to underwrite, at public expense, . . . the remonstrances  
5 of a suitor who is financially able, in whole or in material part, to pull his own oar.” *Temple*  
6 *v. Ellerthorpe*, 586 F. Supp. 848, 850 (D. R.I. 1984) (internal citation omitted). Courts  
7 tend to reject IFP motions where the applicant can pay the filing fee with acceptable  
8 sacrifice to other expenses. *See, e.g., Allen v. Kelley*, C-91-1635-VRW, 1995 WL 396860,  
9 at \*\*2-3 (N.D. Cal. June 29, 1995) (Plaintiff initially permitted to proceed IFP, but later  
10 required to pay \$120 filing fee out of \$900 settlement proceeds).

11 Here, Plaintiff has sufficiently demonstrated his entitlement to IFP status.  
12 According to his affidavit, Plaintiff’s monthly income is \$0, he has no savings or cash, and  
13 he has not worked for the last two years. (Doc. 2 at 1-2.) Plaintiff does not have a spouse  
14 or any other persons relying on him for support. (*Id.* at 2-3.) Plaintiff owns two vehicles  
15 collectively valued at \$1,000. (*Id.* at 3.) Plaintiff’s only listed expenses comprise of \$780  
16 a year in motor vehicle and AAA insurance. (*Id.* at 4.) Plaintiff does not expect major  
17 changes to his monthly income or expenses during the next twelve months. (*Id.* at 5.)

18 Plaintiff’s affidavit sufficiently demonstrated that he is unable to pay the required  
19 \$400 filing fee without sacrificing the necessities of life. *See Adkins*, 335 U.S. at 339-340.  
20 The Court concludes Plaintiff cannot afford to pay any filing fees at this time for this action.  
21 Accordingly, Plaintiff’s IFP Motion is **GRANTED**.

22 **B. Sua Sponte Screening**

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

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 and supplemental security income which was subsequently denied. (*See*  
6 Doc. 1 at ¶¶ 1-2, 8.) This became the Commissioner’s final administrative decision. (*Id.*  
7 at ¶ 2.) Plaintiff timely filed the complaint within sixty days of the Commissioner’s final  
8 decision. (*Id.*) As to the second requirement, the complaint states Plaintiff “resides in  
9 Oceanside, California, County of San Diego within the jurisdiction of this Court.” (*Id.* at  
10 ¶ 4.) As to the third requirement, Plaintiff alleges that he suffers from severe impairments  
11 including obesity and degenerative changes of the cervical and lumbar spine with  
12 radiculopathy. (*Id.* at ¶ 7.) Plaintiff alleges his onset date of disability as May 26, 2017.  
13 (*Id.*) Finally, the complaint alleges the Commissioner’s decision is not supported by  
14 substantial evidence under “applicable law and regulations, including the weight of the  
15 evidence, Plaintiff’s credibility, the medical opinions of his doctors, and any and all other  
16 applicable evidentiary issues . . .” (*Id.* at ¶ 9.) Based upon all of the foregoing, the Court  
17 finds Plaintiff has established the four requirements necessary to survive a sua sponte  
18 screening.

19 However, the undersigned notes that Plaintiff’s counsel has filed several complaints  
20 in other social security appeals that contain language nearly verbatim to the instant  
21 complaint’s paragraph nine. (*Id.*) Paragraph nine of the complaint appears to be a  
22 boilerplate statement identifying the nature of Plaintiff’s disagreement with the Social  
23 Security Administration’s decision and showing that Plaintiff is entitled to relief. (*Id.*)  
24 While the complaints in other cases have survived a sua sponte screening, the undersigned  
25 cautions Plaintiff’s counsel that such boilerplate filings are discouraged. *See Amy D. v.*  
26 *Saul*, 20-cv-1370-BLM, Doc. 4 (S.D. Cal. July 22, 2020) (finding complaint sufficient to  
27 survive a sua sponte screening); *see also Landon H. v. Saul*, 20-cv-910-BGS, Doc. 4 (S.D.  
28 Cal. June 4, 2020); *Mia R. v. Saul*, 20-cv-840-KSC, Doc. 6 (S.D. Cal. May 20, 2020).

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 complaint and forward it to Plaintiff along with a blank U.S. Marshals Form 285 for the  
6 named Defendant. In addition, the Clerk of Court is **DIRECTED** to provide Plaintiff with  
7 certified copies of this Order and the 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 Complaint and summons upon Defendant as directed by Plaintiff on Form 285.  
12 The United States will advance all costs of service. *See* 28 U.S.C. § 1915(d); FED. R. CIV.  
13 P. 4(c)(3).

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

16 **IT IS SO ORDERED.**

17 Dated: September 17, 2020

18 

19 HON. RUTH BERMUDEZ MONTENEGRO  
20 UNITED STATES MAGISTRATE JUDGE