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

EMMA C.,

Plaintiff,

v.

ANDREW SAUL, COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

Case No.: 3:20-cv-01681-RBM

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

[Doc. 2]

I. INTRODUCTION

On August 27, 2020, Plaintiff Emma C. (“Plaintiff”) filed a complaint under 42 U.S.C. §§ 405(g) and 1383(c) 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 IFP Motion and complaint, the Court **GRANTS** Plaintiff’s
12 motion and further finds Plaintiff’s complaint sufficient to survive a sua sponte screening.

13 **II. DISCUSSION**

14 **A. Application to Proceed IFP**

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

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

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

10 Here, Plaintiff has sufficiently demonstrated her entitlement to IFP status.
11 According to her affidavit, Plaintiff’s monthly income is \$0, she has \$60 in savings, and
12 she has had no income for four years. (Doc. 2 at 1-2, 5.) Plaintiff does not have a spouse
13 or any other persons relying on her for support. (*Id.* at 2-3.) Plaintiff alleges she relies on
14 her boyfriend for support, as she has not generated any income for four years. (*Id.* at 5.)
15 Plaintiff owns one vehicle valued at \$1,500. (*Id.* at 3.) Plaintiff has \$1,150 in monthly
16 expenses. (*Id.* at 4-5.) Her monthly expenses are comprised of \$800 for rent or home-
17 mortgage payment, \$200 for food, \$100 for utilities, and \$50 for medication. (*Id.*) Plaintiff
18 does not expect major changes to her monthly income or expenses during the next twelve
19 months. (*Id.* at 5.)

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

24 **B. Sua Sponte Screening**

25 Pursuant to 28 U.S.C. § 1915(a), a complaint filed by any person proceeding IFP is
26 also subject to a mandatory sua sponte screening. The Court must review and dismiss any
27 complaint which is frivolous or malicious, fails to state a claim, or seeks monetary relief
28 from a defendant who is immune. 28 U.S.C. § 1915(e)(2); *see also Lopez v. Smith*, 203

1 F.3d 1122, 1127 (9th Cir. 2000); *see also Alamar v. Soc. Sec.*, 19-cv-0291-GPC-LL, 2019
2 WL1258846, at *3 (S.D. Cal. Mar. 19, 2019).

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

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

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

20 First, the plaintiff must establish that she had exhausted her administrative remedies
21 pursuant to 42 U.S.C. § 405(g), and that the civil action was commenced within sixty
22 days after notice of a final decision. Second, the complaint must indicate the judicial
23 district in which the plaintiff resides. Third, the complaint must state the nature of
24 the plaintiff’s disability and when the plaintiff claims she became disabled. Fourth,
25 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.

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

1 See *Skylar*, 2019 WL 4039650, at *1; see also *Hoagland*, 2012 WL 2521753, at *3.
2 Instead, a complaint “must set forth a brief statement of facts setting forth the reasons why
3 the Commissioner’s decision was wrong.” *Skylar*, 2019 WL 4039650, at *2.

4 As to the first requirement, the complaint contains sufficient allegations that Plaintiff
5 exhausted her administrative remedies. Plaintiff filed concurrent applications for disability
6 insurance benefits and supplemental security income which the Commissioner denied
7 initially and upon reconsideration. (Doc. 1 at ¶ 6.) An administrative law judge (“ALJ”)
8 held a hearing and issued a decision denying Plaintiff’s claim for benefits. (*Id.* at ¶ 7.)
9 Plaintiff filed a request for review, and the appeals council denied it. (*Id.* at ¶ 8.) This
10 became the Commissioner’s final decision. (*Id.*) Plaintiff timely filed the complaint within
11 sixty days of the Commissioner’s final decision. (*Id.* at ¶ 8.) As to the second requirement,
12 the complaint states Plaintiff resides “within the jurisdictional boundaries of this Court in
13 San Diego, CA.” (*Id.* at ¶ 1.) As to the third requirement, Plaintiff alleges she “is, and at
14 all times relevant to this action, disabled as that term is defined in the Social Security Act.”
15 (*Id.* at ¶ 5.) Finally, Plaintiff contends the Court should reverse or remand the
16 Commissioner’s final decision on several grounds. (*Id.* at ¶ 9.) Specifically, Plaintiff
17 alleges the ALJ “failed to articulate specific and legitimate reasons for rejecting the
18 opinions of Dr. Kindel[,]” failed “to articulate germane reasons for rejecting the opinion of
19 the nurse practitioner[,]” failed “to articulate clear and convincing reasons for rejecting
20 [Plaintiff’s] testimony[,]” and erred in “limit[ing] [Plaintiff] to unskilled sedentary work .
21 . . .” (*Id.*) Based upon the foregoing, the Court finds the complaint establishes the four
22 requirements necessary to survive sua sponte screening.

23 However, the Court notes that Plaintiff’s counsel has filed several complaints in
24 other social security appeals that contain language nearly verbatim to the instant
25 complaint’s paragraph five. (*Id.* at ¶ 5.) While paragraph five of the instant complaint
26 alleges Plaintiff is disabled and she has been disabled at all relevant times to this action,
27 this boilerplate language *barely* meets the third screening requirement. *Skylar*, 2019 WL
28 4039650, at *1. The Court has recently issued an order discouraging Plaintiff’s counsel

1 against filing pleadings with such boilerplate language. *Michael W. v. Saul*, 20-cv-608-
2 AJB-RBM, Doc. 6 (S.D. Cal. Sept. 16, 2020) (highlighting boilerplate language in
3 complaint but nevertheless finding complaint sufficient to survive sua sponte screening).
4 While the complaints in other cases have survived a sua sponte screening, the Court
5 cautions Plaintiff's counsel that such boilerplate filings are discouraged. *See Kevin C. v.*
6 *Saul*, 20-cv-463-RBM, Doc. 9 (S.D. Cal. Sept. 2, 2020) (finding complaint sufficient to
7 survive a sua sponte screening); *see also Mark G. v. Saul*, 20-cv-917-WVG, Doc. 5 (S.D.
8 Cal. May 18, 2020) (stating "the Court finds Plaintiff has sufficiently (though barely)
9 satisfied the minimal pleading standards above by stating specific points of error assigned
10 by the ALJ."); *Robert D. v. Saul*, 20-cv-639-MDD, Doc. 6 (S.D. Cal. June 15, 2020)
11 (finding complaint not subject to sua sponte dismissal); *Maria R. v. Saul*, 20-cv-1236-
12 MMA-JLB, Doc. 6 (S.D. Cal. July 23, 2020) (finding complaint not subject to sua sponte
13 dismissal); *but see Maria V. v. Saul*, 20-cv-586-JLB, Doc. 6 (S.D. Cal. May 6, 2020)
14 (dismissing complaint without prejudice finding complaint "merely parrots the standard of
15 judicial review" and "devoid of the [ALJ's] findings and the specific reasons Plaintiff
16 contends the ALJ erred.").

17 **III. CONCLUSION**

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

- 19 1. Plaintiff's IFP Motion is **GRANTED**.
- 20 2. The Clerk of Court is **DIRECTED** to issue a summons as to Plaintiff's
21 complaint and forward it to Plaintiff along with a blank U.S. Marshals Form 285 for the
22 named Defendant. In addition, the Clerk of Court is **DIRECTED** to provide Plaintiff with
23 certified copies of this Order and the complaint.
- 24 3. Upon receipt of these materials, Plaintiff is **DIRECTED** to complete Form
25 285 and forward the materials to the United States Marshals Service.

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

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

7 **IT IS SO ORDERED.**

8 Dated: September 21, 2020

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10 HON. RUTH BERMUDEZ MONTENEGRO
11 UNITED STATES MAGISTRATE JUDGE
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