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

AMANDA C.,

Plaintiff,

v.

ANDREW M. SAUL, COMMISSIONER
OF SOCIAL SECURITY,

Defendant.

Case No.: 3:21-cv-00583-RBM

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

[Doc. 2]

I. INTRODUCTION

On April 2, 2021, Plaintiff Amanda C. ("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, former 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].”). The COVID-19 pandemic
3 has been ongoing for months and will continue for the foreseeable future. At this time, the
4 Court lifts the stay of this case for the limited purpose of ruling on the IFP Motion which
5 will allow Plaintiff to proceed with effectuating service of the summons and complaint to
6 Defendant. Once service is complete, the Court will stay the case again until the
7 Commissioner begins normal operations at the Office of Appellate Hearings Operations
8 and resumes preparation of Certified Administrative Records. *See* Or. of Chief Judge No.
9 21 at sec. 6.

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

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. §1915(a)(1),
27 “an affidavit [of poverty] is sufficient which states that one cannot because of his poverty
28 pay or give security for costs . . . and still be able to provide[] himself and dependents with

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

10 Here, Plaintiff has sufficiently demonstrated her¹ entitlement to IFP status.
11 According to her affidavit, Plaintiff’s monthly income is \$3,610, comprised of child
12 support (\$2,760) and her son’s social security disability benefits (\$850). (Doc. 2 at 1.)
13 Plaintiff owns three vehicles collectively valued at \$26,500; however, one of the vehicles
14 is not in Plaintiff’s possession. (*Id.* at 3.) Plaintiff is currently unemployed and has a 15-
15 year-old son who relies on her for support. (*Id.*) Plaintiff and her spouse have been
16 separated since January 2021, but Plaintiff’s spouse continues to provide financial support.
17 (*Id.* at 5.) While Plaintiff’s spouse provides Plaintiff with \$2,760 per month in “child
18 support” which is not court-ordered, Plaintiff’s listed monthly expenses are \$3,720. (*Id.* at
19 4-5.) These expenses include \$600 in food, \$300 in medical expenses, \$1,260 in rent, \$450
20 in utilities, \$300 in motor-vehicle payments, \$50 in transportation expenses, \$150 in
21 consolidated credit card debts, \$300 in cable/internet expenses, \$150 in clothing expenses,
22 \$60 in laundry expenses, and \$100 in expenses related to “recreation, entertainment,
23 newspapers, magazines, etc.” (*Id.*) Plaintiff does not expect major changes to her monthly
24 income or expenses during the next twelve months. (*Id.* at 5.)

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27 ¹The complaint filed on April 2, 2021 refers to Plaintiff with the pronouns “he” and “his”; however, this
28 appears to be in error given the statements in Plaintiff’s IFP motion (i.e. Plaintiff uses the term husband).
(Doc. 2 at 5.)

1 Plaintiff appears to have sufficient income to cover her debts and *necessary*
2 obligations; however, Plaintiff's affidavit shows a lack of immediately available cash. For
3 example, she is not employed and has no available funds in a bank account. (*Id.* at 2.)
4 Moreover, the child support she receives from her recently-separated spouse is not court-
5 ordered and therefore, subject to change at any moment. (*Id.* at 1.) Arguably, Plaintiff's
6 son's social security benefits should not be considered gross income as the eligibility for
7 these benefits are based on need and disability. (Doc. 2 at 2); *see* Cal. Fam. Code § 4058(c);
8 *In re S.M.* 209 Cal.App.4th 21, 29 (2012) (SSI benefits fell within scope of income
9 exemption and not included in gross income).

10 Based on the above, Plaintiff's affidavit sufficiently demonstrates that she is unable
11 to pay the required \$400 filing fee without sacrificing the necessities of life. *See Adkins*,
12 335 U.S. at 339-340. The Court concludes Plaintiff cannot afford to pay any filing fees at
13 this time for this action. Accordingly, Plaintiff's IFP Motion is **GRANTED**.

14 **B. Sua Sponte Screening**

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

21 To survive, complaints must contain "a short and plain statement of the claim
22 showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). "[T]he pleading
23 standard Rule 8 announces does not require 'detailed factual allegations,' but it demands
24 more than an unadorned, the-defendant-unlawfully-harmed-me-accusation." *Ashcroft v.*
25 *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
26 (2007)). And "[t]hreadbare recitals of elements of a cause of action, supported by mere
27 conclusory statements do not suffice." *Id.* Instead, plaintiff must state a claim plausible
28 on its face, meaning "plaintiff pleads factual content that allows the court to draw the

1 reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556
2 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). “When there are well-pleaded factual
3 allegations, a court should assume their veracity, and then determine whether they
4 plausibly give rise to an entitlement to relief.” *Id.* at 679.

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

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

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

20 *Skylar v. Saul*, 19-cv-1581-NLS, 2019 WL 4039650, at *1 (S.D. Cal. Aug. 27, 2019)
21 (quoting *Montoya*, 2016 WL 890922, at *2). As to the fourth requirement, a complaint is
22 insufficient if it merely alleges the Commissioner was wrong in denying plaintiff benefits.
23 *See Skylar*, 2019 WL 4039650, at *1; *see also Hoagland*, 2012 WL 2521753, at *3.
24 Instead, a complaint “must set forth a brief statement of facts setting forth the reasons why
25 the Commissioner’s decision was wrong.” *Skylar*, 2019 WL 4039650, at *2.

26 As to the first requirement, the complaint contains sufficient allegations that Plaintiff
27 exhausted her administrative remedies. Plaintiff filed an application for disability
28 insurance benefits and supplemental security income which was subsequently denied. (*See*
29 Doc. 1 at ¶¶ 1-2.) This became the Commissioner’s final administrative decision. (*Id.* ¶ at
30 2.) Plaintiff was given sixty days to file a civil action. (*Id.*) Then, Plaintiff was granted

1 an additional thirty days to file her complaint. (*Id.*) Accordingly, Plaintiff timely filed the
2 complaint, and the first requirement necessary to survive a sua sponte screening is satisfied.

3 As to the second requirement, the complaint states Plaintiff “resides in Spring Valley,
4 California, County of San Diego within the jurisdiction of this Court.” (*Id.* at ¶ 4.)
5 Therefore, the second requirement is satisfied.

6 As to the third requirement, Plaintiff alleges that she suffers from severe
7 impairments including depressive/bipolar disorder, anxiety/obsessive disorder, and mood
8 disorder. (*Id.* at ¶ 7.) Additionally, Plaintiff alleges her disability began on January 12,
9 2017. (*Id.*) Because the complaint states the nature of Plaintiff’s disability and her onset
10 date, the third requirement is satisfied.

11 Finally, the complaint contains a plain, short, and concise statement identifying the
12 nature of Plaintiff’s disagreement. Specifically, the complaint alleges that the
13 Commissioner’s decision is not supported by substantial evidence under “applicable law
14 and regulations, including the weight of the evidence, Plaintiff’s credibility, the medical
15 opinions of his doctors, and any and all other applicable evidentiary issues . . .” (*Id.* at ¶ 9.)
16 Based upon all of the foregoing, the Court finds Plaintiff has established the four
17 requirements necessary to survive a sua sponte screening.

18 However, the undersigned notes that Plaintiff’s counsel has filed several complaints
19 in other social security appeals that contain language nearly verbatim to the instant
20 complaint’s paragraph nine. (*Id.*) This is also evident by the misuse of pronouns
21 throughout the complaint. (*Id.* at ¶¶ 7, 9.) Paragraph nine of the complaint appears to be
22 a 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.* at ¶
24 9.) While complaints in other cases have survived sua sponte screenings, 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

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1 (S.D. Cal. June 4, 2020); *Mia R. v. Saul*, 20-cv-840-KSC, Doc. 6 (S.D. Cal. May 20, 2020);
2 *Jason G. v. Saul*, 20-cv-1593-RBM, Doc. 5 (S.D. Cal. Sept. 17, 2020).

3 **III. CONCLUSION**

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

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

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


10 3. Upon receipt of these materials, Plaintiff is **DIRECTED** to complete Form
11 285 and forward the materials to the United States Marshals Service.

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

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

18 **IT IS SO ORDERED.**

19 Dated: April 6, 2021

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21 HON. RUTH BERMUDEZ MONTENEGRO
22 UNITED STATES MAGISTRATE JUDGE
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