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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 MARLOU H.,

12 Plaintiff,

13 v.

14 KILOLO KIJAKAZI, Commissioner of
15 Social Security,

16 Defendant.
17

Case No.: 3:21-cv-1574-AHG

**ORDER GRANTING MOTION FOR
LEAVE TO PROCEED IN FORMA
PAUPERIS**

[ECF No. 3]

18 On September 7, 2021, Plaintiff Marlou H. (“Plaintiff”) brought this action against
19 the Commissioner of Social Security, Kilolo Kijakazi, seeking judicial review of the
20 Commissioner’s final administrative decision denying her application for Social Security
21 Supplemental Security Income for lack of disability. ECF No. 1. Along with her Complaint,
22 Plaintiff also filed a Motion for Leave to Proceed *in forma pauperis* (“IFP”) under 28
23 U.S.C. § 1915. ECF No. 3.

24 **I. LEGAL STANDARD**

25 A motion to proceed IFP presents two issues for the Court’s consideration. First, the
26 Court must determine whether an applicant properly shows an inability to pay the \$400
27 civil filing fee required by this Court. *See* 28 U.S.C. §§ 1914(a), 1915(a). To that end, an
28 applicant must also provide the Court with a signed affidavit “that includes a statement of

1 all assets[,] which shows inability to pay initial fees or give security.” CivLR 3.2(a).
2 Second, § 1915(e)(2)(B)(ii) requires the Court to evaluate whether an applicant’s complaint
3 sufficiently states a claim upon which relief may be granted. *See Lopez v. Smith*, 203 F.3d
4 1122, 1127 (9th Cir. 2000) (“1915(e) not only permits but requires a district court to
5 dismiss an in forma pauperis complaint that fails to state a claim.”).

6 II. DISCUSSION

7 A. Motion to Proceed IFP

8 An applicant need not be completely destitute to proceed IFP, but she must
9 adequately prove her indigence. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331,
10 339–40 (1948). An adequate affidavit should “allege[] that the affiant cannot pay the court
11 costs and still afford the necessities of life.” *Escobedo v. Applebees*, 787 F.3d 1226, 1234
12 (9th Cir. 2015) (citing *Adkins*, 335 U.S. at 339). No exact formula is “set forth by statute,
13 regulation, or case law to determine when someone is poor enough to earn IFP status.”
14 *Escobedo*, 787 F.3d at 1235. Consequently, courts must evaluate IFP requests on a case-
15 by-case basis. *See id.* at 1235–36 (declining to implement a general benchmark of “twenty
16 percent of monthly household income”); *see also Cal. Men’s Colony v. Rowland*, 939 F.2d
17 854, 858 (9th Cir. 1991) (requiring that district courts evaluate indigency based upon
18 available facts and by exercise of their “sound discretion”), *rev’d on other grounds*, 506
19 U.S. 194 (1993); *Venable v. Meyers*, 500 F.2d 1215, 1216 (9th Cir. 1974).

20 An adequate affidavit should state facts supporting the applicant’s claim of
21 indigence “with some particularity, definiteness and certainty.” *United States v. McQuade*,
22 647 F.2d 938, 940 (9th Cir. 1981) (citing *Jefferson v. United States*, 277 F.2d 723, 725 (9th
23 Cir. 1960)). The Court should not grant IFP to an applicant who is “financially able, in
24 whole or in material part, to pull his own oar.” *Temple v. Ellerthorpe*, 586 F. Supp. 848,
25 850 (D.R.I. 1984); *see also Alvarez v. Berryhill*, No. 18cv2133-W-BGS, 2018 WL
26 6265021, at *1 (S.D. Cal. Oct. 1, 2018) (noting that courts often reject IFP applications
27 when applicants “can pay the filing fee with acceptable sacrifice to other expenses”).
28 Additionally, courts have discretion to make a factual inquiry and to deny a motion to

1 proceed IFP when the moving party is “unable, or unwilling, to verify their poverty.”
2 *McQuade*, 647 F.2d at 940.

3 Here, Plaintiff states in her affidavit that she has had no income for the last 12
4 months, other than \$211 in food stamps, and she does not anticipate having any income in
5 the next month. ECF No. 3 at 1–2. She has had no employment history for the past two
6 years, has no money in her checking account, and depends entirely on her daughters to pay
7 all expenses. *Id.* at 2, 5. Considering the information in the affidavit, the Court finds that
8 Plaintiff has sufficiently shown an inability to pay the \$400 filing fee under § 1915(a).

9 **B. Screening under 28 U.S.C. 1915(e)**

10 As discussed above, every complaint filed pursuant to the IFP provisions of 28
11 U.S.C. § 1915 is subject to a mandatory screening by the Court under Section
12 1915(e)(2)(B). *Lopez*, 203 F.3d at 1127. Under that subprovision, the Court must dismiss
13 complaints that are frivolous or malicious, fail to state a claim on which relief may be
14 granted, or seek monetary relief from defendants who are immune from such relief. *See* 28
15 U.S.C. § 1915(e)(2)(B). Social Security appeals are not exempt from this screening
16 requirement. *See Hoagland v. Astrue*, No. 1:12-cv-00973-SMS, 2012 WL 2521753, at *1
17 (E.D. Cal. June 28, 2012) (“Screening is required even if the plaintiff pursues an appeal of
18 right, such as an appeal of the Commissioner's denial of social security disability benefits
19 [under 42 U.S.C. 405(g)].”); *see also Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001)
20 (affirming that “the provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners”);
21 *Lopez*, 203 F.3d at 1129.

22 Rule 8 sets forth the federal pleading standard used to determine whether a complaint
23 states a claim upon which relief may be granted. Fed. R. Civ. P. 8; *see also Ashcroft v.*
24 *Iqbal*, 556 U.S. 662, 678–79 (2009) (“[A] complaint must contain a “short and plain
25 statement of the claim showing that the pleader is entitled to relief.”); *Bell Atlantic Corp.*
26 *v. Twombly*, 550 U.S. 544, 555 (2007) (noting that “detailed factual allegations” are not
27 required, but a plaintiff must provide “more than labels and conclusions, and a formulaic
28 recitation of the elements of a cause of action” to justify relief). A proper pleading “does

1 not require detailed factual allegations, but it demands more than an unadorned, the-
2 defendant-unlawfully-harmed-me accusation. A pleading that offers labels and conclusions
3 . . . will not do. Nor does a complaint suffice if it tenders naked assertions devoid of further
4 factual enhancement.” *Iqbal*, 556 U.S. at 678 (internal citations and quotations omitted).

5 For example, in social security cases, “[t]he plaintiff must provide a statement
6 identifying the basis of the plaintiff’s disagreement with the ALJ’s determination and must
7 make a showing that he is entitled to relief, ‘in sufficient detail such that the Court can
8 understand the legal and/or factual issues in dispute so that it can meaningfully screen the
9 complaint pursuant to § 1915(e).” *Jaime B. v. Saul*, No. 19cv2431-JLB, 2020 WL
10 1169671, at *2 (S.D. Cal. Mar. 10, 2020) (quoting *Graves v. Colvin*, No. 15cv106-RFB-
11 NJK, 2015 WL 357121, at *2 (D. Nev. Jan. 26, 2015)). “Every plaintiff appealing an
12 adverse decision of the Commissioner believes that the Commissioner was wrong. The
13 purpose of the complaint is to briefly and plainly allege facts supporting the legal
14 conclusion that the Commissioner’s decision was wrong.” *Hoagland*, 2012 WL 2521753,
15 at *2.

16 Having reviewed Plaintiff’s Complaint, the Court finds Plaintiff has sufficiently
17 stated a claim upon which relief may be granted. Specifically, Plaintiff appeals the
18 Commissioner’s denial of her application for supplemental security income on the grounds
19 that: (1) “the ALJ did not state clear and convincing reasons for rejecting the symptom and
20 limitation testimony that [Plaintiff] suffers from anxiety, panic attacks with shortness of
21 breath[] and chest pain[,] coupled with crying spells and insomnia” and (2) “the ALJ[’s]
22 finding of the ability to perform work is not supported by substantial evidence because
23 evidence submitted to the Appeals Council establishes a conflict that requires resolution[.]”
24 ECF No. 1 at 3. The Court finds these allegations sufficiently specific to state a claim for
25 reversal or remand of the Commissioner’s decision.

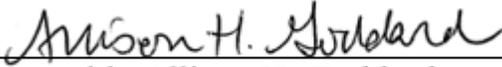
26 III. CONCLUSION

27 Based on the foregoing considerations, the Court **GRANTS** Plaintiff’s Motion to
28 Proceed IFP (ECF No. 3). In accordance with Fed. R. Civ. P. 4(c)(3) and 28 U.S.C.

1 § 1915(d), the Court **DIRECTS** the Clerk to issue the summons and to send Plaintiff a
2 blank United States Marshal Service (“USMS”) Form 285 along with certified copies of
3 this Order and her Complaint (ECF No. 1). Once Plaintiff receives this “IFP Package,” the
4 Court **ORDERS** her to complete the Form 285 and forward all documents in the package
5 to the USMS. Upon receipt, the USMS will serve a copy of the Complaint and summons
6 on Defendant as directed by Plaintiff on the USMS Form 285. The United States will
7 advance all costs of service. *See* 28 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3).

8 **IT IS SO ORDERED.**

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10 Dated: September 9, 2021

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13 Honorable Allison H. Goddard
14 United States Magistrate Judge
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