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

DEBORA A.M.,  
  
Plaintiff,  
  
v.  
  
KILOLO KIJAKAZI, ACTING  
COMMISSIONER OF SOCIAL  
SECURITY,  
  
Defendant.

Case No.: 3:21-cv-01872-RBM

**ORDER GRANTING PLAINTIFF’S  
REQUEST TO PROCEED IN  
FORMA PAUPERIS**

**[Doc. 3]**

**I. INTRODUCTION**

On November 4, 2021, Plaintiff Debora A.M. (“Plaintiff”) filed a Complaint under 42 U.S.C. § 405(g) seeking judicial review of the Commissioner of the Social Security Administration’s (“Defendant” or “Commissioner”) denial of disability insurance benefits under Title II of the Social Security Act (“the Act”).<sup>1</sup> (Doc. 1.) Plaintiff did not pay the

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<sup>1</sup> The Complaint also references Plaintiff’s application for supplemental security income under Title XVI; however, the plain language of the Complaint invokes the Court’s jurisdiction under 42 U.S.C. § 405(g). (Doc. 1 at 1–2, ¶¶ 3, 6.) Thus, it appears Plaintiff is not appealing the supplemental security income decision.

1 required filing fee and instead filed a motion to proceed in forma pauperis (“IFP Motion”).  
2 (Doc. 3.)

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

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

## 17 **II. DISCUSSION**

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

19 All parties instituting a civil action in a district court of the United States, except an  
20 application for a writ of habeas corpus, must pay a filing fee. 28 U.S.C. § 1914(a). But a  
21 litigant who, because of indigency, is unable to pay the required fees or security may  
22 petition the Court to proceed without making such payment. 28 U.S.C. § 1915(a)(1). The  
23 facts of an affidavit of poverty must be stated with some particularity, definiteness, and  
24 certainty. *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir. 2015) (citing *United*  
25 *States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1984)).

26 The determination of indigency falls within the district court’s discretion. *Rowland*  
27 *v. Cal. Men’s Colony*, 939 F.2d 854, 858 (9th Cir. 1991), *rev’d on other grounds*, 506 U.S.  
28 194 (1993). It is well-settled that a party need not be completely destitute to proceed in

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

14 Here, Plaintiff sufficiently demonstrates entitlement to IFP status. According to the  
15 affidavit, Plaintiff’s monthly income for the past twelve months totals \$0; however, her  
16 spouse’s monthly income totals \$3,200. (Doc. 3 at 1.) Plaintiff’s monthly expenses total  
17 \$5,100, which include \$1,500 in “space rent,” \$200 in utilities, \$1,000 for motor vehicle  
18 payments and insurance, \$300 in gasoline, \$300 in food, \$1,600 in “bal[ance] on credit  
19 card[,]” and \$200 in home loan payments. (*Id.*) The couple’s monthly household expenses  
20 exceed their monthly income by \$1,900. (*Id.*) Plaintiff has \$120 in her checking account  
21 and \$25 in her savings account. (*Id.* at 2.) The only valuable property Plaintiff and her  
22 spouse own are a home valued at \$50,000 and two vehicles, a 2017 Chevrolet truck valued  
23 at \$40,000, with an owed balance of \$30,000, and a 2016 Chevrolet Spark valued at  
24 \$10,000. (*Id.*)

25 Even if the \$1,600 in credit card debt is eliminated, it is clear Plaintiff would still be  
26 unable to pay the filing fee without sacrificing other necessary expenses. (Doc. 3 at 1); see  
27 also *Allen*, 1995 WL 396860, at \*\*2–3. Plaintiff’s affidavit sufficiently demonstrates an  
28 inability to pay the required \$400 filing fee without sacrificing the necessities of life. See

1 *Adkins*, 335 U.S. at 339–340. The undersigned concludes Plaintiff cannot afford to pay  
2 any filing fees at this time for this action. Accordingly, Plaintiff’s IFP Motion is  
3 **GRANTED.**

4 **B. Sua Sponte Screening**

5 Pursuant to 28 U.S.C. § 1915(a), a complaint filed by any person proceeding IFP is  
6 also subject to a mandatory sua sponte screening. The Court must review and dismiss any  
7 complaint which is frivolous or malicious, fails to state a claim, or seeks monetary relief  
8 from a defendant who is immune. 28 U.S.C. § 1915(e)(2); *see also Lopez v. Smith*, 203  
9 F.3d 1122, 1126 (9th Cir. 2000); *see also Alamar v. Soc. Sec.*, 19-cv-0291-GPC-LL, 2019  
10 WL1258846, at \*3 (S.D. Cal. Mar. 19, 2019).

11 To survive, complaints must contain “a short and plain statement of the claim  
12 showing that the pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2). “[T]he pleading  
13 standard Rule 8 announces does not require ‘detailed factual allegations,’ but it demands  
14 more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v.*  
15 *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555  
16 (2007)). And “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
17 conclusory statements, do not suffice.” *Ashcroft*, 556 U.S. at 663. Instead, plaintiff must  
18 state a claim plausible on its face, meaning “plaintiff pleads factual content that allows the  
19 court to draw the reasonable inference that the defendant is liable for the misconduct  
20 alleged.” *Id.* at 678. “When there are well-pleaded factual allegations, a court should  
21 assume their veracity and then determine whether they plausibly give rise to an entitlement  
22 to relief.” *Id.* at 679.

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

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

1  
2 First, the plaintiff must establish that she had exhausted her administrative  
3 remedies pursuant to 42 U.S.C. § 405(g), and that the civil action was  
4 commenced within sixty days after notice of a final decision. Second, the  
5 complaint must indicate the judicial district in which the plaintiff resides.  
6 Third, the complaint must state the nature of the plaintiff's disability and when  
7 the plaintiff claims she became disabled. Fourth, the complaint must contain  
8 a plain, short, and concise statement identifying the nature of the plaintiff's  
9 disagreement with the determination made by the Social Security  
10 Administration and show that the plaintiff is entitled to relief.

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

17 As to the first requirement, the Complaint contains sufficient allegations that  
18 Plaintiff exhausted their administrative remedies. (Doc. 1 at 2–3.) Plaintiff filed an  
19 application for a period of disability, disability insurance benefits, and supplemental  
20 security income benefits on September 11, 2019, which the Commissioner denied initially  
21 and upon reconsideration. (*Id.* at 2, ¶ 6.) An administrative law judge (“ALJ”) held a  
22 hearing and issued a decision denying Plaintiff’s claim for benefits on April 29, 2021. (*Id.*  
23 at 2, ¶ 7.) Additionally, Plaintiff sought review with the Appeals Council; however, the  
24 Appeals Council denied the request for review on October 14, 2021. (*Id.* at 3, ¶ 9.) This  
25 became the Commissioner’s final decision. (*Id.*) Plaintiff timely filed the Complaint  
26 within sixty days of the Commissioner’s final decision. *See* 42 U.S.C. § 1383(c). As to  
27 the second requirement, the Complaint states Plaintiff resides “within the jurisdictional  
28 boundaries of this Court at El Cajon, CA.” (Doc. 1 at 1, ¶ 1.) As to the third requirement,  
29 Plaintiff alleges he “is, and at all times relevant to this action, disabled as that term is  
30 defined in the Social Security Act.” (*Id.* at 2, ¶ 5.) Finally, Plaintiff contends the Court

1 should reverse or remand the Commissioner’s final decision on several grounds, including  
2 that the ALJ did not properly weigh medical evidence indicating that Plaintiff had more  
3 limitations as expressed by examining physicians. (*Id.* at 3, ¶ 8(a)-(d).) Based upon the  
4 foregoing, the undersigned finds the Complaint establishes the four requirements necessary  
5 to survive sua sponte screening.

6       However, the Court notes Plaintiff’s counsel has filed several complaints in other  
7 social security appeals that contain language nearly verbatim to the instant Complaint’s  
8 paragraph five. (*Id.* at ¶ 5.) While paragraph five of the instant Complaint alleges Plaintiff  
9 is disabled and he has been disabled at all relevant times to this action, this boilerplate  
10 language *barely* meets the third screening requirement. *Skylar*, 2019 WL 4039650, at \*1.  
11 This Court has recently issued an order discouraging Plaintiff’s counsel against filing  
12 pleadings with such boilerplate language. *Nacimo A. v. Saul*, 20-cv-1780-RBM, Doc. 6 at  
13 6 (S.D. Cal. Sept. 25, 2020) (highlighting paragraph five’s boilerplate language in  
14 complaint but nevertheless finding complaint sufficient to survive a sua sponte screening).  
15 While the complaints in other cases have survived a sua sponte screening, the Court  
16 cautions Plaintiff’s counsel that such boilerplate filings are discouraged. *See Kevin C. v.*  
17 *Saul*, 20-cv-463-RBM, Doc. 9 (S.D. Cal. Sept. 2, 2020) (finding complaint sufficient to  
18 survive a sua sponte screening); *see also Mark G. v. Saul*, 20-cv-917-WVG, Doc. 5 (S.D.  
19 Cal. May 18, 2020) (stating “the Court finds Plaintiff has sufficiently (though barely)  
20 satisfied the minimal pleading standards above by stating specific points of error assigned  
21 by the ALJ.”); *Robert D. v. Saul*, 20-cv-639-MDD, Doc. 6 (S.D. Cal. June 15, 2020)  
22 (finding complaint not subject to sua sponte dismissal); *Maria R. v. Saul*, 20-cv-1236-  
23 MMA-JLB, Doc. 6 (S.D. Cal. July 23, 2020) (finding complaint not subject to sua sponte  
24 dismissal); *but see Maria V. v. Saul*, 20-cv-586-JLB, Doc. 6 (S.D. Cal. May 6, 2020)  
25 (dismissing complaint without prejudice finding complaint “merely parrots the standard of  
26 judicial review” and “devoid of the [ALJ’s] findings and the specific reasons plaintiff  
27 contends the ALJ erred.”).

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