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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 LETICIA ADRIANA MARTINEZ,

12 Plaintiff,

13 v.

14 KILOLO KIJAKAZI, ACTING COMMISSIONER
15 OF SOCIAL SECURITY,

16 Defendant.

Case No.: 22cv953-BLM

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

[ECF NO. 3]

17
18 The instant matter was initiated on June 29, 2022, when Plaintiff filed a complaint to seek
19 judicial review of the Social Security Commissioner's ("Commissioner") final decision. ECF No.
20 1. Plaintiff requests that this Court "reverse and set aside" the Commissioner's decision and find
21 Plaintiff "has been disabled at all times relevant"; alternatively, "remand this matter for a new
22 hearing or new proceedings[.]" ECF No. 1 at 3. That same day, Plaintiff filed an Application to
23 Proceed in District Court without Prepaying Fees or Costs ("Application"). ECF No. 3.

24 Having reviewed the complaint and motion, the Court **GRANTS** Plaintiff's motion to
25 proceed in district court without prepaying fees or costs and finds that Plaintiff's complaint is
26 sufficient to survive *sua sponte* screening.

27 **Application to Proceed in District Court without Prepaying Fees or Costs**

28 All parties instituting any civil action, suit, or proceeding in a district court of the United

1 States, except an application for a writ of habeas corpus, must pay a filing fee. 28 U.S.C.
2 § 1915(a). An action may proceed despite a plaintiff's failure to prepay the entire fee only if
3 she is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a), which
4 states:

5 [A]ny court of the United States may authorize the commencement, prosecution
6 or defense of any suit, action or proceeding ... without prepayment of fees or
7 security therefor, by a person who submits an affidavit that includes a statement
8 of all assets such [person] possesses that the person is unable to pay such fees or
9 give security therefor.

10 The determination of indigency falls within the district court's discretion. Scher v. Saul,
11 2020 WL 8617415, at *1 (S.D. Cal., Sept. 22, 2020) (citing California Men's Colony v. Rowland,
12 939 F.2d 854, 858 (9th Cir. 1991), reversed on other grounds by, 506 U.S. 194 (1993) ("Section
13 1915 typically requires the reviewing court to exercise its sound discretion in determining
14 whether the affiant has satisfied the statute's requirement of indigency.")). It is well-settled
15 that a party need not be completely destitute to proceed IFP. See Escobedo v. Applebees, 787
16 F.3d 1226, 1234 (9th Cir. 2015) (quoting Jefferson v. United States, 277 F.2d 723, 725 (9th
17 Cir.1960)). To satisfy the requirements of 28 U.S.C. § 1915(a), an affidavit of poverty is
18 sufficient which states that one cannot because of his poverty pay or give security for costs and
19 still be able to provide for himself and dependents with the necessities of life. Id. (citing Adkins
20 v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339 (1948)). At the same time, "the same
21 even-handed care must be employed to assure that federal funds are not squandered to
22 underwrite, at public expense, ... the remonstrances of a suitor who is financially able, in whole
23 or in material part, to pull his own oar." Azizeh R. v. Saul, 2020 WL 8082422, at *1 (S.D. Cal.,
24 Oct. 19, 2020) (quoting Temple v. Ellerthorpe, 586 F. Supp. 848, 850 (D.R.I. 1984)). District
25 courts tend to reject IFP applications where the applicant can pay the filing fee with acceptable
26 sacrifice to other expenses. See, e.g., Allen v. Kelley, 1995 WL 396860, at *2 (N.D. Cal. 1995)
27 (Plaintiff initially permitted to proceed IFP, later required to pay \$ 120 filing fee out of \$900
28 settlement proceeds); Ali v. Cuyler, 547 F. Supp. 129, 130 (E.D. Pa. 1982) (IFP application

1 denied because the plaintiff possessed savings of \$450 and that was more than sufficient to pay
2 the filing fee). Moreover, the facts as to the affiant's poverty must be stated "with some
3 particularity, definiteness, and certainty." Escobedo, 787 F.3d at 1234 (quoting United States
4 v. McQuade, 647 F.2d 938, 940 (9th Cir. 1981)).

5 Plaintiff has satisfied her burden of demonstrating that she is entitled to IFP status.
6 According to her Application, Plaintiff is not employed and has no income. ECF No. 3 at 1-2.
7 Plaintiff's spouse is employed and makes \$1,400.00 per month. Id. Plaintiff was last employed
8 in February 2014. Id. at 2. Plaintiff and her spouse have no cash and no bank accounts. Id.
9 Plaintiff owns a 2008 Honda CRV worth \$3,000.00 and 2004 Ford F-150 worth \$3,500.00. Id.
10 at 3. Plaintiff has two young, adopted children. Id. Plaintiff's spouse's monthly expenses include
11 \$775.00 for rent, \$165.00 for utilities, \$650.00 for food, \$105.00 for transportation, \$110.00 for
12 clothing and drying cleaning, a \$75 credit card payment, and \$400 for other family expenses for
13 a total of \$2,280.00 in monthly expenses. Id. at 4-5. Plaintiff does not expect any major
14 changes to her monthly income, expenses, assets, or liabilities over the next twelve months. Id.
15 at 5. Plaintiff states that she "do[es] not have the necessary resources to cover monthly
16 expenses" and her family makes do monthly. Id. at 5. Based on the foregoing, the Court finds
17 Plaintiff has established that she is unable to pay the \$402 filing fee without impairing her ability
18 to pay for life's necessities. Accordingly, Plaintiff's motion to proceed IFP is **GRANTED**.

19 **SUA SPONTE SCREENING PURSUANT TO 28 U.S.C. § 1915(e)(2) and § 1915(a)**

20 Complaints filed by any person proceeding IFP pursuant to 28 U.S.C. § 1915(a) are
21 subject to a mandatory *sua sponte* screening by the Court. Lopez v. Smith, 203 F.3d 1122,
22 1127 (9th Cir. 2000); see also Alamar v. Social Security, 2019 WL1258846, at *3 (S.D. Cal. Mar.
23 19, 2019). A complaint should be dismissed *sua sponte* if it is (1) "frivolous or malicious;" (2)
24 "fails to state a claim on which relief may be granted;" or (3) "seeks monetary relief against a
25 defendant who is immune from such relief." See 28 U.S.C. § 1915(e)(2); Lopez, 203 F.3d at
26 1126–27.

27 To survive, all complaints must contain "a short and plain statement of the claim showing
28 that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "[T]he pleading standard Rule 8

1 announces does not require 'detailed factual allegations,' but it demands more than an
2 unadorned, the-defendant-unlawfully-harmed-me-accusation." Ashcroft v. Iqbal, 556 U.S. 662,
3 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Furthermore,
4 "recitals of elements of a cause of action, supported by mere conclusory statements do not
5 suffice." Id. Instead, the plaintiff must state a claim that is plausible on its face, meaning "the
6 pleaded factual content allows the court to draw the reasonable inference that the defendant is
7 liable for the misconduct alleged." Id. at 556 (quoting Twombly, 550 U.S. at 556, 570)). "When
8 there are well-pleaded factual allegations, a court should assume their veracity, and then
9 determine whether they plausibly give rise to an entitlement to relief." Id. at 679. Social security
10 appeals are not exempt from the general screening requirements for IFP cases proceeding under
11 § 1915(e). Montoya v. Colvin, 2016 WL 890922, at *2 (D. Nev. Mar. 8, 2016) (citing Hoagland
12 v. Astrue, 2012 WL 2521753, *1 (E.D. Cal. June 28, 2012)).

13 In the context of a social security appeal, courts within the Ninth District have established
14 four elements necessary for a complaint to survive a *sua sponte* screening:

15 First, the plaintiff must establish that she has exhausted her administrative
16 remedies pursuant to 42 U.S.C. § 405(g), and that the civil action was commenced
17 within sixty days after notice of a final decision. Second, the complaint must
18 indicate the judicial district in which the plaintiff resides. Third, the complaint must
19 state the nature of the plaintiff's disability and when the plaintiff claims she became
20 disabled. Fourth, the complaint must contain a plain, short, and concise statement
21 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.

22 Skylar v. Saul, 2019 WL 4039650, *1 (S.D. Cal. Aug. 27, 2019) (quoting Montoya, 2016 WL
23 890922 at *2). With regard to element four, a complaint is insufficient if it merely states that
24 the Commissioner was wrong in denying a plaintiff benefits. See id.; see also Hoagland, 2012
25 WL 2521753 at *3 ("Every plaintiff appealing an adverse decision of the Commissioner believes
26 that the Commissioner was wrong. The purpose of the complaint is to briefly and plainly allege
27 facts supporting the legal conclusion that the Commissioner's decision was wrong."). Instead,
28 the "complaint . . . must set forth a brief statement of facts setting forth the reasons why the

1 Commissioner’s decision was wrong.” Id. at *2.

2 After reviewing the complaint, the Court finds that Plaintiff has established the four
3 elements necessary for a complaint to survive *sua sponte* screening. Plaintiff states that she
4 resides within the jurisdictional boundaries of this Court in El Centro, California. ECF No. 1 at 1.
5 Plaintiff also states that she has “exhausted all administrative remedies by seeking review with
6 the Appeals Council[,]” and that the Administrative Law Judge’s (“ALJ”) April 21, 2021,
7 determination became final when the Appeals Council denied Plaintiff’s request for review on
8 May 31, 2022. Id. at 3. In further support of her claim, Plaintiff indicates her disability
9 commenced on February 1, 2014, and she suffers from “medically determinable severe
10 impairments consisting of lumbar degenerative disc disease, post anterior cervical
11 decompression and fusion C-3/4 to C-5/6 [], depression and anxiety[.]” Id. at 2. Plaintiff further
12 identifies four reasons why she disagrees with the Social Security Administration’s decision.
13 First, Plaintiff states the ALJ failed to “state clear and convincing reasons for rejecting the
14 symptom and limitation testimony [of Plaintiff.]” Id. at 3. Second, Plaintiff alleges the ALJ
15 improperly weighed medical evidence that indicated Plaintiff “had more limitations as expressed
16 by the treating and consultative physicians[.]” Id. Third, the ALJ’s residual functional capacity
17 determination was not supported by substantial evidence. Id. Lastly, the ALJ’s finding that
18 Plaintiff could perform work was not free of legal error as such finding was not supported by
19 substantial evidence. Id.

20 In light of the Court’s rulings, **IT IS FURTHER ORDERED:**


21 1. The United States Marshall shall serve a copy of the Complaint filed on June 29,
22 2022, and an accompanying summons upon Defendant as directed by Plaintiff on U.S. Marshal
23 Form 285. All costs of service shall be advanced by the United States.

24 2. Plaintiff shall serve upon Defendant, or, if appearance has been entered by
25 counsel, upon Defendant’s counsel, a copy of every further pleading or document submitted for
26 consideration of the Court. Plaintiff shall include with the original paper to be filed with the Clerk
27 of the Court a certificate stating the manner in which a true and correct copy of any document
28 was served on Defendant or Defendant’s counsel and the date of service. Any paper received

1 by a District Judge or Magistrate Judge that has not been filed with the Clerk or that fails to
2 include a Certificate of Service will be disregarded.

3 **IT IS SO ORDERED.**

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5 Dated: 7/7/2022

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7 Hon. Barbara L. Major
8 United States Magistrate Judge
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