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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ELIZABETH R.,

Plaintiff,

v.

KILOLO KIJAKAZI,
Acting Commissioner of Social Security,

Defendant.

Case No.: 3:23-cv-01190-AHG

**ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS**

[ECF No. 2]

1 On June 27, 2023, Plaintiff Elizabeth R. (“Plaintiff”) brought this action against the
2 Commissioner of Social Security, seeking judicial review of the Commissioner’s final
3 administrative decision denying her application for Social Security Disability Insurance
4 Benefits for lack of disability. ECF No. 1. Along with the Complaint, Plaintiff also filed a
5 Motion for Leave to Proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915. ECF
6 No. 2.

7 **I. LEGAL STANDARD**

8 A motion to proceed IFP presents two issues for the Court’s consideration. First, the
9 Court must determine whether an applicant properly shows an inability to pay the
10 \$402¹ civil filing fee required by this Court. *See* 28 U.S.C. §§ 1914(a), 1915(a). To that
11 end, an applicant must also provide the Court with a signed affidavit “that includes a
12 statement of all assets[,] which shows inability to pay initial fees or give security.” CivLR
13 3.2(a). Second, § 1915(e)(2)(B)(ii) requires the Court to evaluate whether an applicant’s
14 complaint sufficiently states a claim upon which relief may be granted. *See Lopez v. Smith*,
15 203 F.3d 1122, 1127 (9th Cir. 2000) (“1915(e) not only permits but requires a district court
16 to dismiss an in forma pauperis complaint that fails to state a claim.”).

17 **II. DISCUSSION**

18 **A. Motion to Proceed IFP**

19 An applicant need not be completely destitute to proceed IFP, but he must adequately
20 prove his indigence. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339–40
21 (1948). An adequate affidavit should “allege[] that the affiant cannot pay the court costs
22 and still afford the necessities of life.” *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th
23

24
25 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative
26 fee of \$52. *See* 28 U.S.C. § 1914(a); UNITED STATES COURTS, DISTRICT COURT
27 MISCELLANEOUS FEE SCHEDULE § 14 (effective Dec. 1, 2020),
28 <https://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule>.
The additional \$52 administrative fee does not apply to persons granted leave to proceed
IFP. *Id.*

1 Cir. 2015) (citing *Adkins*, 335 U.S. at 339); *see also United States v. McQuade*, 647 F.2d
2 938, 940 (9th Cir. 1981) (an adequate affidavit should state supporting facts “with some
3 particularity, definiteness and certainty”). No exact formula is “set forth by statute,
4 regulation, or case law to determine when someone is poor enough to earn IFP status.”
5 *Escobedo*, 787 F.3d at 1235. Consequently, courts must evaluate IFP requests on a case-
6 by-case basis. *See id.* at 1235–36 (declining to implement a general benchmark of “twenty
7 percent of monthly household income”); *see also Cal. Men’s Colony v. Rowland*, 939 F.2d
8 854, 858 (9th Cir. 1991) (requiring that district courts evaluate indigency based upon
9 available facts and by exercise of their “sound discretion”), *rev’d on other grounds*, 506
10 U.S. 194 (1993); *Venable v. Meyers*, 500 F.2d 1215, 1216 (9th Cir. 1974).

11 Here, in support of her IFP application, Plaintiff states in her affidavit that she has
12 no monthly income, and that her spouse earns \$600.00 per month through self-employment
13 and \$1,722.00 in interest and dividends, for a total of \$2,322.00 of monthly household
14 income. ECF No. 2 at 2-3. She reports that she and her spouse have a total of \$2,600.00 in
15 a checking account and \$50.00 in cash. *Id.* at 3. They do not own a home, and their total
16 monthly expenses amount to \$1,761.00. *Id.* at 3-5. Additionally, their adult daughter relies
17 on them for financial support. *Id.* at 3. Although Plaintiff’s affidavit shows that her
18 monthly household income typically exceeds their monthly expenses by over \$500.00, it
19 is also clear from the information provided that the family has very little savings, and that
20 an expense of \$400.00 would be quite burdensome. Indeed, Plaintiff states in her affidavit
21 that the family “is on a very tight budget and [we] are unable to squeeze out any excess.”
22 *Id.* at 5. As noted by the Ninth Circuit in *Escobedo*, “\$350 [or, in this case, \$402] is a lot
23 of money to many millions of Americans. A person working full-time at a minimum wage
24 job will, with the normal deductions, likely take home less than \$350 in a typical forty-
25 hour week.” 787 F.3d at 1235. There, the trial court had denied IFP status to a plaintiff who
26 received only \$180 per week in unemployment compensation, because her husband
27 received \$1800 per month in social security benefits. *Id.* at 1229-30. The Ninth Circuit
28 found that the denial of the plaintiff’s IFP application constituted an abuse of discretion,

1 reasoning that the plaintiff “was plainly indigent,” and “[e]ven taking into account the
2 income of both Escobedo and her husband . . . the magistrate judge’s ruling represented, at
3 best, the outer boundary of stringency. Including Escobedo’s husband’s income with hers,
4 the filing fee would still be twenty-six percent of Escobedo’s communal property share of
5 the family’s monthly income and thirteen percent of the total monthly family income.” *Id.*
6 at 1235.

7 Similarly, here, a \$402 filing fee represents 17 percent of the total monthly
8 household income and 34 percent of her communal property share of the income. Plaintiff
9 herself has no income whatsoever. Thus, applying the reasoning of *Escobedo*, the Court
10 finds that Plaintiff has sufficiently shown an inability to pay the \$402 filing fee under
11 Section 1915(a).

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

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

25 Rule 2 of the Federal Rules of Civil Procedure’s Supplemental Rules of Social
26 Security Actions sets forth the requirements for a complaint in an action appealing the
27 decision of the Commissioner. Fed. R. Civ. P., Supp. R. 2 of Soc. Sec. Actions under 42
28 U.S.C. § 405(g) (effective Dec. 1, 2022). Under that Rule, the complaint must:

- 1 (A) state that the action is brought under § 405(g);
- 2 (B) identify the final decision to be reviewed, including any identifying designation provided by the Commissioner with the final decision;
- 3 (C) state the name and the county of residence of the person for whom benefits are claimed;
- 4 (D) name the person on whose wage record benefits are claimed; and
- 5 (E) state the type of benefits claimed.

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

18 In her Complaint, Plaintiff alleges that she is disabled due to “a combination of
19 severe physical and mental impairments, including: degenerative disc disease of the lumbar
20 spine, history of pancreatitis, obesity, and bipolar/depression.” ECF No. 1 ¶ 6. Further, in
21 support of her argument that the Commissioner’s decision should be reversed, Plaintiff
22 contends the decision is not supported by substantial evidence because (1) the
23 Administrative Law Judge (“ALJ”) “erred by finding Plaintiff’s dissociative disorder was
24 not a medically determinable impairment;” and (2) “[t]he ALJ erred by finding that
25 Plaintiff’s carpal tunnel syndrome was not a medically determinable impairment.” *Id.* ¶ 7.
26 The Court finds these allegations sufficiently specific under 28 U.S.C. § 1915(e)(2)(B) to
27 state a claim for reversal or remand of the Commissioner’s decision.

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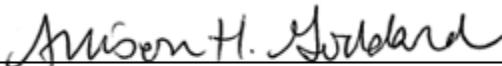
1 **III. CONCLUSION**

2 Based on the foregoing considerations, the Court **GRANTS** Plaintiff’s Motion to
3 Proceed IFP (ECF No. 2).

4 In accordance with Rule 3 of the Federal Rules of Civil Procedure’s Supplemental
5 Rules of Social Security Actions, and this district’s General Order 747, a notice of
6 electronic filing shall be transmitted to the Social Security Administration’s Office of
7 General Counsel and to the United States Attorney’s Southern District of California office
8 in lieu of service of a summons. Here, no further action is needed, as the Clerk’s Office
9 already transmitted the notice of electronic filing of the Complaint to Defendant in the
10 instant case. *See* ECF No. 3, NEF (“The Notice of Electronic Filing of the complaint sent
11 by the court to the Commissioner suffices for service of the complaint. The Plaintiff need
12 not serve a summons and complaint under Civil Rule 4.”).

13 **IT IS SO ORDERED.**

14 Dated: July 3, 2023

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18 Honorable Allison H. Goddard
19 United States Magistrate Judge
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