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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SHAWN C.,

Plaintiff,

v.

KILOLO KIJAKAZI,
Acting Commissioner of Social Security,

Defendant.

Case No.: 3:23-cv-01930-AHG
**ORDER GRANTING PLAINTIFF’S
MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS**

[ECF No. 2]

On October 20, 2023, Plaintiff Shawn C. (“Plaintiff”) brought this action against the Commissioner of Social Security, seeking judicial review of the Commissioner’s final administrative decision denying his applications for Supplemental Security Income for lack of disability. ECF No. 1. Along with his Complaint, Plaintiff also filed a Motion for Leave to Proceed *in forma pauperis* (“IFP”) under 28 U.S.C. § 1915. ECF No. 2.

1 **I. LEGAL STANDARD**

2 A motion to proceed IFP presents two issues for the Court’s consideration. First, the
3 Court must determine whether an applicant properly shows an inability to pay the
4 \$402¹ civil filing fee required by this Court. *See* 28 U.S.C. §§ 1914(a), 1915(a). To that
5 end, an applicant must also provide the Court with a signed affidavit “that includes a
6 statement of all assets[,] which shows inability to pay initial fees or give security.” CivLR
7 3.2(a). Second, § 1915(e)(2)(B)(ii) requires the Court to evaluate whether an applicant’s
8 complaint sufficiently states a claim upon which relief may be granted. *See Lopez v. Smith*,
9 203 F.3d 1122, 1127 (9th Cir. 2000) (“1915(e) not only permits but requires a district court
10 to dismiss an in forma pauperis complaint that fails to state a claim.”).

11 **II. DISCUSSION**

12 **A. Motion to Proceed IFP**

13 An applicant need not be completely destitute to proceed IFP, but he must adequately
14 prove his indigence. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339–40
15 (1948). An adequate affidavit should “allege[] that the affiant cannot pay the court costs
16 and still afford the necessities of life.” *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th
17 Cir. 2015) (citing *Adkins*, 335 U.S. at 339); *see also United States v. McQuade*, 647 F.2d
18 938, 940 (9th Cir. 1981) (an adequate affidavit should state supporting facts “with some
19 particularity, definiteness and certainty”). No exact formula is “set forth by statute,
20 regulation, or case law to determine when someone is poor enough to earn IFP status.”
21 *Escobedo*, 787 F.3d at 1235. Consequently, courts must evaluate IFP requests on a case-
22 by-case basis. *See id.* at 1235–36 (declining to implement a general benchmark of “twenty
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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 percent of monthly household income”); *see also Cal. Men’s Colony v. Rowland*, 939 F.2d
2 854, 858 (9th Cir. 1991) (requiring that district courts evaluate indigency based upon
3 available facts and by exercise of their “sound discretion”), *rev’d on other grounds*, 506
4 U.S. 194 (1993); *Venable v. Meyers*, 500 F.2d 1215, 1216 (9th Cir. 1974).

5 Here, in support of his IFP application, Plaintiff states in his affidavit that he receives
6 \$475.00 in public assistance and another \$280.00 from an unspecified “other” source every
7 month,² for a total of \$755.00 per month, but otherwise has no income. ECF No. 2 at 1-2.
8 He reports no assets, no employment, and no bank accounts in any financial institution. *Id.*
9 at 2-5. Plaintiff states that he has to “ration [his] food to try and last [him] for a month.” *Id.*
10 at 5. Considering the information in the affidavit, the Court finds that Plaintiff has
11 sufficiently shown an inability to pay the \$402 filing fee under § 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”);
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26 ² Elsewhere in the application, Plaintiff states that he spends \$475.00 on housing and
27 \$280.00 on food each month, and that he receives “only GR and food stamps.” ECF No. 2
28 at 4, 5. Together, these statements indicate that the \$475.00 amount reflects a General
Relief cash assistance payment and the \$280.00 amount reflects a CalFresh benefits
payment, both of which are forms of public assistance.

1 *Lopez*, 203 F.3d at 1129.

2 In the past, this Court and others have applied the familiar Rule 8 pleading standard
3 to conduct the mandatory screening of complaints under the IFP statute in Social Security
4 appeals brought pursuant to 42 U.S.C. § 405(g). *See, e.g., Hoagland*, 2012 WL 2521753,
5 at *2-3; (applying Fed. R. Civ. P. 8(a) to determine the sufficiency of a complaint in a
6 Social Security appeal); *Jaime B. v. Saul*, No. 3:19-CV-02431-JLB, 2020 WL 1169671, at
7 *3 (S.D. Cal. Mar. 10, 2020) (same); *Detra H. v. Kijakazi*, No. 3:22-CV-01162-AHG, 2022
8 WL 4230547, at *2 (S.D. Cal. Aug. 10, 2022) (same). However, since the Federal Rules of
9 Civil Procedure’s Supplemental Rules for Social Security Actions Under 42 U.S.C.
10 § 405(g) (“Supplemental Rules”) became effective on December 1, 2022, the standard for
11 screening complaints in the Social Security appeals context has changed. Now, to the extent
12 that the Federal Rules of Civil Procedure are inconsistent with the Supplemental Rules, the
13 Court must apply the Supplemental Rules rather than the Civil Rules. Fed. R. Civ. P. SUPP
14 SS Rule 2 Committee Note. “Supplemental Rules 2, 3, 4, and 5 are the core of the
15 provisions that are inconsistent with, and supersede, the corresponding rules on pleading,
16 service, and presenting the action for decision.” *Id.*

17 Rule 2 of the Supplemental Rules for Social Security Actions sets forth the
18 requirements for a complaint in an action appealing the decision of the Commissioner.
19 Accordingly, the Court must apply Rule 2 to determine whether Plaintiff’s Complaint
20 sufficiently states a claim for relief. Under that Rule, the complaint must:

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

28 Fed. R. Civ. P. SUPP SS Rule 2(b)(1)(A)-(E). Additionally, Rule 2(b)(2) provides that the
complaint may “include a short and plain statement of the grounds for relief.”

In his Complaint, Plaintiff (1) states that he brings this action pursuant to 42 U.S.C.

1 § 405(g); (2) identifies the final decision of the Commissioner to be reviewed as the
2 Appeals Council’s August 24, 2023 denial of Plaintiff’s request for review of the
3 Administrative Law Judge’s (“ALJ”) unfavorable decision, and further provides the unique
4 13-character Beneficiary Notice Code associated with his application in the caption; (3)
5 provides his name and states that he resides in Oceanside, California, located within San
6 Diego County; (4) states that he is claiming benefits on his own wage record; and (5) states
7 the type of benefits claimed, namely, supplemental security income pursuant to 42 U.S.C.
8 § 1383(c) under Title XVI of the Social Security Act. ECF No. 1 at 1-2. Plaintiff further
9 includes as his grounds for relief that the evidence produced at the hearing before the ALJ
10 and on review before the Appeals Council “shows, without substantial contradiction, that
11 Plaintiff was severely and irremediably disabled by physical and/or mental impairments,
12 and that such disability rendered him unable to engage in any substantial gainful activity
13 within the meaning of the Social Security Act.” *Id.* at 2. Plaintiff contends that the
14 Commissioner’s decision to the contrary “lack substantial support in the evidence.” *Id.*

15 Plaintiff’s Complaint satisfies all pleading requirements of Rule 2(b) of the
16 Supplemental Rules for Social Security Actions, and there is no indication that the
17 Complaint is frivolous or malicious or seeks monetary relief from a defendant who is
18 immune from such relief. Accordingly, the Court finds that the Complaint survives
19 screening under 28 U.S.C. § 1915(e)(2)(B).

20 **III. CONCLUSION**

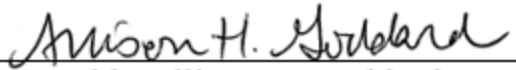
21 Based on the foregoing considerations, the Court **GRANTS** Plaintiff’s Motion to
22 Proceed IFP (ECF No. 2).

23 In accordance with Rule 3 of the Federal Rules of Civil Procedure’s Supplemental
24 Rules for Social Security Actions, and this District’s General Order 747, a notice of
25 electronic filing shall be transmitted to the Social Security Administration’s Office of
26 General Counsel and to the United States Attorney’s Southern District of California office
27 in lieu of service of a summons. No further action by Plaintiff is needed to effect service
28 of the Complaint, as the Clerk’s Office already transmitted the notice of electronic filing

1 of the Complaint to Defendant in the instant case. *See* ECF No. 4, NEF (“The Notice of
2 Electronic Filing of the complaint sent by the court to the Commissioner suffices for
3 service of the complaint. The Plaintiff need not serve a summons and complaint under Civil
4 Rule 4.”).

5 **IT IS SO ORDERED.**

6 Dated: October 24, 2023

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Honorable Allison H. Goddard
9 United States Magistrate Judge
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