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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOEL L.,

Plaintiff,

v.

KILOLO KIJAKAZI,
Acting Commissioner of Social Security,

Defendant.

Case No.: 3:23-cv-02140-AHG
**ORDER GRANTING PLAINTIFF’S
MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS**

[ECF No. 3]

On November 21, 2023, Plaintiff Joel L. (“Plaintiff”) brought this action against the Commissioner of Social Security, seeking judicial review of the Commissioner’s final administrative decision denying his application for disability insurance benefits 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. 3.

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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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 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 \$3,919.00 in disability benefits from the VA every month, and he and his spouse have no
7 other sources of income. ECF No. 3 at 1-2. The family’s total monthly expenses amount to
8 \$4,450.00, more than \$500.00 in excess of their income, and he has a 6-month-old son. *Id.*
9 at 3-5. Although Plaintiff has a decent monthly income, the Court finds that he he has
10 sufficiently shown an inability to pay the filing fee. As noted by the Ninth Circuit in
11 *Escobedo*, “\$350 [or, in this case, \$402] is a lot of money to many millions of Americans.”
12 787 F.3d at 1235. There, the trial court had denied IFP status to a plaintiff who received
13 only \$180 per week in unemployment compensation, because her husband received \$1800
14 per month in social security benefits. *Id.* at 1229-30. The Ninth Circuit found that the denial
15 of the plaintiff’s IFP application constituted an abuse of discretion, reasoning that the
16 plaintiff “was plainly indigent,” and “[e]ven taking into account the income of both
17 Escobedo and her husband[,] the magistrate judge’s ruling represented, at best, the outer
18 boundary of stringency. Including Escobedo’s husband’s income with hers, the filing fee
19 would still be twenty-six percent of Escobedo’s communal property share of the family’s
20 monthly income and thirteen percent of the total monthly family income.” *Id.* at 1235.

21 Similarly, here, a \$402 filing fee represents over 10 percent of the total monthly
22 household income and over 20 percent of Plaintiff’s communal property share of the
23 income. Additionally, Plaintiff’s monthly expenses already substantially exceed his
24 monthly income, and the family has less than \$10.00 in checking or savings. *See* ECF No.
25 3 at 2. Thus, applying the reasoning of *Escobedo*, the Court finds that Plaintiff has
26 sufficiently shown an inability to pay the \$402 filing fee under Section 1915(a).

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

28 As discussed above, every complaint filed pursuant to the IFP provisions of 28

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

12 In the past, this Court and others have applied the familiar Rule 8 pleading standard
13 to conduct the mandatory screening of complaints under the IFP statute in Social Security
14 appeals brought pursuant to 42 U.S.C. § 405(g). *See, e.g., Hoagland*, 2012 WL 2521753,
15 at *2-3; (applying Fed. R. Civ. P. 8(a) to determine the sufficiency of a complaint in a
16 Social Security appeal); *Jaime B. v. Saul*, No. 3:19-CV-02431-JLB, 2020 WL 1169671, at
17 *3 (S.D. Cal. Mar. 10, 2020) (same); *Detra H. v. Kijakazi*, No. 3:22-CV-01162-AHG, 2022
18 WL 4230547, at *2 (S.D. Cal. Aug. 10, 2022) (same). However, since the Federal Rules of
19 Civil Procedure’s Supplemental Rules for Social Security Actions Under 42 U.S.C.
20 § 405(g) (“Supplemental Rules”) became effective on December 1, 2022, the standard for
21 screening complaints in the Social Security appeals context has changed. Now, to the extent
22 that the Federal Rules of Civil Procedure are inconsistent with the Supplemental Rules, the
23 Court must apply the Supplemental Rules rather than the Civil Rules. Fed. R. Civ. P. SUPP
24 SS Rule 2 Committee Note. “Supplemental Rules 2, 3, 4, and 5 are the core of the
25 provisions that are inconsistent with, and supersede, the corresponding rules on pleading,
26 service, and presenting the action for decision.” *Id.*

27 Rule 2 of the Supplemental Rules for Social Security Actions sets forth the
28 requirements for a complaint in an action appealing the decision of the Commissioner.

1 Accordingly, the Court must apply Rule 2 to determine whether Plaintiff's Complaint
2 sufficiently states a claim for relief. Under that Rule, the complaint must:

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

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

10 In his Complaint, Plaintiff (1) states that he brings this action pursuant to 42 U.S.C.
11 § 405(g); (2) identifies the final decision of the Commissioner to be reviewed as the
12 Appeals Council's October 24, 2023 denial of Plaintiff's request for review of the
13 Administrative Law Judge's ("ALJ") unfavorable decision, and further provides the unique
14 13-character Beneficiary Notice Code associated with his application; (3) provides his
15 name and states that he resides in Escondido, California, located within San Diego County;
16 (4) states that he is claiming benefits on his own wage record; and (5) states the type of
17 benefits claimed, namely, disability insurance benefits under Title II of the Social Security
18 Act. ECF No. 1. Although it is optional to do so under Rule 2, Plaintiff further details four
19 grounds for relief from the Commissioner's decision, including that (1) the ALJ did not
20 state clear and convincing reasons for rejecting certain symptom and limitation testimony
21 from Plaintiff; (2) the ALJ improperly weighed the medical evidence that Plaintiff had
22 greater limitations than the ALJ found, as expressed by certain medical opinions in the
23 record; (3) the ALJ failed to support his finding of non-disability with substantial evidence,
24 because the vocational expert did not respond to a complete hypothetical question; and (4)
25 the ALJ failed to resolve an apparent conflict between vocational expert testimony and the
26 Dictionary of Occupational Titles. *Id.* ¶ 8.

27 Plaintiff's Complaint satisfies all pleading requirements of Rule 2(b) of the
28 Supplemental Rules for Social Security Actions, and there is no indication that the

1 Complaint is frivolous or malicious or seeks monetary relief from a defendant who is
2 immune from such relief. Accordingly, the Court finds that the Complaint survives
3 screening under 28 U.S.C. § 1915(e)(2)(B).

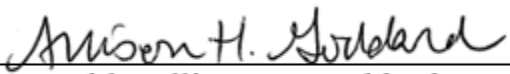
4 **III. CONCLUSION**

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

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

17 **IT IS SO ORDERED.**

18 Dated: November 29, 2023

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21 Honorable Allison H. Goddard
22 United States Magistrate Judge
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