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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

LINDA ANN SMITH,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL  
SECURITY ADMINISTRATION,

Defendant.

Case No. 2:13-cv-00347-GMN-CWH

**ORDER**

14 This matter was referred to the undersigned Magistrate Judge on Plaintiff's Motion/Application  
15 for Leave to Proceed *In Forma Pauperis* (#1), filed on February 28, 2013. On March 4, 2013, the Court  
16 denied Plaintiff's Motion/Application for Leave to Proceed *In Forma Pauperis* (#1) because it did not  
17 provide sufficient information for the Court to determine if she exhausted her administrative remedies  
18 and timely filed this action. See Order #2.

19 **I. Screening the Amended Complaint**

20 Upon granting a request to proceed *in forma pauperis*, a court must additionally screen the  
21 complaint pursuant to § 1915(a). Federal courts are given the authority dismiss a case if the action is  
22 legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks  
23 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a  
24 court dismisses a complaint under § 1915(a), the plaintiff should be given leave to amend the complaint  
25 with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the  
26 deficiencies could not be cured by amendment. See *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir.  
27 1995).

28 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for  
failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially a

1 ruling on a question of law. *North Star Intern. v. Arizona Corp. Comm'n*, 720 F.2d 578, 580 (9th Cir.  
2 1983). In considering whether the plaintiff has stated a claim upon which relief can be granted, all  
3 material allegations in the complaint are accepted as true and are to be construed in the light most  
4 favorable to the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980).

5 Plaintiff's complaint challenges a decision by the Social Security Administration ("SSA")  
6 denying benefits. Prior to filing suit, a plaintiff must exhaust administrative remedies. *See* 42 U.S.C.  
7 § 405(g); *see also Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989) (per curium) ("Section  
8 405(g) provides that a civil action may be brought only after (1) the claimant has been party to a hearing  
9 held by the Secretary, and (2) the Secretary has made a final decision on the claim"). Generally, if the  
10 SSA denies a claimant's application for disability benefits, he can request reconsideration of the  
11 decision. If the claim is denied at the reconsideration level, a claimant may request a hearing before an  
12 Administrative Law Judge ("ALJ"). If the ALJ denies the claim, a claimant may request review of the  
13 decision by the Appeals Council. If the Appeals Council declines to review the ALJ's decision, a  
14 claimant may then request judicial review. *See generally* 20 C.F.R. §§ 404, 416.

15 Once a plaintiff has exhausted administrative remedies, she can obtain judicial review of an  
16 SSA decision denying benefits by filing suit within sixty (60) days after notice of a final decision. *Id.*  
17 An action for judicial review of a determination by the SSA must be brought "in the district court of the  
18 United States for the judicial district in which the plaintiff resides." *Id.* The complaint should state the  
19 nature of Plaintiff's disability, when Plaintiff claims she became disabled, and when and how she  
20 exhausted his administrative remedies. The Complaint should also contain a plain, short, and concise  
21 statement identifying the nature of Plaintiff's disagreement with the determination made by the Social  
22 Security Administration and show that Plaintiff is entitled to relief. A district court can affirm, modify,  
23 reverse, or remand a decision if Plaintiff has exhausted her administrative remedies and timely filed a  
24 civil action. However, judicial review of the Commissioner's decision to deny benefits is limited to  
25 determining: (a) whether there is substantial evidence in the record as a whole to support the findings of  
26 the Commissioner; and (b) whether the correct legal standards were applied. *Morgan v. Commissioner*  
27 *of the Social Security Adm.*, 169 F.3d 595, 599 (9th Cir. 1999).

28 The Court previously found that Plaintiff failed to allege sufficient facts to determine if she

1 exhausted her administrative remedies and timely filed this action. On March 19, 2013, Plaintiff filed a  
2 copy of the Appeals Council's decision dated December 26, 2012. The Notice indicates that the  
3 Appeals Council denied her request for review, and, at that time, the ALJ's decision became the final  
4 decision of the Commissioner. Additionally, Plaintiff filed this action within sixty-five (65) days after  
5 the Notice. Thus, it appears Plaintiff has exhausted her administrative remedies. The Court notes that  
6 Plaintiff failed to file another copy of her complaint. However, it will consider the new filing of the  
7 Notice of Appeals Council's decision as a supplement to the original complaint. Consequently, taken  
8 together, Plaintiff's complaint and supplement allege sufficient facts to state a claim for relief.


9 Based on the foregoing and good cause appearing therefore,

10 **IT IS HEREBY ORDERED** that:

- 11 1. Plaintiff is permitted to maintain this action to conclusion without the necessity of  
12 prepayment of any additional fees or costs or the giving of a security therefor. This  
13 Order granting leave to proceed in forma pauperis shall not extend to the issuance of  
14 subpoenas at government expense.
- 15 2. The Clerk of Court shall file the Complaint (#1-1) along with the Supplement (#4).
- 16 3. The Clerk of the Court shall serve the Commissioner of the Social Security  
17 Administration by sending a copy of the summons and Complaint by certified mail to:  
18 Office of the Regional Chief Counsel, Region IX  
19 Social Security Administration  
20 160 Spear St., Suite 899  
21 San Francisco, CA 94105-1545
- 22 4. The Clerk of the Court shall also serve the Attorney General of the United States,  
23 Department of Justice, 950 Pennsylvania Avenue, N.W., Room 4400, Washington, D.C.  
24 20530.
- 25 5. The Clerk of Court shall issue summons to the United States Attorney for the District of  
26 Nevada and deliver the summons and Complaint to the U.S. Marshal for service.
- 27 6. From this point forward, Plaintiff shall serve upon Defendant or, if appearance has been  
28 entered by counsel, upon the attorney, a copy of every pleading, motion or other

1 document submitted for consideration by the court. Plaintiff shall include with the  
2 original paper submitted for filing a certificate stating the date that a true and correct  
3 copy of the document was personally served or sent by mail to the defendants or counsel  
4 for the defendants. The court may disregard any paper received by a district judge or  
5 magistrate judge which has not been filed with the Clerk, and any paper received by a  
6 district judge, magistrate judge or the Clerk which fails to include a certificate of service.

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8 Dated this 20th day of March, 2013

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11 **C.W. Hoffman, Jr.**  
12 **United States Magistrate Judge**