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4 **UNITED STATES DISTRICT COURT**  
5 **DISTRICT OF NEVADA**  
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7 WILLIAM E. AVELLO,

8 Plaintiff,

9 vs.

10 CAROLYN W. COLVIN,  
11 Acting Commissioner of Social Security,

12 Defendant.

Case No. 2:13-cv-00504-APG-GWF

**ORDER**

Amend Motion to Proceed *In Forma Pauperis* (#12)

13 This matter comes before the Court on Plaintiff's Amended Application to Proceed *In*  
14 *Forma Pauperis* (#12), filed on June 4, 2013. Plaintiff's initial Complaint (#1) contained only the  
15 Civil Cover Sheet. Plaintiff paid the filing fee on March 22, 2013, but filed his first Application to  
16 Proceed *In Forma Pauperis* (#2) on the same day. Plaintiff filed a Notice of Corrected Document  
17 (#11) to the Complaint (#1) on June 4, 2013 that included the previously-omitted body of the  
18 Complaint. In his Amended Application (#12), Plaintiff represents that his local counsel  
19 inadvertently paid the filing fee instead of designating this matter for *in forma pauperis*  
20 consideration. Plaintiff therefore seeks a refund of the filing fee if the instant Application (#12) is  
21 granted.

22 **BACKGROUND**

23 Plaintiff alleges a claim against the Social Security Administration, challenging its denial of  
24 social security benefits. Plaintiff alleges that at all time relevant to this action, he was disabled as  
25 defined by the Social Security Act. Plaintiff claims that the Social Security Commissioner, initially  
26 and upon reconsideration, denied his request for supplemental security income. Plaintiff states that  
27 he timely requested review of the ALJ's decision with the Appeals Council, which was denied on  
28 January 25, 2013. Plaintiff now seeks judicial review of that final agency decision.

1 **DISCUSSION**

2 **I. Application to Proceed In Forma Pauperis**

3 Plaintiff filed this instant action and attached a financial affidavit to his Application and  
4 Complaint as required by 28 U.S.C. § 1915(a). Having reviewed Plaintiff's financial affidavit  
5 pursuant to 28 U.S.C. § 1915, the Court finds that Plaintiff is unable to pre-pay the filing fee.  
6 Therefore, Plaintiff's request to proceed *in forma pauperis* in federal court is granted. The Court  
7 will order the tendered filing fee be refunded.

8 **II. Complaint**

9 Plaintiff brings suit against the SSA alleging he was wrongfully denied social security  
10 disability benefits. Federal courts only have jurisdiction to conduct judicial review of the SSA's  
11 final decisions. *See* 42 U.S.C. § 405(g); *see also Pacific Coast Medical Enterprises v. Harris*, 633  
12 F.2d 123, 137 (9th Cir. 1980). Plaintiff appears to have fully exhausted his administrative remedies  
13 with the SSA. The Court will therefore allow Plaintiff's Complaint to proceed as a petition for  
14 judicial review of a final agency decision. Accordingly,

15 **IT IS HEREBY ORDERED** that Plaintiff's Amended Application to Proceed *In Forma*  
16 *Pauperis* (#12) is **granted** with the caveat that the fees shall be paid if recovery is made. At this  
17 time, Plaintiff shall not be required to pre-pay the full filing fee of three hundred fifty dollars  
18 (\$350.00).

19 **IT IS FURTHER ORDERED** that the Clerk of the Court shall refund any filing fee  
20 Plaintiff previously tendered in this case.

21 **IT IS FURTHER ORDERED** that Plaintiff's first Application to Proceed *In Forma*  
22 *Pauperis* (#2) is **denied** as moot.

23 **IT IS FURTHER ORDERED** that the Clerk of the Court shall file the Complaint.

24 **IT IS FURTHER ORDERED** that the Clerk of the Court shall serve the Commissioner of  
25 the Social Security Administration by sending a copy of summons and Complaint by certified mail  
26 to: (1) Office of the Regional Chief Counsel, Region IX, Social Security Administration, 160 Spear  
27 Street, Suite 899, San Francisco, California 94105; and (2) the Attorney General of the United  
28 States, Department of Justice, 950 Pennsylvania Ave. NW, Washington DC 20530.

