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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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NAIM R. COSTANDI,  
Plaintiff,  
v.  
NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,  
Defendant.

Case No. 2:17-02019-JCM-PAL

**SCREENING ORDER**

(IFP App – ECF No. 1)

Plaintiff Naim R. Costandi has submitted an Application to Proceed *In Forma Pauperis* (ECF No. 1) pursuant to 28 U.S.C. § 1915 along with a Complaint (ECF No. 1-1). This Application and Complaint are referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3 of the Local Rules of Practice.

**I. IN FORMA PAUPERIS APPLICATION**

Plaintiff’s Application includes the affidavit required by § 1915(a) showing an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in forma pauperis* will be granted. The court will now review the Complaint.

**II. SCREENING THE COMPLAINT**

After granting a request to proceed *in forma pauperis*, a court must screen the complaint and any amended complaints filed prior to a responsive pleading. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc). The simplified pleading standard set forth in Rule 8(a) of the Federal Rules of Civil Procedure<sup>1</sup> applies to all civil actions, with limited exceptions. *Alvarez v. Hill*, 518 F.3d 1152, 1159 (9th Cir. 2008). A properly pled complaint must therefore provide “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ.

<sup>1</sup> Any reference to a “Rule” or the “Rules” in this Order refer to the Federal Rules of Civil Procedure.

1 P. 8(a)(2); *see also Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8  
2 does not require detailed factual allegations, it demands “more than labels and conclusions” or a  
3 “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
4 (2009) (citation omitted). A complaint “must contain sufficient allegations of underlying facts to  
5 give fair notice and to enable the opposing party to defend itself effectively.” *Starr v. Baca*, 652  
6 F.3d 1202, 1216 (9th Cir. 2011).

7 Federal courts are given the authority dismiss a case if the action is legally “frivolous or  
8 malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from  
9 a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). The standard for  
10 determining whether a plaintiff has failed to state a claim upon which relief can be granted under  
11 § 1915 is the same as the Rule 12(b)(6) standard for failure to state a claim. *Watison v. Carter*,  
12 668 F.3d 1108, 1112 (9th Cir. 2012). Review under Rule 12(b)(6) is essentially a ruling on a  
13 question of law. *North Star Intern. v. Ariz. Corp. Comm’n*, 720 F.2d 578, 580 (9th Cir. 1983).  
14 When a court dismisses a complaint pursuant to § 1915, a plaintiff is ordinarily given leave to  
15 amend with directions as to curing its deficiencies, unless it is clear from the face of the complaint  
16 that the deficiencies could not be cured by amendment. *Cato v. United States*, 70 F.3d 1103, 1106  
17 (9th Cir. 1995).

18 Here, the Complaint challenges a decision by the Social Security Administration (“SSA”)   
19 denying Plaintiff disability insurance benefits under Title II of the Social Security Act. *See Compl.*  
20 (ECF No. 1-1) ¶ 3. To state a valid benefits claim, a complaint must give the defendant fair notice  
21 of what the plaintiff’s claim is and the grounds upon which it rests. *Starr*, 652 F.3d at 1216. To  
22 do so, a complaint should state when and how a plaintiff exhausted his administrative remedies  
23 with the SSA and the nature of his disability, including when he claims he became disabled. The  
24 complaint should also contain a short and concise statement identifying the nature of the plaintiff’s  
25 disagreement with the SSA’s determination and show that the plaintiff is entitled to relief. *See,*  
26 *e.g., Sabbia v. Comm’r of Soc. Sec. Admin.*, 669 F. Supp. 2d 914, 918 (N.D. Ill. 2009) (when  
27 submitting a complaint for judicial review to the district court, social security appellants “must not  
28 treat the matter as a simple formality” by filing “extremely perfunctory” allegations), *aff’d sub*

1 *nom. Sabbia v. Astrue*, 433 F. App’x 462 (7th Cir. 2011). Although this showing need not be made  
2 in great detail, it must be presented in sufficient detail for the court to understand the disputed  
3 issues so that it can meaningfully screen the complaint. *See* 4 Soc. Sec. Law & Prac. § 56:4 (2016);  
4 2 Soc. Sec. Disab. Claims Prac. & Proc. §§ 19:92–93 (2nd ed. 2015).

5 **A. Exhaustion of Administrative Remedies**

6 Before a plaintiff can sue the SSA in federal court, he must exhaust his administrative  
7 remedies. 42 U.S.C. § 405(g); *Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989)  
8 (“Section 405(g) provides that a civil action may be brought only after (1) the claimant has been  
9 party to a hearing held by the Secretary, and (2) the Secretary has made a final decision on the  
10 claim”). Generally, if the SSA denies a claimant’s application for disability benefits, he or she can  
11 request reconsideration of the decision. If the claim is denied upon reconsideration, a claimant  
12 may request a hearing before an Administrative Law Judge (“ALJ”). If the ALJ denies the claim,  
13 a claimant may request review of the decision by the Appeals Council. If the Appeals Council  
14 declines to review the ALJ’s decision, a claimant may then request review by the United States  
15 District Court. *See* 20 C.F.R. §§ 404.981, 416.1481. A civil action for judicial review must be  
16 commenced within 60 days after receipt of the Appeals Council’s notice of a final decision. *Id.*  
17 *See also* 20 C.F.R. § 405.501. The SSA assumes that the notice of final decision will be received  
18 within five days of the date on the notice unless shown otherwise; thus, an action commenced  
19 within 65 days is presumed timely. The civil action must be filed in the judicial district in which  
20 the plaintiff resides. 42 U.S.C. § 405 (g).

21 In this case, Plaintiff alleges that on May 27, 2017, the Appeals Council denied the request  
22 for review and the ALJ’s decision became the final decision of the Commissioner. *See* Compl.  
23 ¶ 8. Thus, it appears Plaintiff has exhausted administrative remedies. Plaintiff timely commenced  
24 this action as the Complaint was filed on July 25, 2017, and the Complaint indicates that Plaintiff  
25 resides within the District of Nevada. *See* Compl. ¶ 1. Accordingly, Plaintiff has satisfied these  
26 prerequisites for judicial review.

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1                   **B. Grounds for Plaintiff’s Appeal and the Nature of the Disability**

2                   The Complaint seeks judicial review of the Commissioner’s decision denying benefits and  
3 asks the court to reverse that decision, or alternatively, to remand this matter for a new hearing. A  
4 district court can affirm, modify, reverse, or remand a decision if a plaintiff has exhausted his or  
5 her administrative remedies and timely filed a civil action. However, judicial review of the  
6 Commissioner’s decision to deny benefits is limited to determining: (a) whether there is substantial  
7 evidence in the record as a whole to support the findings of the Commissioner; and (b) whether  
8 the correct legal standards were applied. *Morgan v. Comm’r Soc. Sec. Admin.*, 169 F.3d 595, 599  
9 (9th Cir. 1999).

10                  In the Complaint, Plaintiff contends there is not substantial medical or vocational evidence  
11 in the record to support: (a) the legal conclusion that Plaintiff is not disabled within the meaning  
12 of the Social Security Act; or (b) the Commissioner’s finding that Plaintiff could perform  
13 substantial gainful activity. *See* Compl. ¶ 9. Plaintiff asserts that the record supports a finding  
14 that Plaintiff is disabled and has been continuously disabled at all relevant times. *Id.* ¶ 9(c).  
15 Plaintiff also alleges that new evidence exists and warrants a remand of this matter for further  
16 proceedings. *Id.* ¶ 9(d).

17                  However, Plaintiff has not stated the nature of the disability or alleged when it commenced,  
18 instead alleging only Plaintiff “is, and at all times relevant to this action, disabled as that term is  
19 defined in the Social Security Act.” *See* Compl. ¶ 5. Additionally, Plaintiff merely alleges that  
20 the Commissioner’s decision to deny benefits was wrong, but fails to indicate *why* the decision is  
21 wrong other than by reciting the general standards that govern the court’s review of the SSA’s  
22 decision. *Id.* at ¶ 9. Rule 8’s pleading standard requires more than a “formulaic recitation of the  
23 elements of a cause of action” and more than “labels and conclusions.” *Iqbal*, 556 U.S. at 678. A  
24 complaint merely stating that the SSA’s decision was wrong and failing to describe the underlying  
25 reasons why or identify plaintiff’s disability is insufficient to satisfy Rule 8’s pleading requirement  
26 because the complaint does not provide “fair notice of what the plaintiff’s claim is and the grounds  
27 upon which it rests.” *Cf. Starr*, 652 F.3d at 1216 (addressing post-*Iqbal* pleading standards and  
28 holding that a complaint “must contain sufficient allegations of underlying facts to give fair notice

1 and to enable the opposing party to defend itself effectively”). Accordingly, the Complaint fails  
2 to state a claim upon which relief can be granted.

3 Based on the foregoing,

4 **IT IS ORDERED:**

- 5 1. Plaintiff Naim R. Costandi’s Application to Proceed *In Forma Pauperis* (ECF No. 1)  
6 is **GRANTED**. Plaintiff shall not be required to pay the \$400 filing fee.
- 7 2. Plaintiff is permitted to maintain this action to conclusion without the necessity of  
8 prepayment of any additional fees or costs or the giving of a security therefor. This  
9 Order granting leave to proceed in forma pauperis shall not extend to the issuance  
10 and/or service of subpoenas at government expense.
- 11 3. The Clerk of Court shall FILE the Complaint, but SHALL NOT issue summons.
- 12 4. The Complaint is **DISMISSED WITH LEAVE TO AMEND**. Plaintiff shall have 30  
13 days from the date of this order, or until **November 30, 2017**, to file an amended  
14 complaint, if Plaintiff believes the noted deficiencies can be corrected.
- 15 5. Failure to file an amended complaint in accordance with this order may result in a  
16 recommendation to the district judge that this case be closed.

17 Dated this 30th day of October, 2017.

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20 PEGGY A. FEN  
21 UNITED STATES MAGISTRATE JUDGE  
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