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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 FORTUNA GEBRU FKADU,

11 Plaintiff,

12 v.

13 KIDANE TESFAY,

14 Defendant.

CASE NO. C21-0318JLR

ORDER DENYING PLAINTIFF'S
MOTION FOR JUDGMENT ON
THE PLEADINGS

15 **I. INTRODUCTION**

16 Before the court is Plaintiff Fortuna Gebru Fkadu's motion for judgment on the
17 pleadings. (Mot. (Dkt. # 11); Reply (Dkt. # 15).) *Pro se* Defendant Kidane Tesfay
18 opposes the motion.¹ (Resp.) The court has reviewed the motion, the submissions in
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22 ¹ The court previously encouraged Mr. Tesfay to obtain counsel. (See 4/8/21 Order (Dkt. # 6).) Mr. Tesfay maintains that he has been unable to do so and is not proceeding *pro se* by choice. (Resp. (Dkt. # 14) at 2.)

1 favor of and in opposition of the motion, the relevant portions of the record, and the
2 applicable law. Being fully advised,² the court DENIES the motion.

3 II. BACKGROUND

4 This case stems from Mr. Tesfay’s alleged failure to provide income support
5 promised to Ms. Fkadu under a United States Citizenship and Immigration Services Form
6 I-864, Affidavit of Support (“I-864 Affidavit”). (See Compl. (Dkt. # 1).) An I-864
7 Affidavit represents a binding agreement between the affiant and the United States for the
8 benefit of the sponsored immigrant. *Erlor v. Erlor*, 824 F.3d 1173, 1175 (9th Cir. 2016)
9 (citing 8 U.S.C. § 1183a(a)(1); 8 C.F.R. § 213a.2(d)). By signing the Affidavit, a sponsor
10 agrees to provide the sponsored immigrant with “any support necessary to maintain her at
11 an income that is at least 125 percent of the Federal Poverty Guidelines for her household
12 size.” (Compl. ¶ 23 (citing 8 U.S.C. § 1183a(a)(1)(A))); *Erlor*, 824 F.3d at 1175. An
13 I-864 Affidavit generally remains enforceable until the sponsored immigrant: “(1)
14 becomes a citizen of the United States; (2) has worked or can be credited with 40
15 qualifying quarters of work under title II of the Social Security Act; (3) ceases to be a
16 lawful permanent resident and departs the United States; (4) obtains in a removal
17 proceeding a grant of adjustment of status as relief from removal; or (5) dies.” *Erlor*, 824
18 F.3d at 1176 (citing 8 C.F.R. § 213a.2(e)(2)(i); 8 U.S.C. § 1183a(a)(2)-(3)).

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21 ² Neither party requests oral argument (*see* Mot. at 1; Resp. at 1), and the court finds that
22 oral argument would not be helpful to its disposition of the motion, *see* Local Rules W.D. Wash.
LCR 7(b)(4).

1 Ms. Fkadu filed her complaint on March 9, 2021. (*See* Compl.) She alleges that
2 Mr. Tesfay served as her immigration sponsor by executing an I-864 Affidavit during her
3 residency application to the United States and that his duties under the I-864 Affidavit
4 commenced on April 3, 2018. (Compl. ¶¶ 9, 12, 65.) She further alleges that her income
5 for 2020 was \$4,692, below the \$15,950 amount that represents 125% of the federal
6 poverty guideline for a household of one individual. (*Id.* ¶¶ 70-73.) Ms. Fkadu submits
7 her Social Security Administration earnings record to support her alleged income. (*Id.*
8 ¶ 71, Ex. 2.) She alleges that Mr. Tesfay has failed to provide her with support to raise
9 her income to 125% of the federal poverty guideline and that no event has occurred that
10 would terminate his obligations to her under the I-864 Affidavit. (*Id.* ¶¶ 74-83.)

11 On May 17, 2021, Mr. Tesfay filed his answer to Ms. Fkadu’s complaint.³ (Ans.
12 (Dkt. # 7).) Mr. Tesfay’s answer largely consists of general allegations that Ms. Fkadu is
13 untrustworthy and has a long history of misrepresenting herself. (*See generally* Ans.)
14 More relevant to these proceedings, he also alleges that she has failed to provide
15 sufficient evidence to support her claims (*id.* at 2), that she entered into a fraudulent
16 marriage with him for the purposes of obtaining a green card (*id.* at 3), that she is not
17 lawfully or physically in the United States (*id.*), and that her reported income may be

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19 ³ Mr. Tesfay styled his filing a “response to the civil action,” and it does not comport
20 with the proper form of a pleading. *See* Fed. R. Civ. P. 10(b); (Ans.). However, the court
21 construes the filings of *pro se* parties liberally, and interprets Mr. Tesfay’s filing as an answer to
22 the complaint. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).
Nevertheless, the court notes that while it may afford some leeway to *pro se* litigants, Mr. Tesfay
is responsible for complying with case deadlines, the Federal Rules of Civil Procedure, and the
Western District of Washington’s Local Civil Rules. Materials to assist *pro se* litigants,
including a copy of the Local Civil Rules, are available on the United States District Court for
the Western District of Washington’s website.

1 lower than her actual income because she is self-employed “driving for Uber or
2 Doordash” and she may be working “under the table” with the goal of misrepresenting
3 her income (*id.* at 4).

4 On May 26, 2021, Ms. Fkadu filed the instant motion for judgment on the
5 pleadings, arguing that she is entitled to judgment in her favor. (Mot.) The court now
6 addresses her motion.

7 III. ANALYSIS

8 “Judgment on the pleadings is proper when the moving party clearly establishes on
9 the face of the pleadings that no material issue of fact remains to be resolved and that it is
10 entitled to judgment as a matter of law.” *Hal Roach Studios, Inc. v. Richard Feiner and*
11 *Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir. 1990). The standard applied on a motion for
12 judgment on the pleadings under Rule 12(c) is essentially the same as that applied on a
13 Rule 12(b)(6) motion for failure to state a claim: “the allegations of the non-moving
14 party must be accepted as true, while the allegations of the moving party which have been
15 denied are assumed to be false.” *Id.* In evaluating a Rule 12(c) motion, the court “is not
16 required to accept as true legal conclusions or formulaic recitations of the elements of a
17 cause of action unsupported by alleged facts.” *QOTD Film Inv., Ltd. v. Wilson*, No.
18 C16-0371RSL, 2017 WL 841669, at *1 (W.D. Wash. Mar. 3, 2017) (citing *Ashcroft v.*
19 *Iqbal*, 556 U.S. 662, 678 (2009)).

20 Ms. Fkadu argues that her complaint adequately sets forth the factual allegations
21 establishing a breach of contract claim based on Mr. Fkadu’s failure to pay support.
22 (Mot. at 12-14.) However, as the moving party, it is not her pleading, but Mr. Tesfay’s,

1 | which receives the benefit of the doubt at this stage in the proceedings. *See Hal Roach*
2 | *Studios*, 896 F.2d at 1550. Applying this standard, the court concludes that Ms. Fkadu is
3 | not entitled to judgment on the pleadings.

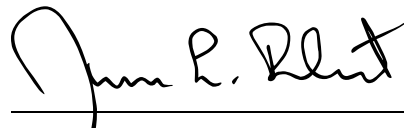
4 | Ms. Fkadu makes much of Mr. Tesfay’s answer’s failure to formally deny or plead
5 | lack of knowledge to the allegations in the complaint. (*See Mot.* at 4.) But while Mr.
6 | Tesfay’s answer is admittedly less clearly organized than Ms. Fkadu’s complaint, the
7 | court interprets his filing liberally. *See Balistreri*, 901 F.2d at 699. Accordingly, the
8 | court looks to the factual substance contained in Mr. Tesfay’s answer and interprets Mr.
9 | Tesfay’s answer as denying multiple allegations included in the complaint. Specifically,
10 | he appears to deny that Ms. Fkadu is lawfully and physically present in the United States.
11 | (*Ans.* at 3.) He also, through alleging that Ms. Fkadu has failed to provide sufficient
12 | support for income and asserting that she may be making money “under the table,”
13 | appears to deny that her income for 2020 was below the statutory threshold of \$15,950.
14 | (*Id.* at 2, 4.; *see also Resp.* at 2 (“There is no way the [P]laintiff[’s] income [for 2020] can
15 | go below 125% of the poverty line.”).) Ms. Fkadu admits that Mr. Tesfay’s allegation
16 | that she has lost her status as a lawful permanent resident creates a factual issue as to
17 | whether her claim is valid. (*Mot.* at 5.) She denies, however, that his claim that she
18 | earned more than \$15,950 in 2020 creates a similar issue. (*Reply* at 1 (arguing that Mr.
19 | Tesfay’s denial goes only to the amount of damages).) But if Ms. Fkadu did not earn less
20 | than the statutory threshold, than Mr. Tesfay does not owe her a duty and cannot have
21 | breached said duty, thus obviating her contract claim. (*See Mot.* at 13 (laying out
22 | elements of Ms. Fkadu’s claim, including breach of duty by not providing support after

1 income fell below \$15,950).⁴ Accordingly, the court concludes that Mr. Tesfay's denial
2 of Ms. Fkadu's status as a lawful permanent resident and denial of her 2020 income are
3 sufficient to deny Ms. Fkadu's motion for judgment on the pleadings.⁵

4 IV. CONCLUSION

5 For the foregoing reasons, Ms. Fkadu's motion for judgment on the pleadings
6 (Dkt. # 11) is DENIED.

7 Dated this 29th day of June, 2021.

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10 JAMES L. ROBART
United States District Judge

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17 ⁴ Although Ms. Fkadu submitted her Social Security Administration earnings record with
18 her complaint (Compl. Ex. 2), Mr. Tesfay disputes the accuracy of this document as a measure of
19 Ms. Fkadu's income (Ans. at 2, 4). At this early stage in the proceedings, viewing the facts in
20 the light most favorable to Mr. Tesfay and recognizing that the parties have not conducted
21 meaningful discovery, the court does not view Ms. Fkadu's submission as dispositive of her
22 income for 2020.

⁵ Ms. Fkadu also focuses on Mr. Tesfay's allegations that she entered into their marriage
as a ruse and engaged in other fraudulent activity related to her immigration to the United States,
arguing that even these allegations are true they would not defeat her claim. (Mot. at 6-12, Reply
at 2-3.) Because the court finds that Ms. Fkadu's motion for judgment on the pleadings fails on
other grounds, it does not address this argument at this time.