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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

TERRY ANN CERVANTES,	)	Case No.: 1:13-cv-00431 - JLT
	)	
Plaintiff,	)	ORDER DIRECTING CLERK TO ISSUE
	)	SUMMONS
v.	)	
	)	ORDER DIRECTING UNITED STATES
CAROLYN W. COLVIN,	)	MARSHAL FOR SERVICE OF THE SECOND
Acting Commissioner of Social Security,	)	AMENDED COMPLAINT
	)	
Defendant.	)	(Doc. 8)
	)	

Terry Ann Cervantes (“Plaintiff”) is proceeding *in forma pauperis* with an action seeking judicial review of a determination of the Social Security Administration. On May 7, 2013, Plaintiff filed her Second Amended Complaint in the action (Doc. 8), which is now before the Court for screening.

**I. Screening Requirement**

When a plaintiff proceeds *in forma pauperis*, the Court is required to review the complaint, and shall dismiss the case at any time if the Court determines that the action is “frivolous, malicious or fails to state a claim on which relief may be granted; or . . . seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. 1915(e)(2). The Court must screen the First Amended Complaint because an amended complaint supersedes the previously filed complaint. *See Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

1 **II. Pleading Standards**

2 General rules for pleading complaints are governed by the Federal Rules of Civil Procedure. A  
3 pleading must include a statement affirming the court’s jurisdiction, “a short and plain statement of the  
4 claim showing the pleader is entitled to relief; and . . . a demand for the relief sought, which may  
5 include relief in the alternative or different types of relief.” Fed. R. Civ. P. 8(a).

6 A complaint must give fair notice and state the elements of the plaintiff’s claim in a plain and  
7 succinct manner. *Jones v. Cmty Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir. 1984). The  
8 purpose of the complaint is to give the defendant fair notice of the claims against him, and the grounds  
9 upon which the complaint stands. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). The  
10 Supreme Court noted,

11 Rule 8 does not require detailed factual allegations, but it demands more than an  
12 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers  
13 labels and conclusions or a formulaic recitation of the elements of a cause of action will  
14 not do. Nor does a complaint suffice if it tenders naked assertions devoid of further  
15 factual enhancement.

16 *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009) (internal quotation marks, citations omitted). Conclusory  
17 and vague allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d 266, 268  
18 (9th Cir. 1982). The Court clarified further,

19 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim  
20 to relief that is plausible on its face.” [Citation]. A claim has facial plausibility when the  
21 plaintiff pleads factual content that allows the court to draw the reasonable inference  
22 that the defendant is liable for the misconduct alleged. [Citation]. The plausibility  
23 standard is not akin to a “probability requirement,” but it asks for more than a sheer  
24 possibility that a defendant has acted unlawfully. [Citation]. Where a complaint pleads  
25 facts that are “merely consistent with” a defendant’s liability, it “stops short of the line  
26 between possibility and plausibility of ‘entitlement to relief.’

27 *Iqbal*, 566 U.S. at 677 (citations omitted). When factual allegations are well-pled, a court should  
28 assume their truth and determine whether the facts would make the plaintiff entitled to relief;  
29 conclusions in the pleading are not entitled to the same assumption of truth. *Id.* The Court may grant  
30 leave to amend a complaint to the extent deficiencies of the complaint can be cured by an amendment.  
31 *Lopez v. Smith*, 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

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1 **III. Jurisdiction**

2 Plaintiff seeks review of a decision by the Commissioner of Social Security denying disability  
3 benefits. (Doc. 8). The Court may have jurisdiction pursuant to 42 U.S.C. § 405(g), which provides  
4 in relevant part:

5 Any individual, after any final decision of the Commissioner made after a hearing to  
6 which he was a party, irrespective of the amount in controversy, may obtain a review of  
7 such decision by a civil action commenced **within sixty days after the mailing to him**  
8 **of such decision or within such further time as the Commissioner may allow**. Such  
9 action shall be brought in the district court of the United States for the judicial district  
10 in which the plaintiff resides, or has his principal place of business . . . The court shall  
11 have power to enter, upon the pleadings and transcript of the record, a judgment  
12 affirming, modifying, or reversing the decision of the Commissioner of Social Security,  
13 with or without remanding the cause for a rehearing.

14 *Id.* (emphasis added). Except as provided, “[n]o findings of fact or decision of the Commissioner shall  
15 be reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h). These regulations  
16 “operate as a statute of limitations setting the time period in which a claimant may appeal a final  
17 decision of the Commissioner.” *Cogburn v. Astrue*, 2013 U.S. Dist. LEXIS 152351, at \* 5 (E.D. Cal.  
18 Oct. 29, 2010) (citing *Bowen v. City of New York*, 476 U.S. 467, 479 (1986); *Vernon v. Heckler*, 811  
19 F.2d 1274, 1277 (9th Cir.1987)). The time limit is a condition on the waiver of sovereign immunity,  
20 and it must be strictly construed. *Id.*

21 **IV. Discussion and Analysis**

22 According to Plaintiff, the Appeals Council denied her request for review of the decision  
23 rendered by the administrative law judge on January 2, 2012, at which time the decision became the  
24 final decision of the Commissioner. (Doc. 8 at 2). Therefore, Plaintiff’s request for review would be  
25 due no later than March 7, 2013. However, Plaintiff requested the Appeals Council grant an extension  
26 of time of thirty days to file a civil action on March 1, 2013. (Doc. 8).

27 An extension of the sixty-day filing deadline may be granted by the Commissioner where a  
28 request is made to the Appeals Council in writing and with a showing that a claimant had “good cause  
for missing the deadline[.]” 20 C.F.R. § 404.982; *see also* § 404.911 (considering the existence of  
good cause, the Administration considers: (1) circumstances that kept the claimant from making the  
request on time; (2) whether any action of the agency misled the claimant; (3) whether the claimant

1 did not understand the requirements of the Social Security Act resulting from amendments to the Act,  
2 other legislation, or court decisions; and (4) whether the claimant had any limitations which prevented  
3 her from timely filing).

4 The doctrine of equitable tolling allows for the statute of limitations to be extended in certain  
5 circumstances, because the Social Security regulations were “designed to be ‘unusually protective’ of  
6 claimants.” *Bowen*, 476 U.S. at 480. The Supreme Court noted,

7 [Social Security Administration] regulations governing extensions of time for filing are  
8 based on considerations of fairness to claimants. Thus, the Secretary may grant an  
9 extension where a suit was not timely filed because of illness, accident, destruction of  
10 records, or mistake. Similarly, an extension may be granted where the claimant  
11 misunderstands the appeal process or is unable to timely collect necessary information,  
or where the Secretary undertook action that “misled” the claimant concerning his right  
to review.

12 *Id.* at 480, n. 12 (citing 20 C.F.R. §§ 404.911,416.1411). Here, the Commissioner has not responded  
13 to Plaintiff’s request for an extension of time, although the request was made within the sixty-day time  
14 period. (Doc. 8 at 2). For this reason, it is appropriate to apply the doctrine of equitable tolling for  
15 purposes of screening the compliant. *See Aschettino v. Sullivan*, 724 F.Supp. 1116 (W.D.N.Y. 1989)  
16 (finding the plaintiff entitled to the doctrine of equitable of tolling when the Appeals Council did not  
17 act on the request for extension or even acknowledge it).

18 **V. Conclusion and Order**

19 Plaintiff’s Second Amended Complaint states a cognizable claim for judicial review of the  
20 decision denying her request for Social Security benefits. Based upon the foregoing, **IT IS HEREBY**

21 **ORDERED:**

- 22 1. The Clerk of Court is DIRECTED to issue summons as to the defendant Carolyn  
23 Colvin, Acting Commissioner of Social Security;
- 24 2. The Clerk of Court is DIRECTED to issue and serve Plaintiff with Social Security Case  
25 Documents, including the Scheduling Order, Order regarding Consent, the Consent  
26 Form, and USM-285 Forms;
- 27 3. Plaintiff **SHALL** complete and submit to the Court the “Notice of Submission of  
28 Documents in Social Security Appeal Form;” and

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4. The U.S. Marshal is DIRECTED to serve a copy of the Second Amended Complaint (Doc. 8), summons, and this order upon the defendant as directed by Plaintiff in the USM Forms.

IT IS SO ORDERED.

Dated: May 9, 2013

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE