

1 complaint. *See Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814
2 F.2d 565, 567 (9th Cir. 1987).

3 **II. Pleading Standards**

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

8 A complaint must give fair notice and state the elements of the plaintiff’s claim in a plain and
9 succinct manner. *Jones v. Cmty Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir. 1984). The
10 purpose of the complaint is to give a defendant fair notice of the claims against him, and the grounds
11 upon which the action stands. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). The Supreme
12 Court noted: “A pleading that offers labels and conclusions or a formulaic recitation of the elements of
13 a cause of action will not do. Nor does a complaint suffice if it tenders naked assertions devoid of
14 further factual enhancement.” *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009) (internal quotation marks,
15 citations omitted). When factual allegations are well-pled, a court should assume their truth and
16 determine whether the facts would make the plaintiff entitled to relief; conclusions in the pleading are
17 not entitled to the same assumption of truth. *Id.*

18 **III. Discussion and Analysis**

19 Plaintiff seeks review of a decision by the Commissioner of Social Security denying disability
20 benefits. (Doc. 4.) The Court would have jurisdiction pursuant to 42 U.S.C. § 405(g), which provides:

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

26 *Id.* Except as permitted by statute, “[n]o findings of fact or decision of the Commissioner shall be
27 reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h). These regulations
28 “operate as a statute of limitations setting the time period in which a claimant may appeal a final

1 decision of the Commissioner.” *Berrigan v. Astrue*, 2010 U.S. Dist. LEXIS 115390, at *4-5 (E.D. Cal.
2 Oct. 29, 2010) (citing *Bowen v. City of New York*, 476 U.S. 467, 479 (1986); *Matthews v. Eldridge*, 424
3 U.S. 319, 328 n. 9 (1976)).

4 According to Plaintiff, the Appeals Council denied her request for review of the decision
5 rendered by the administrative law judge on September 17, 2013, at which time the decision became
6 the final decision of the Commissioner. (Doc. 4 at 2.) Therefore, Plaintiff’s request for review would
7 be due no later than November 16, 2013. However, Plaintiff’s counsel requested the Appeals Council
8 grant an extension of time of thirty days to file a civil action on November 13, 2013. (*Id.*) The
9 Appeals Council granted the request for an extension of time on January 7, 2014. (*Id.*) Accordingly,
10 Plaintiff initiated this action in a timely manner, and the Court has jurisdiction over her request for
11 review of the Commissioner’s decision.

12 **VI. Conclusion and Order**

13 Plaintiff’s First Amended Complaint states a cognizable claim for judicial review of the
14 decision denying her request for Social Security benefits. Based upon the foregoing, **IT IS HEREBY**
15 **ORDERED:**

- 16 1. The Clerk of Court is DIRECTED to issue summons as to the defendant, Carolyn
17 Colvin, Acting Commissioner of Social Security;
- 18 2. The Clerk of Court is DIRECTED to issue and serve Plaintiff with Social Security Case
19 Documents, including the Scheduling Order, Order regarding Consent, the Consent
20 Form, and USM-285 Forms; and
- 21 3. The U.S. Marshal is DIRECTED to serve a copy of the First Amended Complaint
22 (Doc. 4), summons, and this order upon the defendant as directed by Plaintiff in the
23 USM Forms.

24
25 IT IS SO ORDERED.

26 Dated: January 31, 2014

/s/ Jennifer L. Thurston
27 UNITED STATES MAGISTRATE JUDGE