

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

PARRISH MOORE,
Plaintiff,
v.
CAROLYN W. COLVIN,
Acting Commissioner of Social Security,
Defendant.

) Case No.: 1:14-cv-01581-JLT
)
) ORDER DIRECTING CLERK TO ISSUE
) SUMMONS AND SOCIAL SECURITY CASE
) DOCUMENTS
)
) ORDER DIRECTING UNITED STATES
) MARSHAL FOR SERVICE OF THE FIRST
) AMENDED COMPLAINT
)
) (Doc. 6)

Plaintiff Parrish is proceeding *in forma pauperis* with an action for judicial review of a determination of the Social Security Administration. Previously, the Court dismissed Plaintiff's complaint with leave to amend. (Doc. 5.) On November 24, 2014, Plaintiff filed a First Amended Complaint (Doc. 6), 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. Cnty Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir. 1984). The
8 purpose of the complaint is to give a defendant fair notice of the claims against him, and the grounds
9 upon which the action stands. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). The Supreme
10 Court noted: "A pleading that offers labels and conclusions or a formulaic recitation of the elements of
11 a cause of action will not do. Nor does a complaint suffice if it tenders naked assertions devoid of
12 further factual enhancement." *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009) (internal quotation marks,
13 citations omitted). Conclusory and vague allegations do not support a cause of action. *Ivey v. Board of
14 Regents*, 673 F.2d 266, 268 (9th Cir. 1982). When factual allegations are well-pled, a court should
15 assume their truth and determine whether the facts would make the plaintiff entitled to relief;
16 conclusions in the pleading are not entitled to the same assumption of truth. *Id.*

17 **III. Discussion and Analysis**

18 Plaintiff seeks review of a decision by the Commissioner of Social Security denying disability
19 benefits. (Doc. 6.) The Court may have jurisdiction pursuant to 42 U.S.C. § 405(g), which provides
20 in relevant part:

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 such decision or within such further time as the Commissioner may allow. Such
24 action shall be brought in the district court of the United States for the judicial district
25 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.* (emphasis added). Except as provided, "[n]o findings of fact or decision of the Commissioner shall
27 be 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.” *Cogburn v. Astrue*, 2013 U.S. Dist. LEXIS 152351, at * 5 (E.D. Cal.
2 Oct. 29, 2010) (citing *Bowen v. City of New York*, 476 U.S. 467, 479 (1986); *Vernon v. Heckler*, 811
3 F.2d 1274, 1277 (9th Cir.1987)). The time limit is a condition on the waiver of sovereign immunity,
4 and it must be strictly construed. *Id.*

5 Plaintiff alleges the Appeals Council denied a request for review of the decision rendered by an
6 administrative law judge on August 20, 2014, at which time the decision became the final decision of
7 the Commissioner. (Doc. 6 at 2.) Therefore, Plaintiff’s request for judicial review would be due no
8 later than October 24, 2014. (*Id.*) Because Plaintiff initiated this action on October 8, 2014, the request
9 for judicial review is timely under 42 U.S.C. § 405(g). Accordingly, the Court has jurisdiction over
10 the complaint.

11 **IV. Conclusion and Order**

12 Plaintiff’s First Amended Complaint states a cognizable claim for judicial review of the
13 decision denying the request for Social Security benefits.

14 Based upon the foregoing, **IT IS HEREBY ORDERED:**

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

24
25 IT IS SO ORDERED.

26 Dated: November 26, 2014

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

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