

1 **II. Screening Requirement**

2 When an individual seeks to proceed *in forma pauperis*, the Court is required to review the
3 complaint and shall dismiss a complaint, or portion of the complaint, if it is “frivolous, malicious or
4 fails to state a claim upon which relief may be granted; or . . . seeks monetary relief from a defendant
5 who is immune from such relief.” 28 U.S.C. § 1915A(b); 28 U.S.C. § 1915(e)(2).

6 **III. Pleading Standards**

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

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

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

19 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted). Vague
20 and conclusory allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d 266,
21 268 (9th Cir. 1982). The Court clarified further,

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

27 *Iqbal*, 556 U.S. at 679 (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; legal

1 conclusions are not entitled to the same assumption of truth. *Id.* The Court may grant leave to amend a
2 complaint to the extent deficiencies of the complaint can be cured by an amendment. *Lopez v. Smith*,
3 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

4 **IV. Jurisdiction**

5 Plaintiff seeks review of a decision by the Commissioner of Social Security denying disability
6 benefits. (Doc. 1). The Court would have jurisdiction pursuant to 42 U.S.C. § 405(g), which provides
7 in relevant part:

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

17 *Id.* (emphasis added). Except as provided by statute, “[n]o findings of fact or decision of the
18 Commissioner shall be reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h).
19 These regulations “operate as a statute of limitations setting the time period in which a claimant may
20 appeal a final decision of the Commissioner.” *Berrigan v. Astrue*, 2010 U.S. Dist. LEXIS 115390, at
21 *4-5 (E.D. Cal. Oct. 29, 2010) (citing *Bowen v. City of New York*, 476 U.S. 467, 479 (1986); *Matthews*
22 *v. Eldridge*, 424 U.S. 319, 328 n. 9 (1976)). The time limit is a condition on the waiver of sovereign
23 immunity, and it must be strictly construed. *Id.*

24 **V. Discussion and Analysis**

25 The Appeals Council denied Plaintiff’s request for review on August 7, 2014, at which time
26 the ALJ’s decision became the final decision of the Commissioner. (*See* Doc. 1 at 5). Therefore,
27 Plaintiff’s request for judicial review pursuant to 42 U.S.C. § 405(g) was to be filed no later than
28 October 11, 2014. Plaintiff’s counsel requested the Appeals Council grant an extension of time to file
a civil action on October 8, 2014. (*Id.* at 10.) Notably, Plaintiff does not allege the Appeals Council
granted the extension of time. Therefore, from the face of Plaintiff’s complaint, it is not clear that the
Court has jurisdiction over the matter.

1 **VI. Leave to Amend the Complaint**

2 Leave to amend should be granted to the extent that the deficiencies of the complaint can be
3 cured by amendment. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). A complaint, or
4 a portion thereof, should only be dismissed for failure to state a claim upon which relief may be granted
5 if it appears beyond doubt that the Plaintiff can prove no set of facts, consistent with the allegations, in
6 support of the claim or claims that would entitle her to relief. *See Hishon v. King & Spalding*, 467 U.S.
7 69, 73 (1984) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)); *see also Palmer v. Roosevelt Lake*
8 *Log Owners' Ass'n., Inc.*, 651 F.2d 1289, 1294 (9th Cir. 1981).

9 Here the Court cannot find with certainty that Plaintiff cannot allege facts supporting a finding
10 that the Court has jurisdiction over the matter. The Court will grant Plaintiff leave to amend the
11 complaint to cure the deficiencies of this complaint by stating the necessary information regarding if
12 and when the request for an extension of time was granted by the Appeals Council. Failure to cure the
13 deficiencies will result in a recommendation that the matter be dismissed. The amended complaint
14 must bear the docket number assigned this case and must be labeled "First Amended Complaint."
15 Failure to file an amended complaint will be considered to be a failure to comply with an order of the
16 Court pursuant to Local Rule 110 and will result in dismissal of this action.

17 Accordingly, **IT IS HEREBY ORDERED:**

- 18 1. Plaintiff's motion to proceed *in forma pauperis* (Doc. 2) is **GRANTED**;
- 19 2. Plaintiff's complaint **IS DISMISSED** with leave to amend; and
- 20 3. Plaintiff is **GRANTED** 30 days from the date of service of this order to file an
21 amended complaint that complies with the requirements of the pertinent substantive
22 law, the Federal Rules of Civil Procedure, and the Local Rules of Practice.

23
24 IT IS SO ORDERED.

25 Dated: November 4, 2014

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