



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 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.* Leave to amend a  
17 complaint should be granted where deficiencies can be cured by an amendment. *Lopez v. Smith*, 203  
18 F.3d 1122, 1127-28 (9th Cir. 2000).

19 **III. Discussion and Analysis**

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

23 Any individual, after any final decision of the Commissioner made after a hearing to  
24 which he was a party, irrespective of the amount in controversy, may obtain a review of  
25 such decision by a civil action commenced **within sixty days after the mailing to him**  
26 **of such decision or within such further time as the Commissioner may allow.** Such  
27 action shall be brought in the district court of the United States for the judicial district  
28 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.

1 *Id.* (emphasis added). Except as provided, “[n]o findings of fact or decision of the Commissioner shall  
2 be reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h). These regulations  
3 operate as a statute of limitations, which “must be strictly construed.” *Bowen v. City of New York*, 476  
4 U.S. 467, 479 (1986); *see also Vernon v. Heckler*, 811 F.2d 1274, 1277 (9th Cir.1987) (explaining the  
5 60-day period “constitutes a statute of limitations”).

6 Exhibits to Plaintiff’s complaint indicate that an administrative law judge issued a decision  
7 denying her applications for benefits on August 26, 2013. (Doc. 5 at 5.) The Appeals Council denied  
8 her request for review on August 7, 2014, at which time the decision became the final decision of the  
9 Commissioner. (*Id.*) Therefore, Plaintiff’s request for judicial review of the Commissioner’s final  
10 decision was to be filed no later than October 11, 2014. However, Plaintiff’s counsel requested an  
11 extension of time, which was granted by the Appeals Council on December 15, 2014. (*Id.* at 10.)  
12 Therefore, Plaintiff’s request for judicial review of the decision is timely, and the Court has jurisdiction  
13 pursuant to 42 U.S.C. §405(g).

14 **IV. Conclusion and Order**

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

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

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

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4. The U.S. Marshal is DIRECTED to serve a copy of the First Amended Complaint (Doc. 5), summons, and this order upon the defendant as directed by Plaintiff in the USM Forms.

IT IS SO ORDERED.

Dated: December 29, 2014

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE