

1 **II. Discussion**

2 **a. Legal Standard**

3 Under 28 U.S.C. § 1915(e)(2), the Court must conduct an initial review of the Complaint
4 to determine whether it “state[s] a claim on which relief may be granted,” is “frivolous or
5 malicious,” or “seek[s] monetary relief against a defendant who is immune from such relief.” If
6 the Court determines that the Complaint fails to state a claim, it must be dismissed. *Id.* Leave to
7 amend may be granted to the extent that the deficiencies of the Complaint can be cured by
8 amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

9 A complaint must contain “a short and plain statement of the claim showing that the
10 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
11 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
12 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
13 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff must set
14 forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its face.’”
15 *Ashcroft v. Iqbal*, 556 U.S. at 663 (quoting *Twombly*, 550 U.S. at 555). While factual allegations
16 are accepted as true, legal conclusion are not. *Id.* at 678.

17 To determine whether a complaint states an actionable claim, the Court must accept the
18 allegations in the complaint as true, *Hospital Bldg. Co. v. Trustees of Rex Hospital*, 425 U.S. 738,
19 740 (1976), construe pro se pleadings liberally in the light most favorable to the Plaintiff, *Resnick*
20 *v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and resolve all doubts in the Plaintiff’s favor.
21 *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). Pleadings of pro se plaintiffs “must be held to
22 less stringent standards than formal pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627 F.3d 338,
23 342 (9th Cir. 2010) (holding that pro se complaints should continue to be liberally construed after
24 *Iqbal*).

25 **b. Plaintiff’s Allegations**

26 Plaintiff’s Complaint indicates that the Complaint was filed “based on the June 28, 2013
27 unfavorable decision.” ECF No. 1. It does not allege who (or which agency) rendered the
28 decision, nor does it specify any of the findings of that decision. The Complaint proceeds to cite

1 to particular pages of the decision, saying, among other things, that “on page 3 of 9 there is
2 inadequate and out dated [sic] information.” *Id.* The Complaint makes the same comment about
3 page 7 of the decision; the page apparently has “inadequate and outdated information that should
4 be further looked into.” *Id.* The Complaint further notes that Plaintiff has recently had surgery and
5 would like her case “looked into again.” *Id.* The Complaint does not go into further detail and
6 does not specify any factual or legal basis for the appeal.

7 **c. Analysis of Plaintiff’s Allegations**

8 Under Rule 8(a) of the Federal Rules of Civil Procedure, a complaint must first set forth a
9 “short and plain statement of the grounds for the court’s jurisdiction.” Under 42 U.S.C. § 405(g),
10 a plaintiff appealing a final decision of a denial of Social Security benefits can only come within
11 the jurisdiction of this Court if: (1) the appeal is filed within sixty days after she is mailed the
12 notice of the final decision of the Commissioner of Social Security; and (2) she resides in the
13 district in which the action is filed.

14 A “final decision” under 42 U.S.C. § 405(g) is reached only after a lengthy process in
15 which Plaintiff must exhaust her administrative remedies. Once a denial of benefits is received, a
16 claimant must file for reconsideration of that decision with the Social Security Administration. 20
17 C.F.R. § 904.909. If the Administration issues an adverse decision, an individual may request that
18 an administrative law judge (“ALJ”) hold a hearing. 20 C.F.R. § 404.929. If the ALJ then issues
19 an adverse decision, an appeal may be filed with the Social Security Appeals Council. Any appeal
20 to the Appeals Council must be filed within sixty days of the ALJ’s decision. 20 C.F.R. §
21 404.968. Once the Appeals Council issues its decision, a Claimant can file a complaint in the
22 United States District Court. This complaint must be filed within sixty days of the Appeals
23 Council’s order. 42 U.S.C. § 405(g).

24 It is not clear from the face of the Complaint that either of the conditions specified by 42
25 U.S.C. § 405(g) have been met. Although the Complaint states that an unfavorable decision was
26 rendered on June 28, 2013, it is unclear who issued that decision or whether the requisite appeals
27 process (as laid out above) has been followed. Plaintiff should clearly indicate the dates that any
28 appeals were filed, as well as the dates and results of those appeals, in any amended complaint.

1 Rule 8(a) additionally requires that each complaint contain “a short and plain statement of
2 the claim showing the pleader is entitled to relief.” Detailed factual allegations are not required,
3 but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
4 statements, do not suffice.” *Iqbal*, 550 U.S. at 555.

5 In this Complaint, it is clear that Plaintiff believes that something was not reviewed
6 adequately in previous proceedings. It is unclear, however, how specifically Plaintiff believes that
7 the Social Security Administration erred in coming to its decision or which facts the
8 Administration neglected to consider. Any amended complaint that Plaintiff files must correct
9 these errors.

10 Plaintiff should also note that this Court can only review a final decision by the Social
11 Security Administration to determine whether: (1) it is supported by substantial evidence; and (2)
12 it applied the correct legal standards. *Carmickle v. Commissioner*, 533 F.3d 1155, 1159 (9th Cir.
13 2008). In other words, the Court will not rehear the entirety of Plaintiff’s case.

14 **III. Leave to Amend**

15 The Court will provide Plaintiff an opportunity to amend the Complaint to fix the issues
16 identified above. If Plaintiff chooses to file a First Amended Complaint, it must bear the docket
17 number assigned in this case and be labeled “First Amended Complaint.” As a general rule, an
18 amended complaint supersedes the original complaint. *Lacey v. Maricopa Cnty.*, 693 F.3d 896
19 (9th Cir. 2012) (noting that there may be limited exceptions to this rule on appeal). In other
20 words, the amended complaint must be “complete in itself without reference to the prior or
21 superseded pleading.” Local Rule 220.

22 **IV. Order**

23 For the reasons set forth above, Plaintiff’s Complaint is DISMISSED WITH LEAVE TO
24 AMEND. Plaintiff is instructed to consider the standards set forth in this Order and should only
25 file an amended complaint if she believes her claims are cognizable. Any amended complaint
26 shall be filed no later than **February 23, 2015**. Failure to file an amended complaint by the date
27 specified will result in dismissal of this action.

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1 IT IS SO ORDERED.

2 Dated: January 21, 2015

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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